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

Date: 28 June 2012

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 to 3 – Confidential and
Annex 4 – Confidential, *ex parte*, only available to the Office of the Prosecutor**

**Prosecution's request pursuant to Regulation 35 for the extension of time for
disclosure and for variation of time limit to submit a request for redactions**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Counsel for the Defence

Mr Emmanuel Altit

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. On 24 January 2012, the Single Judge issued the “Decision establishing a disclosure system and a calendar for disclosure” (“Disclosure Decision”).¹
2. Following the postponement of the date of the confirmation hearing to 13 August 2012, the Prosecution was ordered to file in the record of the Case, by 13 July 2012, any amendment to the Document Containing the Charges (“DCC”) and its List of Evidence (“LoE”).²
3. Pursuant to Regulation 35(2) of the Regulations of the Court, the Prosecution hereby requests the Chamber for an extension of the time limit to disclose two brief documents and also an investigator’s report and related photographs relevant to the chain of custody of material currently on the Prosecution’s LoE. The two documents were collected prior to 15 February 2012. The investigator’s report and photographs relate to material seized between 14 February and 1 March 2012.³

Application to extend the time limit for disclosure

Two documents

4. During the preparation of its presentation for the confirmation hearing, the Prosecution re-read two documents that identify code names used during radio communications by members of the Republican Guard and the Gendarmerie which had not been disclosed. When first read, they did not contain information

¹ ICC-02/11-01/11-30.

² ICC-02/11-01/11-152-Red, p.12.

³ 51 documents collected at the Presidential Residence are currently on the Prosecution’s LoE. The Prosecution seeks to detail the chain of custody of these documents, including by relying on a report of their seizure and photographs of the rooms where these documents were seized.

that was deemed relevant to the case. The relevance and materiality of the documents, however, became apparent on re-reading when assessed against the statement of Witness P-45, who also uses the code names. Copies of the two documents are provided in Annexes 1 and 2 which are submitted as confidential since they relate to evidence to be treated as confidential.

5. The Prosecution submits that the Defence will not suffer any prejudice as a result of this late disclosure. The two documents total three pages. Additionally, since the date of the confirmation hearing has been postponed,⁴ the Defence will have ample time to analyse these two new items of evidence. At the same time, they will be useful to the parties and the Court, since they aid in understanding some of the context and facts provided by Witness P-45, whose statement is on the Prosecution's LoE. The two documents will also be relevant to the Chamber's assessment of the Prosecution's evidence.

The investigator's report and associated photographs

6. Between 14 February and 1 March 2012, the Prosecution conducted a document search mission of the Presidential Residence of Laurent Gbagbo ("Residence"). During this mission, photographs of the different rooms of the Residence were also taken. The photographs have not been disclosed.
7. The Prosecution requests permission to add to its LoE an investigator's report and photographs that describe the location where 51 documents currently on the Prosecution's LoE were seized in the Residence. The report also makes reference to the photographs of the rooms where these documents were seized. The report and photographs are not voluminous. The addition of the report and photographs will not prejudice the Defence as it relates to rooms and locations

⁴ ICC-02/11-01/11-152-Red, p.12.

already known to Laurent Gbagbo since he and his wife lived and had offices until their arrest on 11 April 2012 at this Residence. Nor do they add further incriminating information against the suspect. They serve instead to clarify the chain of custody of evidence previously disclosed and referred to in the Prosecution's DCC and LoE. The report and photographs will also help the Chamber in its assessment of the relevance and reliability of the 51 documents relied upon by the Prosecution. The report and photographs are submitted in Annex 3 which is submitted as confidential since it relates to evidence that is confidential.

Request for redactions to metadata

8. With respect to the Regulation 35 request submitted above, the Prosecution also seeks to redact from the metadata – in the event the Chamber grants the request itself - the name of the investigator who obtained the two code documents and the identity of the source that provided them. The Prosecution also seeks to redact from the metadata, the name of the investigator who took three of the photographs referred to in the Residence document search report.⁵ These redactions are sought pursuant to Rule 81(2) to protect further and ongoing investigations.
9. The redactions sought are consistent with the “First decision on the Prosecutor’s request for redactions and other protective measures.”⁶ The Prosecution recalls that the Chamber previously authorised the implementation of such redactions for other evidentiary material, including to names of investigators and sources.⁷

⁵ CIV-OTP-0024-0588, CIV-OTP-0024-0589 and CIV-OTP-0024-0591.

⁶ ICC-02/11-01/11-74-Red.

⁷ ICC-02/11-01/11-74-Red.

10. Annex 4 to this filing contains a table that identifies the exact redactions requested to the metadata of the two code documents and the three above-mentioned photographs and provides the factual and legal basis for these redactions. Annex 4 is submitted as confidential, *ex parte*, only available to the Office of the Prosecutor since it provides the identity of the persons for whom the redactions are being sought.

Conclusion

11. For the reasons set out above, the Prosecution requests the Chamber to:

- a. grant, pursuant to Regulation 35, the extension of time for the disclosure of the documents submitted in Annexes 1 to 3;
- b. grant, pursuant to Rule 81(2), the Prosecution's request for redactions to the metadata of the documents in Annexes 1 and 2, and the three photographs found at ERN CIV-OTP-0024-0588, CIV-OTP-0024-0589 and CIV-OTP-0024-0591, as described in Annex 4.



Fatou Bensouda, Prosecutor

Dated this 28th day of June 2012

At The Hague, The Netherlands