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PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Single Judge

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
*THE PROSECUTOR V. CHARLES BLÉ GOUDÉ***

**Public Document
With Public Annexes 1 and 2**

Second Request for State Party Cooperation

Source: The 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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Section**

Pursuant to Articles 57(3)(b), 87(1)(a) and 93(1)(i) of the Rome Statute (the “**Statute**”), the Defence for Charles Blé Goudé (the “**Suspect**”) hereby submits its second request to the Single Judge of Pre-Trial Chamber I of the International Criminal Court (the “**Court**”) to order and/or seek cooperation of Côte d’Ivoire in order to assist the Suspect in the preparation of his defence (the “**Second Request**”).

Procedural History

1. On 21 December 2011, the Court issued a warrant of arrest for the Suspect (“the Warrant of Arrest”).
2. On 15 February 2013, Côte d’Ivoire ratified the Rome Statute.
3. On 30 September 2013, the Warrant of Arrest was reclassified as public.
4. Shortly thereafter, in November 2013, at the 12th Assembly of State Parties to the Rome Statute, Côte d’Ivoire professed its sincere commitment to the activities of the Court through its Minister of Justice, H.E. Gnénéma Coulibaly:

"Mon pays continuera inlassablement à prendre sa part de responsabilité dans le combat pour la justice pour tous".¹

5. On 22 March 2014, the Suspect was surrendered to the ICC.

¹ C. Gnénéma, *12ème Session de l’Assemblée des Etats Parties au Statut de Rome de la Cour Pénale Internationale*, 21 November 2013, p.2, available at http://www.icc-cpi.int/iccdocs/asp_docs/ASP12/GenDeba/ICC-ASP12-GenDeba-CoteDIvoire-FRA.pdf

6. The Suspect made his initial appearance before the Single Judge on 27 March 2014.

7. On 10 April 2014, the Prosecutor partially supported a Defence application pursuant to Articles 57(3)(b) and 93(1)(i) of the Statute. In essence, the Prosecutor agreed not to oppose a Defence request that Ghana and Côte d'Ivoire provide a full record of all legal proceedings related to the post-election violence and which were initiated with respect to the Suspect (inclusive of warrants, court orders, court transcripts, copies of exhibits and all legal submissions filed by the litigants). The Defence sought, more particularly, that the Single Judge “order the competent authorities of Ghana and Côte d'Ivoire to disclose all documents that they possess relevant to all legal proceedings initiated against the Suspect in Ghana and Côte d'Ivoire and which correspond to and post-date the period of the post-electoral violence” (the “**First Request**”).²

8. In the First Request, the Defence also indicated that the Suspect was (i) challenging the legality of the circumstances surrounding his arrest, (ii) considering whether or not to challenge the admissibility of the case, and (iii) preparing all necessary documents to make a request for interim release in due course, and therefore asked that the First Request be decided upon in a prompt manner.

9. On 17 April 2014, the Single Judge rejected the First Request on the grounds that it was not “necessary” (as further defined below). The Single Judge ruled that the Defence could first seek to obtain the documents from the

² ICC-02/11-02/11-56.

Prosecution pursuant to Rule 77 of the Rules of Procedure and Evidence and, if needed, by requesting them directly from Ghana and the Côte d'Ivoire.³

10. On 22 April 2014, the Defence arranged for the submission of a petition to the Doyen des Judges d'Instruction du Tribunal de Première Instance d'Abidjan-Plateau and the Prosecutor General of the Abidjan Court of Appeal, in which the Defence sought disclosure of all legal and evidentiary documents in the pending legal proceedings against the Suspect.⁴

11. At the status conference with the Single Judge of 1 May 2014, the Single Judge stated that she would consider this issue further once the Defence received a response to its requests of 22 April 2014.⁵

12. On 9 May 2014, notified on 19 May 2014 to the Defence by the Abidjan Clerk of the Court, the Doyen rejected the Defence's requests and thus refused to provide such documents. In his decision, the Doyen stated that "*dans le système ivoirien ni le code de procédure pénale ni aucun autre texte de loi ne prescrit au Judge d'Instruction de délivrer à l'inculpé ou à son conseil, copie des pièces et actes de procédure*".⁶

Factual Context of the Second Request

13. The Defence does not submit the First Request and the Second Request in a vacuum. The Suspect has suffered serious violations of his human rights at

³ ICC-02/11-02/11-63.

⁴ See [Annex 1](#).

⁵ ICC-02/11-02/11-T-4-CONF-ENG, p.22, ln. 18-19.

⁶ See [Annex 2](#).

the hands of his former captors, and the Requests are, additionally, designed to provide him with the ability to assess to what extent the domestic jurisdiction offered him any form of legal protection.

