

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No: ICC-02/11-01/15

Date: 22 January 2018

TRIAL CHAMBER I

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

SITUATION IN COTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLE GOUDE***

PUBLIC

Defence Response to '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' 21 December 2017, ICC-02/11-01/15-1091

Source: Defence of Mr Charles Blé Goudé

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

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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. The Defence of Mr Blé Goudé (the “Defence”) files the present response (the “Response”) to the Prosecution’s application submitted on 21 December 2017¹ requesting the Chamber for an extension of time pursuant to regulation 35 of the Regulations of the Court and to allow the Prosecution to re-disclose six documents.
2. The Defence requests the Chamber to deny both requests based on Chamber’s decision of 13 May 2016 in which the Chamber stated *inter alia* that: “Without prejudice to the Prosecutor's ongoing obligations under article 67(2) of the Statute and rule 77 of the Rules, the Chamber will no longer allow the addition of any further incriminating evidence.”² As the Chamber rightly pointed out, as a matter of principle and to protect the rights of the accused under article 67 “the Defence has the right to know the content of the Prosecutor's evidentiary case in its entirety.”

II. Submissions

3. In the request, the Prosecution wishes authorisation to include on its list of evidence four Prosecution documents namely³ CIV-OTP-0048-0878 (disclosed on 15 October 2013 and 9 May 2014),⁴ CIV-OTP-0048-0108 (disclosed on 6 June 2014 and on 17 September 2014),⁵ CIV-OTP-0071-0627 (disclosed on 19 February 2015)⁶ and CIV-OTP-0048-1082 (disclosed on 4 March 2016).⁷

¹ ICC-02/11-01/15-1091

² ICC-02/11-01/15-524 para 21.

³ ICC-02/11-01/15-1091 Para 4.

⁴ Gbagbo Pre-confirmation Rule 77 package 20 (5 October 2013) ; Blé Goudé Pre-Confirmation Rule 77 package 2 (09 May 2014).

⁵ Blé Goudé Pre-Confirmation Rule 77 package 3 (06 June 2014); Gbagbo Pre-Confirmation Rule 77 package 28 (17 September 2014).

⁶ Gbagbo Pre-Trial Rule 77 package 33 (06 February 2015); Blé Goudé Pre-Trial Rule 77 package 11 (19 February 2015).

⁷ Trial Rule 77 Certification Package 31 (04 March 2016).

4. The request also entails a request by the Prosecution to include on its list of evidence two Defence documents: CIV-D15-0001-6210, and CIV-D15-0001-6536;⁸ which have been available to the Prosecution since their disclosure by the Gbagbo Defence on 17 March 2014.⁹

Four Prosecution documents

5. With regard to all four Prosecution documents which the Prosecution request they be added on its list of Evidence, The Prosecution failed to do this within the prescribed deadline. The Defence submits that the Prosecution had more than five years to properly classify the material and add it to its list of evidence (from 15 October 2013 when the oldest document was disclosed¹⁰ by the Prosecution to the Gbagbo Defence team; and about two years from 4 March 2016, date at which the Prosecution disclosed the latest document among the four that it wishes be added on its list of evidence)¹¹. For this reason, the Defence requests the Chamber to reject the Prosecution request to include the four listed documents on the Prosecution's list of evidence.
6. Besides, the Defence also emphasizes that two of the four documents (CIV-OTP-0048-0108 and CIV-OTP-0048-1082) raises authenticity issues as these documents are not authored. While acknowledging that these two documents are not signed and therefore agreeing to their lack of authenticity; the Prosecution uses one name that appear in another document to infer the authenticity of document CIV-OTP-0048-0108. The Prosecution compares a name that appears on document CIV-OTP-0048-0108 at 0113 entry 334 (BAMON SYLVESTRE BAIBO born 15/10/1986) a document allegedly drafted in 2010 *without further indication on the month or place where this document was*

⁸ Para 9 to 11 of

⁹ 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).

¹⁰ CIV-OTP-0048-0878.

¹¹ CIV-OTP-0048-1082.

drafted, to a BAMON SYLVESTRE BAIBO who appears on a list drafted in 2011, whose date and place of birth are unknown. The Prosecution failed to explain how these two names are related, whether they refer to the same person and how this name can give authenticity to an unsigned list.

7. Furthermore, the Prosecution inaccurately refer to the in-court testimony of witness P-0381 to infer the authenticity of documents CIV-OTP-0048-0108 and CIV-OTP-0048-1082 by sending the reader to *"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)"*.¹² The Defence submits that this reference is erroneous because in the answer cited by the Prosecution, witness P-0381 was not answering specifically to a question related to documents CIV-OTP-0048-0108 and CIV-OTP-0048-1082. Witness P-0381 provided a general answer stating that during his preparation session he had reviewed 64 documents among the ones he had previously provided to the Prosecution.
8. Besides, the Defence submits that the reference made by the Prosecution is also inadequate as during witness P-0381's testimony, the following objection was raised by the Defence *"Thank you, your Honour. If I understand what the representative of the bureau of the Prosecutor is doing, he's asking the witness to authenticate to witness documents which he saw or which were given to him during the familiarisation stage. I think the familiarisation stage is not his testimony, is not part of his testimony. And if the Prosecutor wants these documents to be recognised by the witness, it must be during the hearing. It should not be done during the familiarisation process, which should be done ex parte."*¹³; to which the presiding judge answered *"PRESIDING JUDGE TARFUSSER: No, he asked only if he has seen them. What difference if it's authentication? He just asked him if he has seen these documents. Please, go ahead. Thank you. MR LEDDY:*

¹²Para 12 and footnote number 26, of ICC-02/11-01/15-1091.

¹³ ICC-02/11-01/15-T-207-CONF-ENG-ET, P37, ln.19 to ln.25.

Thank you, your Honour. Q. Mr Witness, you said you recognised these documents. My question to you is what did you recognise these documents to be?"¹⁴

9. From the above excerpt of P-0381's in court testimony, it is clear that witness P-0381 did not authenticate documents CIV-OTP-0048-0108 and CIV-OTP-0048-1082. Therefore, the Defence maintains its submission that documents CIV-OTP-0048-0108 and CIV-OTP-0048-1082 should not be admitted because – in addition to being submitted beyond prescribed deadline- they raise serious issues of authenticity.
10. With regard to the Prosecution request to add two Gbagbo Defence documents on the Prosecution list of Evidence,¹⁵ the Defence submits that these documents have been available to the Prosecution since their disclosure by the Gbagbo Defence on 17 March 2014. The Prosecution therefore had sufficient time to add them to its list of evidence should it have deemed these documents relevant to its case.

RELIEF SOUGHT

11. In light of the foregoing, the Defence respectfully requests the Chamber to **DENY** the both of the Prosecution's Applications.

Respectfully submitted,



Mr. Knoop, Lead Counsel and Mr. N'Dry, Co-Counsel

Dated this

22 January 2018

At The Hague, the Netherlands

¹⁴ ICC-02/11-01/15-T-207-CONF-ENG-ET, P38, ln.1 to ln.7.

¹⁵ ICC-02/11-01/15-1091, para 9 to 11.