

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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

Date: 27 March 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 redacted version**

**First decision on the Prosecutor's requests for redactions and other protective  
measures**

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

**The Office of the Prosecutor**  
Luis Moreno-Ocampo, Prosecutor  
Fatou Bensouda, Deputy Prosecutor

**Counsel for the Defence**  
Emmanuel Altit

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

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

**States Representatives**

**Amicus Curiae**

## **REGISTRY**

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**Registrar & Deputy Registrar**  
Silvana Arbia, Registrar  
Didier Preira, Deputy Registrar

**Defence Support Section**

**Victims and Witnesses Unit**  
Ms Maria Luisa Martinod-Jacome

**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,<sup>1</sup> hereby issues the first decision on the Prosecutor’s requests for redactions and other protective measures.

## I. Procedural history and parties’ submissions

### A. Procedural history

1. On 5 December 2011, the first appearance of Mr Laurent Gbagbo was held before the Court. During the hearing the Chamber scheduled the commencement of the confirmation of charges hearing for 18 June 2012.<sup>2</sup>

2. On 12 December 2011, the Prosecutor submitted the “Situation Threat and Risk Assessment” for the Situation in the Republic of Côte d’Ivoire (“STRA”) which was prepared with the Victims and Witnesses Unit (“VWU”).<sup>3</sup> The STRA was thereafter updated by the Prosecutor and the VWU and re-submitted on 20 March 2012.<sup>4</sup>

3. On 24 January 2012, the Single Judge issued the “Decision establishing a disclosure system and a calendar for disclosure” (“Decision on Disclosure”) in order to ensure, in compliance with Rule 121(2)(b) of the Rules of Procedure and Evidence (“Rules”), that disclosure takes place under satisfactory conditions while safeguarding the interests at stake. To that end, the Decision on Disclosure required that requests for redactions of evidence on which the Prosecutor intends

<sup>1</sup> ICC-02/11-01/11-61.

<sup>2</sup> ICC-02/11-01/11-T-1-ENG, p. 8.

<sup>3</sup> ICC-02/11-01/11-16-US-Exp-Anx1.

<sup>4</sup> ICC-02/11-01/11-HNE-1-Conf-Exp.

to rely at the confirmation of charges hearing should be submitted no later than (i) 10 February 2012 in relation to evidence collected before 25 October 2011 and (ii) 9 March 2012 in relation to evidence collected between 25 October 2011 and 15 February 2012.<sup>5</sup> The Single Judge also ordered that *ex parte* applications for protective measures be made no later than 5 March 2012.<sup>6</sup>

4. On 10 February 2012, the Prosecutor submitted the "First Prosecution's request for redactions pursuant to Rule 81(2) and Rule 81(4) and update on other protective measures" including 11 batches of documents ("First Request for Redactions").<sup>7</sup>

5. On 20 February 2012, the Defence filed the "Observations de la défense sur la requête du Procureur aux fins de faire avaliser par la Chambre des expurgations proposées en vertu des Règles 81(2) et 81(4) du Règlement de procédure et observations de sur la « mise à jour d'autres mesures de protection »" ("First Defence Observations").<sup>8</sup>

6. On 5 March 2012, the Prosecutor submitted the *ex parte* "Prosecution's request for protective measures" ("Request for Protective Measures").<sup>9</sup>

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<sup>5</sup> ICC-02/11-01/11-30, p. 29 and 30.

<sup>6</sup> ICC-02/11-01/11-30, p. 30.

<sup>7</sup> ICC-02/11-01/11-38-Conf-Exp and its confidential *ex parte* annexes. On 22 March 2012, the Prosecutor filed a corrigendum in relation to his requests for redactions to annexes 4 and 10 (ICC-02/11-01/11-70-Conf-Exp) and on 23 March 2012 a public redacted version thereof (ICC-02/11-01/11-70-Red).

<sup>8</sup> ICC-02/11-01/11-44.