14. The Defence will briefly describe the circumstances of the Suspect's arrest in Côte d'Ivoire prior to his rendition to the Court, and the physical and psychological torture that he endured. This is the first opportunity that the Suspect has had to bring this matter to the attention of the Single Judge.

15. On or about 18 January 2013 at 6:00AM, the Suspect was awoken in his home in Ghana by unmarked armed men, who refused to show the Suspect an arrest warrant bearing his name. He was handcuffed, his home was searched, and his personal items were seized; he was then whisked into an unmarked car.

16. The Suspect was brought into the Ghana office of the Bureau of National Investigations (BNI), where he was detained and handcuffed from 7:00AM until 10:00PM in a holding cell.

17. The BNI then brought the Suspect to the border with Côte d'Ivoire and, by 4:00AM, on or about 19 January 2013, the Suspect was handed over to plainclothes armed men on the Côte d'Ivoire side of the border. The Suspect was bound by his hands and soon found himself delivered to the locked kitchen of what seemed to be a civilian domicile.

18. Over the course of three months, the Suspect was subjected to psychological torture such as sleep deprivation, blackout hooding, starvation, isolation, and binding of the hands and feet. He was fed once per day. He had no access to an attorney in his place of detention. His seized personal belongings were never returned.
19. At one point during this incarceration, the Suspect's hands were cuffed behind his back for 11 days straight. This required ingestion of food without the manual use of his hands.
20. At a hearing before a judge on or about 21 January 2013, the Suspect complained of his treatment, although hardly coherent due to his lengthy mistreatment and psychological torture. His claims were ignored and he was returned to the kitchen-cum-holding cell.
21. On or about 17 April 2013, the Suspect was transferred without warning to a holding cell within the *Direction de la surveillance du territoire* (DST) of Côte d'Ivoire, a group known for its brutal tactics and extralegal paramilitary activity.
22. The DST holding cell was even crueler than his previous detention. For nine months the Suspect was held in an isolation cell without a mattress or blanket, and was bound and/or handcuffed for days at a time without reprieve.

23. The Suspect was first afforded a lawyer on 2 August 2013, at a hearing in Abidjan, five months after his original arrest and detention.

24. Just before midnight on 21 March 2014, the Suspect was notified of his transfer to the ICC, at which time he was handcuffed to a chair until 9:00AM on 22 March 2014 and left without food or water.

25. The Suspect was surrendered by Côte d'Ivoire to the Court on 22 March 2014 by way of airplane to Schipol Airport.

Legal Basis for the Second Request

26. The Court has the authority to “make requests to State Parties for cooperation.”⁷ State Parties have the “general obligation” to “cooperate fully with the Court.”⁸ Such a request to a State Party could require “the provision of records and documents, including official records and documents.”⁹

27. The Pre-Trial Chamber may, upon request of the Suspect, “issue such orders...or seek such cooperation pursuant to Part 9 as may be necessary to assist the person in the preparation of his or her defence.”¹⁰

⁷ Article 87(1)(a), Rome Statute.

⁸ Article 86, Rome Statute.

⁹ Article 93(1)(i), Rome Statute.

¹⁰ Article 57(3)(b), Rome Statute.

28. The Single Judge has interpreted this Article 57(3)(b) to mean that any request for a judicial order or request for State Party cooperation must meet the “necessity condition”.¹¹

29. Trial Chamber V, as cited by The Single Judge¹², decided in *The Prosecutor v. Abdallah Banda and Saleh Jerbo*¹³ (the “**Banda and Jerbo Decision**”), that the “necessity condition” is fulfilled when:

- i. the Defence has “exhausted the steps to obtain the cooperation” from the State Party before requesting intervention of the Court;¹⁴ and
- ii. the Defence has “explored possible alternatives, short of a request for cooperation” for “obtaining the document(s) or measure(s) sought”.¹⁵

30. The Court’s Rules of Procedure and Evidence stipulate that the Pre-Trial Chamber “shall” issue such orders when it is satisfied that “such an order would facilitate the collection of evidence that may be material to the proper determination of the issues being adjudicated, or to the proper preparation of the person’s defence”.¹⁶ The Court has deemed this requirement to constitute the “relevancy” condition for a request under Article 57(3)(b).¹⁷

¹¹ ICC-02/11-02/11-63, para. 5.

¹² ICC-02/11-02/11-63, para. 5, n. 6 (citing incorrectly to ICC-02/05-03/09-170, para. 13 (does not exist) as well as to the Banda and Jerbo Decision, para. 17).

¹³ ICC-02/06-03/09-169, 1 July 2011, paras. 25-28.

¹⁴ Banda and Jerbo Decision, para. 26.

¹⁵ *Ibid*, para. 28.

¹⁶ Rule 116, Rules of Procedure and Evidence.

¹⁷ Banda and Jerbo Decision, para. 17; ICC-02/11-02/11-63, para. 5.

