



Original: English

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

Date: 2 July 2015

TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Bertram Schmitt

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR

v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ

PUBLIC

With confidential Annex A

Prosecution's Request pursuant to regulation 35 seeking permission to disclose 35 documents with less redactions

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

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Counsel for Mr Charles Blé Goudé

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Legal Representatives of the Victims

Ms Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Office of the Prosecutor (“Prosecution”) was required, under the Trial Chamber’s Decision on the Protocol establishing a redaction regime, to lift certain categories of redactions to material previously disclosed and re-disclose this material in redacted form.¹ This re-disclosure was duly carried out in respect of 1982 documents, but, for technical reasons as described below, not in respect of 35 incriminating documents, which the Prosecution was unable to process by the 30 June 2015 deadline. Accordingly, the Prosecution seeks an extension of time, under regulation 35 of the Regulations of the Court, to comply with its obligation to re-disclose the remaining 35 documents, by 7 July 2015.

Confidentiality

2. The Prosecution submits Annex A as confidential, since it relates to evidentiary material which is currently confidential.

Submissions

3. The Trial Chamber ordered the Prosecution, by its Protocol establishing a redaction regime, to lift some categories of redactions and re-disclose material so redacted, on a rolling basis and, at the latest, by the last disclosure deadline, on 30 June 2015.²
4. The Prosecution has failed to meet this deadline in respect of 35 incriminating documents.
5. Under regulation 35(2), a Chamber may extend a time limit “if good cause is shown”.
6. This application is made after the expiration of the 30 June 2015 deadline. The Chamber may extend the time limit after it has elapsed, if it can be demonstrated

¹ See ICC-02/11-01/11-737, and its AnxA and in combination with ICC-02/11-01/15-58, para. 22.

² ICC-02/11-01/11-737-AnxA, for instance paras.23-25 and 40-45, in combination with ICC-02/11-01/15-58, para.22.

that the extension of the time limit could not be sought, prior to its expiration, for reasons outside a participant's control.³

7. In the *Lubanga* case, in granting a request under regulation 35, the Appeals Chamber took into consideration the "technical problems" the Defence had encountered to submit its document in support of the appeal.⁴
8. In this case, the reasons both for failing to meet the 30 June 2015 disclosure deadline, and for failing to file a request under regulation 35 before the deadline elapsed, are compelling: the non-disclosure was a consequence of technical issues wholly outside the Prosecution's control, which arose in the midst of a significant disclosure process during which the Prosecution disclosed just over 241 documents prior to the deadline, along with its list of evidence, list of witnesses - and summaries of the main facts upon which each of the Prosecution's witnesses will testify.⁵
9. On 26 and 30 June 2015, the Prosecution lifted redactions to the content and/or metadata in relation to 1982 documents. Unfortunately, due to technical reasons, the 35 documents identified in Annex A could not be re-disclosed, with less redactions, within the deadline.
10. Within the set of 35 documents, five registers totalling 1036 pages contained a very large number of redactions to phone numbers of innocent third parties on every page. In four production attempts for these documents the Ringtail system generated excessively large log files, which in turn caused the whole OTP Ringtail system to halt. For this reason, the production of the 35 documents had to be postponed until the risk of affecting other disclosures in other cases was removed. Further troubleshooting of the system is continuing today and tomorrow, in close coordination with the software vendor (FTI) and the Court's IT section, to

³ See Annex A, which contains the email of 30 June 2015 at 14:43, sent to the Chamber, Parties and participants as soon as it became apparent that the 35 documents could not be disclosed within the 30 June deadline.

⁴ ICC-01/04-01/06-562, paras.2-5. See also ICC-01/04-02/06-175-Conf, paras.11-13, with public redacted version at ICC-01/04-02/06-175-Red. See also ICC-01/05-01/08-3046, paras.8, 9 and 13.

⁵ ICC-02/11-01/15-58, para.25.

complete the disclosure, and identify the cause while minimising the impact on the OTP investigations and cases.

11. The Prosecution submits that the Defence will not suffer any prejudice as result of the late re-disclosure since the information to be lifted refers mainly to names of investigators whose identities have all been disclosed with the disclosure or recent re-disclosure of items of evidence. In addition, the Defence teams received previously disclosure of the documents referred to, albeit in redacted form. Therefore, the Defence is in a position to prepare for the start of the presentation of evidence, in January 2016.⁶

12. The Prosecution will be in a position to disclose the 35 documents by 7 July 2015.

Conclusion

13. For the reasons described above, the Prosecution seeks an extension of time to 7 July 2015 to re-disclose with less redactions the 35 documents identified in Annex A.



Fatou Bensouda, Prosecutor

Dated this 2nd day of July 2015

At The Hague, The Netherlands

⁶ ICC-02/11-01/15-58, para.16.