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Date: **16 August 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 document

Prosecution Response to the Defence “*Demande d'autorisation d'interjeter appel de la 'Decision on the Prosecutor's request for redactions pursuant to Rule 81(2) and Rule 81(4) pursuant to the new disclosure calendar and the Prosecution's request for redactions to the transcribed statements of witnesses CIV-OTP-0321 and CIV-OTP-P-0324'*”

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. The Defence seeks leave to appeal (“Defence Application”)¹ the Decision on the "Prosecutor's request for redactions pursuant to Rule 81(2) and Rule 81(4) pursuant to the new disclosure calendar" and the "Prosecution's request for redactions to the transcribed statements of witnesses CIV-OTPP-0321 and CIV-OTP-P-0324 pursuant to Rule 81(2)” (“Decision” or “Impugned Decision”).² It seeks leave to appeal the Decision on the following issues:
 - a. *une décision de la Juge unique rendue sans débat contradictoire, sur la base des seuls éléments présentés par le Procureur, constitue-t-elle une violation de l'article 67 (1) du Statut et de la Norme 24 du Règlement de la Cour?* (First Issue).
 - b. *la Juge unique a-t-elle outrepassé son pouvoir discrétionnaire en accordant les expurgations demandées par le Procureur sans examiner l'argumentation de la défense?* (Second Issue).
 - c. *La quantité et le niveau d'information que la défense doit être à même de recevoir pour pouvoir examiner utilement et discuter toute décision.* (Third Issue).
 - d. *le pouvoir dont disposerait le Juge unique de ne pas transmettre à la défense la partie de la décision comprenant la motivation. Il convient d'ailleurs de noter que la défense ne sait pas quel est le degré de précision auquel obéit la motivation.* (Fourth Issue).
2. The Prosecution submits that the Defence Application should be rejected. The issues as framed by the Defence do not arise out of the Impugned Decision. Even if they did, the issues do not meet the criteria for leave to appeal pursuant to Article 82(1)(d).

¹ ICC-02/11-01/11-473-Conf. The Chamber ordered, by email, that the Defence Application be re-classified as public (see email from Legal Officer of 16 August 2013, at 15:41 hours.

² ICC-02/11-01/11-465.

Procedural History

3. On 24 January 2012, the Single Judge issued the "Decision establishing a disclosure system and a calendar for disclosure" ("Decision on Disclosure").³ On 27 March 2013, the Single Judge issued the "First decision on the Prosecutor's requests for redactions and other protective measures" ("First Decision on Redactions").⁴
4. On 3 June 2013, the Chamber issued the "Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute" (Decision on Adjournment).⁵
5. On 5 July 2013, the Prosecution filed the "Prosecutor's request for redactions pursuant to Rule 81(2) and Rule 81(4) pursuant to the new disclosure calendar" ("First Prosecution Request"),⁶ seeking authorisation of redactions pursuant to Rules 81(2) and 81(4). On the same day the Prosecution submitted the "Prosecution's request pursuant to Regulation 35 for variation of time limit to submit a request for redactions to the transcripts of interviews of two witnesses" ("Request for Variation").⁷ This request was granted on 15 July 2013 ("Decision on Variation").⁸
6. On 24 July 2013, the Defence filed the "*Réponse de la Défense à la «Prosecution's request for redactions pursuant to Rule 81(2) and Rule 81(4) pursuant to the new disclosure calendar » (ICC-02/11-01/11-450) et à la « EXPURGÉ » (ICC-02/11-01/11-447-Conf-Red)*" ("Defence Response")⁹ On 29 July 2013, the Prosecution filed the "Prosecution's request for redactions to the transcribed statements of witnesses CIV-OTP-P-0321 and CIV-OTP-P-0324 pursuant to Rule 81(2) ("Second

³ ICC-02/11-01/11-30 and annexes.

⁴ ICC-02/11-01/11-74-Conf-Exp. A public redacted version has also been filed, see ICC-02/11-01/11-74-Red.

⁵ ICC-02/11-01/11-432.

⁶ ICC-02/11-01/11-450 and confidential annexes, ex parte only available to the Prosecutor.

⁷ ICC-02/11-01/11-448-Red.

⁸ ICC-02/11-01/11-455.

⁹ ICC-02/11-01/11-461-Conf. A public redacted version has also been filed, see ICC-02/11-01/11-461-Red.

