



Original: **English**

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

Date: **05/06/2014**

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Single Judge

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF THE PROSECUTOR v. CHARLES BLÉ GOUDÉ

Public Document

Defence response to Prosecution filing ICC-02/11-02/11-77-Red

Source: Defence for Charles Blé Goudé

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

The Office of the Prosecutor

Fatou Bensouda
James Stewart
Eric Macdonald

Counsel for the Defence

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

Herman von Hebel

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section Other**

The Defence for Charles Blé Goudé hereby responds to the *Prosecution's request pursuant to Regulation 35 for an extension of time to disclose certain documents* dated 5 June 2014 ("the Prosecutor's Request").¹

1. At the outset, the Defence submits that the Prosecutor's Request should be rejected *in limine* for the sheer tardiness of its submission. Indeed, the Prosecutor's custom of filing a request for an extension of a time limit at the eleventh hour has been expressly criticized by other judges of the International Criminal Court. Take, for example, the caustic remarks of HHJ Cuno Tarfusser:

*"CONSIDERING it utterly inappropriate and contrary to fundamental principles of good faith and fairness in the conduct of the proceedings that a request for extension of a time limit be filed on the very day on which that time limit expires, this being tantamount to making it impossible for the Chamber to reject the request for extension and in trying to create a fait accompli for the Chamber, also preventing the right to reply of the other parties to the proceedings;..."*²

2. The witnesses to whom the expert medical records relate are witnesses whose statements were disclosed in connection with the Gbagbo case. With this in mind, the Prosecutor has not clarified whether these medical records also formed part of the Gbagbo disclosure and, if so, why she did not disclose them on 9 May 2014 pursuant to the Single Judge's order in ICC-02/11-02/11-67.

3. On the assumption, however, that these medical records were not part of the Gbagbo disclosure, the question now arises as to whether their late production may be justified by the need to communicate "expert" evidence which is, purportedly, intended to prevent "*incomplete*" or "*duplicate*" disclosure.³

4. The Defence suggests that the Prosecutor's Request is contrived to say the least.

¹ ICC-02/11-02/11-77-Red.

² ICC-01/05-01/13-80.

³ ICC-02/11-02/11-77-Red at paragraph 6.

5. If the anticipated "expert" evidence is the vehicle whereby the Prosecutor hopes to rectify a failure to submit the medical reports on 9 May 2014, then those medical reports should not be adduced at confirmation as incriminating evidence. Should that not be the case, then the Defence will gladly receive the medical reports on 6 June 2014 (*i.e.*; today) and graciously forgive the Prosecutor any unseemly "*incomplete*" or "*duplicate*" disclosure.

6. Since the Defence's intent to challenge evidence emanating from the victims of violence depends, to a large extent, on the forthcoming confirmation decision in the Gbagbo case, no current objection is made to "*additional protective measures*" or "*enhanced confidentiality requirements*".⁴

7. The reason given for the failure of the medical "expert" to proffer his work product on time, however, does not explain why the Prosecutor has made her application for a variation of time limits at such a late stage. No indication is given as to when the expert evidence was commissioned and, indeed, why the Prosecutor did not keep a beady eye on the progress of its preparation.

8. The Single Judge should reject the Prosecutor's Request.



Nicholas Kaufman

Counsel for Charles Blé Goudé

Done in Jerusalem, Israel
Thursday, June 05, 2014

⁴ ICC-02/11-02/11-77-Red at paragraph 7.