

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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**

**Public redacted version of "Prosecution's request pursuant to Regulation 35 in relation to a limited number of documents", 30 June 2015,
ICC-02/11-01/15-115-Conf**

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
(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**

I. Introduction

1. The Office of the Prosecutor (“Prosecution”) requests, pursuant to regulation 35 of the Regulations of the Court, an extension of the time limit to complete its disclosure in respect of a limited number of documents, including the expert report of P-0439 and two additional expert reports to be provided by the *Nederlands Forensic Institute* (“NFI”).
2. On 7 May 2015, the Trial Chamber ordered the Prosecution to file its list of witnesses and list of evidence, and to complete its disclosure, including of expert reports, by 30 June 2015.¹ The Prosecution has completed its disclosure, but for a limited number of documents.
3. The Prosecution seeks an extension of time for the disclosure of: (1) transcripts of the interviews of three insider Witnesses (P-0500, P-0607 and P-0483), interviewed under article 55 of the Rome Statute, whom the Prosecution has included on its List of Witnesses to be relied on at trial², and upon whose evidence the Prosecution will seek to rely in the presentation of its case; (2) transcripts of the re-interview of one insider Witness (P-0435), also included on the Prosecution’s List of Witnesses to be relied on at trial;³ (3) audio tapes of the interview of P-0483; (4) transcripts of the interview, under article 55, of one potential witness (P-0608) to be disclosed under rule 77 of the Rules of Procedure and Evidence, and upon whose evidence the Prosecution will not seek to rely upon at trial; (5) the report of Prosecution expert Witness P-0439, also included on the Prosecution List of Witnesses;⁴ (6) two expert reports from the NFI, which the Prosecution may seek to add to its list of evidence. The Prosecution will seek permission, in due course, to add the transcripts of the interviews of P-0500, P-0435, P-0607 and P-0483, and P-0439’s expert report to its list of evidence to be relied upon at trial, and may, in due course, seek to add the two additional NFI expert reports,

¹ ICC-02/11-01/15-58, paras.22 and 25.

² As filed today, 30 June 2015.

³ As filed today, 30 June 2015.

⁴ As filed today, 30 June 2015.

depending upon their findings and relevance. Finally (7), the Prosecution seeks an extension of time for the disclosure, as necessary when the issue of potentially privileged material is resolved, of information contained on the laptop allegedly belonging to Blé Goudé.

II. Confidentiality

4. The Prosecution files this submission, and Annex A, as confidential since it refers to evidence which is not yet available to the public, including related to Prosecution witnesses. A public redacted version will be filed as soon as practicable.

III. Submissions

Transcripts of article 55(2) interviews of Witnesses P-0500, P-0435, P-0607, P-0483 and P-0608

A. Interviews of persons included on the Prosecution List of Witnesses

5. The Prosecution, in its last investigative activities, conducted interviews of five persons, the transcripts of which are in the process of being finalised. Of these five persons, the Prosecution intends to rely upon the evidence of four - P-0500, P-0435, P-0607 and P-0483 - at trial. Of these four, one - P-0435 - was previously interviewed by the Prosecution, and the transcripts and audio recordings of the interview have been previously disclosed.⁵ All four witnesses are included on the Prosecution's List of Witnesses, together with summaries of the main facts about which they are expected to testify.⁶ Detailed investigator notes of the interviews of each of these Witnesses ("interview notes") have been disclosed, as described below. In respect of Witnesses P-0500, P-0435 and P-0607, audio recordings of the (new) interviews have also been disclosed, as described below. In respect of one Witness, P-0483, for reasons stated below, the audio recordings will be ready for disclosure by 24 July 2015.

⁵ Disclosed to Defence of Blé Goudé on 22 August 2014, ICC-02/11-02/11-125 and Gbagbo Defence on 6 February 2015 ICC-02/11-01/11-762.

⁶ Filed today, 30 June 2015.

