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TRIAL CHAMBER I

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

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF THE PROSECUTOR v. LAURENT GBAGBO

Public Redacted Version of

**Prosecution's request pursuant to regulation 35 for an extension of time to disclose
certain material**

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 Office of the Prosecutor (“Prosecution” or “OTP”) requests, pursuant to regulation 35 of the Regulations of the Court, that the 6 February 2015¹ time limit to disclose all rules 76 and 77 of the Rules of Procedure and Evidence (“Rules”) material in its possession be extended in relation to certain items of evidence (“Request”).
2. The Prosecution recalls that on 13 January 2015 this deadline was partially suspended “solely for the purpose of material that is currently not in the possession of the Prosecution, and which may subsequently become available as a result of ongoing investigations in the Blé Goudé case”.² As a result, this Request may be moot given that the items of evidence in question also relate to the investigations in the *Blé Goudé* case. The Prosecution is nonetheless submitting this Request out of an abundance of caution.
3. The Prosecution submits that granting this Request will not cause the Defence any undue prejudice. With today’s disclosure, the Defence is now in possession of the near totality of the evidence on which the Prosecution intends to rely at trial. Any future additions subsequent to this Request will be mostly corroborative in nature, or constitute ancillary documents to evidence already disclosed.

Confidentiality

4. This filing is submitted as “Confidential, *ex parte*” as it refers to ongoing investigations and to material that is not yet available to the public or the Defence, including information on the current location of Prosecution witnesses. A Confidential redacted version will be filed concurrently and a public redacted version as soon as practicable.

¹ ICC-02/11-01/11-723, para.10 (“17 November Order”).

² ICC-02/11-01/11-746, para.16.

Submissions

5. As noted at the status conference of 4 November 2014³ and in its filing of 27 October 2014,⁴ the Prosecution has been actively conducting further and confined investigations in order to clarify, confirm or corroborate certain aspects of its case as well as to authenticate previously collected materials. In the course of these further investigative activities, a number of witness interviews, including article 55(2) of the Rome Statute ("Statute") witness interviews (insider witnesses) were conducted and material collected. The Prosecution notes that, since the *Gbagbo* case is closely related to the *Blé Goudé* case, this recently collected additional material is equally relevant to both cases.

6. In order to meet the 6 February deadline and given the large number of material that had to be processed, disclosed or redisclosed with fewer redactions and other competing tasks such as providing the list of witnesses in compliance with the E-court protocol, the Prosecution had to set an internal deadline of 30 January 2015 in order to meet the disclosure deadline.⁵ This internal deadline ensured that other units, such as the Knowledge Based Unit ("KBU"), had sufficient time to process the material for final disclosure. Furthermore and as is detailed below, the Prosecution could not process a number of items of newly collected or received material.

Outstanding transcriptions of interviews of Witnesses P-0044, P-0477, P-0480, P-0520, P-0524, P-0544 and P-0545 conducted pursuant to article 55(2)

7. As part of its ongoing investigations, the Prosecution has conducted a number of insider interviews in recent months. Each of these interviews was conducted over a period of several days and recorded pursuant to rule 112 of the Rules.

³ ICC-02/11-01/11-T-25-CONF-ENG CT, p.9, lns.6-8, p.13, ln.4-p.14, ln.13.

⁴ ICC-02/11-01/11-708, paras. 9 and 39.

⁵ With the exception of a few items of evidence. See ICC-02/11-02/11-203 for a description of some of these competing tasks.

