

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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No.: ICC-02/11-01/15  
Date: 18 August 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 redacted version of**

**Decision on the Prosecution requests for variation of the time limit for disclosure  
of certain documents**

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

**The Office of the Prosecutor**

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Mr James Stewart  
Mr Eric MacDonald

**Counsel for Laurent Gbagbo**

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**Counsel for Mr Charles Blé Goudé**

Mr Geert-Jan Alexander Knoops  
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**Legal Representatives of Victims**

Ms Paolina Massidda

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

**States' Representatives**

*Amicus Curiae*

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

**Trial Chamber I** ('Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Articles 64(2), 64(3)(c) and 67(1) of the Rome Statute ('Statute') and Regulations 29 and 35 of the Regulations of the Court ('Regulations'), issues the following 'Decision on Prosecution requests for variation of the time limit for disclosure of certain documents'.

## **I. Background**

1. On 7 May 2015, the Chamber issued the 'Order setting the commencement date for trial ('Order of 7 May 2015'), directing, *inter alia*, the Office of the Prosecutor ('Prosecution'): (i) to disclose to the defence teams for Mr Gbagbo ('Gbagbo Defence') and Mr Blé Goudé ('Blé Goudé Defence') all incriminatory material in the form of witness statements and any other material to be relied on at trial, as well as all Article 67(2) and Rule 77 material in its possession for inspection on a rolling basis and no later than 30 June 2015; and (ii) to file, by the same date, its lists of witnesses ('List of Witnesses') and evidence ('List of Evidence') it intends to rely upon at trial.<sup>1</sup>
2. On 30 June 2015, the Prosecution filed the List of Witnesses and the List of Evidence.<sup>2</sup>
3. On the same day, immediately before the filing deadline, the Prosecution also filed a request pursuant to Regulation 35 of the Regulations ('First Request') seeking an extension of the 30 June 2015 deadline ('Disclosure Deadline') for the disclosure of: (i) transcripts of the interviews of four insider witnesses (Witnesses P-0435, P-0483, P-0500 and P-0607) to be relied on at trial; (ii) audio recordings of the interview of Witness P-0483; (iii) transcripts of the

<sup>1</sup> Order setting the commencement date for trial, 7 May 2015, ICC-02/11-01/15-58.

<sup>2</sup> Annex A and C to Prosecution's submissions of its List of Witnesses and List of Evidence, ICC-02/11-01/15-114-Conf-AnxA and ICC-02/11-01/15-114-Conf-AnxC.A corrigendum to Annex A was filed on 24 July 2015 (ICC-02/11-01/15-114-Conf-AnxA-Corr).

interview of P-0608, which the Prosecution will not seek to rely on at trial; (iv) the expert report of Witness P-0439, whose name appeared on the List of Witnesses; (v) two expert reports from the *Netherlands Forensic Institute* ('NFI'); and (vi) any disclosable material to be found on a laptop allegedly belonging to Mr Blé Goudé.<sup>3</sup> The Prosecution indicated that it would also request, in due course, the addition of some of the above-mentioned material to its List of Evidence.

4. Also on 30 June 2015, the Prosecution filed a notice indicating that it was not in a position to interview [REDACTED] and informing the Chamber that it may, in the future, seek an extension of time pursuant to Regulation 35 of the Regulations in the event that an interview materialises ('First Notice').<sup>4</sup>
5. On 2 July 2015, the Prosecution filed another request pursuant to Regulation 35 of the Regulations ('Second Request') seeking permission to, by 7 July 2015, re-disclose with fewer redactions 35 incriminating documents which, for 'technical reasons', it was unable to process by the 30 June 2015 deadline.<sup>5</sup>
6. On 7 July 2015, the Gbagbo Defence responded to the Second Request.<sup>6</sup> It noted that the 35 documents already had been disclosed prior to the 30 June 2015 deadline and therefore stressed that the issue related more to the Prosecution's obligations set out in the 'Protocol establishing a redaction

<sup>3</sup> Prosecution's request pursuant to Regulation 35 in relation to a limited number of documents, ICC-02/11-01/15-115-Conf with confidential Annex A. A public redacted version was filed on 2 July 2015 (ICC-02/11-01/15-115-Red).

<sup>4</sup> ICC-02/11-01/15-111-Conf-Exp. A confidential redacted version was filed on the same day (ICC-02/11-01/15-111-Conf-Red).

<sup>5</sup> Prosecution's Request pursuant to regulation 35 seeking permission to disclose 35 documents with less redactions, ICC-02/11-01/15-118 with confidential Annex A. The Prosecution had, by way of email, already informed the Defence and the Chamber of the technical difficulties encountered (Email from the Prosecution to the Chamber and the Defence on 30 June 2015 at 14:14).

