



Original: English

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

Date: 11 July 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 Redacted**

**Decision on the “Prosecution’s Request for Variation of Time Limits  
Pursuant to Regulation 35 concerning the Confirmation of Charges”**

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**

Paolina Massidda

**The Office of Public Counsel for the  
Defence**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**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,<sup>1</sup> issues the following decision on the “Prosecution’s Request for Variation of Time Limits Pursuant to Regulation 35 concerning the Confirmation of Charges” (the “Request”).<sup>2</sup>

1. On 27 March 2014, Charles Blé Goudé made his initial appearance before the Single Judge.<sup>3</sup> During that hearing, the Single Judge set the date of the commencement of the confirmation of charges hearing at 18 August 2014.<sup>4</sup>
2. On 14 April 2014, the Single Judge ordered the Prosecutor to complete the disclosure of evidence and file in the record of the case the document containing the charges (the “DCC”) and the list of evidence which she intends to present at the hearing by 18 July 2014.<sup>5</sup>
3. On 4 July 2014, the Prosecutor submitted the Request, requesting “the Chamber to extend the deadline for the final disclosure of evidence to be relied upon for the confirmation of charges, the submission of the Document Containing the Charges and List of Evidence to 29 August 2014”.<sup>6</sup>
4. On 7 July 2014, the Defence responded to the Request.<sup>7</sup>
5. The Single Judge notes articles 61 and 67(1) of the Rome Statute (the “Statute”) and rule 121 of the Rules of Procedure and Evidence (the “Rules”).

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<sup>1</sup> ICC-02/11-02/11-9.

<sup>2</sup> ICC-02/11-02/11-100-Conf. A public redacted version is also available, see ICC-02/11-02/11-100-Red.

<sup>3</sup> 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.

<sup>4</sup> ICC-02/11-02/11-T-3-Red-ENG, p. 12, lines 9-16.

<sup>5</sup> ICC-02/11-02/11-57.

<sup>6</sup> Request, para. 32.

<sup>7</sup> ICC-02/11-02/11-102-Conf-Exp (the “Response”). A public redacted version is also available, see ICC-02/11-02/11-102-Red.

6. By requesting an extension of the time limit for completion of disclosure of evidence on which she intends to rely at the confirmation of charges hearing, and for submitting the DCC and the list of evidence, the Prosecutor effectively seeks a postponement of the confirmation of charges hearing.<sup>8</sup> In this regard, the Single Judge notes that rule 121(7) of the Rules explicitly states that the hearing may be postponed, *inter alia*, on request of the Prosecutor.

7. In the submission of the Prosecutor, a delay is necessary: (i) to ensure that additional evidence is available, in particular the transcripts of interviews of several [REDACTED] witnesses who were recently interviewed,<sup>9</sup> as well as transcripts of certain videos;<sup>10</sup> (ii) to attempt to obtain the consent of the United Nations for disclosure of some evidence obtained through cooperation with that organisation;<sup>11</sup> and (iii) to complete [REDACTED].<sup>12</sup>

8. With respect to the first argument, the Defence submits that the need to transcribe such a large amount of video material at this stage is “nothing more than an issue of poor management compounded by a prior miscalculation”,<sup>13</sup> and that the Prosecutor has not shown why these transcripts are essential for the purpose of confirming the charges.<sup>14</sup>

9. The Single Judge accepts the Defence submission that “confirmation proceedings are not a mini-trial but merely an opportunity for the Prosecutor to satisfy the Pre-Trial Chamber that substantial grounds exist to warrant a trial with all its accompanying costs”.<sup>15</sup> Indeed, article 61(5) of the Statute states that “[a]t the hearing, the Prosecutor shall support each charge with

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<sup>8</sup> See also Request, para. 23 (footnote 18).

<sup>9</sup> *Ibid.*, paras 11-16.

<sup>10</sup> *Ibid.*, paras 17-18.

<sup>11</sup> *Ibid.*, para. 19.

<sup>12</sup> *Ibid.*, para. 20-22.

<sup>13</sup> Response, para. 3, see also para. 6.

<sup>14</sup> *Ibid.*, para. 5.

