

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 17 June 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 Second 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 (the “Chamber”) 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 Second Defence Request for State Party Cooperation.

1. On 27 March 2014, Charles Blé Goudé (“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 10 April 2014, the Defence filed the “Defence Request for State Party Cooperation”(the “First Request”),⁴ asking 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” and “which correspond to and post-date the period of the post-electoral violence”.⁵
3. On 17 April 2014, the Single Judge rejected the First Request, stressing that before seeking the assistance of the Chamber, the Defence should first attempt to obtain the documents in accordance with rule 77 of the Rules of Procedure and Evidence (the “Rules”) or, if needed, by requesting them directly to the relevant authorities.⁶

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.

⁵ First Request, para. 13.

⁶ Decision on the Defence Request for State Party Cooperation, 17 April 2014, ICC-02/11-02/11-63, para. 8.

4. On 22 April 2014, the Defence presented a request to the Dean of Investigating Judges (*"Doyen des Juges d'instruction"*) of the Tribunal of First Instance of Abidjan.⁷
5. On 23 May 2014, the Defence submitted the "Second Request for State Party Cooperation" (the "Second Request").⁸ It requested the issuance of an order seeking the cooperation of the relevant authorities of Côte d'Ivoire for the transmission of legal and evidentiary documents produced against Mr Blé Goudé, "most notably in the case(s) BLE GOUDE Charles c. Ministère Public, R.I: 03/11, 08/12, 9/12", and of a full record of all relevant legal proceedings from 27 November 2010 onwards (including warrants, court orders, court transcripts, etc.).⁹
6. The Single Judge notes articles 57(3)(b), 86, 87(1)(a), 93(1)(i) and 96(2) of the Rome Statute (the "Statute") and rules 116(1), 176(2) and 177(1) of the Rules.
7. The Chamber notes that the Defence has indeed sought to obtain the relevant documents from the Prosecutor and Côte d'Ivoire directly. However, the Prosecutor is not in the possession of a complete record of the documents requested by the Defence¹⁰ and the request was rejected by the Dean of Investigating Judges of the Tribunal of First Instance of Abidjan on 9 May 2014¹¹ because the legal system of Côte d'Ivoire does not require that suspects have access to copies of the investigative file in the case against them.

⁷ Defence, Second Request for State Party Cooperation, 25 May 2014, ICC-02/11-02/11-76, annex 1.

⁸ Defence, Second Request for State Party Cooperation, 25 May 2014, ICC-02/11-02/11-76 and its annexes 1 and 2.

⁹ Second Request, para. 43.

¹⁰ Second Request, para. 37.

¹¹ Second Request, paras 12 and 35; Annexe 2.

8. Despite these unsuccessful attempts by the Defence to obtain the judicial file of proceedings, the Single Judge is not persuaded that the intervention of the Chamber is justified at this stage. It appears that the information sought is either not relevant or may be otherwise provided by the Ivoirian authorities, without necessarily transmitting the judicial file as such.
9. The Defence argues that the requested documents will “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”.¹² In its view, the information sought will also undergird the factual outline of many aspects of the defence of Mr Blé Goudé on the merits.¹³ The Defence also argues that its First and Second 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
10. However, the Defence does not explain how these documents, linked to domestic proceedings, may have an impact on the confirmation of charges proceedings or be otherwise relevant to other proceedings before this Court.
11. The Single Judge notes that the Defence alleges that there were serious violations of the human rights of the suspect while in detention in Ghana and Côte d’Ivoire, *i.e.* before his surrender to the Court.
12. However, at no point the Defence argues that these alleged violations constitute a violation of statutory rights of the suspect either under article 55 or 59 of the Statute or a breach of other fundamental rights that may in any way be attributed to the Court. In this regard, the Single Judge

¹² Second Request, para. 40.

¹³ Second Request, para. 40.

¹⁴ Second Request, para. 13.

recalls that this Court has already indicated that, absent any involvement of the Court, chambers cannot proceed to make determinations of violations of the rights of a suspect while detained on the territory of a State and, therefore, such violations may not be invoked in order to halt proceedings before this Court.¹⁵

13. Similarly, the Defence fails to explain why these conditions of previous detention, no matter how regrettable, may influence decisions on interim release. In this regard, the Single Judge recalls that any ruling on interim release pursuant to rule 118 (1) and (2) of the Rules shall take into account the risks and circumstances prevailing at the time of the decision in order to determine whether the requirements of article 58(1)(b) of the Statute are met.

14. Finally, with respect to a potential admissibility challenge, the Chamber recalls that domestic proceedings at the investigative phase are a bar to admissibility only when a genuine investigation of the same case before the Court is on-going, pursuant to article 17(1)(a) of the Statute, or when, following such an investigation, a decision not to prosecute has already been taken, pursuant to article 17(1)(b) of the Statute.

15. In accordance with the request made to the judicial authorities of Côte d'Ivoire, it appears that Mr Blé Goudé has been charged domestically for the crimes of murder, genocide, rape, injuries and other crimes.¹⁶ Nothing is said however on the substance of the underlying conduct, which may or


¹⁵ *The Prosecutor v. Laurent Gbagbo*, PTC I, Decision on the "Corrigendum of the challenge to the jurisdiction of the International Criminal Court on the basis of articles 12(3), 19(2), 21(3), 55 and 59 of the Rome Statute filed by the Defence for President Gbagbo (ICC-02/11-01/11-129), 15 August 2012, ICC-02/11-01/11-212, paras 88-112 ; *The Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19(2)(a) of the Statute of 3 October 2006, 14 December 2006, ICC-01/04-01/06-772, para. 42.

¹⁶ Second Request, annex 1.

may not be the same conduct object of proceedings before this Court. In addition, the circumstances of the surrender of Mr Blé Goudé to the Court by the authorities of Côte d'Ivoire suggest that domestic investigations either for the same conduct or different offences, if any, were brought to a halt.¹⁷ However, if the Defence has good reasons to believe that a domestic investigation in Côte d'Ivoire falls either under article 17(1)(a) or (b) of the Statute, the Single judge considers that the defence may seek to obtain the relevant information from Côte d'Ivoire without necessarily being granted access to the domestic file as such.

FOR THESE REASONS, THE SINGLE JUDGE

REJECTS the Second Request.



Judge Silvia Fernández de Gurmendi
Single Judge

Dated this Tuesday, 17 June 2014

At The Hague, The Netherlands

¹⁷ Republic of Côte d'Ivoire, 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, 13 January 2014, ICC-02/11-02/11-37-Conf, para. 17.