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TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera-Carbuccia
Judge Geoffrey Henderson

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR

v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ

Public

Public redacted version of "Prosecution's amendments to its application to conditionally admit the prior recorded statements and related documents of Witnesses [REDACTED] and [REDACTED] under rule 68(3)", 17 March 2017

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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Introduction

1. The Prosecution hereby amends its request, filed on 7 February 2017, for the conditional submission under rule 68(3) of the prior recorded statements of crime base witnesses upon whose evidence the Prosecution will rely to prove the 25 to 28 February 2011 charged incident ("7 February 2017 Request").¹
2. The Prosecution now seeks to exclude from its request parts of the prior recorded statements and related documents of Witnesses [REDACTED] and [REDACTED] which constitute evidence of acts and conducts of the Accused and/or which offer opinions on the Accused. These amendments are made to ensure consistency with the Prosecution's consolidated application to admit prior recorded statements under rule 68, filed on 28 February 2017 ("28 February 2017 Request").² The amendment will also meet some of the concerns raised by Mr Blé Goudé in his response to the 7 February 2017 request, filed on 6 March 2017 ("Blé Goudé Response").³ In addition, the Prosecution seeks to exclude from its request a further portion of Witness [REDACTED] statement upon which the Prosecution does not now intend to rely.

Confidentiality

3. This filing is classified as Confidential, as it refers to an application classified as confidential. The Prosecution will file concurrently a public redacted version that will maintain the confidentiality of the relevant witness pseudonyms.

Procedural History

4. By its 7 February 2017 Request, the Prosecution applied to "conditionally admit the prior recorded statements and related documents of Witnesses [REDACTED] and [REDACTED] under rule 68(3), and for testimony by means of video-link

¹ ICC-02/11-01/15-796-Conf.

² ICC-02/11-01/15-829-Conf.

³ ICC-02/11-01/15-838-Conf, paras 12-13, 18-19, 21, 23-24, 26.

technology for Witnesses [REDACTED] and [REDACTED] under rule 67(1).⁴ Annex 2 to this application contained a table which identified the passages of the statements which the Prosecution sought to be submitted into evidence. In fact, the Prosecution had requested the conditional submission of the whole prior recorded statements, accompanying annexes and related documents of Witnesses [REDACTED] and [REDACTED] under rule 68(3).

5. On 28 February 2017, the Prosecution submitted its "Prosecution's consolidated application to conditionally admit the prior recorded statements and related documents of various witnesses under rule 68 and Prosecution's application for the introduction of documentary evidence under paragraph 43 of the directions on the conduct of proceedings relating to the evidence of Witnesses [REDACTED] and [REDACTED].⁵" In this submission, the Prosecution excluded those excerpts of the rule 68(3) Witnesses' statements which constituted evidence of acts and conducts of the Accused and/or which offered opinions on the Accused, and indicated that - in the event that it wishes to rely on it - such evidence will be led by the Prosecution by way of limited supplementary examination, within the projected time estimate.⁶
6. On 6 March 2017, the Accused filed their responses to the Prosecution's 7 February 2017 Request.⁷

Submissions

7. By its 7 February 2017 Request, the Prosecution sought to introduce the whole statements of Witnesses [REDACTED] and [REDACTED], including excerpts describing the acts and conducts of the Accused and/or offering opinion evidence related to the Accused. The Prosecution submitted its 7 February 2017 Request prior to submitting its consolidated 28 February 2017 Request, to allow as much

⁴ ICC-02/11-01/15-796-Conf.

⁵ ICC-02/11-01/15-829-Conf.

⁶ ICC-02/11-01/15-829-Conf, para. 41.

⁷ ICC-02/11-01/15-838-Conf and ICC-02/11-01/15-839-Conf.

time as possible before the expected dates of these Witnesses' upcoming testimony in the 25-28 February 2011 "block" of witnesses.

8. After further considering its consolidated application, however, the Prosecution has decided to adopt a different approach in relation to the evidence for which it seeks submission under rule 68(3). In particular, the Prosecution has decided that it will lead *viva voce* –as necessary and appropriate – all evidence related to the acts and conduct of the Accused and/or all evidence offering opinion evidence about the Accused, instead of seeking submission of such evidence in writing. While it is not a requirement under rule 68(3) that evidence related to the acts and conduct of the Accused and/or which offers opinion evidence be excluded from submission in writing, the Prosecution adopts this practice in this case as a matter of fairness to the Accused.⁸
9. Excluding these paragraphs will address some of the concerns raised in the Blé Goudé Response.⁹ The consequence of the Prosecution's amendments to its 7 February 2011 Request is that evidence related to [REDACTED], as well as other evidence related to the other acts and conducts of the Accused are now withdrawn from its 7 February 2017 Request. This is elaborated further below.
10. Finally, after further reviewing the witness statements forming part of its 7 February 2017 Request, the Prosecution has also decided that it no longer seeks to rely upon a portion of Witness [REDACTED] statement, as elaborated below.

