

**Cour
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**International
Criminal
Court**

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Date: **12 March 2014**

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
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

**Urgent request for an extension of the 17 March 2014 deadline set by the Chamber on 14 February 2014 for the Defence to file its written observations on the Prosecutor's evidence, and Urgent Defence request for an extension of the page limit for its written observations on the Prosecutor's evidence
(Regulation 37(1))**

Source: Defence team for President Gbagbo

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

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**Victims Participation and Reparations
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Other

1. ***As a preliminary point on the issue of urgency:*** the Defence has stated that it would be difficult for it to file written observations on the Prosecutor's evidence by 17 March 2014. The work which needs to be carried out is much more extensive than previously anticipated (see *infra*). The Defence therefore requires a little more time and a little more space to enable it to respond adequately to the Prosecutor's allegations. It is important that a decision on this application should be made as soon as possible as there is less than one week until the deadline for the Defence to file its observations.

I. Procedural history

2. On 14 February 2014, the Chamber set the date of 17 March 2014 as the deadline for the Defence to submit written observations on the Prosecutor's evidence and granted it the possibility to file a document of up to 300 pages in length.¹

II. Applicable law

1. The rights of the suspect at the confirmation of charges hearing

3. Article 61(6) of the Statute provides that:

At the hearing, the person may:

- (a) Object to the charges;
- (b) Challenge the evidence presented by the Prosecutor; and
- (c) Present evidence.

4. Article 67 of the Statute provides that:

In the determination of any charge, the accused shall be entitled to [...] and to the following minimum guarantees, in full equality:

- ...
- (b) To have adequate time and facilities for the preparation of the defence [...];
- ...
- (e) [...] The accused shall also be entitled to raise defences and to present other evidence admissible under this Statute; [...].

¹ ICC-02/11-01/11-619.

2. The option conferred upon the Chamber to grant a party an extension of a time limit

5. Regulation 35 provides that:

1. Applications to extend [...] any time limit [...] setting out the grounds on which the variation is sought.
2. The Chamber may extend [...] a time limit if good cause is shown [...].

3. The option conferred upon the Chamber to grant a party an extension of the page limit

6. Regulation 37(2) of the Regulations of the Court provides that the Chamber may, at the request of a participant, extend the page limit in exceptional circumstances.² In jurisprudence, such exceptional circumstances have been held to include the complexity of the questions raised,³ the number and variety of the arguments,⁴ the novelty of the questions and arguments submitted to the Judges⁵ and the fundamental nature of the application.⁶

III. Arguments

1. The situation

7. The Defence team has been working seven days a week since the Prosecutor filed her amended DCC on 20 January 2014. It has attempted to compile its written submissions in response to this DCC in various ways in order to comply with the submission date and the format. It now seems that it will be impossible to give a precise and detailed response to the Prosecutor's evidence, much less to submit evidence, by 17 March 2014 and in 300 pages. The reasons for this are set out below:

² See regulation 37(2) of the Regulations of the Court.

³ ICC-01/04-01/06-177, para. 6.

⁴ ICC-01/04-01/06-2532, para. 6.

⁵ ICC-01/04-01/10-495, para. 2.

⁶ *Idem*.

1.1 Complexity of the case

8. In order to obtain an extension of the page limit, the Prosecutor herself submitted, on 19 December 2013, that “[t]his case continues to be **very complex and that complexity has increased substantially** in light of the Decision of 3 June 2013, the continuing investigation and the further evidence obtained”.⁷

9. On 20 December 2013, the Single Judge considered that:

“[t]he circumstances as described by the Prosecutor, *i.e.* **the complexity** of the case and the need to respond adequately to the issues raised in the Adjournment Decision, are exceptional within the meaning of regulation 37(2) of the Regulations, and that therefore the requested extension of page limit can be granted”.⁸

1.2 The number of items disclosed by the Prosecutor

10. Between 5 December 2011 and 9 January 2014, the Prosecutor disclosed a total of 2,401 items of incriminating evidence amounting, in total, to 16,181 pages. During this same period, the Prosecutor also disclosed to the Defence 227 potentially exonerating documents, amounting to 1,506 pages, and 3,206 documents under the “rule 77” category, amounting to 13,259 pages.

11. Since the decision of 3 June 2013, the Prosecutor has disclosed 2,305 items, amounting to 14,425 pages, excluding the videos for which the viewing time is in the order of hours.

