

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 3 April 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 redacted version

Decision on the "Prosecution's urgent request pursuant to Regulation 35 for variation of time limit to submit a request for redactions and Notice of information regarding the coming disclosure"

Decision to be notified, in accordance with regulation 31 of the Regulations of the Court, to:

The Office of the Prosecutor

Luis Moreno-Ocampo, Prosecutor
Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

Emmanuel Altit

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar

Silvana Arbia, Registrar
Didier Preira, Deputy Registrar

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 of the International Criminal Court (“Chamber”), 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 urgent request pursuant to Regulation 35 for variation of time limit to submit a request for redactions and Notice of information regarding the coming disclosure” (“Request”).²

I. Procedural history and submissions of the Prosecutor

1. On 24 January 2012, the Single Judge issued the “Decision establishing a disclosure system and a calendar for disclosure” (“Decision on Disclosure”) in order to ensure, in compliance with Rule 121(2)(b) of the Rules of Procedure and Evidence (“Rules”), that disclosure takes place under satisfactory conditions while safeguarding the interests at stake. To that end, the Decision on Disclosure, *inter alia*, required that requests for redactions of evidence on which the Prosecutor intends to rely at the confirmation of charges hearing should be submitted no later than: (i) 10 February 2012 in relation to evidence collected before 25 October 2011; and (ii) 9 March 2012 in relation to evidence collected between 25 October 2011 and 15 February 2012.³

2. On 27 March 2012, the Single Judge issued the “First decision on the Prosecutor’s requests for redactions and other protective measures” (“First Decision on Redactions”).⁴

3. On 30 March 2012, the Prosecutor filed the Request, requesting the Chamber to: (i) grant an extension of time for the submission of additional requests for redactions; and (ii) grant the requests for redactions in question.⁵

¹ ICC-02/11-01/11-61.

² ICC-02/11-01/11-77-Conf-Exp.

³ ICC-02/11-01/11-30, p. 29 and 30.

⁴ ICC-02/11-01/11-74-Conf-Exp and confidential *ex parte* Annex. A public redacted version has also been issued (ICC-02/11-01/11-74-Red).

4. The Request concerns 14 documents collected either before 25 October 2011 or between or between 25 October 2011 and 15 February 2012: two transcripts of the interview of witness 44, seven annexes to the transcript of the interview of witness 11, four open source videos and one document received from national judicial authorities.⁶ In the submission of the Prosecutor, the documents had been overlooked as a result of “missing some identifying metadata, which provides essential information for their identification and retrieval”.⁷ The Prosecutor also submits:

[T]he Defence will not suffer any undue prejudice as a result of the extension of time, since the scope of the request is limited to the transcripts of the interview of witness P-0044, for which the Prosecution is seeking redactions to almost the entire content since they relate to investigative leads; the annexes of witness P-0011, which are an essential part of the witness interview for which the Chamber has already granted redactions; four open sources videos of short length; and one document from the national judicial authorities.⁸

5. The Prosecutor concurrently presents requests for redactions to the 14 items of evidence subject to the Request. He seeks “authorisation to redact (a) the identity of Prosecution staff members mentioned in the relevant documents; (b) the date (day and month only) and location of interviews; and (c) any information identifying Prosecution sources (including investigative leads)”,⁹ and provides individual requests for redactions in the annexes to the Request.¹⁰

⁵ ICC-02/11-01/11-77-Conf Exp and confidential Annexes 1-4, *ex parte* Prosecutor. A public redacted version has also been filed (ICC-02/11-01/11-77-Red).

⁶ ICC-02/11-01/11-77-Conf-Exp, para. 3 and 7.

⁷ ICC-02/11-01/11-77-Conf-Exp, para. 6.

⁸ ICC-02/11-01/11-77-Conf-Exp, para. 9.

⁹ ICC-02/11-01/11-77-Conf-Exp, para. 12.

