

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 6 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***

Public Redacted

Decision on the “Prosecution’s request pursuant to Regulation 35 for an extension of time to add one statement to its Amended List of Evidence for the purposes of the confirmation of charges and, if granted, to be permitted to apply redactions to this item of evidence pursuant to Rule 81(2)”

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 “Prosecution’s request pursuant to Regulation 35 for an extension of time to add one statement to its Amended List of Evidence for the purposes of the confirmation of charges and, if granted, to be permitted to apply redactions to this item of evidence pursuant to Rule 81(2)” (the “Request”).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” (the “Adjournment Decision”).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

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.⁵

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

² ICC-02/11-01/11-626-Conf, confidential annex 1, *ex parte*, only available to the Prosecutor, and confidential annex 2. A public redacted version is also available (ICC-02/11-01/11-626-Red).

³ ICC-02/11-01/11-432.

⁴ *Ibid.*, pp. 22-24.

⁵ 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”),⁶ and the amended list of evidence.⁷

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*, set the time limit for the Defence to submit observations on the Prosecutor’s evidence and to disclose to the Prosecutor any evidence it intends to present and to file its amended list of evidence by 17 March 2014.⁸

5. On 27 February 2014, the Prosecutor filed the Request. She seeks to rely on, for the purpose of further confirmation of charges proceedings, and to add to its amended list of evidence the statement of Witness P-414, which she obtained [REDACTED] 2014.⁹ With the aim of demonstrating that she was unable to obtain and disclose this evidence prior to the applicable time limit of 13 January 2014, she provides a chronology of [REDACTED].¹⁰

6. The Prosecutor submits that it is in the interests of justice at this stage of the proceedings to permit the addition of Witness P-414’s statement to the amended list of evidence.¹¹ In particular, the Prosecutor states that the statement is “highly compelling, probative and reliable” as the witness was in Abidjan at the time of the post-election violence and provides a description of her visit of the site of the shelling of the market in Abobo on 17 March 2011.¹²

⁶ 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).

⁷ ICC-02/11-01/11-592-Conf-Anx3.

⁸ ICC-02/11-01/11-619, p. 24.

⁹ Request, para. 1.

¹⁰ *Ibid.*, paras 5-9.

¹¹ *Ibid.*, para. 11; see also para. 14.

¹² *Ibid.*, para. 12.

7. At the same time, according to the Prosecutor, minimal prejudice at most would arise from the addition of the statement to the amended list of evidence,¹³ as the statement is “not complex or technical” and provides “further evidence on issues that were previously discussed and known to the Defence”.¹⁴ Moreover, the Prosecutor submits that because of the recent extension of time and page limits for the Defence to provide its observations on the Prosecutor’s evidence, the Defence will be able to review Witness P-414’s statement and respond to it.¹⁵

8. The Prosecutor also requests that prior to the disclosure of the statement of Witness P-414 as incriminating evidence, redactions of the identities of the investigators under rule 81(2) of the Rules of Procedure and Evidence (the “Rules”) are authorised by the Chamber.¹⁶

9. On 5 March 2014, the Defence responded to the Request.¹⁷ The Defence essentially submits that the Prosecutor should not be allowed to add to her amended list of evidence the statement of Witness P-414 because the delay in obtaining this evidence is attributable to the Prosecutor,¹⁸ and because granting such authorisation would result in prejudice to the Defence.¹⁹ In the alternative, the Defence objects to the extension of time to the Prosecutor to present requests for redactions to the statement of Witness P-414,²⁰ and finally, also to the proposed redactions.²¹

10. The Single Judge notes article 61 of the Rome Statute and rule 121 of the Rules.

¹³ *Ibid.*, para. 18.

¹⁴ *Ibid.*, para. 16.

¹⁵ *Ibid.*, para. 17.

¹⁶ *Ibid.*, paras 22-28.

¹⁷ ICC-02/11-01/11-631-Conf.

¹⁸ *Ibid.*, paras 20-29.

¹⁹ *Ibid.*, paras 32-37.

²⁰ *Ibid.*, paras 40-42.

²¹ *Ibid.*, paras 43-61.

11. The Single Judge observes that no provision in the legal texts of the Court explicitly regulates time limits for disclosure and presentation of the amended list of evidence following an adjournment of the confirmation hearing under article 61(7)(c)(ii) of the Statute. Thus, the organisation of further proceedings is a matter falling within the discretion of the Chamber.

12. More specifically, the Single Judge considers that, in a procedural situation such as the present, a Pre-Trial Chamber has discretion to accept new evidence obtained after the time limits set by the Chamber for completion of the disclosure of evidence and submission of amended lists of evidence. This discretion must be exercised with due regard to the object and purpose of the confirmation of charges proceedings, and the general procedural principles applicable at this stage. Rule 121(5) and (6) of the Rules, while not directly applicable, may provide guidance to the Chamber in the exercise of its discretion.

13. In the present circumstances, the Single Judge takes the view that it is not appropriate to allow the Prosecutor to rely for the purpose of further confirmation proceedings on the statement of Witness P-414.

14. The Single Judge considers that the statement of Witness P-414 cannot be viewed as indispensable for the Chamber in its determination whether charges should be confirmed. This is in particular so when the statement of Witness P-414 is considered in the context of the other evidence already included by the Prosecutor on her amended list of evidence. Indeed, the Prosecutor has already submitted other statements of witnesses who were “in Abidjan at the time of the post-election violence”, including witnesses who

were present at the site of the alleged shelling of a market in Abobo on 17 March 2011.²²

15. In the view of the Single Judge, it is therefore also unnecessary and disproportionate to expect the Defence, which has so far been preparing its submissions on the basis of the evidence disclosed by the Prosecutor by 13 January 2014, to analyse and respond also to this item of evidence by 17 March 2014.

FOR THESE REASONS, THE SINGLE JUDGE

REJECTS the Request.

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



Judge Silvia Fernández de Gurmendi

Single Judge

Dated this Thursday, 6 March 2014

At The Hague, The Netherlands

²² See Request, para. 13.