

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: 30 June 2015

TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Olga Herrera Carbuccion
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

Prosecution's response to Defence submissions concerning potentially privileged material

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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**Victims Participation and Reparations
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Other

Introduction

1. The Prosecution files this Response to the Blé Goudé Defence submissions concerning potentially privileged material, dated 29 June 2015,¹ pursuant to the Trial Chamber's Order of 25 June 2015.² The Prosecution responds in respect of paragraph 8 of the Defence Submissions, and on the issue only of the ambit of the protection afforded under rule 73(1) of the Rules of Procedure and Evidence.

Confidentiality

2. Pursuant to regulation 23*bis* of the Regulations of the Court, the Prosecution files this Response as confidential as it relates to potentially privileged material that may be subject to confidentiality rules.³

Submissions

3. The Defence Submissions state, at paragraph 8, that counsel-client correspondence, "even when not case-related", falls "within the ambit of rule 73". The Prosecution does not accept that this accurately states the scope of the protection afforded under rule 73. Rule 73, on its face, protects from disclosure "communications made in the context of the professional relationship between a person and his or her legal counsel". This qualifier, "in the context of the professional relationship", narrows the scope of communications that can be legitimately protected as privileged, and would not, in principle, protect from disclosure communications that are not case-related, as the Defence suggests. As a result, while communications to be privileged under rule 73 must not necessarily be related to this case, "privilege attaches to communications between a lawyer and his or her client only where the communication was made in the

¹ ICC-02/11-01/15-110-Conf ("Defence Submissions").

² Order for submissions by the Defence for Mr Blé Goudé concerning potentially privileged material, 25 June 2015, ICC-02/11-01/15-104.

³ The Prosecution notes that the Blé Goudé Defence submissions were also filed confidentially.

context of the professional relationship between a person and his or her legal counsel."⁴



Fatou Bensouda, Prosecutor

Dated this 30th of June 2015

At The Hague, The Netherlands

⁴ ICC-01/04-01/10-314, p.5; ICC-01/04-01/10-67, p.5.