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No.: ICC-02/11-01/11
Date: 28 October 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

Prosecution's request pursuant to Regulation 35 for variation of time limit to file updated document containing the charges, list of evidence and consolidated elements-based chart

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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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
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Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. In its Decision of 3 June 2013, the Majority of Pre-Trial Chamber I declined to confirm the charges, agreed to consider additional evidence, and instructed the Prosecution, among others, to file an amended Document Containing the Charges (“DCC”), list of evidence and a consolidated elements-based chart by no later than 15 November 2013.
2. The Prosecution appealed this decision on grounds that are critical to the Prosecution’s ability to prepare its DCC and to select the evidence in support of the charges. The Prosecution, therefore, seeks an extension of the 15 November 2013 deadline until two weeks after the Appeals Chamber has ruled on the Prosecution’s appeal.

Statement of Facts

3. On 3 June 2013, the Majority of Pre-Trial Chamber I (“Majority”), issued its “Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute” (“Decision”).¹ The Majority requested the Prosecutor to “consider providing further evidence or conducting further investigations” and adopted a “calendar for disclosure of evidence and submissions”.² In that context, the Majority ordered the Prosecution to “submit by no later than Friday, 15 November 2013 the Amended DCC, amended list of evidence and updated consolidated Element Based Chart”.³
4. Pursuant to the Majority’s instruction, the Prosecution disclosed to the Defence additional incriminating evidence on 5 July⁴, 9 August⁵, 5 September⁶, 3 October⁷

¹ ICC-02/11-01/11-432.

² Decision, p.22.

³ Decision, p.23.

⁴ ICC-02/11-01/11-451.

⁵ ICC-02/11-01/11-472.

⁶ ICC-02/11-01/11-498.

⁷ ICC-02/11-01/11-524.

and 15 October⁸. The evidence disclosed after 5 July was collected in the course of the Prosecution's investigation subsequent to the issuance of the Decision.⁹ On the same date, the Prosecution also filed its last request for redactions.¹⁰

5. On 31 July 2013, the Majority partially granted the Prosecution's request for leave to appeal the Decision.¹¹ The Prosecution Appeal¹² raises two grounds: (a) The Majority erred in requiring that in this case a sufficient number of Incidents underlying the contextual elements, including the 41 Incidents, must be established to the standard of proof enshrined in Article 61(7) and by applying that standard of proof to the subsidiary facts and evidence that relate to the 41 Incidents ("First Ground of Appeal"); and (b) The Majority erred in its interpretation and application of the standard of proof under Article 61(7) of the Statute ("Second Ground of Appeal").
6. The Prosecution's brief was filed on 12 August 2013.¹³ With authorization of the Appeals Chamber,¹⁴ the Defence filed its response to the Prosecution Appeal on 20 September 2013.¹⁵ The Appeals Chamber also authorized the legal representative of victims to submit the victims' views and concerns by 27 September 2013, to which the Prosecution and the Defence could file responsive observations by 2 October 2013,¹⁶ and it authorized an *amicus curiae* to file observations by 10 October 2013,¹⁷ to which the Prosecution and the Defence responded on 18 October 2013.¹⁸

⁸ ICC-02/11-01/11-538.

⁹ See Decision, p.23, item (iv).

¹⁰ ICC-02/11-01/11-537-Conf.

¹¹ ICC-02/11-01/11-464.

¹² ICC-02/11-01/11-474 OA5.

¹³ ICC-02/11-01/11-474 OA5.

¹⁴ ICC-02/11-01/11-489 OA5.

¹⁵ ICC-02/11-01/11-510 OA5.

¹⁶ ICC-02/11-01/11-492 OA5.

¹⁷ ICC-02/11-01/11-516 OA5.

¹⁸ ICC-02/11-01/11-540 OA5; ICC-02/11-01/11-541 OA5.

Submissions

7. Under Regulation 35 of the Regulations of the Court, a Chamber may extend time limits ordered by a Chamber or prescribed in the Regulations of the Court “if good cause is shown”. The deadline of 15 November 2013 was set by the Decision. Pursuant to Regulation 35, the Chamber has the discretion to extend this deadline.¹⁹

8. When the 15 November date was originally set (on 3 June), the schedule was entirely reasonable. Indeed, even after the Chamber granted leave to appeal on 31 July, it could reasonably have been anticipated that an appellate decision would be delivered sufficiently before the Amended DCC was due so that the Prosecution could prepare a document that properly reflected the appellate decision. However, the briefing schedule became unexpectedly protracted, and briefing was not concluded until 18 October 2013, thus affecting the viability of the existing schedule. To file an Amended DCC before the delivery of the appellate decision will unduly tax resources of the Court, the parties, and the participants, since once the decision is delivered the Amended DCC and list of evidence might have to be revised yet again.

9. The Appeals Chamber has stated that the “importance and possible impact of a decision on the confirmation of charges” may constitute good cause for an extension of time.²⁰ In this instance, the appellate decision may answer, for the first time, questions concerning what facts must be established to the requisite standard of proof, whether and how many “incidents” must be alleged and proved, and how to interpret and apply the “substantial grounds to believe” test to the relevant facts of the case.²¹ Given the nature of the Prosecution Appeal, there is currently no legal certainty as to the facts the Prosecution must prove to

¹⁹ This deadline is different from the 120-days deadline under Rule 118(2), for which the Defence recently sought an extension. The latter is prescribed by the Rules and does therefore not fall within the scope of Regulation 35. Consequently, the Single Judge of Pre-Trial Chamber I found that “the applicable law does not allow for suspension of the periodic review of detention” (ICC-02/11-01/11-522, para.11).

²⁰ ICC-01/04-01/10-497 OA4, para.6.

²¹ Prosecution Appeal, para.1.

establish an attack and how to interpret and apply the “substantial grounds to believe test” under Article 61(7) to them. This significantly affects the Prosecution’s ability both to formulate the charges against Mr Gbagbo in its upcoming Amended DCC and to select its evidence for the confirmation hearing. The Prosecution submits that the need for the Appeals Chamber’s guidance on these core issues before the Amended DCC and list of evidence are filed provides good cause for the requested extension.

10. If the deadline is extended until two weeks after the Appeals Chamber has ruled, the Prosecution will have sufficient time to adapt the DCC and its list of evidence.

Relief sought

11. For the reasons set out above, the Prosecution requests the Chamber to extend the 15 November 2013 deadline for the Prosecution to “submit [...] the Amended DCC, amended list of evidence and updated consolidated Element Based Chart”²² until two weeks after the Appeals Chamber has rendered its judgment on the Prosecution Appeal.



Fatou Bensouda, Prosecutor

Dated this 28th day of October 2013

At The Hague, The Netherlands

²² Decision, p.23.