



Original: **English**

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

Date: **28 August 2014**

**PRE-TRIAL CHAMBER I**

**Before:** Judge Silvia Fernández de Gurmendi, Presiding Judge  
Judge Ekaterina Trendafilova  
Judge Christine Van den Wyngaert

**SITUATION IN CÔTE D'IVOIRE**

**IN THE CASE OF  
*THE PROSECUTOR v. CHARLES BLÉ GOUDÉ***

**Public Document**

**Response of the Common Legal Representative of Victims to the Defence requests to amend the document containing the charges for lack of specificity (ICC-02/11-02/11-126) and for violation of the rule of speciality (ICC-02/11-02/11-127)**

**Source:** Office of Public Counsel for Victims

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

**The Office of the Prosecutor**

Ms. Fatou Bensouda  
Mr. James Stewart  
Mr. Eric MacDonald

**Counsel for the Defence**

Mr. Nicholas Kaufman

**Legal Representatives of the Victims**

Ms. Paolina Massidda

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

Ms. Paolina Massidda  
Mr. Enrique Carnero Rojo  
Mr. Mohamed Abdou

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

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

---

**Registrar**

Mr. Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. PROCEDURAL BACKGROUND

1. On 30 September 2013, the warrant of arrest issued against Mr. Blé Goudé by Pre-Trial Chamber III on 21 December 2011 was made public (the “Warrant of Arrest”).<sup>1</sup>

2. On 4 November 2013, the decision on the Prosecutor’s application for a warrant of arrest against Mr. Blé Goudé, issued by Pre-Trial Chamber III on 6 January 2012, was made public (the “Warrant of Arrest Decision”).<sup>2</sup>

3. On 22 March 2014, Mr. Blé Goudé was surrendered to the Court.

4. During Mr. Blé Goudé’s initial appearance on 27 March 2014, Pre-Trial Chamber I (the “Chamber”) set 18 August 2014 as the starting date for the confirmation of charges hearing.<sup>3</sup>

5. On 11 June 2014, the Chamber decided to admit 199 applicants as victims at the confirmation of charges hearing and in the related proceedings, appointed the Office of Public Counsel for Victims (the “OPCV” or the “Office”) as the Common Legal Representative of said victims, and specified the manner of their participation in the proceedings.<sup>4</sup>

6. On 11 July 2014, the Chamber decided to postpone the confirmation of charges hearing to 22 September 2014, and ordered the Prosecutor to file the document

---

<sup>1</sup> See the “Warrant Of Arrest For Charles Blé Goudé” (Pre-Trial Chamber III), No. ICC-02/11-02/11-1, 21 December 2011 (the “Warrant of Arrest”).

<sup>2</sup> See the “Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant of arrest against Charles Blé Goudé” (Pre-Trial Chamber III), No. ICC-02/11-02/11-3, 9 January 2012 (dated 6 January 2012) (the “Warrant of Arrest Decision”).

<sup>3</sup> See the transcript of the hearing held on 27 March 2014, No. ICC-02/11-02/11-T-3-Red-ENG, p. 12, lines 14-16.

<sup>4</sup> See the “Decision on victims’ participation in the pre-trial proceedings and related issues” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-02/11-83, 11 June 2014, pp. 19-21.

containing the charges (the “DCC”) and the list of evidence by 22 August 2014.<sup>5</sup>

7. On 1 August 2014, the Chamber decided to admit 271 applicants as victims at the confirmation of charges hearing and in the related proceedings, appointed the OPCV as the Common Legal Representative of said victims, and specified the manner of their participation in the proceedings.<sup>6</sup>

8. On 22 August 2014, the Prosecutor filed a public version of the DCC without footnotes,<sup>7</sup> a confidential version of the DCC with footnotes,<sup>8</sup> and the list of evidence.<sup>9</sup>

9. On 25 August 2014, the Defence filed the “Defence request to amend the document containing the charges for lack of specificity” (the “Request for Specificity”),<sup>10</sup> and the “Defence request to amend the document containing the charges for violation of the rule of speciality” (the “Request on Speciality”).<sup>11</sup>

10. Pursuant to regulations 24 of the Regulations of the Court, the Principal Counsel of the OPCV, acting as Common Legal Representative of the victims (the “Common Legal Representative”) admitted to participate in this case,<sup>12</sup> submits the following response to the Requests.

