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No.: ICC-02/11-01/11
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TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Cuno Tarfusser
Judge Olga Herrera Carbuca

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF THE PROSECUTOR v. LAURENT GBAGBO

PUBLIC

With Annexes A-O - Confidential, *EX PARTE*, only available to the Prosecution

**Prosecution's request pursuant to regulation 35 for variation of time limit to
rediscover certain documents with fewer redactions and Prosecution's request for
authorisation to maintain redactions**

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. On 17 November 2014, Trial Chamber I (“Chamber”) ordered the Office of the Prosecutor (“Prosecution” or “OTP”) “to provide full disclosure of all material to the Defence no later than 6 February 2015.”¹ On 15 December 2014, it issued decision ICC-02/11-01/11-737 (“Redaction Protocol”).²
2. The Prosecution respectfully requests the Chamber to:
 - a. extend the time limit pursuant to regulation 35 of the Regulations of the Court (“RoC”) for disclosure of documents previously disclosed with redactions to the metadata only; and
 - b. authorise the maintenance of redactions:
 - i. previously made to the names of investigators continuing to conduct investigations in the related *The Prosecutor v. Charles Blé Goudé* case (“*Blé Goudé* case”) under Category A.4. of the Redaction Protocol; and
 - ii. falling under Category D (“Non-standard redactions”) of the Redaction Protocol.

Confidentiality

3. Pursuant to regulation 23*bis* of the RoC the Prosecution files the annexes confidentially, *ex parte*, only available to the Prosecution as knowledge by the Defence of the content of the annexes would defeat the purpose of the filing.

¹ ICC-02/11-01/11-723, para.10.

² ICC-02/11-01/11-737-AnxA.

Request for variation of time limit to redisclose certain documents

4. The Prosecution requests the Chamber to extend the time limit pursuant to regulation 35 for the redisclosure of the metadata relating to 2115 documents. These 2115 documents have been previously disclosed with redactions to their metadata only, and not to their content.
5. The Prosecution has, since the issuance of the Redaction Protocol, been faced with a large number of competing obligations. It has been required to review approximately 3000 items of evidence previously disclosed with redactions to their content and/or metadata for redisclosure. These items contain many witness interviews in the form of screenings, written statements and transcripts of interviews which have to be read carefully in order to avoid any error that could have security implications. Following review, it is necessary to individually and manually remove and/or replace a large number of redactions with new redactions containing the categories adopted in the Redaction Protocol and to implement the pseudonyms. In relation to metadata redactions, these tasks can only be performed manually by OTP's Knowledge Base Unit ("KBU") staff members. The KBU provides services not only to the *Gbagbo* trial team but to all Prosecution teams, including the *Ntaganda* trial team that also had significant and voluminous disclosure deadlines.³
6. The Prosecution also notes that in order to disclose all relevant material in its possession by 6 February 2015, it also had to review a number of documents and statements that have only recently become available to the Prosecution. As previously mentioned, the Prosecution's investigations are being finalised.⁴ Therefore, the Prosecution also had to manage the review, application of redactions where necessary, and prepare these newly collected documents for their disclosure by 6 February 2015. In addition to the 613 new documents

³ *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06-382. The *Ntaganda* disclosure deadline was 30 January 2015.

⁴ ICC-02/11-01/11-T-25-CONF, p.9, lns.6-8 (open session) and ICC-02/11-01/11-T-25-CONF, p.4, lns.17-19 (open session). See also ICC-02/11-01/11-741.

disclosed on 6 February 2015,⁵ the Prosecution already disclosed 956 documents on 16 January 2015.⁶ This process also takes time and resources.

7. Additionally, the Prosecution had to finalise its list of evidence and list of witnesses (with the relevant metadata fields populated) and, among other things, prepare a request for non-standard redactions (contained in the present filing) and prepare ongoing filings in the present case and related cases in the *Côte d'Ivoire* situation.⁷
8. In discharging its competing obligations, the Prosecution has prioritised the review and redisclosure of documents previously disclosed with redactions to the content (whether to the content only, or to both the content and the metadata). It is anticipated that the redisclosure of these documents – with previous redactions removed or replaced in accordance with the Redaction Protocol – will be of greater assistance to the Defence than the redisclosure of documents where existing redactions apply only to the metadata. Redactions to the metadata apply to only two fields in the Ringtail database, namely Source Identity and Chain of Custody. The Prosecution submits that the delayed redisclosure of documents previously disclosed with redactions only to the metadata does not impair the Defence's ability to prepare its case, since the Defence still has access to the content of the documents themselves.
9. Consequently, in light of its competing obligations, the Prosecution requests an extension of the time limit to 6 March 2015 to redisclose to the Defence the metadata of these 2115 documents with lesser redactions.

Request for authorisation to maintain redactions

10. The Prosecution requests the Chamber to authorise the maintenance of two categories of redactions pursuant to the Redaction Protocol:

⁵ Pre-Trial INCRIM Package 35, Pre-Trial INCRIM Package 37, Pre-Trial PEXO Package 22, Pre-Trial Rule 77 Package 33 and Pre-Trial Rule 77 Package 35.

