

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 12 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 Confidential, *ex parte*, Annex only available to the Prosecution

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

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**

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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. On 24 January 2012, the Single Judge of the former 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 any request for redactions to incriminating evidence collected between 25 October 2011 and 15 February 2012 shall be submitted to the Chamber no later than 9 March 2012.² The Disclosure Decision also required the Prosecution to disclose any incriminating evidence which was collected before 25 October 2011 and for which no protective measures are required no later than 3 February 2012.³

2. Pursuant to Regulation 35 of the Regulations of the Court (“Regulation 35”), the Prosecution hereby requests the Chamber for an extension of the time limit to file a request for redactions to the metadata for 11 videos to be disclosed to the Defence. The Prosecution concurrently provides the details of the redactions sought. The 11 videos were collected prior to 15 February 2012 but were only uploaded into the Ringtail system on 2 March 2012. Due to this delay and the time required to subsequently analyse the material in question, the Prosecution was unable to include these videos in its first and second redaction requests submitted on 13 February and 9 March 2012.⁴

3. The Prosecution also requests the Chamber to grant, pursuant to Regulation 35, an extension of time for the disclosure of two items (one additional video and its corresponding transcript). These items were collected on 18 October 2011 and were initially qualified as material relevant for the Defence. However, in light of

¹ ICC-02/11-01/11-30.

² ICC-02/11-01/11-30, p. 29-30.

³ ICC-02/11-01/11-30, p. 29.

⁴ ICC-02/11-01/11-38-Conf-Exp and ICC-02/11-01/11-53.

the ongoing investigations, they were re-classified as incriminating information on which the Prosecution wishes to rely for the purposes of the confirmation hearing.

Confidentiality

4. Pursuant to Regulation 23*bis* of the Regulations of the Court the Prosecution files the Annex to this submission as confidential, *ex parte*, only available to the Prosecution as knowledge by the Defence of the content of the Annex would defeat its purpose.

Application to extend the time limit to file a request for redactions to the metadata of 11 video excerpts

5. On 20 December 2011 and on 6 February 2012⁵, the Prosecution disclosed to the defence a documentary⁶ co-produced by witness P-87. The statement of witness P-87⁷ was disclosed to the Defence on 3 April 2012⁸ with redactions as authorised by the Single Judge.⁹
6. On 3 February 2012, the Prosecution received a batch of 310 video excerpts, related to the statement of Prosecution witness P-87.¹⁰ The video excerpts in question contain additional footage that was not included in the core documentary co-produced by P-87.¹¹

⁵ ICC-02/11-01/11-34.

⁶ CIV-OTP-0003-0670.

⁷ CIV-OTP-0011-0201.

⁸ ICC-02/11-01/11-83.

⁹ ICC-02/11-01/11-74-Conf-Exp + Conf-Exp-Anx

¹⁰ CIV-OTP-0011-0201.

¹¹ CIV-OTP-0003-0670.

7. These 310 video excerpts contain a total of approximately 17 hours of footage. Due to the substantial volume of the material in question and the required processing time, it was only fully uploaded into Ringtail on 2 March 2012. Once electronically available, the Prosecution analysed the video material, with a view to identifying the most relevant incriminating footage for use at the confirmation hearing. This resulted in the selection of 11 video excerpts that are the subject of the present request. The volume of these videos and the time required to process them made it impossible for the Prosecution to include them in its previous requests for redactions pursuant to the Chamber's Disclosure Decision.

8. The Prosecution submits that the Defence will not suffer any undue prejudice as a result of the extension of time requested, as the redactions sought are limited to the name of the investigator found in the metadata of the chain of custody. Furthermore, and as stated in para. 5 above, the Defence already has the core footage of the documentary and the statement of witness P-87 who was present and commented on the video. The 11 video excerpts currently total 2 hours and 30 minutes of viewing time. In order not to alter the excerpts received by the provider, the Prosecution intends to disclose these excerpts in their original length but the Prosecution will rely on much shorter extracts of these excerpts which will be clearly identified by specific time stamps in the disclosure list and List of Evidence.

Request for redactions

9. Consistent with prior applications for redactions and the "First decision on the Prosecutor's request for redactions and other protective measures"¹² the Prosecution seeks authorisation to redact the identity of one investigator from the

¹² ICC-02/11-01/11-74-Conf-Exp.

metadata of the 11 video excerpts. These redactions are sought pursuant to Rule 81(2) to protect further and ongoing investigations. The Prosecution recalls that the Chamber previously authorised the implementation of such redactions for other evidentiary material including to the same name of the investigator present during the interview of witness P-87.¹³

10. The Annex to this filing contains a table that identifies the exact redactions requested to the metadata of the videos and provides the factual and legal basis for the redactions.

Application to extend the time limit for the disclosure of two documents

11. The Prosecution further seeks authorisation to disclose video CIV-OTP-0007-0167 and a news article containing its transcript CIV-OTP-0007-0168. The video and the transcript were collected by the Prosecution on 18 October 2011 and initially classified as items “material to the preparation of the Defence” under Rule 77. However, in light of the ongoing investigation, the relevance of this video and its transcript were recently re-evaluated and the Prosecution now wishes to use them as incriminating evidence for the purposes of the confirmation hearing. As a result, the Prosecution seeks leave to disclose these two items to the Defence as soon as possible.
12. The footage in question contains a public interview that Laurent Gbagbo gave to the international press (Euronews) during the post-election crisis. It is referred to in the statement of Prosecution witness P-69, which was disclosed to the Defence on 3 April 2012.¹⁴

¹³ ICC-02/11-01/11-74-Conf-Exp, para. 91.

¹⁴ ICC-02/11-01/11-83; See in particular CIV-OTP-0017-0232 and CIV-OTP-0017-0339.

13. The Prosecution submits that the Defence will not suffer any prejudice as a result of this request, since the material (a) relates to a public statement of Laurent Gbagbo himself and (b) was obtained from an open source; for both reasons, the existence and substance of the material was known by and would have already been available to the Defence. In addition, as mentioned above, the Defence had notice of the existence of such footage through the statement of P-69 as mentioned in the above paragraph. The video is 8 minutes 46 seconds long.

Conclusion

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

- a. grant, pursuant to Regulation 35, the extension of time for the submission of the Prosecution's additional request for redactions to the metadata of 11 video excerpts;
- b. grant, pursuant to Rule 81(2), the Prosecution's request for redactions; and
- c. grant, pursuant to Regulation 35, the extension of time for the disclosure of video CIV-OTP-0007-0167 and its transcript.



Luis Moreno-Ocampo, Prosecutor

Dated this 12th day of April 2012

At The Hague, The Netherlands