---

<sup>5</sup> See the “Public Redacted Decision on the ‘Prosecution’s Request for Variation of Time Limits Pursuant to Regulation 35 concerning the Confirmation of Charges’” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-02/11-108-Red, 11 July 2014, p. 7.

<sup>6</sup> See the “Second Decision on victims’ participation in the pre-trial proceedings and related issues” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-02/11-111, 1 August 2014, pp. 13-15.

<sup>7</sup> See the “Annex 1 to the Prosecution’s Submission of *Document de notification des charges* and *l’Inventaire des éléments de preuve à charge*”, No. ICC-02/11-02/11-124-Anx1, 22 August 2014.

<sup>8</sup> See the “Annex 2 to the Prosecution’s Submission of *Document de notification des charges* and *l’Inventaire des éléments de preuve à charge*”, No. ICC-02/11-02/11-124-Conf-Anx2, 22 August 2014.

<sup>9</sup> See the “Annex 3 to the Prosecution’s Submission of *Document de notification des charges* and *l’Inventaire des éléments de preuve à charge*”, No. ICC-02/11-02/11-124-Conf-Anx3, 22 August 2014.

<sup>10</sup> See the “Defence request to amend the document containing the charges for lack of specificity”, No. ICC-02/11-02/11-126, 25 August 2014 (the “Request for Specificity”).

<sup>11</sup> See the “Defence request to amend the document containing the charges for violation of the rule of speciality”, No. ICC-02/11-02/11-127, 25 August 2014 (the “Request on Speciality”).

<sup>12</sup> See *supra* notes 4 and 6.

## II. COMMON LEGAL REPRESENTATIVE'S RESPONSE

### 1. On the Request for Specificity

11. The Common Legal Representative submits that the Request for Specificity cannot be granted because it falls beyond the statutory powers of the Chamber at this stage of the proceedings and must be rejected as premature at this point in time.

12. The Defence requests the Chamber to *"amend the DCC by striking out all references to modes of liability other than Article 25(3)(a) liability or to order the Prosecutor to remedy the lack of precision"*.<sup>13</sup> However, there is nothing in the applicable law of the Court that empowers the Chamber to attend a request of this sort *before* the hearing to confirm the charges has taken place.

13. The Common Legal Representative argues that it is only *after* the confirmation hearing has taken place that the Chamber can request the Prosecutor to consider amending a charge pursuant to article 61(7)(c)(ii) of the Rome Statute. In this regard, the Chamber has recently confirmed the jurisprudence of others Pre-Trial Chambers by expressly ruling that said provision *"giv[es] the Chamber the authority to request, on the basis of the confirmation of charges hearing, the Prosecutor to consider amending a charge because the evidence presented appears to establish a different crime"*.<sup>14</sup>

14. Said ruling is in line with previous decisions in the matter. In the *Bemba* case, Pre-Trial Chamber III found that *"[u]nder sub-paragraph (ii) [of article 61(7)(c) of the Rome Statute], [...] upon examination of the Evidence and Arguments of the Parties and Participants, the Chamber identifies a problem as to the legal characterisation of the facts presented because the evidence submitted "appears to establish a different crime". At this*

<sup>13</sup> See the Request for Specificity, *supra* note 10, par. 8.

<sup>14</sup> See the "Decision on Defence requests related to the continuation of the confirmation proceedings" (Pre-Trial Chamber I), No. ICC-02/11-01/11-619, 14 February 2014, par. 21 (emphasis added).

