

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **15 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

**Decision on the Prosecutor's urgent request to add Witness P-0239's screening note
to the witness's familiarisation package dated 12 June 2017**

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(2), 64(3)(a) and 64(6)(f) of the Rome Statute, issues this decision on the Prosecutor's "Urgent request to add Witness P-0239's screening note to the Witness's familiarisation package" dated 12 June 2017 ("Prosecutor's Request").¹

1. The Prosecutor is seeking an order of the Chamber allowing Witness P-0239 to be provided, in the context and for the purposes of his imminent familiarisation process and "on an exceptional basis", with "a copy of the notes taken at his screening meeting" with the OTP. In the Prosecutor's submission, the order would be warranted by the fact that the Witness's screening note² contains "a further detail" relevant to the facts underlying one of the charges, which detail "is not apparent in the witness's signed statement", and this with a view "to best refresh[ing]" Witness P-0239's "memory of prior utterances made to the OTP".

2. Pursuant to an order shortening the time limit for responses,³ the Defence for Mr Blé Goudé⁴ and the Defence for Mr Gbagbo⁵ responded to the Prosecutor's Request on 14 June 2017, both objecting to the Request. The LRV did not file a response.

3. The Chamber notes that, pursuant to paragraph 80 of its "Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial" ("Protocol"),⁶ the documents to be provided by the Victims and Witnesses Unit to a witness to refresh his or her memory are the following: "(i) a copy of all the

¹ ICC-02/11-01/15-955-Red.

² CIV-OTP-0036-0132, in ICC-02/11-01/15-955-Conf-AnxA.

³ Presiding Judge's email sent on 13 June 2017, at 9:46 hours.

⁴ ICC-02/11-01/15-956-Conf.

⁵ ICC-02/11-01/15-957-Red.

⁶ ICC-02/11-01/15-355-Anx.

statements the witness has previously given. The term statement includes 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 Chamber also recalls its oral ruling dated 1 December 2016,⁷ where it decided that notes taken by investigators by the Office of the Prosecutor during meetings with witnesses occurring prior to the making of a statement, when they are not authored or signed by the witness or otherwise included or referred to in that witness's statement, neither qualify as "previous statements" within the meaning of paragraph 80 of the Protocol, nor are to be regarded as essential to the comprehension of the witness's statement within the meaning of the Chamber's oral ruling dated 9 March 2016⁸. The 1 December 2016 ruling also clarified that "for the future, documents of this nature shall not be included in the material provided to a witness for the purpose of the familiarisation."

4. In the view of the Chamber, the nature and content of Witness P-0239's screening notes do not warrant any departure from either the plain wording of the Protocol, or from the Chamber's previous rulings on similar matters. The fact that OTP investigators seemingly failed to focus on that particular detail at the time and in the context of the subsequent interviews leading to Witness P-0239's statement does not justify a departure from the overall system put in place by the Chamber in December 2015 and in the Protocol, which *inter alia* does not allow for witnesses' preparation. The Prosecutor will have the opportunity, during the course of her examination, to question the witness in such a way as to allow him to refer to any and all details which she deems relevant for the purposes of making her case, including to the specific detail appearing in the Witness P-0239's screening notes.

⁷ ICC-02/11-01/15-T-109, page 1, line 19 to page 2, line 20.

⁸ ICC-02/11-01/15-T-27, page 1, line 19 to page 2, line 16.

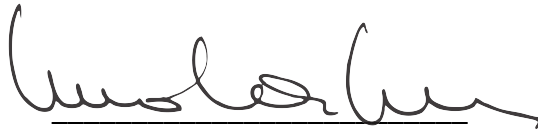
5. Finally, the Chamber reiterates that, as clarified during the hearing on 2 December 2016,⁹ witness screening notes are internal documents, exclusively authored by the investigators meeting the witness; accordingly, they shall not be used in the context or for the purposes of the questioning of a witness.

FOR THE FOREGOING REASONS, THE CHAMBER, HEREBY

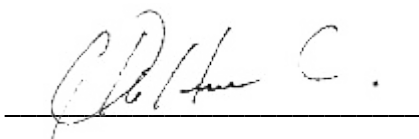
REJECTS the Prosecutor's Request;

ORDERS the Defence for Mr Blé Goudé to file a public redacted version of its response to the Prosecutor's Request by Friday 16 June 2017.

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



Judge Cuno Tarfusser, Presiding Judge



Judge Olga Herrera Carbuccion



Judge Geoffrey Henderson

Dated this 15 June 2017

At The Hague, The Netherlands

⁹ ICC-02/11-01/15-T-110-CONF, page 4, lines 13 to 19.