Prosecution Request”), seeking authorisation of redactions pursuant to Rule 81(2) to the content and metadata of the transcripts of interviews of two further witnesses.¹⁰

7. On 2 August 2013, the Single Judge of Pre-Trial Chamber I (“Single Judge”) issued the Impugned Decision.¹¹ On 12 August 2013, the Defence submitted the Defence Application, seeking leave to appeal the Impugned Decision.¹²

Submissions

A. The First Issue does not meet the criteria for leave to appeal

(i) *The First Issue does not arise out of the Decision*

8. The First Issue is based on the allegation that the Single Judge issued the Decision on the Prosecution’s Second Request without giving the Defence an opportunity to respond. It is premised on the assumption that no adversarial proceedings took place in relation to that portion of the Impugned Decision, which, according to the Defence, is in violation of Article 67(1) and Regulation 24.¹³
9. The Prosecution submits that the First Issue does not arise from the Decision. Even if the Defence did not file a response to the Prosecution’s Second Request, the substance of the Decision on the Prosecution’s Second Request, as well as the process adopted by the Single Judge in this portion of the Impugned Decision has been subject to an adversarial process.

¹⁰ ICC-02/11-01/11-463 and confidential annexes, ex parte only available to the Prosecutor.

¹¹ ICC-02/11-01/11-465.

¹² ICC-02/11-01/11-473-Conf.

¹³ Defence Request, paras.26-31.

10. The Impugned Decision refers to the Decision on Disclosure,¹⁴ as well as to the First Decision on Redactions.¹⁵ These two prior decisions constitute the basis for the approach adopted by the Single Judge in the Impugned Decision.¹⁶ Both decisions were issued after the Defence had filed its submissions.¹⁷ As a result, all arguments advanced by the Defence at that stage were taken into consideration when issuing the Impugned Decision.
11. In addition, the Single Judge took into consideration the recent Defence Response filed in response to the Prosecution's First Request.¹⁸ This includes arguments in relation to a change of circumstances since the issuance of the Decision on Disclosure and the First Decision on Redactions that may be relevant to the Impugned Decision. Since the First Prosecution Request (filed on 5 July 2013), the Defence Response (filed on 24 July 2013) and Second Prosecution Request (filed on 29 July 2013) are extremely proximate in time – any Defence submissions about changed circumstances in the Defence Response to the First Prosecution Request would be *identically* applicable to the Second Prosecution Request.
12. Moreover, the Prosecution notes that the scope of the First Prosecution Request¹⁹ is much broader than the scope of the Second Prosecution Request, which merely seeks redactions in content and metadata to (a) the identities of investigators mentioned in the relevant documents; and (b) the day, month and location of

¹⁴ ICC-02/11-01/11-30 and annexes, referred to in Decision, para.1.

¹⁵ ICC-02/11-01/11-74-Red, referred to in Decision, para.2.

¹⁶ See Impugned Decision, para.13.

¹⁷ In relation to the Decision on Disclosure, see ICC-02/11-01/11-27-Conf; In relation to the First Decision on Disclosure, see ICC-02/11-01/11-44 and ICC-02/01-01/11-58.

¹⁸ Decision, paras.9-11, 14, referring to ICC-02/11-01/11-461-Conf.

The First Prosecution Request sought redactions to (a) the identity of all Prosecution staff members mentioned in the relevant documents; (b) the identity of translators and interpreters; (c) the day, month and location of interviews; (d) any information identifying Prosecution sources; and (e) investigative leads. These redactions were sought pursuant to Rule 81(2) (ICC-02/11-01/11-450, para.4). It also sought redactions for (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 any witnesses. These redactions are sought pursuant to Rule 81(4) (ICC-02/11-01/11-450, para.8). Redactions were also sought to the metadata of some documents limited to (a) the identity of Prosecution staff members, day, month and interview locations where the case may be; and (b) Prosecution sources, pursuant to Rule 81(2). The First Prosecution Request related to numerous documents and the interviews of 16 witnesses (ICC-02/11-01/11-450, paras.10-12).

interviews pursuant to Rule 81(2) in the interviews of two witnesses.²⁰ The same types of redactions were sought, among others, also in the First Prosecution Request. Therefore, by responding to the First Prosecution Request, the Defence has had an opportunity to make submissions in relation to *every type of redaction* sought in the Second Prosecution Request and it could do so in the context of the *same type of documents*.

