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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

With Annexes 1, 2, 3, 4, 5, 6, 7, 8 and 9 – Confidential, *ex parte*, only available to the Prosecution

Prosecution's request for redactions pursuant to Rule 81(2) and Rule 81(4) and to the new disclosure calendar

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

Ms Fatou Bensouda

Mr James Stewart

Mr Eric MacDonald

Counsel for the Defence

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

Ms Natacha Fauveau Ivanovic

Legal Representatives of the Victims

Ms Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
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 consider providing further evidence or conducting further investigations and adopted for these purposes a new disclosure calendar ("Decision").¹ The Chamber also requested the Prosecution to submit "as soon as practicable and no later than Tuesday, 15 October 2013 any requests for redactions with regards to the evidence which is in her possession and on which she intends to rely for the purposes of the confirmation of charges".²
2. The Prosecution hereby presents a request for redactions pursuant to Rule 81(2) and Rule 81(4) to the content and metadata of 9 witness statements, related annexes and investigator reports (when applicable).

Confidentiality

3. 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,³ the Prosecution files its annexes as confidential, *ex parte*, only available to the Prosecution, as knowledge by the Defence of their content would defeat the purpose of this submission.

Requests for redactions

Redactions pursuant to Rule 81(2)

4. The Prosecution seeks the authorisation to redact (a) the identity of all Prosecution staff members mentioned in the relevant documents; (b) the identity of translators and interpreters; (c) the day and month of interviews; and (d) investigative leads. These redactions are sought pursuant to Rule 81(2) to protect

¹ ICC-02/11-01/11-432, pages 22-23.

² Decision, page 23, c)(v).

³ ICC-02/11-01/11-30, paras.54-55 ("Disclosure Decision").

further and ongoing investigations. Revealing to the Defence any of the above information could 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 also impact on their security.⁴ The above redactions also ensure that the Prosecution can continue to use during its investigations the limited number of OTP staff and translators, without any need to replace them which could have negative implications both on the expeditious conduct of its investigations, as well as on the resources required to conduct such investigations.

5. The Prosecution recalls that investigators within the Prosecution can work on different investigations at once, and when they finish working on one investigation they are assigned to another. In this respect, they will be always moving from one investigation to another and will therefore be repeatedly facing potential security 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 the investigators, the Prosecution will seek as a matter of practice to maintain the confidentiality of investigator identities. For these reasons, pertaining both to the present case and to the overall practice of the Prosecution, the identities of the investigators should be redacted from the documents in question.
6. The investigations of the Prosecution are also conducted confidentially. The Prosecution recalled above that the Chamber in its Decision requested the Prosecution to consider the submission of additional evidence or the conduct of further investigations.⁵ In order to maintain the confidentiality of its investigation and protect the reliability of its ongoing evidence collection, the

⁴ 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).

⁵ The Chamber has made public the topics on which it wishes the Prosecution to submit or collect further evidence. In this context, keeping confidential the identity of possible lead information becomes all the more essential.

Prosecution seeks to redact investigative leads. Redaction of these leads does not affect the reading and understanding of the witnesses' statements.

7. The Prosecution submits that the redactions sought pursuant to Rule 81(2) would not result in unfairness to the suspect at the confirmation of charges, since they do not relate to information that is relevant for the preparation of the case of the Defence. The Prosecution will also periodically review the need to maintain redactions and, if they are no longer required, request their lifting. Furthermore, the redactions sought under Rule 81(2) are consistent with prior Decisions of the Chamber that authorised similar redactions.⁶

Redactions pursuant to Rule 81(4)

8. Additionally, 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 witnesses. These redactions do 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. Besides, the proposed redactions falling into the category of "innocent third parties" are very limited; only two statements of the present filing contain this type of redaction.⁷
9. Regarding the proposed redactions falling into the category of "identifying information of family members of any witnesses", the Prosecution emphasizes that it is essential for the purposes of its investigations to be able to seek this type of protection. Witnesses often fear for the security of their family, and in many cases, their cooperation with the Prosecution depends on it. Consequently, it is in the interest of justice, including the search for the truth, to protect family members of cooperating witnesses. Besides, the information that the Prosecution

⁶ ICC-02/11-01/11-74-Red, ICC-02/11-01/11-106 and ICC-02/11-01/11-294 for instance.

⁷ See Annexes 3 and 6.

proposes to redact pursuant to this category is limited. For four witness statements, the proposed redactions only apply to the names of the parents on the cover page of the statement.⁸ For one other witness statement, the proposed redactions additionally apply to the location of the residence of his family members.⁹ For the four remaining statements, the proposed redactions apply to the names of the parents on the cover page, the location of residence and/or name (and identifying information in one case) of the siblings or close family members of the witness.¹⁰ The Prosecution submits that these redactions do not impact on the reading and understanding of the witnesses' accounts and recalls that such redactions have been authorised by the Chamber in prior decisions.¹¹

Redactions to the metadata

10. The Prosecution also seeks authorisation to apply some limited redactions to information in the metadata of the statements and annexes pursuant to Rule 81(2). The redactions sought are limited to the identity of Prosecution staff members, day and month of interviews. Such redactions have also been authorised by the Chamber in the past.¹²
11. Each of the 9 annexes to this filing relate to one witness statement, related annexes and investigator reports (when applicable). It includes a table that identifies the exact redactions requested to the text of the documents as well as to their metadata and provides the factual and legal basis for each individual redaction.¹³ Copies of the statements and annexes with highlights to the information for which redactions are requested, are also submitted.

⁸ See Annexes 1, 3, 4 and 7.

⁹ See Annex 9.

¹⁰ See Annexes 2, 5, 6 and 8.

¹¹ ICC-02/11-01/11-74-Red, ICC-02/11-01/11-106 and ICC-02/11-01/11-294.

¹² ICC-02/11-01/11-74-Red, ICC-02/11-01/11-106, ICC-02/11-01/11-176.

¹³ Disclosure Decision, para.55.

Conclusion

12. The Prosecution hereby requests the Chamber to authorise the redactions as sought.



Fatou Bensouda, Prosecutor

Dated this 30th day of August 2013

At The Hague, The Netherlands