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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

Prosecution's response to the Defence « *Demande de prorogation des délais fixés par la Chambre préliminaire le 17 décembre 2013 afin de permettre à la défense de déposer des observations écrites sur la preuve du Procureur* »

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. On 4 February 2014, the Defence filed its *Demande de prorogation des délais fixés par la Chambre préliminaire le 17 décembre 2013 afin de permettre à la défense de déposer des observations écrites sur la preuve du Procureur* ("Defence request").¹ The Defence requests an extension of six weeks to submit its observations on the Prosecution's evidence and to file its amended list of evidence.
2. The Prosecution neither supports nor opposes the Defence request but does submit the following observations that are: (a) relevant to the issue of whether or not the Defence has "shown good cause" as required by Regulation 35(2) of the Regulations of the Court; or (b) relevant to the conduct of proceedings before the Chamber.

Submissions

3. The Prosecution recalls that showing "good cause" is a prerequisite to the Chamber granting an extension as requested by the Defence, however, the inquiry does not end there. Regulation 35(2) specifically states that "The Chamber may extend or reduce a time limit if good cause is shown [...]" (underlining added). If good cause is shown, the Chamber still has the discretion to grant or refuse an extension (or reduction of a time limit). The Prosecution submits that this discretion ought to be exercised with a view to ensuring the interests of justice in all of the current circumstances.²

¹ ICC-02/11-01/11-603.

² The Prosecution notes that the current circumstances would include the fact that the Chamber is concurrently considering a Defence request for a further oral hearing; see: ICC-02/11-01/11-599.

4. The Prosecution recalls that the Defence is also required “[...] to disclose to the Prosecutor the evidence it intends to present, if any, [...] by 13 February 2014”.³ The Defence in its Request does not seem to seek an extension of the time limit for this requirement. This may be an oversight on their part, and may be an issue requiring clarification from the Defence before a decision is made. In this regard, the Prosecution recognises that disclosure of the Defence evidence is closely related to the presentation of its amended list of evidence.⁴ Of course, there may be a reason for the Defence to retain the “disclosure deadline” to 13 February 2014. But if it was merely an oversight to not have included it in its Request, then the Prosecution is not opposed to the Chamber also considering the deadline for the Defence to disclose its evidence to the Prosecution in the context of this application.

Prosecution’s disclosure of evidence since 3 June 2013

5. While it is true that the Prosecution has disclosed a large number of documents to the Defence, it is important to recall that the disclosures followed the Chamber’s disclosure calendar⁵ and that the bulk of the evidence was disclosed on or before 15 November 2013. After that date, only 102 documents (1489 pages) were disclosed to the Defence.⁶ However, 19 of those documents (244 pages) had previously been disclosed well before 15 November 2013.⁷ Consequently, subsequent to 15 November 2013 only 83 previously undisclosed documents

³ ICC-02/11-01/11-576, page 6.

⁴ This is presumably why the Chamber has consistently scheduled the same deadline for these obligations.

⁵ ICC-02/11-01/11-432, pages 22-23.

⁶ In its Request the Defence argues that these 102 documents contain 3000 pages in total which is inaccurate.

⁷ One document had previously been disclosed as potentially exonerating material; 17 documents had previously been disclosed as Rule 77 material; and one document had previously been disclosed as incriminating evidence but with its pages in reverse order.

(1245 pages) were disclosed to the Defence. Of these 83 documents, only 59 (923 pages) appear in the Prosecution's Amended List of Evidence.⁸

6. The Prosecution would like to clarify that contrary to the Defence's assertion at paragraph 37 of its Request, the Prosecution did not contravene any orders of the Chamber by disclosing evidence beyond 15 November 2013.⁹ The Prosecution recalls that on 17 December 2013, the Chamber specifically ordered the Prosecutor "[...] to disclose to the Defence **by Monday, 13 January 2014** the evidence on which she intends to rely for the purposes of confirmation of charges proceedings; and [...]" (emphasis in the original).¹⁰

