



Original: **English**

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

Date: **19 April 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 8 – Confidential, *ex parte*, only available to the Prosecution

Prosecution's request for redactions pursuant to Rule 81(2) and Rule 81(4)

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 of Pre-Trial Chamber III (“Single Judge”) issued the “Decision establishing a disclosure system and a calendar for disclosure” (“Disclosure Decision”).¹ In the Disclosure Decision the Single Judge ruled, among others, that “requests for redactions to incriminating evidence collected after 15 February 2012 shall be submitted to the Chamber no later than 60 days prior to the date of the confirmation hearing”.²
2. The Prosecution hereby presents a request for redactions pursuant to Rule 81(2) and Rule 81(4) relating to the content and/or metadata of 121 documents that the Prosecution collected after 15 February 2012. Although all the documents to be disclosed contain incriminating information, the Prosecution has not yet made a final determination as to which of these documents it will rely on for the purposes of the confirmation hearing. A final determination to that effect will be made at the latest 30 days prior to the confirmation of charges hearing when the Prosecution will present its List of Evidence pursuant to Rule 121(3) of the Rules of Procedure and Evidence and the Disclosure Decision.³
3. Additionally, the Prosecution also requests permission to redact the names of investigators that may appear in the metadata of the chain of custody of material collected after 19 April 2012. The Chamber has already approved in principle redactions to the names of investigators, pursuant to Rule 81(2), in its first decision on redactions.⁴ None of the requested redactions will result in non-disclosure of content; all will be subject to challenge by the Defence if it feels that the redactions affect its ability to prepare for the confirmation hearing.

¹ ICC-02/11-01/11-30.

² Disclosure Decision, para.52 and p.30.

³ Disclosure Decision, para.35.

⁴ ICC-02/11-01/11-74-Red.

4. Pursuant to Regulation 23*bis* of the Regulations of the Court and the instruction of the Single Judge in the Disclosure Decision,⁵ the Prosecution files its annexes confidential, *ex parte*, only available to the Prosecution, as knowledge by the Defence of the content of the annexes would defeat its purpose.

Requests for redactions

5. The Prosecution seeks authorisation, in compliance with the criteria adopted by the Single Judge in its first decision on redactions,⁶ to redact (a) the identity of all Prosecution staff members mentioned in the relevant documents or identified in the metadata attached to the documents; (b) the identity of translators and interpreters; (c) the day and month and location of interviews; and (d) any information identifying Prosecution sources, including investigative leads. These redactions, which would be made where necessary to both content and Ringtail metadata, are sought pursuant to Rule 81(2) to protect further and ongoing investigations. Revealing to the Defence any of the above information is likely to impact on the Prosecution's ability to conduct its investigations, as it may unduly attract attention to the movement of Prosecution staff and by extension to (potential) witnesses and their security.⁷ The above redactions ensure that the Prosecution can continue to use during its investigations the limited number of investigators, translators, sources or locations of interviews that it currently has at its disposal, without any need to replace them which would have negative implications both on the expeditious conduct of its investigations, as well as on the resources required to conduct such investigations. The Prosecution further submits that the redactions sought pursuant to Rule 81(2) would not result in unfairness to the suspect at the confirmation hearing, since they do not relate to information that is relevant for the preparation of the case of the Defence.⁸

⁵ Disclosure Decision, paras.54-55.

⁶ ICC-02/11-01/11-74-Red.

⁷ Although these redactions are sought pursuant to Rule 81(2), they also have security implications for victims and witnesses and they can therefore equally be justified under Rule 81(4).

⁸ A list containing the information as to which statements have been taken in the presence of which OTP staff member will also be provided to the Defence at the time of disclosure (ICC-02/11-01/11-74-Red, par. 89).

Moreover, the Prosecution will request to lift these redactions when its investigation is at an advanced stage.