12. In her amended DCC of 20 January 2014, the Prosecutor referred to the thousands of pages contained in these new documents.

13. In particular, in January 2014, the Prosecutor added 1,034 new incriminating items to her list of incriminating evidence.⁹ The list of incriminating evidence has increased from

⁷ ICC-02/11-01/11-579, para. 5.

⁸ ICC-02/11-01/11-582, para. 5.

⁹ ICC-02/11-01/11-592-Conf-Anx3-Corr.

196 pages¹⁰ to 747 pages.¹¹ The length of the list of incriminating evidence has thus almost quadrupled and the number of items used by the Prosecutor has increased enormously.

14. Faced with this mass of evidence, the Defence's task is burdensome. In its written observations, the Defence must, in particular, meticulously analyse the evidence disclosed by the Prosecutor, compare the new evidence with that disclosed before 19 February 2013, and relate the incriminating evidence to the evidence which the Prosecutor considers to be potentially exonerating or even with the evidence which she disclosed under rule 77, evaluate and cross check each of the items of evidence submitted by the Prosecutor in support of her arguments, examine the documentary basis for the Prosecutor's assertions in the DCC and organise these items of evidence into a precise and coherent argument.

1.3 The new disclosures

15. Since 13 January 2014, i.e. after the expiry of the time limit set by the Chamber for the Prosecutor to disclose the evidence to the Defence, the Prosecutor has disclosed to the Defence two potentially exonerating documents and 42 documents falling within the "Rule 77" category, i.e. 44 documents and 200 pages.

16. On 12 March 2014, a few days before the deadline for filing the Defence observations on the Prosecutor's evidence, the Prosecutor disclosed new items of evidence under the "rule 77" category to the Defence.

17. These late disclosures make it necessary for the Defence to consider these new documents that have been handed over by the Prosecutor and to integrate them into its arguments; in short, the Defence must reconstruct its arguments. It does not matter whether the documents are considered to be exonerating documents or incriminating documents; both may prove to be very important.

¹⁰ ICC-02/11-01/11-592-Conf-Anx4-Corr.

¹¹ ICC-02/11-01/11-592-Conf-Anx3.

1.4 The new incidents, the new items submitted in support of the previous allegations and the new modes of liability

18. In her amended DCC of 20 January 2014, the Prosecutor added 16 new incidents which had never previously been mentioned.¹²

19. Furthermore, the Prosecutor has amended her portrayal of some of the events which she has retained from her previous arguments:

- The incident concerning an alleged attack led by units of the Defence and Security Forces (*Forces de défense et de sécurité, FDS*) in the PK18 neighbourhood, reported to have taken place between 11 and 12 January 2011, had been referred to in the DCC of 17 January 2013¹³ but discarded at the confirmation of charges hearing; it is then mentioned again in the amended DCC but the number of victims alleged by the Prosecutor is different;¹⁴
- Regarding the alleged death of two Nigeriens that allegedly took place in Yopougon on 1 March 2011, the Prosecutor has changed the names of the alleged perpetrators;¹⁵
- With respect to the alleged murder of a Burkinabé in Port-Bouët, Abidjan, the Prosecutor initially stated that the deeds reportedly took place during the night of 4 to 5 March 2011¹⁶ but then referred to the night of 3 to 4 March 2011¹⁷ in the new DCC;
- Regarding six other events,¹⁸ the Prosecutor has changed the number of the victims.

¹² CC-02/11-01/11-592-Anx1, p. 35, para. 63 (3); p. 36, para. 63; p. 37, para. 64; p. 40, para. 66; p. 41, para. 66 (4); p. 42, para. 66 (3); p. 43, para. 66 (2); p. 45, para. 68.

¹³ ICC-02/11-01/11-357-Conf-Anx1, para. 25.

¹⁴ ICC-02/11-01/11-592-Conf-Anx2-Corr, para. 66.

¹⁵ ICC-02/11-01/11-357-Conf-Anx1, para. 28; ICC-02/11-01/11-T-15-CONF-FRA, p. 44.

¹⁶ ICC-02/11-01/11-T-15-CONF-FRA, pp. 44-45.

¹⁷ ICC-02/11-01/11-592-Conf-Anx2-Corr, para. 68.

