

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/11

Date: 2 August 2013

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Single Judge

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
*THE PROSECUTOR V. LAURENT GBAGBO***

Public

With CONFIDENTIAL Annex, *EX PARTE*, only available to the Prosecutor

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-P-0321 and CIV-OTP-P-0324 pursuant to Rule 81(2)"

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

The Office of the Prosecutor
 Fatou Bensouda, Prosecutor
 James Stewart, Deputy Prosecutor

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 & Deputy Registrar
 Herman von Hebel, Registrar
 Didier Preira, Deputy Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
 Section**

Other

Judge Silvia Fernández de Gurmendi, Single Judge for Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”), responsible for carrying out the functions of the Chamber in relation to the situation in the Republic of Côte d’Ivoire and the cases emanating therefrom,¹ hereby issues the decision on the “Prosecutor’s request for redactions pursuant to Rule 81(2) and Rule 81(4) pursuant to the new disclosure calendar” (the “First Request”)² and 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)” (the “Second Request”).³

1. On 24 January 2012, the Single Judge issued the “Decision establishing a disclosure system and a calendar for disclosure” (the “Decision on Disclosure”).⁴

2. On 27 March 2013, the Single Judge issued the “First decision on the Prosecutor’s requests for redactions and other protective measures” (the “First Decision on Redactions”).⁵

3. 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”, in which it decided to adjourn the confirmation of charges hearing and requested the Prosecutor to consider providing further evidence or conducting further investigation.⁶ The Chamber ordered the Prosecutor to submit “as soon as practicable and no later than Friday, 5 July 2013 any requests for redactions with regards to the evidence which is in her

¹ ICC-02/11-01/11-61.

² ICC-02/11-01/11-450 and confidential annexes, *ex parte* only available to the Prosecutor.

³ ICC-02/11-01/11-463 and confidential annexes, *ex parte* only available to the Prosecutor.

⁴ ICC-02/11-01/11-30 and annexes.

⁵ ICC-02/11-01/11-74-Conf-Exp. A public redacted version has also been filed, see ICC-02/11-01/11-74-Red.

⁶ ICC-02/11-01/11-432, p. 22.

possession and on which she intends to rely for the purposes of the confirmation of charges”.⁷

4. On 5 July 2013, the Prosecutor filed the First Request, seeking authorisation of redactions pursuant to rule 81(2) and rule 81(4) of the Rules of Procedure and Evidence (the “Rules”) to the content and metadata of evidence she wishes to rely on for the purposes of the confirmation of charges.⁸ On 29 July, the Prosecutor, having obtained an extension of time limit for this purpose,⁹ filed the Second Request, seeking authorisation of redactions pursuant to rule 81(2) of the Rules to the content and metadata of the transcripts of interviews of two further witnesses.¹⁰

5. In particular, the Prosecutor seeks authorisation to redact, pursuant to rule 81(2) of the Rules: (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. The Prosecutor contends that the redactions sought do not relate to information that is relevant for the preparation of the Defence case. She adds that she will periodically review the need to request the lifting of these redactions.¹¹

6. The Prosecutor also seeks authorisation to redact, pursuant to rule 81(4) of the Rules: (a) identifying information of third parties at risk on account of the activities of the Court; and (b) identifying information of family members

⁷ *Id.*

⁸ First Request, para. 2.

⁹ ICC-02/11-01/11-455.

¹⁰ Second Request, para. 2.

¹¹ First Request, paras 4 and 7; Second Request, paras 4 and 7.

of any witnesses, submitting that it would not have any impact on the fairness of the proceedings and the rights of the Defence.¹²

7. The Prosecutor further requests the redaction of the metadata of some documents in relation to (a) the identity of Prosecution staff members, day, month and interview locations where the case may be; and (b) Prosecution sources.¹³

8. The Prosecutor alleges that all redactions sought are consistent with prior decisions of the Chamber.¹⁴

9. 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)”*.¹⁵

10. The Defence submits that it cannot properly evaluate the necessity of the redactions requested by the Prosecutor pursuant to rules 81(2) and 81(4) of the Rules, nor the prejudice they may cause, because it does not know the nature of the documents referred to in the Request.¹⁶ Further, the Defence argues that the requests for redactions are too general and not properly justified.¹⁷ It emphasises that the Chamber should authorise redactions on a case-by-case basis, protecting the rights of the suspect and satisfying, as far as possible, the requirements of a fair trial.¹⁸

¹² First Request, para. 8.

¹³ First Request, para. 9; Second Request, para. 4.

¹⁴ First Request, paras 7-9 ; Second Request, para. 7.

¹⁵ ICC-02/11-01/11-461-Conf. A public redacted version has also been filed, see ICC-02/11-01/11-461-Red.

¹⁶ *Ibid.*, paras 17, 53-57.

¹⁷ *Ibid.*, paras 17, 54, 58; see also paras 26-40.

¹⁸ *Ibid.*, paras 23, 53.

11. Accordingly, the Defence requests that the Chamber reject the requests for redactions and order the Prosecutor to immediately provide the documents referred to in the Request. In the alternative, the Defence requests that those documents be provided with redactions as requested and that a time limit be set for the Defence to respond.¹⁹

12. The Single Judge notes articles 54(3)(f), 57(3)(c), 61, 67 and 68(1) of the Rome Statute, and rule 81 of the Rules.

13. The Single Judge makes reference to the First Decision on Redactions wherein the overall reasons for granting or rejecting redactions have been provided.²⁰ For the present decision, the Single Judge has adhered to the same approach.

14. The Single Judge notes that the First Decisions 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 by the Defence presently in its response.²¹ For this reason, while noting the submissions of the Defence, the Single Judge will not analyse them again.

15. The Single Judge has reviewed the proposed redactions individually, on a case by case basis, and considers that they are justified as specified in the Annex to the present decision, confidential *ex parte*, only available to the Prosecutor.

16. Pursuant to the Decision on Disclosure, the Prosecutor shall disclose to the Defence the evidence presently dealt with no later than five days upon

¹⁹ *Ibid.*, page 15.

²⁰ First Decision on Redactions, paras 55-102.

²¹ *Ibid.*, paras 54-59.

notification of the present decision.²² In addition, the Single Judge recalls that in the First Decision on Redactions she held that “in order to enable the Defence to identify more efficiently possible faults, the Prosecutor should provide the Defence, in the format considered appropriate, with information as to which statements have been taken by the same investigator or in the presence of the same interpreter, translator or of another Prosecutor’s staff”.²³ In light of the fact that witness statements will be disclosed shortly upon notification of the present decision, the Single Judge deems it appropriate to order the Prosecutor to update this information.

FOR THESE REASONS, THE SINGLE JUDGE

GRANTS the Prosecutor’s requests for redactions as specified in the Annex to the present decision;

RECALLS that the Prosecutor shall disclose to the Defence the evidence dealt with in the present decision as soon as practicable and no later than 5 days upon notification of the present decision; and

ORDERS the Prosecutor to provide the Defence, at the time of disclosure of the witness statements dealt with in the present decision, with updated information as to which statements have been taken by the same investigator or in the presence of the same interpreter, translator or other OTP staff member.

²² Decision on Disclosure, p. 30.

²³ First Decision on Redactions, para. 89. See also ICC-02/11-01/11-106, para. 14.

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



Judge Silvia Fernández de Gurmendi
Single Judge

Dated this 2 August 2013

At The Hague, The Netherlands