6. In addition, the Prosecution seeks authorisation to redact (a) identifying information of third parties at risk on account of the activities of the Court (also referred to as “innocent third parties”) and (b) identifying information of family members of any witnesses. These redactions are sought pursuant to Rule 81(4) to protect the safety of witnesses and victims and members of their families as well as the safety of other persons at risk on account of the activities of the Court. These redactions are justified bearing in mind the general threats and risk to persons cooperating with the Prosecution as identified in the Situation Threat and Risk Assessment in relation to the Prosecution’s investigations in Côte d’Ivoire (“STRA”).⁹ In addition, the Prosecution refers to the findings of the Single Judge in its first decision on redactions.¹⁰ At the same time, these redactions do not have any impact on the fairness of the proceedings and the rights of the Defence, as they do not cover any information that is relevant for the preparation of the case of the Defence considering, in particular the limited scope of the confirmation hearing, the limited number and type of information being redacted and the fact that the Defence “will still have access to the essential information contained in the witness statements”.¹¹
7. The annexes to this filing consist of 8 Annexes. Annexes 1 to 6 include the statements of six witnesses and their annexes or material provided by the witness for which redactions are sought. Annex 7 is related to documents that originate from the Presidential Residence and Annex 8 relates to audio-video material. Each annex includes a table¹² that identifies the exact redactions requested to the text of the documents as well as to its metadata and provides the factual basis for each individual redaction. By reference to the categories referred

⁹ ICC-02/11-01/11-16-US-Exp-Anx1.

¹⁰ ICC-02/11-01/11-74-Red, par. 65.

¹¹ ICC-02/11-01/11-74-Red, par. 80.

¹² Disclosure Decision, para.55.

to above, it also provides the legal basis of each redaction. In addition, each annex includes copies of the relevant documents with highlighted text for which redactions are requested. For any portions highlighted in blue, the redactions are sought pursuant to Rule 81(2), while for portions highlighted in red, redactions are sought pursuant to Rule 81(4).

8. The Prosecution informs the Chamber that it is not seeking redactions to the faces of Witnesses P-0105 and P-0106 that appear on pictures or identity cards intended to be disclosed since the Defence is under the duty to abide by the *“Protocole régissant l’utilisation de matériel confidentiel par les parties pendant les enquêtes”* and seek the authorisation of the Chamber before they can show them to third parties in the course of their investigations.¹³

Additional request seeking permission to redact the names of investigators in the metadata of material that may be collected and disclosed after 19 April 2012.

9. The Prosecution also seeks permission to redact the names of investigators that may appear in the metadata of the chain of custody of material collected after 19 April 2012.
10. According to the Disclosure Decision, after 19 April 2012, the Prosecution is not permitted to submit redaction requests to material collected after that date.¹⁴ The Prosecution is nevertheless permitted to disclose “as soon as practicable and no later than 16 May 2012, any evidence on which he intends to rely on at the confirmation hearing which was collected after the filing of the present decision, subject to any further decision of the Chamber setting more specific deadlines”.¹⁵
11. Since the investigation of the Prosecution is ongoing, it may still collect material and intend to rely on it for the purpose of the confirmation hearing. Although the Prosecution appreciates that according to the Disclosure Decision it cannot

¹³ ICC-02/11-01/11-49-Anx, page 5, para. d).

¹⁴ Unless it invokes Regulation 35 of the Regulations of the Court.

¹⁵ Disclosure Decision, page 29.

seek redactions to the content of the material itself, the Single Judge may not have anticipated in its Disclosure Decision that redactions to metadata would also be sought by the parties, including by the Prosecution to material disclosed as incriminating evidence. Therefore, since the first decision on redactions allows the Prosecution to redact the names of investigators in the metadata, the Prosecution requests permission to redact, *proprio motu*, the names of investigators that may appear in the metadata of prospective evidence. The Prosecution recalls that the metadata is an electronic tag or information added to documents disclosed electronically and as mandated by the eCourt Protocol. It does not contain any substantive information other than the chain of custody or alter the content of the material obtained.

12. The Prosecution also submits that in all prospective cases, the provider of the material will be identified without redaction. The investigators whose names will be redacted will have acted solely as collectors, carrying the material to the seat of the Court to enable its registration with the Prosecution Evidence Unit.
13. The Prosecution also submits that the Defence will always be in position to challenge the redactions to the names of the investigators in the metadata if it feels that they affect its ability to prepare for the confirmation hearing.¹⁶



Luis Moreno-Ocampo, Prosecutor

Dated this 19th day of April 2012

At The Hague, The Netherlands

¹⁶ For instance, see ICC-02/11-01/11-30, para. 51 *in fine* for the deadline to challenge Article 67(2) or Rule 77 redactions.