*stage, a general review of the Evidence and Arguments of the Parties and Participants pertaining only to the issue at stake is sufficient*".<sup>15</sup>

15. More clearly, in the *Ruto et al.* case, Pre-Trial Chamber II explained that "*the Chamber is not vested with the authority to modify the charges brought by the Prosecutor against the Suspects*", and concluded that "*an amendment of the charges could only be brought by the Prosecutor pursuant to a decision that the Chamber can issue within the framework of article 61(7)(c)(ii) of the Statute, namely on the basis of the confirmation of charges hearing and in light of the evidence submitted*".<sup>16</sup>

16. In fact, the only authority averred by the Defence in support of the Request for Specificity was issued *after* the Chamber considered the evidence in the record of the case and heard submissions from the parties and participants during the confirmation hearing.<sup>17</sup> Judge Van den Wyngaert's separate opinion expressly refers to the possible application of article 61(7)(c)(ii) of the Rome Statute "*at this stage*" and considers "*the nature of the current procedural phase*",<sup>18</sup> namely once the hearing to confirm the charges had taken place.<sup>19</sup>

17. Moreover, as recently recognised by the Chamber in the *Gbagbo* case, a dismissal *in limine* of a part of the DCC as requested by the Defence would not prevent subsequent modifications to the DCC by the Chamber, the Prosecutor or even the Trial Chamber if the charges were to be confirmed.<sup>20</sup>

---

<sup>15</sup> See the "Decision Adjourning the Hearing pursuant to Article 61(7)(c)(ii) of the Rome Statute" (Pre-Trial Chamber III), No. ICC-01/05-01/08-388, 4 March 2009 (dated 3 March 2009), par. 17.

<sup>16</sup> See the "Decision on the 'Request by the Victims' Representative for authorization by the Chamber to make written submissions on specific issues of law and/or fact'" (Pre-Trial Chamber II, Single Judge), No. ICC-01/09-01/11-274, 19 August 2011, paras. 7 and 9.

<sup>17</sup> See the Request for Specificity, *supra* note 10, par. 4.

<sup>18</sup> See the "Separate Opinion of Judge Christine Van den Wyngaert", No. ICC-02/11-01/11-619-Anx, 14 February 2014, paras. 2-3.

<sup>19</sup> The hearing in the *Gbagbo* case was held from 19 until 28 February 2013. See the "Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute" (Pre-Trial Chamber I), No. ICC-02/11-01/11-432, 3 June 2013, par. 11.

<sup>20</sup> See the "Decision on Defence requests related to the continuation of the confirmation proceedings", *supra* note 14, par. 20.

18. Therefore, the Common Legal Representative submits that the intervention of the Chamber may be sought *before* the confirmation hearing at most in order to ensure that “*in the DCC, the material facts underlying the charges on which the Prosecutor seeks to bring the person to trial be clearly and comprehensively identified and distinguished from those facts of a mere subsidiary nature*”.<sup>21</sup> Otherwise, the core purpose of the confirmation of charges hearing, namely to “*fix and delimit the factual scope of the trial*”,<sup>22</sup> might be lost.

19. Along these lines, in a very limited number of cases Pre-Trial Chambers have entertained requests seeking amendments to the DCC prior to the confirmation hearing on the grounds that the latter did not provide sufficient details of the alleged participants in the crimes and of the identity of the alleged victims, and used expressions that were allegedly too vague.<sup>23</sup>

20. Against this background, even if the Request for Specificity is understood in light of the possible intervention by the Chamber *before* the confirmation hearing explained above, the Common Legal Representative contends that the Request cannot be granted. Indeed, contrary to the Defence’s contentions, all alleged forms of liability and all the “facts and circumstances” underpinning them are properly identified in the DCC.

21. The Defence argues that the DCC does not provide it with proper notice of the content, time and place of the actions alleged to engage Mr. Blé Goudé’s responsibility under article 25(3)(b) and (c) of the Rome Statute,<sup>24</sup> but fails to mention

---

<sup>21</sup> See the “Decision on the date of the confirmation of charges hearing and proceedings leading thereto” (Pre-Trial Chamber I), No. ICC-02/11-01/11-325, 17 December 2012 (dated 14 December 2012), par. 28.

