

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: **7 March 2017**

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***

Confidential

**Defence Unified Response to the Prosecution's applications for extension of time
for disclosures (ICC-02/11-01/15-828-Conf and ICC-02/11-01/15-834-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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**Victims Participation and Reparations
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Other

I. Introduction

1. By this filing the defence of Mr Charles Ble Goude (the Defence) responds to two Prosecution requests:
 - a) Prosecution's request for an extension of time pursuant to regulation 35 of the Regulations of the Court relating to Witness P-0011's testimony (First Request).¹
 - b) Prosecution's request for an extension of time pursuant to regulation 35 of the Regulations of the Court relating to Witness p-0010's testimony (Second Request).²
2. The Defence requests the Chamber to deny both requests based on Chamber's decision of 13 May 2016 where 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."³ 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. Confidentiality

3. Pursuant to regulation 23bis (2) of the Regulations of the Court ("Regulations"), the Defence files the Response as "confidential" as it responds to the Application which has been classified as confidential.

¹ ICC-02/11-01/15-828-Conf.

² ICC-02/11-01/15-834-Conf.

³ ICC-02/11-01/15-524 para 21.

III. Submissions

The First Request

4. The request entails a request by the Prosecution to include on its list of evidence two items: document CIV-OTP-0018-0031 originally disclosed as part of article 67 (2) and video CIV-OTP-0069-0372 previously disclosed under rule 77.
5. With regard to document CIV-OTP-0018-0031, the Defence submits that the Prosecution has had years, from 2012 when it was disclosed to the Gbagbo Defence and 2014 when it was disclosed to the Defence, to properly classify the material and add it to its list of evidence (LoE). The Prosecution failed to do this within the prescribed deadline. Consequently, the time now is too short to enable the Defence to conduct investigations on the document before the appearance of P-0011. For this reason, the Defence requests the Chamber to reject the request to include this document on the Prosecution's LoE and use it during the questioning of P-0011.
6. Besides, assuming *arguendo* that the Chamber would allow the addition of this document to the LoE the Defence would object to its use to question witness P-11 because the document raises various authenticity issues among them being that the document is not authored. Furthermore, as admitted by the Prosecution, the witness said he had not seen the document before the day of the interview. He therefore would not be in a position to respond to questions regarding the document.
7. Concerning video CIV-OTP-0069-0372, the Chamber in the 13 May 2016 decision cited above stated that an item would only be added to the LoE if it was *inter alia* non-duplicative. The Defence submits that the relevant portions of CIV-OTP-0069-0372 are duplicates of CIV-OTP-0069-0371, which is already

in the LoE and therefore the request does not meet the exception set by the Chamber.

The Second request

8. The Prosecution's request for an extension of time to disclose documents CIV-OTP-0094-0303⁴ and CIV-OTP-0094-0305⁵ as incriminatory material in addition to its request to add such documents to its list of evidence should be rejected in its entirety for two reasons. First, the deadline to disclose incriminatory material has long expired in the instant case, and the Prosecution has failed to substantiate why an exception should be made. Secondly, the request if granted would be unduly prejudicial to the Defence.
9. On 13 May 2016, in the "Decision on request for leave to appeal the 'Fourth decision on matters related to disclosure and amendments to the List of Evidence' and other issues related to the presentation of evidence by the Office of the Prosecutor" the Chamber found that it would "no longer allow the addition of any further incriminating evidence."⁶ The Chamber reasoned that "the Defence has the right to know the content of the Prosecutor's evidentiary case in its entirety," and that the Chamber has the obligation to ensure Mr. Blé Goudé's fundamental rights under Article 67(1) of the Statute.⁷ Therefore, the Chamber determined that any departure from this rule would have to meet the following two cumulative criteria: (1) the evidence is entirely new, non-duplicative, evidence and was obtained by the Prosecutor after the disclosure deadline, and (2) the Prosecution must show that the material

⁴ See Annex A to ICC-02/11-01/15-834-Conf.

⁵ See Annex B to ICC-02/11-01/15-834-Conf.

⁶ ICC-02/11-01/15-524, para. 21.

⁷ *Ibid.*

could not reasonably have been obtained by a diligent Prosecutor before the disclosure deadline.⁸

10. The Defence stipulates that the cover letter, the letters from the High Commissioner for Human Rights to Laurent Gbagbo and Vagba Faussignaux, and Guiai Bi Poin's response to the High Commissioner is entirely new non-duplicative evidence. However, the letters from the High Commissioner to Dogbo Blé and Guiai Bi Poin, and Dogbo Blé response are not new and duplicative seeing as they have been already disclosed, and thus fail to meet this criterion.

11. More importantly, the Prosecution has utterly failed to satisfy the Chamber's second criterion for late disclosure of incriminatory material. The Prosecution submits that the documents for which it seeks disclosure were outside of the scope of its requests made in September 2011 and December 2014, and thus were not accessible.⁹ However, a diligent Prosecutor could have obtained this material before 1 March 2017.¹⁰ The Prosecution states that it made the request to the High Commissioner on 13 January 2017 while preparing for the upcoming testimony of P-10. However, the Prosecution could have estimated that P-10 would testify in March 2017 long before January of 2017. On 20 October 2016, the Prosecution submitted its third list of the next witnesses to testify in trial, and it added witness P-10 to the number 5 slot.¹¹ Thus, the Prosecution knew several months before January 2017 of Witness P-10's testimony, and a reasonable and diligent Prosecutor would have made his request to the High Commissioner earlier.

⁸ ICC-02/11-01/15-524, para. 22.

⁹ ICC-02/11-01/15-834, para. 12.

¹⁰ Ibid, para. 3.

¹¹ ICC-02/11-01/15-735-Conf-AnxA.

12. Additionally, by the Prosecution's own admission, its investigators asked Witness P-10 about the letters from the High Commissioner during the witness' interviews in September of 2013. Therefore, the Prosecution's request to High Commissioner in December 2014, could have included a request that encompassed the documents the Prosecution now wishes to disclose.

13. Granting the Prosecution's request on the eve of Witness P-10's testimony would also be unduly prejudicial to the Defence. The Defence submits that the Prosecution's argument that the Defence was aware of the content and the existence of the letters does not hold water. As the Defence submitted above, one of the criteria for disclosing incriminatory material is that the material be entirely new and non-duplicative. Thus, the Prosecution submits that the material brings to light new facts and contribute to a better understanding of the case.¹² Moreover, the request, if granted, would set a dangerous precedent. It would mean that with every witness, the Prosecution could continue adding new material to its list of evidence upon the mere showing that the evidence was found while the Prosecution was preparing for the upcoming testimony of a given witness. Mr. Blé Goudé has a right to know the Prosecution's evidence against him. If this evidence is in constant flux, Mr. Blé Goudé cannot mount a proper defence, and his rights under Article 67(1) would be irremediably violated.

RELIEF SOUGHT

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

¹² ICC-02/11-01/15-834, para. 10,

Respectfully submitted,



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

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

Dated this

7 March 2017

At The Hague, the Netherlands