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

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TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera Carbuccion
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

Public redacted version of "Prosecution's request for an extension of time pursuant to regulation 35 of the Regulations of the Court and application to submit documentary evidence under paragraph 43 of the Directions on the conduct of the proceedings relating to the testimony of Witness P-0010",
12 April 2017, ICC-02/11-01/15-874-Conf

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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Other

Introduction

1. The Prosecution seeks submission of document CIV-D15-0001-6610 for the purpose only of submitting the name appearing on page 6612 - "SANGANOKO Mory" - onto the record.
2. During re-examination of Witness P-0010,¹ the Prosecution sought to use document CIV-D15-0001-6610 ("the document"), as an issue was raised during Defence questioning related to the spelling of "SANGANOKO Mory's" name. The Chamber invited the Prosecution to submit the document in writing, instead.²
3. Towards that end, the Prosecution hereby requests first, an extension of time, under articles 64(2) and 64(3)(c) of the Rome Statute ("Statute"), rule 84 of the Rules of Procedure and Evidence ("Rules") and regulation 35 of the Regulations of the Court ("Regulations"), to re-disclose the document as incriminatory material, and to add it to its List of Evidence; and second, the submission of the document pursuant to paragraphs 43 and 44 of the Directions on the conduct of the proceedings ("Directions").³
4. Alternatively, the Prosecution asks that the Trial Chamber request submission of the document in the exercise of its own functions and powers under articles 64(6)(d) and 69(3) of the Statute, and in furtherance of the determination of the truth.
5. The document was disclosed to the Prosecution by the Defence for Mr Gbagbo ("Gbagbo Defence")⁴ on 17 March 2014, and on 25 June 2014 disclosed by the Prosecution to the Defence for Mr Blé Goudé ("Blé Goudé Defence"), under rule 77 of the Rules.⁵ It is available in eCourt to the Trial Chamber.

¹ Witness P-0010 testified on 27 March to 2 April 2017.

² ICC-02/11-01/15-T-142-CONF-ENG, p. 37, lns. 6-8.

³ ICC-02/11-01/15-498-AnxA.

⁴ Disclosure Rule 78 package 4.

⁵ Pre-confirmation Rule 77 package 4.

Confidentiality

6. This filing is classified as “confidential”, pursuant to regulation 23bis of the Regulations of the Court, as it relates to portions of Witness P-0010’s testimony that were heard in private session. A public redacted version will be filed as soon as practicable.

Submissions

7. The document to which this request relates is a *Journal Officiel* of Côte d’Ivoire, dated 25 October 2007, that includes, at pages 6611 to 6617, Decree no. 2007-525 of 18 July 2007, with the title « *portant inscription au tableau d’avancement d’officiers d’active des forces armées nationales pour l’année 2007 et promotions au titre des 1er, 3e et 4e trimestres* ». This decree includes, at page 6612, promotions of elements of the *Gendarmerie Nationale* “pour le grade de capitaine”. As can be seen from page 6612, amongst those promoted in July 2007 to the rank of captain was “SANGANOKO Mory”.

Regulation 35 request

8. During Witness P-0010’s testimony, the Prosecution questioned the witness about his *officier adjoint* in CECOS, whom the witness testified was “Commissioner Mory, Lieutenant Captain Mory Saganoko” – spelt by the witness “MORY SAGANOKO”.⁶ Later, the Prosecution [REDACTED].⁷ [REDACTED]. [REDACTED].⁸
9. In the course of his questioning on behalf of Mr Blé Goudé, Counsel for Mr Blé Goudé asked the witness first, about the rank of Captain Sanganoko Mory, and then, to write his name on a piece of paper.⁹ Questioning of Witness P-0010 on this issue included the following exchange:

⁶ ICC-02/11-01/15-T-137-Red-ENG WT, p. 33, lns. 10-21.

⁷ [REDACTED].

⁸ [REDACTED].

⁹ ICC-02/11-01/15-T-142-Red-ENG WT, p. 3, ln. 15 to p.4, ln. 10.

“Q. You spelt out his name for the Chamber. And the name as you spelt it, is it because you are familiar with it because it is a name that you’ve already read on one of his identity papers and as such you are in a position to be able to spell it?

