

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-02/11-01/11  
Date: 18 January 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 aux fins de prorogation des délais de dépôt des demandes d’expurgations, de soumission d’informations relatives à la présentation de témoignages viva voce et de dépôt de la liste amendée de preuves*”**

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

**The Office of Public Counsel for the  
Defence**

**States Representatives**

**Amicus Curiae**

## **REGISTRY**

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**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,<sup>1</sup> hereby issues the decision on the Defence “*Requête aux fins de prorogation des délais de dépôt des demandes d’expurgations, de soumission d’informations relatives à la présentation de témoignages viva voce et de dépôt de la liste amendée de preuves*” (the “Request”).<sup>2</sup>

1. On 11 December 2012, a status conference was held before the Single Judge, for the purpose of discussing issues related to the continuation of the proceedings leading to the hearing on the confirmation of charges.

2. On 14 December 2012, the Chamber issued the “Decision on the date of the confirmation of charges hearing and proceedings leading thereto” (the “Decision of 14 December 2013”), whereby the Chamber, *inter alia*, set the commencement of the confirmation of charges hearing for Tuesday, 19 February 2013 and established a calendar for the proceedings leading thereto. In particular, the Chamber also ordered the Defence: (i) “to file in the record of the case by Friday, 1 February 2013, its new list of evidence”; (ii) “to submit by Friday, 18 January 2013, any request for redactions, under rule 81 of the Rules, to evidence on which it intends to rely at the confirmation of charges hearing”; (iii) “to disclose to the Prosecutor by Friday, 1 February 2013, any additional evidence on which it intends to rely at the confirmation of charges hearing, and for which no redaction is requested”; and (iv) “to inform the Chamber, as soon as practicable and no later than Tuesday, 22 January 2013, on whether it intends to call *viva voce* witnesses at the confirmation of charges

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<sup>1</sup> ICC-02/11-01/11-61.

<sup>2</sup> ICC-02/11-01/11-355.

hearing, and, if so, on the estimated number of the prospective *viva voce* witnesses".<sup>3</sup>

3. On 24 December 2012, the Defence requested leave to appeal the Decision of 14 December 2012, pursuant to article 82(1)(d) of the Statute.<sup>4</sup> The application was rejected by the Chamber on 14 January 2013.<sup>5</sup>

4. On 17 January 2013, the Defence filed the Request, requesting the extension of the four time limits referred to above.

5. First, the Defence requests that the time limit for submission of its requests for redactions to evidence under rule 81 of the Rules be extended to 6 February 2013, arguing that it would receive the amended document containing the charges and the amended list of evidence on 17 January 2013 and be left with only several hours to determine which evidence to disclose in return, and what redactions will be necessary. Further, the Defence argues that an extension of time is necessary in light of its ongoing investigation, in particular in light of an upcoming mission and in light of requests for cooperation that are pending with certain institutions.<sup>6</sup>

6. Second, the Defence requests extension of the time limit for submission of information concerning *viva voce* witnesses to 6 February 2013. The Defence states that it will be difficult to provide information to the Chamber on 22 January 2013 as the decision to call *viva voce* witnesses will depend on the analysis of the Prosecutor's last disclosure, the information obtained through

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<sup>3</sup> ICC-02/11-01/11-325.

<sup>4</sup> ICC-02/11-01/11-342.

<sup>5</sup> ICC-02/11-01/11-350.

<sup>6</sup> Request, paras 20-26.

certain institutions, the statements of the witnesses of the Prosecutor and detained witnesses, and generally on the investigation on the ground.<sup>7</sup>

7. Third, the Defence requests that the time limit for the submission of its new list of evidence be extended to 6 February 2013, repeating that it would receive the amended document containing the charges and the amended list of evidence only on 17 January 2013, and adding that the Prosecutor waited until the last moment to disclose the most incriminating evidence. In addition, the Defence submits that its efforts to meet with certain potential witnesses and certain witnesses of the Prosecutor, as well as to obtain information from certain institutions, are still pending. As long as this is the case, the Defence submits that it cannot determine its final list of evidence. Furthermore, the Defence refers to *“la spécificité du cas d'espèce, les enjeux particulièrement importants de l'affaire et par conséquent la difficulté pour la défense à obtenir des éléments de preuve, sans compter que le déséquilibre des moyens entre accusation et défense constitue dans un tel dossier un réel handicap”*.<sup>8</sup>

8. Fourth, the Defence requests the postponement of the time limit for finalisation of its disclosure. In this regard, the Defence does not submit discrete arguments, but simply presents, in the final section of the Request, submissions concerning *“les autres délais de procédure et la charge de travail à laquelle la défense fait face”*, for which it says generally that they must be taken into account for the purpose of determining time limits related to the confirmation of charges hearing. In particular, the Defence refers to its workload in light of certain time limits imposed by the Decision of 14 December 2012, to the disclosure by the Prosecutor of *“un grand nombre de*

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<sup>7</sup> *Ibid.*, paras 27-29.

