



Original: **English**

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

Date: **4 July 2014**

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Ekaterina Trendafilova
Judge Christine Van den Wyngaert

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF THE PROSECUTOR v. CHARLES BLÉ GOUDÉ

PUBLIC

**Public redacted version of “Prosecution’s Request for Variation of Time Limits Pursuant to Regulation 35 concerning the Confirmation of Charges”, 4 July 2014,
ICC-02/11-02/11-100-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 Office of the Prosecutor (“Prosecution” or “OTP”) requests, pursuant to Regulation 35 of the Regulations of the Court, that the time limit of 18 July 2014 to file its Document Containing the Charges (“DCC”) and List of Evidence (“LoE”) be extended by six weeks to 29 August 2014.¹ For the various reasons set out below the Prosecution needs more time to submit its DCC.

2. [REDACTED]² [REDACTED],³ the Prosecution has been actively conducting further and specific investigations into the criminal responsibility of Charles BLÉ GOUDÉ (“BLÉ GOUDÉ”) for his involvement in the post-election violence of 2010-2011. In the course of these further investigative activities, the Prosecution has conducted a number of interviews, [REDACTED] and collected additional material. This material now needs to be disclosed, a process which includes where applicable, the transcription, registration, review, and implementation of redactions. Additionally, the Prosecution team was informed that transcripts of the audio recordings of these interviews will not be ready by 18 July 2014.

3. Further, video evidence of speeches and/or statements of BLÉ GOUDÉ is important material on which the Prosecution intends to rely for the confirmation hearing. While the vast majority of these videos have been disclosed, some of their corresponding transcripts are not yet finalised and the Prosecution team has been informed that a number of the requested transcripts will not be ready by 18 July 2014.

4. Additionally, the Prosecution has been seeking the consent of the United Nations (“UN”) in order to disclose and rely on statements the disclosure of which had

¹ ICC-02/11-02/11-57.

² ICC-02/11-02/11-T-4-CONF-ENG ET, notably p. 6, *in fine*.

³ ICC-02/11-02/11-90-Conf, paras. 8-9.

not raised any issues in the Laurent GBAGBO case (“GBAGBO case”) but for which consent to disclose in the BLÉ GOUDÉ case is pending.⁴ Despite the best efforts of both the UN and the Prosecution, it is currently uncertain if the necessary consent to disclose the statements will be obtained prior to 18 July 2014.

5. The Prosecution has also recently learned [REDACTED]. Consequently, it is not certain that the Prosecution will be in a position to disclose this statement by 18 July 2014.
6. The Prosecution’s request to extend the time limit by six weeks also takes into account that the summer Court recess takes place from 19 July to 10 August. Given the practical reality that a great number of staff take their annual leave during this period, this will impact on the time required to complete the necessary process to disclose the evidence and submit the hyperlinked DCC and LoE.
7. Finally, while the BLÉ GOUDÉ case is closely related to the GBAGBO case, before BLÉ GOUDÉ’s transfer on 22 March 2014, the Prosecution was focused on the GBAGBO case with the available resources at its disposal.⁵ In particular, prior to the filing of the Amended DCC in the GBAGBO case⁶ the focus was on the collection of further evidence to address the questions of the majority in the Chamber’s decision of 3 June 2013 adjourning the GBAGBO confirmation hearing (“Decision of 3 June 2013”).⁷ Since then, the Prosecution has now had to refocus its further collection of evidence on issues more directly relevant to the criminal

⁴ ICC-02/11-01/11-626-Red.

⁵ ICC-02/11-01/11-432. While the Defence may argue that the Prosecution has more resources than Defence teams, it is recalled that the Prosecution is investigating and prosecuting many situations and cases. Additionally, the Prosecution has more onerous procedural obligations than the Defence, such as those imposed by Rule 76 and Rule 112, for instance. Finally, the Prosecution has the burden to prove its cases pursuant to Article 66.

⁶ ICC-02/11-01/11-592-Conf-Anx2-Corr2.