<sup>9</sup> ICC-02/11-01/11-48-Conf-Exp. On 6 March 2012, the Prosecutor filed a corrigendum (ICC-02/11-01/11-48-Conf-Exp-Corr) and a public redacted version thereof (ICC-02/11-01/11-48-Conf-Corr-Red).

7. On 6 March 2012, the Single Judge issued the "Decision on the Protocols concerning the disclosure of the identity of witnesses of the other party and the handling of confidential information in the course of investigations."<sup>10</sup>

8. On 9 March 2012, the Prosecutor submitted the "Second Prosecution's request for redactions pursuant to Rule 81(2) and Rule 81(4) and disclosure of identity of witnesses"<sup>11</sup> (Second Request for Redactions").

9. On 15 March 2012, the Defence filed the "Observations de la défense sur la requête du Procureur aux fins de faire avaliser par la Chambre des expurgations proposes en vertu des Règle 81(2) et 81(4) du Règlement de procédure et observations sur la divulgation de l'identité des témoins." ("Second Defence Observations")<sup>12</sup>

10. On 16 March 2012, the Prosecutor submitted the "Prosecution's request pursuant to Regulation 35 for variation of time limit to disclose incriminating evidence".<sup>13</sup>

11. On 16 March 2012, the Prosecutor filed the "Prosecution's request pursuant to Regulation 35 for variation of time limit to submit request for redactions and Prosecution's additional request for redactions to incriminatory evidence."<sup>14</sup>

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<sup>10</sup> ICC-02/11-01/11-49.

<sup>11</sup> ICC-02/11-01/11-49-Conf-Exp and its confidential *ex parte* annexes. On 22 March 2012, the Prosecutor filed a corrigendum in relation to his requests for redactions to annexes 3 and 5 (ICC-02/11-01/11-71-Conf-Exp) and on 23 March 2012 the public redacted version thereof (ICC-02/11-01/11-71-Red).

<sup>12</sup> ICC-02/01-01/11-58.

<sup>13</sup> ICC-02/11-01/11-63.

<sup>14</sup> ICC-02/01-01/11-64.

12. On 20 March 2012, an *ex parte* hearing<sup>15</sup> with the Prosecutor and the VWU was held before the Single Judge, during which clarifications and update on witnesses' situations were submitted.<sup>16</sup>

### *B. Parties' submissions*

#### (i) The Prosecutor's requests

##### *a) First and Second Requests for Redactions*

13. The First Request for Redactions seeks authorisation to redact, pursuant to Rule 81(2) of the Rules: (i) the identity of all Prosecution staff members mentioned in the relevant documents; (ii) the identity of translators and interpreters; (iii) the date and location of interviews; and (iv) any information identifying Prosecution sources. The Prosecutor contends that the redactions sought do not relate to information that is relevant for the preparation of the Defence case and that revealing such information is likely to have implications on its resources and ability to conduct the investigations expeditiously.<sup>17</sup>

14. The Prosecutor also seeks authorisation to redact, pursuant to Rule 81(4) of the Rules: (i) identifying information of third parties at risk on account of the activities of the Court; (ii) identifying information of family members of any witnesses; and (iii) information relevant to locate low-profile witnesses as it might put their family at risk, submitting that it would not have any impact on the fairness of the proceedings.<sup>18</sup>

15. The Prosecutor further requests the redaction of the metadata of 149 documents in relation to (i) the identity of Prosecution staff members; and (ii)

<sup>15</sup> ICC-02/01-01/11-65 and its confidential *ex parte* annex.

<sup>16</sup> ICC-02/11-01/11-T-5-CONF-EXP-ENG.

<sup>17</sup> First Request for Redactions, para. 6; Second Request for Redactions, para. 5.

