

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 18 April 2018

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

**Prosecution's Notice that it does not intend to rely on evidence related to
Witness P-0129**

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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**Unrepresented Applicants
(Participation/Reparation)**

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Victims Participation and Reparations Section Other

Introduction

1. As previously foreshadowed,¹ the Prosecution hereby notifies the Trial Chamber, first, that it is withdrawing Witness P-0129 from its List of Witnesses, and second, that it no longer seeks submission of Witness P-0129's statement and related documents,² due to the unavailability of the Witness to obtain an accompanying declaration within the meaning of rule 68(2)(b) of the Rules of Procedure and Evidence ("Rules").³

2. Further, the Prosecution notifies the Chamber, Parties and participants that it will not rely upon the testimony of Expert Witness P-0410, or any documents submitted during the course of that testimony, insofar as this evidence relates to Witness P-0129. Finally, the Prosecution withdraws its submission, under paragraphs 43-44 of the Directions on the conduct of the proceedings,⁴ of three documents related to Witness P-0129.⁵

Procedural History

3. On 28 February 2017, the Prosecution sought the "conditional admission into evidence of the prior recorded statements, including related documents" of Witness P-0129 under rule 68(2)(b) of the Rules.⁶ On 6 June 2017, the Trial Chamber allowed the introduction of Witness P-0129's statement,⁷ annexes to the statement and documents referred to in the statement⁸ ("Witness P-0129's statement and related documents") under rule 68(2)(b), subject to the submission of an accompanying

¹ ICC-02/11-01/15-1111-Conf, para. 8.

² ICC-02/11-01/15-829-Conf ("28 February 2017 Request"). For the public redacted version, see ICC-02/11-01/15-829-Red2. See also ICC-02/11-01/15-829-Conf-Anx1 and ICC-02/11-01/15-829-Conf-Anx2.

³ ICC-02/11-01/15-950-Conf ("6 June 2017 Decision"), paras. 41 and 73, and p. 45. For the public redacted version, see ICC-02/11-01/15-950-Red.

⁴ ICC-02/11-01/15-498-AnxA.

⁵ ICC-02/11-01/15-1092 ("22 December 2017 Request") and ICC-02/11-01/15-1092-Conf-AnxB. The relevant documents are: CIV-OTP-0056-0009; CIV-OTP-0056-0014; CIV-OTP-0059-0198.

⁶ 28 February 2017 Request. See also ICC-02/11-01/15-829-Conf-Anx1 and ICC-02/11-01/15-829-Conf-Anx2.

⁷ 6 June 2017 Decision, paras. 41 and 73, and p. 45.

⁸ 6 June 2017 Decision, para. 74.

declaration, within the meaning of rules 68(2)(b)(ii) and (iii) (“rule 68(2)(b) declaration”).

Notice

Witness P-0129’s statement and related documents

4. The Prosecution has not obtained a rule 68(2)(b) declaration from Witness P-0129, since it has been unable to locate the witness, despite numerous attempts to do so. The Prosecution has therefore not been in a position to meet the pre-condition to submission under rule 68(2)(b), as required by the Chamber’s 6 June 2017 Decision.

5. Accordingly, the Prosecution no longer seeks the submission of – and will not rely on – Witness P-0129’s statement (CIV-OTP-0071-2186), or the annexes to the statement (CIV-OTP-0071-2195 and CIV-OTP-0071-2197), and the documents referred to in the statement (CIV-OTP-0071-2154, CIV-OTP-0071-2155, CIV-OTP-0071-2150, CIV-OTP-0071-2156 and CIV-OTP-0056-0013).⁹

Withdrawal of Witness P-0129

6. As there does not appear to be any prospect of contacting Witness P-0129, the Prosecution also notifies the Chamber that it is withdrawing Witness P-0129 from its List of Witnesses.

⁹ 28 February 2017 Request. See also ICC-02/11-01/15-829-Conf-Anx1 and ICC-02/11-01/15-829-Conf-Anx2; 6 June 2017 Decision, paras. 41 and 73, and p. 45.

Evidence related to Witness P-0129 submitted on the record through Expert Witness P-0410

7. Before questioning Witness P-0410 on documents related to Witness P-0129, the Prosecution informed the Chamber, Parties and participants that Witness P-0129's rule 68(2)(b) certification had not yet been completed.¹⁰

8. Consistent with its withdrawal of Witness P-0129 from its List of Witnesses, the Prosecution provides notice that it will not rely on the evidence elicited during its examination of Witness P-0410, insofar as it relates to the injuries suffered by Witness P-0129,¹¹ or upon any documents submitted during the questioning of Witness P-0410, insofar as such documents relate to Witness P-0129.¹² For the avoidance of any doubt, the Prosecution will also not rely upon evidence elicited during questioning by the Defence teams of Expert Witness P-0410, insofar as that evidence relates to Witness P-0129.¹³

Evidence related to Witness P-0129 included in application pursuant to paragraphs 43-44 of the Directions on the conduct of the proceedings

9. On 22 December 2017, the Prosecution requested the submission, under paragraphs 43-44 of the Directions on the conduct of the proceedings, of several documents related to the testimony of Expert Witness P-0410.¹⁴ These documents included three documents related to Witness P-0129.¹⁵

¹⁰ ICC-02/11-01/15-T-217-CONF-FRA ET, p. 46.

¹¹ For the relevant excerpt of Witness P-0410's hearing transcripts, see ICC-02/11-01/15-T-217-CONF-FRA ET, p. 46, ln. 18 to p. 52, ln. 17; ICC-02/11-01/15-T-217-CONF-ENG ET, p. 44, ln. 5 to p. 50, ln. 7.

¹² Submitted documents related to Witness P-0129 are: CIV-OTP-0059-0201 (Witness P-0410's report related to Witness P-0129); CIV-OTP-0056-0011 (request for an x-ray); CIV-OTP-0056-0012 (original x-ray); CIV-REG-0001-0245 (x-ray included in CIV-OTP-0059-0201 at 0212 on which Witness P-0410 marked the metallic fragment); CIV-OTP-0056-0013 (report of radiologist); CIV-OTP-0102-0437 (original colour photograph included at page 0210 of Witness P-0410's report related to Witness P-0129).

¹³ See ICC-02/11-01/15-T-218-CONF-FRA ET, p. 4, ln. 24 to p. 7, ln. 5 and p. 65, ln. 20 to p. 68, ln. 28; ICC-02/11-01/15-T-218-CONF-ENG ET, p. 4, ln. 16 to p. 6, ln. 24 and p. 59, ln. 10 to p. 62, ln. 5.

¹⁴ 22 December 2017 Request, ICC-02/11-01/15-1092-Conf-AnxB.

¹⁵ The relevant documents are: CIV-OTP-0056-0009; CIV-OTP-0056-0014; CIV-OTP-0059-0198.

10. As a result of its withdrawal of Witness P-0129 from its List of Witnesses, the Prosecution provides notice that it withdraws its request for the submission of these three documents.

Conclusion

11. In the circumstances, the Prosecution:

(a) notifies the Chamber that it is withdrawing Witness P-0129 from its List of Witnesses, and no longer seeks submission of Witness P-0129's statement and related documents;

(b) notifies the Chamber, Parties and participants that it will not rely upon the evidence of Expert Witness P-0410 insofar as it relates to Witness P-0129, or upon any documents submitted during the questioning of Witness P-0410, insofar as such documents relate to Witness P-0129;

(c) withdraws its request for submission, under its 22 December 2017 Request, of three documents related to Witness P-0129.



Fatou Bensouda, Prosecutor

Dated this 18th day of April 2018

At The Hague, The Netherlands