

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/11
Date: 10 January 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

Decision on the Defence Request for Extension of Time

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor

Eric Macdonald, Senior Trial Lawyer

Counsel for the Defence

Emmanuel Altit

Agathe Bahi Baroan

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Paolina Massidda

**The Office of Public Counsel for the
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”) issues the following decision on the Defence “Requête aux fins de prorogation du délai donné par la Chambre à la défense pour déposer d’éventuelles demandes d’expurgation et d’éventuelles demandes de mesures de protection”¹ (the “Application”).

1. On 3 June 2013, the Chamber, by majority, issued the “Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute” (the “Adjournment Decision”)² in which it ordered the Defence, *inter alia*, to submit any “justified proposals for redactions, if any, (...) as soon as practicable and by no later than Friday, 15 November 2013”.³

2. On 17 December 2013, the Chamber issued the “Decision establishing a calendar for further proceedings” (the “Calendar Decision”) in which it set out a calendar for the proceedings concluding the pre-trial phase in this case.⁴ More specifically, the Prosecutor was ordered, *inter alia*, to present by Monday, 13 January 2014 the amended document containing the charges (the “DCC”) and the amended list of evidence. Moreover, the Defence was ordered, *inter alia*, to present “justified proposals for redactions, if any, (...) by Monday, 13 January 2014” and to “submit its observations on the Prosecutor’s evidence and to disclose to the Prosecutor the evidence it intends to present, if any, and to file its amended list of evidence by Thursday, 13 February 2014”.⁵

3. On 7 January 2014, the Defence presented the Application requesting that the time limit for the presentation of requests for redactions and protective measures

¹ ICC-02/11-01/11-587.

² Pre-Trial Chamber I, ICC-02/11-01/11-432.

³ *Ibid.*, p. 24.

⁴ Pre-Trial Chamber I, ICC-02/11-01/11-576.

⁵ *Ibid.*, p. 6.

(*“demandes d’expurgation et demandes de mesures de protection”*) be extended until 6 February 2014.⁶

4. The Defence submits that “good cause” is shown within the meaning of regulation 35(2) of the Regulations of the Court (the “Regulations”) to extend the time limit for the submission of requests for redactions and protective measures.⁷ The arguments are summarized, in essence, in what follows.

5. The Defence submits that it will be informed of the content of the charges in the amended DCC and the list of evidence of the Prosecutor only on Monday, 13 January 2014.⁸ Drawing a comparison between the former DCC and the anticipated amended DCC, the Defence expects that the charges will be newly formulated, in any case presented differently.⁹ In light of the above, the Defence contends that it must be given “adequate time and facilities”, within the meaning of article 67(1)(b) of the Rome Statute (the “Statute”), to (i) analyse the amended DCC and the Prosecutor’s evidence with a view to identifying the strengths and weaknesses of the Prosecutor’s presentation of the charges; and (ii) conduct its investigation, including in the field, submit requests for redactions and protective measures and present its evidence, as foreseen in article 61(6)(c) of the Statute.¹⁰

6. The Defence further recalls various recent decisions in the present case which instruct the Prosecutor to submit an amended DCC with sufficient detail which will satisfy the requirements of article 67(1)(a) of the Statute, informing the suspect in

⁶ ICC-02/11-01/11-587, p. 13. The Chamber notes that the Defence states in paragraph 11 of the Application that it be granted an extension of time for (i) requesting redactions and protective measures and (ii) present a modified list of evidence. However, considering the overall argumentation of the Defence in the Application and the request as formulated on p. 13 therein, the Chamber understands that the Defence seeks an extension of time only in relation to the submission of proposals for redactions, which is currently set for 13 January 2014.

⁷ ICC-02/11-01/11-587, para. 32.

⁸ ICC-02/11-01/11-587, para. 12.

⁹ ICC-02/11-01/11-587, para. 12.

