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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

Prosecution's request for an extension of time pursuant to regulation 35 of the Regulations of the Court and application to submit six documents under paragraph 43 of the Directions on the conduct of the proceedings

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
(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**

I. Introduction

1. This application is made to ensure that the Chamber has before it – before the end of the Prosecution case – the fullest reading possible of six pieces of evidence previously disclosed pursuant to rule 77 of the Rules of Procedure and Evidence (“Rules”).

2. The Prosecution’s request is submitted under articles 64(2) and 64(3)(c) of the Rome Statute (“Statute”), rule 84, and regulation 35(2) of the Regulations of the Court (“Regulations”), to re-disclose six documents as incriminatory material and to add these documents to its List of Evidence (“LoE”). These six documents¹ include: two Defence documents (one law and one decree) pertaining to the creation and organisation of the FDS,² as well as two lists of FDS recruits, one list of members of an FDS unit, and one FDS order previously disclosed by the Prosecution as material to the Defence under rule 77.³ If granted, the Prosecution also seeks to submit, pursuant to paragraphs 43 and 44 of the Directions on the conduct of the proceedings (“Directions”),⁴ the six above-described documents. Alternatively, the Prosecution asks that the Chamber allow submission of these six documents 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

II. Request for extension of time

3. The Prosecution was directed to file its LoE no later than 30 June 2015.⁶ It hereby seeks an extension of time under articles 64(2) and 64(3)(c) of the Statute, rule 84, and regulation 35, to re-disclose the six items described above as incriminatory material, and add them to its LoE. In the alternative, the Prosecution asks that the Chamber allow submission of these six items, 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.

¹ The six documents are available to the Chamber in eCourt and are therefore not annexed to the present Request.

² CIV-D15-0001-6210 and CIV-D15-0001-6536.

³ CIV-OTP-0048-0108; CIV-OTP-0048-0878; CIV-OTP-0048-1082; CIV-OTP-0071-0627.

⁴ ICC-02/11-01/15-498-AnxA.

⁵ See ICC-02/11-01/15-T-130-ENG CT, p. 4, ln. 3 – p. 5, ln. 11; ICC-02/11-01/15-T-142-Red-ENG WT, p. 47, lns. 14-21. See also ICC-02/11-01/15-921, para. 19.

⁶ ICC-02/11-01/15-58, para. 25.

4. Of the six documents, four Prosecution documents in question were previously disclosed under rule 77 to the Defence for Mr Blé Goudé (“the Blé Goudé Defence”) and Mr Gbagbo (“the Gbagbo Defence”) between 2013 and 2016:

- i) CIV-OTP-0048-0878 was disclosed on 15 October 2013 and 9 May 2014;⁷
- ii) CIV-OTP-0048-0108 was disclosed on 6 June 2014 and 17 September 2014;⁸
- iii) CIV-OTP-0071-0627 was disclosed on 19 February 2015;⁹ and
- iv) CIV-OTP-0048-1082 was disclosed on 4 March 2016.¹⁰

Two Defence documents, CIV-D15-0001-6210 and CIV-D15-0001-6536, have been available to the Prosecution since their disclosure by the Gbagbo Defence on 17 March 2014.¹¹

5. Whilst the criterion under the second sentence of regulation 35(2) may not be met, the Prosecution nevertheless submits that there is good cause for re-disclosure of the six documents and their addition to the LoE, and that it is in the interests of justice for the Chamber to have before it these six documents that pertain to organisation, hierarchy, recruitment, and function of the FDS during the charged incidents. Having in mind the Trial Chamber’s Decision of 13 May 2016,¹² as the Chamber cited in its 8 March 2017 Decision,¹³ the Prosecution, alternatively, asks that the Chamber requests submission of these six documents in the exercise of its own functions and powers under articles 64(6)(d) and 69(3) of the Statute in making determinations relevant to the trial.¹⁴

6. Granting an extension of time to re-disclose and add the six items to the Prosecution’s LoE and/or their submission into evidence would not be prejudicial to the

⁷ Gbagbo Pre-confirmation Rule 77 package 20 (5 October 2013); Blé Goudé Pre-Confirmation Rule 77 package 2 (09 May 2014).

⁸ Blé Goudé Pre-Confirmation Rule 77 package 3 (06 June 2014); Gbagbo Pre-Confirmation Rule 77 package 28 (17 September 2014).

⁹ Gbagbo Pre-Trial Rule 77 package 33 (06 February 2015); Blé Goudé Pre-Trial Rule 77 package 11 (19 February 2015).

