

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/11
Date: 18 February 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 OPCV's "Request to access documents related to the '*Requête relative à la recevabilité de l'affaire en vertu des Articles 19 et 17 du Statut*' filed by the Defence on 15 February 2013"

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

The Office of the Prosecutor

Fatou Bensouda

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

Sarah Pellet

Dmytro Suprun

**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 “Request to access documents related to the ‘*Requête relative à la recevabilité de l’affaire en vertu des Articles 19 et 17 du Statut*’ filed by the Defence on 15 February 2013” (the “Request”), submitted by the Office of Public Counsel for victims (the “OPCV”).²

1. On 4 June 2012, the Single Judge issued the “Decision on victims’ participation at the confirmation of charges hearing and in the related proceedings”, in which she admitted 139 applicants as victims participating at the confirmation of charges hearing and in the related proceedings.³ In addition, the Single Judge decided to appoint a counsel from the OPCV as the Common Legal Representative of all the victims admitted to participate by that decision.⁴ On 6 February 2013, the Single Judge further admitted 60 applicants as victims participating at the confirmation hearing and in the related proceedings and confirmed the appointment of a counsel from the OPCV as the Common Legal Representative of the victims admitted by that decision.⁵

2. On 14 December 2012, the Single Judge issued the “Decision on the date of the confirmation of charges hearing and proceedings leading thereto”, in which she decided that the hearing on the confirmation of charges shall commence on 19 February 2013.⁶

¹ ICC-02/11-01/11-61.

² ICC-02/11-01/11-405.

³ ICC-02/11-01/11-138, pp. 25-26.

⁴ ICC-02/11-01/11-138, p. 26.

⁵ ICC-02/11-01/11-384, pp. 22-23.

⁶ ICC-02/11-01/11-325, p. 14.

3. On 12 February 2013, the Single Judge issued the “Decision on the schedule of the confirmation of charges hearing”.⁷

4. On 15 February 2013, the Defence filed the “*Requête relative à la recevabilité de l’affaire en vertu des Articles 19 et 17 du Statut*” (the “Admissibility Challenge”), together with 13 public annexes and 2 confidential annexes.⁸

5. On 18 February 2013, the OPCV filed the Request, in which it requests the Single Judge:

a) To order the notification to the OPCV of the unredacted version of the Defence’s Application;

b) To order the notification to the OPCV of the confidential annexes to the Defence’s Application;

c) To order the notification to the OPCV of any other document filed confidential in the record of the case which the Chamber might identified as relevant to article 19 proceedings;

d) To order to systematically notify the OPCV with any document submitted by the parties related to Admissibility Challenge and which might be classified confidential – on the same basis as the other parties in the article 19 proceedings.⁹

6. The Common Legal Representative submits that the public redacted version of the Admissibility Challenge and its public annexes “do not enable her to identify the grounds justifying the Admissibility Challenge”.¹⁰ The Common Legal Representative underlines that the redacted passages in the Admissibility Challenge concern the description of proceedings allegedly conducted in Côte d’Ivoire against the suspect and that she will be able to represent the interest of victims “only if she is fully acquainted with the exact nature of the proceedings allegedly undertaken by the Ivorian authorities”.¹¹ In the view of the Common Legal Representative, “the documents requested

⁷ ICC-02/11-01/11-397 and its annex.

⁸ ICC-02/11-01/11-404. A public redacted version was filed simultaneously.

⁹ ICC-02/11-01/11-405, p. 11.

¹⁰ *Ibid.*, para. 19.

¹¹ *Ibid.*, paras 21, 24.

relate to issues specific to the interests and rights of victims and thus, access to this material is necessary to ensure the effective and meaningful participation of victims in article 19 proceedings”.¹²

7. The Single Judge notes articles 17, 19, 68(3) of the Statute, rule 59 of the Rules of Procedure and Evidence (the “Rules”) and regulation 23 *bis* of the Regulations of the Court (the “Regulations”).

