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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 confidential annexes A and B

Public redacted version of "Prosecution's request for an extension of time pursuant to regulation 35 of the Regulations of the Court relating to Witness P-0010's testimony", 3 March 2017, ICC-02/11-01/15-834-Conf

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

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Introduction

1. The Prosecution requests an urgent extension of time to disclose as incriminatory material two documents received from the High Commissioner for Human Rights (“High Commissioner”) and to add them to its List of Evidence (“LoE”).¹ They consist of one cover letter and its attachment. The attachment itself contains four letters sent by the former High Commissioner on 31 December 2010 reminding Mr Gbagbo and Generals Faussignaux, Guiai Bi Poin and Dogbo Blé of their obligations and responsibilities under international human rights and humanitarian law for incidents reported since 28 November 2010. The attachment also includes the replies to these letters from Generals Guiai Bi Poin and Dogbo Blé.
2. These documents reveal compelling and previously unknown information, such as the content of General Guiai Bi Poin’s reply and the exact content of letters addressed to Mr Gbagbo and Vagba Faussignaux. Furthermore, these documents represent the best available evidence of the information contained therein. As such, their admission will contribute to a better understanding of the case and ultimately to the determination of the truth.
3. The Prosecution received the documents on 1 March 2017, following a recent request in anticipation of the testimony of Witnesses P-0010 and P-0011.² The letters and responses are relevant to the charges and, more specifically, for the upcoming testimony of Witnesses P-0010, P-0011, [REDACTED].
4. Further, adding the letters and replies to the Prosecution’s LoE will not prejudice the Defence. The existence and content of these letters have been known to the Defence of Mr Gbagbo since December 2011.³ A copy of the same letter addressed to General Dogbo Blé was seized in March 2012 in Mr Gbagbo’s former bedroom

¹ CIV-OTP-0094-0303 and CIV-OTP-0094-0305.

² The Prosecution sent an official request for assistance (“RFA”) on 24 February 2017 to the UNHCHR.

³ See CIV-OTP-0002-0046, at 0062, disclosed to the Defence of Mr Gbagbo on 20 December 2011 and on 25 April 2014 to the Defence of Mr Blé Goudé. See also CIV-OTP-0002-0131 disclosed on 3 February 2012 to the Defence of Mr Gbagbo and 25 April 2014 to the Defence team of Mr Blé Goudé.

at the Presidential Residence⁴ and his reply was seized at the archives of the *Garde Républicaine* at the Presidential Palace.⁵ Witness P-0010 provided a copy of the same letter he received to the Prosecution in September 2013.⁶ The new material is comprised of the reply of Guiai Bi Poin and the actual letters addressed to Mr Gbagbo and Vagba Faussignaux.

5. This request is made pursuant to regulation 35 of the Regulations of the Court (“Regulations”), articles 64(3)(c), 64(3)(f) and 69(3) of the Statute, and rules 76(2) and 84 of the Rules of Procedure and Evidence (“Rules”).

Confidentiality

6. The filing and its annexes are classified as “confidential” as they relate to confidential evidence not yet available to the public as well as the identity of an upcoming Prosecution witness. A public redacted version will be filed as soon as practicable after the Chamber delivers its decision on the matter and no later than after the testimony of Witness P-0010.

Submissions

7. The Prosecution seeks, pursuant to regulation 35(2) of the Regulations, permission to disclose the above documents⁷ as incriminatory material and to add them to its List of Evidence.⁸ For the sake of completeness the Prosecution requests that document CIV-OTP-0094-0305 be added in its entirety to its LoE, despite the fact that some of the material contained therein is already on the LoE or already submitted in the record of the case. The new material which the Prosecution wishes to rely upon is as follows: two letters dated 31 December 2010,

⁴ CIV-OTP-0018-0054. For the chain of custody report see CIV-OTP-0024-0641 at 0645.

⁵ The reply of General Dogbo Blé (CIV-OTP-0071-0236) was submitted in the record of the case through the testimony of Witness P-0347 on 23 September 2016. For the chain of custody report, see CIV-OTP-0073-0806 at 0815.

⁶ See CIV-OTP-0048-1570 disclosed on 13 November 2013 to Mr Gbagbo and 9 May 2014 to Mr Blé Goudé.

⁷ See para. 1.

