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TRIAL CHAMBER I

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

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, D, E, F, G and H available to the Defence and
Legal Representatives**

**Prosecution's Communication of Evidence Disclosed to the Defence on
22 April 2016, 28 April 2016, 4 May 2016 and 10 May 2016**

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

Ms Fatou Bensouda

Mr James Stewart

Mr Eric Macdonald

Counsel for Mr Laurent Gbagbo

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Mr Geert-Jan Alexander Knoops

Mr Claver N'dry

Legal Representatives of the Victims

Ms Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
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

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. The Prosecution hereby provides this disclosure report relating to disclosure batches provided to the Defence of Laurent Gbagbo and Charles Blé Goudé on 22 April 2016, 28 April 2016, 4 May 2016 and 10 May 2016.

Disclosure of 22 April 2016

2. The Prosecution provides notice of the disclosure on 22 April 2016 to the Defence teams of Charles BLÉ GOUDÉ and Laurent GBAGBO of Rule 77 package 35, containing ten items pursuant to rule 77 of the Rules.¹ Eight of these items were disclosed without redactions, while one was disclosed with redactions to its content only, and one was disclosed with redactions to its metadata only, in accordance with decision ICC-02/11-01/11-737.²
3. Seven of these eight documents have recently come into the Prosecution's possession.
 - a. One item is the final report of the group of experts on Côte d'Ivoire,³ dated 17 March 2016, recently made public, providing updates on the situation in the country.
 - b. One item is a document annexed to the Prosecution's application of 15 April 2016 for a witness to give testimony by means of video technology.⁴
 - c. One item is a video related to Witness P-0048,⁵ disclosed together with a further five OTP-generated documents relating to its download.⁶ The

¹ 20160422 Rule 77 Package 35.

² See ICC-02/11-01/11-737-AnxA.

³ CIV-OTP-0090-3221.

⁴ CIV-OTP-0090-3546. See ICC-02/11-01/15-486-Conf-AnxA.

⁵ CIV-OTP-0090-3687.

⁶ See Cyber Expert Online Data Collection Report at CIV-OTP-0090-3591 and related SRU extraction material at CIV-OTP-0090-3600, CIV-OTP-0090-3601, CIV-OTP-0090-3602 and CIV-OTP-0090-3688.

Prosecution became aware of the online existence of this video document on 12 April 2016.

- d. One item is the “Map book of Cote d’Ivoire and Abidjan” to be distributed to the Parties for the trial, pending agreement between the Parties. This version, produced by the OTP on 5 April 2016, supersedes the map book⁷ previously disclosed as rule 77 material on 2 February 2016.⁸
4. The final item is one victim application⁹ of dual status Witness P-0237. This was originally disclosed on 8 June 2015, and was re-disclosed on 22 April 2016 with fewer redactions, following the Legal Representative for Victims’ indication on 29 March 2016.¹⁰
5. These items were disclosed in compliance with the Prosecution’s ongoing obligation under rule 77 of the Rules, to disclose documents which are material to the preparation of the Defence,¹¹ in conformity with the Trial Chamber’s Second Decision of 21 October 2015 (“Second Decision”) related to disclosure of rule 77 material.¹²
6. The disclosed material was provided *via* TRIM electronically in a format that complies with the e-Court Protocol as approved for the trial stage.¹³

Disclosure of 28 April 2016

7. The Prosecution further provides notice of the disclosure on 28 April 2016 to the Defence teams of Charles BLÉ GOUDÉ and Laurent GBAGBO of INCRIM package 31, containing 72 items of incriminatory evidence.¹⁴ Three of the items were disclosed with redactions to their content only, in accordance with decision

⁷ See parts 1 to 5, ERNs from CIV-OTP-0088-0726 to CIV-OTP-0088-0740.

⁸ See Pre-Trial Rule 77 package 28 02 February 2016.

⁹ CIV-OTP-0082-0018.

¹⁰ ICC-02/11-01/15-473, para. 13.

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

¹² See ICC-02/11-01/15-306-Conf, paras. 17-20 and 34.

¹³ See ICC-02/11-01/15-58, para. 24.

¹⁴ 20160328 INCRIM Package 31.

