

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: *English*

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

Date: 10 June 2015

TRIAL CHAMBER I

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

SITUATION IN COTE D'IVOIRE

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

PUBLIC

Public redacted version of "Addendum to Defence Observations on the Prosecution's requests to apply non-standard redactions to documents related to P-0114, and to maintain redactions to documents related to P-0316 and P-0402," 2 April 2015, ICC-02/11-01/15-22-Conf

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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Detention Section

**Victims Participation and Reparations
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Other

I. Introduction

1. The Defence of Charles Blé Goudé ('the Defence') hereby submits an addendum to its observations on "the Prosecution's requests to apply non-standard redactions to documents related to P-0114, and to maintain redactions to documents related to P-0316 and P-0402," which it submitted on 1 April 2015.¹ The Defence is also providing the Chamber with annexes 1, 2 and 3, which refer to the e-mails exchanged between the Defence, the Prosecution, the Chamber, and Court Management.

II. Procedural History

2. The observations provided herewith shall be made on a confidential basis due to the references to confidential material that shall be made herein.
3. Following its submissions, the Prosecution responded to the Defence observations by firstly stating that it had disclosed to the Defence the most recent redacted version of [REDACTED], and secondly disclosing to the defence the most recent redacted version of [REDACTED].²
4. The Defence would like to remind the Prosecution that it was only able to access the aforementioned disclosure after 5:50 pm on 31 March 2015, and that the communication to the disclosure was released on eCourt on 1 April 2015, the same day that the Defence submitted its Observations regarding redactions to documents related to witnesses P-0316, P-0402, and P-0114.³

¹ ICC-02/11-01/15-17-Conf

² See Annex 1.

³ ICC-02/11-01/15-16

5. The Defence also notes that on 1 April 2015 at 5:20pm, the Prosecution requested permission from the Chamber to release to the Blé Goudé defence team the following annexes:

- a. ICC-02/11-01/11-787-Conf-AnxA-Red
- b. ICC-02/11-01/11-797-Conf-AnxA-Red and Conf-AnxB-Red.⁴

6. The Single Judge instructed these documents to be notified to the Defence at 18:46 on 1 April 2015. As of 10:18, the Defence had access to ICC-02/11-01/11-797-Conf-AnxB. The Defence obtained access to ICC-02/11-01/11-787-Conf-AnxA-Red at 11:03.⁵

III. Submissions

7. Given that the Defence has now been given access to the charts related to P-0402 and to P-0114, it withdraws its arguments related to the Prosecution not following the established protocol in relation to these two witnesses.⁶ The Defence has yet to receive the annex in relation to P-0316, and therefore the arguments it made with regard to the Prosecution's failure to follow the Protocol still stand with regard to that witness.⁷

8. However, the Defence maintains that its other arguments, namely the failure of the Prosecution to substantiate the objective risk to the witnesses, as well as the prejudice to the Accused are still valid despite this recent release of the annexes. In the event, the Chamber decides that these arguments are not sufficient to lift the redactions to the relevant documents, the Defence requests that it be granted a two week extension to respond to these charts found in the recently released annexes.

⁴ See Annex 1.

⁵ See Annex 2.

⁶ ICC-02/11-01/15-17-Conf.

⁷ See Annex 3.

The Defence submits that on its face, the content of these charts, do not allow for the Defence to engage in an adversarial debate.

9. Since the Prosecution has made available to the Defence the two documents related to P-0316 before the 2 April 2015 deadline, the Defence hereby upholds its observations on the prejudice to the Accused caused by the Prosecution's requested redactions to documents related to P-0316. The Defence hereby withdraws its request for an extension of time to respond to this issue from its 1 April 2015 submission.

10. In its request to maintain redactions to documents related to P-0316, the Prosecution submitted that the Accused would suffer no prejudice because "[t]he Defence already has access to the identity and other identifying information of the witness. "⁸ The Prosecution further states that "the redaction of [REDACTED] is the only measure being sought and does not impair the Defence's ability to understand his evidence or to conduct investigations. "⁹

11. Similar to its observations on witnesses P-0114 and P-0316 submitted on 1 April 2015, the Defence submits that it is not able to ascertain the content that the Prosecution would like to redact, and therefore is not in a position to respond fully to the prejudice that would be caused by the redactions. The Defence submits that this inability to engage in an adversarial debate with the prosecution violates the equality of arms.