8. The procedure to register and disclose audio-recorded material collected as a result of article 55(2) interviews is as follows. The audio-recordings are submitted to the OTP's Language Services Unit ("LSU") for initial transcription as soon as possible after the actual recordings are brought to the OTP Headquarters and registered in the Prosecution's Evidence Management Database ("Ringtail"). Upon completion of the initial transcriptions, two quality controls of the transcriptions are performed; one by LSU and a second one by the investigators who conducted the interview. The transcripts are subsequently registered in Ringtail. Next, the transcribed statements are further reviewed in order to apply redactions where necessary and comply with the required disclosure review obligations. Only upon completion of this process can the transcribed statements be disclosed. The process of transcribing audio-recorded interviews and preparing these transcripts for disclosure requires the completion of several successive time-consuming stages.
9. Among the recently conducted audio-recorded interviews are the second interview of P-0044 and interviews of six new witnesses: P-0477, P-0480, P-0520, P-0524, P-0544 and P-0545.
10. The Prosecution recalls that the initial transcribed statement of P-0044 was disclosed to the Defence in April 2012. Following Mr Blé Goudé's confirmation hearing, a second interview of Witness P-0044 was conducted in December 2014.
11. Witness P-0480 was interviewed in late October 2014 and P-0477 in November 2014. Both of these witnesses were interviewed over a period of several days. The Prosecution does not intend to rely on these witnesses at trial and will disclose their transcribed statements pursuant to rule 77.
12. The draft transcripts of the interview of P-0044 were made available by the LSU on 3 February 2015, on 22 January 2015 for P-0477 and on 23 January for P-0480. Quality control of these initial transcripts is currently being completed. As described above, these transcripts will be registered in Ringtail and available for

final disclosure and redaction review as soon as the quality check is finalised. The Prosecution expects to be in a position to disclose the final transcribed statements of P-0044, P-0477 and P-0480 by 6 March 2015 at the latest.

13. Witnesses P-0520, P-0524, P-0544 and P-0545 were all interviewed in January 2015. A request for their initial transcription has been submitted and is currently being processed by the LSU. Their interviews amount to a total of approximately 22 hours of audio-recordings, with initial transcripts expected to be completed in one month. The Prosecution anticipates being in a position to disclose these transcribed statements as incriminating evidence to the Defence within three weeks of receiving the draft transcripts from the LSU, therefore by the end of March 2015.

Witness P-0114

14. Witness P-0114 [REDACTED]. In order to address the questions raised by the Defence during the confirmation hearing [REDACTED], the OTP has been actively attempting to locate and interview P-0114, which has proved challenging for the reasons detailed below.
15. In September 2014, the Prosecution sought to reinitiate contact with P-0114 for the purpose of obtaining his statement. The Prosecution was finally able to reach P-0114, who was [REDACTED].
16. [REDACTED], the Prosecution was able to stay in contact with P-0114 who is willing to provide a statement. [REDACTED]. The Prosecution intends to interview P-0114 very shortly [REDACTED] and should be in a position to disclose his statement by 6 March 2015 at the latest.

Anonymous Witness P-0238

17. P-0238's anonymous statement was provided to the Defence in November 2013, pursuant to Pre-Trial Chamber I's authorisation dated 7 November 2013,⁶ granting redactions to his identity. As indicated in the "Prosecution's Submissions on the Provisional Agenda for the 4 November 2014 Status Conference"⁷, the OTP has been attempting to contact P-0238 in recent months in order to discuss the disclosure of his identity.

18. Following several attempts to reach him in Côte d'Ivoire and communications with his hierarchy, the Prosecution finally learnt in January that the witness was [REDACTED]. The OTP was able to reach P-0238 by phone on 15 January 2015. He initially expressed subjective fears and safety concerns for family members that currently are living [REDACTED]. The Prosecution's following attempts to contact P-0238 proved difficult [REDACTED] – the witness would not pick-up the telephone, and when he did, he said he could not talk. The Prosecution was finally able to reach him again on 4 February 2015. Witness P-0238 was informed that his statement and his identity would be disclosed to the Defence, since it is material to their preparation and therefore falls within rule 77. The witness said he understood and gave his consent. Furthermore, Witness P-0238 requested a few additional days to consider if he was to testify for the Prosecution or not. He was reminded of the 6 February deadline. Consequently, the Prosecution may seek authorisation to add P-0238 to its list of witnesses and his statement to the list of evidence in the coming weeks. Meanwhile, the Prosecution is disclosing today his statement and his identity to the Defence.

Witness P-0131's medical examination

19. Witness P-0131 is on the Prosecution's List of Witnesses. His initial statement in CIV-OTP-0046-1244 was provided to the Defence in November 2013. The Prosecution took a second statement from the witness which was finalised on 18 January 2015 and is also being disclosed on 6 February 2015.

⁶ ICC-02/11-01/11-554-Conf.

⁷ ICC-02/11-01/11-708, para.20.

