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

Public redacted version of "Prosecution's urgent Request for an extension of time to comply with one of the time limits set out in the Chamber's Order of ICC-02/11-01/15-787", 8 February 2017, ICC-02/11-01/15-798-Conf

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Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Introduction

1. The Prosecution applies under regulation 35 of the Regulations of the Court (“Regulations”) and article 64(6)(f) of the Statute, for an extension of time to comply with one of the deadlines set out in the Chamber’s Order of 23 January 2017.¹
2. Specifically, the Prosecution seeks first, an extension to 28 April 2017 of the Chamber’s deadline of 28 February 2017, to file a submission of its documentary evidence, excluding its video evidence; and second, an extension to 30 June 2017 of the Chamber’s deadline of 28 February 2017, for the submission of its video evidence. This request for variation is based on a combination of factors, namely the size of the evidence collection in question and the complexity of the task involved, the particularities of the collection of video evidence, significant competing responsibilities during the next month, and the Prosecution’s continued efforts to streamline the proceedings.
3. Given the proximity of the 28 February 2017 deadline, the Prosecution seeks an expedited decision on this request. The Defence for Mr Gbagbo has indicated that it would not oppose such a request.²

Confidentiality

4. This filing is classified as confidential, as it refers to information that is not yet available to the public. The Prosecution will file a public redacted version that will maintain the confidentiality of the relevant witness pseudonyms by 10 February 2017.

¹ Order requesting the Parties and participants to submit information for the purposes of the conduct of the proceedings pursuant to article 64(2) of the Statute and rule 140 of the Rules of Procedure and Evidence (“Order”), ICC-02/11-01/15-787. The Chamber ordered the Prosecutor, *inter alia*, to file a consolidated submission of documentary evidence, by 28 February 2017, “without prejudice to the further submission of additional documentary evidence if necessary”.

² E-mail from Gbagbo Defence to TC 1 Communications, dated 24 January 2017.

Submissions

5. In recent months, the Prosecution initiated a process of internal review of all items included on its List of Evidence with a view to organising its submissions of documentary evidence under paragraphs 43-44 of the Conduct Directions.³ As such, the Prosecution's endeavours are in line with the Chamber's order. However, this is a lengthy process which involves not only the selection of documents for submission, but also providing information that will enable the Trial Chamber to make its determination on admissibility and relevance at the appropriate phase of the case. As such, each document needs to be presented, with detailed and precise information showing the nexus between each document and the charges, the portions of each document that are relevant to the case, the way in which each document was obtained, and other elements demonstrating its probative value.
6. For these reasons, the Prosecution seeks an extension of time, under regulation 35(1) of the Regulations, of the Order's deadline of 28 February 2017 to file a consolidated submission of its documentary evidence. There exists good cause for extending the 28 February 2017 time limit, as further elaborated below. The Prosecution seeks different time limits for filing submissions of its documentary and video evidence, for the reasons also elaborated, namely, an extension to 28 April 2017 to file a submission of its documentary evidence, and an extension to 30 June 2017 for the submission of its video evidence.

Size of the collection, complexity of the task

7. The intended submission of documentary and video evidence relates to a large volume of material. Drafting the appropriate submissions under paragraphs 43 - 44 of the Conduct Directions is a time consuming and relatively complex task. The Prosecution seeks the time necessary to complete this task properly, in particular having in mind the need to fully address, at this stage - for purposes of

³ ICC-02/11-01/15-498-AnxA ("Conduct Directions").

the Chamber's admissibility and relevance determination later⁴ – issues of relevance and probative value, including authenticity.

8. The Prosecutor's List of Evidence contains 5,669 items of which 556 have been submitted on the record to date. Included in the List of Evidence are over 840 documents emanating from nine different FDS source-locations or from the Presidential Palace or Residence ("the Abidjan collections"). It further includes over 100 items related to the United Nations, and over 400 videos ("the video collection"). The Abidjan and video collections in particular include a number of documents of great significance to the Prosecution's case.
9. Drafting the necessary submissions for purposes of paragraphs 43-44 of the Conduct Directions involves analysing each document within the Prosecution's collections individually and articulating the relevance and probative value of each. The Prosecution has in mind, in particular, the Chamber's guidance:

Parties are expected to fully litigate the relevance and admissibility of each item of evidence at the time it is submitted (cf. Rule 64(1) of the Rules). Unless the relevance of an item of evidence is readily apparent – on its face or from submissions that are already on the record of the case (such as the pre-trial brief) – the party submitting the evidence must make sufficiently detailed and precise submissions, so as to enable the other parties to make informed responses and the Chamber to resolve the matter, including ruling on admissibility if necessary.⁵

10. As such, the Prosecution is drafting its submissions in relation to each document with a view to providing the Chamber with a concise yet detailed analysis containing all the necessary information to make a determination as to both the relevance, probative value and weight to be accorded to each item.

