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

Date: **14/01/2014**

**PRE-TRIAL CHAMBER I**

**Before: Judge Silvia Fernández de Gurmendi, Single Judge**

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE**

**Public**

**Defence Response to the  
Observations de la République de Côte d'Ivoire concernant la demande  
d'arrestation et de remise de M. Charles Blé Goudé à la Cour pénale internationale**

**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**

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**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**

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**REGISTRY**

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**Registrar**

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**Defence Support Section**

**Deputy Registrar**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Other  
Section**

Counsel for Charles Blé Goudé ("the Suspect") hereinafter files his response to the "*Observations de la République de Côte d'Ivoire concernant la demande d'arrestation et de remise de M. Charles Blé Goudé à la Cour pénale internationale*".<sup>1</sup>

1. On 18 January 2013, the Suspect was transferred to Côte d'Ivoire.
2. On 21 January 2013, the Suspect was formally charged with various crimes by a senior magistrate sitting in Abidjan.
3. On 30 January 2013, the Suspect was heard, once more, before a senior magistrate – this time in the presence of his local counsel.
4. A year has flown by and the world remains in the dark concerning the nature of the proceedings purportedly instituted against the Suspect.
5. Côte d'Ivoire declares that "*l'instruction s'est depuis lors développée avec diligence*" yet supplies no written proof of such a grandiose assertion. Côte d'Ivoire, furthermore, announces it is resolved to "*mener à bien l'ensemble des procédures complexes lancées à l'encontre de M. Blé Goudé*" but provides no documentary support for such an intent.
6. Notwithstanding the aforementioned, Côte d'Ivoire now seeks to exercise what it believes to be its right to postpone the surrender of the Suspect to the International Criminal Court ("the Court") pursuant to article 94(1) of the Rome Statute.
7. Côte d'Ivoire and its learned Parisian counsel are mistaken. Article 94(1) does not permit a State Party to postpone compliance with a request for surrender. In this matter, the learned Single Judge is referred to the precedent established in the *Gaddafi* case:

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<sup>1</sup> ICC-02/11-02/11-37-Red.

*"The Chamber notes that article 94(1) of the Statute indicates that a requested State may postpone the execution of a cooperation request for a period of time agreed upon with the Court "[i]f the immediate execution of a request would interfere with an ongoing investigation or prosecution of a case different from that to which the request relates". By contrast, article 89(4) of the Statute, which is part of the article discussing "Surrender of persons to the Court", provides that: "[i]f the person sought is being proceeded against or is serving a sentence in the requested State for a crime different from that for which surrender to the Court is sought, the requested State, after making its decision to grant the request, shall consult with the Court".*

*Upon comparing the text of the two provisions and with a view to giving independent content to each, the Chamber considers that the relationship between articles 94(1) and 89(4) of the Statute is as follows: (i) both articles relate to situations where a cooperation request creates interference with the requested State's domestic legal process, (ii) article 89(4) of the Statute is a *lex specialis* provision that specifically relates to surrender requests and, without any mention of a possibility for postponement, requires the requested State to grant the request and then consult with the Court and (iii) article 94(1) allows for postponement of the request when such a situation arises, but only for requests other than requests for surrender. That article 94 only applies to cooperation requests other than surrender, such as those identified in article 93 of the Statute, is also supported by both the drafting history and learned commentators who have examined the issue".<sup>2</sup>*

8. Accordingly, Côte d'Ivoire's present application for a postponement must fail.

9. Counsel seizes the opportunity to stress that the Suspect declares himself to be a patriot, a man of peace and a public servant with much to contribute to reconciliation in Côte d'Ivoire. The Suspect completely denies the charges levelled at him and, subject to the realisation of a number of conditions, would naturally prefer that his innocence be established, if needs be, in a court of law in Côte d'Ivoire.

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<sup>2</sup> ICC-01/11-01/11-72 at paragraphs 14 & 15.

10. The present response is thus made without any prejudice to the Suspect's views regarding the admissibility of the case against him at the Court. The Suspect will make his views on admissibility known when appropriate and only after he has had an opportunity to consult with herein undersigned Counsel. To this end, Counsel hopes that Côte d'Ivoire will facilitate the necessary visit to the Suspect at his present place of detention.

Relief Sought

11. In light of all the aforementioned, the learned Single Judge is respectfully requested:

- 1) To reject Côte d'Ivoire's request for a postponement made pursuant to article 94(1) of the Rome Statute, and;
- 2) To order Côte d'Ivoire to act forthwith if it intends to challenge the admissibility of the case against the Suspect.



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Nicholas Kaufman

Counsel for Charles Blé Goudé

Jerusalem, Israel

January 14, 2014