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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

Public redacted version of Prosecution's Request pursuant to regulation 35 for an extension of time to re-disclose three documents as incriminatory material, 7 September 2015, ICC-02/11-01/15-207-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”) applies, under regulation 35 of the Regulations of the Court (“Regulations”) and article 64(2) of the Statute, for an extension of time to re-disclose copies of three logbooks, previously disclosed under rule 77 of the Rules of Procedure and Evidence (“Rules”), as incriminatory material (“the Original Logbooks”).
2. The Original Logbooks (numbered CIV-OTP-0067-0402, CIV-OTP-0067-0003 and CIV-OTP-0067-0643) are complete copies of three logbooks collected by the Prosecution, in 2014, from the Presidential Residence in Abidjan, and disclosed, under rule 77, to the Defence team for Mr Blé Goudé on 17 September 2014¹ (“17 September 2014 disclosure”), and for Mr Gbagbo on 10 October 2014² (“10 October 2014 disclosure”).
3. The Original Logbooks are better copies of the three logbooks which were previously only partially copied by the Prosecution, *in situ* in Abidjan. These partial copies were disclosed by the Prosecution as incriminatory material, included on the Prosecution’s List of Evidence³ and referenced on multiple occasions (this applies to one logbook)⁴ in the Prosecution’s Pre-Trial Brief, as explained below.
4. In addition, extracts from each of the Original Logbooks were in any event authenticated by and annexed to the witness statement of P-0501.⁵ These extracts were disclosed with P-0501’s statement as incriminatory material, and included on the Prosecution’s List of Evidence.
5. Because the Original Logbooks are better and more complete copies of the three logbooks, as further elaborated below, the Prosecution now seeks to rely upon the

¹ Pre-confirmation Rule 77 package 9. See ICC-02/11-02/11-154-Conf-Anx-A.

² Pre-Trial Rule 77 package 29. See ICC-02/11-01/11-694-Anx-A.

³ CIV-OTP-0018-1313, CIV-OTP-0018-1178 and CIV-OTP-0018-1191.

⁴ CIV-OTP-0018-1313.

⁵ Statement: CIV-OTP-0071-0906; Annexes: CIV-OTP-0071-0920; CIV-OTP-0071-0962; CIV-OTP-0071-0965.

Original Logbooks at trial and, it follows, to re-disclose them as incriminatory material.

6. The Prosecution therefore seeks first, an extension of time to comply with its obligation to disclose all incriminatory material by 30 June 2015,⁶ and second, permission to rely upon the Original Logbooks at trial.
7. If this application is granted the Prosecution will add the Original Logbooks to its List of Evidence.⁷

Confidentiality

8. This motion is filed confidentially, because it refers to evidence, including witness evidence, presently treated as confidential in nature.

Submissions

9. By the Trial Chamber's 7 May 2015 Order, the Prosecution was required to disclose all incriminatory material no later than 30 June 2015.⁸ The Prosecution has disclosed the Original Logbooks under rule 77, but not as incriminatory material. In addition, the Original Logbooks were not included on the Prosecution's List of Evidence.
10. The Prosecution intends to rely upon the Original Logbooks at trial, and therefore now seeks an extension of time to re-disclose them as incriminatory material.
11. Under regulation 35(2) of the Regulations, prior to the expiry of the time limit, a Chamber may extend a time limit "if good cause is shown", and after the lapse of the time limit, "an extension may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control".⁹ This Trial Chamber has

⁶ See ICC-02/11-01/15-58 ("7 May 2015 Order"), para.22.

⁷ Filed on 30 June 2015: ICC-02/11-01/15-114-Conf-AnxC.

⁸ ICC-02/11-01/15-58, para.22.

⁹ Regulation 35(2), last sentence.

observed that regulation 35(2), last sentence, provides a strict standard affording only a few exceptions.¹⁰

12. The Trial Chamber may nevertheless authorise an extension of the relevant time limit for disclosure of incriminatory material, after expiry of the relevant deadline, having conducted a case-by-case assessment – one that balances the justifications for late disclosure with any potential prejudice to the receiving party – consistent with its obligations under article 64(2) of the Statute.¹¹ Additional factors that may be considered include: (i) whether the new evidence brings to light a previously unknown fact that has a significant bearing on the case; (ii) whether the other party will have adequate time to investigate the new evidence, bearing in mind the need to conduct the trial fairly and expeditiously; and (iii) whether it would be in the interests of justice to grant the request.¹²

13. This application is filed after expiry of the 30 June 2015 disclosure deadline. The request should nevertheless be granted, for the reasons stated below.

The Original Logbooks were previously disclosed under rule 77

14. The Original Logbooks were disclosed under rule 77, as opposed to as incriminatory material, as a result of an oversight. The Prosecution was alerted to its error upon review of its List of Evidence conducted since 30 June 2015, and has filed this application promptly.