ICC-02/11-01/11-737,¹⁵ and sixty-nine were disclosed without redactions. The package consisted of:

- a. Three witness statements previously disclosed as incriminatory, and now re-disclosed with fewer redactions;¹⁶
 - b. Sixty-three still images (sixty photographs and three sketches) derived from documents already disclosed as incriminatory, and that the Prosecution may have used in its examination of Witness P-0441;¹⁷ and
 - c. Six still images derived from a document already disclosed as incriminatory, and that the Prosecution may have used in its examination of Witness P-0441.¹⁸ The previously disclosed versions contained annotations and for the purposes of use in court, the Prosecution intends to use the newly-disclosed images which contain no annotation.
8. The disclosed material was provided *via* TRIM electronically in a format that complies with the e-Court Protocol as approved for the trial stage.¹⁹

Disclosure of 4 May 2016

9. The Prosecution further provides notice of the disclosure on 4 May 2016 to the Defence teams of Charles BLÉ GOUDÉ and Laurent GBAGBO of INCRIM package 32, containing 11 items of incriminatory evidence.²⁰ All items were disclosed without redactions. The package consisted of:
- a. Six images derived from a forensic report already disclosed to the Defence teams;²¹ and

¹⁵ See ICC-02/11-01/11-737-AnxA.

¹⁶ Items 1-3 on the Prosecution's accompanying list of documents.

¹⁷ Items 4-62 and 69-72 on the Prosecution's accompanying list of documents.

¹⁸ Items 63-68 on the Prosecution's accompanying list of documents.

¹⁹ See ICC-02/11-01/15-58, para. 24.

²⁰ 20160504 INCRIM Package 32.

²¹ Items 1-6 on the Prosecution's accompanying list of documents.

- b. Five still images extracted from three videos already disclosed to the Defence teams.²²

10. The disclosed material was provided *via* TRIM electronically in a format that complies with the e-Court Protocol as approved for the trial stage.²³

Disclosure of 10 May 2016

11. The Prosecution further provides notice of the disclosure on 10 May 2016 to the Defence teams of Charles BLÉ GOUDÉ and Laurent GBAGBO of Rule 77 package 36, containing 80 items pursuant to rule 77 of the Rules.²⁴ Seventh-five of these items were disclosed without redactions, while one was disclosed with redactions to its content only, and four were disclosed with redactions to their metadata only, in accordance with decision ICC-02/11-01/11-737.²⁵

12. All documents have recently come into the Prosecution's possession.

- a. Four documents from the military tribunal dated between 19 March 2015 and 10 February 2016²⁶ were recently collected on 26 April 2016.
- b. One investigator's report on the security and detention conditions of an upcoming witness,²⁷ which was annexed to an application by the Prosecution filed on 29 April 2016.²⁸
- c. Two "chain of custody" forms dated 28 April 2016 related to the transfer of forty exhibits from the *Institut de Recherche Criminelle de la Gendarmerie Nationale* (IRCGN) to the Forensic Science Section (FSS).²⁹
- d. Seven press articles (open source) related to Witness P-0048,³⁰ published between June 2012 and April 2016, and collected by the Prosecution in

²² Items 7-11 on the Prosecution's accompanying list of documents.

²³ See ICC-02/11-01/15-58, para. 24.

²⁴ 20160510 Rule 77 Package 36.

²⁵ See ICC-02/11-01/11-737-AnxA.

²⁶ See ERN range from CIV-OTP-0090-3822 to CIV-OTP-0090-3826.

²⁷ CIV-OTP-0090-3828.

²⁸ See ICC-02/11-01/15-494-Conf-Exp-AnxA.

²⁹ CIV-OTP-0090-3834 and CIV-OTP-0090-3835.

April and May 2016. The Prosecution ran renewed searches of publicly available information and disclosed these documents as part of its ongoing review of media articles relating to its witnesses.