¹⁰ Trial Rule 77 Certification Package 31 (04 March 2016).

¹¹ Gbagbo Disclosure Rule 78 package 4. The Prosecution disclosed these documents to the Blé Goudé Defence team in Pre-Confirmation Rule 77 package 4 (25 June 2014).

¹² ICC-02/11-01/15-524, paras. 21-22.

¹³ See ICC-02/11-01/15-T-130-ENG CT, 8 March 2017, p. 2, ln. 21 – p. 3, ln. 3.

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

Accused, who have already been in a position to investigate the evidence for a period of one-and-a-half to four years. Additionally, two of the items in question are publicly available laws that originated from the Gbagbo Defence.¹⁵ Further, and as explained below, a portion of one of the Prosecution documents was already submitted in court, while the Prosecution has already requested that a portion of another be submitted via a bar table motion. As such, the submission into evidence of these two documents would better explain the related documents in evidence and help contribute to the Chamber's determination of the truth.

7. Furthermore, it is in the interests of justice for all six documents to be received at this stage – before the end of the Prosecution case. The Prosecution elaborates further on the content of the six items in Part III, below.

III. Submission of documentary evidence

8. All six documents the Prosecution seeks to submit help the Chamber better understand the structure and conduct of the FDS during the post-electoral crisis of 2010-2011. The relevance and probative value of the two Defence documents and four Prosecution documents are discussed in turn below.

Two excerpts of the *Journal Officiel de la République de Côte D'Ivoire* on the creation and structure of the FDS: CIV-D15-0001-6210 and CIV-D15-0001-6536

(a) *Relevance*

9. Although these two Defence documents pertaining to the creation and structure of the FDS date from 1960 and 1996 respectively, they are nonetheless important to show the basic functioning of the FDS during the post-electoral violence of 2010-2011. The first document, CIV-D15-0001-6210, is a one-page extract from the *Journal Officiel de la République de Côte D'Ivoire* dated 30 July 1960 containing *Loi n 60-209 du 27 juillet 1960* on the creation of the national armed forces of Côte d'Ivoire.¹⁶ The brief text of the law shows

¹⁵ Gbagbo Disclosure Rule 78 package 4. The Prosecution disclosed these documents to the Blé Goudé Defence team in Pre-Confirmation Rule 77 package 4 (25 June 2014).

¹⁶ CIV-D15-0001-6210.

the intent and purpose behind the creation of the FDS, in that President Félix Houphouët-Boigny signed the law forming the national armed forces to ensure the defence of the nation, the maintenance of order, and the execution of laws.¹⁷ The Accused, Laurent Gbagbo, cited this 1960 law as part of the basis for his 14 November 2010 requisition of the national armed forces.¹⁸

10. The second document, CIV-D15-0001-6536, is a seven-page excerpt from the *Journal Officiel de la République de Côte D'Ivoire* dated 22 August 1996 containing *Décret n 96-603 du 9 août 1996* on the organisation of the national armed forces of Côte d'Ivoire.¹⁹ The decree, signed by President Konan Bédié, describes that the *Chef d'Etat-Major des Armées* ("CEMA") exercises effective control over the national armed forces,²⁰ authority over the commanders of the military region whose activities he coordinates,²¹ and that regional military commanders exercise territorial control over all units of the national armed forces permanently stationed in their military region.²² The decree also details the general organisation of the *Gendarmerie Nationale* and indicates, for example, that the *Gendarmerie Nationale* is an integral part of the national armed forces, and military rules apply to them with a few exceptions.²³ The decree also illustrates the reporting structure of the *Gendarmerie Nationale* within the FDS.²⁴ In the present case, the CEMA's effective control of the FDS is a significant issue. The purpose, function, leadership, and reporting structure of the FDS and *Gendarmerie Nationale* are therefore important to the understanding of the linkage evidence that has been elicited thus far on the record.

(b) *Probative Value*

11. There can be little doubt as to the authenticity of these two documents, which are both excerpts of the *Journal Officiel de la République de Côte D'Ivoire*. These documents are

¹⁷ CIV-D15-0001-6210.

¹⁸ CIV-OTP-0071-2452 at 2453 (*Décret No 2010-306 du 14 novembre 2010 portant réquisition des Forces Armées Nationales de Côte D'Ivoire (FANCI)*).

¹⁹ CIV-D15-0001-6536 at 6538.

²⁰ CIV-D15-0001-6536 at 6537 - 6538 (art. 6).