<sup>22</sup> *Idem*, par. 27.

<sup>23</sup> See for instance the “Decision on the Three Defences’ Requests Regarding the Prosecution’s Amended Charging Document” (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/07-648, 25 June 2008, par. 3.

<sup>24</sup> See the Request for Specificity, *supra* note 10, paras. 5-6.

that the DCC expressly indicates that “[b]ien que l’Accusation ait structuré la présentation des faits selon les éléments constitutifs de l’article 25-3-a, ces faits s’appliquent, pour autant que pertinent, aux autres motifs de responsabilité pénale retenus, tel que détaillé dans l’Exposé des Charges”.<sup>25</sup>

22. Accordingly, several paragraphs dealing with Mr. Blé Goudé’s alleged responsibility under article 25(3)(a) of the Rome Statute refer to facts that appear relevant to an assessment, in the alternative, of Mr. Blé Goudé’s alleged responsibility under article 25(b) and (c).<sup>26</sup>

23. In turn, the “*faits et circonstances*” mentioned within the “*exposé des charges*” of the DCC identify in detail Mr. Blé Goudé’s alleged contribution to the commission of the crimes,<sup>27</sup> with footnotes in the confidential version of the DCC referring to some of the abovementioned paragraphs.<sup>28</sup>

24. In this regard, the Common Legal Representative observes that the conduct referred to in said paragraphs must be understood, using an expression of the Appeals Chamber, as the “*the factual allegations which support each of the legal elements of the crimes charged*”<sup>29</sup> under article 25(3)(b) and (c) of the Rome Statute and, thereby, as the “*facts and circumstances*” underpinning said modes of liability.

25. In fact, the Chamber sanctioned a similar approach to the DCC in the *Gbagbo*

---

<sup>25</sup> See the “Annex 1 to the Prosecution’s Submission of *Document de notification des charges* and *l’Inventaire des éléments de preuve à charge*”, *supra* note 7, par. 172.

<sup>26</sup> For instance, see the “Annex 1 to the Prosecution’s Submission of *Document de notification des charges* and *l’Inventaire des éléments de preuve à charge*”, *supra* note 7, paras. 190-198, 202, 218-220, 224, 228-229, 231-233, 238-239, 244-248, 249, 251, 253, 257, 259, 263, 267, 269, 277-278, 281, 285-286, 294-297, 302-307, 310, 312, 315, 317-318 and 321.

<sup>27</sup> *Idem*, paras. 332-334.

<sup>28</sup> See the “Annex 2 to the Prosecution’s Submission of *Document de notification des charges* and *l’Inventaire des éléments de preuve à charge*”, *supra* note 8, footnotes 1162-1193.

<sup>29</sup> See the “Judgment on the appeals of Mr Lubanga Dyilo and the Prosecutor against the Decision of Trial Chamber I of 14 July 2009 entitled ‘Decision giving notice to the parties and participants that the legal characterisation of the facts may be subject to change in accordance with Regulation 55(2) of the Regulations of the Court’” (Appeals Chamber), No. ICC-01/04-01/06-2205 OA15 OA16, 8 December 2009, par. 90, footnote 163.



case,<sup>30</sup> where the Prosecution made a less detailed reference to the facts underlying alternative modes of liability than to the facts allegedly supporting liability under article 25(3)(a).<sup>31</sup>

26. Regarding the Defence's argument that the reference in the DCC to article 25(3)(d) of the Rome Statute *in toto* must be amended because the two sub-sections of the provision are "*markedly different in nature*",<sup>32</sup> the Common Legal Representative submits that this mode of liability is characterised *vis-à-vis* other modes of liability by its lower level of contribution to the crime, not by the different degree of intention reflected in its two sub-sections.<sup>33</sup> Accordingly, the DCC properly puts the Defence on notice of Mr. Blé Goudé's alleged responsibility under article 25(3)(d) in the alternative to article 25(3)(a) of the Rome Statute.

