



Original: English

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

Date: 1 September 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 the “Defence request to amend the document containing the charges for lack of specificity”

Decision to be notified, in accordance with regulation 31 of the Regulations of the Court, to:

The Office of the Prosecutor
 Fatou Bensouda, Prosecutor
 James Stewart, Deputy Prosecutor

Counsel for the Defence
 Nicholas Kaufman

Legal Representatives of the Victims

Legal Representatives of the 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

Registrar
 Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
 Section**

Other

Judge Silvia Fernández de Gurmendi, Single Judge for Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “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 hereby issues the decision on the “Defence request to amend the document containing the charges for lack of specificity” (the “Request”).²

1. On 25 August 2014, the Defence filed the Request in which it asks the Chamber to amend the document containing the charges submitted by the Prosecutor on 22 August 2014 (the “DCC”)³ by striking out all references to modes of liability other than article 25(3)(a) of the Rome Statute (the “Statute”), or to order the Prosecutor to remedy the DCC’s lack of precision.⁴ The Defence submits that the facts and circumstances underpinning all forms of liability except for article 25(3)(a) of the Statute are lacking from the DCC.⁵ The Defence argues with regard to article 25(3)(b) of the Statute that Charles Blé Goudé has not been provided with proper notice as to which orders, solicitations or inducements he is alleged to have given, or when and where any such orders, solicitations or inducements are alleged to have been given by him.⁶ In relation to article 25(3)(c) of the Statute, the Defence additionally submits that the more general and open-ended a mode of liability, the greater the degree of precision should be.⁷ Concerning article 25(3)(d) of the Statute, it is argued that the Prosecutor’s failure to stipulate on which of the two subsections of this article she relies will prejudice the preparation of the Defence.⁸

¹ “*Décision portant désignation d’un juge unique*”, 16 March 2012, ICC-02/11-02/11-9.

² ICC-02/11-02/11-126.

³ ICC-02/11-02/11-124-Anx1-Corr (public, without footnotes); ICC-02/11-02/11-124-Conf-Anx2-Corr (confidential, with footnotes).

⁴ Request, para. 8.

⁵ *Ibid.*, para. 5.

⁶ *Id.*

⁷ *Ibid.*, para. 6.

⁸ *Ibid.*, para. 7.

2. The Prosecutor⁹ and the Office of Public Counsel for victims (the “OPCV”)¹⁰ responded to the Request on 28 August 2014.

3. The Prosecutor argues that she fully respected the requirements of regulation 52 of the Regulations of the Court (the “Regulations”) and the Chamber’s directions in respect thereof.¹¹ The Prosecutor submits that the facts outlined in the DCC establish the elements of all modes of liability,¹² and that while she could have repeated all the same facts for each mode of liability charged, this would have led to an overly voluminous and repetitive DCC without any additional specificity.¹³ It is argued that as a matter of law, there is significant overlap between the different modes of liability and that in the instant case, the same set of facts can be used to establish the elements of the different modes of liability.¹⁴ Further, the Prosecutor submits that the Defence appears to misunderstand the scope of a charging document within the meaning of regulation 52 of the Regulations,¹⁵ and that the DCC in the case against Laurent Gbagbo providing the same form of notice was found to be in compliance with that regulation after having been challenged for similar reasons.¹⁶ The Prosecutor also confirms that she intends to rely on both article 25(3)(d)(i) and (ii) of the Statute for purposes of the confirmation of charges hearing.¹⁷

4. The OPCV argues that the Request cannot be granted because it falls beyond the statutory powers of the Chamber and must be rejected as

⁹ ICC-02/11-02/11-134 (“Response”).

¹⁰ ICC-02/11-02/11-135 (“OPCV response”).

¹¹ Response, para. 3.

¹² *Ibid.*, para. 5.

¹³ *Ibid.*, para. 4.

¹⁴ *Ibid.*, para. 6.

¹⁵ *Ibid.*, para. 7.

¹⁶ *Ibid.*, para. 9.

¹⁷ *Ibid.*, para. 12.

premature at this stage of the proceedings.¹⁸ It submits that even if the Request is understood in light of a possible intervention by the Chamber before the confirmation of charges hearing, the Request cannot be granted because all alleged forms of liability and “facts and circumstances” are properly identified in the DCC.¹⁹ The OPCV argues that the Request fails to identify how the alleged imprecision in relation to article 25(3)(d) of the Statute will prejudice the Defence’s preparation and that the Chamber cannot address this aspect of the Request as to do otherwise would be tantamount to rendering an advisory opinion.²⁰

5. The Single Judge notes articles 61 and 67(1) of the Statute, rule 121 of the Rules of Procedure and Evidence (the “Rules”), and regulation 52 of the Regulations.

6. Article 67(1)(a) of the Statute establishes the suspect’s right to be informed promptly and in detail of the nature, cause and content of the charge. Rule 121(3) of the Rules mandates the Prosecutor to provide a detailed description of the charges within a reasonable time before the confirmation of charges hearing. Regulation 52 of the Regulations further details the required content of the document containing the charges which shall include, *inter alia*, a statement of the facts which provides a sufficient legal and factual basis to bring the person to trial, and a legal characterisation of the facts to accord both with the crimes under articles 6, 7, or 8 of the Statute, and the precise form of participation under articles 25 and 28 of the Statute.

7. The Single Judge notes that regulation 52 of the Regulations makes clear that for purposes of informing the suspect of the nature, cause and content of the charges brought against him or her, it is sufficient for the

¹⁸ OPCV response, paras 11-18.

¹⁹ *Ibid.*, paras 20-25.

²⁰ *Ibid.*, para. 27.

Prosecutor to clearly set out the relevant facts and identify their proposed legal characterisation. In the present case, the Prosecutor argues that the same alleged facts may fall under alternative legal characterisations, and charges Charles Blé Goudé accordingly.

8. In the view of the Single Judge, by setting out the alleged facts and by alleging that these facts give rise to Charles Blé Goudé's criminal responsibility under the alternative modes of liability charged, *i.e.* article 25(3)(a), (b), (c) and (d) of the Statute,²¹ the Prosecutor has clearly identified the proposed legal characterisation of the alleged facts as outlined in the DCC, within the meaning of regulation 52 of the Regulations, and informed the suspect of the nature, cause and content of the charges against him. The Single Judge is of the view that the Defence has thus been put on notice of both the alleged facts as well as their proposed legal characterisation with regard to all alternative modes of liability charged.

9. Concerning the charges under article 25(3)(d) of the Statute, the Single Judge considers that the Prosecutor's identification of article 25(3)(d) of the Statute in either of its subsections is appropriate, and that the Defence has thus been put on notice of Charles Blé Goudé's alleged criminal responsibility under article 25(3)(d) of the Statute as one of the alternative modes of liability.²²

²¹ DCC, paras 322-334; Response, paras 5-6.

²² See also the Prosecutor's confirmation in the Response, para. 12.

FOR THESE REASONS, THE SINGLE JUDGE

REJECTS the Request.

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



Judge Silvia Fernández de Gurmendi

Single Judge

Dated this 1 September 2014

At The Hague, The Netherlands