¹⁸ Incident which occurred from 16 to 19 December 2010, ICC-02/11-01/11-592-Conf-Anx2-Corr, para. 63; incident which occurred on 4 January 2011, ICC-02/11-01/11-592-Conf-Anx2-Corr, para. 64; incident which occurred between 18 and 19 January 2011, ICC-02/11-01/11-592-Conf-Anx2-Corr, para. 63; incident which

20. The Prosecutor has also changed the constituent facts of the four “principal” events constituting the charges.

21. This is particularly apparent in the case of the event which the Prosecutor refers to as the “attacks related to the demonstrations at the RTI building”. Indeed, in her amended DCC of January 2014, the Prosecutor has left out no less than six allegations which she had formulated; two of these were set out in her DCC of 17 January 2013¹⁹ and four of them were mentioned at the confirmation of charges hearing.²⁰ Furthermore, and no doubt in an attempt to compensate for the disappearance, owing to lack of evidence, of some of her charges, the Prosecutor has added a number of events which allegedly took place on 16 December 2010 in Attécoubé,²¹ Adjamé,²² Treichville,²³ Marcory²⁴ and Cocody,²⁵ and to which she had made no reference in either her DCC of January 2013,²⁶ or at the hearing of February 2013.²⁷

22. By altering the factual basis of the charges, the Prosecutor has changed the debate initially intended – according to the decision of 3 June 2013 – to cover the additional items of evidence into a debate on the new charges or charges that have been extensively altered.

23. By altering the nature of the debate on the evidence, the Prosecutor has placed the Defence in a difficult situation as it must now respond, within a tight deadline and by

occurred on 25 February 2011, ICC-02/11-01/11-592-Conf-Anx2-Corr, para. 66; incident which occurred on 17 March 2011 in Abobo, ICC-02/11-01/11-592-Conf-Anx2-Corr, para. 66; incident which occurred on or around 12 April 2011 in Yopougon, ICC-02/11-01/11-592-Conf-Anx2-Corr, para. 71.

¹⁹ ICC-02/11-01/11-357-Anx1, para. 47.

²⁰ ICC-02/11-01/11-T-16-CONF-FRA, p. 17, l. 24-26; p. 17, l. 26-28; p. 18, l. 1-3; p. 18, l. 20-25.

²¹ ICC-02/11-01/11-592-Conf-Anx2-Corr2, para. 104.

²² *Ibid.*, para. 105.

²³ *Ibid.*, para. 106.

²⁴ *Ibid.*, para. 107.

²⁵ *Ibid.*, paras. 108 and 109.

²⁶ ICC-02/11-01/11-357-Anx1.

²⁷ ICC-02/11-01/11-T-16-CONF-FRA.

means of written submissions that are subject to a page limit, to a line of argument which is different to the one presented on 17 January 2013.

1.5 The Prosecutor has added three modes of liability

24. As the Defence explained in its application for the DCC filed on 20 January 2014 to be declared inadmissible on the merits,²⁸ the Prosecutor has extensively changed both the legal basis and the factual basis of her DCC and this has resulted, quite simply, in an extensive change to the charges against President Gbagbo.

25. In this way, the Prosecutor has added three modes of liability ((25(3)(b), 28(a) and 28(b)) to those she had already included in her previous DCC. The Prosecutor has thus included the modes of liability of superior responsibility – military and civilian – referred to in article 28 of the Statute, and she has also added a new mode of liability based on ordering, soliciting or inducing the commission of a crime.

26. The Defence would like to emphasise that the Prosecutor waited until January 2014, i.e. two and a half years after the issuance of the warrant of arrest, to add these three modes of liability, which has resulted not only in confusion as to the charges but also in a considerable increase in the scale of the Defence's task to rebut the Prosecutor's arguments.

27. The Prosecutor has thus burdened the Defence with the consequences of what appears to be her lack of preparation and her inability to decide upon the charges actually levied against President Gbagbo.

²⁸ ICC-02/11-01/11-598-Conf-Corr.

