

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 19 September 2014

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Single Judge

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

THE PROSECUTOR V. CHARLES BLÉ GOUDÉ

Public Document

**Defence notice of its intention to raise a plea
pursuant to Articles 17(1)(d) and 19 of the Rome Statute**

Source: The Defence 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

Fatou Bensouda

James Stewart

Eric MacDonald

Counsel for Charles Blé Goudé

Nicholas Kaufman

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

Paolina Massidda

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States' Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Counsel Support Section

1. The Defence for Charles Blé Goudé (“the Suspect”) notes the *Prosecution’s Observations for the purposes of establishing a schedule for the confirmation hearing*¹ and the observation contained therein that “*mere mention of this issue in the Defence proposed schedule is not sufficient or a proper notice pursuant to Article 19 of the Rome Statute and Rule 58 of the Rules of Procedure and Evidence*”.

2. The Defence fails to see what more information the Prosecution could possibly require concerning a potential gravity challenge. The Defence will argue that the total number of mortal fatalities and casualties imputed to the Suspect in the present case fails to satisfy the gravity threshold for the purpose of proceedings before the International Criminal Court. Despite the Suspect’s firm desire and belief that none of the charges presented against him should be confirmed, the gravity submission will, as a matter of logic, acquire additional force should the Pre-Trial Chamber decide to partially confirm the charges and/or incidents levelled against him.

3. For the avoidance of doubt, the Defence rehearses below that which it told the Prosecutor’s representatives on 18 September 2014.

4. Firstly, the Defence informed the Prosecution that it is firmly opposed to any attempt to catch the other party off-guard by raising an issue which was not fully announced in advance. Secondly, and for the aforementioned reason, the Defence informed the Prosecution, as a matter of courtesy, that it would raise an admissibility issue – more particularly “gravity” pursuant to Article 17(1)(d) of the Rome Statute. The Defence informed the Prosecution of its view that the gravity of the offences is dictated not only by the number of fatalities directly imputed to the Suspect in the document containing the charges but also by the future factual findings of the Chamber.

¹ ICC-02/11-02/11-159.

5. In light of the aforementioned, the Defence informed the Prosecution of its preference to present submissions on “gravity” at the conclusion of the Defence challenge to the substantive evidence.

6. For the purpose of Rule 58(1) of the Rules of Procedure and Evidence (“Rules”), the Defence will, of course, address the issue of gravity “*in writing*” in the context of its closing brief and, furthermore, does so by virtue of the present notice.

7. For the purpose of Rule 58(2), the Pre-Trial Chamber “*may join the challenge or question to a confirmation or a trial proceeding as long as this does not cause undue delay, and in this circumstance shall hear and decide on the challenge or question first*”. The Defence thus submits that it is most appropriate to join the gravity challenge to the confirmation proceedings. The Defence is also prepared to change its schedule in order argue the issue of gravity as a preliminary issue and to comply with the strict letter of the law.



Nicholas Kaufman
Counsel for Charles Blé Goudé

The Hague, the Netherlands

19 September 2014