



Original: English

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

Date: 13 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 document

Decision on the “Requête urgente aux fins de prorogation du délai donné par la Chambre le 14 février 2014 à la défense pour qu’elle dépose le 17 mars 2014 des observations écrites sur la preuve du Procureur et Requête urgente aux fins d’augmentation du nombre de pages autorisé en vue du dépôt par la défense de ses observations écrites sur la preuve du Procureur (Norme 37(1))”

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

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

Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”) hereby issues the decision on the *“Requête urgente aux fins de prorogation du délai donné par la Chambre le 14 février 2014 à la défense pour qu’elle dépose le 17 mars 2014 des observations écrites sur la preuve du Procureur et Requête urgente aux fins d’augmentation du nombre de pages autorisé en vue du dépôt par la défense de ses observations écrites sur la preuve du Procureur (Norme 37(1))”* (the “Request”).¹

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”.² 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.³ The calendar for the continuation of the confirmation proceedings has been subsequently amended on 17 December 2013.⁴

2. On 14 February 2014, the Chamber issued the “Decision on Defence requests related to the continuation of the confirmation proceedings” (the “Decision”).⁵ In the Decision, the Chamber, *inter alia*, and following the Defence “*Demande de prorogation des délais fixés par la Chambre préliminaire le 17 décembre 2013 afin de permettre à la défense de déposer des observations écrites sur la preuve du Procureur*”⁶ and “*Requête aux fins d’augmentation du nombre de pages autorisé en vue du dépôt par la défense d’observations écrites sur la preuve du*

¹ ICC-02/11-01/11-634.

² ICC-02/11-01/11-432.

³ *Ibid.*, pp. 22-24.

⁴ Pre-Trial Chamber I, “Decision establishing a calendar for further proceedings”, 17 December 2013, ICC-02/11-01/11-576, p. 6.

⁵ ICC-02/11-01/11-619.

⁶ ICC-02/11-01/11-603.

Procureur (Norme 37(1))”,⁷ extended to 17 March 2014 the time limit for the Defence to submit its observations on the Prosecutor’s evidence, to disclose to the Prosecutor the evidence it intends to present, if any, and to file its amended list of evidence, and granted the Defence up to 300 pages for its observations on the Prosecutor’s evidence.⁸

3. On 12 March 2014, the Defence filed the Request, seeking a further extension by 100 pages of the page limit for its observations on the Prosecutor’s evidence, and a further extension of time until 24 March 2014 to file the observations.⁹

4. The Defence submits that it is unable to respond precisely and in detail to the evidence of the Prosecutor by 17 March 2014 and within 300 pages.¹⁰ In the submission of the Defence, the reasons for this inability are: (i) the complexity of the case;¹¹ (ii) the amount of evidence disclosed by the Prosecutor between 5 December 2011 and 9 January 2014 and in particular the amount of evidence added by the Prosecutor to her list of evidence in January 2014;¹² (iii) the disclosure of evidence under article 67(2) of the Rome Statute (the “Statute”) and rule 77 of the Rules of Procedure and Evidence (the “Rules”) since 13 January 2014;¹³ (iv) the introduction of “*les nouveaux incidents, les nouveaux éléments apportés au soutien d’anciennes allégations et les nouveaux modes de responsabilité*” in the amended Document Containing the Charges (the “Amended DCC”),¹⁴ and (v) “*le choix qu’a fait le Procureur de procéder dans son DCC par renvois successifs et de construire un labyrinthe logique*”.¹⁵ On these

⁷ ICC-02/11-01/11-607.

⁸ ICC-02/11-01/11-619, p. 24.

⁹ Request, p. 17.

¹⁰ *Ibid.*, para. 7.

¹¹ *Ibid.*, paras 8-9. See also paras 48-50, referring to the multiplicity and variety of arguments.

¹² *Ibid.*, paras 10-14.

¹³ *Ibid.*, paras 15-17.

