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No.: ICC-02/11-01/11  
Date: 13 January 2014

**PRE-TRIAL CHAMBER I**

**Before:** Judge Silvia Fernández de Gurmendi, Presiding Judge  
Judge Hans-Peter Kaul  
Judge Christine Van den Wyngaert

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE**

**IN THE CASE OF THE PROSECUTOR *v.* LAURENT GBAGBO**

**Public**

**With Annex 1 – Public, and**

**Annexes 2, 3, 4, 5, 6, 7 and 8 – Confidential, available to the Defence and OPCV**

**Prosecution's Submission of *Document amendé de notification des charges, l'Inventaire amendé des éléments de preuve à charge, and le Tableau amendé des éléments constitutifs des crimes*, and Response to issues raised by Pre-Trial Chamber I**

**Source:** Office of the Prosecutor

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

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(Participation/Reparation)**

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Victims**

**The Office of Public Counsel for the  
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**States' Representatives**

**Amicus Curiae**

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**REGISTRY**

**Registrar**

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**Defence Support Section**

**Deputy Registrar**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## Introduction

1. On 3 June 2013, Pre-Trial Chamber I (the Chamber) adjourned the hearing on the confirmation of charges and requested “the Prosecutor to consider providing further evidence or conducting further investigation with respect to all charges, mindful of the questions in paragraph 44 of the present decision” (“the Request”). The Chamber also directed, *inter alia*, the Prosecutor to submit “by no later than Friday, 15 November 2013 the amended document containing the charges, amended list of evidence and updated consolidated Element Based Chart” (“Decision of 3 June 2013”).<sup>1</sup>
2. On 8 November 2013, the Chamber postponed the date by which the Prosecutor was required to submit the amended document containing the charges, amended list of evidence and updated consolidated Element Based Chart; and suspended the calendar of subsequent deadlines.<sup>2</sup>
3. On 17 December 2013, the Chamber issued its “decision establishing a calendar for further proceedings” requiring, *inter alia*, that the Prosecutor submit by 13 January 2014 the amended document containing the charges, amended list of evidence and the updated consolidated Elements Based Chart (“Decision of 17 December 2013”).<sup>3</sup>
4. The Prosecution hereby annexes its *Document amendé de notification des charges*, *Inventaire amendé des éléments de preuve à charge*, et *Tableau amendé des éléments constitutifs des crimes*. The Prosecution also submits additional annexes as detailed below.

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<sup>1</sup> ICC-02/11-01/11-432.

<sup>2</sup> ICC-02/11-01/11-557.

<sup>3</sup> ICC-02/11-01/11-576.

## Confidentiality

5. Pursuant to Regulation 23bis of the Regulations of the Court, the Prosecution files Annexes 2 to 8 as confidential, as these documents pertain to evidentiary matters which are currently treated as confidential. The Prosecution will file a redacted version of Annex 2 as soon as practicable.

## Amended Document Containing the Charges and related documents

6. Pursuant to the decisions cited above, the Prosecution submits the following documents:
- a) A public version of the *Document amendé de notification des charges*, without footnotes, (Annex 1) ;
  - b) The *Document amendé de notification des charges*, with footnotes, (Annex 2) ;
  - c) The *Inventaire amendé des éléments de preuve à charge*, (Annex 3) ;
  - d) The *Tableau amendé des éléments constitutifs des crimes*, (Annex 4) ;

Additionally, the Prosecution submits:

- e) A list identifying all items of evidence in the *Inventaire amendé des éléments de preuve à charge* that were not included in the previous list of evidence submitted on 17 January 2013,<sup>4</sup> (Annex 5).

## Response to the Chamber's Request

7. In its Decision of 3 June 2013, the Chamber identified six questions or issues that it requested be addressed, to the extent possible, by the Prosecution.<sup>5</sup> During the

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<sup>4</sup> ICC-02/11-01/11-357-Conf-Anx2.

<sup>5</sup> ICC-02/11-01/11-432, paragraph 44 and page 22: (item 'b' of decision).

course of its further investigation, the Prosecution collected additional evidence aimed at addressing these issues.