6. All four Witnesses - P-0500, P-0435, P-0607 and P-0483 - will give highly relevant and probative evidence at trial. The Prosecution submits that the Defence will suffer minimal, if any, prejudice as a result of the late disclosure of the transcripts of the interviews of P-0500, P-0435 and P-0607, and the transcripts and audiotapes of the interview of P-0483, because detailed interview notes have been disclosed in respect of each of these Witnesses, and audiotapes in respect of three. In addition, the re-interview of Witness P-0435 focused on highly limited issues.
7. The Prosecution regrets that it has not yet been in a position to disclose the audiotapes for P-0483, and that the transcripts for this Witness will take longer to prepare, for reasons explained below. The Prosecution, however, anticipates that disclosure in relation to P-0500, P-0435 and P-0607 will be complete by the end of July, and, in respect of P-0483, by the end of September. In addition, Witnesses P-0500, P-0435 and P-0607 are unlikely to be called at the beginning of the presentation of the evidence in this case. P-0483 will not be called until mid-2016.

(i) *Witness P-0500*

8. Witness P-0500 was interviewed between [REDACTED] May 2015. On 25 June 2015, the Prosecution disclosed as incriminating evidence the audio recording⁷ of his interview and detailed interview notes.⁸ The Prosecution expects to be in a position to disclose the transcripts of the interview by 10 July 2015.

(ii) *Witness P-0435*

9. Witness P-0435 was previously interviewed in May 2014. He was re-interviewed on [REDACTED] May 2015 on very limited and focused issues. On 25 June 2015, the Prosecution disclosed as incriminating evidence the audio recording⁹ of his

⁷ With one specific standard redaction to the audio recording itself.

⁸ ICC-02/11-01/15-108. See for the audio recording and annexes from CIV-OTP-0082-0383 to CIV-OTP-0082-0391 and the Witness summary at CIV-OTP-0084-0252.

⁹ With one specific standard redaction to the audio recording itself.

interview and detailed interview notes.¹⁰ The Prosecution expects to be in a position to disclose the transcripts of the interview by 24 July 2015.

(iii) Witness P-0607

10. Witness P-0607 was interviewed on [REDACTED] June 2015. On 30 June 2015, the Prosecution disclosed as incriminating evidence the audio recording of his interview and detailed interview notes.¹¹ The Prosecution expects to be in a position to disclose the transcripts of the interview by 31 July 2015, at the latest.

(iv) Witness P-0483

11. P-0483 is an important insider witness, [REDACTED].

12. [REDACTED]. [REDACTED]¹²

13. [REDACTED].

14. [REDACTED].

15. [REDACTED].

16. [REDACTED]. This revised and final version will have to be registered in Ringtail and disclosed. Once this quality review is completed, the entire interview will also have to be translated into French pursuant to rule 76 of the Rules.

17. The audio recordings of the interview have not been disclosed since they need to be redacted. In order to ascertain the accuracy of such redactions, it was decided to wait for the review of the transcripts of the interview before contemplating the disclosure of redacted audio recordings.

18. The Prosecution, as an interim measure, if need be, will be in a position to disclose the transcripts of the interview, [REDACTED], together with the redacted audio tapes (including any necessary redactions), by 24 July 2015. The complete certified translation into French will be ready before the end of September 2015.

¹⁰ ICC-02/11-01/15-108. See for the audio recording and annexes from CIV-OTP-0082-0371 to CIV-OTP-0082-0379 and the Witness summary at CIV-OTP-0084-0319.

¹¹ ICC-02/11-01/15-108. See for the audio recording and annexes from CIV-OTP-0083-0290 to CIV-OTP-0083-0294 and the Witness summary at CIV-OTP-0084-3902.

¹² [REDACTED].

19. While this may be just over three months before the likely start of the presentation of evidence (January 2016), Witness P-0483 will not be called to testify before mid-2016, if not much later into the Prosecution's case. Therefore, any prejudice to the Defence will be reduced. And as stated above, the Prosecution has disclosed detailed interview notes for this witness.

