

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 10 July 2012

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 document

Decision on the "Prosecution's request to redact the name of an investigator from the metadata of documents to be added to its amended List of Evidence", the "Prosecution's request pursuant to Regulation 35 for extension of time for disclosure and for variation of time limit to submit a request for redactions" and related issues

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

The Office of the Prosecutor
Fatou Bensouda, 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 & Deputy Registrar
Silvana Arbia, Registrar
Didier Preira, Deputy Registrar

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 of the International Criminal Court (“Chamber” and “Court” respectively), 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 to redact the name of an investigator from the metadata of documents to be added to its amended List of Evidence” (“First Request”)², the “Prosecution’s request pursuant to Regulation 35 for extension of time for disclosure and for variation of time limit to submit a request for redactions” (“Second Request”)³ and related issues.

1. On 5 December 2011, during the first appearance of Mr Gbagbo before the Court, Pre-Trial Chamber III scheduled the commencement of the confirmation of charges hearing for 18 June 2012.⁴

2. On 27 March 2012, the Single Judge issued the “First decision on the Prosecutor’s requests for redactions and other protective measures” (“First Decision on Redactions”).⁵

3. On 2 May 2012, the Single Judge issued the “Second decision on the Prosecutor’s requests for redactions” whereby taking into account the proximity of the confirmation of charges hearing, (i) she authorised the Prosecutor to redact the names of investigators in the metadata of the evidence collected after 19 April 2012⁶ and (ii) she ordered the Prosecutor to provide the Chamber with “proper reasoning for each individual redaction, in

¹ ICC-02/11-01/11-61.

² ICC-02/11-01/11-168.

³ ICC-02/11-01/11-169 and annexes.

⁴ ICC-02/11-01/11-T-1-ENG, p. 8.

⁵ ICC-02/11-01/11-74-Conf-Exp and confidential *ex parte* Annex. A public redacted version has also been issued (ICC-02/11-01/11-74-Red).

⁶ ICC-02/11-01/11-106, paras 17-18, pp. 8-9.

order for the Chamber upon review to either confirm the redactions or to order their withdrawal.”⁷

4. On 12 June 2012, the Single Judge issued the “Decision on the ‘*Requête de la Défense en report de l’audience de confirmation des charges prévue le 18 juin 2012*’”, whereby she, *inter alia*, (i) postponed the commencement of the confirmation of charges hearing to 13 August 2012; (ii) ordered the Prosecutor to file in the record of the case, by 13 July 2012, any amendment to the Document Containing the Charges and to the List of Evidence; and (iii) ordered the Prosecutor to submit, by 28 June 2012, any request for redactions under Rule 81 of the Rules of Procedure and Evidence (“Rules”).⁸

5. On 28 June 2012, the Prosecutor filed the First Request, wherein she “requests the Chamber to grant, pursuant to Rule 81(2), the Prosecution’s request for redactions to the metadata of the documents seized from the Presidential palace that are to be added to the Prosecution’s amended List of Evidence”.⁹ The request concerns 169 items of evidence which were obtained “from the Presidential Palace, which belonged to the former regime of Laurent Gbagbo”, and the Prosecutor seeks permission to redact the name of the investigator who seized the documents and whose identity appears in the metadata (chain of custody).¹⁰

6. Also on 28 June 2012, the Second Request was submitted to the Chamber, wherein the Prosecutor requests the Chamber to:

- a. grant, pursuant to Regulation 35 the extension of time for the disclosure of the documents submitted in Annexes 1 to 3;
- b. grant, pursuant to Rule 81(2), the Prosecution’s request for redactions to the metadata of the documents in Annexes 1 and 2, and the three photographs

⁷ ICC-02/11-01/11-106, para. 17.

⁸ ICC-02/11-01/11-152-Red, p. 12.

⁹ First Request, para. 6.

