

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 19 May 2015

TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Olga Herrera-Carbuccia
Judge Bertram Schmitt

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

**IN THE CASE OF
THE PROSECUTOR *v.* LAURENT GBAGBO *and* CHARLES BLÉ GOUDÉ**

**Confidential, *EX PARTE*, only available to the Office of the Prosecutor
With Annexes A and B – Confidential, *EX PARTE*, only available to the Office of
the Prosecutor**

**Prosecution's request in relation to potentially privileged material seized by the
Office of the Prosecutor**

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

Counsel for Mr Charles Blé Goudé

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. The Prosecution files a request seeking the Trial Chamber's determination on the status of four documents potentially covered by attorney-client privilege with respect to the Accused Charles Blé Goudé.

Confidentiality

2. Pursuant to regulation 23bis of the Regulation of the Court, the Prosecution files the present submission as confidential, *ex parte*, only available to the Prosecution, since it relates to potentially privileged material that may be subject to confidentiality rules governed by article 69(5) and rule 73(1) of the Rules. Knowledge by the Defence of the content of the filing at this stage would defeat its purpose. The Prosecution leaves it to the discretion of the Chamber to determine whether it is appropriate or necessary to notify the present filing and its annexes to the Defence team of Blé Goudé.

Submissions

3. In November 2014, the Prosecution collected an electronic forensic copy of a laptop hard disk in the possession of the Ivorian authorities. The forensic image of the laptop hard disk was registered in the Prosecution's evidence database with ERN number CIV-OTP-0069-0016.
4. Based on information received from the Ivorian authorities, the original laptop was seized during the arrest of Blé Goudé.
5. In January 2015, the Prosecution's Scientific Response Unit ("SRU") began examining the digital forensic copy of the laptop (CIV-OTP-0069-0016). On 30 March 2015, the SRU staff member assigned with the examination of the forensic copy found a cached webpage file containing an email message which seemed to have originated from a lawyer. Consistent with internal policy, SRU halted the

forensic examination immediately and reported the existence of potentially privileged material.

6. In light of the possibility that additional electronic documents could contain information covered by attorney-client privilege pursuant to rule 73, the SRU staff member proceeded to identify and isolate any potentially privileged materials from staff of the Office of the Prosecutor. The working copy of the forensic image at CIV-OTP-0069-0016 used for the forensic examination was kept securely by the SRU, with access restricted to SRU.
7. The following procedure was implemented to identify and isolate additional potentially privileged material:
 - On 1 April 2015, SRU ran key-word searches on the forensic image of the laptop. A list containing the names of 22 legal counsels and names of two religious clergies were provided to SRU for the purpose of this task. The list was drawn up by the Prosecution Team and contained the names of persons who are known to be officially linked to the Defence teams of Blé Goudé and Laurent Gbagbo in the proceedings before the ICC, or who could otherwise be linked to either defence team (see the names listed in *ex parte* Annex A).
 - The 24 names were subsequently split up into 55 words, which were used as individual search expressions in the keyword searches (see *ex parte* Annex B).
 - The search resulted in three emails identified as potentially privileged. They contain the name "Nick Kaufman", the former legal counsel of Blé Goudé.
 - The email messages were extracted to a readable format.¹ It was then revealed that two of the email messages were originally sent with

¹ The emails extracted from the electronic files responsive to the search were in a format that is not easily readable for a lay person. The extracted data was interpreted by the SRU forensic expert and presented in a readable format. It is in the latter format that the emails are submitted to the Chamber for review.

attachments, containing the file names "CBG.pdf" and "LG-Appeal.pdf".

Following a search for these files, only one document was found matching the filename "LG-Appeal.pdf". The file "CBG.pdf" was not found.

8. As a result, the total number of potentially privileged documents is four: three emails and one attachment.
9. These four documents were copied by SRU onto a CD, sealed and kept securely until the CD was handed over directly to the Registry. The Registry will provide the CD under seal, only available to the Chamber.
10. Finally, the Prosecution notes that it does not consider that in the specific circumstances of this case a different system for review is required, such as the appointment of an independent counsel or expert to review the potentially privileged material. The amount of relevant material is limited, and the issue of privilege is not a salient or relevant aspect of this case.

Conclusion

11. The Prosecution requests the Chamber to review these four documents to determine whether they contain privileged information within the meaning of rule 73(1) of the Rules.
12. In case the Chamber determines that these documents are not privileged, the Prosecution will review them in order to determine whether they are to be disclosed pursuant to article 67(2) or rule 77.



Fatou Bensouda, Prosecutor

Dated this 19th day of May 2015

At The Hague, The Netherlands