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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 redacted version

**With Annex 1 – Confidential, *EX PARTE*, only available to the Office of the
Prosecutor
and Annex 2 - Confidential**

**Public redacted version of Prosecution's request pursuant to Regulation 35 for an
extension of time to add one statement to its Amended List of Evidence for the
purposes of the confirmation of charges and, if granted, to be permitted to apply
redactions to this item of evidence pursuant to Rule 81(2), 26 February 2014,
ICC-02/11-01/11-626-Conf**

Source: Office of the Prosecutor

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

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Introduction

1. During [REDACTED] February 2014, the Prosecution obtained statements from three persons employed with the United Nations [REDACTED] at the time of the post-election violence of 2010-2011. The Prosecution seeks to rely on one of these statements, including its annexes, for the purposes of the confirmation hearing and requests, pursuant to Regulation 35(2) of the Regulations of the Court, an extension of the time limit for its inclusion on the Prosecution's Amended List of Evidence ("Amended LoE"). The other two statements will be disclosed pursuant to Rule 77 of the Rules of Procedure and Evidence.
2. Also, without presuming the decision of the Chamber on this request, the Prosecution requests an extension of the time limit to request redactions to this statement and its metadata. The Prosecution simultaneously presents its request for these redactions pursuant to Rule 81(2).

Confidentiality

3. The Prosecution files this submission as Confidential since it relates to a statement that is to be treated as such. Pursuant to Regulation 23*bis* of the Regulations of the Court and the instruction of the Single Judge in her Decision establishing a disclosure system, the Prosecution files Annex 1 as confidential, *ex parte*, only available to the Prosecution, as knowledge by the Defence of the requested redactions would defeat the purpose of that part of this request; and Annex 2 as confidential, as it pertains to evidentiary matters. The Prosecution will file as soon as practicable a public redacted version of this submission.

Submissions

Application to extend the time limit to include one statement in the Prosecution's Amended List of Evidence

4. In Annex 1, the Prosecution submits the statement, including its annexes, of witness CIV-OTP-P-0414 ("the Statement") that it requests, pursuant to Regulation 35, to be included on its Amended LoE.¹ The Prosecution was required to submit its Amended LoE for the continuation of the confirmation of the charges hearing by 13 January 2014.² The Statement was obtained after this time limit. Consequently, pursuant to Regulation 35(2), the Prosecution must show good cause why the time limit should be extended; and the Prosecution must demonstrate that it was unable to file this application within the time limit for reasons outside its control. In the submissions that follow the latter will be addressed first.

The Prosecution was unable to file this application prior to the time limit

5. The Prosecution recalls its recent report submitted to the Chamber³ describing efforts to obtain the UN report referred to in footnote 58 of the Chamber's "Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute" ("Adjournment Decision").⁴ The Prosecution's efforts to obtain this UN report continue [REDACTED]. The interview of witness P-0414 was planned and conducted within this framework.

¹ The Statement is registered in the evidence management database (Ringtail) with ERN CIV-OTP-0054-0582 to 0626; and its five annexes (each one page) with ERNs CIV-OTP-0054-0627 to 0631.

² ICC-02/11-01/11-576, p. 6, para. a)(ii)

³ ICC-02/11-01/11-592-Conf Anx8.

⁴ ICC-02/11-01/11-432.