1.6 Above all, the Prosecutor's election to use successive cross-references in her DCC and construct a logical labyrinth has made the Defence's task most difficult

28. At the confirmation of charges hearing held in February 2013, the Defence had the opportunity to demonstrate that the Prosecutor had constructed her DCC in the form of a paper chase that systematically refers any illustration or demonstration in relation to a given affirmation to another argument, different to the one dealing with the point in question, and that when the reader follows the Prosecutor's suggestion, he or she is immediately referred to other paragraphs, or even footnotes, without ever arriving at an illustration or demonstration. The Defence also pointed out that the Prosecutor herself became lost in this policy of systematic referrals; for example, the arguments to which she referred in relation to the constituent elements of liability under 25(3)(d) were different in the DCC, in her arguments at the confirmation of charges hearing and in her final submissions.²⁹

29. It should also be recalled that, in its judgment rejecting the Prosecutor's appeal on the adjournment decision, the Appeals Chamber noted the systematic practice of cross-referencing in which the Prosecutor indulged and concluded from this that such a practice did not satisfy the requirements for notification of the charges and was insufficient to satisfy the Defendant's right to be informed of the nature, the reasons for, and the content of the charges.³⁰

30. However, it must be noted that the Prosecutor followed the same practice in her amended DCC of 20 January 2014.

31. Hence, for example, on the matter of superior responsibility, the Prosecutor has not only failed to give any indication of the legal elements that would enable this mode of liability to be invoked but has also, regarding the factual elements, used a footnote to

²⁹ ICC-02/11-01/11-429-Conf, para. 169.

³⁰ ICC-02/11-01/11-572, para. 42.

refer to different paragraphs of the DCC which she considered to be a relevant demonstration.³¹ In another section, dedicated to setting out the charges under article 28,³² the Prosecutor refers to different paragraphs of the DCC. For example, the Prosecutor offers no arguments in relation to the element of intent under 28 and simply refers to a footnote to paragraph 228 which in turn refers to paragraph 210 (this contains 27 lines setting out different assertions and refers all of them to a general footnote that states “[TRANSLATION] see the facts and evidence at paragraphs 30, 46, 68, 80-82, 90, 91, 93-97, 118, 121, 125, 175, 180, 203 (a) and (b), 207 (f) and (j)”).³³

32. Examination of the content of the abovementioned paragraphs reveals that paragraph 46 refers to paragraphs 83-93, 195-196 and 202-203,³⁴ paragraph 90 refers to paragraphs 195-196,³⁵ paragraph 125 refers to paragraph 93,³⁶ paragraph 180 refers to paragraphs 20-29, 43-56, 61-63, 65-66, 77-85³⁷ and paragraph 207 refers to paragraphs 79-98, 118, 133-203.³⁸

33. As for these new paragraphs to which the Prosecutor refers the reader, 44 refers to 74-98³⁹; 45 refers to 62, 113, 177, 181, 197-198;⁴⁰ 46 refers to 83-93, 195-196, 202-203;⁴¹ 47 refers to 195-203, 58, 66, 122-125, 189;⁴² 48 refers to 55-71, 99-128;⁴³ 50 refers to 55- 71, 72-98;⁴⁴ 56 refers to 99-128;⁴⁵ 61 refers to 79-98, 186;⁴⁶ 63 refers to 99-118⁴⁷ and 119-121;⁴⁸

³¹ ICC-02/11-01/11-592-Conf-Anx2, footnote 423.

³² ICC-02/11-01/11-592-Conf-Anx2-Corr2, para. 225 *et seq.*

³³ *Ibid.*, footnote 728.

³⁴ *Ibid.*, footnote 100.

³⁵ *Ibid.*, footnote 279.

³⁶ *Ibid.*, footnote 413.

³⁷ *Ibid.*, footnotes 604-608.

³⁸ *Ibid.*, footnote 721.

³⁹ *Ibid.*, footnote 95.

⁴⁰ *Ibid.*, footnotes 98-99.

⁴¹ *Ibid.*, footnote 100.

⁴² *Ibid.*, footnotes 101-102.

⁴³ *Ibid.*, footnotes 103-105.

⁴⁴ *Ibid.*, footnote 110.

⁴⁵ *Ibid.*, footnote 123.

⁴⁶ *Ibid.*, footnote 131.

⁴⁷ *Ibid.*, footnote 142.

