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No.: ICC-02/11-01/15

Date: 22 July 2016

**TRIAL CHAMBER I**

**Before:** Judge Cuno Tarfusser, Presiding Judge  
Judge Olga Herrera-Carbuccia  
Judge Geoffrey Henderson

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

***IN THE CASE OF THE PROSECUTOR  
v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ***

**Public**

**With Annexes A and B – Confidential, *ex parte*, only available to the Office of the  
Prosecutor**

**Public redacted version of “Prosecution’s provision of communications with the  
Côte d’Ivoire authorities as ordered in decision ICC-02/11-01/11-351-Conf”, 18  
January 2013, ICC-02/11-01/11-365-Conf-Exp**

**Source:** Office of the Prosecutor

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

**The Office of the Prosecutor**

**Counsel for the Defence**

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

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

**States' Representatives**

**Amicus Curiae**

## **REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Deputy Registrar**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## Introduction

1. On 15 January 2013, the Single Judge ordered the Prosecution to file in the record of the case, the documents containing the communications between the Office of the Prosecutor and the Ivorian authorities and from which the Prosecution had extracted information that was disclosed to the Defence on 25 June 2012. Such transmission to the Chamber would enable the Single Judge to decide whether the Prosecution had discharged itself of its disclosure obligations pursuant to Article 67(2) and Rule 77.<sup>1</sup>
2. The Prosecution hereby submits the documents containing the requested communications.

## Confidentiality

3. As ordered by the Single Judge, the Prosecution files this submission as confidential, *ex parte*, only available to the Office of the Prosecutor.

## Submission

4. For ease of reference, the Prosecution resubmits in Annex A the document it emailed to the Defence on 25 June 2012, which contained the extracted information ("25 June 2012 disclosure response").<sup>2</sup>
5. In Annex B, the Prosecution submits the documents, which are email reports of the communications held between the OTP and Ivorian authorities. As requested, the Prosecution has highlighted in yellow the information extracted and previously disclosed to the Defence.
6. The Prosecution would like to clarify that when using the expression information "extracted" in its original response,<sup>3</sup> it was not referring to passages that were cut and pasted in its 25 June 2012 disclosure response. As the Chamber will note,

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<sup>1</sup> ICC-02/11-01/11-351-Conf, paras 20 and 21.

<sup>2</sup> This document was previously made available to the Chamber see ICC-02/11-01/11-316-Conf-Anx 6, pages 5-6.

<sup>3</sup> ICC-02/11-01/11-335-Conf.

the email reports in Annex B (which were submitted to the Executive Committee of the OTP) touch upon a wide range of topics and summarize conversations and meetings held with the Ivorian authorities, but do not provide *verbatim* account of those communications. The Prosecution consequently drafted its 25 June 2012 disclosure response in a manner that was consistent with the content and spirit of the email reports, including where appropriate additional clarification that it deemed necessary to understand the email summaries.

7. The Chamber will thus note that the 25 June disclosure response contains information that is not expressly included in the emails submitted in Annex B.<sup>4</sup> After receiving the Defence's request, the Prosecution located the relevant material in its possession and then verified it. In that process, the Joint Team leadership met with the OTP staff members who were present during the conversations with the Ivorian officials, primarily the OTP International Cooperation Section Head, to confirm or clarify that the *post-hoc* summaries were accurate. As stated above, the emails are summaries and do not contain all the details of the communications between members of the OTP and Ivorian authorities. Therefore, the passage identified in footnote 4, cited above, stems from the memory of the OTP International Cooperation Section Head who had the communications with the CIV authorities.
8. The Prosecution would also like to specify that the third paragraph of its 25 June disclosure response described that it "sought the assistance of the CIV authorities in facilitating access" to witnesses [REDACTED], P-48, [REDACTED] and [REDACTED]. This information was disclosed as background information and in order to clarify that the CIV authorities were cooperating with the OTP and

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<sup>4</sup>As stated in Annex A, in the fourth paragraph, Mr. Ba, the Head of the International Cooperation Section of the Jurisdiction, Complementarity and Cooperation Division, indicated to the Ivorian authorities: "*It was stressed that there should be no consequences to the witnesses as a result of cooperation or non-cooperation, that their cooperation could only be voluntary and that whatever information they provided had to be truthful*". See also further "*Some time after this second screening, witness [REDACTED] communicated with the OTP and complained of [REDACTED] situation despite the fact that [REDACTED] had collaborated with the OTP. The OTP informed witness [REDACTED] that we could not interfere and [REDACTED] should contact directly the Ivorian authorities*". Mr. Ba's statements were corroborated and confirmed by the witnesses themselves, in the interviews in 2012 referred to in paragraph 9 of this submission.

that the OTP had communications with them to obtain the location of potential witnesses of interest or for access to detainees who were considered as potential witnesses. Such operational or logistic communications with national authorities are common and are not necessarily mentioned in internal reports on communications or contacts. The Prosecution is therefore not annexing to this submission the Requests for Assistance (“RFAs”) sent to the Ivorian authorities or the Activities Logs that may reference such communications. Of course, if RFAs or logs did contain Article 67(2) or Rule 77 information, the information would have been extracted and disclosed to the Defence. In the event that the Chamber wishes to receive such RFAs and Activities Logs in order to rule on the appropriateness of the 25 June disclosure response, the Prosecution has no objection to provide them to the Chamber.

9. The Prosecution submits that the information referred to in its 25 June 2012 disclosure response and that may fall within the realm of Article 67(2) or Rule 77 is in relation to the manner in which the OTP came to first screen witnesses [REDACTED] and [REDACTED].<sup>5</sup> It is also for that purpose and consistent with its obligations under Articles 54(1) and 67(2) that the Prosecution re-interviewed, in July 2012, these witnesses in order to focus exclusively on whether the Ivorian authorities exerted any influence on their cooperation with the OTP.<sup>6</sup>
10. The Prosecution reaffirms that the email reports refer to diplomatic communications that should be treated as confidential.<sup>7</sup> The email reports themselves, apart from the information extracted and disclosed in the 25 June 2012 disclosure response, do not contain potentially exonerating information or anything that would be material to the preparation of the defence case. If the Single Judge determines that the 25 June 2012 disclosure response was

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<sup>5</sup> Starting at para. 4 of the 25 June 2012 disclosure response. The Prosecution would like to make clear that all screenings and statements taken from witnesses [REDACTED] and [REDACTED] were disclosed to the Defence before they filed their request numbered ICC-02/11-01/11-316-Conf.

<sup>6</sup> ICC-02/11-01/11-335-Conf –Annexes 1 to 4. Again these statements were disclosed to the Defence before they filed their request numbered ICC-02/11-01/11-316-Conf.

<sup>7</sup> See ICC-02/11-01/11-335-Conf, para. 7 which describes the Prosecution’s submission detailing its position on the matter.

incomplete, the Prosecution has no objection to amend it with whatever additional information the Single Judge deems disclosable to respect the rights of the Defence. If the Single Judge is of the view that some of the emails need to be disclosed, the Prosecution requests prior notification before disclosure, to give the Prosecution the opportunity to redact confidential or privileged information that is not disclosable under Article 67(2) or Rule 77.



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Fatou Bensouda, Prosecutor

Dated this 22<sup>nd</sup> day of July 2016

At The Hague, The Netherlands