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No.: ICC-02/11-01/11
Date: 13 February 2015

TRIAL CHAMBER I

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

SITUATION IN CÔTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO***

Public redacted version of

**Response to the Prosecution's request pursuant to regulation 35
for an extension of time to disclose certain material
(ICC-02/11-01/11-760-Conf-Red)**

Source: Office of Public Counsel for Victims

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

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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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Other

I. PROCEDURAL BACKGROUND

1. On 12 June 2014, Pre-Trial Chamber I, by majority, issued a decision confirming the charges against Mr. Gbagbo under article 61(7)(a) of the Rome Statute and committing him for trial.¹
2. On 17 September 2014, the Presidency assigned the case to Trial Chamber I (the “Chamber”).²
3. On 10 November 2014, the Chamber directed the Prosecution *inter alia* to disclose to the Defence all rule 76 and rule 77 material and all article 67(2) material no later than 6 February 2015.³
4. On 6 February 2015, the Prosecution filed its list of witnesses and list of evidence.⁴ On the same day, the Prosecution filed a request for an extension of time to disclose certain rule 76 and rule 77 materials (the “Request”).⁵
5. On 9 February 2015, the Chamber shortened the deadline to file any responses to the Request to 16 February 2015.⁶
6. Pursuant to regulation 24(2) of the Regulations of the Court, the Principal Counsel of the Office of Public Counsel for Victims, acting as the Common Legal

¹ See the “Decision on the confirmation of charges against Laurent Gbagbo” (Pre-Trial Chamber I), No. ICC-02/11-01/11-656-Red, 12 June 2014, p. 131.

² See the “Decision re-constituting Trial Chamber I and referring to it the case of *The Prosecutor v. Laurent Gbagbo*” (Presidency), No. ICC-02/11-01/11-682, 17 September 2014.

³ See the “Order setting the commencement date for the trial and the time limit for disclosure” (Trial Chamber I), No. ICC-02/11-01/11-723, 17 November 2014, para. 10.

⁴ See the “Prosecution’s submission of its List of Witnesses and List of Evidence”, No. ICC-02/11-01/11-759, 6 February 2015.

⁵ See the “Prosecution’s request pursuant to regulation 35 for an extension of time to disclose certain material”, No. ICC-02/11-01/11-760-Conf-Red, 6 February 2015 (the “Request”).

⁶ See the e-mail sent on behalf of the Single Judge of Trial Chamber I on 9 February at 14h23.

Representative of the victims authorised to participate in the case (the “Common Legal Representative”),⁷ submits the following response to the Request.

7. Pursuant to regulation 23*bis* (2) of the Regulations of the Court, the Common Legal Representative files her response as confidential following the classification chosen by the Prosecution for its Request and because reference is made to confidential records. A public redacted version is filed simultaneously.

II. RESPONSE OF THE COMMON LEGAL REPRESENTATIVE

8. The Common Legal Representative supports the Request in its entirety and especially the granting of an extension of time to disclose to the Defence (i) the information on the forensic missions conducted by the Prosecution regarding the victims of the incidents on 3 and 17 March 2011, [REDACTED],⁸ and (ii) the external examinations of the bodies of the victims of the incident on 17 March 2011, [REDACTED].⁹

9. The Common Legal Representative agrees with the Prosecution’s submission that the 6 February 2015 deadline for the disclosure of the materials referred to in the preceding paragraph may be extended because there exists “*good cause*” pursuant to regulation 35(2) of the Regulations of the Court.

10. Interpreting regulation 35 of the Regulations of the Court, the Appeals Chamber has clarified that “[a] *cause is good, if founded upon reasons associated with a person’s capacity to conform to the applicable procedural rule or regulation or the directions*

⁷ See the “Decision on Victims’ Participation and Victims’ Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-138, 4 June 2012, pp. 25-26; and the “Second decision on victims’ participation at the confirmation of charges hearing and in the related proceedings” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-384-Corr, 6 February 2013, pp. 22-23.

⁸ See the Request, *supra* note 5, paras. 31-32.

⁹ *Idem*, para. 33.

of the Court. Incapability to do so must be for sound reasons, such as would objectively provide justification for the inability of a party to comply with his/her obligations”.¹⁰

11. In this regard, the Common Legal Representative submits that the Request is objectively justified by the Prosecution’s competing tasks and the amount of new material collected as a result of the latest investigations.¹¹ The additional time necessary for the Prosecution to [REDACTED] is also objectively justified.¹² As argued by the Prosecution, [REDACTED].¹³

12. Moreover, the Common Legal Representative contends that the Request must be granted pursuant to the duty of the Chamber under rule 86 of the Rules of Procedure and Evidence to take into account the needs of victims in accordance with article 68 of the Rome Statute when making any direction or order. The personal interests of the victims authorised to participate in the proceedings include finding the truth about what happened and seeing justice done for the harm they suffered in the four incidents contemplated in the confirmed charges against Mr. Gbagbo.¹⁴ Granting the Prosecution the requested extension of time to complete the disclosure of evidence to the Defence will serve said interests of the victims.

13. In particular, the Common Legal Representative submits that granting the requested extension of time to [REDACTED] will satisfy the personal interests of the indirect victims participating in the proceedings. Indeed, some of the participating

¹⁰ See the “Reasons for the ‘Decision of the Appeals Chamber on the request of counsel to Mr. Thomas Lubanga Dyilo for modification of the time limit pursuant to regulation 35 of the Regulations of the Court of 7 February 2007’ issued on the 16 February 2007” (Appeals Chamber), No. ICC-01/04-01/06-834 OA8, 21 February 2007, para. 7; and the “Reasons for the ‘Decision on the ‘Application for Extension of Time Limits Pursuant to Regulation 35 of the Regulations of the Court to Allow the Defence to Submit its Observations on the Prosecutor’s Appeal regarding the Decision on Evidentiary Scope of the Confirmation Hearing and Preventative Relocation’” (Appeals Chamber), No. ICC-01/04-01/07-653 OA7, 27 June 2008, para. 5.

¹¹ See the Request, *supra* note 5, para. 6.

¹² *Idem*, paras. 26-33.

¹³ *Ibid.*, para. 27.

¹⁴ See the “[REDACTED]”, No. ICC-02/11-01/11-702-Conf, [REDACTED], paras. 9-10.

victims have an interest in knowing whether some of the corpses referred to by the Prosecution are those of their loved ones.

14. Finally, the Common Legal Representative is of the view that granting the request will not unduly affect the rights of the Defence. The prejudice that the Defence may suffer, if any, if the Request is granted is minimized by the limited delay in the disclosure of the materials to the Defence (four weeks in most cases)¹⁵ and the fact that some of the additional evidence pending for disclosure relates to evidence already disclosed to the Defence.¹⁶

FOR THE FOREGOING REASONS, the Common Legal Representative respectfully requests the Trial Chamber to grant the Request.

A handwritten signature in black ink, reading "Paolina Massidda", with a horizontal line underneath the name.

Paolina Massidda
Principal Counsel

Dated this 13th day of February 2015

At The Hague, The Netherlands

¹⁵ *Ibid.*, paras. 12, 16, 20, 22, 23-24 and 31-32.

¹⁶ *Ibid.*, paras. 9, 17 and 19.