<sup>18</sup> First Request for Redactions, para. 7; Second Request for Redactions, para. 6.

information relating to the date of interviews,<sup>19</sup> as well as the lifting of other redactions, subject to the adoption by the Chamber of a protocol regulating the use of confidential information during investigations.<sup>20</sup>

*b) Request for Protective Measures*

16. The Request for Protective Measures seeks, pursuant to Article 68(1) of the Rome Statute ("Statute") and Rule 81(4) of the Rules, a delay until 16 May 2012 for the disclosure of statements of witnesses 54 and 108.<sup>21</sup> In addition, pursuant to Article 68(5) of the Statute and Rule 81(5) of the Rules, the Prosecutor requests to withhold the identity and statements of witnesses 47 and 49 and instead to submit anonymous summaries.<sup>22</sup> At the *ex parte* hearing held on 20 March 2012, the Prosecutor submitted further information on the particular situation of each of these witnesses.

17. The Prosecutor contends that these protective measures do not cause any undue prejudice to the Defence since the evidence of witnesses 47, 49, 54 and 108 is merely used to corroborate other evidence that will be disclosed to the Defence at an earlier stage.<sup>23</sup>

*c) Request for variation of time limit to disclose incriminating evidence*

18. The Prosecutor informs the Chamber that two items – an open source video recording and a written transcript of a previously disclosed recording, which were collected between 25 October 2011 and 24 January 2012 – were not disclosed to the Defence in compliance with the Disclosure Decision due to an

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<sup>19</sup> First Request for Redactions, para. 8; Second Request for Redactions, para. 7.

<sup>20</sup> First Request for Redactions, paras 10-11.

<sup>21</sup> Request for Protective Measures, paras 2, 5-12, 20.

<sup>22</sup> *Ibid.*, paras. 3, 13-19, 20.

<sup>23</sup> *Ibid.*, paras. 12, 19.

oversight by the Prosecutor in the review of his database.<sup>24</sup> Accordingly, he requests an extension of time for the disclosure of the items of evidence in question.<sup>25</sup>

*d) Request for variation of time limit to submit requests for redactions*

19. The Prosecutor submits that due to an oversight from his Office, 15 documents were not included in the Second Request for Redactions. The Prosecutor explains this oversight in light of the fact that his Office undertook the review of its entire database up to 15 February 2012. Such review comprised more than 1,500 documents.<sup>26</sup>

20. The Prosecutor appended to his requests for a variation of time limit his actual requests for redactions to the 15 omitted documents.

*(ii) The Defence Observations*

21. The Defence opposes the proposed redactions as being requested on a systematic and not on a case-by-case basis.<sup>27</sup> The Defence submits that the First Request for Redactions was filed after the deadline<sup>28</sup> and that it had not been duly informed of the filing of the Requests for Redactions and of their underlying legal and factual basis, in accordance with the Decision on Disclosure.<sup>29</sup>

22. In particular, the Defence contends that any redaction of a Prosecution staff member's identity, based on Rule 81(2) of the Rules, should be objectively

<sup>24</sup> ICC-02/11-01/11-63, paras 3-5.

<sup>25</sup> ICC-02/11-01/11-63, para. 8.

<sup>26</sup> ICC-02/11-01/11-64, paras 2-4.

<sup>27</sup> First Defence Observations, p. 19; Second Defence Observations, p.19.

<sup>28</sup> First Defence Observations, pp. 17-18.

<sup>29</sup> First Defence Observations, pp. 4-6; Second Defence Observations, pp. 4-5.



justified and not systematic, since the use of anonymous prosecutors violates its right to a fair trial. It argues that the identification of staff members present during the interviews is a key guarantee of procedural propriety in the taking of the statements. Less intrusive alternative measures should have been sought and the logistical reasons given by the Prosecutor should be rejected.<sup>30</sup>

23. For the same reasons, the Defence submits that an unrestricted redaction of key elements such as the identifying information of translators, interpreters<sup>31</sup> and Prosecutor sources,<sup>32</sup> as well as the date and location of interviews,<sup>33</sup> would be prejudicial to their own investigations.