6. It was in this context that on 12 July 2013, the Prosecution [REDACTED], including witness P-0414. By letters dated 4 and 7 October 2013, [REDACTED].
7. Following these further consultations, on 11 December 2013 [REDACTED]. On 18 December 2013, the Prosecution [REDACTED]. On 19 December 2013, the Prosecution [REDACTED] to schedule an interview with witness P-0414.⁵ On 26 December 2013, [REDACTED].
8. On 6 January 2014, [REDACTED]⁶ [REDACTED]. The Prosecution then planned a mission, which took place during [REDACTED], to conduct these interviews. The interview of witness P-0414 was conducted [REDACTED]. After the conclusion of the mission, the Statement was brought to the Headquarters in The Hague on [REDACTED] February 2014 and on [REDACTED] February 2014 it was registered in the evidence management database (Ringtail). Pursuant to the [REDACTED]. On 26 February 2014, [REDACTED].
9. On 6 January 2014, [REDACTED], the Prosecution could have informed the Chamber, ahead of the said deadline, that it anticipated conducting these interviews. However, this information would have been provided without a clear purpose because the Prosecution was not able, at that time, to make an application pursuant to Regulation 35(2). This is because of the following factors:
 - a. As of 13 January 2014, although the Prosecution had recently received confirmation as to the availability of the interviewees, the mission planning had not yet been completed.⁷ Consequently, the Prosecution would not have been able to advise the Chamber with reasonable certainty

⁵ This contact also pertained to potential interviews of other persons.

⁶ And other persons.

⁷ The mission plan was not completed [REDACTED].

as to the likely amount of time that would be required to obtain the statements, [REDACTED];

- b. At that time, in addition to the 13 January 2014 time limit for the Prosecution, the Defence time limit of 13 February 2014 to respond to the Amended DCC and Amended LoE⁸ was also pending, and it was obvious that the statements would not be available for disclosure prior to the Defence time limit;
- c. Prior to actually obtaining and reviewing the statements, the Prosecution was not in a position to determine the value of any of them. Consequently, prior to 13 January 2014, the Prosecution would not have been able to advise the Chamber as to whether or not it intended to add one or more of the anticipated statements to its Amended LoE.

10. The Prosecution also submits that the Chamber's recent decision to suspend the calendar⁹ and subsequently extend the Defence time limit to respond to the Prosecution's additional evidence until 17 March 2014,¹⁰ combined with the Statement actually being obtained, have changed the overall circumstances such that the Prosecution is now able to make this application. However, prior to these changes, in light of the overall circumstance described, it was not possible for the Prosecution to make this application.

As to the Prosecution showing good cause for the extension of the time limit

11. The Prosecution also submits that there is good cause and it is in the interests of justice at this stage of the proceedings to extend the applicable time limit to

⁸ ICC-02/11-01/11-576, p. 6, para. b) (iii).

⁹ ICC-02/11-01/11-614.

¹⁰ ICC-02/11-01/11-619, p. 24.

permit the addition of witness P-0414's statement to the Prosecution's Amended LoE.

12. It should be noted that in the instant case, the Prosecution was not aware that witness P-0414 had personally visited *in situ* the sites of the 3 and 17 March 2011 incidents until after this information was provided during the interview. Furthermore, the Prosecution recalls that the Defence continues to challenge the [REDACTED],¹¹ thereby increasing the evidentiary importance of witness P-0414's first-hand knowledge based upon actual *in situ* visits.

Nature of the Evidence

13. The Statement presents direct evidence from an individual who was in Abidjan at the time of the post-election violence. The Statement reflects witness P-0414's personal knowledge that is contemporaneous to events that pertain to the contextual elements of the alleged attack and to some of the charged incidents and crimes. Nowhere is the contemporaneous nature of the evidence more evident than in the description of P-0414's *in situ* visit [REDACTED] 17 March 2011 shelling of the market in Abobo, including the following observation: "[REDACTED]."¹² Consequently the Statement is highly compelling, probative and reliable.
14. The Prosecution submits that, as previously noted by the Chamber, it is in the public interest to have this type of highly reliable and probative evidence included at this stage of the proceedings.¹³ The Statement provides first-hand information and observations from an identified witness.

¹¹ See Defence request ICC-02/11-01/11-600-Conf.

¹² The Statement, para. 212.

¹³ ICC-02/11-01/11-432, para. 27.

15. The Prosecution observes that the evidentiary value of the Statement is increased by the fact that it goes directly to the issues raised by the Chamber in “question 6”¹⁴ and in footnote 58 of the Adjournment Decision.¹⁵ As noted in paragraph 5 the Prosecution has undertaken significant efforts to respond to the issue raised by the Chamber and it would be in the public interest for the Chamber to be able to consider this relevant information that is now available.

