

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/11
Date: 19 December 2011

PRE-TRIAL CHAMBER III

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

**with confidential *ex parte* Annex A only available to the Prosecutor and the
Victims and Witnesses Unit**

**Decision ordering the filing of a public redacted version of the "Prosecutor's
Application Pursuant to Article 58 as to Laurent Koudou Gbagbo"**

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

The Office of the Prosecutor

Mr Luis Moreno-Ocampo

Ms Fatou Bensouda

Counsel for the Defence

Mr Emmanuel Altit

Legal Representatives of Victims

Legal Representatives of 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

Ms Silvana Arbia

Detention Section

Victims and Witnesses Unit

Others

**Victims Participation and
Reparations Section**

I, Judge Silvia Fernández de Gurmendi, Single Judge for Pre-Trial Chamber III of the International Criminal Court (“Chamber” and “Court” respectively), responsible for carrying out the functions of the Chamber in relation to the case of *The Prosecutor v. Laurent Gbagbo* hereby renders this decision;¹

1. On 25 October 2011, the Prosecutor requested the Chamber, pursuant to article 58 of the Rome Statute (“Statute”), to issue a warrant of arrest for Laurent Gbagbo (“Application”).²

2. On 30 November 2011, the Chamber issued its “Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant of arrest against Laurent Koudou Gbagbo” (“Decision”) whereby (i) it decided to issue a warrant of arrest against Mr Gbagbo and (ii) further ordered the Prosecutor to inform the Chamber as to whether the Decision can be reclassified as public and if redactions are considered necessary, to provide a proposed redacted public version thereof.³

3. Both the Application and the Decision were filed in the record of the case of *The Prosecutor v. Laurent Gbagbo* as “under seal” notably in order to ensure the effective execution of the arrest of Mr Gbagbo as well as to protect further or ongoing investigations and victims and witnesses’ safety. Accordingly, to date the Defence does not have access to either of these documents.

¹ Oral Decision of the Chamber, 5 December 2011, ICC-02/11-01/11-T-1-ENG, page 8.

² Prosecutor’s Application Pursuant to Article 58 as to Laurent Koudou Gbagbo, ICC-02/11-24-US-Exp and its annexes.

³ ICC-02/11-01/11-9-US-Exp.

4. Pursuant to the warrant of arrest issued on 23 November 2011,⁴ Mr Gbagbo has effectively been arrested and surrendered to the Court. He appeared before the Chamber on Monday 5 December 2011.

5. The Single Judge notes that, as held by the Appeals Chamber, “in order to ensure both equality of arms and an adversarial procedure, the defence must, to the largest extent possible, be granted access to documents that are essential in order effectively to challenge the lawfulness of detention, bearing in mind the circumstances of the case.”⁵ In the Single Judge’s view, such right encompasses access to the Application and the Decision, yet the access must also be assessed by reference to the need to ensure appropriate protection to victims and witnesses pursuant to articles 57(3)(c) and 68(1) of the Statute as well as to safeguard the Prosecutor’s investigations.

6. In this respect, the Prosecutor filed on 29 November 2011 a “Request for redactions to ‘Prosecutor’s Application Pursuant to Article 58 as to Laurent Koudou Gbagbo’” (the “Prosecutor’s Request for Redactions”) whereby he requests authorization to redact certain information contained in his Application which is “necessary to ensure that victims and witnesses are appropriately protected and to safeguard ongoing investigations.”⁶ He further submitted on 2 December 2011 a proposed public redacted version of the Decision.⁷

7. The Chamber has further convened an *ex parte* hearing which was held on 14 December 2011 and attended by the Prosecutor and the Victims and Witnesses

⁴ ICC-02/11-01/11-1.

⁵ Appeals Chamber, *Judgment on the appeal of Mr. Jean-Pierre Bemba Gombo against the decision of Pre-Trial Chamber III entitled “Decision on application for interim release”* issued on 16 December 2008.

⁶ ICC-02/11-31-US-Exp and its Annex A.

⁷ ICC-02/11-01/11-13-US-Exp and its Annex A.

Unit (“VWU”) and in the course of which they have submitted additional information on security matters and protective measures.⁸

8. In light of the information provided by the Prosecutor and the VWU, notably in the course of the *ex parte* hearing, the Single Judge considers that although Mr Gbagbo was arrested and surrendered to the Court, the reasons warranting the classification of the Prosecutor’s Application and the Decision as *ex parte* still exist. The Single Judge indeed considers that in light of the current circumstances the Application and the Decision contain sensitive information that cannot, at this stage of the proceedings, be disclosed to the Defence.

9. Considering further that the Prosecutor is undertaking further risk assessments and that in order not to further delay the Defence access to the relevant documents while not jeopardising the protection of victims and witnesses nor the Prosecutor’s further or ongoing investigations, the Single Judge has assessed the requested redactions to the Application and the proposed redactions to the Decision in light of the information currently available to her.

10. The Single Judge considers that, at this stage of the proceedings and in light of the information currently available, these redactions are necessary to overcome or reduce a justifiable risk to further or ongoing Prosecutor’s investigations as well as to the safety of victims, witnesses and persons who might be put at risk on the account of the Court’s activities. In the Single Judge’s view these redactions are the least intrusive measure to overcome such risk.

11. Furthermore, in the view of the Single Judge, these redactions are not at this stage prejudicial to or inconsistent with the rights of the suspect as (i) the

⁸ Decision Convening Status Conferences, ICC-02/11-01/11-15.

Defence will have to a great extent access to the relevant sections enabling him to challenge the lawfulness of detention and (ii) the Prosecutor has already provided the Defence with all documents in support of the facts included in paragraphs 143 to 148 of the Application with the exception of one document.⁹

12. In light of the foregoing, the Single Judge will accordingly file a public redacted version of the Decision and as to the Application, she has further noted few inconsistencies in the Prosecutor's Request for Redactions which she has outlined in confidential *ex parte* Annex A to the present decision which is only available to the Prosecutor and the VWU.

13. Finally, the Single Judge underlines that information that has been withheld at this stage of the proceedings may need to be subsequently disclosed, should circumstances change. The Prosecutor is thus required to promptly bring to the attention of the Chamber any element that may warrant a variation of its ruling on non-disclosure.

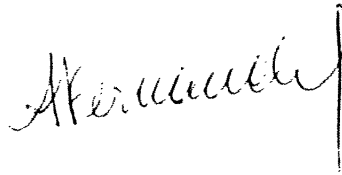
FOR THESE REASONS THE SINGLE JUDGE HEREBY

GRANTS the Prosecutor's Request for Redactions to his "Prosecutor's Application Pursuant to Article 58 as to Laurent Koudou Gbagbo" with the corrections outlined in a Confidential *ex parte* Annex A which is only available to the Prosecutor and the VWU.

⁹ ICC-02/11-01/11-T-2-CONF-EXP-ENG, p.31, lines 5-8.

ORDERS the Prosecutor to file by Wednesday 21 December 2011 at 16:00 the confidential redacted version of the “Prosecutor’s Application Pursuant to Article 58 as to Laurent Koudou Gbagbo” (ICC-02/11-24-US-Exp).

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



Judge Silvia Fernández de Gurmendi

Single Judge

Dated this Monday 19 December 2011

At The Hague, The Netherlands