A. I was not using them. I didn’t have his identity papers before me. But habitually speaking, I know him under the name of Sanganoko Mory.”¹⁰

10. Witness P-0010 then proceeded to write Mory SANGANOKO’s name as he had spelt it previously: “SAGANOKO MORY”.¹¹

11. As a result of this line of questioning, it became clear that the spelling of Mory SANGANOKO’s name was in issue. Thus, in re-examination, the Prosecution requested that the Chamber allow use of the document, to clarify the spelling of this individual’s name.¹² The Chamber directed the Prosecution to submit the document instead, without confronting the witness with it.¹³

12. Upon being questioned by the Prosecution upon the fact stated in the document – namely whether “Captain Mory” was promoted to the rank of Captain in July 2007, the Witness P-0010 replied affirmatively.¹⁴

13. The Prosecution seeks permission to re-disclose 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 2015,¹⁵ based on regulation 35(2) of the Regulations and under articles 64(2) and 64(3)(c) of the Statute and rule 84 of the Rules. Whilst the criterion under regulation 35(2), second sentence, of the Regulations may not be met, the Prosecution nevertheless submits that first, there is good cause for re-disclosure of the document and its addition to the List of Evidence, and second, that it is in the interests of justice for the Chamber to have

¹⁰ ICC-02/11-01/15-T-142-Red-ENG WT, p. 3, lns. 20-24.

¹¹ CIV-REG-0001-0152.

¹² ICC-02/11-01/15-T-142-Red-ENG WT, p.34, ln. 5-24.

¹³ ICC-02/11-01/15-T-142-Red-ENG WT, p. 37, lns. 6-8.

¹⁴ ICC-02/11-01/15-T-142-Red-ENG WT, p. 37, lns. 16-21.

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

before it this document to clarify an issue that has been raised by the Blé Goudé Defence, and in furtherance of the determination of the truth.

14. As indicated, that the spelling of Mory SANGANOKO's name is, it seems, in issue arose only during questioning of Witness P-0010 by the Blé Goudé Defence. This is not a matter which could reasonably have been foreseen by the Prosecution.

15. The document will resolve the issue, and is relevant both to the assessment of Witness P-0010's credibility and – in particular - to the [REDACTED] (paragraph 8, above). The extension of time to re-disclose and add the document to the LoE and/or its submission into evidence will not be prejudicial to the Accused since the document was disclosed by the Gbagbo Defence, and on 25 June 2014 disclosed by the Prosecution to the Blé Goudé Defence. Thus, both Accused are aware of, and have been in a position to investigate the content of the document.

Paragraph 43 request

16. For the same reasons, the Prosecution seeks to introduce the document under paragraph 43 of the Directions.

17. In addition, the document: (i) is relevant, for the reasons stated above (paragraphs 7-15); (ii) is of probative value and authentic as it is an Official Journal of Côte d'Ivoire bearing the same indicators of reliability as other Official Journals of Côte d'Ivoire, previously submitted onto the record;¹⁶ and (iii) was disclosed to the Prosecution on 17 March 2014 by the Gbagbo Defence, and disclosed to the Blé Goudé Defence by the Prosecution on 25 June 2014.¹⁷

Submission under articles 64(6)(d) and 69(3) of the Statute

18. Having in mind the Trial Chamber's Decision of 13 May 2016,¹⁸ as recently cited to by the Chamber in its Decision of 8 March 2017,¹⁹ the Prosecution, alternatively,

¹⁶ See, for example, CIV-OTP-0018-0047, submitted during Witness P-0010's testimony. See ICC-02/11-01/15-T-138-Red-ENG WT ET, p. 45, ln. 11-12.

¹⁷ See paragraph 44 of the Directions.

¹⁸ ICC-02/11-01/15-524, paras 21-22.

asks that the Chamber requests submission of the document in the exercise of its own functions and powers under articles 64(6)(d) and 69(3) of the Statute, for the reasons stated at paragraphs 7-15, above.²⁰

Conclusion

19. In all the circumstances, the Prosecution requests:

- a. An extension of time to re-disclose and add document CIV-D15-0001-6610 to its List of Evidence; and
- b. That the document be considered submitted in the record of the case.
- c. In the alternative, that the Chamber requests submission of the document in the exercise of its own functions and powers under articles 64(6)(d) and 69(3) of the Statute.



Fatou Bensouda, Prosecutor

Dated this 16th day of May 2017

At The Hague, The Netherlands

¹⁹ See ICC-02/11-01/15-T-130-ENG CT, 8 March 2017, p.2, ln. 21 to p. 3, ln. 3.

²⁰ See ICC-02/11-01/15-T-130-ENG CT, 8 March 2017, p.4, ln. 3 to p. 5, ln. 11; and ICC-02/11-01/15-T-142-Red-ENG WT, 3 April 2017, p. 47, lns. 14-21.