



Original: **English**

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

Date: **11/10/2013**

PRE-TRIAL CHAMBER I

**Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Hans-Peter Kaul
Judge Christine Van den Wyngaert**

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

**Public Document
URGENT**

Defence request for a decision ordering the authorities of the Republic of Côte d'Ivoire to facilitate a legally privileged interview with Charles Blé Goudé and to clarify their intentions with respect to the proceedings initiated against Charles Blé Goudé at the International Criminal Court

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

Ms. Fatou Bensouda, Prosecutor

Mr. James Stewart, Deputy-Prosecutor

Mr. Eric Macdonald, Senior Trial Lawyer

Counsel for the Defence

Mr. Nicholas Kaufman

Legal Representatives of the Victims

Legal Representatives of the Applicants

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

Mr. Hermann von Hebel

Defence Support Section

Prof. Esteban Peralta-Losilla

Deputy Registrar

Mr. Didier Preira

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section Other

Pre-Trial Chamber I is hereby requested to order the authorities of the Republic of Côte d'Ivoire ("Côte d'Ivoire") to allow herein undersigned counsel ("Counsel") to conduct a legally privileged interview with Charles Blé Goudé ("the Suspect") at his place of detention as soon as possible. Pre-Trial Chamber I is, furthermore, requested to order Côte d'Ivoire to make immediate notification of whether it intends to execute the Arrest Warrant and surrender the Suspect to the International Criminal Court ("ICC"), or to file an admissibility challenge pursuant to Article 19(2)(b) of the Rome Statute or to seek permission to prioritize a non-related domestic prosecution under Article 94(1) of the Rome Statute.

Factual Background

1. On 21 December 2011, Pre-Trial Chamber III issued its "Warrant of Arrest for Charles Blé Goudé" under seal ("the Arrest Warrant").¹

2. At the beginning of March 2012, the Suspect initiated contact with Counsel by telephone and requested that Counsel represent him before all organs of the ICC. The Suspect explained his indigent status to Counsel and informed him that he was subject to restrictive measures imposed on him by the United Nations Security Council. Given these exigencies, Counsel agreed to represent the Suspect *pro bono* on matters pertaining to the ICC until such time as he should be afforded financial assistance.

3. On 26 March 2012, the Suspect gave Counsel a written power of attorney.² In accordance with the said power of attorney, Counsel communicated on many occasions with the Suspect advising him and, pursuant to specific instructions, engaging with various organs of the ICC.

¹ ICC-02/11-02/11-1.

² The written power of attorney is before all organs of the Court.

4. On 17 January 2013, the Suspect was arrested in Ghana and transferred to Côte d'Ivoire where domestic criminal proceedings were instituted against him.

5. On 19 January 2013, Counsel wrote to the lawyers acting on behalf of Côte d'Ivoire before the ICC³ asking to know, *inter alia*, whether Côte d'Ivoire would surrender the Suspect to The Hague should he be subject to an arrest warrant of the ICC. Apart from acknowledgment of his enquiry, Counsel received no meaningful reply.

6. On 15 February 2013, Côte d'Ivoire deposited its instrument of ratification of the Rome Statute thereby assuming all obligations and duties arising out of membership of the ICC.

7. On 30 September 2013, the learned Single Judge of Pre-Trial Chamber I lifted the seal on the Arrest Warrant.⁴ At or around the same time, Counsel wrote to the Ambassador of Côte d'Ivoire to the State of Israel in Tel Aviv – H.E. Jean-Baptiste Gomis requesting official permission from Côte d'Ivoire to visit the Suspect. To date, Counsel has received no response to his urgent request.

8. On 1 October 2013, Côte d'Ivoire filed a challenge to the admissibility of the case against Simone Gbagbo.⁵

9. On 1 October 2013, Counsel wrote to representatives of the Registrar requesting that they facilitate a joint mission to Côte d'Ivoire in order to permit Counsel to visit his client with the diplomatic assistance and protection of the Registry.

³ Messrs J-P Mignard and J-P Benoît.

⁴ ICC-02/11-02/11-30.

⁵ ICC-02/11-01/12-11-Red.