31. A request for cooperation must also be as detailed as possible and include a “concise statement of the purpose of the request and the assistance sought, including the legal basis and the grounds for the request.”¹⁸ This “specificity” requirement will not be met if the request contains a “non exhaustive list of localities” to be visited, is an “open-ended expedition”, or is an “indiscriminate request” for investigative power in the State Party.¹⁹

32. Finally, pursuant to Articles 93(1) and 99(1) of the Statute, all requests must be executed in accordance with the national law of the State Party.

a) The “necessity” condition

33. The Defence recalls that the Rome Statute permits the Pre-Trial Chamber to issue such orders and/or requests to State Parties “as may be necessary to assist the person in the preparation of his or her defence.”²⁰ The plain reading of this provision is that there is no definitive requirement that the request be strictly necessary, but only that it may be necessary. Trial Chamber V’s extrapolation of Article 57(3)(b) adds an additional burden to any defence team seeking such an order, in theory, requiring the Defence to have exhausted all steps and explore all possible alternatives. By placing such an additional burden on the Defence, this interpretation violates the equality of arms principle enshrined in Article 67 of the Statute.

34. Furthermore, this reading of this provision is in violation of its plain language and ordinary meaning, and would indeed render the language

¹⁸ Article 96(2)(a).

¹⁹ ICC-02/06-03/09-169, 1 July 2011, paras. 25-28.

²⁰ Article 57(3)(b), Rome Statute (emphasis added).

“may be” ineffective. This would further violate the canon of statutory interpretation as well as the Vienna Convention on the Law of Treaties.²¹

35. However, and regardless of the validity of Trial Chamber V’s interpretation of the so-called “necessity condition”, the Suspect has fulfilled this requirement. The Defence has submitted a request to the highest authority among the Judges of First Instance in Abidjan for the Suspect’s legal record and the documents pertaining thereto. This request was refused *prima facie* because no law exists requiring the Judges of First Instance to hand over such documents.

36. The Defence wishes to add that, in its view, the absence of a national law requiring the handover of such documents does not mean that such a request is forbidden by national law. On the contrary, human rights law and the norms of this Court would invalidate any legal provision preventing the Suspect from seeing the charges against him.

37. The Defence for the Suspect has even attempted to obtain a full record of these documents from the Prosecutor’s representative. The Prosecutor’s representative partially supported the First Request in the knowledge that his office did not possess a complete record of such documents.

38. Finally, the Defence asks the Single Judge to review the context of this Second Request as discussed above. The Defence respectfully suggests that a State that treats its citizens, even those accused of crimes, with the

²¹ Article 31(1), Vienna Convention on the Law of Treaties.

contempt detailed above, cannot, be trusted to follow the requisite cooperation procedures without a judicial order from this Court.

39. In the Côte d'Ivoire, the Minister's elegant declaration in favor of "*justice pour tous*" appears not to apply to the Suspect.

b) The relevancy condition

40. The Defence submits that there is no question as to the relevancy of this Second Request. Not only will it be vital for any request for interim release, potential admissibility challenges and/or challenges to the circumstances of the Suspect's rendition to the Court, but the information obtained therein would undergird the factual outline of many aspects of the Suspect's defence on the merits of this case throughout the pre-trial phase.

41. The Defence further submits that Rule 116 clearly states that, if the Pre-Trial Chamber is "satisfied" that this condition is fulfilled, it "shall" issue its order or request for cooperation. The Defence therefore submits that this aspect of the test is determinative and that the Single Judge must issue an order for State Party cooperation if it is satisfied that the Second Request is relevant.

c) The specificity condition

42. The Defence submits that the Second Request fulfills the specificity condition by way of the prayer for relief below, as well as the description of the factual context of the Second Request and its procedural history.

Relief Sought

43. In light of all the aforementioned, the Defence requests that the Single Judge issue an order and/or seek the cooperation of the relevant authorities of Côte d'Ivoire, to produce the legal and evidentiary documents sought, and to provide a full record of all legal proceedings initiated against the Suspect, including warrants, court orders, court transcripts, copies of exhibits and all legal submissions filed by the litigants and/or relevant state entities, from 27 November 2010 through present day, most notably in the case(s) *BLE GOUDE Charles c. Ministère Public*, R.I: 03/11, 08/12, 9/12. The Defence submits that transmission of such documentation is not forbidden by Ivorian law and is indeed required by human rights law. They can be easily obtained by petition to the Doyen des Judges d'Instruction du Tribunal de Première Instance d'Abidjan-Plateau.

44. The Defence asks for this issue to be decided upon promptly yet does not, in any way, wish for it to delay the confirmation hearing set down for 18 August 2014. The Defence will be ready on the appointed date to convince the Court that no "substantial" grounds exist to believe that the Suspect committed the crimes with which he is charged.

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Friday, May 23, 2014