<sup>6</sup> *Réponse de la Défense à la « Prosecution's Request pursuant to regulation 35 seeking permission to disclose 35 documents with less redactions »* (ICC-02/11-01/15-118), ICC-02/11-01/15-125-Conf ('First Gbagbo Defence Response'). A public redacted version was filed on the same date (ICC-02/11-01/15-125-Red).

regime [...]’ (‘Redaction Protocol’).<sup>7</sup> The Gbagbo Defence contended that the Prosecution should have lifted the redactions in question on an ongoing basis, in accordance with the Redaction Protocol, and that it should have sought a variation of the time limits set therein, and not of the Disclosure Deadline. The Gbagbo Defence therefore considered that the Second Request was moot. It invited the Chamber to remind the Prosecution of its obligations arising from the Redaction Protocol and order the Prosecution to immediately re-disclose the 35 documents with fewer redactions, as instructed.<sup>8</sup>

7. On 8 July 2015, the Prosecution informed the Chamber that the 35 documents that were the subject of the Second Request had been re-disclosed to the Blé Goudé Defence on 7 July 2015 and to the Gbagbo Defence on 8 July 2015.<sup>9</sup>
8. On 15 July 2015, the Gbagbo Defence filed its response to the First Request,<sup>10</sup> in which it stressed that the Prosecution failed to meet its disclosure obligations.<sup>11</sup> It opposed the extensions sought, and requested that the Chamber remove Witnesses P-0439, P-0483, P-0500 and P-0607 from the Prosecution’s List of Witnesses to be relied on at trial. In the Gbagbo Defence’s view, granting the First Request would infringe Mr Gbagbo’s right to have adequate time and facilities for trial preparation because the Gbagbo Defence would not have time to, *inter alia*, analyse the disclosed material and conduct necessary investigations.<sup>12</sup> In the alternative, the Gbagbo Defence requests, should the Chamber grant the First Request, that the Chamber set a

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<sup>7</sup> First Gbagbo Defence Response, ICC-02/11-01/15-125-Red, paras 11-21 referring to Protocol establishing a redaction regime in the case of *The Prosecutor v. Laurent Gbagbo* annexed to Decision on the Protocol establishing a redaction regime, 15 December 2015, ICC-02/11-01/11-737-AnxA.

<sup>8</sup> First Gbagbo Defence Response, ICC-02/11-01/15-125-Red, paras 21 and 26 and page 9.

<sup>9</sup> Prosecution’s Communication of Evidence Disclosed to the Defence on 7 and 8 July 2015, ICC-02/11-01/15-128 with confidential Annexes.

<sup>10</sup> *Réponse de la Défense à la « Prosecution’s request pursuant to Regulation 35 in relation to a limited number of documents »* (ICC-02/11-01/15-115-Conf), ICC-02/11-01/15-137-Conf (‘Second Gbagbo Defence Response’).

<sup>11</sup> Second Gbagbo Defence Response, ICC-02/11-01/15-137-Conf, paras 12-13.

<sup>12</sup> Second Gbagbo Defence Response, ICC-02/11-01/15-137-Conf, paras 14-16.

new date for full disclosure and for the start of trial, the latter being no less than six months after the former.<sup>13</sup>

9. Also on 15 July 2015, the Blé Goudé Defence filed its response to the First Request,<sup>14</sup> in which it stressed that the Prosecution failed to meet the Chamber's deadline for full disclosure.<sup>15</sup> The Blé Goudé Defence therefore requested that the Chamber dismiss the First Request and, consequently:
  - (i) exclude from the List of Witnesses P-0500, P-0435, P-0607, P-0483 and P-0439 and, as appropriate, the experts from the NFI ('NFI Experts'); and
  - (ii) exclude from the List of Evidence all related material and any document from the laptop referred to in the First Request.<sup>16</sup> In this regard, the Blé Goudé Defence submits that '[a]uthorising the Prosecutor to complete its disclosure obligations after the time limit has lapsed would have a serious impact on the rights of Mr Blé Goudé to a fair trial'.<sup>17</sup> In the alternative, should the Chamber grant the First Request, the Blé Goudé Defence asks that the Chamber set a new deadline for full disclosure and rule that the six-month timeframe initially allocated for its preparation shall run from this new disclosure deadline.<sup>18</sup>
  
10. On 22 July 2015, the Blé Goudé Defence filed a response to the First Notice, requesting that the Chamber declare it 'null and void' ('Blé Goudé First Notice Response').<sup>19</sup>
  
11. On 24 July 2015, the Prosecution filed a notice indicating its withdrawal of Witness P-0439 from its List of Witnesses and further withdrawing its related

<sup>13</sup> Second Gbagbo Defence Response, ICC-02/11-01/15-137-Conf, paras 73-78.

