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

Date: 5 July 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, 3, 4, 5, 6, 7, 8, 9, 10, 11A, 11B, 12, 13, 14, 15, 16, 17 and 18 –  
Confidential, *ex parte*, only available to the Prosecution**

**Prosecution's request for redactions pursuant to Rule 81(2) and Rule 81(4)  
pursuant 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:

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**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**

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**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 provide further evidence or conduct further investigations and adopted for that purpose a new disclosure calendar (“the Decision”).<sup>1</sup> The Chamber also requested the Prosecution 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 possession and on which she intends to rely for the purposes of the confirmation of charges”.<sup>2</sup>
2. The Prosecution hereby presents a request for redactions pursuant to Rule 81(2) and Rule 81(4) to the content and metadata of documents it wishes to rely on for the purposes of the confirmation of charges.

## 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,<sup>3</sup> the Prosecution files its annexes confidential, *ex parte*, only available to the Prosecution, as knowledge by the Defence of the content of the filing and its annexes would defeat its purpose.

## Requests for redactions

4. The Prosecution seeks 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, month and location of interviews; (d) any information identifying Prosecution sources; and (e) investigative leads. These redactions are sought pursuant to Rule 81(2) to protect further and ongoing investigations. Revealing to the Defence any of the above information is likely to impact on the Prosecution’s ability to conduct its investigations, as it

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<sup>1</sup> ICC-02/11-01/11-432, page 22.

<sup>2</sup> ICC-02/11-01/11-432, page 22, c)(ii).

<sup>3</sup> ICC-02/11-01/11-30, paras.54-55 (“Disclosure Decision”).

may unduly attract attention to the movement of Prosecution staff and by extension to (potential) witnesses and their security.<sup>4</sup> The above redactions also ensure that the Prosecution can continue to use during its investigations the limited number of investigators, translators, sources or location of interviews that it currently has at its disposal, without any need to replace them which would 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 OTP 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 new 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 investigators, the OTP 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 OTP, 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 submission of additional evidence or the conduct of further investigations.<sup>5</sup> In order to maintain the confidentiality of its investigation and protect the reliability of its ongoing evidence collection, the Prosecution seeks to redact investigative leads.

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<sup>4</sup> 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).

<sup>5</sup> 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.

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 request the lifting of these redactions at a more advanced stage of its investigation. Furthermore, the redactions sought under Rule 81(2) are consistent with prior Decisions of the Chamber that authorised similar redactions.<sup>6</sup>
8. Furthermore, the Prosecution seeks 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 any witnesses. These redactions are sought pursuant to Rule 81(4) to protect the safety of witnesses and victims and members of their families as well as the safety of other persons at risk on account of the activities of the Court. 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. The Prosecution also recalls that such redactions have been authorised by the Chamber in prior decisions.<sup>7</sup>
9. In addition to the redactions to the content referred to above, the Prosecution seeks authorisation to redact the metadata of some documents that it wishes to disclose.<sup>8</sup> Redactions to the metadata are sought pursuant to Rule 81(2). They are limited to (a) the identity of Prosecution staff members, day, month and interview locations where the case may be; and (b) Prosecution sources. Such redactions have also been authorised by the Chamber in the past.<sup>9</sup>
10. The annexes to this filing consist of 18 batches of documents. Annex 1 includes 28 documents with redactions to the content and/or metadata. The information proposed to be redacted is highlighted. A table that identifies the exact

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

<sup>7</sup> ICC-02/11-01/11-74-Red, ICC-02/11-01/11-106 and ICC-02/11-01/11-294.

<sup>8</sup> For 173 documents, the Prosecution seeks only to redact the metadata of the documents.

<sup>9</sup> ICC-02/11-01/11-74-Red, ICC-02/11-01/11-106, ICC-02/11-01/11-176.

redactions requested to the content of the documents as well as to its metadata (when applicable) is submitted. This table also provides the factual and legal basis for each individual redaction requested.<sup>10</sup>

11. Annex 2, contains a table that refers to 173 documents for which the Prosecution is seeking redactions only to their metadata. Since the redactions sought are limited to the metadata, the document themselves are not submitted.
12. Annexes 3 to 18 relate to the interviews of 16 witnesses. Each annex<sup>11</sup> includes a table that identifies the exact redactions requested to the text of the documents as well as to their metadata (when applicable) and provides the factual and legal basis for each individual redaction.<sup>12</sup> Copies of the statements with highlights to the information for which redactions are requested are also submitted.



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Fatou Bensouda, Prosecutor

Dated this 5<sup>th</sup> day of July 2013

At The Hague, The Netherlands

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<sup>10</sup> Disclosure Decision, para.55.

<sup>11</sup> Annex 11B contains a video related to CIV-OTP-P-0217. The redactions table for this witness can be found in Annex 11A.

<sup>12</sup> Disclosure Decision, para.55.