27. Moreover, the Request for Specificity fails to identify how the alleged imprecision in the DCC regarding Mr. Blé Goudé's alleged responsibility under article 25(3)(d) of the Rome Statute will prejudice the preparation of the confirmation hearing by the Defence. In these circumstances, the Common Legal Representative contends that the Chamber cannot address this aspect of the Request. To do otherwise would be tantamount to rendering an advisory opinion.<sup>34</sup>

28. Furthermore, the Common Legal Representative notes that a submission

---

<sup>30</sup> See the "Decision on Defence requests related to the continuation of the confirmation proceedings", *supra* note 14, par. 22.

<sup>31</sup> See the "Prosecution's response to the Defence 'Requête afin que soit déclaré irrecevable au fond le Document Contenant les Charges (ICC-02/11-01/11-592-Conf-Anx2-Corr2) déposé par le Procureur le 20 janvier 2014'", No. ICC-02/11-01/11-612, 7 February 2014, par. 16.

<sup>32</sup> See the Request for Specificity, *supra* note 10, par. 7.

<sup>33</sup> See the "Decision on the confirmation of charges" (Pre-Trial Chamber I), No. ICC-01/04-01/06-803-tEN, 14 May 2007, par. 337; and the "Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled 'Decision on the confirmation of charges'" (Appeals Chamber), No. ICC-01/04-01/10-514 OA4, 30 May 2012, Separate Opinion of Judge Silvia Fernández de Gurmendi, paras. 8-9.

<sup>34</sup> See the "Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case" (Appeals Chamber), No. ICC-01/04-01/07-1497 OA8, 25 September 2009, par. 38; and the "Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled 'Decision on the confirmation of charges'", *supra* note 33, par. 68.

similar to the Request for Specificity was dismissed by the Single Judge of Pre-Trial Chamber II in the *Bemba et al.* case upon finding that the “objections” raised by the Defence prior to the confirmation hearing “*pertain to the merit of the case and that, accordingly, the appropriate procedural venue for the Defence to raise such objections are its submissions in lieu of [the confirmation] hearing*”.<sup>35</sup>

29. Consequently, the Common Legal Representative shares the conclusions of the Single Judge that “*the appropriate procedural venue for the Chamber to make its determinations on the issues raised by the Defence Objection is the decision on the confirmation of the charges pursuant to article 61(7) of the Statute*”.<sup>36</sup>

## 2. On the Request on Speciality

30. The Common Legal Representative submits that the Request on Speciality must be rejected *in limine* as inadmissible because the Defence cannot make submissions on behalf of Côte d’Ivoire in relation to a purported change in the course of conduct for which Mr. Blé Goudé was surrendered to the Court.

31. The Defence argues that a person before the Court can defend their subjective rights on the basis of article 101(1) of the Rome Statute,<sup>37</sup> but fails to notice that article 101(2) mentions only the surrendering State as the subject that can provide a “waiver” to the rule of speciality, encouraging it to do so (“should”) without mentioning and/or taking into account the views of the person concerned.

32. Similarly, when the Court requests a waiver of the requirements of article 101(1) of the Rome Statute, the legal texts of the Court do not compel the Court or the

---

<sup>35</sup> See the “Decision on the ‘Defence objection to the form of the document containing the charges’ submitted by the Defence for Mr Bemba on 2 July 2014 and on the ‘Requête urgente de la Défense tendant à obtenir de la Chambre préliminaire II l’autorisation d’accès aux Annexes confidentielles du document ICC-01/05-01/08-346-Conf dans l’affaire le Procureur c. Jean-Pierre Bemba Gombo’ submitted by the Defence for Mr Babala on 7 July 2014” (Pre-Trial Chamber II, Single Judge), No. ICC-01/05-01/13-561, 14 July 2014 (dated 11 July 2014), p. 4.