8. The Single Judge notes that rule 59(1) of the Rules provides that the Registrar shall inform “the victims who have already communicated with the Court in relation to that case or their legal representatives” of any challenge to the admissibility of the case. Victims are entitled to submit observations with regard to a challenge to the admissibility of the case, as laid down in article 19(3) of the Statute.

9. At the outset, the Single Judge underlines that the Defence does not provide any factual or legal basis for withholding the requested material from the OPCV. As recently held by this Chamber in another case, “in the absence of a proper reason justifying the contrary, the OPCV should in principle be given access to the relevant material [concerning the admissibility challenge]”.¹³ The Single Judge observes that the Defence relies, to a significant extent, on the information contained in Annex 4 in order to substantiate its Admissibility Challenge.¹⁴ The Single Judge further observes that the only other confidential annex (Annex 15) attached to the Admissibility Challenge is a recapitulative list of all annexes that the Defence attached to its challenge.

¹² *Ibid.*, para. 25.

¹³ “Public Redacted Decision on the ‘Libyan Government’s proposed redactions to ICC-01/01- 01/11-258-Conf-Exp and Annexes 4,5,6,7,15,16 and 17” ICC-01/11-01/11-271-Red, 7 February 2013, par. 17.

¹⁴ ICC-02/11-01/11-404-Conf, paras 53-54.

10. The Single Judge considers that access to Annex 4 and to the arguments made by the Defence in the Admissibility Challenge on the basis of Annex 4 is essential to understand the grounds upon which the Defence challenges the admissibility of the case. The Single Judge further considers that the interests of the victims who have communicated with the Court in the present case are affected by the issue as to whether or not the case against the suspect is admissible. Moreover, access to the requested material is not prejudicial to or inconsistent with the rights of the suspect under article 67 of the Statute and to a fair and impartial trial. Access to Annex 4, Annex 15 and the confidential version of the Admissibility Challenge may therefore be granted.

11. With regard to the request to be systematically notified of any confidential document filed by either party and related to the Admissibility Challenge, the Single Judge recalls that this is an issue to be determined on a case-by-case basis at the time that the documents are filed.¹⁵ The Single Judge underlines that the responsibility to determine any necessary level of classification lies primarily with the parties. Accordingly, should the Prosecutor or the Defence assess that any particular document to be filed in the record of the case may be notified to the OPCV, they are expected to indicate so on the notification sheet of such document.¹⁶

12. The Single Judge underlines that the Chamber has, pursuant to regulation 23 *bis* of the Regulations, the power to review *proprio motu* the level of confidentiality of any document filed in the record of the case.

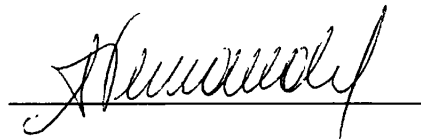
¹⁵ See e.g. Pre-Trial Chamber I, “Decision on the OPCV ‘Request to access documents in relation to the Challenge to the Jurisdiction of the Court by the Government of Libya’”, ICC-01/11-01/11-147, 15 May 2012, para. 8. See Also “Decision on victims’ participation at the confirmation of charges hearing and in the related proceedings”, 4 June 2012, ICC-01/11-01/11-138, para. 56.

¹⁶ Pre-Trial Chamber I, “Decision on OPCV requests for access to confidential documents in the record of the case” ICC-02/11-01/11-166, 27 June 2012, para. 27.

FOR THESE REASONS, THE SINGLE JUDGE

ORDERS the Registry to provide the OPCV with access to documents ICC-02/11-01/11-404-Conf, ICC-02/11-01/11-404-Conf-Anx4 and ICC-02/11-01/11-404-Conf-Anx15.

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

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

Judge Silvia Fernández de Gurmendi

Single Judge

Dated this 18 February 2013

At The Hague, The Netherlands