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

**Prosecution's request for an extension of time to disclose a document under rule
77 of the Rules of Procedures and Evidence**

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 Victims

**Unrepresented Applicants
(Participation/Reparation)**

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States' Representatives

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Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. The Prosecution seeks an extension of time, pursuant to regulation 35 of the Regulations of the Court ("Regulations"), to disclose a document related to Witness P-0483 – numbered CIV-OTP-0084-0367 ("the Document") - under rule 77 of the Rules of Procedure and Evidence ("Rules").
2. By the Trial Chamber's Order setting the commencement date for trial ("7 May 2015 Order"), the Prosecution was required to disclose all incriminatory material, as well as all article 67(2) and rule 77 material in its possession, no later than 30 June 2015.¹
3. The Prosecution did not disclose the Document - although in its possession - by 30 June, for the reasons stated below.
4. Noting its ongoing obligations with regard to rule 77 material, the Prosecution has, in any event, now disclosed the Document to both Defence teams.²

Procedural Background

5. The Prosecution was ordered by the Trial Chamber to disclose all incriminatory material, as well as all article 67(2) and rule 77 material in its possession, no later than 30 June 2015.³
6. On 30 June 2015, the Prosecution applied for an extension of time to disclose, as incriminatory material, the audio recordings and translated transcripts of the Prosecution's interview of P-0483, dated March 2015. The Prosecution sought permission to disclose the audio recordings by 24 July and the translated transcripts by the end of September 2015.⁴ The Trial Chamber issued a Decision in

¹ ICC-02/11-01/15-58, para.22.

² See Prosecution's Communication of Evidence Disclosed to the Defence on 20 and 25 August 2015: ICC-02/11-01/15-190.

³ ICC-02/11-01/15-58, para.22.

⁴ ICC-02/11-01/15-115-Red ("Prosecution's 30 June 2015 Request"). See also ICC-02/11-01/15-183-Red, para.26.

respect of this, and other Prosecution requests, on 18 August 2015 (“18 August 2015 Decision”).⁵

7. By its 18 August 2015 Decision, the Trial Chamber directed the Prosecution to disclose forthwith the original language transcripts and audio recordings of P-0483’s March 2015 interview, and to meet the remainder of its disclosure obligations in respect of this witness as soon as practicable, but no later than 30 September 2015.⁶
8. On 20 August and 25 August 2015, the Prosecution disclosed both the Document, and the original language transcripts and audio recordings of P-0483’s March 2015 interview to the Defence teams for Mr Gbagbo (on 20 August) and Mr Blé Goudé (on 25 August).⁷

Submissions

9. The Document is a two-page investigation report of a medical appointment and medical expenses in relation to Witness P-0483, dated 11 June 2015. It was in the Prosecution’s possession before 30 June 2015, but not disclosed under rule 77 because linked, for disclosure purposes, to P-0483’s March 2015 interview. The Prosecution intended to disclose the Document at the same time as the interview transcripts. However, the interview transcripts – whether in translation or the original language - were not ready to be disclosed by 30 June 2015, for reasons stated in the Prosecution’s 30 June 2015 Request.⁸
10. Although the Prosecution disclosed by email, on 30 June 2015, detailed interview notes related to P-0483’s March 2015 interview,⁹ the Document was not disclosed because it was overlooked at that time. Once the audio recordings and original language transcripts of P-0483’s March 2015 interview were processed - to be

⁵ ICC-02/11-01/15-183-Red.

⁶ ICC-02/11-01/15-183-Red, para.29.

⁷ See ICC-02/11-01/15-190.

⁸ ICC-02/11-01/15-115-Conf, paras.11-16.

⁹ See ICC-02/11-01/15-115-Conf, para.12. See also ICC-02/11-01/15-183-Red, para.29.

disclosed on 24 July 2015¹⁰ - this non-disclosure came to the Prosecution's attention.

11. This request is made under regulation 35, after expiry of the 30 June 2015 deadline for disclosure of rule 77 material in the Prosecution's possession prior to 30 June.
12. The Prosecution does not seek to rely upon the Document at trial, or to add it to its List of Evidence.
13. The Prosecution acknowledges that the criteria under regulation 35(2) for disclosure after lapse of a time limit do not apply to the circumstances of this disclosure.
14. However, the Prosecution is under an ongoing obligation to disclose rule 77 material, as reiterated by the Trial Chamber in its 18 August 2015 Decision.¹¹ Where the criteria under regulation 35(2) are not met, rule 77 material *must*, nevertheless, be disclosed.¹²
15. Indeed, noting its ongoing obligations with regard to rule 77 material, the Prosecution, in any event, disclosed the Document to both Defence teams on 20 August (for Mr Gbagbo) and 25 August (for Mr Blé Goudé), and indicated that it would file the present request in its disclosure report.¹³
16. The Prosecution has been diligent in its efforts to comply with its disclosure obligations in relation to Witness P-0483. The Prosecution's challenges in this regard were described in the Prosecution's 30 June 2015 Request.¹⁴
17. By its 18 August 2015 Decision, the Trial Chamber granted the Prosecution's application for an extension of time in relation to its disclosure of the translated transcripts and audio recordings of P-0483's March 2015 interview.¹⁵ The Trial

¹⁰ See ICC-02/11-01/15-175, para.6.

¹¹ ICC-02/11-01/15-183-Red, paras.34, 39.

¹² See e.g. in the *Katanga* case: ICC-01/04-01/07-T-105-Red-ENG, page 3, lns.1-10; ICC-01/04-01/07-1590, para.12.

¹³ See ICC-02/11-01/15-190, fn.12.

¹⁴ ICC-02/11-01/15-115-Conf, paras.11-16. See also ICC-02/11-01/15-183-Red, para.26.

¹⁵ ICC-02/11-01/15-183-Red, paras.31, 47.

Chamber also specifically ordered that P-0483 not be included in the Prosecution's first 20 witnesses to testify at trial.¹⁶

18. The Defence will suffer little, if any, prejudice as a result of the late disclosure of the Document, given its content and nature - including its disclosure, under rule 77, as "material to the preparation of the defence", and the Trial Chamber's prior order related to the date of P-0483's expected testimony.

19. In all the circumstances, and considering the Prosecution's ongoing obligation in relation to material relevant for the preparation of the Defence, the Prosecution requests an extension of the time limit to disclose the Document under rule 77.

Conclusion

20. For the reasons described above, the Prosecution requests an extension of time to disclose the Document under rule 77 of the Rules.



Fatou Bensouda, Prosecutor

Dated this 2nd day of September 2015

At The Hague, The Netherlands

¹⁶ ICC-02/11-01/15-183-Conf, paras.29, 47.