66 refers to 122-125;⁴⁹ 78 refers to 158-185, 132-157, 76, 189, 100, 195-196, 79-98, 186-194, 55-71;⁵⁰ 86 refers to 55-71, 99-118;⁵¹ 87 refers to 195-202, 186-196;⁵² 88 refers to 55-71,⁵³ 17-23, 28-29, 31,⁵⁴ 197-203,⁵⁵ 131-156, 187, 189, 203⁵⁶, 158-185;⁵⁷ 89 refers to 45, 197;⁵⁸ 90 refers to 195-196;⁵⁹ 98 refers to 29-56;⁶⁰ 134 refers to 16;⁶¹ 142 refers to 147 and 140-142;⁶² 143 refers to 169-180;⁶³ 146 refers to 169-170;⁶⁴ 147 refers to 23, 156-157;⁶⁵ 148 refers to 23, 169-180;⁶⁶ 149 refers to 19-23;⁶⁷ 150 refers to 187;⁶⁸ 151 refers to 40;⁶⁹ 153 refers to 19-20 and 187;⁷⁰ 159 refers to 133-136;⁷¹ 161 refers to 41-43;⁷² 164 refers to 163-167;⁷³ 166 refers to 100 and 175;⁷⁴ 170 refers to 12-37, 143-148;⁷⁵ 171 refers to 189, 75 and 187;⁷⁶ 173 refers to 99-118;⁷⁷ 175 refers to 172;⁷⁸ 176 refers to 63, 198, 55-73, 99-128, 198;⁷⁹ 177 refers to 99-101, 103,

⁴⁸ *Ibid.*, footnote 147.

⁴⁹ *Ibid.*, footnote 171.

⁵⁰ *Ibid.*, footnotes 230-235.

⁵¹ *Ibid.*, footnote 264.

⁵² *Ibid.*, footnotes 267 and 269.

⁵³ *Ibid.*, footnote 270.

⁵⁴ *Ibid.*, footnote 272.

⁵⁵ *Ibid.*, footnote 273.

⁵⁶ *Ibid.*, footnote 274.

⁵⁷ *Ibid.*, footnote 276.

⁵⁸ *Ibid.*, footnote 277.

⁵⁹ *Ibid.*, footnote 279.

⁶⁰ *Ibid.*, footnote 313.

⁶¹ *Ibid.*, footnote 432.

⁶² *Ibid.*, footnotes 466-467.

⁶³ *Ibid.*, footnote 468.

⁶⁴ *Ibid.*, footnote 472.

⁶⁵ *Ibid.*, footnotes 480-481.

⁶⁶ *Ibid.*, footnote 483.

⁶⁷ *Ibid.*, footnote 487.

⁶⁸ *Ibid.*, footnote 500.

⁶⁹ *Ibid.*, footnote 502.

⁷⁰ *Ibid.*, footnotes 506 and 508.

⁷¹ *Ibid.*, footnote 535.

⁷² *Ibid.*, footnote 539.

⁷³ *Ibid.*, footnote 548.

⁷⁴ *Ibid.*, footnote 554.

⁷⁵ *Ibid.*, footnotes 572-573.

⁷⁶ *Ibid.*, footnotes 574-575.

⁷⁷ *Ibid.*, footnote 578.

⁷⁸ *Ibid.*, footnote 587.

⁷⁹ *Ibid.*, footnotes 589 and 591.

82, 55-71, 119-128, 179;⁸⁰ 180 refers to 20-29, 43-56, 61-63, 65-66, 77-85;⁸¹ 182 refers to 154, 187 (last sentence);⁸² 185 refers to 156, 188 (last sentence), 156-157;⁸³ 186 refers to 74-98, 187-203;⁸⁴ 187 refers to 160-180;⁸⁵ 188 refers to 152-154;⁸⁶ 189 refers to 171;⁸⁷ 192 refers to 99;⁸⁸ 196 refers to 169-180⁸⁹ and 92;⁹⁰ 198 refers to 99-128;⁹¹ 199 refers to 99-118;⁹² 200 refers to 167, 179⁹³ and 201 refers to 68, 80, 85, 186 and 192-193.⁹⁴

34. In other words, starting from one single five-line paragraph, concerning one single element of one single mode of liability, the Prosecutor has managed to send the reader to 120 different paragraphs of her DCC, i.e. almost half of the DCC. It should be noted that a patient and determined reader who follows the Prosecutor's directions to the letter will be guided to the same paragraphs several times. Even more extraordinary is the fact that if the reader follows the Prosecutor's directions and consults the hundreds of items referenced in the footnotes to the DCC in relation to the abovementioned paragraphs, he or she will notice that the Prosecutor is actually using these same items to support all sorts of other allegations, without ever specifying how a particular component of an item relates to a specific allegation and how another component relates to a different allegation.