⁷ ICC-02/11-01/11-432.

responsibility of BLÉ GOUDÉ. And, although the Decision of 3 June 2013 was specifically made in the GBAGBO case, the recent investigative steps have also been undertaken with a view to respecting the instructions of the majority in that decision.

Confidentiality

8. This filing is classified as “Confidential” as it refers to ongoing investigations, to material that is not yet available to the public, and to submissions made in partially closed session. A public redacted version will be filed as soon as practicable.

Submissions

9. On 22 March 2014, BLÉ GOUDÉ was transferred to the seat of the Court and he first appeared before the Single Judge on 27 March 2014.⁸ At this appearance, the Single Judge scheduled the date for the confirmation hearing to 18 August 2014.⁹ Additionally when setting this date, the Single Judge indicated: “[t]his date could be put back depending on the proceedings and the requests of parties. However, this time must be sufficiently long to allow for the disclosure of evidence and exhibits and to allow the parties to prepare themselves in the most effective way.”¹⁰
10. On 14 April 2014, the Chamber ordered the Prosecutor to “file in the record of the case the document containing the charges and the list of evidence she intends to present at the hearing by Friday, 18 July 2014”.¹¹ On 1 May 2014, the Chamber

⁸ ICC-02/11-02/11-50-Conf and Conf-Anx-3, Conf-Anx4, Conf-Anx7 and Conf-Anx8; ICC-02/11-02/11-T-3-CONF-ENG-ET.

⁹ ICC-02/11-02/11-T-3-CONF-ENG-ET, p. 12, line 15.

¹⁰ ICC-02/11-02/11-T-3-CONF-ENG-ET, p. 12, lines 17-20.

¹¹ ICC-02/11-02/11-57, p.9.

held a status conference, during which the Prosecution advised the Chamber, *inter alia*, [REDACTED].¹²

Availability of Additional Evidence

11. At this same hearing, the Prosecution also advised the Chamber that [REDACTED].¹³ The Prosecution has been drafting the DCC, with references to the currently available evidence but the DCC cannot be completed until all the recently collected incriminating material is processed (including the transcription of audio recorded statements), registered, reviewed for disclosure (for possible redactions) and disclosed to the Defence. Consequently, the submission of the DCC and LoE is intrinsically linked to the progress of the processing of the additional evidence which has been recently collected during the Prosecution's further investigations.
12. [REDACTED], the Prosecution interviewed several [REDACTED] witnesses. These interviews were audio recorded [REDACTED]. Some of these interviews were conducted over a period of several days. In total, the Prosecution obtained 72 hours of audio recordings from these interviews.
13. These audio recordings are now being transcribed, reviewed for quality control, finalised and then registered in the Prosecution's Evidence Management Database ("Ringtail"). They will also need to be further reviewed in order to apply redactions where necessary, and only thereafter can they be disclosed. The process of transcribing audio-recorded statements is time consuming. The Prosecution has delivered the audio recordings to its Language Services Unit ("LSU") for transcription as soon as possible after the actual recordings were brought to the ICC Headquarters and registered in Ringtail.

¹² ICC-02/11-02/11-T-4-CONF-ENG-ET, p. 6, line 21-p. 7, line 16.

¹³ ICC-02/11-02/11-T-4-CONF-ENG-ET, p. 7, lines 20-22.

14. When the investigative missions were planned, the LSU had advised the Prosecution team that it would be possible to transcribe, prior to 18 July 2014, the anticipated number of hours of interviews to be recorded. At the planning stages, the Prosecution could only estimate [REDACTED] and the duration of such interviews. In the course of its recent investigation, the Prosecution received [REDACTED], which resulted in a high number of hours of recorded interviews. [REDACTED].
15. Earlier this week, it was confirmed that some transcripts will not be completed by 18 July 2014 and that the earliest probable date of completion will be at the end of July 2014.¹⁴ It must be noted that LSU provides essential services, including transcription services, to all of the different Prosecution teams and it must take into account their various demands and priorities. While the transcripts required for the BLÉ GOUDÉ case are clearly of the highest priority, other cases also have important competing demands. During the last months, the LSU has also been tasked by other teams with other requests for transcripts with the same level of priority.¹⁵ This is an additional factor that is contributing to the total amount of time that will be required to complete the transcripts for the BLÉ GOUDÉ case.
16. The Prosecution intends to rely on these transcripts of interviews for the confirmation of charges. The transcripts are necessary in order to accurately draft the DCC; they will also be referenced in the DCC and LoE and, as confirmed by the Chamber, will be hyperlinked to eCourt.¹⁶ The Prosecution is unable to complete the DCC and the required hyperlinks until the transcripts are finalised, registered, disclosed and uploaded to eCourt.