<sup>15</sup> *Id.*

sufficient evidence to establish substantial grounds to believe that the person committed the crime charged”, and, importantly, that “[t]he Prosecutor may rely on documentary or summary evidence and need not call the witnesses expected to testify at the trial”.

10. It follows from the above that the Chamber needs not be in possession of all the evidence that could be available at trial and the fact that new evidence is collected will not necessarily justify *per se* a postponement of the confirmation of charges hearing under rule 121(7) of the Rules. Nevertheless, the Single Judge is of the view that it is for the Prosecutor to determine in the first place what is the evidence that needs to be provided in order to support the charges. Therefore, the Single Judge is of the view that a postponement is warranted in the circumstances at hand in which the Prosecutor considers certain additional evidence already collected to be of importance for the purpose of the confirmation hearing and requests a moderate delay to allow this evidence to be placed before the Chamber for consideration. The limited postponement is particularly appropriate in light of the fact that the witness testimonies referred to by the Prosecutor are already in her possession and only need to be properly processed, disclosed and submitted. Similarly, the Single Judge considers that there is merit in the Prosecutor’s argument that transcripts of the “most relevant portions” of certain videos relevant for the case should be disclosed and presented to the Chamber.<sup>16</sup> In these circumstances, while noting the right of Mr Blé Goudé to have the proceedings against him conducted without undue delay, the Single Judge is of the view that it would be contrary to the proper conduct of the proceedings, as well as the interests of the parties, not to allow the Chamber to consider this evidence at the confirmation of charges hearing.

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<sup>16</sup> Request, para. 17.

11. Conversely, the Single Judge considers that the submissions of the Prosecutor in relation to her efforts to obtain the consent of the United Nations for disclosure of certain statements and to complete [REDACTED] do not provide justification for postponement of the confirmation of charges hearing. The Prosecutor states that it is currently not known whether these issues will be resolved before the current time limit of 18 July 2014.<sup>17</sup> However, the Prosecutor does not explain why she expects to be in position to solve them by the suggested extended time limit of 29 August 2014. Any postponement on these grounds would therefore be speculative.

12. With respect to the length of the required postponement, the Prosecutor states that the transcripts of the concerned witness statements and videos will be available by 15 August 2014.<sup>18</sup> In this regard, the Single Judge, mindful of the need to prevent any unnecessary delay, notes in the statement of the Prosecutor that the estimates of time needed for transcription are based on the use of “all available means, including contracting out some transcripts”.<sup>19</sup> The Single Judge also appreciates that after completion of the transcripts, some additional time will be needed to disclose the evidence and prepare the DCC.

13. The Single Judge notes that the initial date for the confirmation hearing was set taking into account the judicial recess. Contrary to the position of the Prosecutor,<sup>20</sup> the Single Judge cannot accept that the planned annual leave of the Prosecutor’s staff should have any additional impact on the setting of a new date for the hearing and related time limits in the present proceedings, in particular considering that Mr Blé Goudé is in detention.<sup>21</sup>

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<sup>17</sup> *Ibid*, paras 19, 22.

<sup>18</sup> *Ibid.*, paras 15, 17.

<sup>19</sup> *Ibid*, para. 15 (footnote 14).

<sup>20</sup> *Ibid.*, para. 6.

<sup>21</sup> See also Response, para. 9.

14. Taking into account the above, the Single Judge is of the view that it is appropriate to require the Prosecutor to complete disclosure of the evidence on which she intends to rely at the confirmation of charges hearing and file the DCC and the list of evidence by 22 August 2014. Accordingly, the confirmation of charges hearing shall commence on 22 September 2014.

**FOR THESE REASONS, THE SINGLE JUDGE**

**DECIDES** that the hearing on the confirmation of charges shall commence on Monday, 22 September 2014;

**ORDERS** the Prosecutor to complete the disclosure of evidence on which she intends to rely at the confirmation of charges hearing and file in the record of the case the document containing the charges and the list of evidence which she intends to present at the hearing by Friday, 22 August 2014;

**ORDERS** the Defence to complete the disclosure of any evidence on which it intends to rely at the confirmation of charges hearing and file any list of evidence which it intends to present at the confirmation of charges hearing by Friday, 5 September 2014.

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



**Judge Silvia Fernández de Gurmendi**

Dated this Friday, 11 July 2014

At The Hague, The Netherlands