Lack of prejudice to the Defence

16. The statement, comprised of 45 pages of text and 5 pages of annexes, is not complex or technical. The statement provides further evidence on issues that were previously disclosed and known to the Defence. For instance, it discusses the methodology used and provides information about reports that are relied upon by the Prosecution for the purposes of the confirmation of the charges.¹⁶ It also discusses on-site visits of incidents and locations already known by the Defence.¹⁷

17. The Prosecution observes that the Defence was recently granted an extension of their time limit (from 13 February 2014 to 17 March 2014) and an increase in the number of pages (from 20 to 300) to submit their response.¹⁸ Consequently, if this request is granted, the Defence will have time to review the Statement and will

¹⁴ ICC-02/11-01/11-432, para. 44: “6. In relation to the alleged incidents taking place on 3 March 2011 (“Women’s march”) and 17 March 2011 (“Shelling of Abobo”), any forensic or other evidence indicating who fired the ammunitions and what their alleged target was.” [footnote omitted].

¹⁵ ICC-02/11-01/11-432, p. 21; “58 The Chamber is led to believe that there exists at least one UN report in this regard, see Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Côte d’Ivoire, 14 June 2011, CIV-OTP-0002-0598 at 0604, para. 16.”

¹⁶ The [REDACTED] reports that are on the Prosecution’s Amended LoE that are discussed in the Statement: CIV-OTP-0044-1745 and CIV-OTP-0044-1740 (paras. 69-75); CIV-OTP-0044-1619 (paras. 78, 79, 140 and 148); CIV-OTP-0002-0598 (paras. 222-224); CIV-OTP-0044-1704 (paras. 56-68); CIV-OTP-0044-1654 (paras. 82-88, 191, 220 and 221); CIV-OTP-0044-1617 (paras. 91-92 and 197); CIV-OTP-0044-1692 (para. 276).

¹⁷ See the Amended document containing the charges for the 3 and 17 March incidents. See ICC-02/11-01/11-592-Conf-Anx6 for the Anonkoua-Kouté incident of 7 March 2011. For the incident of 8 March see Defence submission ICC-02/11-01/11-602, paras. 22, 51 and 58. Information on the Charnier at N’Dotre was provided with the disclosure of documents CIV-OTP-0002-1039, CIV-OTP-0052-0813 and CIV-OTP-0052-0653. As to the incident and abduction of the priest held by the “Commando Invisible” see CIV-OTP-0044-0392 at 0427.

¹⁸ ICC-02/11-01/11-619.

have the ability to respond to it. The Prosecution submits that, while not directly applicable at this stage of the proceedings, Rules 121(5) and (6) are instructive as they provide authority for the parties to present new evidence at a confirmation hearing provided that the other party and the Chamber are given notice of at least 15 days. The Defence will have more than 15 days (from the time of notification of this application) to review and respond to the Statement.

18. The Prosecution submits that in this context, the prejudice, if any, caused by the timing of this application, (and simultaneous disclosure of the Statement), is minimal and is outweighed by the nature and probative value of the evidence.

Application to extend the time limit to request redactions

19. The time limit for the Prosecution to submit requests for redactions to the further evidence collected and on which it intended to rely for the purposes of the confirmation of charges was 15 October 2013.¹⁹ If the Chamber grants the request of the Prosecution to add the statement of witness P-0414 to its Amended LoE the Prosecution requests that this time limit be extended to permit the request for redactions to its content and metadata as set out below.
20. For the same reasons as explained above, the Prosecution was not able to file a request to extend the time limit to request redactions to the Statement and related metadata.
21. The Prosecution submits that if it has satisfied the requirements of Regulation 35(2) with respect to the inclusion of the Statement in its Amended LOE, then

¹⁹ ICC-02/11-01/11-432, p. 23, para. (v).

logically, in these particular circumstances, the same requirements are satisfied with respect to this request to extend the time limit to request redactions.