²¹ CIV-D15-0001-6536 at 6537 (art. 7).

²² CIV-D15-0001-6536 at 6537 (art. 34).

²³ CIV-D15-0001-6536 at 6540 (art. 47).

²⁴ CIV-D15-0001-6536 at 6540 (art. 55).

publicly available as the official laws of *Côte D'Ivoire*, and their content is easily verifiable. Furthermore, the Defence team for Laurent Gbagbo, the former President of Côte D'Ivoire, provided these documents to the Prosecution.²⁵ To the extent that these two laws assist the Chamber in a fuller understanding of the structure, purpose, and organisation of the FDS as related to the crimes charged, it should re-classify them as incriminatory and consider them submitted as evidence.

Two lists of FDS recruits: CIV-OTP-0048-0108 and CIV-OTP-0048-1082

(a) *Relevance*

12. These two documents consist of lists of FDS recruits that Prosecution obtained from Witness P-0381, an FDS Sergeant responsible for the archives of the *Division Organisation et Ressources Humaines* ("DORH") at Camp Gallieni in Abidjan during the post-electoral crisis.²⁶ The first document, CIV-OTP-0048-0108, entitled « *Etat des volontaires pour le recrutement au titre de l'année 2010* » is an enumerated 37-page list of 2,274 recruits into the FDS during 2010. It contains their date of birth, education level, and a corresponding FDS unit (e.g. COMTER,²⁷ COMAR,²⁸ CEMA/CPCO),²⁹ including *Groupes d'auto-défense* ("GAD"),³⁰ such as GAD/ABIDJAN,³¹ GAD/OUEST,³² and GAD/EST.³³ This list corroborates the testimony of the CEMA, who indicated that in 2010 about 2,000 people were recruited into the FDS.³⁴ Similar in appearance, the second document, CIV-OTP-0048-1082, is a nine-page enumerated list entitled « *Etat des volontaires au recrutement aptes* ». It lists 398 recruits in alphabetical order from various militias and youth groups with acronyms such as: GPP, LIMA, FSCO, FLGO, and COJEPAS.³⁵ These same 398 recruits,

²⁵ Gbagbo Disclosure Rule 78 package 4.

²⁶ OTP Investigator's Report CIV-OTP-0051-0166 at 0177 and 0202 (8 October 2013); *see also* P-0381 at ICC-02/11-01/15-T-207-CONF-ENG ET p. 38, lns. 6 -14 (indicating that he provided documents pertaining to youth recruitment to the OTP).

²⁷ CIV-OTP-0048-0108 at 0121 (entries 822 to 830).

²⁸ CIV-OTP-0048-0108 at 0121 (entries 831 to 859).

²⁹ CIV-OTP-0048-0108 at 0120 (entries 782 to 806).

³⁰ CIV-OTP-0045-1194 (official DGPN document referring to *Groupes d'auto-défense* as GAD), submitted through P-0435 at ICC-02/11-01/15-T-88-CONF-FRA ET p. 26, ln. 9 – p. 28, ln. 4.

³¹ CIV-OTP-0048-0108 at 0112 to 0113 (entries 308 to 327).

³² CIV-OTP-0048-0108 at 0113 (entries 328 to 337).

³³ CIV-OTP-0048-0108 at 0113 (entries 348 to 357).

³⁴ P-0009 at ICC-02/11-01/15-T-196-CONF-FRA ET p. 82, lns. 11-13.

³⁵ CIV-OTP-0048-1082 at 1082-1090.

and at least one name from the 2010 list,³⁶ also appear on a third list of recruits dated 21 February 2011³⁷ that has already been submitted on the record and discussed by Prosecution Witness P-0047, who explained that these 398 recruits were allocated to various FDS commands.³⁸ This third list contains more detailed information on each recruit, including their date of birth, place of birth, education level, and the FDS unit to which they were being allocated.³⁹ Accordingly, the submission of these two lists would corroborate existing evidence and contribute to a better understanding of the exact size of the youth recruitment into the FDS during the crisis, and ultimately to the determination of the truth.