⁸ ICC-02/11-01/15-829-Conf, para. 41.

⁹ ICC-02/11-01/15-838-Conf, paras 12-13, 18-19, 21, 23-24, 26.

Evidence to be excluded from 7 February 2017 Request

11. The Prosecution amends the 7 February 2011 Request as described in the paragraphs below.
12. Witness [REDACTED]: In the prior recorded statement of Witness [REDACTED],¹⁰ paragraphs [REDACTED] and [REDACTED] contain evidence of the acts and conduct of the Accused and opinion evidence related to the Accused. This includes [REDACTED]. Further, paragraph [REDACTED] of Witness [REDACTED] statement contains information upon which the Prosecution does not intend to rely. The Prosecution excludes all of these paragraphs from its 7 February 2017 Request and amends accordingly Annex 2 of the Request.
13. Witness [REDACTED]: In the prior recorded statement of Witness [REDACTED],¹¹ paragraphs [REDACTED] and [REDACTED] contain evidence of the acts and conduct of the Accused and opinion evidence related to the Accused. This includes [REDACTED]. The Prosecution excludes these paragraphs from its 7 February 2017 Request and amends Annex 2 of the Request accordingly.
14. Witness [REDACTED]: In the prior recorded statement of Witness [REDACTED],¹² paragraphs [REDACTED] and its corresponding Annex 2 ([REDACTED]) contain evidence of the acts and conduct of the Accused and opinion evidence related to the Accused. This includes a meeting of [REDACTED]. The Prosecution excludes these paragraphs from its 7 February 2017 Request and amends accordingly Annex 2 of the Request.
15. Witness [REDACTED]: In the prior recorded statement of Witness [REDACTED],¹³ paragraphs [REDACTED] and [REDACTED] contain evidence of the acts and conduct of the Accused and opinion evidence related to the Accused. This includes [REDACTED]. The Prosecution excludes these paragraphs from its 7 February 2017 Request and amends Annex 2 of the Request accordingly.

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

16. Witness [REDACTED]: In the prior recorded statement of Witness [REDACTED],¹⁴ paragraphs [REDACTED] and [REDACTED] contain evidence of the acts and conduct of the Accused. This includes [REDACTED]. The Prosecution excludes these paragraphs from its 7 February Request and amends Annex 2 of the Request accordingly.
17. Witness [REDACTED]: In the prior recorded statement of Witness [REDACTED],¹⁵ paragraphs [REDACTED] and its corresponding Annex 2 ([REDACTED]) contain evidence of the acts and conduct of the Accused. This includes [REDACTED]. The Prosecution excludes these paragraphs from its 7 February 2017 Request and amends accordingly Annex 2 of the Request.
18. Witness [REDACTED]: In the prior recorded statement of Witness [REDACTED],¹⁶ paragraphs [REDACTED] contain evidence of the acts and conduct of the Accused and opinion evidence related to the Accused. This includes [REDACTED]. The Prosecution excludes these paragraphs from its 7 February 2017 Request and amends accordingly Annex 2 of the Request.

Limited supplementary examination

19. The Prosecution also amends paragraphs 22 and 23 of its 7 February 2017 Request. In addition to the supplementary questions described in paragraphs 21 and 22, the Prosecution anticipates - where it wishes to rely upon such evidence - asking in relation to each Prosecution witness as part of its limited supplementary examination questions related to the acts and conduct of the Accused. The Prosecution will do so within the time estimate projected for Witnesses [REDACTED] and [REDACTED]. For Witness [REDACTED], in light of the number of paragraphs being removed from the rule 68(3) submission, the Prosecution requests to extend its supplementary examination to one hour.

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

Conclusion

As described above, the Prosecution submits amendments to Annex 2 and paragraphs 22 and 23 of its 7 February 2017 Request.



Fatou Bensouda, Prosecutor

Dated this 17th day of March 2017

At The Hague, The Netherlands