<sup>14</sup> Defence Response to "Prosecution's request pursuant to Regulation 35 in relation to a limited number of documents" (ICC-02/11-01/15-115-Conf), notified on 16 July 2015, ICC-02/11-01/15-140-Conf ('First Blé Goudé Response').

<sup>15</sup> First Blé Goudé Response, ICC-02/11-01/15-140-Conf, para. 10.

<sup>16</sup> First Blé Goudé Response, ICC-02/11-01/15-140-Conf, page 15.

<sup>17</sup> First Blé Goudé Response, ICC-02/11-01/15-140-Conf, para. 12. *See also*, paras 26-31.

<sup>18</sup> First Blé Goudé Response, ICC-02/11-01/15-140-Conf, paras 32 and 35.

<sup>19</sup> Defence Response to "Prosecution's notice that it was not in a position to interview witness P-0473" (ICC-02/11-01/15-111-Conf-Red), ICC-02/11-01/15-154-Conf.

request for an extension of time to disclose the report of this expert witness ('Prosecution Withdrawal').<sup>20</sup>

12. On 27 July 2015, the Prosecution filed a further request seeking permission to disclose a document under Rule 77 of the Rules that it had omitted to disclose by the Disclosure Deadline ('Third Request', and together with the First and Second Request, 'Prosecution Requests').<sup>21</sup> The relevant document was attached to the request.
13. On 31 July 2015, the Blé Goudé Defence filed a response to the Third Request,<sup>22</sup> whereby it submitted that it should be rejected.
14. On 3 August 2015, the Prosecution filed a notice ('Second Notice') in which it informed the Chamber that the Defence refused to receive disclosure of certain materials pertaining to the First Request.<sup>23</sup>
15. On 11 August 2015, the Gbagbo Defence filed a response to the Third Request<sup>24</sup> in which it submitted that: (i) the Prosecution did not show good cause; (ii) that there is no reason outside the Prosecution's control to grant an extension of the time limit; (iii) the document that was the subject of the Third Request is of great importance to the Prosecution's case; and (iv) disclosure should not have been sought under Rule 77 of the Rules.

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<sup>20</sup> Prosecution Notice of Withdrawal of Witness P-0439 from the List of Witnesses, ICC-02/11-01/15-160.

<sup>21</sup> Prosecution's Request pursuant to regulation 35 seeking permission to disclose a document under rule 77, ICC-02/11-01/15-164 and confidential Annex A.

<sup>22</sup> Defence Response to Prosecution's Request pursuant to regulation 35 seeking permission to disclose a document under rule 77, ICC-02/11-01/15-173 ('Second Blé Goudé Response').

<sup>23</sup> Prosecution's notice of attempts to disclose documents, notified on 4 August 2015, ICC-02/11-01/15-175.

<sup>24</sup> *Réponse de la Défense à la «Prosecution's Request pursuant to regulation 35 seeking permission to disclose a document under rule 77»* (ICC-02/11-01/15-164), ICC-02/11-01/15-179-Conf ('Third Gbagbo Defence Response').

16. On 12 August 2015, the Prosecution filed another notice ('Third Notice') in which it informed the Chamber that the Defence refused to receive disclosure of additional materials pertaining to the First Request.<sup>25</sup>

## II. Submissions and analysis

17. On 7 May 2015, in setting the commencement date for trial, the Chamber directed that by 30 June 2015 – the Disclosure Deadline – the Prosecution shall, *inter alia*: (i) complete its disclosure of material to the Defence; and (ii) file its List of Witnesses and List of Evidence.<sup>26</sup> The purpose of this deadline was to provide the Defence with sufficient time to prepare for trial and sufficient notice of the witnesses and material that the Prosecution will rely on at trial. Indeed, in reaching its decision setting 10 November 2015 as the commencement date for trial, the Chamber indicated that it had 'taken into account the Prosecution's undertaking that it has already disclosed the vast majority of the evidence to the defence teams, and that any limited material remaining to be disclosed, [would] be transmitted on a rolling basis and no later than the end of June 2015',<sup>27</sup> a fact which the Prosecution acknowledges.<sup>28</sup> The Chamber held that, in the circumstances, the Defence would have sufficient time to carry out necessary preparations for trial.<sup>29</sup>

18. The Chamber also emphasises that, while the Statute does not prohibit the Prosecution from conducting post-confirmation investigations, investigations should be largely completed by the Confirmation Hearing.<sup>30</sup> The Chamber

<sup>25</sup> Prosecution's notice of attempt to disclose the transcripts of the interview of Witness P-0608 pursuant to rule 77, ICC-02/11-01/15-180.

