

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 15 May 2017

TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera Carbuccion
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

**Consolidated decision on three Prosecutor's Applications for extension of time
limits and submission of evidence (filings 869, 874 and 875)**

Decision 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 Laurent Gbagbo

Mr Emmanuel Altit
Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Mr Geert-Jan Alexander Knoops
Mr Claver N'dry

Legal Representatives of Victims

Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
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

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber I of the International Criminal Court, in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Articles 64(6)(d) and 69(3) of the Rome Statute ('Statute'); Regulation 35(2) of the Regulations of the Court ('Regulations'), and paragraphs 2, 43 and 44 of the Directions on the conduct of the proceedings ('Directions'), issues this "Consolidated decision on three Prosecutor's applications for submission of evidence".

I. PROCEDURAL BACKGROUND

1. On 6 and 12 April 2017 the Prosecutor submitted two requests "for an extension of time pursuant to regulation 35 of the Regulations of the Court and application to submit documentary evidence under paragraph 43 of the Directions on the conduct of the proceedings", respectively relating to the testimonies of Witness P-0045 ('First Application')¹ and of Witness P-0010 ('Second Application')².
2. On 12 April 2017, the Prosecutor also submitted her "application to submit video evidence related to the Bar le Baron speech, to present fullest possible reading of the speech" ('Third Application').³
3. On 24 April 2017, the Defence for Mr Gbagbo submitted a consolidated response to the three applications⁴ and the Defence for Mr Blé Goudé a consolidated response to the Second and the Third Applications⁵.
4. The LRV did not file a response.

¹ ICC-02/11-01/15-869-Conf.

² ICC-02/11-01/15-874-Conf.

³ ICC-02/11-01/15-875.

⁴ ICC-02/11-01/15-880-Conf.

⁵ ICC-02/11-01/15-882-Conf.

II. ANALYSIS

The First Application

5. In the First Application, the Prosecutor is seeking an extension of time “to reclassify video CIV-OTP-0095-0368 as incriminatory material and add it to its List of Evidence”, together with its transcript (CIV-OTP-0097-0136), both of which have already been disclosed to the Defence teams pursuant to rule 77 of the Rules. In case the extension is granted, the Prosecutor would apply to submit these items pursuant to paragraphs 43 and 44 of the Directions on the conduct of the proceedings.
6. Item CIV- OTP-0095-0368 consists of a video relating to the testimony of Witness P-0045, which – the Prosecutor alleges – would corroborate the Witness’s testimony, in particular by “support[ing] Witness’s P-0045 assertion that he took notes during the post-election crisis” based on his listening to the FDS radio frequencies, which notes were referred to in the context of his testimony. The Prosecutor submits that she only sought submission of this video at the time of the testimony because only then did she learn that Witness P-0045 was no longer in possession of his original notes; she also notes that the Defence for Mr Gbagbo did not oppose the presentation of the video in court.
7. Regulation 35(2) of the Regulations of the Court stipulates that an extension of a time limit can only be granted if the party seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control.

8. In its decision dated 13 May 2016,⁶ the Chamber stated that it would “no longer allow the addition of any further incriminating evidence”, and hence any modification of the Prosecutor’s List of Evidence, with the only possible exception being “entirely new, non-duplicative, evidence which was obtained by the Prosecutor after the disclosure deadline, but only if it can be shown that this new evidence could not reasonably have been obtained by a diligent Prosecutor before the disclosure deadline”.
9. The Chamber is not persuaded that the items referred to in the First Application meet either the requirements set forth in regulation 35 for an extension of time, or the conditions making amendments to the list of evidence permissible as indicated in the Chamber’s decision dated 13 May 2016. From the start, the Prosecutor was always aware that she was not in possession of Witness P-0045’s original notes and should therefore have been aware of the risk that those originals might get lost in the years following the time when she had made copies. Furthermore, the Prosecutor maintains having located and registered the video as early as 12 July 2016 and having disclosed it to the Defence on 21 July 2016. It seems to the Chamber that it was rather at that stage that a diligent Prosecutor might and possibly should have sought addition of the item to the list of evidence and that the decision to wait until the start of Witness P-0045 testimony seems the result of the realisation that this step had not been taken at the appropriate time, rather than the effect of a factor outside her own control.
10. The Chamber reiterates⁷ that allowing the Prosecutor to modify her list of evidence simply on the basis of the fact that her appreciation of a given document, or her own strategy about it, changes over time, would be

⁶ ICC-02/11-01/15-524.

⁷ See Oral decision dated 8 March 2017, T-130, pages 1-5.

tantamount to depriving not only the deadline for the submission, but even the existence of a list of evidence of any meaningful content and would significantly compromise its usefulness for the purposes of preparation by the Defence teams.

11. For these reasons, the Chamber rejects the First Application.

The Second Application

12. In the Second Application, the Prosecutor is seeking an extension of time “to re-disclose” document CIV-D15-0001-6610 “as incriminatory material” and to add it to its list of evidence, as well as to submit it pursuant to paragraph 43 of the Directions; alternatively, the Prosecutor requests that the Chamber request submission of this document in the exercise of its own powers under articles 64(6)(d) and 69(3) of the Statute; this “for the purpose only of submitting the name appearing on page 6612 – “SANGANOKO Mory” into the record. The Prosecutor had sought to use the document (originally disclosed to the Prosecutor by the Defence for Mr Gbagbo) during the questioning of Witness P-10, with a view to dispelling uncertainties as regards the spelling of the name of one of P-10’s subordinates appearing on other documents used by the Prosecutor during her re-questioning of this Witness.

