

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 14 April 2014

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. *CHARLES BLÉ GOUDÉ***

Public

Decision establishing a system for disclosure of evidence

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

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Counsel for the Defence

Nicholas Kaufman

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

Herman von Hebel

Detention Section

Victims and Witnesses Unit

Others

**Victims Participation and Reparations
Section**

Judge Silvia Fernández de Gurmendi, Single Judge for Pre-Trial Chamber I of the International Criminal Court, 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 issues the following decision establishing a system for disclosure of evidence.

1. On 21 December 2011, Pre-Trial Chamber III issued the “Warrant of Arrest for Charles Blé Goudé”.²

2. On 27 March 2014, Mr Blé Goudé appeared before the Single Judge, pursuant to article 60(1) of the Rome Statute (the “Statute”) and rule 121(1) of the Rules of Procedure and Evidence (the “Rules”).³ During that hearing, the Single Judge set the date of the commencement of the confirmation of charges hearing at 18 August 2014.⁴

3. The Single Judge notes articles 61 and 67 of the Statute, rules 15, 76 to 83 and 121 of the Rules, and regulations 26, 37(1), 42, 52 of the Regulations of the Court (the “Regulations”).

4. As is standard practice before the Court, disclosure of evidence between the parties shall take place through the Registry. For this purpose, the Registry shall file in the record of the case the latest version of the e-court protocol.

5. The determination of the appropriate level of classification of the items of evidence disclosed shall be the responsibility of the disclosing party. The parties are expected to determine the appropriate level of classification on an item-by-item basis, and to assign to those witnesses whose statements will be

¹ ICC-02/11-02/11-9.

² ICC-02/11-02/11-1.

³ ICC-02/11-02/11-T-3-CONF-ENG. A public redacted version is also available, see ICC-02/11-02/11-T-3-Red-ENG.

⁴ ICC-02/11-02/11-T-3-Red-ENG, p. 12, lines 9-16.

classified as “confidential” pseudonyms or codes to be used in public documents and during public hearings.

6. Pursuant to rule 121 of the Rules, “[a]ll evidence disclosed between the Prosecutor and the person for the purposes of the confirmation hearing shall be communicated to the Pre-Trial Chamber”. In the view of the Single Judge, evidence disclosed “for the purposes of the confirmation hearing” must be understood as evidence on which the parties intend to rely at the confirmation of charges hearing. Disclosure of evidence pursuant to article 67(2) of the Statute and disclosure, by way of inspection, of items which are “material to the preparation of the defence” and items which were “obtained from or belonged to the person”, pursuant to rule 77 of the Rules, does not constitute disclosure “for the purposes of the confirmation hearing” and evidence so disclosed does not fall within the duty of communication to the Chamber.

7. The Single Judge clarifies that the parties shall communicate to the Chamber the evidence disclosed for the purposes of the confirmation of charges hearing following each batch of disclosure. In addition, the Defence is expected to ensure the communication to the Chamber of any of the evidence disclosed to it under article 67(2) of the Statute or rule 77 of the Rules upon which it intends to rely at the hearing.

8. The Single Judge emphasises that in order to enable the parties to properly prepare for the confirmation of charges hearing, the disclosure of evidence must proceed without delay, and all disclosure by the parties must be completed at the latest by the time limit for the submission of their respective lists of evidence in accordance with rule 121 of the Rules.

9. In order to expedite access by the Defence to evidence previously disclosed in the case of *The Prosecutor v. Laurent Gbagbo* that may be also

relevant for the case at hand, the Single Judge authorises the Prosecutor to disclose such evidence with the same redactions previously authorised. This authorisation is without prejudice to further decisions by the Single Judge as may be required in the exercise of judicial control of exemptions to disclosure and without prejudice to any determination by the Prosecutor that certain redactions under rule 81(2) of the Rules are no longer warranted.

10. Pursuant to rule 121(3) of the Rules, the Prosecutor shall file in the record of the case, no later than 30 days before the date of the confirmation of charges hearing “a detailed description of the charges [‘document containing the charges’] together with a list of evidence which he or she intends to present at the hearing”. Similarly, should the Defence intend to present evidence at the hearing, it must file a list of that evidence no later than 15 days before the date of the hearing. In order to provide the greatest clarity as to these time limits in the proceedings leading up to the confirmation of charges hearing, the Single Judge considers it appropriate to specify them as calendar dates.

11. With respect to the document containing the charges to be submitted by the Prosecutor, the Single Judge draws the Prosecutor’s attention to the following considerations expressed by the Chamber in the case of Laurent Gbagbo:

25. [T]he Chamber observes that a “charge” is composed of the facts underlying the alleged crime as well as of their legal characterization.

26. In this regard, the Chamber recalls that, under article 67(1)(a) of the Statute, the suspect has the right “[t]o be informed promptly and in detail of the nature, cause and content of the charge[s]” against him. To give effect to this right in the context of the confirmation of charges proceedings, rule 121(3) of the Rules mandates the Prosecutor to provide the suspect with a “detailed description of the charges”, and regulation 52(b) of the Regulations further indicates that the document containing the charges shall include, *inter alia*, “[a] statement of the facts, including the time and place of the alleged crimes, which provides a sufficient legal and factual basis to bring the person or persons to trial”.