24. The Defence equally opposes the systematic redaction, based on Rule 81(4) of the Rules, of identifying information of third parties at risk,<sup>34</sup> of family members of any witnesses<sup>35</sup> and of information relevant to locate low-profile witnesses,<sup>36</sup> as the risk has to be objectively justified on a case-by-case basis, balancing the various interests at stake.<sup>37</sup>

## II. Applicable law

25. The Single Judge notes Articles 54, 57(3), 61, 67 and 68 of the Statute and Rules 15, 76, 77, 81 and 121 of the Rules.

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<sup>30</sup> First Defence Observations, pp. 6-11; Second Defence Observations, pp. 6-12.

<sup>31</sup> First Defence Observations, pp. 11-12; Second Defence Observations, pp. 12-13.

<sup>32</sup> First Defence Observations, pp. 13-14; Second Defence Observations, pp. 14-15.

<sup>33</sup> First Defence Observations, pp. 12-13; Second Defence Observations, pp. 13-14.

<sup>34</sup> First Defence Observations, pp. 15-16; Second Defence Observations, pp. 16-17.

<sup>35</sup> First Defence Observations, pp. 16-17; Second Defence Observations, pp. 17-18.

<sup>36</sup> First Defence Observations, p. 17.

<sup>37</sup> First Defence Observations, pp. 15-17; Second Defence Observations, pp. 16-18.

### III. Analysis and conclusions of the Single Judge

#### *A. Issues of compliance by the Prosecutor with the time limits established in the Decision on Disclosure*

26. In its response to the First Request for Redactions, the Defence notes that although dated 10 February 2012, the First Request for Redactions was notified to the Defence only on 13 February 2012, and appears to have been registered in the record of the case on that same day.<sup>38</sup> The Defence therefore prays that the First Request for Redactions be rejected as out of time.<sup>39</sup>

27. The information available indicates that the First Request for Redactions was filed on 10 February 2012 at 17.08, outside of the working hours of the Registry. In line with Regulation 24 of the Regulations of the Registry, the document was registered in the case record and notified to the parties the next working day, 13 February 2012. The Single Judge agrees with the Defence that the First Request for Redactions was not filed in compliance with the time limit imposed by the Judge in the Decision on Disclosure.<sup>40</sup>

28. However, the Single Judge, recalling the Decision on Disclosure,<sup>41</sup> 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

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<sup>38</sup> ICC-02/11-01/11-44, p. 18.

<sup>39</sup> ICC-02/11-01/11-44, p. 19.

<sup>40</sup> Decision on Disclosure, p. 29.

<sup>41</sup> ICC-02/11-01/11-30, paras 37-39.

obligations in relation to the disclosure process, as provided for by Article 61(3) of the Statute and Rule 121(2) of the Rules. In the present case, the Single Judge does not consider it proportionate that the minor delay on the part of the Prosecutor should lead to a rejection of the First Request for Redactions.

29. On the basis of the foregoing, the Single Judge is of the view that this particular request of the Defence cannot be granted and the First Request for Redactions must be considered as properly filed.

30. With respect to the Prosecutor request for a variation of time limit to submit redactions to 15 documents which were omitted from the Second Request for redaction, the Single Judge notes the limited length of the documents affected and the fact that the omission was promptly brought to the attention of the Chamber together with the redactions sought. For the same reasons as above, the Single Judge considers that the Prosecutor's additional requests for redactions must be considered as properly presented and are dealt with in the present decision.

31. With respect to the Prosecutor request for variation of time limit to disclose incriminating evidence, relating to two items of evidence which do not need any protective measures, the Single Judge also considers, in light of the abovementioned and of the nature of the two items of evidence, including their small volume, that the Prosecutor should also be permitted to rely at the confirmation of charges hearing on these two items of evidence, provided that they are disclosed to the Defence as soon as possible but no later than 5 April 2012.