35. The Prosecutor has constructed an extraordinary labyrinth, worthy of Escher. Any reader of good faith who enters this labyrinth will become lost in it. There is no exit,

⁸⁰ *Ibid.*, footnotes 593-595.

⁸¹ *Ibid.*, footnotes 604-608.

⁸² *Ibid.*, footnotes 622 and 624.

⁸³ *Ibid.*, footnotes 627-628.

⁸⁴ *Ibid.*, footnotes 629 and 631.

⁸⁵ *Ibid.*, footnote 632.

⁸⁶ *Ibid.*, footnote 643.

⁸⁷ *Ibid.*, footnote 646.

⁸⁸ *Ibid.*, footnote 659.

⁸⁹ *Ibid.*, footnote 667.

⁹⁰ *Ibid.*, footnote 674.

⁹¹ *Ibid.*, footnote 687.

⁹² *Ibid.*, footnote 688.

⁹³ *Ibid.*, footnote 689.

⁹⁴ *Ibid.*, footnote 692.

regardless of the entrance used. In other words, nowhere does the Prosecutor pursue a logical line of argument that is organised around a departure point – a statement –, an explanation and an arrival point – the conclusion. Under these conditions, it is almost impossible for a reader, in this case the Defence, to test the Prosecutor's allegations as these allegations are not based on a genuine explanation. It is impossible to identify the exact items of evidence that the Prosecutor is using in support of a particular allegation. The amount of work that is necessary to analyse the DCC is therefore especially onerous.

36. In view of the above, the Chamber will be able to understand how much extra time it has taken the Defence, compared to the amount of time anticipated, to reconstruct the line of argument pursued by the Prosecutor for each of her allegations. The amount of time and energy being devoted by the Defence, which has limited resources, to the task of relating the items of evidence submitted by the Prosecutor to the specific allegations is considerable. This explains why, despite all of the efforts the Defence team has made to try and achieve its goals by 17 March 2014, it is nonetheless impossible for it to do so. This also explains why it is necessary to have more time, at least one week, and more space: the Defence would need one hundred additional pages.

37. These requests are due to the choices made by the Prosecutor and her mode of operation. They are not attributable to the Defence.

38. For these reasons, the Defence respectfully requests the Chamber to take into account the reality of the situation and grant it an additional week, and one hundred additional pages, so that it can submit observations that will enable it to “challenge the evidence presented by the Prosecutor” and “present evidence” so that it will be in a position to contest the charges in accordance with the letter – in particular, the provisions of article 61(6) – and the spirit of the Statute.

2. The request to extend the deadline

2.1 The Defence needs time to analyse a DCC which has been extensively redrafted and amended charges that are based on thousands of new documents, some of which were disclosed late, and to contest the charges presented by the Prosecutor; this constitutes a valid reason to request an extension of the time limit under regulation 35 of the Regulations of the Court

39. It is clear that, in the light of the amendments which the Prosecutor has made to her DCC, the Defence could not have been aware of the factual scope of the charges before it had knowledge of the content of the new DCC. Hence, it was never, in any way, “in a position to continue its preparations” as if it were simply a matter of working from the old DCC and “in light of the ongoing disclosure of evidence by the Prosecutor” as considered by the Single Judge in her decision of 10 January 2013.⁹⁵

40. In addition, the Prosecutor has used unfair methods in order to make it more difficult for the Defence to analyse her file, as demonstrated, for example, by the fragmented nature of the new DCC or the game of paper chase which she continues to play.

41. Furthermore, owing to the fact that the Prosecutor has continued to disclose new evidence since 13 January 2014, and continues to do so, the Defence is forced to incorporate the new items into the construction of its arguments and the drafting of its observations as and when the Prosecutor sends them to it.

42. The Statute is meant to ensure that the Defence has the necessary time both to analyse the new DCC in detail and to examine the way in which the Prosecutor uses the items at her disposal to construct an argument in relation to each charge, and to analyse the Prosecutor’s evidence.

⁹⁵ ICC-02/11-01/11-589, para. 12.

43. These are important issues as they relate to the evidence, the rights of the Defence and the fairness of the proceedings; the question here is whether the suspect will be able to have “adequate time and facilities for the preparation of the defence” (article 67).

