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No.: ICC-02/11-02/11
Date: 11 September 2014

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Single Judge

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
*THE PROSECUTOR v. CHARLES BLÉ GOUDÉ***

Public

URGENT

Decision on the "Defence request to amend the document containing the charges for violation of the rule of speciality"

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Fatou Bensouda

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Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
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States Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Detention Section

Victims and Witnesses Unit

Others

**Victims Participation and Reparations
Section**

Judge Silvia Fernández de Gurmendi, Single Judge for Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”), responsible for carrying out the functions of the Chamber in relation to the situation in the Republic of Côte d’Ivoire and the cases emanating therefrom,¹ issues the following decision on the “Defence request to amend the document containing the charges for violation of the rule of speciality” (the “Request”).²

1. On 22 August 2014, the Prosecutor filed the document containing the charges (the “DCC”).³

2. On 25 August 2014, the Defence filed the Request. It submits that Côte d’Ivoire has “relied strictly upon certain aspects of the Prosecutor’s documents and those of the Pre-Trial Chamber in surrendering the Suspect” and that “[a]ny subsequent changes to the ‘course of conduct’ underlying the crimes charged would violate the rights of both Côte d’Ivoire and the Suspect under the rule of speciality as delineated in Article 101(1) of the Rome Statute”.⁴

3. The Defence contends that the rule of speciality is violated in the DCC by way of including in the charges the “so-called ‘fifth incident’ [...], principally but not exclusively, an attack on the Sicogi-Lem Mosque on 25 February 2011, during which 13 people were allegedly killed”.⁵ The Defence refers to a number of factual statements in the DCC concerning this “incident”,⁶ and concludes that “[n]one of the above-cited specifics which comprise a clearly defined ‘course of conduct’ are mentioned in either the Suspect’s arrest warrant or that of Laurent Gbagbo. Nor is this ‘course of

¹ “*Décision portant désignation d’un juge unique*”, ICC-02/11-02/11-9.

² ICC-02/11-02/11-127.

³ ICC-02/11-02/11-124-Anx1-Corr (public, without footnotes); ICC-02/11-02/11-124-Conf-Anx2-Corr (confidential, with footnotes).

⁴ Request, para. 33.

⁵ *Ibid.*, para. 35.

⁶ *Ibid.*, para. 36.

conduct' mentioned in either of the Prosecutor's applications pursuant to Article 58, despite the details provided with respect to the other charged 'incidents'".⁷

4. Submitting that the rule of speciality, in addition to protecting the interests of the surrendering State, also shields the individual from "unexpected prosecution",⁸ the Defence requests that the Chamber "amend the DCC by striking out all reference to the so-called 'fifth incident' relating to the alleged attacks in Yopougon/Doukouré between 25-28 February 2011".⁹

5. On 28 August 2014, the OPCV responded to the Request, arguing primarily that the Request is 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",¹⁰ and premature as it "demands the Chamber to assess the content of some of the charges brought against Mr. Blé Goudé before the confirmation hearing has taken place".¹¹ In the alternative, the OPCV also submits that the course of conduct which forms the basis of the crimes for which Charles Blé Goudé was surrendered to the Court encompasses the allegedly new course of conduct included in the DCC.¹²

6. The Prosecutor responded to the Request on 29 August 2014, submitting that the "incident" at issue falls within the factual parameters of the arrest warrant.¹³ In the event that the Chamber finds that the new "incident" does not fall within the factual parameters of the arrest warrant, the Prosecutor submits that it falls within the same conduct and/or course of

⁷ *Ibid.*, para. 37.

⁸ *Ibid.*, para. 45; see also paras 23-24.

⁹ *Ibid.*, para. 47.

¹⁰ ICC-02/11-02/11-138, para. 30.

¹¹ *Ibid.*, para. 37.

¹² *Ibid.*, para. 39.

¹³ ICC-02/11-02/11-137-Conf, paras 10-13.

conduct “as it is constitutive of the same crimes, occurring in the context of the same attack against the civilian population, and during the same temporal scope and geographic area.”¹⁴

7. The Single Judge notes articles 61, 67 and 101 of the Rome Statute (the “Statute”), rules 121, 196 and 197 of the Rules of Procedure and Evidence (the “Rules”), and regulation 23 *bis* of the Regulations of the Court.

