

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-02/11-02/11**
Date: **27 August 2014**

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Ekaterina Trendafilova
Judge Christine Van den Wyngaert

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF THE PROSECUTOR v. CHARLES BLÉ GOUDÉ

Public

Prosecution's Notice that it is not relying on certain documents and Request for an extension of time to include one document on its list of evidence

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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Detention Section

**Victims Participation and Reparations
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Other

Introduction

1. On 22 August 2014, the Prosecution filed its footnoted document containing the charges (“DCC”)¹ and list of evidence (“LoE”).²
2. The Prosecution has noticed that nine documents are erroneously listed in the LoE. These nine documents are not cited in the footnotes of the DCC nor are they otherwise necessary for the confirmation of charges hearing. Consequently, the Prosecution does not seek to rely on these nine documents.
3. The Prosecution has also identified five documents cited as source evidence in the DCC that are not listed in the LoE. The Prosecution does not seek to rely on four of these documents but seeks to extend the time limit for the inclusion of one document in its LoE pursuant to Regulation 35(2) of the Regulations of the Court.

Submissions

The Prosecution does not seek to rely on nine documents listed in the LoE

4. Through inadvertent error there are nine documents listed in the LoE that were not cited as source evidence in the footnotes of the DCC, nor are they otherwise necessary for the confirmation of charges hearing.³ Consequently, the Prosecution hereby formally notifies the Chamber, Defence and other participants that it is not relying on the following nine documents for the purposes of the confirmation of the charges hearing:

¹ ICC-02/11-02/11-124-Anx2-Conf.

² ICC-02/11-02/11-124-Anx3-Conf.

³ These include, for example, additional transcripts or annexes of a witness statement that is itself cited as source evidence in the DCC.

- a) CIV-OTP-0015-0323;
- b) CIV-OTP-0019-0163;
- c) CIV-OTP-0020-0283;
- d) CIV-OTP-0020-0326;
- e) CIV-OTP-0020-0559;
- f) CIV-OTP-0029-0601;
- g) CIV-OTP-0057-1173;
- h) CIV-OTP-0060-0007; and,
- i) CIV-OTP-0060-0010.

The Prosecution does not seek to rely on four documents that were cited as source evidence in the DCC but were not included in the LoE

5. The Prosecution made every effort to correctly reference in its DCC and LoE the relevant source evidence from its collection of evidence. All documents cited as source evidence in the DCC should have been included on the LoE. Unfortunately, the electronic extraction of all of the Evidence Registration Numbers from the footnoted DCC for the purpose of inclusion in the LoE was done prior to five documents being added to the DCC as source evidence. Consequently, due to this inadvertent error, the LoE was prepared without including these five documents.
6. The Prosecution has carefully reviewed the five documents in question and has concluded that four of the five documents, while relevant, are not essential. For most of these, there exists other equivalent evidence covering the same subject matter. Therefore, the Prosecution hereby formally notifies the Chamber, Defence and other participants that it is not relying on the following four documents for the purposes of the confirmation of the charges hearing:

- a) CIV-OTP-0003-0551;⁴
- b) CIV-OTP-0047-0444;⁵
- c) CIV-OTP-0054-0803;⁶ and,

⁴ DCC, para.139, footnote 449.

⁵ DCC, para.275, footnote 979.

d) CIV-OTP-0063-3178.⁷

The Prosecution seeks to rely on one document that was cited as source evidence in the DCC but was not included in the LoE

7. With respect to one document, CIV-OTP-0035-1933,⁸ the Prosecution seeks to extend the time limit for its inclusion in the LoE pursuant to Regulation 35(2). This document is of high evidentiary value as it is the sole item of evidence that supports the factual allegation that Laurent GBAGBO gave a speech before the United Nations (“UN”) in 2007 asking for the lifting of UN sanctions against Charles BLÉ GOUDÉ.⁹ Consequently, and in the interest of justice, this relevant item of evidence should be available for the Chamber to consider at the confirmation of charges hearing.
8. The Prosecution was not able to make this request pursuant to Regulation 35(2) prior to the expiry of the 22 August 2014 time limit for the submission of its LoE¹⁰ because: (a) the error causing the need for this request occurred contemporaneously with the filing of the LoE on 22 August 2014, and (b) the error was only discovered, on Monday, 25 August 2014, after the time limit had passed.
9. The document in question, CIV-OTP-0035-1933, comprises a cover page and seven pages of a speech of Laurent GABGBO. It is not lengthy, complex or technical. It was disclosed to the Defence on 9 May 2014¹¹ pursuant to Rule 77

⁶ DCC, para.85, footnote 206.

⁷ DCC, para.49, footnote 105.

⁸ DCC, para.55, footnote 122.

⁹ DCC, para. 55.

¹⁰ ICC-02/11-02/11-108-Red at p.7.

¹¹ ICC-02/11-02/11-71-Conf-AnxA at pp.285-286.

and the Defence has had the opportunity to review the document. Additionally, the document is still available online.¹²

10. In the overall circumstances and context of this request, the prejudice to the Defence, if any, caused by the inclusion of this document in the LoE, would be minimal and outweighed by the probative value of the item of evidence.
11. If this request is granted, the Prosecution will be in a position to reissue and redisclose forthwith the metadata of this document to allow it to be promptly uploaded in the eCourt database.

Documents CIV-OTP-0001-0399 and CIV-OTP-0002-0141

12. The Prosecution takes this opportunity to also notify the Chamber, the Defence and other participants that documents CIV-OTP-0001-0399 and CIV-OTP-0002-0141, which are on the LoE and previously disclosed pursuant to Rule 77 are not currently accessible in the eCourt database.¹³ The Prosecution will redisclose the metadata of these two documents as incriminating evidence to allow for their upload in the eCourt database. With respect to this procedure, the Prosecution recalls the Single Judge's decision that "[...] what is important is that all disclosure obligations in relation to incriminating evidence are properly discharged as envisaged in the Decision on Disclosure. In particular, this means that the Prosecutor must [...] give notice to the Defence of her intention to use evidence previously disclosed under article 67(2) of the Statute or rule 77 of the Rules as soon as practicable and at the latest at the time of the filing of the list of evidence."¹⁴

¹² <http://www.un.org/webcast/ga/62/2007/pdfs/cotedivire-fr.pdf>.

¹³ These two documents were not reclassified as incriminating evidence by 22 August 2014 but as stated the Prosecution notified its intention of relying on them by adding them to its LoE. They are also sourced in the DCC, see footnote 618 (for CIV-OTP-0002-0141) and 887 *in fine* (for CIV-OTP-0001-0399).

¹⁴ ICC-01/11-01/11-573, para. 18.

Conclusion

13. For the reasons set out above, the Prosecution requests the Chamber to grant, pursuant to Regulation 35(2), the extension of time to include document CIV-OTP-0035-1933 in its list of evidence.



Fatou Bensouda, Prosecutor

Dated this 27th day of August 2014

At The Hague, The Netherlands