(b) *Probative Value*

13. The Prosecution obtained these documents from Witness P-0381, who testified at trial that these lists were obtained from the premises of Camp Gallieni after Gbagbo's arrest, and that they drew his attention because they were documents relating to recruitment of youth from different places.⁴⁰ Further, they have standard indicia of reliability showing their authenticity in that they both list recruits by name and share a similar format, font size, and title. With respect to CIV-OTP-0048-0108, the list of recruits from 2010 entitled « *Etat des volontaires pour le recrutement au titre de l'année 2010* », indicates recruits by name, date of birth, diploma, and as discussed above, provides a corresponding detailed military acronym within a particularised branch of the FDS. The second document, CIV-OTP-0048-1082, entitled « *Etat des volontaires au recrutement aptes* » contains reliable information on the source of many youth recruits in that it details from which militias or youth group each one came, and specifies "*inconnu*" or "unknown" when that information is not known. Lastly, as stated above, names on both of these lists also appear in another official FDS document which was identified and submitted through

³⁶ Compare CIV-OTP-0048-0108 at 0113 (entry 334) with CIV-OTP-0071-0850 at 0852 (entry 4).

³⁷ CIV-OTP-0071-0850.

³⁸ P-0047 at ICC-02/11-01/15-T-204-CONF-ENG ET p. 36, ln. 22 – p. 39, ln. 21.

³⁹ CIV-OTP-0071-0850; P-0047 at ICC-02/11-01/15-T-204-CONF-ENG ET p. 36, ln. 22 – p. 39, ln. 21.

⁴⁰ P-0381 at ICC-02/11-01/15-T-207-CONF-ENG ET, p. 38, lns. 6-14, and p. 46, lns. 2-18 ; ICC-02/11-01/15-T-208-CONF-ENG ET, p. 13, ln. 14 – p. 14, ln. 7.

the testimony of Witness P-0047, who confirmed that the recruits listed were allocated to various battalions.⁴¹

An official FDS order from 18 February 2011 on operational measures to reinforce security in Abidjan: CIV-OTP-0071-0627

(a) *Relevance*

14. This document contains two parts: an official FDS order sent by the CEMA to various FDS commands, on 18 February 2011, on reinforcing security in Abidjan, as well as a cover page forwarding this order to the Minister of Defence.⁴² The order itself details the measures to be taken by various commands in the five separate operational zones within Abidjan, including which specific units are to conduct missions in each zone.⁴³ On the first two pages of the document, Colonel René Kokou Sako, then Chief of the CPCO,⁴⁴ forwards this order to the Minister of Defence, explaining that it is related to the FDS providing security reinforcements to support a military operation: “*relative a renforcement dispositive de sécurité pour exploitation en vue soutien en carburant de l’opération.*”⁴⁵ A subsequent message on the same day from the *Commandant Supérieur Gendarmerie* to his subordinates implemented this order - essentially showing an operational chain of command within the FDS and the *Gendarmerie* executing the CEMA’s order.⁴⁶ This implementing order has been submitted on the record and several important witnesses, including Prosecution Witness P-0009, the CEMA,⁴⁷ Prosecution Witness P-0011, the *Commandant Supérieur de la Gendarmerie*,⁴⁸ and Prosecution Witness P-0156⁴⁹ confirmed its content. Accordingly, the addition of this FDS order to the LoE and, ultimately, its submission into evidence would not only provide the Chamber with the best available

⁴¹ CIV-OTP-0071-0850; P-0047 at ICC-02/11-01/15-T-204-CONF-ENG ET, p. 36, ln. 22 – p. 39, ln. 21.

⁴² CIV-OTP-0071-0627.

⁴³ CIV-OTP-0071-0627 at 0629 to 0632.

⁴⁴ P-0009 at ICC-02/11-01/15-T-193-FRA ET, p. 55, lns. 6-7.

⁴⁵ CIV-OTP-0071-0627.

⁴⁶ CIV-OTP-0044-0026.

⁴⁷ P-0009 at ICC-02/11-01/15-T-195-CONF-ENG ET, p. 72, ln. 8 – p. 73, ln. 5.

⁴⁸ P-0011 at ICC-02/11-01/15-T-131-CONF-ENG ET, p. 35, ln. 22 – p. 36, ln. 8; ICC-02/11-01/15-T-134-CONF-ENG ET, p. 87, ln. 21 – p. 88, ln. 5.

⁴⁹ P-0156 at ICC-02/11-01/15-T-171-CONF-ENG ET, p. 27, ln. 7 – p. 28, ln. 5.

evidence of the order's content but better explain the message implementing that order.⁵⁰ As such, its submission would contribute to a better understanding of the FDS contribution to the events of late February and March 2011, in Abidjan, and ultimately to the determination of the truth.