8. The Single Judge notes that article 101(2) of the Statute provides that a person can be proceeded against even for conduct other than the conduct or course of conduct which forms the basis of the crimes for which that person has been surrendered *if the State which has surrendered the person provides a waiver to the Court*. This provision makes clear that only the State which has surrendered the person may allow the Court to proceed against that person even in the requirements described in article 101(1) of the Statute would not be met, while the surrendered person is only entitled to provide views, in accordance with rule 196 of the Rules. This Rule provides that “[a] person surrendered to the Court may provide views on a perceived violation of the provisions of article 101, paragraph 1”. In case article 101(2) of the Statute is activated by the Court, rule 197 of the Rules provides that, “[w]hen the Court has requested a waiver of the requirements of article 101, paragraph 1, the requested State may ask the Court to obtain and provide the views of the person surrendered to the Court”.

9. Accordingly, the Single Judge takes the view that the Defence may only raise the issue of a perceived violation of the rule of speciality leaving it to the Court to decide whether the requirements under article 101(1) have been respected and, in the negative, eventually present a request to the State which has surrendered the person prosecuted for a waiver of those

¹⁴ *Ibid.*, para. 16 (footnote omitted).

requirements under article 101(2) of the Statute. Conversely, the Defence cannot claim a violation of the right of the suspect for violation of the rule of speciality and obtain as a remedy the striking of certain charges.

10. In line with the above, the Single Judge must ascertain whether the provisions of article 101(1) have been respected. Article 101(1) of the Statute provides that “[a] person surrendered to the Court under this Statute shall not be proceeded against, punished or detained for any conduct committed prior to surrender, other than the conduct or course of conduct which forms the basis of the crimes for which that person has been surrendered”. The Single Judge notes that the statutory provision not only refers to specific offences or conduct but also to the broader term of “course of conduct”, which reflects the systemic nature of crimes under the Statute. In this regard, the provision contained in article 101(1) is much broader than the rule of speciality is traditionally formulated in extradition law.¹⁵

11. The Single Judge notes that that the Defence is of the view that the so-called “fifth incident” exceeds the scope of the conduct for which the person was surrendered to the Court. This incident refers to the allegation that between 25 and 28 February, the pro-Gbagbo forces killed at least 24 persons, mostly originating from the north of Côte d’Ivoire and from neighbouring West African countries, and injured at least seven persons, in the commune of Yopougon in Abidjan.¹⁶

¹⁵ Article 14, entitled “Rule of speciality”, of the Model Treaty on Extradition adopted by the United Nations General Assembly on 14 December 1990, states that a “person extradited under the present Treaty shall not be proceeded against, sentenced, detained, re-extradited to a third State or subjected to any other restriction of personal liberty in the territory of the requesting State for any offence committed before surrender (...);” see Annex to A/RES/45/116). The European Convention on extradition contains an almost identical formulation in its article 14; see European Treaty Series, N° 24, 13 December 1957.

¹⁶ See DCC, paras 327, 329.

12. For the purpose of determining whether the rule of speciality has been infringed, the Single Judge must undertake a comparison between the charges as contained in the DCC and the conduct or course of conduct which forms the basis of the crimes for which Charles Blé Goudé was surrendered to the Court.

13. As is evident from the judgment of the *Cour d'appel d'Abidjan, Chambre d'accusation*, dated 21 March 2014, which authorised the surrender of Charles Blé Goudé to the Court,¹⁷ the document received from the Court in compliance with article 91(2) of the Statute and considered by the national judicial authorities was the "Warrant Of Arrest For Charles Blé Goudé" (the "Warrant of Arrest") issued by Pre Trial Chamber III on 21 December 2011.¹⁸ Contrary to the submission of the Defence,¹⁹ the national judicial authorities were not notified of and did not consider the "Prosecutor's Application Pursuant to Article 58 as to Charles Blé Goudé".²⁰

14. Therefore, the Warrant of Arrest is authoritative for the determination of the conduct or course of conduct which forms the basis of the crimes for which Charles Blé Goudé was surrendered. The Single Judge notes that the Warrant of Arrest, consistent with article 58(3)(c) of the Statute, contains "[a] concise statement of the facts which are alleged to constitute th[e] crimes [for which Charles Blé Goudé's arrest was sought". These facts can be summarised as follows: (i) the attack, in the aftermath of the presidential elections in Côte d'Ivoire, by the pro-Gbagbo forces against the civilian population in Abidjan and in the west of the country, from 28 November 2010

¹⁷ ICC-02/11-02/11-50-Conf-Anx, pp. 18-24.

¹⁸ See ICC-02/11-02/11-1.

¹⁹ Request, paras 10, 34.