<sup>26</sup> Order of 7 May 2015, ICC-02/11-01/15-58.

<sup>27</sup> Order of 7 May 2015, ICC-02/11-01/15-58, para. 15.

<sup>28</sup> Prosecution's consolidated response to the Defence requests for leave to appeal the "Order setting the commencement date of trial" (ICC-02/11-01/15-58), 18 May 2015, ICC-02/11-01/15-67, para. 9.

<sup>29</sup> Order of 7 May 2015, ICC-02/11-01/15-58, para. 16.

<sup>30</sup> See *The Prosecutor v. Thomas Lubanga Dyilo*, "Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled 'Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 (2) and (4) of the Rules of Procedure and Evidence'", 13 October 2006, ICC-01/04-01/06-568 (OA 3), para. 54; *The Prosecutor v. Callixte Mbarushimana*, "Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled 'Decision on the



recalls that the Prosecution was supposed to have completed its ‘last investigative activities’ by early June 2015.<sup>31</sup>

19. A request to vary a time limit set by the Chamber is provided for under, *inter alia*, Regulation 35 of the Regulations. Under Regulation 35(2), 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’. The Chamber observes that Regulation 35(2), last sentence, provides a strict standard affording only a few exceptions.<sup>32</sup>

20. Notwithstanding, the Chamber is of the view that it may nevertheless authorise the Prosecution to disclose material after the relevant deadline (and subsequently rely on it during trial), 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.<sup>33</sup> In conducting this exercise, the Chamber shall be mindful of the right of the accused persons to have adequate time and facilities for the preparation of their defence. Additional factors that may be considered include: (i) whether the new evidence brings to light a

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confirmation of charges”, 30 May 2012, ICC-01/04-01/10-514, para. 44. In so finding, the Chamber acknowledges that it held in March 2015 in *The Prosecutor v. Laurent Gbagbo* that, ‘in suspending the deadline for disclosure of material obtained in ongoing investigations in the *Blé Goudé* case, the Chamber has recognised that investigative steps that are currently being pursued by the Prosecution ultimately will have an impact on both the *Blé Goudé* case and on [the *Gbagbo*] case’ – Decision on Prosecution’s request for an extension of time to disclose certain material 9 March 2015, ICC-02/11-01/11-804-Red, para. 36.

<sup>31</sup> See, e.g., Prosecution’s submission on the provisional agenda for the 21 April status conference, 14 April 2015, ICC-02/11-01/15-35-Conf, para. 44.

<sup>32</sup> See e.g. *Prosecutor v Uhuru Muigai Kenyatta*, Decision on Prosecution request to add P-548 and P-66 to its witness list, 23 October 2013, ICC-01/09-02/11-832 (‘*Kenyatta* Decision’), para. 10.

<sup>33</sup> This approach is consistent with the approaches of Trial Chambers I, V(b) and V(a). See, e.g. *The Prosecutor v Thomas Lubanga Dyilo*, Decision on the Prosecution’s Application to Add P-317 to the Prosecution Witness List (ICC-01/04-01/07-1537), ICC-01/04-01/07-1590, para. 12; *Kenyatta* Decision, ICC-01/09-02/11-832, para. 11; *The Prosecutor v William Samoei Ruto & Joshua Arap Sang*, Prosecution’s Request to Add Witnesses to its List of Witnesses, 3 September 2013 (redacted version notified on 5 September 2013), ICC-01/09-01/11-899-Red; Decision on prosecution requests to add witnesses and evidence and defence requests to reschedule the trial start date, 3 June 2013, ICC-01/09-01/11-762.

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.<sup>34</sup>

21. The Chamber will consider the Prosecution Requests within this legal framework.

#### A. First Notice

22. Regarding the First Notice in relation to [REDACTED], the Chamber notes that the Prosecution indicates that it has not yet been able to interview [REDACTED], and that it wishes to inform the Chamber 'in the interests of the proper management of the proceedings' that it may possibly later file a request under Regulation 35(2) of the Regulations to present the evidence of [REDACTED] at trial.<sup>35</sup> The Chamber considers that the Blé Goudé First Notice Response, seeking that the Chamber find the First Notice 'null and void' because of its 'hypothetical' nature,<sup>36</sup> is therefore inapposite, as the Prosecution clearly stated that it merely seeks to flag the issue with the Chamber and was 'not attempting to circumvent the need to file, in due course, the appropriate request pursuant to [R]egulation 35'.<sup>37</sup> Therefore, at this stage, the Chamber merely notes the Prosecution's submissions.

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<sup>34</sup> *Kenya* Decision, ICC-01/09-02/11-832, para. 11.

<sup>35</sup> Prosecution Notice, ICC-02/11-01/15-111-Conf-Exp, paras 14-15.

