



Original: English

No.: ICC-02/11-02/11  
Date: 11 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 to exclude prejudicial facts”**

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**

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**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, 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> hereby issues the decision on the “Defence request to amend the document containing the charges to exclude prejudicial facts” (the “Request”).<sup>2</sup>

1. On 27 August 2014, the Defence filed the Request in which it asks the Chamber to strike out part 3 of the document containing the charges (the “DCC”), filed on 22 August 2014,<sup>3</sup> and to order the Prosecutor to file an amended DCC which clearly states when the alleged common plan was conceived and from when Charles Blé Goudé allegedly commenced participating therein.<sup>4</sup> The Defence submits that if Part 3 was to impute participation in a common plan going back as far as September 2002, this should have been stated unequivocally.<sup>5</sup> The Defence further submits that examples of Charles Blé Goudé’s alleged involvement in criminal activity before the period relevant to the charges unfairly influence the decision-making process of the Chamber,<sup>6</sup> and that evidence of prior conduct is irrelevant and has no probative value.<sup>7</sup> The Defence argues that the number and nature of the allegations regarding prior conduct require it to devote more energy to countering Part 3, and that it is “manifestly unfair” for it having to defend against the large number of allegations in the short time before the confirmation of charges.<sup>8</sup>

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

<sup>2</sup> ICC-02/11-02/11-128-Conf.

<sup>3</sup> ICC-02/11-02/11-124-Anx1-Corr (public, without footnotes); ICC-02/11-02/11-124-Conf-Anx2-Corr (confidential, with footnotes), paras 15-58 (“Part 3”).

<sup>4</sup> Request, para. 11.

<sup>5</sup> *Ibid.*, para. 2.

<sup>6</sup> *Ibid.*, para. 3.

<sup>7</sup> *Ibid.*, paras 4-5.

<sup>8</sup> *Ibid.*, para. 7.

2. On 1 September 2014, the Prosecutor responded that Part 3 is not unfairly prejudicial but significant as it provides notice to the Defence of a number of factual allegations,<sup>9</sup> and that it would be difficult, if not impossible, to understand the post-election violence and related events without Part 3 as the violence did not occur spontaneously or as a result of a sole triggering event.<sup>10</sup> The Prosecutor argues that the Defence's assertion that references to alleged prior conduct would unduly influence the decision-making process of the Chamber is unfounded,<sup>11</sup> and that the Chamber will evaluate the totality of the evidence to deliver its decision on the confirmation of charges.<sup>12</sup> The Prosecutor submits that the DCC is in compliance with regulation 52 of the Regulations of the Court (the "Regulations") as it provides the date by which the alleged common plan had emerged and details of how it evolved.<sup>13</sup> The Prosecutor also submits that she retains the discretion to include the facts and circumstances she intends to rely on at a confirmation of charges hearing.<sup>14</sup> Finally, the Prosecutor argues that Part 3 contributes in a positive way to the fairness of the proceedings by providing notice to the Defence, and that the Defence will be able to challenge the admissibility and probative value of the evidence relating to Part 3 at the confirmation of charges hearing.<sup>15</sup>

3. The Single Judge notes articles 61 and 67(1) of the Rome Statute (the "Statute"), rule 121 of the Rules of Procedure and Evidence (the "Rules"), and regulations 23 *bis* and 52 of the Regulations.

4. 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

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<sup>9</sup> ICC-02/11-02/11-141-Conf (the "Response"), para. 5.

<sup>10</sup> *Ibid.*, para. 6.

<sup>11</sup> *Ibid.*, paras 7-8.

<sup>12</sup> *Ibid.*, para. 9.

<sup>13</sup> *Ibid.*, para. 10.

<sup>14</sup> *Ibid.*, para. 12.

<sup>15</sup> *Ibid.*, paras 13-14.

charge. Rule 121(3) of the Rules mandates the Prosecutor to provide a detailed description of the charges before the confirmation of charges hearing, while regulation 52 of the Regulations details the required content of the document containing the charges.

5. 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 Prosecutor to clearly set out the relevant facts and identify their proposed legal characterisation. In the instant case, the Prosecutor sets out the contours of the alleged common plan in which Charles Blé Goudé is said to have participated, the date by when it had emerged, and how its implementation evolved.<sup>16</sup> In the view of the Single Judge, the Defence has thereby been put on notice of the factual allegations and the Prosecutor's proposed legal characterisation within the meaning of regulation 52 of the Regulations.

6. The Single Judge further considers, as outlined previously,<sup>17</sup> that one of the purposes of the confirmation of charges is to delimit the factual scope of trial. In the event that any charges are confirmed, the factual parameters of the case at trial are determined by the charges as presented by the Prosecutor, to the extent confirmed by the Pre-Trial Chamber. Any such delimiting effect can only be ascribed to the facts and circumstances which underlie the charges and must be described therein, as opposed to the factual allegations which are presented by the Prosecutor with a view to demonstrating or supporting the existence of the material facts.

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<sup>16</sup> DCC, para. 323.

<sup>17</sup> "Decision establishing a system for disclosure of evidence", ICC-02/11-02/11-57, 14 April 2014, para. 11, referencing Pre-Trial Chamber I, "Decision on the date of the confirmation of charges hearing and proceedings leading thereto", ICC-02/11-01/11-325, 14 December 2012, paras 25-29.

7. In the view of the Single Judge, the Prosecutor has clearly outlined the scope of the facts and circumstances which underlie the charges and their proposed legal characterisation.<sup>18</sup> In addition, the Prosecutor submits that Part 3 includes factual allegations which establish the context to assist in understanding the historical and political background and the events that occurred during the post-election violence, including the crimes charges, as well as factual allegations and evidence to prove knowledge and intent, corroborating evidence, and pattern of conduct evidence.<sup>19</sup>

8. The Single Judge is of the view that the appropriate venue for discussing questions regarding the relevance of such factual allegations, and the relevance, admissibility and probative value of evidence will be the confirmation of charges hearing which will give the Defence the opportunity to raise any apposite challenges and objections pursuant to article 61(6) of the Statute. Thereafter, the Chamber will consider the entirety of the evidence and submissions presented by the parties and participants, as a whole, in order to reach any conclusions concerning the confirmation of charges pursuant to article 61(7) of the Statute.

9. With regard to the current classification of the Request and the Response as confidential, the Single Judge is of the view that neither contains any references to confidential information and that therefore both can be reclassified as public.

## **FOR THESE REASONS, THE SINGLE JUDGE**

**REJECTS** the Request;

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<sup>18</sup> DCC, paras 322-334.

<sup>19</sup> Response, para. 5.

**ORDERS** the Registry to reclassify filings ICC-02/11-02/11-128-Conf and ICC-02/11-02/11-141-Conf as “public”.

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



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**Judge Silvia Fernández de Gurmendi**

**Single Judge**

Dated this 11 September 2014

At The Hague, The Netherlands