13. Importantly, the Request for Variation whereby the Prosecution obtained permission to submit the Second Prosecution Request was filed on the record *before* the submission of the Defence Response. The Request for Variation made it clear that the Prosecution would seek “redactions to the transcripts of interviews of two insider witnesses”²¹ and that the redactions “should be limited to the names of the investigators, the day, month and location of the interview (Rule 81(2))”. The Decision on Variation, allowing the above request, was *also* issued *before* the submission of the Defence Response, and noted the legal basis of the upcoming Second Prosecution Request and the precise nature of the proposed redactions.²² Hence, the Defence was aware of the relevant content and legal basis of the Second Prosecution Request at the time that it formulated and submitted the Defence Response.
14. In addition, the Prosecution notes that under its First Issue, the Defence merely claims that the Decision was issued without hearing the Defence, while making no analysis of the governing regime for *ex parte* motions in proceedings before the Pre-Trial Chamber. Pre-Trial Chamber I has previously found that such a claim amounts to “a general allegation” instead of “raising an issue arising from

²⁰ ICC-02/11-01/11-463, para.4.

²¹ ICC-02/11-01/11-448-Red, para.2.

²² ICC-02/11-01/11-455, paras.4-6.

the Decision”²³ and consequently concluded that it does amount to an “issue” for the purposes of Article 82(1)(d).²⁴

(ii) *The First Issue does not meet the criteria for leave to appeal under Article 82(1)(d)*

15. The Prosecution submits that even if the First Issue arose from the Impugned Decision, the impact of the First Issue on the fairness of proceedings is negligible. In support of its argument, the Defence merely refers to general principles of law, but it fails to show in concrete terms how the First Issue affects the fairness of the proceedings.²⁵
16. Moreover, as noted above, the Defence briefed the Single Judge in response to the First Prosecution Request regarding the *same* types of redactions imposed on the *same* types of documents at approximately the *same* time as the Second Prosecution Request. There was also no change of circumstances between the 24 July 2013 and 29 July 2013 that the Defence refers. Therefore, even if, *arguendo*, the Defence could have advanced additional arguments in relation to individual redactions sought in the Second Prosecution Request, in the context of the above background no unfairness can be discerned. This is also because when issuing the Impugned Decision, the Single Judge expressly took into consideration “the protection of the interests of the Defence”.²⁶ The Defence also makes references to prior alleged infringements of its right to be heard.²⁷ These allegations, even if they were true, do not demonstrate that an issue allegedly arising from *this* Decision would affect the fairness of the proceedings.
17. The Defence also does not demonstrate that the First Issue significantly impacts on the expeditious conduct of the proceedings. The Defence states generally a)

²³ ICC-01/04-01/07-116, p.5.

²⁴ ICC-01/04-01/07-116.

²⁵ Defence Request, paras.48-55.

²⁶ Decision, para.14.

²⁷ Decision, paras.53-55.

that “il est primordial que la Défense puisse discuter réellement les charges”;²⁸ b) that “la durée de la procédure a déjà été affectée par l’insuffisance des preuves du Procureur et notamment par la faible qualité de sa preuve”;²⁹ and c) that “une défense capable de disposer d’informations permettant de discuter les éléments de preuve présentés par le Procureur, conduite à l’abandon de certaines charges aura un impact évident sur la rapidité de la procédure.”³⁰ The first of these points does not relate to the expeditious conduct of proceedings. The second does not relate to this application or the Impugned Decision as they do not concern evidentiary findings beyond those related to the standard under Article 58. The third point, while remotely relevant to expeditiousness, is predicated on the speculative assumption that a finding that the Impugned Decision is wrongly decided would have an impact on the charges in this case. The Prosecution notes in this context that the Rule 81(2) redactions at issue do not go to the guilt or innocence of Mr. Gbagbo – they are limited to protecting ongoing investigations, and also limited in number and scope. Hence even if the Impugned Decision is wrongly decided, there would be no impact on the charges.

18. Regarding the question of whether an immediate resolution of the Issue will materially advance the proceedings, the Defence submits that a late resolution of these issues “risquerait de porter un préjudice irréparable à l’accusé qui se verrait privé du droit de répondre au Procureur, ne pourrait plus – selon la logique du Juge unique – contester d’expurgations et ne pourrait faire valoir ses moyens de défense lors de l’audience de confirmation des charges”.³¹ The Prosecution submits that this claim is speculative. As discussed above, even if the Decision was wrong, the prejudice to the Defence as a result of the First Issue is minimal.

²⁸ Defence Request, para.68.

