



Original: English

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

Date: 12 March 2015

TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Cuno Tarfusser
Judge Olga Herrera-Carbuccia

SITUATION IN THE REPUBLIC OF COTE D'IVOIRE

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

**Public redacted version
of filing ICC-02/11-01/11-785-Conf**

**Joint request of the Common Legal Representative of victims and the Prosecution
for an extension of time to file their submissions on the outstanding protocols**

Source: Office of Public Counsel for Victims
Office of the Prosecutor

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

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Other

I. PROCEDURAL BACKGROUND

1. On 4 November 2014, Trial Chamber I (the “Chamber”) held its first status conference, during which the Chamber encouraged the parties and participants to enter into discussions on the protocols to be used at trial.¹

2. On 4 December 2014, the Chamber held its second status conference, during which the Chamber sought the views of the parties and participants *inter alia* on the following protocols: i) Protocol concerning the disclosure of the identity of witnesses of the other party (the “Protocol on witness identities”); ii) Protocol concerning the handling of confidential information in the course of investigations (the “Protocol on confidential information”); iii) Protocol concerning contacts with witnesses of the opposing party (the “Protocol on contact with witnesses”); iv) Proposed mechanisms for exchange of information on individuals with dual status (the “Protocol on dual status witnesses”); v) Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses (the “Protocol on vulnerable witnesses”); and vi) Unified protocol on the practices used to prepare and familiarise witnesses for giving testimony (the “Familiarisation Protocol”) together with the witness preparation protocol (the “Witness preparation Protocol”) (hereafter referred to as “the Protocols”).²

3. On 18 December 2014, the Single Judge of Trial Chamber I directed the parties, the Legal Representative of Victims and the Victims and Witnesses Unit (the “VWU”) to conclude their discussions on the Protocols and to make any further submissions on the Protocol on witness identities, the Protocol on confidential information and the Protocol on contact with witnesses by 20 February 2015, and on the Protocol on

¹ See the transcript of the status conference held on 4 November 2014, No. ICC-02/11-01/11-T-25-CONF-ENG ET, p. 26, lines 3-16 (open session).

² See the transcript of the status conference held on 4 December 2014, No. ICC-02/11-01/11-T-27-CONF-ENG ET, pp. 17, 19, 30, 35 and 47 (open session).

dual status witnesses, the Protocol on vulnerable witnesses, the Familiarisation Protocol and the Witness Preparation Protocol by 27 February 2015.³

4. On 20 February 2015, the Prosecution,⁴ the Defence,⁵ and the Principal Counsel of the Office of Public Counsel for Victims,⁶ acting as Common Legal Representative of the victims authorised to participate in the case (the “LRV”),⁷ filed their submissions on the Protocol on witness identities, the Protocol on confidential information, the Protocol on inadvertent disclosure and the Protocol on contact with witnesses.

5. On 26 February 2015, the LRV and the Prosecution filed a joint submission on the Familiarisation Protocol.⁸ [REDACTED].⁹

6. Pursuant to regulation 23*bis* (2) of the Regulations of the Court, the present request is filed as confidential because it makes reference to discussions among parties and participants as well as to documents exchanged between them. A public redacted version of this request will be filed as soon as practicable.

II. JOINT REQUEST FOR EXTENSION OF TIME

7. Pursuant to regulation 35 of the Regulations of the Court, the LRV and the Prosecution request an extension of time until 6 March 2015 to file their submissions

³ See the “Order setting deadlines for the filing of submissions on outstanding protocols” (Trial Chamber I, Single Judge), No. ICC-02/11-01/11-739, 18 December 2014, para. 8.

⁴ See the “[REDACTED]”, No. ICC-02/11-01/11-777-Conf, 20 February 2015.

⁵ See the “[REDACTED]”, No. ICC-02/11-01/11-778-Conf, 20 February 2015.

⁶ See the “Submissions of the Common Legal Representative of victims pursuant to the order setting deadlines for the filing of submissions on outstanding protocols (ICC-02/11-01/11-739)”, No. ICC-02/11-01/11-776, 20 February 2015.

⁷ See the “Decision on Victims’ Participation and Victims’ Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-138, 4 June 2012, pp. 25-26; and the “Second decision on victims’ participation at the confirmation of charges hearing and in the related proceedings” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-384, 6 February 2013, pp. 22-23.

⁸ See the “Joint submission of the Prosecution and the Legal Representative of Victims on the proposed familiarisation protocol”, No. ICC-02/11-01/11-783, 26 February 2015.

⁹ [REDACTED].

on the Protocol on dual status witnesses and the Protocol on vulnerable witnesses. It is submitted that their request for extension of time could not have been filed earlier and that extending the deadline as requested is not likely to prevent the proceedings from being concluded within a reasonable time.

