

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/11-01/11
Date: 30 March 2012

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
Redacted Version**

With Annexes 1-4 – Confidential, *ex parte*, only available to the Prosecution

Prosecution's urgent request pursuant to Regulation 35 for variation of time limit to submit a request for redactions and Notice of information regarding the coming disclosure

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Counsel for the Defence

Mr Emmanuel Altit

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. On 24 January 2012, the Single Judge of Pre-Trial Chamber III ("Single Judge") issued the "Decision establishing a disclosure system and a calendar for disclosure" ("Disclosure Decision").¹ In the Disclosure Decision the Single Judge ruled, among others, that "any request for redactions to incriminating evidence collected between 25 October 2011 and 15 February 2012 shall be submitted to the Chamber no later than 9 March 2012".²
2. On 27 March 2012 and 29 March 2012, the Single Judge issued the "First decision on the Prosecutor's requests for redactions and other protective measures"³ ("First Decision") and its Addendum⁴ and ordered the Prosecution to disclose to the Defence the evidence dealt in its decision "with the exception of the statements of witnesses 54 and 108 and related documents, as soon as practicable and no later than 5 days upon notification of the present decision."⁵
3. Pursuant to Regulation 35 of the Regulations of the Court, the Prosecution hereby requests the Chamber for an extension of the time limit to file a request for redaction for 14 documents and concurrently provides the details of the redactions sought for each document. These 14 documents were collected before 25 October 2011 and between 25 October 2011 and 15 February 2012. Due to a back log on the implementation of the metadata for these documents, these documents were not included in the Prosecution's first and second redaction requests submitted on 13 February and 9 March 2012.⁶

¹ ICC-02/11-01/11-30.

² Disclosure Decision, para.52; dispositive, pp.29-30.

³ ICC-02/11-01/11-74-Conf-Exp + Conf-Exp-Anx.

⁴ ICC-02/11-01/11-75 +-Conf-Exp-Anx.

⁵ ICC-02/11-01/11-74-Conf-Exp, p.39.

⁶ ICC-02/11-01/11-38-Conf-Exp and ICC-02/11-01/11-53.

4. In addition, the Prosecution takes this opportunity to provide the Chamber with certain information regarding the upcoming disclosure to the Defence that will take place on 3 April 2012.
5. Pursuant to Regulation 23*bis* of the Regulation of the Court the Prosecution files the present submission and its annexes confidential, *ex parte*, only available to the Prosecution as knowledge by the Defence of the content of the filing and its annexes would defeat their purpose. A public redacted version of this submission is also being filed.

Urgent application to extend the time limit to file a request for redactions

6. The Prosecution previously informed the Chamber of the difficulties it encountered during the analysis and review of the entire Prosecution database for material collected up to 15 February 2012.⁷ Moreover, the Prosecution faced a new issue concerning some documents; on 26 March 2012, the Prosecution realised that a limited number of documents were missing some identifying metadata, which provides essential information for their identification and retrieval in the Ringtail system, and thus overlooked the documents.
7. The Prosecution submits that the oversight regarding the deadline for requesting redactions to incriminating information collected affects 14 documents: two interview transcripts of witness P-0044 [REDACTED]⁸, the seven annexes of Witness P-0011's interview,⁹ four open source videos and one document received from the national judicial authorities. With the exception of the two transcripts of the interview of P-0044, the documents for which redactions are sought are on average one to four pages and the videos do not exceed 14 minutes in length.

⁷ ICC-02/11-01/11-64.

⁸ [REDACTED].

⁹ The redaction request of 13 February 2012 included the transcribed statements of P-0011 interview (ICC-02/11-01/11-38-Conf-Exp-Anx3).

8. Regulation 35 of the Regulations of the Court provides that “[t]he Chamber may extend or reduce a time limit if good cause is shown”. The extent of the preparation required by an applicant,¹⁰ especially where a short extension of time was requested,¹¹ has previously been considered to constitute good cause for granting an extension of time.
9. The Prosecution respectfully submits that the Defence will not suffer any undue prejudice as a result of the extension of time, since the scope of the request is limited to the transcripts of the interview of witness P-0044, for which the Prosecution is seeking redactions to almost the entire content since they relate to investigative leads; the annexes of witness P-0011, which are an essential part of the witness interview for which the Chamber has already granted redactions; four open sources videos of short length; and one document from the national judicial authorities. Regarding the videos, the Prosecution has already requested the preparation of transcripts of their content to facilitate their eventual presentation into evidence, if need be, at Confirmation. These transcripts should be ready by Tuesday 3 April.
10. Moreover, the Prosecution submits this application on an urgent basis as it wishes to include the documents referred to above, if possible, in the coming disclosure to the Defence ordered by the Chamber in its First Decision on Tuesday 3 April 2012, assuming the Chamber grants the application, and thereby limit any prejudice to the Defence and any disclosure delay.