- e. Twenty-three documents are reports by the group of experts on Côte d'Ivoire dated between 2004 and 2014,³¹ providing updates on the situation in the country.
- f. Thirty-six documents are reports of the United Nations Secretary General dated between 2004 and 2016,³² providing updates on the United Nations Operation in Côte d'Ivoire.
- g. One video related to Witness P-0048,³³ disclosed together with a further two OTP-generated documents relating to its download.³⁴ The Prosecution became aware of the online existence of this video document on 3 May 2016.
- h. One statement of the PDCI-RDA³⁵ dated 10 November 2006, collected on 20 April 2016 by the Prosecution, providing a list of peace agreements signed by Côte d'Ivoire and commenting on their implementation.
- i. One video related to Simone Gbagbo and to Witness P-0048,³⁶ disclosed together with a further two OTP-generated documents relating to its download.³⁷ The Prosecution became aware of the online existence of this video document on 3 May 2016.

³⁰ See ERN range from CIV-OTP-0090-3847 to CIV-OTP-0090-4039 and CIV-OTP-0091-3050.

³¹ See ERN range from CIV-OTP-0090-4040 to CIV-OTP-0090-4685.

³² See ERN range from CIV-OTP-0090-4772 and CIV-OTP-0090-5458.

³³ CIV-OTP-0090-5489.

³⁴ See Cyber Expert Examination Report at CIV-OTP-0090-5479 and Screenshot at CIV-OTP-0090-5488.

³⁵ CIV-OTP-0091-3045.

³⁶ CIV-OTP-0092-0073.

³⁷ See Cyber Expert Examination Report at CIV-OTP-0092-0058 and Screenshot at CIV-OTP-0092-0072.

Request for Confidentiality

13. Annexes A,³⁸ B,³⁹ C,⁴⁰ D,⁴¹ E,⁴² F,⁴³ G⁴⁴ and H⁴⁵ 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.

Ongoing Disclosure Communications

14. Given that the pre-trial stage has now concluded, and that the amount of new documents to be disclosed is now lesser than in the pre-trial stage, the Prosecution proposes to file its disclosure communications to the Chamber on a monthly basis.⁴⁶ At this trial stage, the continuation of current practice would mean filing a disclosure communication on every occasion that the Prosecution discloses a metadata update package, or that it discloses images extracted from existing INCRIM material for the purpose of using them in court with a witness.

15. It is submitted that a monthly reporting system, as a general approach, would keep the Chamber apprised of the Prosecution’s compliance with its ongoing disclosure obligations, while avoiding the use of filings to convey matters of

³⁸ Disclosure note for Rule 77 Package 35 provided to the Defence of Laurent Gbagbo on 22 April 2016.

³⁹ Disclosure note for Rule 77 Package 35 provided to the Defence of Charles Blé Goudé on 22 April 2016.

⁴⁰ Disclosure note for INCRIM Package 31 provided to the Defence of Laurent Gbagbo on 28 April 2016.

⁴¹ Disclosure note for INCRIM Package 31 provided to the Defence of Charles Blé Goudé on 28 April 2016.

⁴² Disclosure note for INCRIM Package 32 provided to the Defence of Laurent Gbagbo on 4 May 2016.

⁴³ Disclosure note for INCRIM Package 32 provided to the Defence of Charles Blé Goudé on 4 May 2016.

⁴⁴ Disclosure note for Rule 77 Package 36 provided to the Defence of Laurent Gbagbo on 10 May 2016.

⁴⁵ Disclosure note for Rule 77 Package 36 provided to the Defence of Charles Blé Goudé on 10 May 2016.

⁴⁶ At the pre-confirmation stage of the single *Blé Goudé* case, the Prosecution was ordered by Pre-Trial Chamber I to communicate to the Chamber the evidence disclosed, for the purposes of the confirmation of charges hearing, ‘following each batch of disclosure’ in accordance with rule 121(2)(c) (ICC-02/11-02/11-57, para. 7). To the best of the Prosecution’s knowledge, no order has been made as to the timing for filing communications before the Trial Chamber, or otherwise following the confirmation of charges hearing.

document management. Nevertheless, where an individual disclosure merits being brought to the attention of the Chamber without delay, the Prosecution will file an individual disclosure communication as soon as practicable after the disclosure.



Fatou Bensouda, Prosecutor

Dated this 13th day of May 2016

At The Hague, The Netherlands