

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **27/08/2014**

PRE-TRIAL CHAMBER I

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

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF THE PROSECUTOR v. CHARLES BLÉ GOUDÉ

Confidential Document

**Defence request to amend the document containing the charges
to exclude prejudicial facts**

Source: 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

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Counsel for the Defence

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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

Applicants

(Participation/Reparation)

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Detention Section

**Victims Participation and Reparations
Section**

**Other
Section**

Charles Blé Goudé ("the Suspect") hereby files his third and final challenge to the form of the document containing the charges. In this filing, the Suspect requests that Pre-Trial Chamber I amend the document containing the charges ("DCC") by striking out facts which are highly prejudicial to his defence and by ordering the Prosecutor to provide further clarification concerning the alleged common plan.

Submission

1. Part 3 of the DCC (paragraphs 15-58 inclusive) ("Part 3") contains a one-sided account of the civil unrest which afflicted Cote d'Ivoire from the death of Félix Houphouët-Boigny in 1993 up to the post-electoral crisis of 2010-2011.

2. The only possible relevance of such an historical account is to impute to the Suspect participation in a common criminal plan stretching back as far as the failed *coup d'état* in September 2002. If this is, indeed, the Prosecutor's case theory, she should have stated it in unequivocal fashion instead of alleging, as she does, that the "*plan commun a évolué jusqu'à inclure, au plus tard le 27 novembre 2010, un politique ... qui.. avait pour un but une attaque ...contre les civils....*".

3. As it is, the Prosecutor has drafted her DCC with a deliberate lack of specificity as to the date on which the alleged common plan was conceived and the Suspect's participation therein commenced. In so doing, the Prosecutor has permitted herself to adduce numerous examples of the Suspect's alleged involvement in criminal activity before the period relevant to the charges, thereby unfairly influencing the decision making process of the Pre-Trial Chamber.

4. Evidence of prior good or bad conduct, is, as a rule, irrelevant. Precedent for this assertion is to be found in the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia:

"(i) generally speaking, evidence of the accused's character prior to the events for which he is indicted before the International Tribunal is not a relevant issue inasmuch as (a) by their nature as crimes committed in the context of widespread violence and during a national or international

*emergency, war crimes and crimes against humanity may be committed by persons with no prior convictions or history of violence, and that consequently evidence of prior good, or bad, conduct on the part of the accused before the armed conflict began is rarely of any probative value before the International Tribunal, and (b) as a general principle of criminal law, evidence as to the character of an accused is generally inadmissible to show the accused's propensity to act in conformity therewith;"*¹

5. Without firmly stipulating the date on which the common plan was conceived and when the Suspect's participation therein commenced, evidence of the Suspect's alleged prior bad conduct has no probative value other than to show a general predisposition to violence.

6. Article 69(4) of the Rome Statute stipulates that "[t]he Court may rule on the relevance or admissibility of any evidence, taking into account, *inter alia*, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence".

7. The sheer multitude and poorly substantiated nature of the allegations as to the Suspect's prior conduct² will require the Defence to devote more energy to countering Part 3, than to dealing with the 5 core incidents with which he is presently charged. It is manifestly unfair for the Prosecutor to set the Suspect the task of defending himself against such large number of allegations in the short time remaining to him before confirmation.

Confidentiality

8. The Defence files this submission as confidential merely as a result of an Email received from the Prosecutor's representative dated 26 August 2014. The Defence does not believe that there is any substantive justification for filing this submission as

¹ *Prosecutor v. Kupreskic* (ICTY), Decision on the good character of the accused and the defence of tu quoque, 17 February 1999.

² These incidents fall without the scope of the investigation authorized by the Pre-Trial Chamber III. It will be recalled that the investigation in Côte d'Ivoire was first initiated on 3 October 2011 with the Prosecutor being permitted to investigate from 28 November 2010 onwards. Only on 22 February 2012, two months after the warrant for the arrest of the Suspect had been issued under seal, did Pre-Trial Chamber III expand the investigation to include events dating back to 2002.

confidential other than the fact that it is a response to a Prosecution document of the same classification. The Prosecution should thus be ordered to file a public redacted version of its DCC as soon as possible.

Relief Sought

9. In the circumstances, the prejudicial effect of Part 3, in so far as it relies on evidence as to the Suspect's alleged prior bad conduct, outweighs its probative value.

10. The Prosecutor should not be entitled to rely on such evidence unless she stipulates with the requisite clarity in her DCC when the common plan was conceived and when the Suspect is alleged to have commenced participation therein.

11. In the circumstances, the Pre-Trial Chamber is requested to strike out Part 3 and to order the Prosecutor to file an amended DCC in which she states, clearly and unequivocally, when the common plan was conceived and from when the Suspect allegedly commenced participation therein.



Nicholas Kaufman

Counsel for Charles Blé Goudé

Done in Jerusalem, Israel
Wednesday, August 27, 2014