¹⁰ ICC-02/11-01/11-77-Conf-Exp-Anx1, ICC-02/11-01/11-77-Conf-Exp-Anx2, ICC-02/11-01/11-77-Conf-Exp-Anx3, ICC-02/11-01/11-77-Conf-Exp-Anx4.

II. Applicable law

6. The Single Judge notes Articles 54, 57(3), 61, 67 and 68 of the Rome Statute and Rules 15, 76, 77, 81 and 121 of the Rules.

III. Analysis and conclusions of the Single Judge

A. *Request for variation of time limit*

7. With respect to the request for variation of time limit to submit requests for redactions, the Single Judge has stated recently in the First Decision on Redactions:

[T]he Single Judge, recalling the Decision on Disclosure, notes that specific time limits for the submission of redaction requests to the Chamber were set in order for the Defence to have evidence disclosed as soon as possible and on an ongoing basis. Although the parties are under obligation to comply with such time limits, the latter do not have preclusive effect with respect to the parties' ability to seek protective measures or to rely on evidence at the confirmation of charges hearing. Any consequences of non-compliance with time limits for disclosure are to be determined by the Chamber, within its powers and obligations in relation to the disclosure process, as provided for by Article 61(3) of the Statute and Rule 121(2) of the Rules (footnote omitted).¹¹

8. In holding so, the Single Judge made reference to the Decision on Disclosure, which stated:

[W]hile Rule 121(3) of the Rules allows the Prosecutor to file the DCC and LoE on the 30th day preceding the start of the confirmation hearing, this is 'only indicative of the minimum time-limits that a party can avail itself to comply with its disclosure obligations'. Furthermore, such provision should be read in conjunction with and subject to Articles 61 and 67 of the Statute. Article 61 of the Statute allows the suspect to object to the charges, challenge the evidence presented by the Prosecutor and to present evidence. Article 67 (1) of the Statute sets out as minimum guarantees the right of the suspect to be 'informed properly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks' and 'to

¹¹ ICC-02/11-01/11-74-Red, para. 28.

have adequate time' for the preparation of the defence (footnotes omitted).¹²

9. The Single Judge is of the view that it would be disproportionate to preclude the Prosecutor from relying at the confirmation of charges hearing upon the items of evidence subject to the instant Request. The Single Judge considers relevant in particular that the oversight did not concern a large volume of evidence and that no bad faith can be discerned on the part of the Prosecutor. Furthermore, the Single Judge considers that the Defence will be able to analyse and appropriately respond to the two items of evidence. Accordingly, the Single Judge considers it appropriate to address the Prosecutor's requests for redactions to the items of evidence in question.

B. Requests for redactions

10. The Single Judge makes reference to the relevant parts of the First Decision on Redactions, wherein the overall reasons for granting or rejecting requests for redactions have been provided.¹³ For the present decision, the Single Judge has adhered to the same approach.

11. Accordingly the Single Judge will specify in the Annex to the present decision, *ex parte* only available to the Prosecutor, to which category each requested redaction belongs and whether the request is granted or rejected. Furthermore, when the specific nature of the requested redaction so requires, the Single Judge will provide additional explanation in the Annex.

12. The Single Judge considers it appropriate, in light of both the limited volume of evidence subject to the present decision and the interests of the

¹² ICC-02/11-01/11-30, para. 37.

¹³ ICC-02/11-01/11-74-Red, paras 55-66, 82-102.

Defence, to shorten the general five-day time limit¹⁴ for the disclosure of evidence [REDACTED].

13. [REDACTED]¹⁵ [REDACTED].

FOR THESE REASONS, THE SINGLE JUDGE

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

ORDERS the Prosecutor to disclose to the Defence the evidence dealt with in the present decision, [REDACTED], no later than 5 April 2012.

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



Judge Silvia Fernández de Gurmendi
Single Judge

Dated this 3 April 2012

At The Hague, The Netherlands

¹⁴ See ICC-02/11-01/11-30, p. 30.

¹⁵ [REDACTED]