

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-02/11-01/11
Date: 10 February 2012

PRE-TRIAL CHAMBER III

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Elizabeth Odio Benito
Judge Adrian Fulford

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF THE PROSECUTOR *v.* LAURENT GBAGBO

PUBLIC

Redacted Version

With Annexes 1-11 – Confidential, *ex parte*, only available to the Prosecution

**First Prosecution's request for redactions pursuant to Rule 81(2) and Rule 81(4)
and update on other protective measures**

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 "any request to redact incriminating evidence on which [the Prosecution] intends to rely on at the confirmation hearing and which was collected prior to 25 October 2011 shall be submitted to the Single Judge no later than 10 February 2012".²
2. The Prosecution hereby presents its first request for redactions pursuant to Rule 81(2) and Rule 81(4) relating to the content of 137 documents that the Prosecution had collected prior to 25 October 2011 and to the metadata of 136 of these 137 documents and to the metadata of an additional 13 documents, whose content may be disclosed in unredacted form. Although all 150 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. The Prosecution hereby also seeks the lifting of some redactions previously granted by the Single Judge in the Prosecution's redacted version of the application for a warrant of arrest against Laurent GBAGBO. The lifting sought concerns the Prosecution's allegations of rape and other forms of sexual violence committed by pro-GBAGBO forces in the context of the attack related to the RTI demonstrations from 16 to 19 December 2010, as well as any details relating to the Prosecution's source of information.

¹ ICC-02/11-01/11-30.

² Disclosure Decision, para.52; dispositiv, p.29, last paragraph.

³ Disclosure Decision, para.35.

4. {REDACTED}.
5. Pursuant to Regulation 23*bis* of the Regulations of the Court and the instruction of the Single Judge in the Disclosure Decision,⁴ the Prosecution files this document and its 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. In accordance with the Disclosure Decision, the Prosecution will present a simultaneous public redacted version of this filing (without the annexes), to put the Defence on notice of the existence of this request and of the underlying legal and factual basis for the redactions to the largest extent possible.⁵

Requests for redactions

6. The Prosecution seeks authorisation to redact (a) the identity of all Prosecution staff members mentioned in the relevant documents; (b) the identity of translators and interpreters; (c) the date and location of interviews; and (d) any information identifying Prosecution sources. 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 witnesses and their security.⁶ 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 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

⁴ Disclosure Decision, paras.54-55.

⁵ Disclosure Decision, para.54.

⁶ 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).

confirmation hearing, since they do not relate to information that is relevant for the preparation of the case of the Defence. Moreover, the Prosecution will request to lift these redactions when its investigation is at an advanced stage.

7. 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"); (b) identifying information of family members of any witnesses; and (c) information relevant to locate low-profile witnesses, such as their whereabouts and phone numbers, disclosure of which might put their family members at risk. 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").⁷ In addition, the Prosecution refers to the findings of the Chamber in relation to the underlying facts justifying the arrest of Laurent GBAGBO,⁸ which equally warrant the requested redactions under Rule 81(4). 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.
8. In addition to the redactions to the content of the 137 documents referred to above, the Prosecution seeks authorisation to redact the metadata of 149 documents out of the 150 documents that it wishes to disclose. Redactions to the metadata are sought pursuant to Rule 81(2) and are based on the same grounds referred to in paragraph 6 above. They are limited to (a) the identity of Prosecution staff members; and (b) information relating to the date of interviews.

⁷ ICC-02/11-01/11-16-US-Exp-Anx1.

⁸ See ICC-02/11-01/11-9-Red, paras.85-86.

9. The annexes to this filing consist of 11 batches of documents. Annexes 1-10 relate to the 10 witnesses interviewed by the Prosecution prior to 25 October 2011.⁹ Annex 11 relates to the affidavits taken by the Prosecution during its investigation prior to that date. Each annex includes a table¹⁰ that identifies the exact redactions sought 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, 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 sought. 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).

Request for lifting of redactions

10. On 19 December 2011, the Single Judge ordered the Prosecution to file a redacted version of the "Prosecutor's Application Pursuant to Article 58 as to Laurent Koudou Gbagbo".¹¹ On 21 December 2011 the Prosecution filed a confidential redacted version of its application.¹² With the authorization of the Chamber, it redacted among others the following information relating to allegations of rape and other forms of sexual violence committed by pro-GBAGBO forces in the context of the attack related to the RTI demonstrations from 16 to 19 December 2010, as well as any details relating to the Prosecution's source of information.

- Paragraph 60, third sentence onwards and content of footnotes 144, 145 and 146;
- Paragraph 62, last sentence and content of footnote 150; and
- Paragraph 63, entire text of paragraph and content of footnote 151.

⁹ W-0009, W-0010, W-0011, W-0044, W-0045, W-0046, W-0047, W-0048, W-0049, and W-0054.

¹⁰ Disclosure Decision, para.55.

¹¹ ICC-02/11-01/11-19 ; see also ICC-02/11-01/11-19-Corr+Corr-Anx.

¹² ICC-02/11-01/11-20+ICC-02/11-24-Conf-Exp.

11. Pursuant to Regulation 42(3) of the Regulations of the Court, the Prosecution hereby requests the lifting of the redactions referred to above, so that it can disclose the underlying information to the Defence and rely on that information for the purposes of the confirmation hearing. This request, however, is subject to the adoption by the Chamber of a protocol, referred to below, regulating the use of confidential information during investigations. With the adoption of such an additional protective measure, the Prosecution assesses that it is safe to disclose the relevant information. The effect of such a protocol also demonstrates that it is necessary to expand the scope of its application to all persons at risk on account of the activities of the Court and not to limit it to persons who enjoy other Court protective measures.

[REDACTED]

12. [REDACTED].

(i) [REDACTED]

13. [REDACTED].

(ii) [REDACTED]

14. [REDACTED]:

15. [REDACTED].¹³ [REDACTED].

16. [REDACTED].¹⁴

17. [REDACTED]¹⁵ [REDACTED]¹⁶ [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

(iii) [REDACTED]

18. [REDACTED] ¹⁷[REDACTED].

19. [REDACTED].



Luis Moreno-Ocampo, Prosecutor

Dated this 10th day of February 2012

At The Hague, The Netherlands

¹⁷ [REDACTED].