



Original: English

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Date: 6 January 2016

TRIAL CHAMBER I

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

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR

v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ

PUBLIC

**With confidential Annexes A, B, C and D available to the Defence and
Legal Representatives**

**Public Redacted Version of "Prosecution's Communication of Evidence Disclosed
to the Defence on 17 and 18 December 2015", 18 December 2015, ICC-02/11-01/15-
370-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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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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REGISTRY

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Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Office of the Prosecutor (“Prosecution”) provides notice of the disclosure to the Defence teams of Charles BLÉ GOUDÉ and Laurent GBAGBO¹ of the following packages on 17 and 18 December 2015:
 - a. INCRIM package 26, containing 483 items.²
 - b. Rule 77 package 25, containing 3 items pursuant to rule 77 of the Rules of Procedure and Evidence.³
2. INCRIM package 26 was disclosed pursuant to the Trial Chamber’s Third Decision of 30 November 2015 on disclosure related matters and amendments to the List of Evidence (“Third Decision”) and contains:
 - a. 66 items that are namely chain of custody documents, videos and a duplicate video, Pre-Trial Brief documents, the statement and annexes of Witness P-0590, the autopsy reports and the letter of instruction, [REDACTED] of Witness P-0097, the FDS documents and the duplicate expert reports. These formed part of the Prosecution’s 8 October 2015 request seeking an extension of time to disclose incriminatory material, mostly by way of re-classification from rule 77 material to incriminatory material, and to add this material to its List of Evidence (“Prosecution Request”).⁴ These documents were disclosed as incriminating evidence following the Trial Chamber’s Third Decision authorising the late disclosure and re-disclosure as incriminatory material of documents never disclosed before and of documents previously disclosed as potentially exculpatory or under rule 77 and granting their addition to the List of Evidence.⁵

¹ The disclosure took place on 18 December at the request of the Gbagbo Defence team.

² 20151217 INCRIM Package 26.

³ 20151217 Rule 77 Package 25.

⁴ See ICC-02/11-01/15-262-Conf-Corr, paras. 18-31, 33-34 and 36-38.

⁵ See ICC-02/11-01/15-350-Conf, paras. 17, 20, 21, 24-26, 28-30, 32-33, 35-36, 39, 41, 43-45, 48 and 58.

- b. 397 transcripts - 15 transcripts⁶ of videos reclassified as incriminatory evidence, 135 transcripts in the Prosecution's possession at the time of the 1 October 2015 request⁷, two translations of transcripts⁸ and new transcripts of previously disclosed video material already appearing on the List of Evidence, which formed part of the Prosecution's Request.⁹ These transcripts were disclosed as incriminating evidence in line with the Trial Chamber's Third Decision granting their disclosure and addition to the List of Evidence.¹⁰
 - c. 20 documents such as Witness P-0114's second statement and Witness P-0360's second statement and annexes which formed part of the Prosecution's 23 October 2015 request seeking an extension of the disclosure deadline of incriminatory material and permission to add them to its List of Evidence.¹¹ These documents were disclosed as incriminating evidence following the Trial Chamber's Third Decision granting the delayed disclosure of documents which had not been disclosed yet and authorising the amendments to the List of Evidence.¹²
3. Out of the 483 items in the INCRIM package, 476 items were disclosed without redactions while six documents were disclosed with redactions to the item only and one document with redactions to the metadata only, in accordance with decision ICC-02/11-01/11-737 ("Redaction Protocol").¹³
 4. The three items in the Rule 77 package – a press article,¹⁴ [REDACTED] written by Witness P-0097¹⁵ and a letter written by Witness P-0114¹⁶ – were disclosed in

⁶ These transcripts have the following ERNs: CIV-OTP-0086-0637, CIV-OTP-0086-0642, CIV-OTP-0086-0645, CIV-OTP-0086-0648, CIV-OTP-0086-0650, CIV-OTP-0086-0664, CIV-OTP-0086-0756, CIV-OTP-0086-0808, CIV-OTP-0086-0834, CIV-OTP-0086-0838, CIV-OTP-0086-0875, CIV-OTP-0086-0877, CIV-OTP-0086-0913, CIV-OTP-0086-0931 and CIV-OTP-0086-1116.