<sup>36</sup> Blé Goudé First Notice Response, ICC-02/11-01/15-154-Conf.

<sup>37</sup> Prosecution Notice, ICC-02/11-01/15-111-Conf-Exp, paras 14-15.

## B. First Request

### *i. Transcript of interviews of Witnesses P-0435, P-0483, P-0500 and P-0607 and related audio recording of interview of Witness P-0483*

23. The Prosecution requests an extension of the time limit to disclose interview transcripts which, at the time of the filing of the First Request, '[we]re in the process of being finalised',<sup>38</sup> of interviews conducted with four insider witnesses on which it intends to rely at trial, as well as the audio recording of the interview of Witness P-0483. The Prosecution also informed the Chamber that none of these witnesses will be called at the beginning of the presentation of the evidence<sup>39</sup> and therefore argues that the Defence 'will suffer minimal, if any, prejudice as a result of [this] late disclosure'.<sup>40</sup> The Chamber notes that some of this material forms the basis for the Second Notice, and was thus ready to be disclosed as of late July 2015.<sup>41</sup>

24. The Prosecution underlines that certain material related to these witnesses has, in any event, already been disclosed, including interview notes (for all four witnesses) and audio recordings of the recent interviews (for Witnesses P-0435, P-0500 and P-0607), as well as transcripts of previous interviews (for Witness P-0435).<sup>42</sup> The Prosecution further notes that the Defence is assisted by the summaries of the main facts about which each of these four witnesses is expected to testify.<sup>43</sup>

25. The Prosecution indicated in the First Request that disclosure in relation to Witnesses P-0435, P-0500 and P-0607, for interviews conducted in May and

<sup>38</sup> First Request, ICC-02/11-01/15-115-Red, para. 5.

<sup>39</sup> First Request, ICC-02/11-01/15-115-Red, para. 7.

<sup>40</sup> First Request, ICC-02/11-01/15-115-Red, para. 6.

<sup>41</sup> Second Notice, ICC-02/11-01/15-175, para. 6.

<sup>42</sup> For Witness P-0435.

<sup>43</sup> First Request, ICC-02/11-01/15-115-Red, para. 5 referring to Witness Summaries, Annex B to Prosecution's submission of its List of Witnesses and List of Evidence, 30 June 2015, CC-02/11-01/15-114-Conf-AnxB, pages 243-246, 291-294, 300-304 and 406-408.

June 2015, would be completed by the end of July 2015, which was also confirmed in the Second Notice.

26. In respect of P-0483, the Prosecution submitted that interviews were conducted in March 2015, but that, in light of unique linguistic challenges, the Prosecution would only be in a position to disclose the transcripts of the interviews (in the original language), together with the audio recordings, by 24 July 2015.<sup>44</sup> The Prosecution submitted that complete and certified translations of the interview transcripts would only be ready for disclosure by the end of September 2015.<sup>45</sup>
27. The Defence considers that the Prosecution should have anticipated the time it would need to transcribe the interviews in order to meet its disclosure obligations. Therefore, according to the Gbagbo Defence, the Prosecution did not demonstrate due diligence insofar as it did not conduct its interviews in sufficient time to enable it to comply with the calendar set by the Chamber.<sup>46</sup> In the view of the Gbagbo Defence, the claim that the Prosecution did not have adequate time to transcribe the interviews is not, in and of itself, a valid ground on which an extension of the time limit should be granted.<sup>47</sup>
28. Furthermore, the Gbagbo Defence recalls that in the Prosecution's view all four witnesses will give 'highly relevant and probative evidence at trial'.<sup>48</sup> In light of the importance of Witness P-0483's testimony to the Prosecution's case, the Gbagbo Defence submits that, should P-0483's statement be provided in a language Mr Gbagbo fully understands on the eve of trial, he will not have been informed promptly and in detail of the nature, cause and

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<sup>44</sup> This was also confirmed in the Second Notice, ICC-02/11-01/15-175, para. 6.

<sup>45</sup> First Request, ICC-02/11-01/15-115-Red, paras 16-18.

<sup>46</sup> Second Gbagbo Defence Response, ICC-02/11-01/15-137-Conf, paras 27-30; First Blé Goudé Response, ICC-02/11-01/15-140-Conf, paras 13-15.

<sup>47</sup> Second Gbagbo Defence Response, ICC-02/11-01/15-137-Conf, paras 30-31.

