



Original: English

No.: ICC-02/11-02/11
Date: 24 September 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. CHARLES BLÉ GOUDÉ***

Public

**Decision on OPCV requests in relation to the Defence disclosure and list of
evidence**

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

Nicholas Kaufman

Legal Representatives of Victims

Legal Representatives of 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

Others

Emmanuel Altit

Agathe Bahi Baroan

REGISTRY

Registrar

Herman von Hebel

Detention Section

Victims and Witnesses Unit

Others

**Victims Participation and Reparations
Section**

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 issues the following decision on the Office of Public Counsel for victims’ (the “OPCV”) requests presented in the “Submissions of the Common Legal Representative of Victims on the Notice of Alibi (ICC-02/11-02/11-146) and the Defence Communication of Evidence (ICC-02/11-02/11-152 and ICC-02/11-02/11-153)” (the “Submissions”), filed on 18 September 2014.²

1. On 11 June and 1 August 2014, the Single Judge admitted victims to participate in the proceedings, appointed the OPCV as their common legal representative, and granted the OPCV specific rights with respect to the confirmation of charges hearing.³
2. On 9 September 2014, the Defence filed the “Notice of Alibi”,⁴ to which the Prosecutor responded on 10 September 2014.⁵ Both documents were initially notified only to the Prosecutor and the Defence, and were reclassified as “public” on 12 September 2014 upon instruction of the Chamber.
3. On 11 and 12 September 2014, the Defence communicated to the Chamber the evidence disclosed to the Prosecutor for the purposes of the

¹ “*Décision portant désignation d’un juge unique*”, 16 March 2012, ICC-02/11-02/11-9.

² ICC-02/11-02/11-155.

³ “Decision on victims’ participation in the pre-trial proceedings and related issues”, ICC-02/11-02/11-83; “Second Decision on victims’ participation in the pre-trial proceedings and related issues”, ICC-02/11-02/11-111 and confidential Annex.

⁴ ICC-02/11-02/11-146.

⁵ ICC-02/11-02/11-148.

confirmation of charges hearing.⁶ On 12 September 2014, the Defence also filed its list of evidence.⁷

4. On 18 September 2014, the OPCV filed the Submissions. It argues that the Notice of Alibi should have also been communicated to it and requests the Chamber to “direct the Defence to notify her of future submissions, if any, concerning grounds excluding criminal responsibility”.⁸

5. Further, the OPCV requests the Chamber to order the notification to it of document ICC-02/11-02/11-153-Conf-AnxA and the Defence list of evidence.⁹ In support of this request, the OPCV argues: (i) that the Defence submission that the annexes should not be released to the public does not mean that they cannot be notified to the OPCV; (ii) that according to the Defence the annexes also contain open source material; (iii) that without access to the Defence list of evidence it will not be in a position to request access to items of evidence relied upon by the Defence.¹⁰

6. The OPCV also refers to its communication with the Defence, stating that the Defence has indicated that it does not object to the notification of document ICC-02/11-02/11-153-Conf-AnxA to the OPCV, as well as of the Defence list of evidence as concerns category (i).¹¹ However, the OPCV requests access to the entirety of said document, submitting with respect to category (ii) that “pursuant to an agreement with the Prosecution, the Common Legal Representative has access to the evidence disclosed to the Defence in the present case” and with respect to category (iii) that it “has

⁶ ICC-02/11-02/11-152 and confidential Annex A, ICC-02/11-02/11-153 and confidential Annex A.

⁷ ICC-02/11-02/11-153-Conf-AnxB.

⁸ Submissions, para. 14, see also paras 15-23.

⁹ *Ibid.*, para. 24.

¹⁰ *Ibid.*, paras 25-30.

¹¹ *Ibid.*, para. 32; see also ICC-02/11-02/11-153, para. 4.

gained access to some materials submitted by the Defence in the *Gbagbo* case”.¹²

7. Finally, the OPCV requests the Chamber to “order the notification to the Common Legal Representative of the document and/or material listed in Annexes A and B identified as “open source”, as well as of the evidence listed in Annex B category (ii), and of the evidence listed in Annex B category (iii) to which she has already been granted access in the *Gbagbo* case”.¹³

8. On 22 September 2014, the Defence in the case of *The Prosecutor v. Laurent Gbagbo* filed the “*Demande d’intervention en vertu de la Règle 103 du Règlement de Procédure et de Preuve, portant sur la préservation du caractère confidentiel d’éléments de preuve émanant de la Défense du Président Gbagbo*”, requesting the Chamber to accept its intervention as *amicus curiae*, under rule 103 of the Rules, and take into account its submissions related to whether the evidence originally disclosed by it to the Prosecutor, disclosed by the Prosecutor to the Defence in the present case, and finally relied upon by the latter, can be made available to the OPCV.¹⁴ On 23 September 2014, the OPCV requested leave to respond to this application.¹⁵

9. The Single Judge notes article 68(3) of the Rome Statute (the “Statute”), rule 103 of the Rules of Procedure and Evidence (the “Rules”), and regulation 23 *bis* of the Regulations of the Court.

