

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 22 March 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 document

Decision on the “Requête de la défense du Président Gbagbo aux fins d’extension du nombre de pages fixé par la Chambre en vue du dépôt d’observations écrites portant sur les questions discutées au cours de l’audience de confirmation des charges”

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

The Office of the Prosecutor

Fatou Bensouda

James Stewart

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

Silvana Arbia

Didier Preira

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 *"Requête de la défense du Président Gbagbo aux fins d'extension du nombre de pages fixé par la Chambre en vue du dépôt d'observations écrites portant sur les questions discutées au cours de l'audience de confirmation des charges"* (the "Request").²

1. The confirmation of charges hearing in the case took place between 19 and 28 February 2013. Having previously informed the parties and participants that they would be accorded an opportunity to file written submissions after the hearing,³ the Chamber established, at the conclusion of the hearing, 14 March 2013 as the time limit for the filing of the final written submissions by the Prosecutor and the Office of Public Counsel for victims (the "OPCV"), as the common legal representative of the victims participating in the proceedings, and 28 March 2013 as the time limit for the filing of the final written submissions by the Defence.⁴ In addition, the Chamber authorised the parties and participants to file final written observations of up to 40 pages.⁵

2. The final written submissions of the Prosecutor and the OPCV on issues discussed during the confirmation of charges hearing were filed on 14 March 2013.⁶

¹ ICC-02/11-01/11-61.

² ICC-02/11-01/11-422.

³ ICC-02/11-01/11-397, para. 10; ICC-02/11-01/11-T-14-ENG, p. 5, lines 23-25.

⁴ ICC-02/11-01/11-T-21-FRA, p. 53, lines 21-24.

⁵ ICC-02/11-01/11-T-21-FRA, p. 53, lines 27-28.

⁶ ICC-02/11-01/11-419, ICC-02/11-01/11-420-Conf and annex.

3. On 19 March 2013, the Defence filed its Request. On 22 March 2013, the OPCV and the Prosecutor responded.⁷

4. The Defence requests an extension of the page limit for its final written submissions up to a total of 80 pages, on the basis of the number and complexity and importance of the arguments on the one hand, and of the need to preserve the fairness of proceedings, on the other hand.⁸

5. With respect to the former, the Defence contends that the arguments raised during the confirmation of charges hearing are many and complex. The Defence argues that it is important to allow it to address all points discussed during the hearing which it deems important, regardless of whether they were raised by the Prosecutor, the OPCV, or by the Defence. The Defence also submits that the multiplicity and complexity of the questions raised in the final written submissions of the Prosecutor and the OPCV do not permit it to respond in 40 pages, let alone add observations on its own arguments. Additionally, the Defence alleges, without specifying, that the OPCV raises new points in its final written submissions, and that the Prosecutor develops her arguments *"sous un angle différent de celui utilise lors de l'audience"*.⁹

6. With respect to the second argument in support of the Request, the Defence reiterates the importance of the confirmation of charges hearing for the protection of its rights. It submits that in according the parties and the OPCV the same number of pages for their final written submissions, the Chamber has effectively considered them to be equal, despite the fact that victims are participants to the proceedings, and not parties. In fact, the Defence contends that the OPCV has exceeded its role and has attempted to intervene as a party. Therefore, the Defence submits that equality of arms has

⁷ ICC-02/11-01/11-423, ICC-02/11-01/11-424.

⁸ Request, para. 7 and page 13.

⁹ *Ibid.*, paras 8-22.

been breached, as it has to respond in 40 pages to both the Prosecutor and the OPCV, who disposed, between them, of twice as many pages.¹⁰

7. In conclusion, the Defence submits that it has attempted to comply with the allocated page limit, but that *“compte tenu du nombre des arguments présentés, de leur importance, de l’étendue des écritures déposées par l’Accusation et par le Représentant légal des victimes et compte tenu aussi de la nécessité d’articuler un raisonnement synthétique convaincant et complet pour démontrer qu’il n’y a pas de motifs substantiels de croire que le Président Gbagbo serait responsable des charges qui lui sont reprochées par le Procureur”*, it requests an extension.¹¹

8. The OPCV requests principally that the Chamber reject the Request as manifestly unfounded, and, in the alternative, submits that any extension of page limit accorded to the Defence should not exceed 15 pages.