Request for Redactions pursuant to Rule 81(2)

22. The Prosecution requests, pursuant to Rule 81(2), to redact from the Statement and related metadata the identity of the investigators.
23. Annex 1 includes a table that identifies the exact redactions requested to the text of the document as well as to its metadata and provides the factual and legal basis for each individual redaction.²⁰
24. These redactions are sought to protect further and ongoing investigations. Revealing, at this stage, to the Defence any of the above information is likely to impact on the Prosecution's ability to conduct its investigations, as it may unduly attract attention to the movement of Prosecution staff and by extension to (potential) witnesses and their security.²¹
25. These redactions also ensure that the Prosecution can continue to use during its investigations the limited number of investigators that it currently has at its disposal, without any need to replace them, which would have negative implications both on the expeditious conduct of its investigations, as well as on the resources required to conduct such investigations.
26. The Prosecution recalls that investigators within the OTP can work on different investigations at once and when they finish working on one investigation they are assigned to another. Consequently, they repeatedly face potential security

²⁰ ICC-02/11-01/11-30, para.55.

²¹ Although these redactions are sought pursuant to Rule 81(2), they also have security implications for victims and witnesses and they can therefore equally be justified under Rule 81(4).

issues requiring that their identities be kept confidential. When the identities of investigators are revealed in one case, it makes it significantly more difficult to maintain confidentiality in subsequent cases. Thus, absent some showing of a specific need or justification for the disclosure of the identities of investigators, the OTP seeks, as a matter of practice, to maintain their confidentiality. For these reasons, pertaining both to the present case and to the overall practice of the OTP, the identities of the investigators should be redacted from the documents in question.

27. The Prosecution submits that the redactions sought pursuant to Rule 81(2) would not result in unfairness to the Defence at the confirmation of charges. They are very limited and have no impact on the ability to understand the information provided by witness P-0414 in the Statement. Notably, given the nature of the interview and the city where it was conducted, the Prosecution is not seeking to redact the location and date of the statement as revealing this information about the investigators' activities, in these particular circumstances, would not materially contribute to the risks identified above.

28. Furthermore, the redactions sought under Rule 81(2) are consistent with prior Decisions of the Chamber that authorised similar redactions in the past.²²

No unfair prejudice to the Defence

29. In addition to the specific submissions above, the Prosecution states that granting all of the relief requested in this submission will not cause unfair prejudice to the Defence.

²² ICC-02/11-01/11-74-Red, ICC-02/11-01/11-106, ICC-02/11-01/11-176 and ICC-02/11-01/11-294, ICC-02/11-01/11-465, ICC-02/11-01/11-466-Conf-Red, ICC-02/11-01/11-514, ICC-02/11-01/11-520, ICC-02/11-01/11-549, ICC-02/11-01/11-554-Conf-Red, ICC-02/11-01/11-556, ICC-02/11-01/11-570 and ICC-02/11-01/11-588-Conf.

30. The request is limited in its scope as it pertains to only one Statement and its annexes. Attached as Annex 2 is a copy of the Statement with the redactions already implemented and it is thus immediately available to the Defence.²³ They will have sufficient time to review and respond to it within the time limit for their response to the Amended DCC and Amended LoE.

Conclusion

For the reasons set out above, the Prosecution requests the Chamber to grant, pursuant to Regulation 35(2), the extension of time for the Prosecution to include the statement of witness P-0414 and its annexes, with authorised redactions, in its Amended List of Evidence, and to rely on it for the purposes of the confirmation of charges.



Fatou Bensouda, Prosecutor

Dated this 5th day of March 2014

At The Hague, The Netherlands

²³ The Prosecution also notes that if the Chamber was to reject the Prosecution's request to add the statement of witness P-0414 to its LoE, it nevertheless is under the obligation to disclose it pursuant to Rule 77 and these proposed redactions would be applied *proprio motu*.