¹⁰ ICC-01-04-01/06-190 OA3, paras.4-5; ICC-01/04-01/07-653 OA7, 27 June 2008, para.5.

¹¹ ICC-01/04-01/06-562 OA3, para.5; ICC-01/04-01/06-190 OA3, paras.2, 4, 5; ICC-01/04-01/07-653 OA7, para.5.

Requests for redactions

11. The Prosecution hereby concurrently details its request for redactions pursuant to Rule 81(2) relating to the content and metadata of 9 documents and to the metadata only of the 5 remaining documents (their content may be disclosed in unredacted form).

12. Consistent with prior applications for redaction and the First Decision, the Prosecution seeks authorisation to redact (a) the identity of all Prosecution staff members mentioned in the relevant documents; (b) the date (day and month only) and location of interviews; and (c) any information identifying Prosecution sources (including investigative leads). These redactions are sought pursuant to Rule 81(2) to protect further and ongoing investigations. Revealing to the Defence any of the above information is likely to impact on the Prosecution's ability to conduct its investigations, as it may unduly attract attention to the movement of Prosecution staff and by extension to (potential) witnesses and their security.¹² The redactions ensure that the Prosecution can continue to use during its investigations the limited number of investigators, translators, sources or locations of interviews that it currently has at its disposal without any need to replace them, which would have negative implications both on the expeditious conduct of its investigations, as well as on the resources required to conduct such investigations.

13. The Prosecution submits that the redactions sought pursuant to Rule 81(2) would not result in unfairness to the suspect at the confirmation hearing, since they do not relate to information that is relevant for the preparation of the Defence case. Moreover, the Prosecution will request to lift these redactions when its investigation is at an advanced stage.

¹² Although these redactions are sought pursuant to Rule 81(2), they also have security implications for victims and witnesses and they can therefore equally be justified under Rule 81(4).

14. The annexes to this filing consist of four batches of documents. Annex 1 contains the interview transcripts of P-0044 and Annex 2 includes the annexes of P-0011. Annex 3 and 4 relate to the open source videos and a document from the national judicial authorities respectively. Each annex includes a table¹³ that identifies the exact redactions requested to the text of the documents as well as to its metadata and provides the factual basis for each individual redaction. By reference to the categories referred to above, each table also provides the legal basis of each redaction. In addition, each annex includes copies of the relevant documents with highlighted text for which redactions are requested. Consistent with the Prosecution's general practice, portions highlighted in blue reflect redactions that are based on Rule 81(2).

Notice of information regarding the coming disclosure

15. The Prosecution takes this opportunity to inform the Chamber about two specific issues regarding the coming disclosure on 3 April 2012.
16. First, the Prosecution informs that Chamber that one document which has been included in the second redaction request¹⁴ has been re-assessed and considered to be potentially of an exculpatory nature. The Prosecution therefore informs the Chamber and Defence that this document will be disclosed as such on Tuesday 3 April 2012 with the redactions as granted by the Chamber.
17. [REDACTED].¹⁵ [REDACTED]¹⁶ [REDACTED].
18. [REDACTED].

¹³ Disclosure Decision, para.55.

¹⁴ ICC-02/11-01/11-53-Conf-Exp-Anx8: CIV-OTP-0013-0146.

¹⁵ [REDACTED].

¹⁶ [REDACTED].

Conclusion

19. For the reasons set out above, the Prosecution requests the Chamber to:

- a. grant, pursuant to Regulation 35, the extension of time for the submission of the Prosecution's additional request for redaction of the 14 documents; and
- b. grant, pursuant to Regulation 81(2), the Prosecution's request for redactions.



Luis Moreno-Ocampo, Prosecutor

Dated this 30th day of March 2012

At The Hague, The Netherlands