¹⁰ First Request, paras 2, 4.

found at ERN CIV-OTP-0024-0588, CIV-OTP-0024-0589 and CIV-OTP-0024-0591, as described in Annex 4.¹¹

An extension of time for disclosure is requested for “two brief documents and also an investigator’s report and related photographs relevant to the chain of custody of material currently on the Prosecution’s LoE”. The Prosecutor submits, in essence, that although this evidence was collected some months ago, and the Prosecutor was not originally intending to rely on it at the confirmation of charges hearing, she would now, based on a recent review of the evidence, intend to rely on it at the postponed hearing. The Prosecutor also submits that the Defence would not suffer prejudice if this request is granted. In the event that the Chamber grants this request, the Prosecutor requests to redact from the metadata of the documents: (i) the name of the investigator who obtained the two documents and the identity of the source that provided them; and (ii) the name of the investigator who took three of the concerned photographs.¹²

7. The Single Judge notes articles 61 and 67 of the Rome Statute (“Statute”) and rules 81 and 121 of the Rules.

(i) Request for extension of time

8. In relation to the request for the extension of time for disclosure, the Single Judge recalls the First Decision on Redactions:

[T]he Single Judge, recalling the Decision on Disclosure, notes that specific time limits for the submission of redaction requests to the Chamber were set in order for the Defence to have evidence disclosed as soon as possible and on an ongoing basis. Although the parties are under obligation to comply with such time limits, the latter do not have preclusive effect with respect to the parties’ ability to seek protective measures or to rely on evidence at the confirmation of charges hearing. Any consequences of non-compliance with time limits for disclosure are to be determined by the Chamber, within its powers and

¹¹ Second Request, para. 11.

¹² Second Request, paras 4-9.

obligations in relation to the disclosure process, as provided for by Article 61(3) of the Statute and Rule 121(2) of the Rules (footnote omitted).¹³

9. The Single Judge is of the view that in light of the postponement of the confirmation of charges hearing the Defence's ability to prepare adequately for the confirmation of charges hearing will not be impaired if the Prosecutor is permitted to rely on the evidence, which she has identified as relevant in the time period following the cut-off date for the confirmation of charges hearing as originally scheduled.

(ii) Request for redactions

10. Turning now to the requests for redactions presented in both the First and the Second Requests, the Single Judge makes reference to the relevant parts of the First Decision on Redactions, wherein the overall reasons for granting or rejecting requests for redactions have been provided.¹⁴ For the present decision, the Single Judge has adhered to the same approach.

11. The Single Judge has reviewed the individual redactions to the metadata proposed in the First Request (name of an investigator, category B.1),¹⁵ and in Annex 4 to the Second Request (names of investigators, category B.1, and name of a prosecution source, category B.3), and considers that they are justified and shall be granted.

(iii) Confirmation of redactions

12. The Single Judge also notes that the Prosecutor submitted justification for redaction which were applied to the metadata of a document pursuant to

¹³ First Decision on Redactions, para. 28.

¹⁴ First Decision on Redactions, paras 55-66, 82-92.

¹⁵ First Request, para. 4.

Rule 81(2) of the Rules.¹⁶ Such redactions are spelled out in ICC-02/11-01/11-110 and are limited to the name of the investigator who downloaded the item.

13. Having reviewed the justifications submitted by the Prosecutor to that effect, the Single Judge confirms that the abovementioned redactions applied comply with the conditions established by the Single Judge in her first decision on redactions.¹⁷

FOR THESE REASONS, THE SINGLE JUDGE

CONFIRMS the Prosecutor's redactions to the metadata of a document as spelled out in ICC-02/11-01/11-110;

DECIDES that the Prosecutor may rely at the confirmation of charges hearing on the items of evidence contained in ICC-02/11-01/11-169-Conf-Anx1, ICC-02/11-01/11-169-Conf-Anx2; ICC-02/11-01/11-169-Conf-Anx3, provided that they are properly disclosed to the Defence no later than 13 July 2012;

GRANTS the Prosecutor's requests for redactions;

¹⁶ Prosecution's justification for redaction to the metadata of a document pursuant to Rule 81(2), ICC-02/11-01/11-110.

¹⁷ ICC-02/11-01/11-74-Red, paras.84-92.

ORDERS the Prosecutor to disclose to the Defence the evidence for which redactions are authorised in the present decision no later than 13 July 2012;

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 10 July 2012

At The Hague, The Netherlands