

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 24 March 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. LAURENT GBAGBO***

**URGENT
Public document**

**Decision on the OPCV's "Request for re-classification and extension of time to
file the final written submissions"**

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor

James Stewart, Deputy Prosecutor

Counsel for the Defence

Emmanuel Altit

Agathe Bahi Baroan

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Paolina Massidda

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Silvia Fernández de Gurmendi, Single Judge for Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “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 hereby issues the decision on the “Request for re-classification and extension of time to file the final written submissions” (the “Request”), submitted by the Office of Public Counsel for victims (the “OPCV”).²

1. On 3 June 2013, the Chamber issued, by majority, Judge Silvia Fernández de Gurmendi dissenting, the “Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute”.³ In this decision, the Chamber decided to adjourn the confirmation of charges hearing, requested the Prosecutor to consider providing further evidence or conducting further investigation with respect to all charges, and established a calendar for further proceedings.⁴ Specifically, the Chamber also provided for the right of the victims participating in the proceedings to file final written submissions.⁵

2. On 17 December 2013, the Chamber issued the “Decision establishing a calendar for further proceedings”, wherein it, *inter alia*, ordered the Prosecutor to disclose to the Defence by 13 January 2014 the evidence on which she intended to rely for the purposes of the confirmation of charges proceedings, and to submit, by the same date, *inter alia*, the amended document containing the charges and the amended list of evidence.⁶

¹ “*Décision portant désignation d’un juge unique*”, 16 March 2012, ICC-02/11-01/11-61.

² ICC-02/11-01/11-638..

³ ICC-02/11-01/11-432.

⁴ *Ibid.*, pp. 22-24.

⁵ *Ibid.*, p. 24.

⁶ ICC-02/11-01/11-576, p. 6.

3. On 13 January 2014, the Prosecutor filed the amended document containing the charges on which she seeks to bring Mr Gbagbo to trial (the “Amended DCC”),⁷ and the amended list of evidence.⁸

4. On 14 February 2014, the Chamber issued the “Decision on Defence requests related to the continuation of the confirmation proceedings”, whereby it, *inter alia*: (i) ordered the Defence to submit its observations on the Prosecutor’s evidence and to disclose to the Prosecutor any evidence it intended to present and to file its amended list of evidence by 17 March 2014; and (ii) decided that the Prosecutor and the OPCV on behalf of the victims participating in the proceedings may file final written submissions in response to the Defence by Monday 31 March 2014.⁹

5. On 17 March 2014, the Defence filed the “*Soumissions par la défense de ses observations écrites sur la preuve du Procureur et soumission par la défense de l’Inventaire amendé des éléments de preuve à décharge*”.¹⁰ While the cover filing is public, the substantive submissions of the Defence are contained in Annexes 1 to 3, which are classified as “confidential” and are not accessible to the OPCV (collectively, the “Defence Submissions”).¹¹ To date, no public redacted version has been filed of any of these annexes.

6. On 21 March 2014, the OPCV filed the Request, seeking: (i) that it be granted access to the confidential Defence Submissions; (ii) that the time limit

⁷ ICC-02/11-01/11-592-Anx1 and the identical, but footnoted ICC-02/11-01/11-592-Conf-Anx2-Corr2 (a public redacted version is also available, see ICC-02/11-01/11-592-Conf-Anx2-Corr2-Red).

⁸ ICC-02/11-01/11-592-Conf-Anx3.

⁹ ICC-02/11-01/11-619, p. 24.

¹⁰ ICC-02/11-01/11-637 and confidential Annexes 1-3. *Corrigenda* to Annexes 1 and 2 were filed on 19 March 2014, see ICC-02/11-01/11-637-Conf-Anx1-Corr and ICC-02/11-01/11-637-Conf-Anx2-Corr.

¹¹ The Single Judge notes that Annex 1 was originally filed as a public document, but was reclassified as “confidential” on 18 March 2014, following a request by the Defence, submitted by email.

for its final written submissions in response to the Defence Submissions be extended until at least two weeks after it is granted access thereto; and (iii) that the Chamber “[r]emind the Defence of its obligations towards victims admitted to participate in the proceedings”.¹² In the alternative, as concerns Annex 3, the OPCV requests to be granted access to a redacted version in accordance with guidelines issued by the Chamber for appropriate redactions to said document.¹³

7. In support of its request for access to the Defence Submissions, the OPCV emphasises that it participated in the oral phase of the confirmation of charges hearing, including the parts held in closed session, and thereby has knowledge of all matters discussed during the hearing.¹⁴ In addition, the OPCV submits that it has access to all evidence submitted by the Prosecutor, and to the confidential version of the Defence’s final written submissions filed after conclusion of the oral phase of the confirmation of charges hearing.¹⁵

8. The OPCV further submits that the Defence failure of providing notice to the OPCV of its submissions has the effect of depriving the victims participating in the proceedings of their right to respond.¹⁶

9. As concerns the requested extension of time to submit its final written observations, the OPCV submits that good cause exists as a result of the fact that it does not have access to the Defence Submissions.¹⁷ The OPCV specifically requests that it be permitted to file its final written submissions fourteen days following notification to it of the Defence Submissions, which

¹² Request, p. 12.