⁶ Pre-Trial INCRIM Package 34 and Pre-Trial Rule 77 Package 32.

⁷ For example, ICC-02/11-02/11-207 and ICC-02/11-01/11-755.

- a. Category A.4. – redactions previously made to the names of investigators continuing to conduct investigations in the related *Blé Goudé* case; and
- b. Category D - non-standard redactions.

11. In relation to Category A.4., the Prosecution seeks maintenance of redactions applied to the names of 10 investigators in order to protect the ongoing investigation in the related *Blé Goudé* case. Revealing to the Defence the identity of these investigators is likely to impact upon the Prosecution's ability to conduct its investigations, as it may unduly attract attention to the movement of Prosecution staff and by extension to (potential) witnesses. The redactions ensure that the Prosecution can continue to use during its investigations the limited number of investigators that it currently has at its disposal.

12. The Prosecution submits that the redactions sought would not result in unfairness to the Defence. Under the pseudonym regime employed by the Prosecution, the Defence already has the ability to cross-reference the involvement of investigators across the documents. Moreover, the Prosecution will lift these redactions once investigations in the *Blé Goudé* case are completed, anticipated to occur in approximately two months' time.

13. By way of confidential, *ex parte* annexes, and in compliance with the Redaction Protocol, the Prosecution provides to the Chamber individual lists in respect of each investigator indicating the documents (including metadata) where their names appear:

- *Annex A: Redaction Chart for CIV1-001*
- *Annex B: Redaction Chart for CIV1-018*
- *Annex C: Redaction Chart for CIV1-022*
- *Annex D: Redaction Chart for CIV1-024*
- *Annex E: Redaction Chart for CIV1-030*
- *Annex F: Redaction Chart for CIV1-031*
- *Annex G: Redaction Chart for CIV1-033*
- *Annex H: Redaction Chart for CIV1-034*
- *Annex I: Redaction Chart for CIV1-035*

- *Annex J: Redaction Chart for CIV1-036*

14. In relation to Category D, the Prosecution seeks maintenance of redactions on various grounds as set out below (with the exception of redactions relating to Witness P-0234). By way of confidential, *ex parte* annexes and in compliance with the Redaction Protocol, the Prosecution provides to the Chamber the following charts indicating the location of and justification for redactions sought.

- *Annex K: Redaction Chart for Witness P-0234*

15. The justification for the redaction sought is set out in the annexed chart. The Prosecution does not provide the justification in the present public filing, as knowledge by the Defence would defeat the very purpose of the redaction sought.

- *Annex L: Redaction Chart for Witness P-0316*

16. The Prosecution seeks redactions in order to protect the information of the witness, namely the current location of the witness and his family. The Prosecution recalls that Pre-Trial Chamber I has previously authorised the non-disclosure of the witness's identity, finding that disclosure would "pose an objectively justifiable risk to the safety of the witness".⁸ The witness's identity now being disclosed, protection of his location is necessary to address this risk.

- *Annex M: Redaction Chart for items CIV-OTP-0053-0113 and CIV-OTP-0053-0203*

17. Item CIV-OTP-0053-0113 is the transcript of a video provided by the United Nations, and CIV-OTP-0053-0203 is a transcript and partial translation (Dioula into French) of the same. The Prosecution seeks redactions in both items to the possible name of the video's source which appears at the end of the video. The United Nations has provided the Prosecution with one redacted version of the video and one unredacted version, on the basis that only the redacted version could be disclosed. The Prosecution has duly disclosed to the Defence only the

⁸ ICC-02/11-01/11, para.17.

redacted version of the video. Single redactions to the transcript / translations are therefore sought in order to maintain consistency with the redaction already applied to the video disclosed to the Defence.

- *Annex N: Redaction Chart for Witness P-0435*

18. The Prosecution seeks redactions of information relating to social media accounts for the purpose of ongoing investigations in the *Blé Goudé* case. The redactions ensure that the Prosecution can continue to conduct investigative steps in that case. As mentioned above in paragraph 12, it is anticipated that the investigation will be complete in two months' time.

- *Annex O: Redaction Chart for Witness P-0402*

19. The Prosecution seeks redactions in order to protect the information of the witness, namely the current location of the witness and his family. The witness has expressed concerns about his safety to investigators on multiple occasions, due largely to the fact that he lives in a pro-Gbagbo area.

Conclusion

20. For the foregoing reasons, the Prosecution respectfully requests the Chamber to:

- a. extend, to 6 March 2015, the time limit for redisclosure of documents previously disclosed with redactions to the metadata only; and
- b. authorise the maintenance of redactions:
 - i. made to the names of investigators continuing to conduct investigations in the related *Blé Goudé* case; and
 - ii. sought under Category D ("Non-standard redactions") of the Redaction Protocol.



Fatou Bensouda, Prosecutor

Dated this 6th day of February 2015

At The Hague, The Netherlands