²⁹ Defence Request, para.71.

³⁰ Defence Request, para.69.

³¹ Defence Request, para.75.

B. The Second Issue does not meet the criteria for leave to appeal

(i) *The Second Issue does not arise out of the Decision*

19. The Second Issue is predicated on the assumption that the Single Judge did not take into consideration the arguments of the Defence when issuing the Impugned Decision. This assumption is incorrect. The Defence misrepresents the Impugned Decision in this context.³² The Decision expressly refers to the arguments advanced by the Defence in response to the Prosecution's First Request.³³ It found that "the substance of [these] arguments" has already been addressed in the First Decision on Redactions, whose process was adopted in the Impugned Decision. Therefore the Single Judge stated that ""while *noting* the submissions of the Defence" she ""will not analyse them *again*".³⁴ This confirms that the Single Judge has in fact considered the arguments of the Defence. She merely avoided repetitive analysis.
20. As noted above, case law has already established that merely claiming that a decision on redactions "was issued without hearing the Defence"³⁵ while making "no analysis of the governing regime for ex parte motions in proceedings before the Pre-Trial Chamber"³⁶ amounts to making "a general allegation" instead of "raising an issue arising from the Decision".³⁷ Consequently, such claims have been found not to amount to an "issue" for the purposes of article 82(1)(d).³⁸

³² See in this context prior caselaw where leave to appeal has been denied due to misrepresentation of the impugned decision. ICC-01/09-02/11-406, para.46 (In this case the appellant misinterpreted a factual finding - with which it merely disagrees - in order to make it a point of law); ICC-01/04-01/07-15, para.15 (the TC did not make a general ruling and it only addressed the concrete request by the Prosecution); ICC-01/04-01/07-1732, paras.15,17-18; ICC-01/04-01/10-487, paras.32-33; ICC-01/04-01/07-1088, paras.33-35; ICC-01/04-535, paras. 26-29 (OPCD misinterpreted the terms *prima facie* vs. "factual finding" used in the decision); ICC-01/04-01/10-106, p. 6; ICC-02/11-01/11-350, paras.42, 44.

³³ Decision, paras.9-11.

³⁴ Decision, para.14. Emphasis added.

³⁵ ICC-01/04-01/07-116, page 5.

³⁶ ICC-01/04-01/07-116, page 5.

³⁷ ICC-01/04-01/07-116, page 5.

³⁸ ICC-01/04-01/07-116.

21. The Defence submits that the arguments that it advanced in response to the Prosecution's First Request are different to those rehearsed previously in the context of the First Decision on Redactions, which is demonstrated by a change of relevant circumstances.³⁹ The Defence does not, however, detail what aspect of the circumstances have changed and in what manner. The Defence merely states that "[e]lles ont changé parce que l'audience de confirmation des charges a mis en évidence les insuffisances de la preuve du Procureur et elles ont changé à la lumière des exigences formulées par les Juges le 3 juin 2013 vis-à-vis du Procureur".⁴⁰ This does not amount to a change of circumstances that is relevant to the context of redactions. Rather it amounts to a mere disagreement between the Defence and the Single Judge as to the impact that recent developments have on the merits of the Prosecution's requests. The Single Judge found that "the substance of the arguments" advanced by the Defence now and previously was the same,⁴¹ thereby concluding that any factual developments referred to by the Defence had no impact on the outcome of the decision.⁴²
22. The Defence further submits that "*Bien que dans la présente décision le Juge unique affirme avoir examiné les expurgations demandées au cas par cas, il est évident qu'il ne pouvait le faire proprement à partir de demandes du Procureur ne distinguant pas chaque cas particulier mais procédant de façon générale et systématique et sans avoir analysé les arguments actuels de la Défense*".⁴³ This too amounts to a mere disagreement with the Impugned Decision. The Defence cannot allege for the purpose of framing an issue that the Single Judge has not done what she has explicitly stated as having done, without any support for the same.

(ii) *The Second Issue does not meet the criteria for leave to appeal under Article 82(1)(d)*

³⁹ Defence Request, paras.33-34, 41-42.

⁴⁰ ICC-02/11-01/11-473-Conf, para.33.

⁴¹ Decision, para.14.

⁴² The Prosecution notes in this context that a "mere reiteration of prior arguments and an expression of disagreement with the analysis and conclusion made by the Chamber are not sufficient to identify an 'issue'". See ICC-02/11-01/11-350, para.40.

