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

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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

Public Document

**Defence request to amend the document containing the charges
for lack of specificity**

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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Legal Representatives of the Victims

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**Victims Participation and Reparations
Section Other**

1. Regulation 52(c) of the Regulations of the Court stipulates that a document containing the charges ("DCC") shall contain "[a] *legal characterisation of the facts to accord both with the crimes under articles 6, 7 or 8 and the precise form of participation under articles 25 and 28*" [emphasis added].

2. The DCC which was notified belatedly to the Defence at 10:34 on 23 August 2014¹ provides extensive (albeit recycled *Gbagboesque*) details concerning Charles Blé Goudé's individual criminal responsibility under Article 25(3)(a) of the Rome Statute. In the alternative, the DCC asserts that the Suspect participated in the alleged crimes pursuant to Articles 25(3)(b), 25(3)(c) and 25(3)(d) of the Rome Statute.

3. The Suspect anticipates that the Prosecutor will argue, as she did in the *Gbagbo* case, that the DCC presents "*facts that go to prove the elements of criminal responsibility for ordering, soliciting and inducing the commission of crimes under Article 25(3)(b)*".² Indeed, the Defence is fully aware that Laurent Gbagbo's demand for further particulars pertaining to modes of liability was rejected by the majority of Pre-Trial Chamber I with the observation that "[t]he Chamber recognises that the modes of liability under the Statute may significantly overlap in certain cases".³

4. The Defence, nevertheless, notes the very pertinent and apposite observations of HHJ Christine Van den Wyngaert who found as follows:

"However, as there is no legal obstacle to the application of article 61(7)(c)(ii) at this stage, it would have been possible, in my view, to permit the Prosecutor to include article 25(3) (b) and 28 in the charges on this basis, provided that the 'facts and circumstances' underpinning each form of criminal responsibility are clearly spelled out in the amended document containing the charges, that the Defence is given adequate time to prepare its response, and that this does not cause undue delay".⁴

¹ ICC-02/11-02/11-124-Anx2-Conf.

² ICC-02/11-01/11-612 at paragraph 16.

³ ICC-02/11-01/11-619 at paragraph 19.

⁴ ICC-02/11-01/11-619-Anx at paragraph 3.

5. The "*facts and circumstances*" underpinning all forms of liability apart from Article 25(3)(a) liability are lacking from the present DCC. For the purpose of Article 25(3)(b), the Suspect has not been provided with proper notice as to what "*order[s], solicit[ations] or induce[ments]*" he is alleged to have given which led to the commission or attempted commission of crimes against humanity. Nor is the Suspect any the wiser as to when such "*order[s], solicit[ations] or induce[ments]*" were supposedly given and where.

6. The same arguments are applicable to facilitation under Article 25(3)(c) – especially given that this mode of liability permits a suspect to be found culpable for "otherwise" assisting in the commission of a crime. The more general and open-ended the mode of liability, the greater the degree of precision should be when drafting the DCC.

7. In throwing the book at the Suspect, the Prosecutor has also neglected to stipulate on which of the two sub-sections of Article 25(3)(d) she relies in the alternative. These two forms of "contribution" liability are markedly different in nature and failure to supply the requisite "*precision*" will prejudice the preparation of the Suspect's defence.

8. In light of the aforementioned, the Pre-Trial Chamber is requested 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.



Nicholas Kaufman
Counsel for Charles Blé Goudé

Done in Jerusalem, Israel
Monday, August 25, 2014