⁸ The Prosecution had until 30 June 2015 to submit its final LoE, see decision ICC-02/11-01/15-58, paras 22 and 25.

addressed to Mr Gbagbo⁹ and Vagba Faussignaux¹⁰ and the response letter from Guiai Bi Poin dated 11 January 2011.¹¹

The Chamber's duty to establish the truth

8. The Prosecution takes note of the Chamber's decision of May 2016 which stated that it will not allow the addition of any further incriminating evidence unless it is new (non-duplicative) and could not have been reasonably obtained by a diligent Prosecutor prior to the deadline.¹²
9. However, The Prosecution's submits that its duty to establish the truth is not limited to the time before the commencement of the trial¹³ and may continue its investigation (for example to address matters arising in the course of trial). This is moreover confirmed by the Prosecution's ongoing duty of disclosure, which would otherwise be unnecessary. Although such investigations may generally be exceptional, it would be wrong for the Chamber to be deprived of new, more compelling information that becomes available at a later stage, as this might interfere with its duty to establish the truth.¹⁴ This need not come at the expense of the Accused's right to have adequate time for the preparation of its Defence.
10. In this case, the newly discovered documents bring to light new facts and contribute to a better understanding of the case and the establishment of the truth¹⁵ with no prejudice to the Defence. These documents serve to demonstrate that Mr Gbagbo and other members of the inner circle, including Guiai Bi Poin were notified on 31 December 2010 - during the post-electoral crisis - of violations to international human rights and humanitarian law. As such, these documents are ultimately relevant to the criminal responsibility of Mr Gbagbo. The Prosecution also wishes to use these documents during the testimony of the

⁹ CIV-OTP-0094-0305 at 0305-0306.

¹⁰ CIV-OTP-0094-0305, at 0307-0308.

¹¹ CIV-OTP-0094-0305, at 0315-0317.

¹² ICC-01/11-01/15-524, paras. 21-22.

¹³ ICC-01/04-01/06-568, para. 52.

¹⁴ See ICC-01/04-01/07-1336, paras. 26-27 and ICC-01/04-01/07-1515-Corr, para. 37.

¹⁵ See ICC-01/04-01/07-1515-Corr, para. 37.

upcoming witnesses, notably Witness P-0010, as it touches upon an important part of his anticipated testimony: his knowledge of the crimes. His reply sent on 11 January 2011, will also be relevant to the Chamber's assessment of his credibility.

11. As noted in paragraph 4, the Defence was already aware of the existence of the letters and the reply. As such, the Defence has ample time for its continued preparation.

The Prosecution did not send its request to the UNHCHR before the deadline of 30 June 2015

12. The Prosecution did not comply with the disclosure deadline of 30 June 2015. The Prosecution previously screened material from the UNHCHR for collection on two separate occasions, in September 2011 and in December 2014. However, the above documents did not fall under the scope of the Prosecution's specific request and therefore were not accessible.
13. On 13 January 2017, while preparing the examination of upcoming Witness P-0010, the Prosecution enquired by email whether the UNHCHR had received any reply to its 31 December 2010 letter addressed to Guiai Bi Poin and whether it had any copy of the letters that it had addressed to Mr Gbagbo and three Generals. As requested by the UNHCHR, the Prosecution sent on 24 February 2017 an official RFA seeking both the letters and reply. On 1 March 2017, the Prosecution received the four letters and two replies.

Content of the documents

14. Document CIV-OTP-0094-0303 (confidential Annex A) consists of a cover letter dated 1 March 2017 sent from the High Commissioner to the Prosecution. This letter relates to the chain of custody of its attachment. Document CIV-OTP-0094-0305 (confidential Annex B) consists of the attachment which contains four letters dated 31 December 2010 to Mr Gbagbo, Vagba Faussignaux, Dogbo Blé and Guiai

Bi Poin and two replies from Dogbo Blé and Guiai Bi Poin.¹⁶ The letters to Dogbo Blé¹⁷ and Guiai Bi Poin,¹⁸ as mentioned above, are duplicates of material already on the Prosecution's LoE. The reply of Dogbo Blé is also a duplicate of a document on the List of evidence and already submitted into the record of the case.¹⁹

Relevance of the documents

15. Document CIV-OTP-0094-0305 is relevant for the two letters addressed to Mr Gbagbo and Vagba Faussignaux and the reply of Guiai Bi Poin. In a letter dated 31 December 2010 addressed to Mr Gbagbo,²⁰ the High Commissioner notified Mr Gbagbo of violations to international human rights and humanitarian law being committed by the FDS and reminded him of his obligations deriving from his *de facto* authority over the FDS. The letter also states that the High Commissioner already cited serious human rights violations through messages dated 26 November and 1 December 2010. In a letter addressed to the Vice-Amiral Vagba Faussignaux dated 31 December 2010,²¹ the High Commissioner also reminds him of his obligations and responsibilities as head of the *Marine Nationale*.

16. The letter addressed to Mr Gbagbo will serve to demonstrate that as of 31 December 2010 at the latest and as early as 26 November 2010, Mr Gbagbo had knowledge that human rights violations were being committed by members of the FDS. The letter addressed to Vagba Faussignaux also shows that as of 31 December 2010, he was on notice in relation to a potential operation against the Golf Hotel, which was under the protection of the United Nations at the time.

¹⁶ Redactions in the reply of the letter of Guiai Bi Point were applied by the UNCHCHR and received as such by the Prosecution.

¹⁷ The letter to General Dogbo Blé CIV-OTP-0018-0054 was seized at the Presidential Residence.