⁴³ ICC-02/11-01/11-473-Conf, para.61.

23. Even if the Pre-Trial Chamber considers that the Second Issue does arise from the Impugned Decision, it does not fulfil the requirements for granting leave to appeal. Once again, the Defence has failed to show in concrete terms how the Second Issue affects the fairness of the proceedings.⁴⁴ It is insufficient to make broad generalizations such as “[l]es questions liées à la divulgation des pièces sont directement liées à l’équité de la procédure.”⁴⁵ Indeed, numerous applications for leave to appeal relating to issues of disclosure and redactions have been rejected in the developing practice of the Court.⁴⁶ It is also insufficient for the Defence to argue that as a general principle the Defence must be heard. The Defence must demonstrate how the alleged disregard by the Single Judge of the Defence’s arguments significantly impacts on the fairness of the proceedings.
24. As noted above, the Single Judge has found that the *same* Defence arguments and circumstances featured during the issuance of the First Decision on Redactions as during the issuance of the Impugned Decision. Consequently even if it were the case that the Single Judge has disregarded the recent arguments of the Defence regarding the First Request, this would not have a significant impact on the fairness of proceedings.
25. The Defence in this context has also not specified any concrete change of circumstances that occurred between the issuance of the First Decision on Redactions and the Impugned Decision that could have impacted on the fairness of proceedings. The Defence makes a general reference⁴⁷ to the issuance of the Decision on Adjournment without explaining why this amounts to a change of

⁴⁴ Defence Request, paras.56-62.

⁴⁵ ICC-02/11-01/11-473-Conf, para.56.

⁴⁶ See for example ICC-01/04-01/07-116, ICC-02/04-01/05-367, ICC-01/09-01/11-596, ICC-01/04-01/07-431.

⁴⁷ ICC-02/11-01/11-473-Conf, para.33.

circumstances that would be relevant particularly to the Prosecution's Second Request. A purely general complaint of this nature does not suffice.⁴⁸

26. Neither does it suffice for an issue to have merely a hypothetical impact on the expeditiousness of proceedings.⁴⁹ The Defence argues that “[la] décision de la Juge Unique a pour conséquence d’empêcher la Défense de mener des enquêtes”.⁵⁰ This is a speculative argument for which the Defence provides no basis. The Defence is on notice regarding the types and general themes of information that is redacted. Most crucially - for investigative purposes - the Defence has access to the identity of the relevant witnesses and substantive content of the interviews.
27. The Defence's arguments in relation to the impact of the Second Issue on the expeditious conduct of the proceedings and the question of whether an immediate resolution of the Issue will materially advance the proceedings are the same as those cited for the First Issue. Hence the Prosecution reiterates the submissions made at paragraphs 18-19 above in response to the same.

C. The Third and Fourth Issues do not meet the criteria for leave to appeal

(i) The Third and Fourth Issues do not arise out of the Decision

28. The Defence raises as the third and fourth issues “[l]a quantité et le niveau d’information que la défense doit être à même de recevoir pour pouvoir examiner utilement et discuter toute décision”⁵¹ and “le pouvoir dont disposerait le Juge unique de ne pas transmettre à la défense la partie de la décision comprenant la motivation.”⁵²

⁴⁸ ICC-01/04-01/07-2463, para. 31. See also ICC-01/04-168 OA3, para. 10; ICC-02/04-01/05-316, p. 6; ICC-01/09-02/11-211 paras. 33 and 39; ICC-01/09-02/11-88, para. 25, see also paras. 23-27; ICC-01/04-01/06-2109, para.22; ICC-01/05-01/08-680, para. 36; ICC-01/09-02/11-275, paras. 28-29; ICC-01/09-01/11-301, para. 30.

⁴⁹ ICC-01/04-01/07-1958, para. 20. See also: ICC-02/04-01/05-367, paras. 21-22.

⁵⁰ Defence Request, para.60.

⁵¹ Defence Request, para.47.

⁵² Defence Request, para.47.