*B. Request for Protective Measures*

(i) Request for authorisation to submit anonymous summaries of statements of witnesses 47 and 49

32. The Single Judge notes at the outset that Article 61(5) of the Statute provides that at the confirmation of charges hearing the Prosecutor “may rely on documentary or summary evidence”. In this respect, the Appeals Chamber stated that “the use of summaries by the Prosecutor at the confirmation hearing [...] is not subject to any explicit condition” and that “neither the Statute nor the Rules of Procedure and Evidence foresee that such summaries must be approved by the Pre-Trial Chamber prior to their presentation at the confirmation hearing.”<sup>42</sup>

33. However, the Single Judge notes that although there is no need for the Prosecutor to seek the authorisation of the Chamber for the purpose of using summaries of statements or transcripts of interviews with witnesses, the Prosecutor needs the approval of the Chamber to conceal from the Defence the identities of those witnesses in respect of which he wishes to rely on summaries.

34. Indeed, Rule 76 of the Rules directs the Prosecutor to provide the Defence, sufficiently in advance to enable its adequate preparation, with the names of the witnesses on whom he intends to rely at the confirmation of charges hearing. On the other hand, Article 68(5) of the Statute also allows the Prosecutor, for the purposes of any proceedings conducted prior to the commencement of the trial, to withhold such evidence or information which may lead to the grave endangerment of the security of a witness or his or her family and instead to

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<sup>42</sup> Appeals Chamber, “Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled ‘First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81’”, 14 December 2006, ICC-01/04-01/06-773, para. 43.

submit a summary thereof. However, such measure shall be exercised in a manner that is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

35. In this respect, the Appeals Chamber held that “the presentation of summaries at the confirmation hearing without disclosure of the identities of the relevant witnesses to the defence [...] is not per se prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.”<sup>43</sup>

36. In his Application, the Prosecutor requests authorisation to disclose summaries *in lieu* of the statements of witnesses 47 and 49 while concealing their identity to the Defence. In light of the above, the Single Judge will assess whether disclosing the identities of witnesses 47 and 49 would lead to the grave endangerment of their safety and, if so, whether presenting a summary of their statements at the confirmation of charges hearing without disclosing their identities would be prejudicial to or inconsistent with the rights of the suspect and a fair and impartial trial. In this respect, the Single Judge underlines that the risk caused to these witnesses by the disclosure of their identities to the Defence must be assessed with regard to each individual witness taking into account his or her specific situation. In the present decision the Single Judge, in reaching her decision, has given particular weight to: (i) the witness’ particular circumstances; (ii) the relevant security situation where the witness and his or her family currently reside; and (iii) whether the witness benefits from any protective measures other than the requested anonymity.

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<sup>43</sup> Judgment of 14 December 2006, ICC-01/04-01/06-773, para.50.

a) *Witness 49*

37. With respect to witness 49, the Prosecutor provided information at the *ex parte* hearing held on 20 March 2012 that the witness is [REDACTED].<sup>44</sup> Additionally, the Prosecutor stated that [REDACTED] "would not provide him much more protection."<sup>45</sup> In particular, the Prosecutor submits that there exists a real threat towards him and his family [REDACTED].<sup>46</sup>

38. The Prosecutor further states that [REDACTED].<sup>47</sup>

39. Accordingly, the Prosecutor [REDACTED].<sup>48</sup>

40. In the submission of the Prosecutor, granting anonymity to witness 49 is warranted by the fact that the implementation of the above protective measures also depends on [REDACTED].<sup>49</sup> However, in light of these facts and efforts, the Prosecutor does not foresee that appropriate measures can be realistically implemented by 16 May 2012.<sup>50</sup>

41. The Single Judge considers that, on the basis of the available information submitted by the Prosecutor, the personal circumstances of witness 49 and the relevant security situation warrant granting the request for anonymity. The Single Judge is of the view that at this stage of the proceedings, there are no less intrusive alternative measures short of anonymity and the use of the summary of his statement to address the risk to his safety and well being.