The Original Logbooks are better and more complete copies of logbooks previously disclosed

15. The Original Logbooks are complete copies of three sets of logbooks collected by the Prosecution, in 2014, from the Presidential Residence, in Abidjan: CIV-OTP-

¹⁰ ICC-02/11-01/15-183-Red, para.19.

¹¹ ICC-02/11-01/15-183-Red, para.20. *See also*, in the *Ntaganda* case: ICC-01/04-02/06-740-Red, para.13. Article 64(2) requires the Trial Chamber to ensure that the trial is “fair and expeditious and is conducted with full respect for the rights of the accused”.

¹² ICC-02/11-01/15-183-Red, para.20; ICC-01/04-02/06-740-Red, para.13.

0067-0402 (“the first logbook”), CIV-OTP-0067-0003 (“the second logbook”) and CIV-OTP-0067-0643 (“the third logbook”).

16. Partial copies of these logbooks were previously disclosed by the Prosecution, as incriminatory material, as described below. The Original Logbooks are of a better quality than the partial copies of the logbooks, for the reasons explained below.
17. In addition, the Prosecution will rely at trial upon the evidence of P-0501, [REDACTED]. P-0501’s statement was disclosed to the Defence as incriminatory material on 6 February 2015 (Defence team of Mr Gbagbo¹³) and 19 February 2015 (Defence team of Mr Blé Goudé¹⁴), and, on 30 June 2015, a summary of his statement filed with the Prosecution’s List of Witnesses.¹⁵
18. P-0501 authenticates extracts from each of the Original Logbooks, and these extracts – from CIV-OTP-0067-0402 (the first logbook), CIV-OTP-0067-0003 (the second logbook), and CIV-OTP-0067-0643 (the third logbook) – were annexed to the statement (as Annexes 2 (CIV-OTP-0071-0920), 3 (CIV-OTP-0071-0962), and 4 (CIV-OTP-0071-0963) respectively)), and disclosed with it.¹⁶

The first logbook: CIV-OTP-0067-0402

19. CIV-OTP-0067-0402 is a complete copy of a logbook – the first logbook - collected by the Prosecution from Abidjan in 2014, and scanned at the ICC premises in The Hague.
20. The first logbook is the visitor logbook from the Presidential Residence¹⁷ and covers the period 3 November 2010 to 10 April 2011. It is 241 pages long.
21. A previous, partial version of the first logbook, CIV-OTP-0018-1313, was disclosed to the Defence as incriminatory material on 4 July 2014 (Defence team of

¹³ Pre-Trial INCRIM package 35. See ICC-02/11-01/11-762-Conf-AnxB.

¹⁴ Pre-Trial INCRIM package 11. See ICC-02/11-02/11-218-Conf-AnxA .

¹⁵ ICC-02/11-01/15-114-Conf-AnxB-Corr, pp.305-306.

¹⁶ See P-0501’s witness summary, paras.9-11 (ICC-02/11-01/15-114-Conf-AnxB-Corr, p.306); and his witness statement (CIV-OTP-0071-0906), paras.33-66.

¹⁷ See P-0501’s witness summary, para.19 (ICC-02/11-01/15-114-Conf-AnxB-Corr, p.306); and his witness statement (CIV-OTP-0071-0906), para.34.

Mr Blé Goudé¹⁸) and 16 January 2015 (Defence team Mr Gbagbo¹⁹), and is included on the Prosecution's List of Evidence. A transcript of this partial version (CIV-OTP-0053-0574) was disclosed to the Defence as incriminatory material on 18 July 2014 (Defence team of Mr Blé Goudé²⁰) and 16 January 2015 (Defence team of Mr Laurent Gbagbo²¹), and is also included on the Prosecution's List of Evidence. The partial version is 138 pages long, and was copied on location in Abidjan. CIV-OTP-0067-0402, as well as being complete – since every page of the relevant logbook was scanned – is also a better quality copy, since copied from the original logbook in The Hague.

22. Forty-two pages of extracts from CIV-OTP-0067-0402 were also annexed to the statement of Prosecution Witness P-0501 (Annex 2, CIV-OTP-0071-0920). CIV-OTP-0071-0920 is also included on the Prosecution's List of Evidence.

The second logbook: CIV-OTP-0067-0003

23. CIV-OTP-0067-0003 is a complete copy of a logbook – the second logbook - collected by the Prosecution from Abidjan in 2014, and scanned at the ICC premises in The Hague.
24. This logbook is the First Lady's visitor logbook,²² and covers the period 25 May 2010 to 31 December 2010. It is 399 pages long.
25. A previous, partial version of the second logbook, CIV-OTP-0018-1191, was disclosed to the Defence as incriminatory material on 4 July 2014 (Defence team of Mr Blé Goudé²³) and 16 January 2015 (Defence team of Mr Gbagbo²⁴), and is included on the Prosecution's List of Evidence. The partial version of the first logbook is 75 pages long, and was copied on location in Abidjan. CIV-OTP-0067-0003, as well as being complete – since every page of the relevant logbook was

¹⁸ Pre-confirmation INCRIM package 5. See ICC-02/11-02/11-101-Conf-AnxA.