9. The OPCV argues that a page limit can be extended only in case of exceptional circumstances, which the Defence has failed to demonstrate.¹²

10. In particular, the OPCV opposes the Defence argument that an extension is warranted due to victim participation in the confirmation of charges hearing, submitting that the Defence in fact appears to be challenging the previous decisions of the Chamber concerning the participation of victims in the case and emphasising that the Defence has never contested these decisions under appropriate procedures. The OPCV also reiterates that pursuant to article 68(3) of the Rome Statute, victims may present their views and concerns at all stages of proceedings before the Court when their personal

¹⁰ *Ibid.*, paras 23-46.

¹¹ *Ibid.*, para. 53.

¹² ICC-02/11-01/11-423, para. 9.

interests are affected, and that the victims' interests are not comparable and must not be confused with the role of the Prosecutor.¹³

11. With respect to its own final written submissions, the OPCV underlines that it has been granted the right to present submissions on all points discussed during the hearing, that it announced orally that it would be making submissions on questions of law in writing, and that it only filed written observations of 30 pages, less than authorised.¹⁴

12. In the event that the Chamber considers that the conditions for an extension of page limit are met, the OPCV submits that the Defence has had at its disposal during the confirmation of charges hearing twice as much time as the Prosecutor, and ten times as much as the OPCV, and that consequently, a maximum extension by 15 pages would be appropriate.

13. The Prosecutor does not in principle object to a reasonable extension of the page limit, but submits that a request for an additional 40 pages is excessive.¹⁵

14. The Single Judge notes regulation 37(2) of the Regulations of the Court, pursuant to which the Chamber may in exceptional circumstances, at the request of a participant, extend the page limit for a document filed in the record of the case.

15. At the outset, the Single Judge does not accept the arguments of the Defence that an extension of page limit for its final written submissions is justified by the improper exercise of procedural rights by the OPCV on behalf of the victims participating in the proceedings. The OPCV has been granted limited participatory rights at the confirmation of charges hearing, and the

¹³ *Ibid.*, paras 10-15.

¹⁴ *Ibid.*, para. 16.

¹⁵ ICC-02/11-01/11-424, para. 2.

Single Judge has no reason to believe that it has exercised its rights in a manner inconsistent with the rights of the Defence.

16. This matter aside, the Single Judge notes that final written submissions are not a right granted to the parties and participants by the legal texts of the Court, and should accordingly be understood as an additional opportunity to supplement arguments which should in principle be made during the oral sessions of the hearing. The Single Judge reiterates that final written submissions must be limited to issues discussed during the hearing.¹⁶

17. In addition, the Single Judge notes, as pointed out by both the Prosecutor and the OPCV, that the Defence has been accorded a considerably larger amount of time at the hearing than the Prosecutor or the OPCV and that the Chamber has already *proprio motu* doubled the page limit for the final written submissions. Consequently, the Single Judge is of the view that the request for an extension by another 40 pages is unfounded.

18. However, the Single Judge does not reject in entirety the submissions of the Defence that the present case raises multiple complex questions which it wishes to address in its final written observations, and considers that a limited extension by 20 pages is warranted.

FOR THESE REASONS, THE SINGLE JUDGE

AUTHORISES the Defence to file final written submissions following the confirmation of charges hearing of up to 60 pages.

¹⁶ ICC-02/11-01/11-397, para. 10; ICC-02/11-01/11-T-21-ENG, p. 51, lines 2-3.

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

A handwritten signature in black ink, appearing to read 'S. Fernández de Gurmendi', written over a horizontal line.

Judge Silvia Fernández de Gurmendi

Single Judge

Dated this 22 March 2013

At The Hague, The Netherlands