



Original: English

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Date: 6 April 2017

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 annex A

Lesser 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-0011's testimony", 10 March 2017, ICC-02/11-01/15-828-Red

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

Ms Fatou Bensouda

Mr James Stewart

Mr Eric MacDonald

Counsel for Mr Laurent Gbagbo

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Mr Geert-Jan Alexander Knoops

Mr Claver N'dry

Legal Representatives of the Victims

Ms Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. The Prosecution applies for an urgent extension of time to reclassify as incriminatory material one document¹ shown to Witness P-0011 during his second interview which was regrettably disclosed pursuant to article 67(2) of the Statute. A number of documents were shown to the Witness during this interview and were marked for disclosure pursuant to rule 77 or article 67(2). Of those documents, the Prosecution is only seeking to re-classify one document as incriminatory for the purposes of the testimony of Witness P-0011.
2. In addition, the Prosecution seeks to use a video related to the testimony of Witness P-0011 and add it to its List of Evidence. The video, previously disclosed pursuant to rule 77, consists of quasi-duplicate of a video currently on the List of Evidence. However, the proposed video is of a better quality and will assist the Trial Chamber in its truth seeking mission.
3. 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").
4. Annex A contains document CIV-OTP-0018-0031, currently disclosed pursuant to article 67(2) of the Statute. The requested video, CIV-OTP-0069-0372, is available in eCourt for the Trial Chamber.

Confidentiality

5. The filing and its annex are classified as "confidential" as it relate to confidential evidence not yet available to the public as well as names of Prosecution witnesses. A public redacted version will be filed after the testimony of Witness P-0011.

¹ CIV-OTP-0018-0031.

Submissions relating to one military document

6. The Prosecution requests the authorisation to use a document which is relevant to [REDACTED] and to the Prosecution's case theory relating to the parallel structure. The document describes that [REDACTED]. The relevant portions of the document discussing the parallel structure are already disclosed as incriminatory material as they were read out during Witness P-0011's interview.

Regulation 35 request

7. Document CIV-OTP-0018-0031 consists of a [REDACTED] dated [REDACTED] and entitled [REDACTED]. The document was seized at the Presidential Residence, in Mr Gbagbo's bedroom.² It is stamped as [REDACTED], it is dated and, while it is not authored, it appears to be of a purely military nature.

(i) Relevance

8. The document was shown to the Witness during his second interview and was previously disclosed on 25 April 2012 but pursuant to article 67(2) of the Statute, since it describes [REDACTED]. However, the document also contains elements relevant to the Prosecution's case theory, in particular the existence of a parallel structure: indeed, on page 4, it states that the [REDACTED].
9. During his second interview, the Witness commented on the substance of the document and indicated, amongst other things, that there was a lot of truth in it, despite the fact that he had not seen it at the time.³ This Witness should consequently be able to discuss the substance of the document, as he did in the interview.

² Investigator's report CIV-OTP-0024-0641 relates to the collection of documents at the Presidential Residence. As stated in the first paragraph of the report (page 0641), the report concentrated on the chain of custody of the 51 documents that were on the List of Evidence at the time for the purpose of the Confirmation Hearing. The Prosecution is in the process of finalising an additional report which will be disclosed to the Defence and describe the chain of custody of the remaining documents that were also seized at the Presidential Residence.

³ CIV-OTP-0082-0065 at 0086, the witness says "... *mais tout ce qui est dedans là, il y a du vrai*", meaning that with respect to everything mentioned in the document, there is truth in it.

10. The document also corroborates Witness P-0011's statement on the issue of a [REDACTED].⁴ The document, which is an independent documentary material and contemporaneous to the time of the events, is therefore useful to assess Witness P-0011's credibility, and more generally for the interest of justice.

(ii) Lack of prejudice to the Defence

11. The Defence, in its preparation for this Witness, would have already read this portion of his interview and would have read this document in preparing its cross-examination. The Prosecution recalls that Witness P-0011's second interview was disclosed on 8 June 2015 to the Defence teams. The Defence has been in possession of document CIV-OTP-0018-0031 for a few years now as it was disclosed on 25 April 2012 to the Gbagbo team and on 9 May 2014 to the Blé Goudé team.