<sup>48</sup> Second Gbagbo Defence Response, ICC-02/11-01/15-137-Conf, para. 43 *referring to* First Request, ICC-02/11-01/15-115-Red, para. 6.

content of the charges in accordance with his right under Article 67(1)(a) of the Statute.<sup>49</sup>

29. With regard to Witness P-0483, the Chamber notes that he is, according to the Prosecution, an important insider witness<sup>50</sup> and is [REDACTED]. The Chamber further observes that the Defence is assisted by the summary of the main facts about which this witness is expected to testify, as well as interview notes. In addition, the Chamber notes the Prosecution's undertaking that, in any event, Witness P-0483 will not be called to testify before mid-2016, if not much later.<sup>51</sup> The Chamber also takes note of the Prosecution's suggestion that, as an interim measure, audio recordings of the interviews, as well as [REDACTED] transcripts, would be and were ready for disclosure to the defence teams by 24 July 2015.<sup>52</sup> Thus, due to the nature of the evidence, and noting the relatively short period of time that has elapsed since the Disclosure Deadline, the Chamber determines that the ability of the Defence to prepare for trial is not unduly prejudiced by the relief sought, and that it is therefore in the interests of justice to grant the extension. The Prosecution is therefore directed to disclose forthwith the [REDACTED] transcripts of the interviews, together with the audio recordings, and is instructed to meet the remainder of its disclosure obligations as soon as practicable, but no later than 30 September 2015.

30. As for the transcripts of interviews of Witnesses P-0435, P-0500 and P-0607, the Chamber notes: (i) the Prosecution's submission that the witnesses 'will give highly relevant and probative evidence at trial';<sup>53</sup> (ii) that detailed

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<sup>49</sup> Second Gbagbo Defence Response, ICC-02/11-01/15-137-Conf, paras 58-60.

<sup>50</sup> First Request, ICC-02/11-01/15-115-Red, para. 11.

<sup>51</sup> First Request, ICC-02/11-01/15-115-Red, paras 7 and 19.

<sup>52</sup> The Chamber has duly noted that, due to the difficulties encountered during the interview, this material might be of limited assistance (First Request, ICC-02/11-01/15-115-Conf, paras 12 and 14; and Second Gbagbo Defence Response, ICC-02/11-01/15-137-Conf, para. 61). *See also* Second Notice, ICC-02/11-01/15-175, para. 6.

<sup>53</sup> First Request, ICC-02/11-01/15-115-Red, para. 6.

interview notes have already been disclosed in respect of these witnesses; and (iii) the Prosecution's commitment not to call these three witnesses at the beginning of trial.<sup>54</sup> In light of this, and again noting the relatively short period of time that has elapsed since the Disclosure Deadline, the Chamber finds that sufficient time is provided for the Defence to analyse the material, conduct the necessary investigations and prepare for cross-examination. The Chamber therefore considers that the Defence will not be unduly affected by the late disclosure of the material requested and that it is in the interests of justice to grant the Prosecution's request for extension of time. Accordingly, the Prosecution is directed to disclose forthwith the transcripts of interviews of Witnesses P-0435, P-0500 and P-0607.

31. Finally, in light of the Prosecution's commitment not to call the four 'insider witnesses'<sup>55</sup> at the beginning of its case, the Chamber directs that these witnesses shall not be included in the list setting out the first 20 witnesses it intends to call at trial.<sup>56</sup>

*ii. Transcript of interviews of P-0608*

32. The Prosecution requests an extension of the Disclosure Deadline for the transcripts of an interview conducted on 17 June 2015 with P-0608, a person whom the Prosecution does not intend to rely on at trial. Audio recordings and detailed interview notes for this interview were already disclosed to the Defence under Rule 77. The Prosecution therefore argues that the Defence will not suffer any undue prejudice as a result of late disclosure.<sup>57</sup> The

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<sup>54</sup> First Request, ICC-02/11-01/15-115-Red, para. 6.

<sup>55</sup> First Request, ICC-02/11-01/15-115-Red, para. 3.

<sup>56</sup> Order of 7 May 2015, ICC-02/11-01/15-58, para. 25.

<sup>57</sup> First Request, ICC-02/11-01/15-115-Red, para. 21.

Prosecution expects the transcripts to be ready for disclosure by 14 August 2015.<sup>58</sup>

33. The Blé Goudé Defence submits that the Prosecution does not give any valid reasons why the transcripts of the interview with P-0608 have not yet been disclosed.<sup>59</sup> The Gbagbo Defence did not make any specific submissions for the part of the First Request related to P-0608.

34. In respect of this specific request, the Chamber notes that the Prosecution (i) does not intend to rely on this material at trial; and (ii) was not in possession of the transcripts in a disclosable format as of 30 June 2015. Considering that the Prosecution was directed by the Chamber to disclose either the material it intended to rely on at trial or any Article 67(2) and Rule 77 material already in its possession,<sup>60</sup> the Chamber finds that the Disclosure Deadline is inapplicable to these transcripts, which were not finalised as of 30 June 2015. In light of the Prosecution's ongoing obligations with regard to Rule 77 and Article 67(2) material, the Prosecution is directed to provide the transcript to the Defence as soon as it becomes available.