<sup>8</sup> *Ibid.*, paras 30-35.

*nouvelles pièces incriminantes a la defense*” on 15 January 2013, and to its workload in relation to its ongoing investigation.<sup>9</sup>

9. The Single Judge notes regulation 35 of the Regulations of the Court (the “Regulations”), pursuant to which “[t]he Chamber may extend [...] a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard”.

10. The Single Judge notes that the arguments raised by the Defence are almost identical to those advanced at the status conference of 11 December 2012 and addressed in the Decision of 14 December 2012. Upon consideration of the submissions of the parties and participants, including the Defence, and upon determination of the relevant factors, the Chamber set the date for the commencement of the hearing, and established a series of related procedural time limits.

11. Thereafter, the Defence requested leave to appeal the Decision of 14 December 2012, largely repeating the same submissions developed at the status conference. The sought leave to appeal was rejected *inter alia* because the Defence confined itself to a mere reiteration of its prior arguments, expressing its disagreement on the way the Chamber adjudicated, in the Decision of 14 December 2012, the issues raised by the Defence.<sup>10</sup> The Single Judge notes that the present Request is based essentially upon the same arguments.

12. The Single Judge is of the view that all those submissions by the Defence which were considered by the Chamber in setting the original time limits cannot be said to constitute “good cause” for the variation of said time limits. This is the case with all arguments raised by the Defence in relation to its

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<sup>9</sup> *Ibid.*, paras 36-42.

<sup>10</sup> ICC-02/11-01/11-350, para. 40.

ongoing investigation, including the mission to Côte d'Ivoire, pending efforts to interview particular witnesses, and efforts to obtain cooperation from certain institutions. In this regard, the Chamber already considered these submissions and held that, in the particular circumstances of the present case, and without prejudice for the Defence to rely on any evidence that may be obtained before the expiration of the time limit under rule 121(6) of the Rules, "the conclusion of [the] tardy investigative activities [recently initiated by the Defence] cannot constitute a pre-condition to hold the confirmation of charges hearing".<sup>11</sup>

13. In addition, no good cause for variation of time limits arises from the Defence submissions that the relationships between various time limits established create difficulties for the work of the Defence, or from the submission that the present case is specific and entails particular difficulties for the Defence. The interests of the parties, including the Defence, were duly considered by the Chamber in the Decision of 14 December 2012, *inter alia*, in light of the time frame established in the legal texts of the Court.

14. The remaining argument raised by the Defence relates to the disclosure of incriminating evidence by the Prosecutor on 15 January 2013.<sup>12</sup> The question is whether this disclosure is of such nature which would warrant variation of time limits for the Defence. In this respect, the Single Judge notes that the Defence states both that the last disclosure of the Prosecutor contains the most incriminating evidence and that it included a large number of new evidence.<sup>13</sup> The last disclosure of the Prosecutor, however, concerned 54 documents, comprising 360 pages and one video of approximately three

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<sup>11</sup> Decision of 14 December 2012, para. 15.

<sup>12</sup> See ICC-02/11-01/11-352.

<sup>13</sup> Request, paras 31 and 39.

minutes.<sup>14</sup> The Defence does not explain in its submission why this evidence is considered to be the most incriminating. Therefore, the Single Judge concludes that the Prosecutor's disclosure of incriminating evidence on 15 January, which was made in compliance with the relevant time limits, does not provide good cause for the requested variation of time limits.

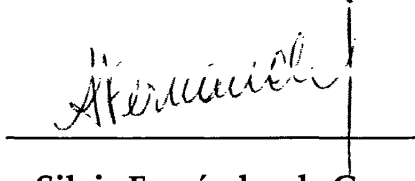
15. Accordingly, the Request must be rejected.

16. Nevertheless, the Single Judge wishes to inform the Defence that any requests for redactions to evidence potentially obtained after expiration of the time limit will be considered, provided that the requirements of regulation 35(2) of the Regulations are met.

**FOR THESE REASONS, THE SINGLE JUDGE**

**REJECTS** the Request.

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



**Judge Silvia Fernández de Gurmendi**  
**Single Judge**

Dated this 18 January 2013

At The Hague, The Netherlands

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<sup>14</sup> ICC-02/11-01/11-352, para. 1.