10. On 7 October 2013, Counsel wrote to the same representatives of the Registrar informing them that his request for a privileged visit was urgent given that Côte d'Ivoire had filed a challenge to the admissibility of the case against Simone Gbagbo. Counsel reasoned that the arguments made as to the capacity and willingness of Côte d'Ivoire to conduct a domestic prosecution against Simone Gbagbo would directly impact on a similar application, should it be made, with respect to the Suspect.

11. On 8 October 2013, Counsel wrote, once more, to the legal representatives of Côte d'Ivoire asking them to contact him should it be the intention of Côte d'Ivoire to file an admissibility challenge with respect to the Suspect. To date, Counsel has received no acknowledgment of receipt of his correspondence.

12. On 10 October 2013, Counsel Support Services in the Registry ("CSS") informed Counsel that, pending the submission of an application by the Suspect pursuant to Regulation 131 of the Regulations of the Registry, it would not finance a trip by Counsel to Côte d'Ivoire to visit his client. Despite Counsel's offer to forgo any fee and to fund his own travel expenses, CSS also informed Counsel that it presently lacked sufficient information in order to coordinate the diplomatic arrangements necessary for Counsel to engage on such a mission or to obtain access to his client.

Submission

13. In lifting the seal on the Arrest Warrant, the learned Single Judge stated that she was acting pursuant to Article 67 of the Rome Statute. Article 67(1)(b) of the Rome Statute states that an accused shall be entitled to communicate freely with counsel of his choosing in confidence. Furthermore, Article 67(1)(d) provides for the right of an indigent accused to have financial legal assistance assigned by the Court where the interests of justice so require.

14. The constitution of a representation agreement before the ICC is not contingent on a decision of the Pre-Trial Chamber. Article 11 of the ICC Code of Professional Conduct for Counsel makes it clear that there are two ways in which a representation agreement may come into existence: "*the agreement is established when counsel accepts a request from a client seeking representation or from the Chamber*". Counsel entered into his representation agreement with the Suspect on 26 March 2012 at the request of the latter.

15. Pursuant to the ethical code of his national bar association, Counsel is not permitted to relinquish his power of attorney unless, *inter alia*, a client should inform him, personally, that his services are no longer required.⁶ Moreover, Article 17 of the ICC Code of Professional Conduct obliges Counsel to continue to represent the Suspect until termination of the said agreement.

16. Counsel may only pursue the duties necessitated by his representation agreement effectively in circumstances where he is granted immediate and confidential access to the Suspect.

17. Unless it should seek postponement in accordance with the relevant provisions of the Rome Statute, Côte d'Ivoire is obliged immediately to comply with the request to surrender the Suspect to the ICC. Côte d'Ivoire is not permitted to remain inactive and silent as to its intentions with respect to the proceedings before the ICC. Côte d'Ivoire is, additionally, obliged to ensure that the right of a Suspect to consult with Counsel, as envisaged under Article 67(1)(b) of the Rome Statute, is respected - specifically so that Counsel and the Suspect may be able to formulate an appropriate strategy once Côte d'Ivoire clarifies its intentions.

⁶ Regulation 13 of the Israel Bar Regulations (Professional Ethics), 1986.

18. At the present moment in time, severe prejudice is being caused to the Suspect by virtue of Côte d'Ivoire's dilatory attitude to its obligations under the Rome Statute. Such prejudice is exemplified by the recent filing of an admissibility challenge in the case of Simone Gbagbo. By reason of its silence and inactivity with respect to the Suspect, Côte d'Ivoire is permitting a scenario in which an imminent ICC ruling on State capacity and willingness to prosecute will render any future argument of the Suspect redundant.

Relief Sought

19. In light of all the aforementioned, the learned Pre-Trial Chamber is respectfully requested as follows:

- 1) To order Côte d'Ivoire, as a matter of urgency, to facilitate an interview between Counsel and the Suspect in Abidjan in conditions where the privileged nature of such an interview may be ensured;
- 2) To order Côte d'Ivoire, as a matter of urgency, to permit a team from the Registry to visit the Suspect with Counsel, in Abidjan, in order to assess the Suspect's financial status for the purpose of legal assistance, and;
- 3) To order Côte d'Ivoire, as a matter of urgency, to notify its intentions with respect to the proceedings being conducted against the Suspect at the ICC.



Nicholas Kaufman

Counsel for Charles Blé Goudé

Done in Jerusalem, Israel

Friday, October 11, 2013