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No.: ICC-02/11-01/11
Date: 22 November 2013

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

With Annexes 1, 2 and 3 – Confidential, *ex parte*, only available to the Office of the Prosecutor

Prosecution's request for an extension of time to apply for redactions pursuant to Regulation 35 and for redactions to two documents pursuant to Rule 81(4)

Source: Office of the Prosecutor

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

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Section****Other**

Introduction

1. On 3 June 2013, Pre-Trial Chamber I adjourned the hearing on the confirmation of charges and requested the Prosecution to provide further evidence or conduct further investigations and adopted for that purpose a new disclosure calendar ("the Decision of 3 June 2013").¹ The Chamber also requested the Prosecutor to submit "as soon as practicable and no later than Tuesday, 15 October 2013 any requests for redactions with regard to the evidence she has collected in the course of her further investigation and on which she intends to rely for the purposes of the confirmation of charges".²
2. On 8 November 2013, the Chamber granted the Prosecution's application to extend the time limit, as set out in the Decision of 3 June 2013, for the filing of the amended Document Containing the Charges, amended List of Evidence, and consolidated Elements-based Chart ("the Decision of 8 November 2013").³
3. Pursuant to Regulation 35(2) of the Regulations of the Court, the Prosecution seeks an extension of the time limit of 15 October 2013 to request redactions to two documents. Without presuming the decision of the Chamber on this request, the Prosecution also simultaneously presents its request for these redactions pursuant to Rule 81(4).

Confidentiality

4. 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

¹ ICC-02/11-01/11-432.

² ICC-02/11-01/11-432, page 23, c)(v).

³ ICC-02/11-01/11-557.

Prosecution files Annexes 1, 2 and 3 as confidential, *ex parte*, only available to the Office of the Prosecutor ("OTP"), as knowledge by the Defence of the requested redactions would defeat the purpose of this submission.

Extension of the time limit to request redactions

5. Document CIV-OTP-0052-0386 is a detailed report including two cover letters. It also includes an earlier interim report and cover letter⁴. This document was received by the OTP on 7 November 2013 from the OPCV. This Document is attached as Annex 1 – confidential, *ex parte*, only available to the OTP.
6. Document CIV-OTP-0052-0292 is a detailed report that is a compilation of rapports, procès-verbaux, compte rendu and similar documents. This document was also received by the OTP on 7 November 2013⁵ from the OPCV. This document is attached as Annex 2 – confidential, *ex parte*, only available to the OTP.
7. The persons who provided the documents to the OPCV gave their consent to the documents being provided to the Prosecution but requested that limited redactions be implemented if they were to be relied upon as evidence in the proceedings. The documents were received from the OPCV on the condition that the Prosecution would only use the documents if redactions were granted.
8. The Prosecution wishes to rely on these documents as incriminatory evidence for the purposes of the confirmation of charges. The evidence is relevant since it pertains to question four (4) of the Decision of 3 June 2013. Notably it: a)

⁴ CIV-OTP-0052-0478 is the cover letter to the interim report which follows thereafter.

⁵ Although both documents were received by the OTP on 7 November 2013, it was not until 14 November 2013 that the OPCV was able to confirm the specific redactions being requested by the providers of the documents and thereafter representatives of the Prosecution and the OPCV were able to meet to discuss and confirm the specific redactions to be requested.

provides corroboration of other evidence that Malians and Burkinabe were targeted by pro-Gbagbo forces; b) confirms that the violence against these groups was across most of the Gbagbo government controlled territory of Côte d'Ivoire; c) provides information regarding the perpetrators of the violence against these groups; and, d) is evidence from a Conseil and an Embassy and consular office, and not open source material.

9. As indicated in paragraph one, above, the applicable time limit established by the Chamber for requesting redactions was 15 October 2013. Pursuant to Regulation 35, the Prosecution applies for an extension of this time limit with respect to the two annexed documents. The Prosecution submits that the requirements of Regulation 35(2) are met. The Prosecution was not in possession of these documents until after 15 October 2013 and consequently, it was unable to file this application within the specified time limit.
10. The Prosecution submits that the Defence will not suffer any prejudice if the Chamber grants the requested extension of the time limit for the Prosecution to request redactions. If this application is granted, the documents will be promptly disclosed to the Defence. Additionally, the Decision of 8 November 2013 has the effect of providing all parties with additional time to prepare for the remaining steps in the confirmation of charges hearing.

Request for redactions pursuant to Rule 81(4)

11. The Prosecution seeks pursuant to Rule 81(4) authorisation to redact (a) identifying information of third parties at risk on account of the activities of the Court (also referred to as "innocent third parties") and (b) identifying information of family members of victims.

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12. With respect to Annex 1, the only redaction being requested is to the signature and name of signatory found on CIV-OTP-0052-0386 (being the second page of the second cover letter). This person provided this document to the OPCV and in doing so expressed concern for his security if his name would be revealed.⁶

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13. With respect to Annex 2, the redactions requested are for: a) the names and other identifying information of the persons involved in compiling the information presented in the various parts of the report; b) the names and other identifying information of persons listed as “contacts” for the listed victims; c) personal information, such as phone numbers and e-mail addresses of persons referred to in a) and b), above; and, d) personal information, specifically telephone numbers of victims and other persons mentioned in the report.
14. Included in these redactions is the name of the person who provided Annex 2 to the OPCV. In providing the document to the OPCV, this person expressed concern for his security and the security of the other persons referred to above if their names or other identifying information would be revealed.⁷ Of note is the fact that no redactions are being sought for the names of victims mentioned and other information (except their telephone numbers) that could identify them.
15. No redactions are being sought for the metadata of either document.
16. It is clear that the security concerns of the persons who provided these documents to the OPCV are directly related to the prospect of their names and

⁶ This information was subsequently communicated by the OPCV to the Prosecution.

⁷ This information was subsequently communicated by the OPCV to the Prosecution.

the names of other innocent third parties being associated with the activities of the Court, and in particular being identified in evidence for the Prosecution.

17. With respect to the telephone numbers of the victims, the Prosecution submits that this is personal and private information. Withholding their telephone numbers from the Defence will protect their privacy, as is appropriate under Article 68(1), and this will not prejudice the Defence as the listed victims are otherwise identified.
18. These redactions will not have any impact on the fairness of the proceedings and the rights of the Defence, as they do not cover any information that is relevant for the preparation of the case of the Defence. The proposed redactions are very limited and in no way affect the content or substantive information presented in the documents.
19. Annex 3 – confidential, *ex parte*, only available to the OTP, is a table that identifies the exact redactions requested to the documents and identifies the factual and legal basis for the requested redactions. The Prosecution requests that the Chamber authorise these redactions pursuant to Rule 81(4). Such an authorisation would also be consistent with prior decisions of the Chamber that authorised similar redactions.⁸

⁸ ICC-02/11-01/11-74-Red, ICC-02/11-01/11-106, 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-02/11-01/11-554-Conf-Red, and ICC-02/11-01/11-556.

Conclusion

20. For the reasons set out above, the Prosecution requests the Chamber to:

- a. grant, pursuant to Regulation 35, the extension of time for the Prosecution to request redactions to the subject documents; and,
- b. grant, pursuant to Rule 81(4), the Prosecution's requests for redactions to the documents in Annexes 1 and 2.



Fatou Bensouda, Prosecutor

Dated this 22nd day of November 2013

At The Hague, The Netherlands