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

Date: 17 April 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

Decision on the Defence Request for State Party Cooperation

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Counsel for the Defence

Nicholas Kaufman

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
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

Detention Section

Victims and Witnesses Unit

Others

**Victims Participation and Reparations
Section**

Judge Silvia Fernández de Gurmendi, Single Judge for Pre-Trial Chamber I of the International Criminal Court, responsible for carrying out the functions of the Chamber in relation to the situation in the Republic of Côte d'Ivoire and the cases emanating therefrom,¹ issues the following decision responding to the Defence request for cooperation:

1. On 27 March 2014, Mr Blé Goudé made his initial appearance before the Single Judge.² On this occasion, the Single Judge set the date of the commencement of the confirmation of charges hearing at 18 August 2014.³
2. On 14 April 2014, the Defence filed an application requesting the Chamber to 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”.⁴ The Defence, stressing that the confirmation of charges was scheduled for 18 August 2014, also requested the Chamber to limit the time for compliance with the request.⁵
3. The Single Judge notes articles 57(3)(b), 87(6), 93(1)(i) and 96(2) of the Rome Statute (the “Statute”) and rule 116(1) of the Rules of Procedure and Evidence (the “Rules”).
4. The Single Judge recalls that, in accordance with article 57(3)(b) of the Statute, a request for cooperation may be issued “as may be necessary to assist the person in the preparation of his or her defence”. Under the related

¹ Decision designating a single judge, 16 March 2012, ICC-02/11-02/11-9-tENG.

² ICC-02/11-02/11-T-3-CONF-ENG. A public redacted version is also available, see ICC-02/11-02/11-T-3-Red-ENG.

³ ICC-02/11-02/11-T-3-Red-ENG, p. 12, lines 9-16.

⁴ Defence, Defence Request for State Party Cooperation, 10 April 2014, ICC-02/11-02/11-56, paragraph 13.

⁵ Defence, Defence Request for State Party Cooperation, 10 April 2014, ICC-02/11-02/11-56, paragraph 14.

rule 116(1) of the Rules, the Pre-Trial Chamber shall issue an order or seek cooperation under article 57(3)(b) where it is satisfied “(a) [t]hat 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; and (b) [i]n a case of cooperation under Part 9, that sufficient information to comply with article 96, paragraph 2, has been provided”. The Single Judge notes that article 96(2) provides that a request shall be supported, amongst other things and as applicable, by “(a) [a] concise statement of the purpose of the request and the assistance sought, including the legal basis and the grounds for the request; (b) [a]s much detailed information as possible about the location or identification of any person or place that must be found or identified in order for the assistance sought to be provided; and (c) [a] concise statement of the essential facts underlying the request [...]”.

5. As previously indicated in the jurisprudence of this Court, the Single Judge considers that cooperation from States Parties may be sought by the Chamber only when the requirements of (i) specificity, (ii) relevance and (iii) necessity have been met.⁶

6. The Single Judge notes that the Defence has not demonstrated that it cannot obtain the documents without the assistance of the Chamber, either from the Prosecutor or, directly, from the requested States.

⁶ See *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Decision on “Defence Application pursuant to Articles 57(3)(b) & 64(6)(a) of the Statute for an order for the preparation and transmission of a cooperation request to the African Union, 1 July 2011, ICC-02/05-03/09-170, paragraph 13 ; *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Decision on “Defence Application pursuant to articles 57(3)(b) & 64(6)(a) of the Statute for an order for the preparation and transmission of a cooperation request to the Government of the Republic of the Sudan, 1 July 2011, ICC-02/05-03/09-169, paragraph 17 ; *The Prosecutor v. Laurent Gbagbo*, Decision on the Defence request for cooperation, 19 December 2012, ICC-02/11-01/11-333-Conf-Exp, paragraph 11.

7. In this regard, the Defence informed the Chamber that on 31 March 2014, it requested the Prosecutor to disclose a full record of all legal proceedings initiated against Mr Blé Goudé in Ghana and Côte d'Ivoire⁷. It also mentioned that on 1 April 2014, it further requested to be provided with letters issued by the Prosecutor pursuant to article 18(1) of the Statute in connection with the Côte d'Ivoire situation and any responses received thereto. Assessing that the documents requested were material to the preparation of their case, in particular for an eventual challenge of the admissibility of the proceedings against Mr Blé Goudé, the Defence submitted that such documents should be disclosed pursuant to rule 77 of the Rules of Procedure and Evidence⁸. It appears, therefore, that the documents sought by the Defence are likely to be in the possession or control of the Prosecutor and disclosed pursuant to rule 77 in due course.

8. In light of the above, the Single Judge considers it appropriate that the Defence first seeks to obtain the documents in accordance with rule 77 of the Rules or, if needed, by requesting them directly from Ghana and Côte d'Ivoire, before seeking the assistance of the Chamber.

9. Since the requirement of necessity is not met, the Single Judge considers it is not necessary to address the other requirements of specificity and relevance at this stage⁹.

⁷ Defence, Defence Request for State Party Cooperation, 10 April 2014, ICC-02/11-02/11-56, paragraph 3.

⁸ Defence, Defence Request for State Party Cooperation, 10 April 2014, ICC-02/11-02/11-56, paragraph 6.

⁹ It should be noted that a decision establishing a system for disclosure of evidence was recently issued (14 April 2014, ICC-02/11-02/11-57). *See also, The Prosecutor v. Germain Katanga and Mathieu Ngudjolo*, Decision on the "Defence Application pursuant to Article 57(3)(b) of the Statute to Seek the Cooperation of the Democratic Republic of Congo (DRC)", 25 April 2008, ICC-01/04-01/07-444, page 6.

FOR THESE REASONS, THE SINGLE JUDGE

REJECTS the Defence application.

Done in both English and French, the English version being authoritative.



Judge Silvia Fernández de Gurmendi
Single Judge

Dated this Thursday, 17 April 2014

At The Hague, The Netherlands