Particularities of the video collection

11. The Prosecution seeks a longer extension of time, to 30 June 2017, for filing its submission of video evidence because of the particularities of the Prosecution's video collection.

⁴ ICC-02/11-01/15-405, p. 10.

⁵ ICC-02/11-01/15-773, para. 38.

12. The List of Evidence contains more than 400 videos. Most of these were obtained from *RTI*, [REDACTED]. As the Chamber is well aware, the Prosecution is in possession of individual *RTI Journal Télévisé* episodes that were broadcast twice a day during the post-electoral violence in Cote d'Ivoire. In many instances, the daytime broadcast and the evening broadcast present some duplicate clips. Further, there is also overlap between the videos obtained from the *RTI* itself with some of the *RTI* videos obtained as part of [REDACTED]. The process of submitting only the most relevant clips involves identifying the duplicative broadcasts, or in some instances the segments of the broadcasts that are duplicative. Further, analysing these videos inevitably involves resource-intensive technical work such as identifying the exact dates of the events reported, the date of the broadcast itself, the time-stamp of each clip within a broadcast as well as the accompanying transcript.
13. Further, and as forecast in its recent filing,⁶ the Prosecution has instructed Witness P-0541 to produce a report - including a list - outlining and summarising the content of videos of the *RTI Journal Télévisé* in the Prosecution's possession, to serve as a useful tool for easily identifying relevant news clips and their content. The report is currently expected to be finalised by the end of March 2017. The Prosecution will file a request under regulation 35 of the Regulations as soon as possible thereafter. The Prosecution expects Witness P-0541's report to contain much of what will form the basis for the paragraph 43-44 submission of its video collection.
14. Given the volume of videos, including duplicative clips, the time-consuming nature of technical video-work, and the fact that P-0541's report will not be completed until the end of March, the Prosecution seeks additional time for the submission of its relevant videos.

⁶ ICC-02/11-01/15-788, para. 18.

Efforts to streamline proceedings

15. The Prosecution is currently engaged in the process of reviewing its List of Evidence with a view to further streamlining its case. This process of review involves a thorough analysis of over 5,000 documents, which are listed but have not yet been submitted into evidence in this case. With more time to complete this further in-depth review, the Prosecution expects to be able to submit substantially fewer documents than now appear on its List.
16. These 5,000 documents include approximately 1,200 items from the Abidjan and video collections (paragraph 7 above). Whilst the great majority of items from these collections is likely to be submitted, there is a need to further refine and streamline this evidence, to avoid submission of duplicative material or material of lesser relevance or probative value. The Prosecution is also reviewing over 1,000 items included in its List of Evidence comprising, *inter alia*, reports, media articles, legislation, photographs and financial documents. Similarly to its review of evidence within its Abidjan collection, the Prosecution is conducting this review with a view to selecting for submission only the most relevant and probative of these.
17. The Prosecution seeks additional time to complete a thorough process of review, and to ensure the necessary internal oversight. It is hoped that this exercise will result in a significant saving of resources in the longer term, since it is expected that the Prosecution will be able to submit substantially fewer documents than now appear on its List of Evidence.

Competing tasks

18. Finally, the Prosecution seeks an extension of time due to the fact that the current order of witnesses will be drawing much of the team's resources. Indeed, [REDACTED]. These witnesses require [REDACTED]. In order for the presentation of evidence of these witnesses to be streamlined, including the

careful selection of the relevant documents, team members will not be able to participate in the competing task of preparing the submission of documentary evidence. Given the size of the exercise, completing this task when most of the team is busy preparing the [REDACTED] will prove most difficult.

Conclusion

19. In summary, the Prosecution is seeking additional time in order to comply with the Chamber's order, continue its efforts to streamline the proceedings by selecting only the most relevant and probative evidence for submission, and to provide the necessary concise analysis of these items of evidence, in order to assist the Chamber, Parties and participants.
20. For all of the foregoing reasons, the Prosecution seeks an extension of time until 28 April 2017 to file its submission of its documentary evidence, excluding its video evidence, and an extension until 30 June 2017 to file its submission of its video evidence. Given the proximity of the 28 February 2017 deadline, the Prosecution seeks an expedited decision on this request.



Fatou Bensouda, Prosecutor

Dated this 9th day of February 2017

At The Hague, The Netherlands