



Original: **English**

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

Date: **10/04/2014**

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Single Judge

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
*THE PROSECUTOR v. CHARLES BLE GOUDE***

Public

Defence Request for State Party Cooperation

Source: Counsel 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 Representative/s of the Applicant/s

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for the Victims

The Office of Public Counsel for the Defence

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

Pursuant to articles 57(3)(b) and 93(1)(i) of the Rome Statute, Counsel for Charles Blé Goudé ("the Suspect") hereinafter requests that the Single Judge order the competent authorities of Ghana and Côte d'Ivoire to communicate to the Court all documents relating to all legal proceedings¹ initiated against the Suspect in Ghana and Côte d'Ivoire and which correspond to and postdate the period of the post electoral violence forming the subject of the arrest warrant before the International Criminal Court ("the Court" or "the ICC").

1. On 22 March 2014, the Suspect was surrendered to the ICC.
2. On 27 March 2014, the Suspect made his initial appearance before the Single Judge.
3. On 31 March 2014, Counsel for the Suspect wrote to the Prosecutor's representative requesting that he disclose a full record of all legal proceedings initiated against the Suspect in Ghana and Côte d'Ivoire.
4. On 1 April 2014, Counsel wrote, once again, to the Prosecutor's representative with a separate petition. Counsel requested that he be supplied with the letters issued by the Prosecutor pursuant to article 18(1) of the Rome Statute in connection with the Côte d'Ivoire situation and any responses received thereto.
5. Counsel awaits the decision of the Single Judge to fix a speedy timetable for the disclosure of all materials on which the Prosecution will rely at confirmation.

¹ inclusive of warrants, court orders, court transcripts, copies of exhibits and all legal submissions filed by the litigants.

Submission

6. The Suspect wishes to challenge the legality of the circumstances surrounding his arrest. He further wishes to consider the admissibility of the proceedings instituted against him at the ICC. Accordingly, the documents referred to in paragraphs 3 and 4 hereinabove are material to the preparation of the Defence and should be disclosed pursuant to Rule 77 of the Rules of Procedure and Evidence ("Rules").

7. Indeed, the Prosecutor has signalled to the Defence her willingness to agree to the disclosure of the article 18(1) letters to State Parties as well as the responses thereto subject to the agreement of those State Parties.² Furthermore, the Prosecutor has signalled to the Defence that she will not oppose a request that the cooperation of Ghana and Côte d'Ivoire be sought for the purpose of providing a full record of all legal proceedings related to the post-election violence initiated with respect to the Suspect (inclusive of warrants, court orders, court transcripts, copies of exhibits and all legal submissions filed by the litigants).³

8. Counsel's request, however, extends beyond a record of legal proceedings related to the post-election violence since he does not believe that the competent State authorities should exercise the discretion as to what allegations may or may not be deemed substantially the same conduct for the purpose of an admissibility challenge. Such a determination should, rightly and properly, fall within the discretion of the Court after being supplied with all information pertaining to all legal proceedings instituted against the Suspect at the relevant time.

² The Prosecutor has committed herself to seek such agreement.

³ Email to Counsel dated 10 April 2014.

Relevant Statutory Provisions

9. Article 57(3)(b) of the Rome Statute provides as follows:

"In addition to its other functions under this Statute, the Pre-Trial Chamber may:

(a) ...

(b) Upon the request of a person who has been arrested or has appeared pursuant to a summons under article 58, issue such orders, including measures such as those described in article 56, 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. Article 93(1) of the Rome Statute provides as follows:

States Parties shall, in accordance with the provisions of this Part and under procedures of national law, comply with requests by the Court to provide the following assistance in relation to investigations or prosecutions:

...;

(i) The provision of records and documents, including official records and documents;"

Disclosure related to interim release should be prompt

11. Rule 118(1) permits a suspect to make a request for interim release at his initial appearance. In order for such a right to be real and not illusory, Counsel requires appropriate disclosure. On this very matter, the Appeals Chamber of the ICC has ruled that disclosure should be full and prompt:

"Based on the jurisprudence of the ECtHR, the Appeals Chamber considers that, in order to ensure both equality of arms and an adversarial procedure, the defence must, to the largest extent possible, be granted access to documents

that are essential in order effectively to challenge the lawfulness of detention, bearing in mind the circumstances of the case. Ideally, the arrested person should have all such information at the time of his or her initial appearance before the Court. This would allow the person to challenge his or her detention as soon as he or she is in detention at the Court and in circumstances in which he or she is apprised of the material on which the arrest warrant was based".⁴

Disclosure related to admissibility should be prompt

12. Similarly, in the Mbarushimana case, Pre-Trial Chamber I found that admissibility related disclosure should not be delayed merely because there is no live admissibility issue before the Court.

"...As discussed above, the purpose of such disclosure is to give effect to the suspect's right to challenge the admissibility of the case. In particular, the Defence should have access to relevant documents in order to be able to make such a challenge. Making such disclosure dependent on a prior finding by the Chamber that there is a live admissibility issue pending or on a prior challenge to admissibility by the Defence would unduly restrict and delay the Defence's exercise of the right to effectively make such a challenge".⁵

Relief Sought

13. In light of all the aforementioned, the learned Single Judge is respectfully requested 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 ICC-01/05-01/08-323 at paragraph 32.

⁵ ICC-01/04-01/10-47 at paragraph 14.

14. The Single Judge is, also, respectfully requested to strictly limit the time for compliance with this request by Ghana and Côte d'Ivoire bearing in mind that the confirmation of charges is scheduled for 18 August 2014.

A handwritten signature in black ink that reads "Nicholas Kaufman". The signature is written in a cursive, slightly slanted style. Below the signature is a solid horizontal line.

Nicholas Kaufman

Counsel for Charles Blé Goudé

Jerusalem, Israel
April 10, 2014