¹⁰ ICC-02/11-01/11-587, paras 14-16.

detail of the nature, cause and content of the charges.¹¹ Taking into account that the amended DCC, which organises the ensuing legal discussion,¹² will amount to 245 pages, the Defence deems it necessary that it be afforded sufficient time to analyse the document meticulously.¹³ The Defence adds that in the absence of the amended DCC, it cannot investigate, as the investigation would be founded on hypothetical presumptions, and by extension, cannot request redactions to the evidence or protective measures for witnesses.¹⁴ Likewise, without knowledge of and time to analyse the Prosecutor's evidence and the updated consolidated Element Based Chart it cannot investigate and respond to the charges by presenting its own evidence.¹⁵

7. The Defence further explains that it must prepare a mission to Côte d'Ivoire with a view to collecting supplementary evidence, meet potential Defence witnesses and, as the case may be, new prosecution witnesses, and conduct site visits.¹⁶ All this entails purportedly a significant amount of preparation and coordination with the Registry, the Office of the Prosecutor, the Victims and Witnesses Unit and the Ivorian authorities which can only be finalised once the amended DCC is submitted.¹⁷ The Defence also submits that many witnesses express fear for their own safety and that of their families, and that many witnesses may wish to benefit from protective measures.¹⁸

8. Referring to the filter function of the confirmation of charges, it is emphasised that the right of the Defence to present evidence at this stage of the proceedings must be safeguarded.¹⁹ To achieve that goal, the Defence avers that the Chamber must

¹¹ ICC-02/11-01/11-587, paras 18-21.

¹² ICC-02/11-01/11-587, para. 18.

¹³ ICC-02/11-01/11-587, paras 24 and 25.

¹⁴ ICC-02/11-01/11-587, para. 25.

¹⁵ ICC-02/11-01/11-587, paras 26-28.

¹⁶ ICC-02/11-01/11-587, para. 29.

¹⁷ ICC-02/11-01/11-587, para. 30.

¹⁸ ICC-02/11-01/11-587, para. 31.

¹⁹ ICC-02/11-01/11-587, paras 33 and 34.

ensure that the Defence has sufficient time and facilities, in particular by amending the time limits established for the proceedings.²⁰ Under the current calendar, the Defence is unable to benefit from this right as it is obliged to finalise its investigation and identify its evidence without knowing the content of the amended DCC and the Prosecutor's evidence on which she intends to rely.²¹ In case the Defence request is not acceded to, this would prevent the Defence, in its view, from requesting protective measures and, by extension, present evidence in the framework of the confirmation of charges which, as a result, constitutes a violation of one of the most fundamental rights of the suspect.²² Finally, the Defence argues that the extension of time does not prejudice the Prosecutor.²³

9. The Chamber notes articles 61, 67, and 68(1) of the Statute, rule 121 of the Rules of Procedure and Evidence (the "Rules") and regulation 35(2) of the Regulations. Regulation 35(2), first sentence, of the Regulations reads, in relevant part: "The Chamber may extend (...) a time limit if good cause is shown (...)".

10. The Chamber recalls that it established first in the Adjournment Decision and later in the Calendar Decision a precise calendar for the proceedings concluding the pre-trial phase in this case in accordance with which it, *inter alia*, ordered the Defence to submit justified proposals for redactions within a specific time limit. As the Defence is seeking to alter this particular ruling, the Chamber must assess whether "good cause" has been demonstrated by the Defence which justifies extending the time limit for the submission of justified proposals of redactions.

11. The Chamber accepts that the amended DCC, which will be submitted on Monday, 13 January 2014, may provide further factual details to the charges, in addition to those already communicated in the previous DCC filed on 17 January

²⁰ ICC-02/11-01/11-587, para. 34.

²¹ ICC-02/11-01/11-587, para. 35.

²² ICC-02/11-01/11-587, para. 37.

²³ ICC-02/11-01/11-587, para. 39.

