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

Date: 16 March 2012

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi
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 1-2 – Confidential, *ex parte*, only available to the Prosecution

Prosecution's request pursuant to Regulation 35 for variation of time limit to submit request for redactions and Prosecution's additional request for redactions to incriminatory evidence

Source: Office of the Prosecutor

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

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(Participation/Reparation)**

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Victims**

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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 “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
2. Pursuant to Regulation 35 of the Regulations of the Court, the Prosecution hereby requests the Chamber for an extension of the time limit to file a request for redaction. The Prosecution also presents its additional request for redactions. This latter request concerns 15 documents, out of which 13 are annexes to the interview of witness P-0069 and two are documents provided by the national judicial authorities. These 15 documents were collected between 25 October 2011 and 15 February 2012. Due to an oversight by the Prosecution, these documents were not included in the Prosecution’s second redaction request submitted on 9 March 2012.³
3. Pursuant to Regulation 23*bis* of the Regulation of the Court the Prosecution files the annexes confidential, *ex parte*, only available to the Prosecution as knowledge by the Defence of the content of the filing and its annexes would defeat its purpose.

Application to extend the time limit to file a request for redactions

4. In order to meet the deadlines set out in the Disclosure Decision, the Prosecution undertook the analysis and review of the entire Prosecution database up to 15 February 2012. The review comprises more than 1,500 documents. On 12 March

¹ ICC-02/11-01/11-30

² Disclosure Decision, para.52; dispositive, pp.29-30.

³ ICC-02/11-01/11-53

2012, the Prosecution realised it had made an oversight in its review process and started immediately assessing the concerned documents.

5. The Prosecution submits that the oversight regarding the deadline for requesting redactions to incriminating information collected between 25 October 2011 and 15 February 2012 affects 15 documents, including the annexes and notes drafted by Witness P-0069 during his interview⁴ and two documents received from national judicial authorities. The documents for which redactions are sought are on average 1-2 pages long.
6. Regulation 35 of the Regulations of the Court provides that “[t]he Chamber may extend or reduce a time limit if good cause is shown”. The magnitude of the preparation required by an applicant,⁵ especially where a short extension of time was requested,⁶ has previously been considered to constitute good cause for granting an extension of time.
7. The Prosecution respectfully submits that the 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 annexes and notes of P-0069, which are an essential part of the witness interview, and two documents from the national judicial authorities. Moreover, since the Chamber has not yet ruled on the Prosecution’s second redaction request, the present request for redaction may be considered together with the Prosecution’s prior request, which will limit any delay of the disclosure of information to the Defence.

⁴ The redaction request of 9 March 2012 included the transcribed statements of P-0069 interview (ICC-02/11-01/11-53-Conf-Exp-Anx3).

⁵ ICC-01-04-01/06-190 OA3, paras.4-5; ICC-01/04-01/07-653 OA7, 27 June 2008, para.5.

⁶ ICC-01/04-01/06-562 OA3, para.5; ICC-01/04-01/06-190 OA3, paras.2, 4, 5; ICC-01/04-01/07-653 OA7, para.5.

Requests for redactions

8. The Prosecution hereby presents its additional request for redactions pursuant to Rule 81(2) relating to the content and metadata of 13 documents that the Prosecution and to the metadata of an additional two documents, whose content may be disclosed in unredacted form.

9. All 15 documents to be disclosed were collected between 25 October 2011 and 15 February 2012. Although they 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.⁷

10. Consistent with prior applications for redaction, the Prosecution seeks authorisation to redact (a) the identity of all Prosecution staff members mentioned in the relevant documents; (b) the date and location of interviews; and (c) any information identifying Prosecution sources (including investigative leads). These redactions 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.⁸ The 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

⁷ Disclosure Decision, para.35.

⁸ 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).

implications both on the expeditious conduct of its investigations, as well as on the resources required to conduct such investigations.

11. The Prosecution 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 Defence case. Moreover, the Prosecution will request to lift these redactions when its investigation is at an advanced stage.
12. The annexes to this filing consist of two batches of documents. Annex 1 contains the annexes and notes from P-0069, and Annex 2 relates to the documents from the national judicial authorities. Each annex includes a table⁹ 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 to above, each table 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. Consistent with the Prosecution's general practice, portions highlighted in blue reflect redactions that are based on Rule 81(2).

Conclusion

13. For the reasons set out above, the Prosecution requests the Chamber to:
 - a. grant, pursuant to Regulation 35, an extension of time for the submission of the Prosecution's additional request for redaction of the 13 documents related to the interview of P-0069 and two documents from the national judicial authorities; and

⁹ Disclosure Decision, para.55.

- b. grant, pursuant to Regulation 81(2), the Prosecution's request for redactions.

A handwritten signature in blue ink, appearing to read 'Luis Moreno-Ocampo', is positioned above a horizontal line.

Luis Moreno-Ocampo, Prosecutor

Dated this 16th day of March 2012

At The Hague, The Netherlands