

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/11
Date: 13 November 2012

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

With confidential Annex, *ex parte* Prosecutor only

Decision on the "Prosecution's Request pursuant to Regulation 35 for variation of time limit to disclose incriminating evidence and modify the list of evidence for the confirmation hearing, and Request for redactions"

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

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 “Prosecution’s Request pursuant to Regulation 35 for variation of time limit to disclose incriminating evidence and modify the list of evidence for the confirmation hearing, and Request for redactions”.²

1. On 5 December 2011, during the initial appearance of Mr. Gbagbo before the Court, Pre-Trial Chamber III scheduled the commencement of the confirmation of charges hearing for 18 June 2012.³

2. On 24 January 2012, the Single Judge issued the “Decision establishing a disclosure system and a calendar for disclosure” (the “Decision on Disclosure”), *inter alia*, establishing time limits for the disclosure of evidence for the purpose of the confirmation of charges hearing, and for submission of requests for protective measures including redactions.⁴

3. On 27 March 2012, the Single Judge issued the “First decision on the Prosecutor’s requests for redactions and other protective measures” (the “First Decision on Redactions”).⁵

4. On 12 June 2012, the Single Judge issued the “Decision on the *Requête de la Défense en report de l’audience de confirmation des charges prévue le 18 juin 2012*”, whereby, *inter alia*: (i) the commencement of the confirmation of charges hearing was postponed to 13 August 2012; (ii) the Prosecutor was

¹ ICC-02/11-01/11-61.

² ICC-02/11-01/11-178.

³ ICC-02/11-01/11-T-1-ENG, p. 8.

⁴ ICC-02/11-01/11-30 and annexes.

⁵ ICC-02/11-01/11-74-Conf-Exp and annex. A public redacted version is also available, see ICC-02/11-01/11-74-Red.

ordered to file in the record of the case by 13 July 2012 any amendment to the document containing the charges (the “DCC”) and list of evidence; and (iii) the Defence was ordered to file its list of evidence by 27 July 2012.⁶

5. On 13 July 2012, the Prosecutor filed in the record of the case the “*Soumission de l’Accusation du Document amendé de notification des charges, de l’Inventaire amendé des éléments de preuve à charge et des Tableaux amendés des éléments constitutifs des crimes*”.⁷ Likewise, on 27 July 2012, the Defence filed its “*Communication de l’inventaire des éléments de preuve à décharge de la Défense*”.⁸

6. On 2 August 2012, the Single Judge issued the “Decision on issues related to the proceedings under rule 135 of the Rules of Procedure and Evidence and postponing the date of the confirmation of charges hearing”, wherein, *inter alia*, the confirmation of charges hearing was postponed “until the issue of Mr Gbagbo’s fitness to take part in the proceedings against him is resolved”.⁹

7. On 31 October 2012, the Prosecutor filed the “Prosecution’s Request pursuant to Regulation 35 for variation of time limit to disclose incriminating evidence and modify the list of evidence for the confirmation hearing, and Request for redactions”,¹⁰ wherein she requests authorisation: (i) to disclose to the Defence four new witness statements and one item of documentary evidence, and to add these items to her list of evidence for the confirmation of charges hearing; and (ii) to disclose the said evidence with redactions.¹¹

8. On 2 November 2012, the Chamber issued the “Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court”, wherein it

⁶ ICC-02/11-01/11-152-Red, p. 12.

⁷ ICC-02/11-01/11-184 and annexes.

⁸ ICC-02/11-01/11-197 and annex.

⁹ ICC-02/11-01/11-201, p. 8.

¹⁰ ICC-02/11-01/11-284-Conf-Exp.

