

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/11
Date: 19 February 2013

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

***Decision on the "Requête en prorogation du délai portant sur la divulgation de
preuves en vue de l'audience de confirmation des charges"***

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

The Office of the Prosecutor

Fatou Bensouda

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 & Deputy Registrar

Silvana Arbia

Didier Preira

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 Defence *"Requête en prorogation du délai portant sur la divulgation de preuves en vue de l'audience de confirmation des charges"* (the "Request").²

1. On 14 December 2012, the Chamber issued the "Decision on the date of the confirmation of charges hearing and proceedings leading thereto", whereby the Chamber, *inter alia*, set the commencement of the confirmation of charges hearing for 19 February 2013 and ordered the Defence to disclose to the Prosecutor by 1 February 2013 the evidence on which it intends to rely at the confirmation of charges hearing, and to file in the record of the case, by the same date, its list of evidence.³

2. On 1 February 2013, the Defence filed its list of evidence.⁴

3. On 18 February 2013, the Defence filed the Request, seeking leave to disclose two witness statements and one video and to add them to its list of evidence. In addition, the Defence requests that the Chamber attribute a pseudonym to one of the witnesses concerned.⁵

4. The Defence submits that it was not in position to disclose said items of evidence before the 1 February 2013 time limit. In particular, it states: (i) that the first witness statement was received on 31 January 2013 between 17.37 and 20.12 but the witness did not provide a proof of identity until 1 February 2013

¹ ICC-02/11-01/11-61.

² ICC-02/11-01/11-408-Conf and annexes.

³ ICC-02/11-01/11-325.

⁴ ICC-02/11-01/11-381 and annex.

⁵ Request, p. 13.

at 20.00 The Hague time; and (ii) that the second witness statement was prepared by the witness on 31 January 2013 but was not received at the counsel's office until 6 February 2013.⁶

5. The Defence further submits that these items of evidence appear "*fondamentales dans l'optique de l'audience de confirmation des charges*" in light of the evidence disclosed by the Prosecutor between 15 January 2013 and 13 February 2013. The Defence explains that the public disclosure of the name of one of the witnesses would put the witness life at risk and requests for this purpose that a pseudonym is attributed to that witness.⁷

6. In relation to the video, which also forms part of the Request, the Defence states that, "*pour des problèmes techniques*", only the transcript but not the video itself was disclosed on 1 February 2013.⁸

7. The Defence argues that its Request is well-founded in Mr Gbagbo's rights under articles 61(6) and 67 of the Rome Statute (the "Statute") and that no prejudice would arise to the Prosecutor as the evidence concerned amounts to only 26 pages and one video, giving the Prosecutor enough time to familiarise herself with it before the start of her presentation on the merits on 20 February 2013.

8. The Single Judge notes articles 61 and 67 of the Statute, rule 121 of the Rules of Procedure and Evidence (the "Rules") and regulation 35(2) of the Regulations of the Court.

9. At the outset, the Single Judge emphasises the importance of the procedural regime of rule 121 of the Rules, which imposes time limits for the disclosure of evidence and the filing of lists of evidence by the Prosecutor and

⁶ *Ibid.*, paras 22-27.

⁷ *Ibid.*, paras 29-32.

⁸ *Ibid.*, paras 33-36.

the Defence, in the interests of the other party and of the proper conduct of the confirmation of charges hearing. Rule 121 of the Rules thus necessarily, and in line with the object and purpose of confirmation of charges, means that the parties are in principle not allowed to rely on new evidence obtained after expiration of the applicable time limits. It is the responsibility of the parties to properly organise their preparation for the confirmation of charges hearing, including investigation.

10. The Single Judge is not persuaded by the argument of the Defence that the evidence in question could not be disclosed to the Prosecutor within the applicable time limit for reasons outside of the Defence's control. The Defence does not provide reasons why it was unable to obtain statements from the two witnesses at an earlier time; it merely explains that the statements were taken during, or as a result of, its mission to Côte d'Ivoire, which took place between 23 January 2013 and 1 February 2013, the time limit for finalisation of its disclosure and presentation of its list of evidence.⁹ However, the Single Judge considers that the late conducting of an investigative mission cannot provide a reason for the Defence not to comply with its procedural obligations. In this regard, the Single Judge recalls that the Chamber has previously held that the conclusion of tardy investigative activities could not constitute a pre-condition to holding the confirmation of charges hearing.¹⁰

11. In addition, the Single Judge notes that the Defence, despite having received the evidence between 31 January 2013 and 6 February 2013, has failed to seize the Chamber until late on 18 February 2013, one day before the commencement of the confirmation of charges hearing.

⁹ *Ibid.*, para. 23.

¹⁰ ICC-02/11-01/11-325, para. 21.

12. The Single Judge notes in this regard the argument of the Defence that the fundamental nature of the two witness statements became apparent only in light of the disclosure by the Prosecutor between 15 January 2013 and 13 February 2013. However, the Defence does not seek to explain why the relevance of the two witness statements became apparent only then.

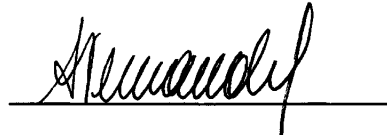
13. Turning to the request to disclose and add to the list of evidence a video, the Single Judge notes that the Defence provides no grounds to establish that the technical problems which prevented disclosure within the time limit did not occur as a fault of the Defence. In addition, the Single Judge notes also in this regard that the Defence could have brought the matter to the attention of the Chamber before 18 February 2013, but has failed to do so.

14. In light of the above, the Single Judge does not deem it necessary to entertain the Request any further. Consequently, it is also not necessary to address the request to assign a pseudonym to one of the witnesses in question.

FOR THESE REASONS, THE SINGLE JUDGE

REJECTS the Request.

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

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

Judge Silvia Fernández de Gurmendi

Single Judge

Dated this 19 February 2013

At The Hague, The Netherlands