⁸ ICC-02/11-01/11-797-Conf-Red, para. 19.

⁹ Ibid.

12. Moreover, the Defence holds that the Prosecution's submissions pertaining to the objectively justifiable risk to P-0316 are also prejudicial to the Defence. The Prosecution claimed that the risk to P-0316 was objectively justifiable because of [REDACTED]. The Defence submits that such substantiations are highly prejudicial to the Defence, and should be rejected by the Chamber. If the Chamber were to accept that [REDACTED] is sufficient to constitute objectively justifiable risk, then redactions would become the rule instead of the exception, which runs contrary to the jurisprudence of the Court.¹⁰

13. While the Defence avers that the most recent redacted version of the documents related to P-0316 contain the identity of the witness, it still remains the case that highly relevant information has been redacted. Specifically, the witness provides [REDACTED].¹¹ Sections that are redacted include a non-standard redaction in relation to [REDACTED].¹² Since this is a non-standard redaction the Defence can only guess as to what information it contains. Verifying this information is of utmost importance to the Defence because of the Prosecution's allegations regarding [REDACTED].

14. Another section including non-standard redactions pertains to the witness allegedly [REDACTED], and the fact that [REDACTED].¹³ The Defence is unable to ascertain the exact location of this event, and will be hampered in assessing the veracity of this [REDACTED] account, especially since the information relating to [REDACTED] is redacted.

IV. Relief Requested

¹⁰ ICC-02/11-01/11-737 para. 9

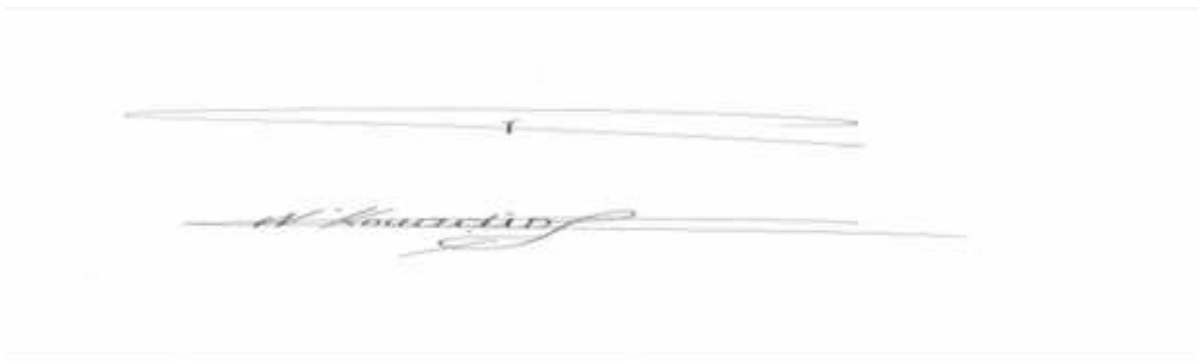
¹¹ See CIV-OTP-0043-0462-R01, paras. 89-105; CIV-OTP-0042-0665 paras, 36, 51-52.

¹² CIV-OTP-0043-0462-R01, para. 100

¹³ CIV-OTP-0043-0462-R01, para. 164; CIV-OTP-0042-0665, para.52.

15. For the foregoing reasons, the defence respectfully requests the honourable Chamber to grant the following requests:

- a. to consider the Defence's arguments pertaining to the Prosecution's failure to follow the protocol as null and void as to the documents related to witnesses P-0402 and to P-0114.
- b. to grant the Defence request to respond by this addendum to the prejudice that the redactions to the documents related to P-0316 would cause to the Accused.
- c. in the alternative: to grant an extension of time for the Defence to respond to the content of the annexes containing the redaction charts in the event that the Chamber decides that the Defence primary arguments regarding objective risk to the witnesses and prejudice to the accused, are not sufficient to justify lifting redactions.

A handwritten signature in dark ink, appearing to read 'Mr. Knoop', is centered within a rectangular box. The signature is written in a cursive style with a long horizontal stroke extending to the right.

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

Dated this 10 June 2015

at The Hague, the Netherlands