B. Interviews of persons to be disclosed under rule 77

20. On 17 June 2015, P-0608 was interviewed by the Prosecution. On 30 June 2015, the Prosecution disclosed pursuant to rule 77 the audio recording of his interview and detailed interview notes.¹³ The transcripts of this interview will be ready for disclosure by 14 August 2015.

21. The Prosecution submits that the Defence will not suffer prejudice as a result of the late disclosure of the interview transcripts for P-0608, given that interview notes have already been disclosed and that the transcripts will be disclosed well in advance of the trial's commencement.

The expert on youth groups – Witness P-0439

22. The Prosecution has been waiting for the expert report of Witness P-0439 for over a year now and has been in communication with this expert on a regular basis to obtain clarity as to when his report will be ready for disclosure to the Defence.

23. On 29 June 2015, the Prosecution requested an explanation from the witness as to the reasons why his report had not been finalised as promised, as well as an estimated date of delivery. The Prosecution attaches an email response received from Witness P-0439 as confidential Annex A. The Prosecution expects to be in a position to disclose the report by 7 July 2015, once it has been registered and processed for disclosure.

¹³ ICC-02/11-01/15-108. See for the audio recording and annexes from CIV-OTP-0083-0305 to CIV-OTP-0083-0311 and the witness summary at CIV-OTP-0084-4206 disclosed pursuant to rule 77.

Expert reports from the Netherlands Forensic Institute (“NFI”)

24. The Prosecution is expecting two additional expert reports from the NFI, dealing with two issues. First, on 12 May 2015, the Prosecution submitted to the NFI further [REDACTED] for DNA analysis in relation to the 3 March 2011 incident. [REDACTED].
25. The NFI is still very much engaged with its scientific investigations into the downing of flight MH17 over Ukraine and have informed the Prosecution that they will be in a position to provide their scientific analyses by mid-August. It is expected that these analyses will be provided in two new reports, and may (depending upon the findings and relevance) require the addition of one, or possibly, two experts to the Prosecution List of Witnesses.¹⁴ In this event, the Prosecution will seek permission to add any new expert witnesses to its List of Witnesses.
26. The Prosecution submits that the prejudice occasioned to the Defence, if any, by this late disclosure will be minimal. This evidence, if incriminating in nature, will corroborate an existing and wide ranging body of evidence related to the 3 March 2011 incident. The Defence will have ample time to prepare, following its disclosure.

Laptop of Charles Blé Goudé

27. The Prosecution recalls that it has stopped the analysis of a laptop allegedly belonging to Blé Goudé since the latter filed a submission related to potentially privileged material on 19 May 2015.¹⁵ The Prosecution will be in a position to disclose, as soon as practicable, any relevant material from this laptop, once the issue of potentially privileged material is resolved.

¹⁴ One expert from NFI, P-0601, is already included on the Prosecution List of Witnesses.

¹⁵ See Chamber’s order at ICC-02/11-01/15-104, making reference to *ex parte* submission ICC-02/11-01/15-69-Conf-Exp of the Prosecution.

Conclusion

28. The Prosecution respectfully requests an extension of time as follows:

- i. To disclose, as incriminating evidence, and rely upon for the purposes of the presentation of its case at trial, the interview transcripts of Witnesses P-0500, P-0435 and P-0607 by the end of July 2015, P-0483 by the end of September, and the expert report and testimony of Witness P-0439 by 7 July 2015.
- ii. To disclose the audio tapes of the interview of P-0483, as incriminating evidence by 24 July 2015.
- iii. To disclose, pursuant to rule 77, the transcripts of the interview of P-0608 by 14 August 2015.
- iv. To disclose, and rely, if relevant, at trial upon, additional NFI expert reports relating to analysis of the DNA [REDACTED] of an alleged victim of the 3 March 2011 incident by mid-August 2015.
- v. To disclose, as necessary when the issue of potentially privileged material is resolved, information contained on the laptop allegedly belonging to Blé Goudé.



Fatou Bensouda, Prosecutor

Dated this 2nd of July 2015

At The Hague, The Netherlands