

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 2 April 2014

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Hans-Peter Kaul
Judge Christine Van den Wyngaert

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
*THE PROSECUTOR V. LAURENT GBAGBO***

Public document

**Decision on the *“Requête aux fins de prorogation du délai de dépôt des
soumissions finales de la défense et d’obtention de pages additionnelles”***

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

The Office of the Prosecutor

Fatou Bensouda

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Counsel for the Defence

Emmanuel Altit

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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”) hereby issues the decision on the “*Requête aux fins de prorogation du délai de dépôt des soumissions finales de la défense et d’obtention de pages additionnelles*” (the “Request”).¹

1. On 3 June 2013, the Chamber issued, by majority, Judge Silvia Fernández de Gurmendi dissenting, the “Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute”.² In this decision, the Chamber decided to adjourn the confirmation of charges hearing, requested the Prosecutor to consider providing further evidence or conducting further investigation with respect to all charges, and established a calendar for further proceedings.³

2. The calendar for the continuation of the confirmation proceedings was ultimately amended by the Chamber in the “Decision on Defence requests related to the continuation of the confirmation proceedings” issued on 14 February 2014.⁴ The Chamber, *inter alia*, extended to Monday, 17 March 2014 the time limit for the Defence to submit its observations on the Prosecutor’s evidence, established 31 March 2014 as the time limit for the final written submissions of the Prosecutor and the Office of Public Counsel for victims (the “OPCV”) on behalf of the victims participating in the proceedings, and established 14 April 2014 as the time limit for the final written submissions of the Defence.⁵ The Chamber also extended the page limit for the final written submissions of the OPCV to 40 pages.⁶

¹ ICC-02/11-01/11-643-Conf. A public redacted version has also been filed, see ICC-02/11-01/11-643-Red.

² ICC-02/11-01/11-432.

³ *Ibid.*, pp. 22-24.

⁴ ICC-02/11-01/11-619.

⁵ *Ibid.*, p. 24.

⁶ *Ibid.*, p. 25.

3. On 17 March 2014, the Defence filed the “*Soumissions par la défense de ses observations écrites sur la preuve du Procureur et soumission par la défense de l’Inventaire amendé des éléments de preuve à décharge*”.⁷ The substantive submissions of the Defence, contained in Annexes 1 to 3 to this filing, have been classified as “confidential”.

4. On 24 March 2014, the time limit for the final written submissions of the OPCV was extended to 4 April 2014, upon request by the OPCV⁸ and in light of the fact that the OPCV had not been notified yet of the Defence substantive submissions.⁹ A confidential redacted version of the Defence submissions was made available to the OPCV on 25 March 2014.

5. On 26 March 2014, the Single Judge, upon request by the Prosecutor,¹⁰ granted the Prosecutor up to 60 pages for her final written submissions.¹¹

6. On 31 March 2014, in compliance with the applicable time limit, the Prosecutor filed the “Prosecution’s final written submissions on the confirmation of charges proceedings”.¹²

7. On 1 April 2014 the Defence filed the Request, seeking, for its final written observations, an extension of the page limit to 150 pages and an extension of time until 18 April 2014.¹³

⁷ ICC-02/11-01/11-637 and confidential Annexes 1-3. *Corrigenda* to Annexes 1 and 2 were filed on 19 March 2014, see ICC-02/11-01/11-637-Conf-Anx1-Corr and ICC-02/11-01/11-637-Conf-Anx2-Corr.

⁸ ICC-02/11-01/11-638.

⁹ “Decision on the OPCV’s ‘Request for re-classification and extension of time to file the final written submissions’”, ICC-02/11-01/11-639, p. 8.

¹⁰ ICC-02/11-01/11-640.

¹¹ “Decision on the ‘Prosecution’s request for an extension of the page limit for the its final written submissions’”, ICC-02/11-01/11-641, p. 4.

¹² ICC-02/11-01/11-642-Conf and confidential Annex 1.

¹³ Request, p. 12.