⁷ These transcripts fall between the range of CIV-OTP-0086-0633 and CIV-OTP-0086-1168.

⁸ CIV-OTP-0087-0704 and CIV-OTP-0087-0708.

⁹ See ICC-02/11-01/15-262-Conf-Corr, paras. 21-22 and 37-38.

¹⁰ See ICC-02/11-01/15-350-Conf, paras. 21, 25

¹¹ See ICC-02/11-01/15-312-Conf.

¹² See ICC-02/11-01/15-350-Conf, paras. 49, 52-54 and 57-58.

¹³ See ICC-02/11-01/11-737-AnxA.

¹⁴ CIV-OTP-0087-0002.

compliance with the Prosecution's ongoing disclosure obligation under rule 77. These documents are potentially material to the preparation of the Defence,¹⁷ and were disclosed in line with the Trial Chamber's Second Decision of 21 October 2015 related to the ongoing and late disclosure of rule 77 material ("Second Decision").¹⁸ The press article came into the Prosecution's possession on 20 November 2015. The other two items – [REDACTED] of Witness P-0097 and the letter of Witness P-0114 – formed part of the Prosecution's 8 October 2015 request for an extension of time to disclose under rule 77.¹⁹ As set out in that request, the disclosure of [REDACTED],²⁰ was postponed pending the disclosure of P-0097's identity to the Defence on 19 May 2015²¹. Also as set out in the request, P-0114's letter was obtained by the Prosecution in April 2015 and the Prosecution was unsuccessful in its attempts to meet with the Witness to discuss the letter.

5. The Prosecution determined that these documents may be material to the preparation of the Defence and therefore provided them in line with the Trial Chamber's Third Decision of 30 November 2015,²² which in turn recalls the procedure set out for the disclosure of items falling under rule 77 in the Trial Chamber's Second Decision.²³
6. The disclosed material was provided in a format that complies with the e-Court Protocol as approved for the trial stage.²⁴

¹⁵ CIV-OTP-0055-0966.

¹⁶ CIV-OTP-0086-1285.

¹⁷ See ICC-02/11-01/15-183-Conf, para. 34.

¹⁸ See ICC-02/11-01/15-306-Conf, paras. 17-20 and 34.

¹⁹ See ICC-02/11-01/15-262-Conf-Corr, paras. 30-31 and 32.

²⁰ CIV-OTP-0081-0006, disclosed in Pre-Trial Rule 77 package 8 of 19 May 2015 (joint case).

²¹ Pre-Trial INCRIM package 10 of 19 May 2015 (joint case).

²² See ICC-02/11-01/15-350-Conf, paras. 36, 40 and 13.

²³ See ICC-02/11-01/15-306-Conf, paras. 17-20 and 34.

²⁴ See ICC-02/11-01/15-58, para. 24.

Request for Confidentiality

7. Annexes A²⁵, B²⁶, C²⁷ and D²⁸ appended to this communication contain the disclosure notes provided to the Defence. The Prosecution requests that these annexes be received as “Confidential” since they relate to *inter partes* disclosure.



Fatou Bensouda, Prosecutor

Dated this 6th day of January 2016

At The Hague, The Netherlands

²⁵ Disclosure note for Pre-trial INCRIM Package 26 provided to the Defence of Laurent Gbagbo on 18 December 2015.

²⁶ Disclosure note for Pre-trial IMCRIM Package 26 provided to the Defence of Charles Blé Goudé on 17 December 2015.

²⁷ Disclosure note for Pre-trial Rule 77 Package 25 provided to the Defence of Laurent Gbagbo on 18 December 2015.

²⁸ Disclosure note for Pre-trial Rule 77 Package 25 provided to the Defence of Charles Blé Goudé on 17 December 2015.