¹⁴ *Ibid.*, paras 18-27.

¹⁵ *Ibid.*, paras 28-35.

submissions, the Defence grounds the requested extension of time and page limits.¹⁶ The Defence also submits that the extension of time would not be prejudicial to the Prosecutor.¹⁷

5. The Chamber notes regulations 35 and 37 of the Regulations of the Court (the “Regulations”).

6. Regulation 35(2) of the Regulations provides that the Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard.

7. The Chamber notes that the present request for extension of time almost exclusively rests on submissions which have been previously made by the Defence¹⁸ and considered by the Chamber for the purpose of the Decision.¹⁹ In the view of the Chamber, such arguments cannot constitute good cause, within the meaning of regulation 35(2) of the Regulations, for variation of the time limit imposed by the Decision.

8. The only factor that the Defence presently puts forward which has not previously been raised before the Chamber is that disclosure of evidence by the Prosecutor under article 67(2) of the Statute and rule 77 of the Rules has continued since 13 January 2014, the time limit for the disclosure of incriminating evidence for the purpose of the confirmation of charges proceedings, as well as the filing of the Amended DCC and related documents. However, as the Chamber has already stated in the present case in an analogous situation, continued disclosure under article 67(2) of the Statute and rule 77 of the Rules after the time limit for disclosure of incriminating evidence is consistent with the continuous obligation of the

¹⁶ *Ibid.*, paras 38-43, 45-47.

¹⁷ *Ibid.*, para. 44.

¹⁸ See ICC-02/11-01/11-603, paras 20-50.

¹⁹ Decision, paras 23-24.

Prosecutor to identify and disclose to the Defence any evidence falling under these provisions.²⁰ The mere fact that disclosure under article 67(2) of the Statute and rule 77 of the Rules continues is by itself no reason for the Chamber to modify the calendar of further confirmation of charges proceedings. Considering also that the Defence has not put forward any specific argument as to why the particular disclosure of the Prosecutor should have an impact on the procedural calendar, the Chamber concludes that no good cause for variation of time limit has been shown.

9. As concerns the request for extension of the page limit for the Defence observations on the Prosecutor's evidence, the Chamber notes that it has previously granted the requested extension to 300 pages, in order to give to it an opportunity to address fully all relevant aspects that it intends to raise.²¹ For the same purpose, the Chamber is of the view that it is appropriate to accept the new estimation of the Defence that 400 pages, rather than 300, will be necessary for it to present its arguments. The Chamber takes this view also considering that no prejudice will arise to the interests of the Prosecutor or the participating victims, or to the proper conduct of the proceedings.

FOR THESE REASONS, THE CHAMBER

REJECTS the request for extension of time; and

GRANTS the Defence up to 400 pages for its observations on the Prosecutor's evidence.

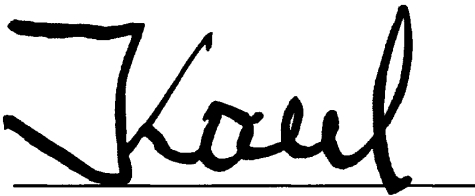
²⁰ Pre-Trial Chamber I, "Decision on the '*Requête de la Défense en report de l'audience de confirmation des charges prévue le 19 février 2013*'", 14 February 2013, ICC-02/11-01/11-403, paras 17-18.

²¹ Decision, para. 31.

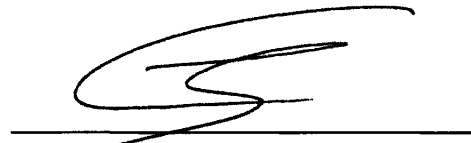
Done in both English and French, the English version being authoritative.



Judge Silvia Fernández de Gurmendi
Presiding Judge



Judge Hans-Peter Kaul



Judge Christine Van den Wyngaert

Dated this Thursday, 13 March 2014

At The Hague, The Netherlands