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

Date: 12 June 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
With Confidential Annex A**

Public redacted version of "Prosecution's Urgent Request to add Witness P-0239's screening note to the witness's familiarisation package", 12 June 2016, ICC-02/11-01/15-955-Conf

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 urgently seeks an order of the Chamber, pursuant to article 64(6)(f) of the Rome Statute, for Witness P-0239 to be provided, during his familiarisation, with a copy of the notes taken at his screening meeting of [REDACTED] with the OTP (“screening note”).¹ This request is made on an exceptional basis because the witness’s screening note contains a further detail relevant to [REDACTED] that is not apparent in the witness’s signed statement.² The witness ought to be provided with a copy of the screening note in order to best refresh his memory of prior utterances made to the OTP.
2. The request is urgent, as the OTP is due to handover the familiarisation material to the Victims and Witnesses Unit (“VWU”) on 16 June 2017.

Confidentiality

3. This filing is classified as confidential, as it refers to information that is not yet available to the public. The Prosecution files a public redacted version concurrently.

Procedural History

4. On 2 December 2015, the Chamber published the Unified Protocol on witness preparation and familiarisation.³ The Unified Protocol provides at paragraph 80 that during witness familiarisation, the VWU shall provide to the witness, *inter alia*, a copy of any signed statement and recorded interview, “to refresh his/her memory.” The term “statement” was defined to include “any signed statement and recorded interview (audio, video or both) and, (ii) any document or information generated or provided by the witness when giving any of his/her previous statements.” The preliminary paragraphs of the Unified Protocol state

¹ CIV-OTP-0036-0132, attached as Annex A.

² CIV-OTP-0037-0425.

³ Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial: ICC-02/11-01/15-355-Anx (“Unified Protocol”).

that the VWU will apply the protocol to all witnesses called to testify, “(u)nless ordered otherwise.”⁴

5. On 9 March 2016, the Chamber found in an oral ruling that a number of documents, including a witness’s screening note, were “records of previous interviews of the witness in the context of the case... (and) relevant to the facts and circumstances to which the witness is likely to refer in the course of his testimony.”⁵ Accordingly, the Chamber rejected the Gbagbo Defence’s request to determine that the Unified Protocol had been violated by the inclusion of these documents in the familiarisation package.
6. On 1 December 2016, the Chamber found that another witness’s screening note, which was not authored or signed by the witness, nor included or otherwise referred to in her statement, was “clearly not a previous statement within the meaning of paragraph 80 of the witness familiarisation protocol.”⁶ The Chamber therefore determined that “documents of this nature shall not be included in the material provided to a witness for the purposes of the familiarisation.”⁷

Submissions

7. Witness P-0239’s screening note contains a further detail that is not apparent in his signed statement. [REDACTED], the screening note records the witness as saying [REDACTED].⁸ In his statement, the witness states that [REDACTED],⁹ [REDACTED].¹⁰ The statement does not, however, clarify the source of the witness’s knowledge, including whether [REDACTED]. [REDACTED] is a highly relevant circumstance of his evidence, and one on which he will be questioned during his testimony.

⁴ Unified Protocol, para. 3.

⁵ ICC-02/11-01/15-T-27-ENG, p. 2, lns. 9-14.

⁶ ICC-02/11-01/15-T-109-Red-ENG, p. 2, lns. 1-4.

⁷ ICC-02/11-01/15-T-109-Red-ENG, p. 2, lns. 13-14.

⁸ CIV-OTP-0036-0132 at 0133 (beginning of fourth paragraph, emphasis added).

⁹ CIV-OTP-0037-0425 at 0443, paras. 120-122.

¹⁰ CIV-OTP-0037-0425 at 0443, para. 127.

8. As a reliable record of his oral statement to the OTP, Witness P-0239's screening note should be provided to him in order to refresh his memory of his prior utterances to the OTP to the fullest extent possible. The screening note was written by OTP investigators and, although not signed by the witness, is nevertheless a reliable record of the information previously provided by the witness to the OTP. In this specific instance, where the screening note contains information not found in the statement, providing the screening note to the witness during familiarisation will allow him to refresh his memory on the totality of his utterances to the OTP in the context of the case and would facilitate his testimony.
9. Finally, the Prosecution notes that while Witness P-0239's signed statement does not make reference to [REDACTED], it does refer to his screening with OTP investigators. At paragraph 9 of his statement, the witness describes having his first contact with the OTP on [REDACTED], the purpose of which was to evaluate whether he had information of interest to the Office.¹¹

Conclusion

10. For all of the foregoing reasons, the Prosecution seeks permission to add Witness P-0239's screening note to his familiarisation package.



Fatou Bensouda, Prosecutor

Dated this 12th day of June 2017

At The Hague, The Netherlands

¹¹ CIV-OTP-0037-0425 at 0427-0428, para. 9: “Le [REDACTED] j’ai eu un premier contact avec des enquêteurs du Bureau du Procureur [REDACTED] et [REDACTED] dans le cadre d’une rencontre préliminaire dont le but était d’évaluer si j’avais des informations qui pouvaient intéresser le Bureau du Procureur.”