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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

Public Redacted Document

Defence response to Prosecution request ICC-02/11-02/11-100

Source: Defence for Charles Blé Goudé

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

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The Defence for Charles Blé Goudé ("the Suspect") hereby submits its response to the Prosecutor's *Request for Variation of Time Limits Pursuant to Regulation 35 concerning the Confirmation of Charges* ("the Prosecutor's Request").¹

Submission

1. The Suspect strenuously opposes the Prosecutor's Request. Apart from seriously inconveniencing Counsel and the judges who have planned their busy schedule specifically in order to accommodate her case, the Prosecutor's Request is without "good cause" and contrary to the interests of justice.
2. The Suspect will proceed to analyze below each and every one of the Prosecutor's grounds for seeking the variation of time limits.

Paragraph 2

[T]he Prosecution has conducted a number of interviews, [REDACTED] and collected additional material. This material now needs to be disclosed, a process which includes where applicable, the transcription, registration, review, and implementation of redactions. Additionally, the Prosecution team was informed that transcripts of the audio recordings of these interviews will not be ready by 18 July 2014.

3. While the Prosecutor was, of course, entitled to continue her investigations subsequent to the Suspect's surrender to the Court, it would appear that the only reason for the present impasse is because the Prosecutor has performed such an intense investigation at an inordinately late stage. Indeed, the exact dates on which the new witnesses were interviewed are not stipulated in the Prosecutor's Request. In a nutshell, however, the Prosecutor's investigators have now swamped her transcribers with a mass of audio material which cannot be analyzed and incorporated into a document

¹ ICC-02/11-02/11-100-Red.

containing the charges by 18 July 2014. This is nothing more than an issue of poor management compounded by a prior miscalculation. [REDACTED], the Prosecutor's representative, [REDACTED], stated as follows:

"[REDACTED]".²

4. At the time of this submission, the Prosecutor's representative was fully aware that the confirmation hearing had been fixed for 18 August 2014. Without committing to an earlier date, the Prosecutor's representative, nonetheless, indicated that [REDACTED].

5. The Pre-Trial Chamber is reminded that confirmation proceedings are not a mini-trial but merely an opportunity for the Prosecutor to satisfy the Pre-Trial Chamber that substantial grounds exist to warrant a trial with all its accompanying costs. It should not be forgotten that the Prosecutor's representative has already stated that the Suspect's case and that of Laurent Gbagbo are "*as if they were joint cases*".³ With this in mind, it is not clear what aspects of the Prosecutor's case [REDACTED] designed to corroborate above and beyond those aspects common to the *Gbagbo* case. Such a lack of clarity presumably arises out of the fact that the Prosecutor's Languages Service Unit has not had the opportunity of furnishing her team with any transcripts which may elucidate the matter further. At the end of the day, however, the Prosecutor has not shown why these transcripts are essential for the purpose of confirming the charges.

Paragraph 3

[V]ideo evidence of speeches and/or statements of BLE GOUDE is important material on which the Prosecution intends to rely for the confirmation hearing. While the vast majority of these videos have been disclosed, some of their corresponding transcripts are

² ICC-02/11-02/11-T-4-CONF-ENG ET 01-05-2014 7/23.

³ ICC-02/11-02/11-T-4-Red-ENG WT 01-05-2014 4/23.

not yet finalised and the Prosecution team has been informed that a number of the requested transcripts will not be ready by 18 July 2014.

6. The speeches are open source media which have been accessible to the Prosecutor ever since her predecessor commenced his investigation in Côte d'Ivoire. Those speeches which are not available in transcript format and, as a result, fail to meet the high standards for the presentation of evidence at the International Criminal Court should not be admitted into evidence. The Suspect refers to paragraph 6 of the Prosecutor's Request and suggests that the said transcripts could easily be made available on time if some of her "*great number of staff*" were to take their "*annual leave*" later in the year.

Paragraph 4

[T]he Prosecution has been seeking the consent of the United Nations ("UN") in order to disclose and rely on statements the disclosure of which had not raised any issues in the Laurent GBAGBO case ("GBAGBO case") but for which consent to disclose in the BLE GOUDE case is pending. Despite the best efforts of both the UN and the Prosecution, it is currently uncertain if the necessary consent to disclose the statements will be obtained prior to 18 July 2014.