(b) *Probative Value*

15. The Office of the Prosecutor collected this document from the *Ancien Camp Akouédo* in December 2014 as part of a larger collection of official FDS documents.⁵¹ Both parts of the document, the original order and the message forwarding the order to the Minister of Defence, bear several indicia of reliability demonstrating their authenticity. First, they contain official government stamps and signatures of FDS officials such as Colonel René Kokou Sako and the CEMA, General Philippe Mangou. Second, both are dated 18 February 2011, and contain multiple fax transmission headlines indicating they were sent on the same day. Third, both pieces have an official FDS document number and filing acronyms consistent with other FDS documents. Fourth, and as described above, the order itself is implemented in a subsequent message from the *Commandant Supérieur Gendarmerie* that has been verified by Prosecution witnesses.⁵²

**A list of members of the 1er Bataillon de Commandos et de Parachutistes of the FDS:
CIV-OTP-0048-0878**

(a) *Relevance*

16. This official FDS document entitled « *Compagnie de Commandement et de Logistique (CCL)* » is a 24-page list of over 700 officers and soldiers in the *1er Bataillon de Commandos et de Parachutistes* ("1er BCP").⁵³ The list also includes their function, grade, qualifications, registration number, and detailed assignment. P-0381 elaborated that such

⁵⁰ Compare CIV-OTP-0071-0627 with CIV-OTP-0044-0026, already submitted through Witnesses P-0011, P-0156, and P-0009, and recognised as submitted per decision ICC-02/11-01/15-773.

⁵¹ OTP Investigator's Report CIV-OTP-0073-0756 at 0768.

⁵² CIV-OTP-0044-0026; *infra* footnotes 46-49.

⁵³ CIV-OTP-0048-0878.

documents are confidential and are used to manage the staff and their mobility and their position determined by the hierarchy.⁵⁴

17. Further, this document is being offered to clarify the record as it pertains to the list of members of the 1er BCP versus those in the Navy. One page of this document⁵⁵ inadvertently appeared in a larger document listing all of the members of the Navy, entitled “*Tableau des effectifs et de dotations de la Marine Nationale*”⁵⁶ that has been submitted in a previous bar table motion.⁵⁷ The submission into the evidence of the entire list would provide the Chamber with the best available evidence of its content, and contribute to a better understanding of the actual capacity of 1^{er} BCP and the Navy during the post-electoral crisis.

(b) *Probative Value*

18. The Prosecution also obtained this document from Witness P-0381, the FDS Sergeant responsible for the archives of the *DORH*, who testified that these kinds of “*Ordre de Bataille*” are the kinds of documents he would receive in the normal course of business.⁵⁸ This document bears indicia of reliability of an authentic FDS document in that it is signed and contains the seal of the Commander of the 1er BCP, Prosecution Witness P-0156.⁵⁹ Further, it contains other hallmarks of reliability including the column on the far right of the document which contains handwritten initials. Finally, it lists the name of a further Prosecution Witness, P-0316, who gave evidence that he was a member of the 1er BCP.⁶⁰

⁵⁴ P-0381 at ICC-02/11-01/15-T-207-CONF-ENG ET, p. 50, lns. 13 - 25.

⁵⁵ CIV-OTP-0048-0878 at 0882.

⁵⁶ CIV-OTP-0048-0972 at 0990.

⁵⁷ ICC-02/11-01/15-895-Conf-AnxA-Corr.

⁵⁸ OTP Investigator’s Report CIV-OTP-0051-0166 at 0201 (8 October 2013); P-0381 at ICC-02/11-01/15-T-207-CONF-ENG ET, p. 38, lns. 6-18.

⁵⁹ CIV-OTP-0048-0878 at 0901.

⁶⁰ P-0316 at ICC-02/11-01/15-T-182-CONF-ENG ET, p. 50, ln. 15 – p. 51, ln. 7.

IV. Conclusion

19. For the foregoing reasons, the Prosecution requests:
- (i) an extension of time, under articles 64(2) and 64(3)(c) of the Statute, rule 84 of the Rules, and regulation 35 of the Regulations, to re-disclose six items (CIV-D15-0001-6210, CIV-D15-0001-6536, CIV-OTP-0048-0108, CIV-OTP-0048-0878, CIV-OTP-0048-1082, and CIV-OTP-0071-0627) as incriminatory material and add these six items of evidence to its LoE;
 - (ii) the submission of these six items under paragraphs 43 and 44 of the Directions, or alternatively that the Chamber allow their submission under articles 64(6)(d) and 69(3) of the Statute;
 - (iii) that all six items be recognised as submitted.



Fatou Bensouda, Prosecutor

Dated this 21st day of December 2017

At The Hague, The Netherlands