<sup>36</sup> *Idem.*

<sup>37</sup> See the Request on Speciality, *supra* note 11, paras. 23-24.

surrendering State to collect the views of the surrendered person. At most, rule 197 of the Rules of Procedure and Evidence provides that the requested State “*may ask the Court to obtain and provide the views of the person surrendered to the Court*” on the extension of his surrender.

33. In light of the wording of article 101(2) of the Rome Statute and rule 197 of the Rules of Procedure and Evidence, the Common Legal Representative submits that the rule of speciality before the Court is meant to protect the interests of surrendering States, not those of persons surrendered to the Court.

34. This conclusion is consistent with the existing jurisprudence on article 101 of the Rome Statute, which clarifies that the rule of speciality contained therein was introduced in the Rome Statute to protect the sovereignty of States which have surrendered persons to the Court. In this regard, in the *Muthaura et al.* case, Pre-Trial Chamber II ruled that “*the rationale of article 101 of the Statute is to protect State sovereignty*”.<sup>38</sup>

35. In the same case, Pre-Trial Chamber II clarified that the application of the rule of speciality is limited to the scenarios in which the person is arrested and surrendered as a result of a request submitted by the Court to a State, and does not extend to cases where persons have voluntarily appeared before the Court.<sup>39</sup> This ruling supports the conclusion that the rule of speciality is meant to protect exclusively the interests of States, and contradicts the broad arguments of the Defence regarding “*the ability of individuals to exercise their rights pursuant to the rule of speciality*”.<sup>40</sup>

---

<sup>38</sup> See the “Decision on the ‘Preliminary Motion Alleging Defects in the Documents Containing the Charges (DCC) and List of Evidence (LoE) and Request that the OTP be ordered to re-file an Amended DCC & LoE’ and the ‘Defence Request for a Status Conference Concerning the Prosecution’s Disclosure of 19<sup>th</sup> August 2011 and the Document Containing the Charges and Article 101 of the Rome Statute’” (Pre-Trial Chamber II, Single Judge), No. ICC-01/09-02/11-315, 12 September 2011, par. 16.

<sup>39</sup> *Idem.*

<sup>40</sup> See the Request on Speciality, *supra* note 11, par. 24.

36. In the current proceedings, Côte d'Ivoire has not filed any objections on the basis of article 101 of the Rome Statute nor has it requested the Court to collect Mr. Blé Goudé's views pursuant to rule 197. In these circumstances, the submissions by the Defence regarding the lack of subjective consideration by Côte d'Ivoire on the alleged change to the course of conduct underlying the crimes charged cannot be considered.<sup>41</sup> Consequently, the Request on Speciality must be declared inadmissible.

37. Moreover, the Common Legal Representative notes that the Request on Speciality is in any case premature. Indeed, the Request demands the Chamber to assess the content of some of the charges brought against Mr. Blé Goudé before the confirmation hearing has taken place.<sup>42</sup>

38. As argued in relation to the Request for Specificity,<sup>43</sup> substantive submissions of this nature cannot be entertained before the confirmation hearing because they request adjudication based on the evidence to be presented to the Chamber during said hearing and before the parties and participants have made submissions on it. In these circumstances, the Chamber may not properly assess the Defence's arguments on an alleged change to the course of conduct underlying the crimes charged.

39. Assuming, *arguendo*, that the Chamber considers the Request on Speciality to be admissible at this stage of the proceedings, the Common Legal Representative argues that the Request cannot be granted because the course of conduct which forms the basis of the crimes for which Mr. Blé Goudé was surrendered to the Court encompasses the allegedly new course of conduct included in the DCC, namely the attack on Yopougon on 25-28 February 2011 (the "fifth incident").<sup>44</sup>

40. The Common Legal Representative agrees with the Defence that, as found by

---

<sup>41</sup> *Idem*, paras. 33, 40 and 45-46.

<sup>42</sup> *Ibid.*, paras. 36-37 and 46.

<sup>43</sup> See *supra* paras. 28-29.

<sup>44</sup> See the "Annex 1 to the Prosecution's Submission of *Document de notification des charges* and *l'Inventaire des éléments de preuve à charge*", *supra* note 7, paras. 149-160.