*iii. Expert report of P-0439*

35. The Prosecution initially sought a variation of the time limit to disclose the expert report of P-0439. Subsequently, the Prosecution gave notice that it was withdrawing P-0439 from its List of Witnesses, and therefore also its request for an extension of time to disclose this witness's expert report.<sup>61</sup> Therefore, the Chamber considers this part of the First Request to be moot.

<sup>58</sup> First Request, ICC-02/11-01/15-115-Red, para. 20.

<sup>59</sup> First Blé Goudé Response, ICC-02/11-01/15-140-Conf, paras 13-15.

<sup>60</sup> Order of 7 May 2015, ICC-02/11-01/15-58.

<sup>61</sup> Prosecution Withdrawal, ICC-02/11-01/15-160.

*iv. Expert reports from the NFI*

36. The Prosecution requests an extension of the Disclosure Deadline for the eventual disclosure of two additional expert reports by the NFI relating to the 3 March 2011 incident which may, 'depending upon the findings and relevance',<sup>62</sup> require the addition of one or two experts to the List of Witnesses. In this regard, the Prosecution submits that the prejudice occasioned to the Defence by this late disclosure, if any, will be minimal.<sup>63</sup>
37. The Gbagbo Defence argues that the Prosecution has not offered a valid reason justifying its late request for expertise of a forensic nature, especially given that the Gbagbo Defence had insisted since the beginning on the fact that no probative or authentic documents of this sort had been provided.<sup>64</sup> The Blé Goudé Defence also objects to late disclosure of the two NFI expert reports, stressing that, aware of the NFI's constraints, the Prosecution 'should have secured an alternative solution'.<sup>65</sup>
38. The Chamber notes that the Prosecution has not provided a prospective timeline for disclosure of these reports. Furthermore, the description provided by the Prosecution does not allow the Chamber to assess any potential impact on the ability of the Defence to prepare for trial as, notably, the Prosecution itself does not know: (i) what findings will be presented in these reports; (ii) whether or not the findings made therein will go far beyond the existing body of evidence; or (iii) the length of these reports. Accordingly, the Chamber is not in a position to determine the degree of prejudice to the Defence, if any, that may result from late disclosure.

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<sup>62</sup> First Request, ICC-02/11-01/15-115-Red, para. 25.

<sup>63</sup> First Request, ICC-02/11-01/15-115-Red, para. 26.

<sup>64</sup> Second Gbagbo Defence Response, ICC-02/11-01/15-137-Conf, para. 39.

<sup>65</sup> First Blé Goudé Response, ICC-02/11-01/15-140-Conf, para. 23. *See also*, para. 24.



39. Consequently, the Chamber is of the view that the part of the First Request related to the extension of the time limit for disclosing potential NFI expert reports is premature, and that the safeguards necessary to ensure the fairness of trial cannot be put in place if the Chamber were to grant the request *in abstracto*. The Chamber recalls that, on one hand, the Prosecution has ongoing disclosure obligations and shall therefore proceed with disclosure should it determine that the expert reports it receives from NFI contain information covered by Rule 77 of the Rules or Article 67(2) of the Statute. Should the Prosecution otherwise wish to be authorised to rely on these expert reports at trial, it shall seise the Chamber anew providing the necessary justification.

*v. Any material from the laptop allegedly belonging to Mr Blé Goudé*

40. Noting that the Chamber's decision with regard to the Prosecution's request concerning potentially privileged material was rendered on 6 July 2015,<sup>66</sup> the Chamber is of the view that the Prosecution has an obligation to evaluate the material, and, as indicated above, should any material be assessed as disclosable under Rule 77 of the Rules and Article 67(2) of the Statute, the Prosecution shall disclose this material as soon as practicable, notwithstanding the fact that the Disclosure Deadline has expired. However, should the Prosecution wish to rely on any of the material from the laptop during the present proceedings, a new request seeking an extension of the Disclosure Deadline would be required.