7. No indication is given as to when the Prosecutor first sought the consent of the UN to disclose these statements. Nor is any explanation given as to why the necessary consent for disclosure could not be obtained before 18 July 2014. Furthermore, it is not clear why the Prosecutor could not have obtained consent for disclosure at the same time as she obtained such in the case of Laurent Gbagbo. In any event, the Prosecutor has had since late March 2014 to obtain the consent required and despite flagging the issue at the Status Conference on 1 May 2014,⁴ has failed to remedy the situation. No variation of time limits

⁴ ICC-02/11-02/11-T-4-CONF-ENG ET 01-05-2014 6/23 at line 1.

should be afforded to remedy what can only be intransigence on the part of the UN or lack of diligence on the part of the Prosecutor.

Paragraph 5

The Prosecution has also recently learned [REDACTED]. Consequently, it is not certain that the Prosecution will be in a position to disclose this statement by 18 July 2014.

8. [REDACTED].

Paragraph 6

Given the practical reality that a great number of staff take their annual leave during this period [19 July – 10 August], this will impact on the time required to complete the necessary process to disclose the evidence and submit the hyperlinked DCC and LoE.

9. The Suspect is extremely concerned that the Prosecutor deems his liberty and the preparation for the confirmation hearing as being subordinate to her employees' holiday plans. It is the Prosecutor's obligation to be ready to meet all eventualities even if "*a great number*" of her staff will be hitting the beach. Counsel and his not so "*great number of staff*"; viz, one legal assistant and one case manager, will seek no resort other than Maanweg 174 come the month of August. The Suspect, unfortunately, has no choice in the matter. The Court is requested to ignore this particular justification for the variation of time limits.

Paragraph 7

Finally, while the BLE GOUDE case is closely related to the GBAGBO case, before BLE GOUDE's transfer on 22 March 2014, the Prosecution was focused on the GBAGBO case with the available resources at its disposal.

10. The Suspect cannot accept this as a legitimate excuse for an extension of time limits. The Prosecutor's predecessor – Luis Moreno-Ocampo – in his inimitable style - had targeted the Suspect even before seeking permission from the Pre-Trial Chamber to open an investigation indicating, thereby, the priority that *he* attached to this case.⁵ How the present Prosecutor, nevertheless, shuffles her generously abundant resources is not an issue for the Pre-Trial Chamber and her failure to manage them appropriately or to make contingency provisions for the sudden arrival of a detainee should not be a reason for prejudicing the Suspect's right to an expeditious confirmation process.

Conclusion

11. By way of conclusion, it is fitting to note that the Single Judge rejected a recent request of the Suspect to bring forward the deadline for the submission of the document containing the charges:

"...the Single Judge considers that the current 30 days period, from the filing of the DCC and the list of evidence until the commencement of the confirmation of charges hearing, is adequate for the preparation of Mr Blé Goudé's defence".⁶

12. Sauce for the goose is sauce for the gander: In rejecting the Suspect's request to expedite the confirmation process, the Single Judge had already factored the ongoing investigation into her reasoning and the fact that the Prosecutor's recently acquired materials were "*in the process of being transcribed, registered and disclosed*".⁷ As a matter of equity, the Prosecutor should not now benefit from the Court's indulgence where it was previously denied the Suspect.

⁵ [http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/press%20releases%20\(2010\)/Pages/pr617.aspx](http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/press%20releases%20(2010)/Pages/pr617.aspx).

⁶ ICC-02/11-02/11-93 at paragraph 9.

⁷ ICC-02/11-02/11-93 at paragraph 4.

13. No delay is warranted in this case and any delay occasioned can only arise, unreasonably and inexcusably, as a result of mismanagement and/or miscalculation on the part of the Prosecutor.⁸ In the absence of "good cause", the Pre-Trial Chamber should **REJECT** the Prosecutor's Request.

A handwritten signature in black ink, reading "Nicholas Kaufman", enclosed within a rectangular border.

Nicholas Kaufman

Counsel for Charles Blé Goudé

Done in Jerusalem, Israel
Sunday, July 06, 2014

⁸ Article 60(4) of the Rome Statute.