¹⁹ Pre-Trial INCRIM package 34. See ICC-02/11-01/11-747-Conf-AnxA.

²⁰ Pre-confirmation INCRIM package 7. See ICC-02/11-02/11-109-Conf-AnxA.

²¹ Pre-Trial INCRIM package 34. See ICC-02/11-01/11-747-Conf-AnxA.

²² See P-501's witness summary, para.10 (ICC-02/11-01/15-114-Conf-AnxB-Corr, p.306); and his witness statement (CIV-OTP-0071-0906), para.65.

²³ Pre-confirmation INCRIM Package 5. See ICC-02/11-02/11-101-Conf-AnxA.

²⁴ Pre-Trial INCRIM package 34. See ICC-02/11-01/11-747-Conf-AnxA.

scanned – is also a better quality copy, since copied from the original logbook in The Hague.

26. CIV-OTP-0018-1191 is included on the Prosecution's List of Evidence.

27. In addition, CIV-OTP-0071-0962 - Annex 3 to P-0501's witness statement as described above - is a copy of three pages from CIV-OTP-0067-0003.²⁵ CIV-OTP-0071-0962 is included on the Prosecution's List of Evidence.

The third logbook: CIV-OTP-0067-0643

28. CIV-OTP-0067-0643 is a complete copy of a logbook – the third logbook - collected by the Prosecution from Abidjan in 2014, and scanned at the ICC premises in The Hague.

29. The third logbook is the logbook manned by the unit guarding the President's bedroom at the Presidential Residence.²⁶ It is 96 pages long and covers the period 5 January 2011 to 9 April 2011. A previous partial version of this logbook, CIV-OTP-0018-1178, was disclosed to the Defence as incriminatory material on 4 July 2014 (Defence team of Mr Blé Goudé²⁷) and 16 January 2015 (Defence team of Mr Gbagbo²⁸), and is included on the Prosecution's List of Evidence. The partial version is 13 pages long, and was copied on location in Abidjan. CIV-OTP-0067-0643, as well as being complete – since every page of the relevant logbook was scanned – is also a better quality copy, since copied from the original in The Hague.

30. In addition, CIV-OTP-0071-0965 - Annex 4 to P-0501's witness statement as described above - is a copy of five pages from CIV-OTP-0067-0643.²⁹ CIV-OTP-0071-0965 is included on the Prosecution's List of Evidence.

²⁵ See P-0501's witness summary, para. 10 (ICC-02/11-01/15-114-Conf-AnxB-Corr, p.306); and his witness statement (CIV-OTP-0071-0906), para.65.

²⁶ See P-0501's witness summary, para.10 (ICC-02/11-01/15-114-Conf-AnxB-Corr, p.306); and his witness statement (CIV-OTP-0071-0906), para.66.

²⁷ Pre-confirmation INCRIM package 5. See ICC-02/11-02/11-101-Conf-AnxA.

²⁸ Pre-Trial INCRIM package 34. See ICC-02/11-01/11-747-Conf-AnxA.

²⁹ See P-0501's witness summary, para.10 (ICC-02/11-01/15-114-Conf-AnxB-Corr, p.306); and his witness statement (CIV-OTP-0071-0906), para.66.

The Defence has been on notice of the Prosecution's intention to rely upon the first, second and third logbooks

31. The Defence will suffer little, if any, prejudice as result of the late re-disclosure both because the Original Logbooks were previously disclosed as rule 77 material, and because copies (albeit partial) of the Original Logbooks have been previously disclosed, included on the List of Evidence, and referenced in the Pre-Trial Brief. In addition, extracts from the Original Logbooks were authenticated in and attached to P-0501's statement.
32. The Defence have been on notice, for a number of months – and in any event in advance of the 30 June 2015 disclosure deadline - of the Prosecution's intention to rely upon the three logbooks at trial, and have therefore had adequate time to investigate this evidence.

Re-disclosure is in the interests of justice

33. The Original Logbooks are relevant and probative, as is demonstrated at least by the multiple references to a partial copy of the first logbook (CIV-OTP-0067-0402) - CIV-OTP-0018-1313 - in the Prosecution's Pre-Trial Brief.³⁰
34. Permission to re-disclose the logbooks as incriminatory material is in the interests of justice. It is plainly both more appropriate and useful to all Parties, including the Trial Chamber, for the complete versions of each of the three logbooks – which are in any event of better quality than the partial copies - to be available for use, and their potential admission, at trial.

³⁰ See ICC-02/11-01/15-148-Conf-Anx2-Corr, footnotes 37, 52, 55, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 93, 95, 393, 394, 678, 714, 719, 724, 725, 726, 728, 734, 926, 974, 975, 976, 977, and 1015.

Conclusion

35. For the reasons described above, the Prosecution seeks an extension of time to re-disclose the Original Logbooks as incriminatory material, and permission to rely upon the Original Logbooks at trial.



Fatou Bensouda, Prosecutor

Dated this 30th day of October 2015

At The Hague, The Netherlands