8. As concerns the requested extension of time, the Defence submits that the period of two weeks between the final written submissions of the OPCV and its own final written submissions, which was consistently respected in the Chamber's previous decisions concerning the procedural calendar following the adjournment of the confirmation of charges hearing, should be maintained.¹⁴ In addition, the Defence states that an extension of time is necessary because of the anticipated subject-matter of the final submissions of the OPCV, submitting that it is "possible" that the OPCV will support the submissions of the Prosecutor, and that it will address points not made by any of the parties.¹⁵

9. With respect to its request for an extension of the page limit, the Defence refers: (i) to the previously granted extensions of page limits for the final written observations of the Prosecutor and the OPCV;¹⁶ (ii) to the complexity of the case;¹⁷ (iii) to the importance of final written submissions in the absence of an oral hearing;¹⁸ (iv) to the statutory right of the Defence to "*pouvoir s'exprimer librement et [...] pouvoir répondre adéquatement au Procureur*";¹⁹ (v) to new or more detailed submissions by the Prosecutor in her final written submissions, in comparison to the amended document containing the charges;²⁰ (vi) to the multiplicity and variety of the points addressed by the Prosecutor in her final written submissions, and to the possibility that the OPCV will raise other matters;²¹ and (vii) to the "*importance de donner à voir aux Juges une autre réalité*".²²

¹⁴ *Ibid.*, paras 19-22.

¹⁵ *Ibid.*, paras 23-25.

¹⁶ *Ibid.*, para. 28.

¹⁷ *Ibid.*, paras 29-32.

¹⁸ *Ibid.*, paras 33-36.

¹⁹ *Ibid.*, paras 37-40.

²⁰ *Ibid.*, paras 41-42.

²¹ *Ibid.*, paras 43-45.

²² *Ibid.*, paras 46-50.

10. The Chamber notes regulations 35(2) and 37 of the Regulations of the Court (the “Regulations”).

11. Regulation 35(2) of the Regulations provides that the Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard.

12. The Defence essentially criticises the fact that the recent extension of time granted to the OPCV for its final written submissions has reduced the amount of time that the Defence has at its disposal to analyse and respond to those submissions. However, the Chamber recalls that the extension of time to the OPCV was necessitated by the Defence’s own conduct. The “Decision on the OPCV’s ‘Request for re-classification and extension of time to file the final written submissions’” stated:

The Single Judge notes that to date [24 March 2014], one week after the filing of the Defence Submissions, the Defence has not submitted any version of its Submissions to be made available to the OPCV. As a result, the Defence is effectively preventing the OPCV to properly exercise its right to respond to the Defence Submissions. This is in particular so considering that half the time allocated to the OPCV to prepare its only submissions on the merits following the adjournment of the confirmation of charges hearing has already elapsed.²³

13. The Chamber also notes that in that decision, the Single Judge refused to the OPCV an extension of time which would fully compensate the time taken away from it by reason of the Defence failure to provide proper notification of its submissions, opting instead for a shorter extension of time, “in order not to have to vary also the time limit for the final written submissions of the Defence and thereby cause further delay to the proceedings in the case”.²⁴

14. It is clear from the above that the effect of the extension of time to the OPCV on the time limit for the final written submissions of the Defence has

²³ ICC-02/11-01/11-639, para. 11, see also paras 12 and 15.

²⁴ *Ibid.*, para. 15.

already been determined by the Single Judge. The Single Judge, upon consideration of the specific circumstances, effectively decided to reduce the two week period previously envisaged for the Defence to analyse and respond to the OPCV's final written submissions. Consequently, the insistence by the Defence on the two week period as a sort of general principle is inappropriate.

15. As the Chamber is also not persuaded by the speculative argument of the Defence that the substance of the final written submissions of the OPCV will be such that it will be impossible to respond to them by 14 April 2014, as opposed to 18 April 2014, the Chamber concludes that no good cause within the meaning of regulation 35(2) of the Regulations has been shown and that the request for extension of time must be rejected.

16. As concerns the requested extension of the page limit for the Defence final written submissions, the Chamber notes that according to regulation 37(1) of the Regulations, "[a] document filed with the Registry shall not exceed 20 pages". Regulation 37(2) of the Regulations states that "[t]he Chamber may, at the request of a participant, extend the page limit in exceptional circumstances".

17. The Chamber is of the view, also taking note of the previous extensions of page limits to the Prosecutor and the OPCV for their respective final written observations, that exceptional circumstances exist to vary also the page limit for the Defence final written observations.

18. However, in light of the fact that in its final written observations the Defence is expected only to address the arguments raised by the Prosecutor and the OPCV in their final written submissions, and not to reiterate other submissions it made on 17 March 2014 or raise completely new matters, the

Chamber is of the view that an extension to 60 pages, as opposed to the 150 pages requested by the Defence, is sufficient.

FOR THESE REASONS, THE CHAMBER

REJECTS the request for extension of time; and

GRANTS the Defence up to 60 pages for its final written submissions in response to the Prosecutor's and the OPCV's final written submissions.

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



Judge Silvia Fernández de Gurmendi
Presiding Judge



Judge Hans-Peter Kaul



Judge Christine Van den Wyngaert

Dated this Wednesday, 2 April 2014

At The Hague, The Netherlands