29. The issues of the amount and level of information that the Defence in this case should receive in order to effectively examine and discuss a decision on redactions, and the extent to which it should have access to the reasons for such a decision, do not arise from the Impugned Decision. These issues were settled in a prior decision, namely the Decision on Disclosure of January 2012,⁵³ which set out a comprehensive procedure for requests for redactions and decisions regarding the same⁵⁴ including the nature and amount of information that must be accessible to the Defence.
30. In the Decision on Disclosure, the Single Judge held that “disclosing to the Defence all the factual motivation for the Prosecutor's requests for redactions may defeat the purpose of these requests. In this respect, the Single Judge recalls that Rule 81(2) of the Rules, for instance, provides that the Prosecutor's requests to redact information when its disclosure may prejudice further or ongoing investigations shall be heard on an ex parte basis.”⁵⁵
31. In the Decision on Disclosure, Single Judge added that “the Prosecutor should inform the Defence of the existence of such requests and of the underlying legal and factual basis of his requests for redactions to the largest extent possible. However, with respect to the request itself and its annexes, they shall be filed as ex parte and shall include a chart containing all the relevant legal and factual information necessary to allow a determination by the Single Judge in compliance with the Appeals Chamber's guidelines”.⁵⁶ Regarding the provision of access to reasoning, the Single Judge held in the Decision on Disclosure that “the Defence will be provided with all relevant information on the basis of which the Single Judge reached a decision on the Prosecutor's requests for redactions, to

⁵³ ICC-02/11-01/11-30.

⁵⁴ ICC-02/11-01/11-30, paras. 48-57.

⁵⁵ ICC-02/11-01/11-30, para.54.

⁵⁶ ICC-02/11-01/11-30, para.55.

the extent that such information does not lead to the disclosure of information that must be protected.”⁵⁷

32. The Impugned Decision merely follows the system implemented in the Disclosure Decision, but does not analyse the questions raised under the Third and Fourth Issues. The Prosecution submits that under these circumstances leave to appeal cannot be sought for these two issues with regard to the Impugned Decision.⁵⁸ The Defence had ample opportunity to raise these Issues in the context of the Initial Disclosure Decision, but chose not to avail itself of the opportunity. The failure of the applicant to raise an issue at the point that it actually arose has previously resulted in leave to appeal being denied.⁵⁹
33. Moreover, the Third and Fourth Issues are also based upon a mischaracterization of the Impugned Decision. These two issues are premised on the assumption that the Single Judge “*n’a nullement expliqué, tout du moins à la défense, les arguments qui fondent sa décision du 2 août 2013.*”⁶⁰ This is a flawed premise. The Single Judge stated explicitly that she “makes reference to the First Decision on Redactions wherein the overall reasons for granting or rejecting redactions have been provided. For the present decision, the Single Judge has adhered to the same approach.”⁶¹ Hence, contrary to the contention of the Defence, the Single Judge did provide reasons for her decision. Moreover, as noted in the Decision on Disclosure, reasons for individual redactions cannot be provided since they may nullify the purpose of the redaction.

⁵⁷ ICC-02/11-01/11-30, para.56.

⁵⁸ ICC-01/04-01/06-338, p. 8.

⁵⁹ ICC-01/04-01/06-338, p.8, See further ICC-01/04-01/07-116, p.5.

⁶⁰ Defence Request, para.67.

⁶¹ ICC-02/11-01/11-465, para.13.

(ii) *The Third and Fourth Issues do not meet the criteria for leave to appeal under Article 82(1)(d)*

34. The Prosecution submits that even if, *arguendo*, the Single Judge had indeed provided insufficient reasoning, this would have a negligible impact on the fairness of the proceedings. Firstly, the Defence is fully on notice regarding the specific types of redactions being discussed.⁶² Secondly, the Defence is also on notice regarding the overall reasons for granting or rejecting redactions. The Single Judge explicitly noted that she makes reference to the First Decision on Redactions wherein the overall reasons for granting or rejecting redactions have been provided, and that for the present decision, she adhered to the same approach.⁶³ She added that the First Decision on Redactions has addressed the protection of the interests of the Defence in the process of adjudicating redaction requests emanating from the Prosecutor, including the substance of the arguments advanced in the Defence Response.⁶⁴
35. The Defence's arguments in relation to the impact of the Third and Fourth Issues on the expeditious conduct of the proceedings and the question of whether an immediate resolution of the Issue will materially advance the proceedings are the same as those cited for the First Issue. Hence the Prosecution reiterates the submissions made in paragraphs 18-19 above in response to the same.

⁶² Decision, paras. 5-6.

⁶³ Decision, para 13.

⁶⁴ Decision, para.14.

Conclusion

36. For the above reasons, the Prosecution requests that the Chamber reject the Defence Application.



Fatou Bensouda, Prosecutor

Dated this 16th day of August 2013

At The Hague, The Netherlands