2.2 The absence of any detriment to the Prosecutor

44. The requested deadline extensions will not be detrimental to the Prosecutor. Firstly, the Prosecutor had seven months to conduct her own investigations and present her own evidence, with two extra months granted to her by the Chamber in addition to the initial schedule. Secondly, the Prosecutor, whose task is to serve “the interests of justice”⁹⁶ and to “establish the truth”,⁹⁷ will benefit from the fact that a genuine dialogue could be initiated with the Defence, as the Defence will be in a position to present evidence to enlighten not only the Bench, but also the other parties, in the interests of justice.

3. The request for an extension to the page limit

3.1 The complexity of the case

45. As the Defence has already demonstrated (see *supra*), the case in question is particularly complex and it is important for the Defence to have enough time and pages to respond not only to each of the arguments presented by the Prosecutor but also to present its own arguments in a manner that is sufficiently detailed to show the Bench a complex and contrasting reality.

3.2 The new nature of the questions and the arguments presented to the Bench

46. The Defence has shown that the Prosecutor fundamentally changed both the legal and the factual basis of her DCC, which led to a fundamental change to the charges levied against President Gbagbo (see *supra*). The Defence must respond, *inter alia*, to the

⁹⁶ Article 53, regulation 31.

⁹⁷ Article 54.

allegations that are based on the new incidents, the allegations that relate to the previous incidents but which are based on the new items, and to a new legal argument.

47. It is important for the Defence to have the necessary space to respond in detail to these new items and to make use of the items that the Prosecutor continues to disclose to it. The Defence will be in a position to contest the evidence in order to “contest the charges” only if this condition is satisfied.

3.3 The number and variety of the arguments

48. The questions of fact and of law addressed by the Prosecutor are many and more numerous and more detailed than those set out in her previous DCC. Above all, the logic underlying these questions is different as the charges were fundamentally changed by the Prosecutor from one DCC to the next.⁹⁸

49. The Defence now knows that, despite all of its efforts, it will be impossible for it to respond, within the space of 300 pages, to all of the points addressed by the Prosecution in its DCC. It will be even more impossible to respond, within these three hundred pages, to the Prosecutor’s annexes 6 and 7, which form part of her arguments. Furthermore, the Defence requires space to be able to “present evidence” in accordance with the provisions of article 61(6).

50. An adequate response to the DCC must include arguments on each of the points addressed by the Prosecutor that present a problem on the merits or the method, the items enabling the Bench to better understand the facts, a critical analysis of the DCC, a legal reflection focusing in particular on the Prosecutor’s lack of explanation with respect to crimes against humanity and the lack of arguments dedicated to the constituent elements of the crimes, an analysis based on the failure to demonstrate the links between the charges and events, an examination of the content of the documents

⁹⁸ See ICC-02/11-01/11-598-Corr-Red.

presented by the Prosecutor in support of her arguments, an evaluation of the credibility of her witnesses, and a reflection on the overall weakness of the Prosecutor's evidence.

Conclusion

51. The Defence has done everything in its power to comply with the page limit of three hundred pages allowed by the Pre-Trial Chamber. Owing to the number of new items presented by the Prosecutor and the manner in which her DCC has been drafted, this is proving impossible. Taking into account the vital importance of the Defence observations in relation to the Prosecutor's evidence during the confirmation of charges stage and the nature of the arguments presented, the Defence respectfully requests the Chamber to accept its request and grant it an extension of one hundred pages.

FOR THESE REASONS, MAY IT PLEASE PRE-TRIAL CHAMBER I TO:

Having regard to articles 61 and 67 of the Statute and to regulations 35 and 37(2) of the Regulations of the Court,

- **Authorise** the Defence for President Gbagbo to file observations on the Prosecutor's evidence which exceed, by one hundred pages, the number of pages which the Pre-Trial Chamber allowed the Defence in its decision of 14 February 2014 (ICC-02/11-01/11-619), i.e. a maximum of four hundred pages including footnotes.
- **Extend** the time limit for the Defence to file its written observations on the Prosecutor's evidence by one week;
- **Set** the date of 24 March 2014 as the deadline for the Defence to file said document.

[signed]

Emmanuel Altit

Lead Counsel for Laurent Gbagbo

Dated this 12 March 2014,

At The Hague, The Netherlands