Other considerations

7. With respect to the issue of how the new Amended DCC differs from the previous DCC, the Prosecution acknowledges that the new evidence would be a factor for the Chamber to consider in the context of this application. However, the Prosecution submits that in assessing this issue, it is more important to focus primarily on the amount of material that has been "recently" disclosed. All of the evidence relied upon in the Amended DCC (and listed in the Amended List of Evidence) was disclosed prior to 13 January 2014; with the vast majority being disclosed, as incriminating evidence, well in advance of that date (see *supra*, para. 5). The fact that much of this incriminating evidence later appears on the Prosecution's list of evidence should not come as a surprise. Thus, the Defence has had many months to review and analyse the vast majority of the incriminating evidence.

⁸ Out of these 59 documents that appear on the Prosecution's Amended List of Evidence, 11 documents are Official Journals of the CIV Government, including Presidential decrees, and 12 documents are transcripts related to video material that had been disclosed by 15 November 2013.

⁹ At para. 37 of its request the Defence submits that "*Le Procureur a continué de divulguer des pièces jusqu'au 9 janvier 2014 alors que les Juges ne l'avaient autorisé à le faire que jusqu'au 15 novembre 2013.*"

¹⁰ ICC-02/11-01/11-576, page 6.

8. At paragraph 26 of its request, the Defence again identifies Annexes 6, 7 and 8 to ICC-02/11-01/11-592 as forming part of the Amended DCC.¹¹ These Annexes are not part of the Amended DCC but are naturally documents of interest to the Defence. However, it should be noted that Annex 8 to ICC-02/11-01/11-592 was disclosed to the Defence on 15 November 2013;¹² and nearly all of the documents referenced in Annexes 6 and 7 to ICC-02/11-01/11-592 were disclosed on or before 15 November 2013.¹³

9. The Prosecution submits that in all of the circumstances, the request of the Defence for an extension of the 13 February 2014 deadline is not unreasonable. However, considering all the relevant circumstances, the Prosecution submits that an extension of six weeks would be excessive. Since the Prosecution submitted the new Amended DCC on 13 January 2014, the Defence has submitted at least nine applications to the Chamber, all of which are directly or indirectly related to the Amended DCC and the evidence presented in the Amended List of Evidence. This demonstrates that the Defence has had time to do a considerable amount of analysis of the evidence and the Amended DCC.

10. Another relevant consideration in deciding whether or not to grant an extension, and if so, the length thereof, is the fact that the Chamber is concurrently considering the Defence's request for a further oral hearing.¹⁴ If the Chamber decides to grant that application, while not necessarily affecting the Defence's 13 February 2014 disclosure deadline, it would necessarily result in a delay of the remaining proceedings. It is submitted that if both applications are granted, the Chamber ought to carefully consider the overall delay that would result.

¹¹ See for instance Defence submissions ICC-02/11-01/11-599, paras. 43 and following and ICC-02/11-01/11-607, paras. 6 and 42.

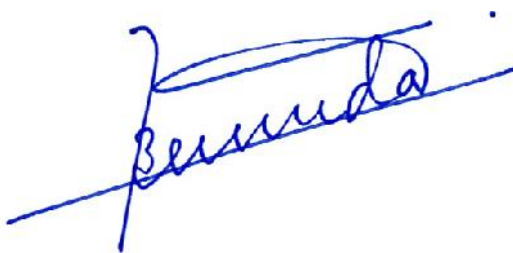
¹² ICC-02/11-01/11-563 and ICC-02/11-01/11-563-Conf-AnxB.

¹³ Together these two annexes have references to 276 documents. Out of the 276 documents, 268 had already been disclosed on or before 15 November 2013.

¹⁴ ICC-02/11-01/11-599.

Conclusion

11. The Prosecution does not support or oppose the Defence request; but respectfully requests the Chamber to weigh the relevant factors and competing interests when considering the request and, if the request is to be granted, in determining the appropriate extension of time.



Fatou Bensouda, Prosecutor

Dated this 7th day of February 2014

At The Hague, The Netherlands