2013. The Chamber agrees that this circumstance necessitates proper preparation on the part of the Defence with a view to being able to exercise its rights under article 61(6) of the Statute. While the Defence has already received in the course of the past several months most of the evidence upon which the Prosecutor will rely for the purposes of the confirmation of charges, it is only with the amended DCC that the facts and related pieces of evidence, which purportedly support each of the alleged facts, are notified to the Defence. Hence, the Chamber understands that, in this particular case, the Defence may need additional time to organize its presentation of the evidence, including any antecedent requests for redactions, if necessary, albeit not to the full extent as requested by the Defence. In addition, the Chamber is of the view that the following considerations have a bearing on the matter.

12. It has to be emphasised that although the upcoming amended DCC may provide further factual details with regard to the charges, more specifically in relation to the contextual elements of crimes against humanity, the factual scope of the charges will not be changed. Indeed, in accordance with article 61(7)(c)(i) of the Statute, the hearing in this case has simply been adjourned. The Prosecutor has been requested to consider providing further evidence or conducting further investigations with regard to this same case, the scope of which has been determined by the DCC of 17 January 2013. Therefore, the Prosecutor may decide to provide further evidence with respect to an existing charge or “any element within the charge(s) in question”²⁴. It is therefore clear that the factual scope of the charges in the present case is known to the Defence since at least 17 January 2013 and that it was in a position to continue its preparations, also in light of the ongoing disclosure of evidence by the Prosecutor.

13. Thus, the Chamber is not convinced by the Defence’s main argument that it can start its investigation only after the submission of the amended DCC on 13 January

²⁴ Pre-Trial Chamber I, Adjournment Decision, para. 14.

2014. Certainly, when the scope of the charges is known for so long, as in the present case, necessary investigatory action could have been undertaken in the meantime.

14. At this juncture, the Chamber points out that the Rules foresee a strict time schedule for the Prosecutor and the Defence to present their evidence at the stage of the confirmation of charges. In particular, rule 121(6) of the Rules accords to the Defence only 15 days to respond to the DCC and the list of evidence presented by the Prosecutor. If the Chamber were to follow the argumentation of the Defence that its investigation can only start after the presentation of the DCC, the confirmation of charges process as established in rule 121 of the Rules would be inapplicable.

15. Moreover, the Chamber is particularly concerned about and must take into account the length of proceedings in the present case and the right of the suspect “to be tried without undue delay”, within the meaning of article 67(1)(c) of the Statute.

16. Lastly, and most importantly, it is the Chamber’s responsibility to organize the proceedings in a fair manner and ensure that “disclosure takes place under satisfactory conditions” within the meaning of rule 121(2)(b) of the Rules - for both parties. Thus, when deciding on the present Application, the Chamber must factor in the expected potential amount of Defence proposals for redactions, and the time required, first, by the Chamber to decide upon them and, second, by the Defence to implement them, without jeopardizing the 13 February 2014 deadline imposed on the Defence to disclose all the evidence it intends to present, if any, and to file the amended list of evidence. The Chamber finds support for this last consideration in the fact that the Defence merely seeks an extension of time for the submission of justified proposals for redactions.

17. In light of the foregoing, the Chamber finds that the Defence showed “good cause” and grants an extension of time of two weeks until Monday, 27 January 2014, for the Defence to submit justified proposals for redactions, if any, pursuant to rule 81 of the Rules.

FOR THESE REASONS, THE CHAMBER

GRANTS an extension of time of two weeks and, consequently, **ORDERS** the Defence to submit justified proposals for redactions, if any, pursuant to rule 81 of the Rules, until Monday, 27 January 2014.

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

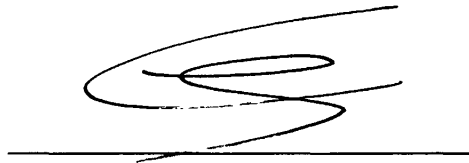


Judge Silvia Fernández de Gurmendi

Presiding Judge



Judge Hans-Peter Kaul



Judge Christine Van den Wyngaert

Dated this Friday, 10 January 2014

At The Hague, The Netherlands