## **B. Second Request**

41. In the Second Request, the Prosecution requested an extension of time to comply with its obligation to re-disclose 35 documents to the Defence with

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<sup>66</sup> Decision on 'Prosecution's request in relation to potentially privileged material seized by the Office of the Prosecutor', ICC-02/11-01/15-121.

fewer redactions. The Chamber notes that it has since effected this disclosure in full.<sup>67</sup>

42. In relation to the Gbagbo Defence's contention that the Second Request is moot on the basis that the Prosecution should have sought a variation of the time limits set in the Redaction Protocol, and not of the disclosure deadline, the Chamber considers that the impact on the Defence would be the same regardless of the legal framework through which the matter is adjudicated. Either way, the focus of the Chamber's inquiry is to assess whether any prejudice to the Defence may arise as a consequence of the Prosecution's actions. Therefore, while the Chamber recalls the parties' obligations under the Redaction Protocol, it does not consider that the Prosecution's request under Regulation 35 of the Regulations is misplaced or that the Gbagbo Defence's argument is material to adjudicating the request.

43. In considering the matter, the Chamber notes that the Prosecution submits that it was unable to meet the Disclosure Deadline because of technical difficulties relating to the Ringtail system which arose just before the deadline.<sup>68</sup> Accordingly, the Chamber is persuaded that the Prosecution could not have foreseen the need to file a request for extension prior to the technical difficulties arising, and its inability to meet the deadline was outside of its control. For these reasons, the Chamber finds that good cause exists for late disclosure and grants the Second Request. In light of the limited scope of the extension of time requested, the Chamber is satisfied that no undue prejudice to the accused arises.

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<sup>67</sup> Prosecution's Communication of Evidence Disclosed to the Defence on 7 and 8 July 2015, ICC-02/11-01/15-128 and Annexes A-D.

<sup>68</sup> Second Request, ICC-02/11-01/15-118, para. 8.

### C. Third Request

44. The Prosecution seeks an extension of time to disclose one document under Rule 77 that was not disclosed before the Disclosure Deadline 'as a result of an oversight'. The Prosecution indicates that it does not intend to use the document at trial, but nevertheless requests an extension of time to comply with its obligation under Rule 77 of the Rules.
45. The Blé Goudé Defence and Gbagbo Defence submit that: (i) the Prosecution did not substantiate its Third Request; (ii) the cause of delayed disclosure 'was entirely within the control of the Prosecution'; and (iii) they will suffer prejudice as a result of the late disclosure.<sup>69</sup>
46. The Chamber notes that the Prosecution disclosed the relevant document as an annex to the Third Request. Given the length of the document, the relatively short period between the expiry of the Disclosure Deadline and its disclosure, and the fact that the Prosecution does not intend to use the document at trial, the Chamber is satisfied that no undue prejudice arises to the Defence by its late disclosure. However, having so found, the Chamber reminds the Prosecution of its obligation to be diligent in effecting disclosure in a thorough and timely manner.

### D. Conclusion

47. Finally, the Chamber has considered the overall impact of the requested variation of time limit and considers that, cumulatively, the delayed disclosure granted in the present decision will not prejudice the accused persons or impact on the fair and expeditious conduct of proceedings. In reaching this conclusion, the Chamber has had due regard to the specific circumstances of the case at hand including, notably, the commencement date

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<sup>69</sup> Second Blé Goudé Response, ICC-02/11-01/15-173, paras 9-18; Third Gbagbo Defence Response, ICC-02/11-01/15-179-Conf, paras 10-45.

for the evidentiary stage of trial, the length of time that has elapsed since the Disclosure Deadline, the current status of disclosure, the Prosecution's undertaking not to call the four witnesses subject of the First Request at the beginning of its case, and the bearing on the case of the subject matter of the Prosecution Requests.

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**PARTLY GRANTS** the First Request;

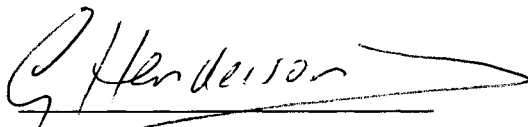
**AUTHORISES** the extension of the time limit sought in respect of materials relating to Witnesses P-0435, P-0483, P-0500 and P-0607, subject to the guidance provided in paragraph 31 above;

**GRANTS** the Second and Third Requests;

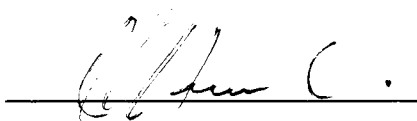
**REJECTS** all other requests; and

**ORDERS** the Gbagbo Defence and the Blé Goudé Defence to file public redacted versions of ICC-02/11-01/15-137-Conf and ICC-02/11-01/15-140-Conf, respectively.

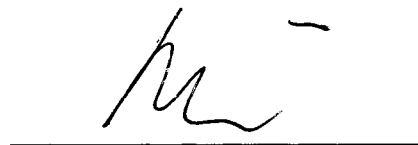
Done in both English and French, the English version being authoritative.



**Judge Geoffrey Henderson, Presiding Judge**



**Judge Olga Herrera Carbuccia**



**Judge Bertram Schmitt**

Dated 18 August 2015

At The Hague, The Netherlands