¹³ *Id.*

¹⁴ *Ibid.*, para. 14.

¹⁵ *Ibid.*, para. 15.

¹⁶ *Ibid.*, paras 18-21.

¹⁷ *Ibid.*, paras 28-29.

represents the amount of time originally allocated to it by the Chamber for this purpose.¹⁸

10. The Single Judge notes article 68(1) and (3) of the Rome Statute (the “Statute”) and regulations 23 *bis* and 35 of the Regulations of the Court.

11. The Single Judge notes that to date, one week after the filing of the Defence Submissions, the Defence has not submitted any version of its Submissions to be made available to the OPCV. As a result, the Defence is effectively preventing the OPCV to properly exercise its right to respond to the Defence Submissions. This is in particular so considering that half the time allocated to the OPCV to prepare its only submissions on the merits following the adjournment of the confirmation of charges hearing has already elapsed.

12. In these circumstances, the Single Judge considers that her intervention is needed in order to guarantee the proper exercise of the victims’ right to participate in the proceedings.

13. However, in the absence of any input of the Defence as to what specific information within the Defence Submissions, if any, must be withheld from the participating victims, the Single Judge is of the view that it is not appropriate that the confidential annexes are at present notified to the OPCV. Rather, the Single Judge considers it necessary that the Defence be ordered to file within an appropriately short time limit confidential redacted versions of its Submissions to be made available to the OPCV. The Single Judge specifies that such confidential redacted versions shall be filed in addition to the public redacted versions of the Defence Submissions, and shall contain only those redactions which the Defence deems necessary *vis-à-vis* the participating victims. In particular, the Single Judge emphasises that the confidential

¹⁸ *Ibid.*, para. 30.

redacted versions shall not contain redactions of references to confidential filings or evidence submitted by the Prosecutor of which the OPCV has been notified. Also, the Single Judge recalls that references to evidence in the Defence Amended List of Evidence (ICC-02/11-01/11-637-Conf-Anx3) shall not be redacted on the mere ground that the evidence itself is not accessible to the OPCV.¹⁹

14. Alternatively, if no redactions *vis-à-vis* the OPCV are justified with respect to any part of the Defence Submissions, the Defence is instructed to inform the Chamber immediately so that their notification to the OPCV can be ordered.

15. In addition, the Single Judge considers, as argued by the OPCV, that good cause is given for variation of the time limit for the OPCV to file its written submissions. However, the Single Judge considers that a shorter extension than the one requested by the OPCV is more appropriate, in order not to have to vary also the time limit for the final written submissions of the Defence and thereby cause further delay to the proceedings in the case. In this regard, the Single Judge notes that the OPCV itself makes reference to “the interest of victims to have finalisation of the confirmation of the charges phase concluded as soon as possible”.²⁰

16. Finally, the Single Judge reminds the Defence of its obligation to promptly provide notice to the OPCV of all its submissions in order to enable the exercise of the victims’ rights under article 68(3) of the Statute, unless specific reasons exist warranting the non-communication of certain submissions.

¹⁹ See also Pre-Trial Chamber I, “Decision on the OPCV’s ‘Requests to receive information and access documents for the effective participation of victims at the confirmation of charges hearing’”, 13 February 2013, ICC-02/11-01/11-400, para. 20.

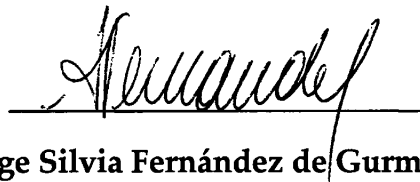
²⁰ Request, para. 32.

FOR THESE REASONS, THE SINGLE JUDGE

ORDERS the Defence to file confidential redacted versions of documents ICC-02/11-01/11-637-Conf-Anx1-Corr, ICC-02/11-01/11-637-Conf-Anx2-Corr and ICC-02/11-01/11-637-Conf-Anx3 to be notified to the OPCV, or inform the Chamber that no redactions are necessary, by Tuesday, 25 March 2014;

GRANTS the OPCV until Friday, 4 April 2014, to file final written submissions in response to the Defence.

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

A handwritten signature in black ink, appearing to read 'Silvia Fernández de Gurmendi', is written over a horizontal line.

Judge Silvia Fernández de Gurmendi

Single Judge

Dated this Monday, 24 March 2014

At The Hague, The Netherlands