8. The Prosecution hereby submits the *Document amendé de notification des charges* (the “Amended DCC”) and the *Inventaire amendé des éléments de preuve à charge* (“Amended LoE”), which answer the questions raised with the exception of the first and sixth issues, which require the following further submissions:

- With respect to the first issue,<sup>6</sup> the nature of the material that addresses this issue is not generally incriminating, and therefore not uploaded in E-court.<sup>7</sup> Consequently, this material is not sourced in the Amended DCC or the Amended LoE. In order to provide the requested information to the Chamber, the Prosecution instead submits two detailed reports. The first one pertains to rebel groups active in Abidjan during the post-election violence and is attached as Annex 6; the second, attached as Annex 7, relates to the *Forces Nouvelles*.
- Regarding the sixth issue,<sup>8</sup> the particular report mentioned by the Chamber in footnote 58 of the Decision of 3 June 2013 had been already requested before the confirmation hearing of February 2013 and it has still not been provided to the Prosecution. The steps taken, both prior and subsequent to the Decision of 3 June 2013, to obtain a copy of this report (and any related documents) have been detailed in a report prepared by the Prosecution which was disclosed to the Defence as Rule 77 material on

<sup>6</sup> ICC-02/11-01/11-432, paragraph 44: “1. The position(s), movements and activities of all armed groups opposed to the “pro-Gbagbo forces” (for example *Commando Invisible* and *Forces Nouvelles*) in Côte d’Ivoire (including particularly in and around Abidjan) between November 2010 and May 2011, including specific information about confrontations between those armed groups and the “pro-Gbagbo forces” between November 2010 and May 2011.”

<sup>7</sup> ICC-02/11-01/11-30, para. 15.

<sup>8</sup> ICC-02/11-01/11-432, paragraph 44: “6. In relation to the alleged incidents taking place on 3 March 2011 (“Women’s march”) and 17 March 2011 (“Shelling of Abobo”), any forensic or other evidence<sup>58</sup> indicating who fired the ammunitions and what their alleged target was.”

15 November 2013. It is attached as Annex 8. The Prosecution, nonetheless, did conduct its own forensic mission in relation to the incident of 17 March and relies on it in the Amended DCC and the Amended List of Evidence.

### **Ancillary Issues**

#### **Criminal responsibility under 25(3)(a)**

9. In its decision pertaining to the issuance of the warrant of arrest against Laurent Gbagbo Pre-trial Chamber III stated: "...it is likely that this issue (i.e. Mr Gbagbo's suggested liability as an "indirect co-perpetrator" under Article 25(3)(a) of the Statute) may well need to be revisited in due course with the parties and participants."<sup>9</sup> While different interpretations of Article 25(3)(a) are possible, the position being advanced by the Prosecution is based upon jurisprudence of this Court, in particular on the conclusions of the majority in the *Lubanga* judgment.<sup>10</sup> and an analysis of sources cited therein as submitted in the Kenya cases.<sup>11</sup> The Prosecution takes this opportunity to inform the Chamber and notify the Defence of its position that: the evidence presented in the Amended DCC and Amended LoE is sufficient to establish substantial grounds to believe that GBAGBO is criminally responsible (as indirect co-perpetrator) for the crimes described in the Amended DCC pursuant to either interpretation, in the *Lubanga* judgment, of the required elements for criminal responsibility under Article 25(3)(a).

#### **Additional grounds of criminal responsibility**

10. On 22 February 2013, during the Confirmation of Charges Hearing, the Chamber asked the Prosecution a question about "criminal responsibility pursuant to

<sup>9</sup> ICC-02/11-01/11-9-Red, paragraph 77.

<sup>10</sup> ICC-01/04-01/06-2842.

<sup>11</sup> ICC-01/09-02/11-444, paragraphs 8 – 23; ICC-01/09-01/11-433, paragraphs 8 – 23.

Article 28".<sup>12</sup> The Prosecution responded and submitted that the facts and evidence as presented did meet the requirements of Article 28.

11. The Prosecution avails itself to this opportunity to formally confirm to the Chamber and notify the Defence that, as set out in the Amended DCC, it now relies, in addition to Articles 25(3)(a) and (d), on Article 25(b) as well as Article 28(a) and b) as alternative grounds of criminal responsibility in these proceedings.



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Fatou Bensouda, Prosecutor

Dated this 13<sup>th</sup> day of January 2014

At The Hague, The Netherlands

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<sup>12</sup> ICC-02/11-01/11-T-17-Red-ENG, at page 27.