¹⁴ The advice from the LSU includes their confirmation of using all available means, including contracting out some transcripts.

¹⁵ See for instance the Article 70 case in the CAR situation, ICC-01/05-01/13-526.

¹⁶ ICC-02/11-02/11-57, para.13.

Transcripts of Videos

17. In addition to continuing its investigation, the Prosecution has also reviewed its evidence collection in the GBAGBO case in order to identify any other items of evidence that would be relevant for BLÉ GOUDÉ. In doing so, the Prosecution has identified many videos that are relevant and that it intends to include in its LoE and refer to in its DCC. For some of these videos, the relevant portions have been transcribed but for a number of them they have not. The Prosecution has been submitting these transcription requests to the LSU as the videos were being reviewed and the relevant portions were identified. The Prosecution has purposely limited the requested transcripts to the most relevant portions of these videos in order to limit, to the extent possible, delays for their transcription. But it has to be noted that the same LSU staff members assigned to transcribe insider interviews are also working on the video transcripts. The LSU has advised that the expected completion date of the transcriptions of the videos is approximately 15 August 2014.
18. The Prosecution acknowledges that it can cite/reference the actual videos in its DCC (with mention of the “time codes” of the relevant portions) and provide hyperlinks to the videos themselves. However, the use of transcripts, and their hyperlinks, will permit efficient access, for the Chamber and the Defence, to the relevant portions of the video evidence. The Prosecution also considers these transcripts to be important as their inclusion contributes to the effective presentation of evidence in the DCC and during related court proceedings. Notably, during court proceedings it is easier to follow video evidence when assisted by transcripts. Transcripts also enhance the quality and efficiency of transcription and interpretation during court sessions.

Evidence obtained via UN cooperation

19. The Prosecution recalls that at the status conference of 1 May 2014, it advised the Chamber that “[...] there are a number of UN statements that were collected or obtained in the course of the Laurent Gbagbo investigation that have been disclosed in that case, but that we need to go back to the United Nations to obtain their consent to be able now to disclose them in this case.”¹⁷ At present, discussions are ongoing and it remains uncertain whether this issue will be resolved prior to 18 July 2014 and, whether the Prosecution will be in a position to disclose and rely on these statements. [REDACTED].

[REDACTED]

20. [REDACTED].

21. [REDACTED].

22. [REDACTED].

Good Cause

23. Regulation 35(2) requires that the Prosecution shows good cause for its requested extension of the time limit. Keeping in mind the overall impact of its request, if the application is granted,¹⁸ the Prosecution submits that it has indeed shown good cause. In particular, good cause is shown by the cumulative effect of the various issues, as identified above, that all require more time so that the Prosecution can be in a position to present a comprehensive DCC and a complete LoE prior to the confirmation hearing.

¹⁷ ICC-02/11-02/11-T-4-CONF-ENG ET, p. 5, line 25-p. 6, line 3.

¹⁸ The Prosecution is mindful of the fact that an extension of the time limit to file its DCC and LoE would, by operation of Rule 121(3), necessitate a corresponding postponement of the confirmation hearing, and other time limits applicable to the Defence.