8. As stated by the Appeals Chamber, “[a] *cause is good* [within the meaning of regulation 35(2) of the Regulations of the Court], *if founded upon reasons associated with a person’s capacity to conform to the applicable procedural rule or regulation or the directions of the Court. Incapability to do so must be for sound reasons, such as would objectively provide justification for the inability of a party to comply with his/her obligations*”.¹⁰

9. In this regard, the LRV and the Prosecution submit that they have been prevented from complying with the deadline of 27 February 2015 set by the Chamber for objective reasons beyond their control and despite their best efforts.

10. Regarding the Protocol on vulnerable witnesses, on 16 January 2015 the LRV and the Prosecution [REDACTED]. The VWU [REDACTED] on 27 January 2015. Between 20 and 23 February 2015, the LRV, the Prosecution and the VWU [REDACTED]. The Defence [REDACTED] on 25 February 2015, at 18:04 h.

11. Regarding the Protocol on dual status witnesses, the LRV and the Prosecution [REDACTED] on 16 January 2015. The VWU [REDACTED] on the very same day, [REDACTED]. On 27 January 2015, the VWU [REDACTED], to which the LRV and the Prosecution [REDACTED] one day later. Between 19 and 23 February 2015, the LRV, the VWU and the Prosecution [REDACTED]. The Defence [REDACTED] on 26

¹⁰ See the “Reasons for the ‘Decision of the Appeals Chamber on the request of counsel to Mr. Thomas Lubanga Dyilo for modification of the time limit pursuant to regulation 35 of the Regulations of the Court of 7 February 2007’ issued on the 16 February 2007” (Appeals Chamber), No. ICC-01/04-01/06-834 OA8, 21 February 2007, para. 7; and the “Reasons for the ‘Decision on the ‘Application for Extension of Time Limits Pursuant to Regulation 35 of the Regulations of the Court to Allow the Defence to Submit its Observations on the Prosecutor’s Appeal regarding the Decision on Evidentiary Scope of the Confirmation Hearing and Preventative Relocation’” (Appeals Chamber), No. ICC-01/04-01/07-653 OA7, 27 June 2008, para. 5.

February 2015 at 15:29 h, *i.e.* one day before the deadline set by the Chamber for filing submissions on said protocol.

12. In these circumstances, the LRV and the Prosecution have made their best efforts to file their submissions to the Chamber by 27 February 2015, but they have been prevented from doing so because they have received [REDACTED] within 48 hours before the deadline for submissions.

13. In addition, the nature of the observations received from the Defence also justifies an extension of time for their consideration. [REDACTED]. They may therefore have a material impact on the protocols applied throughout the trial.

14. Moreover, the observations by the Defence [REDACTED]. In this regard, the LRV and the Prosecution are aware of the interest of the Chamber in harmonising the existing protocols.¹¹ As a consequence, they intend to analyse the observations of the Defence also from this perspective. The late submission of the observations has prevented them from doing so within the deadline set by the Chamber.

15. Finally, the LRV and the Prosecution acknowledge that “[a] *request for extension of time should, as a rule, be filed before the expiry of the time limit in question*”,¹² that “[a]n *application to extend a time limit pursuant to Regulation 35 of the Regulations should be filed, when possible, before the expiration of the deadline*”,¹³ and that “[s]uch *applications [for extension of time limits under regulation 35 of the Regulations of the Court] must be made sufficiently in advance so as to allow the Chamber to render a decision sufficiently prior to the lapse of the time limit*”.¹⁴ In this regard, the LRV and the

¹¹ See the transcript of the status conference held on 4 November 2014, No. ICC-02/11-01/11-T-25-CONF-ENG ET, p. 26, lines 5-7 (submissions made in open session); and the transcript of the status conference held on 4 December 2014, No. ICC-02/11-01/11-T-27-CONF-ENG ET, p. 28, lines 4-5 (submissions made in open session)

¹² See the “Decision on the request for an extension of time filed by the Legal Representatives of Victims V02” (Appeals Chamber), No. ICC-01/04-01/06-2975 A4 A5 A6, 7 February 2013, para. 4.

¹³ See the “Decision on the Request of the Legal Representatives of victim a/6000/11 pursuant to Regulation 35” (Trial Chamber IV), No. ICC-02/05-03/09-314, 29 March 2012, para. 9.

¹⁴ See the “Decision on the Defence Request for an Extension of Time” (Trial Chamber III), No. ICC-01/05-01/08-2192, 20 April 2012, para. 4.

Prosecution submit that the circumstances described in the preceding paragraphs have made it impossible for them to file earlier the current request.¹⁵

FOR THE FOREGOING REASONS, the LRV and the Prosecution respectfully request the Trial Chamber to extend the deadline to file their submissions on the Protocol on dual status witnesses and on the Protocol on vulnerable witnesses to 6 March 2015.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line drawn underneath the name.

Paolina Massidda
Principal Counsel

Dated this 12th day of March 2015

At The Hague, The Netherlands

¹⁵ The LRV and the Prosecution note that on 26 February 2015, at 17h47, they provided notice via email of their intention to request the Chamber an extension of time to file their submissions.