10. As regards the Defence “Notice of Alibi”, the Single Judge agrees with the OPCV in principle that this type of notification should also be notified to the victims participating in the proceedings, but notes that no identifiable

¹² *Ibid.*, paras 33-34.

¹³ *Ibid.*, p. 14.

¹⁴ ICC-02/11-02/11-163-Conf. A public redacted version is also available, see ICC-02/11-02/11-163-Red.

¹⁵ ICC-02/11-02/11-166.

prejudice occurred to the OPCV considering that it was notified of the documents in question on 12 September 2014. No order to the Defence of the type proposed by the OPCV is therefore necessary.

11. Concerning the Defence list of evidence, the Single Judge notes that according to the Defence, this document is registered as “confidential” because “it relates to evidence disclosed *inter partes* and should not be released to the public”.¹⁶ The Single Judge agrees with the OPCV that this in itself does not constitute a reason that the list of evidence cannot be made available to the OPCV.

12. Accordingly, the Single Judge deems it appropriate to require the Defence, with respect to the evidence collected in the course of its own investigations, and the Prosecutor, with respect to the evidence disclosed to the Defence under article 67(2) of the Statute and rule 77 of the Rules, to provide submissions as to whether the list of evidence can be notified to the OPCV as such, or whether certain redactions are necessary.

13. Finally, as concerns the access of the OPCV to the evidence on the Defence list of evidence, it appears that, despite a previous order to this effect,¹⁷ the OPCV currently does not have access to the public evidence on the Defence list of evidence. As a result, a specific order to the Registrar is warranted.

14. The Single Judge also notes that it does not appear that the Defence has, when communicating its evidence to the Chamber, assessed the question whether access to confidential evidence can be provided to the OPCV.

¹⁶ ICC-02/11-02/11-153, para. 3.

¹⁷ Pre-Trial Chamber I, “Decision on victims’ participation in the pre-trial proceedings and related issues”, ICC-02/11-02/11-83, p. 21; Pre-Trial Chamber I, “Second Decision on victims’ participation in the pre-trial proceedings and related issues”, ICC-02/11-02/11-111, p. 15.

Consequently, the Single Judge deems it appropriate to order that this review, which concerns only 29 items of evidence, be undertaken now.

15. Likewise, and in particular considering the fact that all evidence communicated to the Chamber by the Prosecutor has also been provided to the OPCV, it is appropriate to obtain submissions from the Prosecutor as to whether access to the evidence disclosed by her to the Defence under article 67(2) of the Statute and rule 77 of the Rules, which is now relied upon by the Defence, can be provided to the OPCV.

16. As concerns the Defence of Laurent Gbagbo's request under rule 103 of the Rules, the Single Judge is not satisfied that the proposed submissions are desirable for the proper determination of the matter, and instead considers that it is primarily for the Prosecutor to assess the appropriate level of classification of evidence it discloses to the Defence, and to take or request appropriate protective measures, if necessary, in light of her statutory duty to ensure confidentiality of information or protection of individuals if circumstances so require. Accordingly, it is sufficient to receive the Prosecutor's submissions on the matter. It is also not necessary to rule on the OPCV request for leave to respond to the Defence request.

17. Following the receipt of the parties' submissions, the Single Judge will make further orders as necessary.

FOR THESE REASONS, THE SINGLE JUDGE

ORDERS the Defence to file in the record of the case, by 25 September 2014, submissions as to:

- whether any redactions are needed to section (i) of its list of evidence prior to its notification to the OPCV; and
- whether access to all or certain confidential items of evidence listed in section (i) of its list of evidence can be provided to the OPCV;

ORDERS the Prosecutor to file in the record of the case, by 25 September 2014, submissions as to:

- whether any redactions are needed to sections (ii) and (iii) of the Defence list of evidence prior to its notification to the OPCV; and
- whether access to all or certain confidential items of evidence listed in sections (ii) and (iii) of the Defence list of evidence can be provided to the OPCV;

ORDERS the Registrar to provide the OPCV with access to all public items of evidence listed on the Defence list of evidence (ICC-02/11-02/11-153-Conf-AnxB); and

REJECTS the Defence of Laurent Gbagbo's request to submit observations pursuant to rule 103(1) of the Rules.

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



Judge Silvia Fernández de Gurmendi

Single Judge

Dated this 24 September 2014

At The Hague, The Netherlands