¹⁸ The letter to General Guiai Bi Poin under reference CIV-OTP-0048-1570 was received from P-0010 during his second interview.

¹⁹ The reply by General Dogbo Blé under reference CIV-OTP-0071-0236 was seized at the Office of the *Garde Républicaine* and submitted in the record of the case through the testimony of Witness P-0347 on 23 September 2016.

²⁰ CIV-OTP-0094-0305, at 0305-0306.

²¹ CIV-OTP-0094-0305, at 0307-0308.

17. On 11 January 2011, General Guiai Bi Poin, as head of the CECOS, provided his response to the High Commissioner. In his second interview, Witness P-0010 showed to the investigators the letter dated 31 December 2010 that he received from the High Commissioner.²² He further stated that he had responded to the letter but could not find a copy of it.²³ Document CIV-OTP-0094-0305, pages 0315-0317, contains Guiai Bi Poin's reply which is contemporaneous to the time of the events, provides insight regarding his knowledge leading up to 31 December 2010 and is also relevant to the assessment of his credibility. Being a copy of the original document, it also represents the best evidence of the contents thereof.
18. The Prosecution notes that in his reply, Guiai Bi Poin states that, in conjunction with the military prosecutor's office, an internal administrative investigation on the actions of his elements was opened (*"en liaison avec le parquet militaire, une enquête administrative interne"*).²⁴ However, in his second interview with the Prosecution, Witness P-0010 does not volunteer this information. Rather, he stated that he had asked his intelligence service to look into the allegations of the High Commissioner dated 31 December 2010 and on the basis of which he replied to the High Commissioner's letter.²⁵ In his second interview, he also stated that he did not ask his intelligence service to report on the events of 16 December 2010,²⁶ and that he did not carry out an investigation or report about events of 16 December 2010 because it was not his responsibility.²⁷ Receiving the **original** *ipsissima verba* of Guiai Bi Poin's reply, which provides the best evidence of its contents, rather than having to rely on Witness P-0010's recollection some six years later, can only assist the Chamber in its truth finding mission.

²² Annex 3 of his interview, CIV-OTP-0048-1570.

²³ CIV-OTP-0051-0505 at 0535, l. 1124-1136.

²⁴ CIV-OTP-0094-0305, page 0317.

²⁵ CIV-OTP-0051-0505 at 0506, l. 18-21; 0508, l. 86-115

²⁶ CIV-OTP-0051-0505 at 0506, l. 32-40.

²⁷ CIV-OTP-0051-0392 at 0422, l. 1068-1073.

Lack of prejudice to the Defence

19. If the request is granted, the Defence will not suffer prejudice because of 1) the timing of the request and 2) the substance of the documents.
20. The Prosecution is seeking the addition of the documents while it is still presenting its case. More specifically, the request is made prior to the testimony of Witnesses P-0010, P-0011, [REDACTED], so the Defence will have ample opportunity to prepare and use these documents when they examine these witnesses.
21. The new material is essentially constituted of three letters for which the Defence had prior notice of their existence.²⁸ Document CIV-OTP-0094-0303 contains two pages and is only relevant for chain of custody purposes. CIV-OTP-0094-0305 contains 14 pages, including 6 pages of duplicated documents already on the List of Evidence.

It is in the interests of justice to grant the request

22. It is in the interests of justice to grant this request as the documents contain compelling new evidence which brings to light Mr Gbagbo's knowledge of human rights violations during the postelection crisis as well as that of other high level members of his inner circle. Ultimately they are also relevant to the criminal responsibility of Mr Gbagbo himself. These documents will also be useful during the testimony of Witnesses P-0010, P-0011, [REDACTED] as they touch upon important matters that will be raised during their examinations. Further, given the stage of the proceedings, and the content of the documents, the Defence will not suffer prejudice from the addition of these documents in the LoE. In all, the inclusion of these documents will help the Chamber carry out its truth finding

²⁸ CIV-OTP-0051-0505 at 0535, l. 1124-1136, disclosed to the Defence of Mr Gbagbo on 13 November 2013 and on 9 May 2014 to the Defence of Mr Blé Goudé; CIV-OTP-0002-0046, at 0062, disclosed to the Defence of Mr Gbagbo on 20 December 2011 and on 25 April 2014 to the Defence of Mr Blé Goudé. *See also* CIV-OTP-0002-0131 disclosed on 3 February 2012 to the Defence of Mr Gbagbo and 25 April 2014 to the Defence team of Mr Blé Goudé.

mission. The Prosecution therefore submits that the request should be granted and the documents added to the List of Evidence.

Conclusion

23. For the reasons outlined above, the Prosecution seeks and extension of time to disclose CIV-OTP-0094-0303 and CIV-OTP-0094-0305 as incriminatory material and to be authorised to add them to its List of evidence.



Fatou Bensouda, Prosecutor

Dated this 4th day of April 2017
At The Hague, The Netherlands