20. Witness P-0131 has a piece of metal lodged in his body since the 17 March 2011 shelling incident that causes him great pain. On 27 January 2015, it was decided that a medical examination was warranted before any operation is performed to remove the metal object. The medical examination and x-rays are scheduled to take place on 11 February 2015. The ensuing expert medical report will be available for disclosure by 6 March 2015 at the latest.

Documents obtained from the United Nations

21. Following a request dated 27 February 2014, OTP representatives conducted a mission to review the archives of the United Nations Group of Experts on Côte d'Ivoire and of the United Nations Panel of Experts on Liberia in May 2014. On 4 June 2014, a letter requesting copies of the selected documents was sent to the United Nations. Some of the items requested were received and registered into Ringtail only on 28 January 2015.

22. Given the very recent arrival of this material and competing disclosure obligations, the Prosecution has been unable to review these items for the 6 February disclosure deadline. In addition, as mentioned at paragraph 6 above, the Prosecution set an internal deadline to 30 January for the review of all material to be disclosed by 6 February 2015. The Prosecution undertakes to disclose this material at the latest on 6 March 2015.

Video footage obtained from UNOCI and RTI

23. On 30 April 2014, the OTP requested transmission of several items, in particular video and audio material, in the possession of the UNOCI Media Monitoring and Media Development Unit. In the following months, the OTP sent its representatives on several missions to the UNOCI Public Information Office ("PIO") to assist with the compilation of media related items. Two of these missions were carried out in June 2014, and one on 8 and 9 January 2015. Relevant material, including videos, collected as a result of the June 2014 missions, was

already disclosed to the Defence in December 2014 and January 2015. Material requested following the latest 8 and 9 January 2015 mission was received on 28 January 2015 and, in light of its volume, is still being uploaded in the OTP's Ringtail. The Prosecution undertakes to review this material as soon as practicable and to disclose it to the Defence by 6 March 2015.

24. The Prosecution also sought to complete its collection of relevant video material from the archives of the *Radiodiffusion Télévision Ivoirienne* ("RTI"). The screening and collection mission at the RTI took place on 21 and 22 January 2015. Representatives of the OTP screened the main RTI archives and the *films conducteurs*, as well as the relevant RTI news broadcasts that were still missing from the OTP collection. One hundred and forty-nine (149) photographs of the *films conducteurs* obtained during this mission are being disclosed on 6 February 2015. The relevant videos have been registered and are in the process of being uploaded in the OTP's Ringtail. The Prosecution undertakes to review this material as soon as practicable and to disclose it to the Defence by 6 March 2015. Other relevant identified videos of the news broadcasts are currently being copied to DVD-Rs by the RTI. Once this copy process is completed, it will enable the physical collection of the remaining material in question by the OTP. The Prosecution undertakes to review and disclose this material as soon as practicable.

25. A report further detailing the steps undertaken to review and collect the material referred to above has been registered under CIV-OTP-0073-0938 and is also being disclosed on 6 February 2015.

Exhumations of the bodies of alleged victims of the incidents on 3 and 17 March 2011

26. From January 2014 until January 2015, the OTP, including members of its Scientific Response Unit ("SRU"), together with Ivorian authorities, conducted

several forensic missions, including exhumations, in an attempt to identify bodies of the victims of the 3 and 17 March 2011 incidents.

27. To date, a significant amount of effort and coordination was required from all participants, including the Côte d'Ivoire authorities, to plan and organise these missions. [REDACTED].

28. [REDACTED].

29. [REDACTED].

30. [REDACTED].

31. [REDACTED].

32. The DNA bio-samples collected during the forensic missions were transferred to the Netherlands Forensic Institute ("NFI") for identification. The NFI informed the OTP that the DNA results will be available at the earliest in one month, clarifying that their current priority is the ongoing identification of victims of the Malaysia airlines flight MH17. Once complete, all information relevant to the forensic missions will be disclosed to the Defence.

External examinations of the bodies of the victims of the incident on 17 March 2011

33. [REDACTED].

Conclusion

34. For these reasons, the Prosecution requests the Chamber to grant, pursuant to regulation 35, the extension of the time limit for the disclosure of the items of evidence as set out in paragraphs 7-33 above.



Fatou Bensouda, Prosecutor

Dated this 6th day of February 2015

At The Hague, The Netherlands