13. The Chamber notes that item CIV-D15-0001-6610 consists of a page from the 2007 Official Journal of the Ivory Coast. Since the document might assist the Chamber in making determinations relevant to the trial, it should be submitted and included in the record of the case. The Chamber also notes that the document originally came from the Defence for Mr Gbagbo and was discussed in the courtroom, as already mirrored in the e-court metadata.

14. Accordingly, the Chamber rejects the Second Application, decides that document CIV-D15-0001-6610 shall be submitted in the record of the case and orders the Registry to accordingly update the document’s metadata.

The Third Application

15. In the Third Application, the Prosecutor seeks to re-disclose as incriminatory material, add to her list of evidence and submit pursuant to paragraphs 43 and 44 of the Directions two excerpts of the speech given by Mr Blé Goudé at the Bar Le Baron of Yopougon on 25 February 2011: more specifically, (i) “a further video excerpt” already on its list of evidence (CIV-OTP-0074-0083, at 00:11:48–00:18:53); (ii) an excerpt submitted by the Defence for Mr Gbagbo (CIV-D15-0001-0586), and (iii) their corresponding transcripts. In the Prosecutor’s submission, these excerpts, together with the one which is already on the Prosecutor’s list of evidence, would provide “the fullest reading available” of the speech.
16. The Defence for Mr Gbagbo partially opposes the Third Application, in so far as it refers to the speech’s excerpt originally submitted by them (i.e., item CIV-D15-0001-0586). The Defence for Mr Blé Goudé opposes the Third Application in full.
17. The Chamber regrets that it took the Prosecutor several years before realising that the excerpt disclosed by the Defence for Mr Gbagbo should be included in her list of evidence. By the same token, the Chamber notes that the speech portrayed in the two excerpts referred to in the Third Application is, in the Prosecutor’s submission, relevant at least to one of the charges against Mr Blé Goudé in this case. Furthermore, as noted by the Defence for Mr Blé Goudé, the Prosecutor’s submission to the effect that there is a link between the speech and the incidents occurring in Yopougon on 25-28 February 2011 has been known to the Defence teams since the pre-trial phase of the proceedings, and the excerpts of which the Prosecutor seeks submission also “contain exculpatory material”. Accordingly, the Chamber takes the view that the speech might assist it in its determination of the truth and that it is therefore

desirable that a version of this speech which is as complete and uninterrupted as possible be available on the record.

18. The Chamber finds that the relevance of these items, including for the purposes of compliance with paragraph 44 of the Directions, is adequately supported by both the submissions contained in the Third Application and the parties' submissions in their responses; this is obviously without prejudice to the Chamber's own interpretation and reading of the speech and to the fact that, as already stated in the courtroom,⁸ it is for the Chamber to determine whether the video is important and for what purpose. Accordingly, the Third Application is granted.

19. The Chamber also notes that the Defence for Mr Blé Goudé stated that it "has in its possession another excerpt from Mr. Blé Goudé's speech that it will disclose and submit to the Chamber in due course". In light of the Prosecutor's allegation that the speech referred to in the Third Application is relevant to the charges centred on the events having allegedly unfolded on the day of the speech, the Chamber finds it necessary that any and all existing excerpts of the speech be made available to it at this stage. Accordingly, the Chamber requests that this additional excerpt of the speech, as well as any and all video and/or audio recording of Mr Blé Goudé's speech at the bar Le Baron and any corresponding transcripts which is available to either of the parties, be submitted on the record, pursuant to articles 64(6)(d) and 69(3) of the Statute.

FOR THE FOREGOING REASONS, THE CHAMBER, HEREBY

REJECTS the First Application;

⁸ T-40, page 46, lines 8-11.

DECIDES that item CIV-D15-0001-6610 shall be submitted in the record of the case;

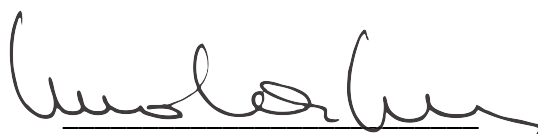
GRANTS the Third Application;

REQUESTS the Defence for Mr Blé Goudé, as well as all the other parties and participants, to submit into the record of the case any and all video and/or audio recording of Mr Blé Goudé's speech at the Bar Le Baron and any corresponding transcripts which is available to them;

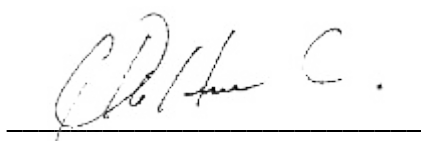
ORDERS the Registry to update the metadata of the items submitted in implementation of this decision;

ORDERS the parties to file public redacted versions of their respective filings referred to in this decision, or to indicate that they can be reclassified as public, at the earliest convenience and no later than by Friday 26 May.

Done in both English and French, the English version being authoritative.



Judge Cuno Tarfusser, Presiding Judge



Judge Olga Herrera Carbuca



Judge Geoffrey Henderson

Dated 15 May 2017

At The Hague, The Netherlands