

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: *English*

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

Date: **19 May 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***

PUBLIC

Public Redacted Version of the “Defence Response to the ‘Prosecution’s amendments to its application to conditionally admit the prior recorded statements and related documents of Witnesses P-0108, P-0433, P-0436, P-0402, P-0438, P-0459 and P-0109 under rule 68(3)’” (ICC-02/11-01/15-862-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

I. Introduction

1. On 7 February 2017, the Prosecution submitted under Rule 68(3) an application to conditionally admit the prior recorded statements and related documents of Witnesses P-0108, P-0433, P-0436, P-0402, P-0438, P-0459 and P-0109 (“the Application”).¹ More than a month later and after the Defence for Charles Blé Goudé (the “Defence”) presented its objections, the Prosecution filed an amendment to the Application.² The Prosecution submitted that it was filing an amendment for two reasons. Firstly, it wanted to ensure consistency with its consolidated Rule 68 application. Secondly, the Prosecution wished to meet some of the concerns that the Defence raised in its objections to the Application.
2. The Defence hereby presents its response to the Prosecution’s amendments to the Application.

II. Confidentiality

3. Pursuant to regulation 23bis (2) of the Regulations, the Defence requests that the present response be received and classified as “confidential”, as it refers to a request which has been classified as confidential.

III. Submissions

4. The Prosecution submits that as a matter of fairness to the accused it has decided to adopt a different approach to its Rule 68(3) applications, and thus it will no longer seek to introduce under Rule 68(3) “all evidence related to the acts and conduct of the Accused and/or all evidence offering opinion

¹ ICC-02/11-01/15-796-Conf.

² ICC-02/11-01/15-855-Conf.

evidence about the Accused.”³ In keeping with this new approach, the Prosecution no longer seeks to admit the entire prior recorded statements of Witnesses P-0108, P-0433, P-0436, P- 0402, P-0438, P-0459 and P-0109, and now requests to exclude the paragraphs, which relate to Mr. Blé Goudé’s alleged acts and conduct as well as opinion evidence relating to Mr. Blé Goudé.

5. The Defence regrets the untimely filing of the Prosecution’s amendments, and submits that the Prosecution could and should have made its request to amend the application earlier. The Prosecution’s first stated reason for amending its request is that it wants to ensure consistency between it and its consolidated Rule 68 application. The consolidated Rule 68(3) application was filed on 28 February 2017, and therefore the amendment to the Rule 68(3) request for P-0108, P-0433, P-0436, P- 0402, P-0438, P-0459 and P-0109 could have been made on or around the same date. By doing so, the Prosecution would have allowed the Defence sufficient time to analyse each of the 7 witnesses’ statements in light of the amendment.

6. Now, the Defence simply does not have the time or the resources to go through these witness statements again. In the interests of fairness to Mr. Blé Goudé, the Defence requests that Witnesses P-0108, P-0433, P-0436, P- 0402, P-0438, P-0459 and P-0109 testify *viva voce* and that Rule 68(3) not be applied in the instant case. Rule 68(1) requires that the application of Rule 68(3) not be prejudicial to the defence. It is unfortunate that the Prosecution only began taking it into account as of 28 February 2017.

7. Moreover, the Prosecution’s amendment did not eliminate all the paragraphs relating to Mr Blé Goudé’s alleged acts and conduct, or the paragraphs, which would constitute opinion evidence relating to Mr. Blé Goudé. Paragraph 49

³ ICC-02/11-01/15-855-Conf, para. 8.

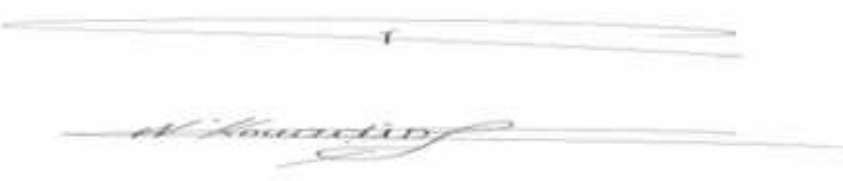
of Witness P-436's statement states that Mr. Blé Goudé's [REDACTED]⁴ These individuals are alleged to be [REDACTED]. In paragraph 78, Witness P-436 alleges that after Mr. Blé Goudé [REDACTED].⁵ These two paragraphs should have been included in the Prosecution's amended application.

RELIEF SOUGHT

For the foregoing reasons, the Defence respectfully requests the Chamber to:

- REJECT the application of Rule 68(3) to Witnesses P-0108, P-0433, P-0436, P-0402, P-0438, P-0459 and P-0109
- In the alternative, if the Chamber decides to grant the Prosecution's amended application to additionally exclude paragraphs 49 and 78 of Witness P-436's statement.

Respectfully submitted,



⁴ CIV OTP 0058 0320, para. 49.

⁵ CIV OTP 0058 0320, para. 78.

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

Dated this

19 May 2017

At The Hague, the Netherlands