12. As a result, the Defence have seen the substance of the document and know what the Witness can say about it. Moreover, the relevant portions of the document discussing the parallel structure are already available to the Defence as incriminatory material as they were read out and discussed during Witness P-0011's interview. For these reasons, it is submitted that the Defence will suffer no undue prejudice as a result of the use of this document.

(iii) It is in the interests of justice to grant the request

13. The Prosecution seeks permission to reclassify the document as incriminatory material and add it to its List of Evidence, after the expiry of the 30 June 2015 deadline set in the Chamber's order of 7 May 2015,⁵ based on regulation 35(2) of the Regulations.

14. All documents shown to Witness P-0011 during his interview should have *de facto* been disclosed as incriminating in order to follow the classification of the interview transcripts themselves. This was an oversight, the significance of which

⁴ CIV-OTP-0082-0065 at 0092, CIV-OTP-0082-0245, at 0248 and CIV-OTP-0016-0372, at 0386.

⁵ ICC-02/11-01/15-58, paras. 22 and 25.

only came to light when reviewing Witness P-0011's interview and related material in preparation for his testimony. It is in the interest of justice that the document be available to be shown to the Witness, if necessary. It would also serve the Chamber's truth seeking mission.

Submission relating to one video

15. The Prosecution seeks to use a video bearing number CIV-OTP-0069-0372 for a small portion of 1 minute 25 seconds running from minute 00:04:11 to 00:05:36. This video was disclosed pursuant to rule 77 (the "Proposed Video"). This short excerpt is an almost identical duplicate of another video currently on the List of Evidence (disclosed as incriminating) containing similar footage, but of lower quality (the "Current Video").⁶ The Prosecution wishes to use CIV-OTP-0069-0372 instead. The distinction between the Proposed Video and the Current Video is that the Proposed Video contains more frontal images of the generals and assists in better identifying those present at the meeting.

(i) Relevance

16. The Proposed Video relates to footage of Laurent Gbagbo receiving the main generals of the FDS at his residence on 14 March 2011, in an effort, among others, by the RTI to re-affirm to their viewers the allegiance of these generals to Mr Gbagbo. The Proposed Video was recorded during the period relevant to the charges, was broadcast on the same day and on the next day at 20h00.⁷

17. The Proposed Video shows how FDS Generals were received by Mr Gbagbo on 14 March 2011. These included Chief of Staff Philippe Mangou, the head of the Gendarmerie Édouard Tiapé Kassaraté, the head of the national police, Brindou M'Bia, and the head of the CECOS, Georges Guiai Bi Poin. The Prosecution intends to use this video with Witness P-0011 during his examination on the topic of meetings held with Mr Gbagbo.

⁶ The video currently on the Prosecution's List of Evidence bears ERN CIV-OTP-0069-0371 (portion from 00:12:23 to 00:13:28).

⁷ The video currently on the List of Evidence was broadcast on 14 March 2011. The video the Prosecution now seeks to use was broadcast on 15 March 2011.

(ii) Lack of prejudice to the Defence

18. As mentioned above, the substance of the Proposed Video is already included in the Current Video already on the List of Evidence. The Prosecution is not seeking to add new content or new facts by the introduction of the Proposed Video. The video was disclosed to both Defence teams on 19 June 2015 and the selected portion is limited to the same meeting portrayed in the Current Video.

(iii) It is in the interest of justice to grant the request

19. The Proposed Video will assist the Trial Chamber in its truth-seeking mission and will permit witnesses to better identify participants to this meeting with Mr Gbagbo. While the Proposed Video was previously classified as rule 77, it contains elements in support of the Prosecution's case theory. As it is relevant and given that the Defence will suffer no undue prejudice, the Prosecution seeks permission to add this video to the List of Evidence.

Conclusion

20. For the reasons outlined above, the Prosecution seeks and extension of time to reclassify document CIV-OTP-0018-0031 and video CIV-OTP-0069-0372 as incriminatory material and to add both to its List of Evidence.



Fatou Bensouda, Prosecutor

Dated this 6th day of April 2017

At The Hague, The Netherlands