

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/11-02/11

Date: 13 August 2014

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Ekaterina Trendafilova
Judge Christine Van den Wyngaert

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF THE PROSECUTOR v. CHARLES BLÉ GOUDÉ

**Confidential, only available to the Prosecution, Defence and Registry
With Annexes 1 to 3 – Confidential, only available to the Prosecution, Defence
and Registry**

**Prosecution's Request for Measures under Regulation 101(2) of the Regulations of
the Court**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

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Mr James Stewart

Mr Eric MacDonald

Counsel for the Defence

Mr Nicholas Kaufman

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. The Prosecution requests that Pre-Trial Chamber I ("Chamber") set conditions applicable to Charles BLÉ GOUDÉ ("BLÉ GOUDÉ")'s incoming and outgoing telephone communications and his personal visits at the ICC Detention Centre. The Prosecution has reasonable grounds to believe that without such conditions, BLÉ GOUDÉ could use his telephone communications and personal visits to breach an order for non-disclosure made by the Single Judge.¹

Confidentiality

2. Pursuant to Regulation 23*bis* of the Regulations of the Court ("RoC"), the Prosecution files this document and its annexes as Confidential, only available to the Prosecution, Defence and Registry, as reference is made to sensitive and confidential information related to the detention conditions of BLÉ GOUDÉ.

Submissions

3. On 15 June 2014, a published media article described how an individual, not on BLÉ GOUDÉ's list of authorised telephone contacts at the ICC Detention Centre, was nonetheless able to communicate with him by using the telephone of another person whose telephone number was "*enregistré[] à la CPI*".² A copy of this article is attached as Annex 1. The Prosecution became aware of this media article on 14 July 2014. On 15 July 2014, the Prosecution forwarded a copy of this article to the Registry for it to assess the matter and determine if BLÉ GOUDÉ was having unauthorised contact with third parties.
4. On 31 July 2014, a published media article indicated that, since March 2014, BLÉ GOUDÉ could be contacted through a "*canal fiable*". The article also provided

¹ See for instance ICC-02/11-02/11-67-Anx.

² In making reference to telephone numbers in this manner, the maker of the statement presumably is referring to telephone numbers that are registered with and approved by the Registrar or the Chief Custody Officer.

both an e-mail address and the name of a personalised social media ('Facebook') page that could both be used to contact BLÉ GOUDÉ. A copy of this article is attached as Annex 2. The Prosecution became aware of this media article on 2 August 2014. On 5 August 2014, the Prosecution forwarded a copy of this article to the Registry with a request that the Registry make efforts to verify the information in the article and advise the Prosecution of its findings.

5. On 5 August 2014, a published media article indicated that BLÉ GOUDÉ had received the first 100 messages sent to him *via* the e-mail address and social media page previously identified in the article at Annex 2. A copy of this article is attached as Annex 3. On 7 August 2014, the Prosecution forwarded a copy of this article to the Registry as further information that could assist its inquiries.
6. On 8 August 2014, the Registry confirmed to the Prosecution that BLÉ GOUDÉ does not have access to the Internet but that he is permitted visits and telephone calls. The Registry also advised the Prosecution that if the Registrar ordered monitoring pursuant to Regulation 175 of the Regulations of the Registry ("RoR") the existence of such an order and information about the measures taken, if any, would not be provided to the Prosecution.
7. Based upon the foregoing, including the attached annexes, and pursuant to Regulation 101(2)(d) of the RoC, it is reasonable to conclude that BLÉ GOUDÉ is in direct or indirect communication with persons in an unauthorised manner and that there are reasonable grounds to believe that such contact could be used "to breach an order for non-disclosure". The Prosecution does not allege that BLÉ GOUDÉ has breached an order for non-disclosure, but rather, as set out in Regulation 101(2)(d), that these uncontrolled and unauthorised contacts could be used to breach such an order.³ The Prosecution also observes that divulging

³ In addition to possible future orders, the current order that could be breached is found in the Second decision on issues related to disclosure of evidence where the Chamber decided "[...] that the parties shall apply the

confidential information to unauthorised persons, for example, can occur intentionally or inadvertently. In either case, the chances of an inadvertent disclosure are obviously increased in proportion to the number of unauthorised contacts.

8. As a result, additional measures are necessary to verify if BLÉ GOUDÉ has breached an order for non-disclosure and to ensure that there are no additional unauthorised contacts or that he does not, either intentionally or inadvertently, breach an order for non-disclosure in the future.

Relief Requested

9. For the reasons set out above, the Prosecution requests, pursuant to Regulation 101(2) of the RoC, that the Chamber direct the Registrar to immediately implement the following measures:
 - a. Commence and maintain active supervision, including audio recording of all conversations between BLÉ GOUDÉ and his visitors at the ICC Detention Centre, with the exceptions of visits with his Defence Counsel, assistants to counsel entitled to legal privilege, diplomatic or consular representatives and medical professionals who are there to provide medical care and treatment, for an initial period of one month, and to keep the recordings until the completion of the proceedings;
 - b. Commence and maintain active monitoring of BLÉ GOUDÉ's telephone calls in a manner consistent with Regulations 175(2) and (5)-(10) of the RoR, for an initial period of one month;

protocols on the handling of confidential information as annexed to the present decision; See ICC-02/11-02/11-67 at page 10 and ICC-02/11-02/11-67-Anx.

- c. Review the recordings of all of BLÉ GOUDÉ's non-privileged telephone conversations⁴ since 5 May 2014,⁵ and report as soon as practical to the Chamber and the Prosecution, on a confidential basis, all information that appears to be relevant to the possible disclosure of information that is confidential or otherwise subject to a non-disclosure order;
- d. For an initial period of one month, report forthwith to the Chamber and the Prosecution, on a confidential basis, any visit or telephone conversation that appears to be relevant to the possible disclosure of information that is confidential or otherwise subject to a non-disclosure order; and,
- e. Implement any other measures that the Chamber deems to be appropriate in the circumstances, including further restrictions on contact with other persons, with the exception of Counsel.



Fatou Bensouda, Prosecutor

Dated this 13th day of August 2014

At The Hague, The Netherlands

⁴ Pursuant to Regulation 174 of the RoR, all telephone conversations of detained persons are recorded and the recordings maintained until the completion of proceedings.

⁵ This being the date of the Second decision on issues related to disclosure of evidence, ICC-02/11-02/11-67.