Pre-Trial Chamber II in the *Bemba et al.* case,<sup>45</sup> the deliberate choice of the more generic term “course of conduct” in article 101 of the Rome Statute implies that “*this term restricts the scope of application of the rule of speciality before the Court in the sense that its operation is linked to the underlying facts rather than the legal qualification of the suspect’s behaviour*”.<sup>46</sup>

41. However, the Common Legal Representative strongly disagrees with the Defence’s assertion that the course of conduct mentioned in the DCC with regard to the fifth incident was not mentioned in the Warrant of Arrest, in the Warrant of Arrest Decision or in the request for arrest and surrender addressed to Côte d’Ivoire.<sup>47</sup>

42. A mere reading of said documents discloses that charging Mr. Blé Goudé in the DCC with the fifth incident is based on the same set of facts presented in the abovementioned documents, both regarding the contextual elements of the crimes charged and the underlying acts. Consequently, the fifth incident must be deemed to be part of the course of conduct which forms the crimes for which Mr. Blé Goudé has been surrendered to the Court.

43. In particular, the fifth incident falls within the scope of the attack against the civilian population which constitutes the context of the crimes committed in Abidjan,<sup>48</sup> and refers to attacks allegedly carried out by pro-Gbagbo forces between 25 and 28 February 2011 against people in the district of Yopougon, in particular against civilians from the North of Côte d’Ivoire and immigrants from West African countries.<sup>49</sup>

---

<sup>45</sup> See the Request on Speciality, *supra* note 11, par. 27.

<sup>46</sup> See the “Decision on ‘Narcisse Arido’s Request for an Order Rejecting the Prosecution’s Document Containing the Charges (ICC-01/05-01/13-526-AnxB1) and for an Order to the Prosecution to File an Amended and Corrected Document Containing the Charges’” (Pre-Trial Chamber II, Single Judge), No. ICC-01/05-01/13-567, 15 July 2014, p. 5.

<sup>47</sup> See the Request on Speciality, *supra* note 11, paras. 37 and 43.

<sup>48</sup> See the “Annex 1 to the Prosecution’s Submission of *Document de notification des charges* and *l’Inventaire des éléments de preuve à charge*”, *supra* note 7, par. 77.

<sup>49</sup> *Idem*, paras. 151, 155-156 and 158-159.

44. In turn, the Warrant of Arrest and the Warrant of Arrest Decision refer that “*pro-Gbagbo forces*” attacked the “*civilian population*” in “*many neighbourhoods of Abidjan and the west of Côte d’Ivoire*”, often targeting specific ethnic or religious communities, “*between 28 November 2010 and May 2011*”.<sup>50</sup> The Common Legal Representative submits that this language obviously covers the facts referred to in the fifth incident.

45. The Warrant of Arrest was attached to the request for arrest and surrender subsequently addressed to and complied with by Côte d’Ivoire.<sup>51</sup> Consequently, Mr. Blé Goudé’s claim that the rule of speciality has been violated is without merit.

**FOR THE FOREGOING REASONS**, the Common Legal Representative respectfully requests the Pre-Trial Chamber to dismiss the Request for Specificity and the Request on Speciality.



**Paolina Massidda**  
**Principal Counsel**

Dated this 28<sup>th</sup> day of August 2014  
At The Hague, The Netherlands

---

<sup>50</sup> See the Warrant of Arrest, *supra* note 1, paras. 5-6; and the Warrant of Arrest Decision, *supra* note 2, paras. 6, 17 and 19, referring to the “Public redacted version of ‘Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant of arrest against Laurent Koudou Gbagbo’” (Pre-Trial Chamber III), No. ICC-02/11-01/11-9, 20 December 2011, including paras. 36 and 67 thereof.

<sup>51</sup> See the “Demande d’arrestation et de remise de Charles Blé Goudé adressée à la République de Côte d’Ivoire”, No. ICC-02/11-02/11-19, 4 December 2012, p. 6.