27. Furthermore, the Chamber observes that one of the core purposes of confirmation of charges is to fix and delimit the factual scope of trial. In this regard, article 74 of the Statute states that “the decision at trial shall not exceed the facts and circumstances described in the charges and any amendment to the charges”. Accordingly, in the event that any charges are confirmed, the factual parameters of the case at trial are determined by the charges as presented by the Prosecutor, to the extent confirmed by the Pre-Trial Chamber. Such delimiting effect can only be ascribed to those facts and circumstances which underlie the charges and must be described therein (“material facts”). Conversely, no constraining power is attributed to those factual allegations presented by the Prosecutor in the DCC, or at the confirmation of charges hearing, with a view to demonstrating or supporting the existence of material facts (“subsidiary facts”). Such subsidiary facts may be analysed by the Pre-Trial Chamber insofar as relevant to determine the existence of material facts, but are not themselves part of the charges and are not subject to confirmation by the Pre-Trial Chamber under article 61(7) of the Statute.

28. In view of these considerations, and bearing in mind the recent developments in other cases at trial stage, the Chamber is of the view that it is of paramount importance that, in the DCC, the material facts underlying the charges on which the Prosecutor seeks to bring the person to trial be clearly and comprehensively identified and distinguished from those facts of a mere subsidiary nature. In this regard, the Chamber is of the view that the Prosecutor shall identify, and present separately for each count, the charges brought against [the suspect] clearly setting out all the material facts.

29. As recalled above, together with a clear identification of the material facts underlying the charge, a “charge” also includes the legal characterisation of such material facts. In this regard, the Chamber notes that regulation 52 of the Regulations specifies that the DCC shall include “[a] legal characterisation of the facts to accord both with the crimes under articles 6, 7 or 8 and the precise form of participation under articles 25 and 28”. With respect to the legal characterisation of the facts as subsumed within a form of individual criminal responsibility under article 25(3) or 28 of the Statute, the Prosecutor shall identify the form or forms of individual criminal responsibility which would accord to the set of material facts alleged.⁵

12. The Single Judge expects the Prosecutor to follow the same approach in the present case.

13. The Single Judge also emphasises the importance of comprehensive and accurate submissions of the Prosecutor as to what evidence is relied upon to substantiate the particular factual allegations that support the charges being brought against Mr Blé Goudé. In the view of the Single Judge, the inclusion

⁵ “Decision on the date of the confirmation of charges hearing and proceedings leading thereto”, 14 December 2012, ICC-02/11-01/11-325, paras 25-28 (footnotes omitted).

of footnotes in the document containing the charges, with hyperlinks to the evidence on the electronic record, is an effective method of achieving this purpose. In order to facilitate this method, any footnotes in the document containing the charges with references to evidence shall not count towards the page limit for that document.

14. The Single Judge considers it appropriate to convene a status conference for 1 May 2014 to discuss other issues that may require orders from the Single Judge. The Single Judge clarifies, without prejudice to Mr Blé Goudé's right to attend, that his presence is not obligatory.

15. At the status conference, the Single Judge expects the Prosecutor to provide the following information:

- to what extent she intends to rely on evidence previously disclosed in the case of Laurent Gbagbo, as well as the progress and anticipated duration of the process of disclosure of such evidence;
- to what extent she intends to rely on other evidence currently in her possession which was not previously disclosed in the case of Laurent Gbagbo, as well as the progress and anticipated duration of the process of disclosure of such evidence;
- whether she intends to continue her investigation prior to the confirmation of charges hearing, and, in that case, when she would be in a position to disclose any evidence arising from this investigation.

16. Moreover, the Single Judge expects both parties to indicate at the status conference whether they intend, at the present time, to propose any live witnesses to testify at the confirmation of charges hearing.

17. The Single Judge notes the system previously adopted with a view to simplifying the procedure for judicial control over exceptions to disclosure.⁶ The Single Judge expects the parties to discuss whether a similar or broader system could be applied in the case at hand, and to inform the Single Judge of the results of such discussions at the status conference.

18. The Single Judge also expects the parties to discuss whether the disclosure of pieces of evidence should be accompanied by additional documents or other explanatory information, and to report on the agreements reached in this regard at the status conference.

19. The Single Judge recalls the protocol on the handling of confidential information that was adopted in the case of Laurent Gbagbo,⁷ and requests the parties to make submissions at the status conference as to whether an identical or similar protocol may be adopted in the case at hand.

FOR THESE REASONS, THE SINGLE JUDGE

ORDERS the Registry to file in the record of the case the latest version of the e-court protocol by Tuesday, 15 April 2014;

AUTHORISES the Prosecutor to disclose to the Defence any evidence for which redactions have been authorised in the case of *The Prosecutor v. Laurent Gbagbo* with redactions as previously authorised;

⁶ See Pre-Trial Chamber I, "Decision establishing a disclosure system and a calendar for disclosure", 24 January 2012, ICC-02/11-01/11-30, paras 48-51.

⁷ See Pre-Trial Chamber I, "Decision on the Protocols concerning the disclosure of the identity of witnesses of the other party and the handling of confidential information in the course of investigations", 6 March 2012, ICC-02/11-01/11-49 and annex.

ORDERS the Prosecutor to complete the disclosure of evidence on which she intends to rely at the confirmation of charges hearing and file in the record of the case the document containing the charges and the list of evidence which she intends to present at the hearing by Friday, 18 July 2014;

DECIDES that any footnotes in the document containing the charges with references to evidence shall not count towards the page limit;

ORDERS the Defence to complete the disclosure of any evidence on which it intends to rely at the confirmation of charges hearing and file any list of evidence which it intends to present at the confirmation of charges hearing by Friday, 1 August 2014; and

CONVENES a status conference for Thursday, 1 May 2014, at 9.30 hours, to be held in open session, to obtain the parties' submissions on the issues identified above and discuss other matters as appropriate.

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



Judge Silvia Fernández de Gurmendi
Single Judge

Dated this Monday, 14 April 2014

At The Hague, The Netherlands