The fifth charged incident

24. In its recent “Response to Defence request for the variation of a time limit pursuant to Regulation 35(2) of the Regulations of the Court”,¹⁹ the Prosecution informed the Chamber and the Defence that the DCC would include a “fifth charged incident”.
25. [REDACTED].²⁰ In light of the present request to extend the time limit, and in order to assist the Chamber and notably to assist the Defence in its review of the evidence being disclosed,²¹ the Prosecution considers it appropriate to provide the Chamber and the Defence with some further information about the “fifth charged incident”.
26. The fifth charged incident will refer to the same crimes as currently charged and falls within the same course of conduct involving the multiple commission of acts in Abidjan between 25 February and early March 2011.²² The Prosecution informs the Chamber that crime-base statements related to this fifth incident are being disclosed with other material on 4 July.

Lack of Prejudice

27. In the “Decision establishing a system for disclosure of evidence”²³ the Single Judge stressed the importance of “[...]comprehensive and accurate submissions of the Prosecutor as to what evidence is relied upon to substantiate the particular factual allegations that support the charges being brought against Mr Blé Goudé.”²⁴ The Prosecution is indeed making every effort to complete its DCC and LoE, however, simply stated, at present the Prosecution requires more time

¹⁹ ICC-02/11-02/11-90-Conf.

²⁰ ICC-02/11-02/11-94-Conf-Exp, para. 4.

²¹ The Prosecution observes that a package of incriminating evidence is to be disclosed to the Defence on 4 July 2014 which includes statements relevant to the “fifth charged incident”.

²² See the GBAGBO Amended DCC, at ICC-02/11-01/11-592-Conf-Anx2-Corr2, paras. 66 and 68.

²³ ICC-02/11-02/11-57.

²⁴ ICC-02/11-02/11-57, para.13.

to complete these documents as comprehensively and accurately as possible. This would consequently provide the Defence with the most comprehensive and accurate notice of the evidence submitted by the Prosecution.

28. The Prosecution submits that the requested extension is of relatively short duration, and will not result in an excessive delay of confirmation hearing proceedings. Also as noted above (in paragraph 6), the practicalities of the Court recess cannot be ignored and are being taken into consideration when seeking an extension of six weeks specifically. If the extension to 29 August 2014 is granted, the DCC will still be filed less than six months from the time BLÉ GOUDÉ was transferred to the Court, a period of time which the Prosecution submits, is reasonable.
29. Additionally, the Prosecution confirms that, but for a few exceptions as discussed in this submission, it undertakes to complete the disclosure of all the other evidence it intends to rely on at the confirmation hearing and that is currently in its possession by 18 July 2014, which will also give more time to the Defence to review the Prosecution's evidence. Furthermore, the Prosecution confirms that for the purposes of the current confirmation of charges proceedings, it does not intend to rely on further insider witnesses.²⁵
30. The Prosecution also recalls that it currently has disclosed 2671 items of evidence as incriminating and 4490 documents pursuant to Article 67(2) and Rule 77.²⁶ Consequently, it is anticipated that the Defence also needs time to analyse such material and the additional evidence recently collected.

²⁵ This is not a statement that the investigation has ended.

²⁶ Four documents disclosed as incriminating evidence had been disclosed under Rule 77 in a previous package, and one document disclosed as incriminating evidence had been disclosed pursuant to Article 67(2) in a previous package.

31. The Prosecution also recalls that the Defence currently has access to the Amended DCC and the Chamber's confirmation decision in the GBAGBO case.²⁷ With this case and the GBAGBO case being closely related, these two documents combined with the currently disclosed evidence and element-based chart that accompanies each disclosure, provide the Defence with a large body of material in order to prepare itself sufficiently in advance of the confirmation of charges proceedings if the extension of time is granted.

Conclusion

32. For the reasons submitted above, the Prosecution requests the Chamber to extend the deadline for the final disclosure of evidence to be relied upon for the confirmation of the charges, the submission of its Document Containing the Charges and List of Evidence to 29 August 2014.



Fatou Bensouda, Prosecutor

Dated this 4th day of July 2014

At The Hague, The Netherlands

²⁷ ICC-02/11-01/11-592-Conf-Anx2-Corr2 and ICC-02/11-01/11-656-Conf.