¹¹ ICC-02/11-01/11-284-Conf-Exp, para. 48.

found that Mr Gbagbo was fit to take part in the proceedings before this Court and stated that “[a] date for the confirmation of charges hearing will be set shortly, in a separate decision”.¹²

9. On 6 November 2012, the Defence filed the *“Demande aux fins d’organisation d’une Conférence de mise en état”*, in which it states, *inter alia*, that the good administration of justice makes it essential that the parties are accorded new time limits for disclosure of evidence in order to best prepare for the confirmation of charges hearing.¹³

10. The Single Judge notes articles 54, 61 and 67 of the Rome Statute, rules 81 and 121 of the Rules of Procedure and Evidence (the “Rules”).

11. Both parties request that they be allowed to rely on new evidence at the upcoming confirmation of charges hearing.¹⁴ In this regard, the Single Judge notes that a considerable period of time has lapsed since the time limits were established for disclosure and filing in the record of the case of the amended DCC and the parties’ respective lists of evidence. During this time, the parties have continued their preparation for the hearing, including by conducting investigation. In the view of the Single Judge, it is in the interest of both fairness of the proceedings, as well as the proper exercise of the function of the Pre-Trial Chamber in light of the purpose of the confirmation of charges, to permit the parties to rely at the upcoming confirmation of charges hearing on additional evidence not previously included in their respective lists of evidence.

12. Pursuant to rule 121 of the Rules certain time limits must be imposed on the parties in this regard, primarily in order to safeguard the rights of the

¹² ICC-02/11-01/11-286-Red, para. 101.

¹³ ICC-02/11-01/11-288-Conf, para. 45.

¹⁴ ICC-02/11-01/11-284-Conf-Exp, paras 13-18; ICC-02/11-01/11-288-Conf, para. 45.

opposing party. However, without prejudice to disclosure in the meantime, the Single Judge considers, that it will be appropriate to establish such final time limits only when the date for the commencement of the confirmation of charges hearing has been set.

13. In light of the above, the Single Judge considers it necessary to address the Prosecutor's request for redactions, which concerns the statements of four witnesses and one item of documentary evidence. The Prosecutor requests redactions, under rule 81(2) of the Rules, of: (i) "the identity of all Prosecution staff members mentioned in the relevant documents"; (ii) "the identity of translators and interpreters"; (iii) "the day and month and location of interviews"; and (iv) "any information identifying Prosecution sources and investigative leads". Under the same provision, the Prosecutor also requests redaction of the "identity of Prosecution staff members" and "information relating to the date of the interviews" in the metadata of the evidence. The Prosecutor submits that these redactions are necessary to protect further and ongoing investigations, as "[r]evealing such information to the Defence is likely to have implications on the Prosecution's resources and ability to conduct the investigations expeditiously, including but not limited to its ongoing investigations in this case".¹⁵

14. Furthermore, the Prosecutor requests, under rule 81(4) of the Rules, redaction of identifying information of third parties at risk on account of the activities of the Court, and of family members of witnesses.¹⁶

15. The Single Judge makes reference to the First Decision on Redactions wherein the overall reasons for granting or rejecting redactions have been

¹⁵ ICC-02/11-01/11-284-Conf-Exp, paras 42-43.

¹⁶ ICC-02/11-01/11-284-Conf-Exp, para. 45.

provided.¹⁷ For the present decision, the Single Judge has adhered to the same approach.

16. The Single Judge has reviewed the individual proposed redactions and considers that they are justified as specified in the Annex to the present decision, confidential *ex parte*, only available to the Prosecutor.

17. Pursuant to the Decision on Disclosure, the Prosecutor shall disclose to the Defence the evidence presently dealt with no later than five days upon notification of the present decision.¹⁸ 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”.¹⁹ In light of the fact that statements of four witnesses 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

DECIDES that the parties shall be allowed to rely at the confirmation of charges hearing on additional evidence not previously included in their respective lists of evidence;

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

¹⁷ First Decision on Redactions, paras 55-102.

¹⁸ Decision on Disclosure, p. 30.

¹⁹ First Decision on Redactions, para. 89. See also ICC-02/11-01/11-106, para. 14.

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.

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



Judge Silvia Fernández de Gurmendi

Single Judge

Dated this 13 November 2012

At The Hague, The Netherlands