²⁰ See ICC-02/11-02/11-60-Conf. The Defence relies on the reference to this submission in the judgment of the *Cour d'appel d'Abidjan* (ICC-02/11-02/11-50-Conf-Anx5, p. 22). This reference, which is a copy of an introductory paragraph in the Warrant of Arrest (see para. 2) is however only to the fact that the submission was filed before the Court.

till May 2011,²¹ targeting civilians who they considered were supporters of Alassane Ouattara, and often directing the attacks at specific ethnic or religious communities;²² (ii) the carrying out of acts amounting to the crimes against humanity of murder, rape and other forms of sexual violence, other inhumane acts and persecution, under, respectively, article 7(1)(a), (g), (k) and (h) of the Rome Statute;²³ (iii) the coordinated implementation by Laurent Gbagbo and his inner circle, including Charles Blé Goudé, of a common plan which led to the commission of the crimes.²⁴

15. In the view of the Single Judge, the so-called “fifth incident”, just as the other four “incidents” described in the charges brought against Charles Blé Goudé,²⁵ falls entirely within the conduct for which the arrest and surrender of Charles Blé Goudé was sought by the Court and granted by Côte d’Ivoire. These allegations, while more specifically defined in the DCC, fall within the factual parameters of the acts of murder, other inhumane acts and persecution for which the Warrant of Arrest, transmitted to Côte d’Ivoire as the basis upon which Charles Blé Goudé’s arrest was sought, was issued.

16. In addition, these acts are alleged by the Prosecutor to have occurred as a result of the implementation by Charles Blé Goudé, Laurent Gbagbo and other members of Laurent Gbagbo’s inner circle, through the pro-Gbagbo forces, of a common plan to stay in power at all cost, including by committing the crimes charged.²⁶ As is clear from the above summary of the Warrant of Arrest, these allegations also correspond entirely to the facts as stipulated in the Warrant of Arrest.

²¹ Warrant of Arrest, para. 6.

²² *Ibid.*, para. 5.

²³ *Ibid.*, para. 7.

²⁴ *Ibid.*, paras 9-15.

²⁵ See DCC, paras 327-330.

²⁶ See *ibid.*, paras 323-326, 332-334.

17. Accordingly, the Single Judge is satisfied that Charles Blé Goudé has been charged with the same conduct which formed the basis of the crimes for which he was surrendered to the Court. Accordingly, no issue under article 101(1) of the Statute arises.

18. The Single Judge notes that on 27 June 2014, the Defence filed the “Defence request for a status conference”, in which it anticipated that it would be raising an issue related to the rule of speciality.²⁷ This issue is addressed in the present decision. However, in the same request the Defence also submits that “valuable court time will be saved if agreements are reached on issues which need not be litigated in light of the Pre-Trial Chamber’s findings in the *Gbagbo* confirmation decision” and that “a status conference [...] will allow the parties and the Court to streamline and focus their preparation”.²⁸

19. The Single Judge encourages the parties to seek agreements as to evidence pursuant to rule 69 of the Rules as this will serve to focus the confirmation of charges hearing on the crucial issues related to the case. While intervention of the Single Judge is not as such necessary for agreements as to evidence to be concluded between the parties, the Single Judge will consider a request for a status conference for this or other issues by any of the parties. .

20. The Single Judge notes that the above request was filed as “confidential”, for the reason that it made reference to the issue under the rule of speciality.²⁹ As the Request, which deals with the same matter in detail, was filed publicly, the Single Judge is of the view that this level of classification is no longer warranted. In addition, the Single Judge notes that the Prosecutor indicates that her response to the Request was filed confidentially but can be

²⁷ ICC-02/11-02/11-94-Conf-Exp.

²⁸ *Ibid.*, para. 2.

²⁹ *Ibid.*, para. 6.

reclassified as public “if the Chamber deems it appropriate”.³⁰ The Single Judge indeed considers that the Prosecutor’s response to the Request can be made public without jeopardising the reasons mandating the confidentiality of the documents which are referred to therein. Accordingly, both documents shall be reclassified as “public”.

FOR THESE REASONS, THE SINGLE JUDGE

REJECTS the Request;

DETERMINES that no issue under article 101(1) of the Statute arises in the present proceedings; and

ORDERS the Registrar to reclassify documents ICC-02/11-02/11-94-Conf-Exp and ICC-02/11-02/11-137-Conf as “public”.

Done in both English and French, the English version being authoritative.



Judge Silvia Fernández de Gurmendi

Single Judge

Dated this 11 September 2014

At The Hague, The Netherlands

³⁰ ICC-02/11-02/11-137-Conf, para. 4.