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<sup>44</sup> [REDACTED]

<sup>45</sup> [REDACTED]

<sup>46</sup> [REDACTED]

<sup>47</sup> [REDACTED]

<sup>48</sup> [REDACTED]

<sup>49</sup> [REDACTED]

<sup>50</sup> Request for Protective Measures, para. 16; ICC-02/11-01/11-T-5-CONF-EXP-ENG, p. 25, lines 19-23.

42. In addition, as already indicated, the Prosecutor has informed the Chamber that the summary is “merely” intended to “corroborate other evidence” that would be disclosed to the Defence.<sup>51</sup>

43. Therefore, the Single Judge is of the view that such measures are not prejudicial to or inconsistent with the rights of the suspect. The Prosecutor is directed to include in this summary, to the extent it does not reveal his identity, the information relevant to the Case at hand and the potentially exculpatory or exonerating information that may be contained in these statements

44. In light of the above, the Single Judge will not engage in an assessment of each request for redaction made by the Prosecutor with respect to the statement of witness 49 as they were rendered moot by the Prosecutor’s request for anonymity and desire to rely *in lieu* of his statement on a summary thereof.

b) *Witness 47*

45. In relation to witness 47, the Single Judge notes that according to the Prosecutor “all objective security concerns with respect to W-0047 have been managed”<sup>52</sup> and notwithstanding this, witness 47 does not currently consent to the disclosure of his identity to the Defence.<sup>53</sup> The Prosecutor further informs the Chamber that he is making all efforts to address the subjective perception of the witness as regards risks<sup>54</sup> but that he is not confident that they will manage this before the timeframe for disclosure for the confirmation of charges hearing.<sup>55</sup>

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<sup>51</sup> Request for Protective Measures, para. 19.

<sup>52</sup> Request for Protective Measures, para. 14.

<sup>53</sup> Request for Protective Measures, para. 14.

<sup>54</sup> Request for Protective Measures, para. 14.

<sup>55</sup> ICC-02/11-01/11-T-5-CONF-EXP-ENG, p. 23, lines 4-12.

46. In the present case, the request for anonymity does not stem from an objectively justifiable risk to his safety but rather from the witness refusing his identity to be revealed to the Defence based on an inaccurate subjective perception of risk. The Single Judge therefore rejects the Prosecutor's request for anonymity in respect of witness 47. However, in light of the circumstances, the Single Judge considers appropriate to vary the time limit to disclose the statement of witness 47 in order to allow the Prosecutor, in consultation with the VWU, to address the witness' concerns. Should the Prosecutor decide to rely on the statement of witness 47, any request for redactions may be re-submitted to the Chamber no later than 19 April 2012.

(ii) Request for delayed disclosure

47. The Single Judge turns now to the Prosecutor's request for authorisation of a delay in the disclosure of the statements of witnesses 54 and 108, advanced in the Request for Protective Measures. While requesting redactions to the statements of the two witnesses,<sup>56</sup> the Prosecutor requests a variation of the 5-day time limit for disclosure of evidence subject to the Chamber's decision on redaction proposals.<sup>57</sup>

48. With respect to witness 54, the Prosecutor provided information at the *ex parte* hearing that [REDACTED].<sup>58</sup> [REDACTED].<sup>59</sup> [REDACTED].<sup>60</sup>

49. In the submission of the Prosecutor, a delay in the disclosure of statement of witness 54 is warranted by the fact that the implementation of protective measures depends on [REDACTED].<sup>61</sup> [REDACTED].<sup>62</sup>

<sup>56</sup> ICC-02/11-01/11-38-Conf-Exp-Anx10; ICC-02/11-01/11-53-Conf-Exp-Anx5.

<sup>57</sup> Request for Protective Measures, para. 7.

<sup>58</sup> [REDACTED]

<sup>59</sup> [REDACTED]

<sup>60</sup> [REDACTED]



50. With respect to witness 108, the Prosecutor submitted that [REDACTED].<sup>63</sup> Prior to the disclosure of the witness' identity to the Defence, the Prosecutor aims at putting in place additional protective measures, [REDACTED].<sup>64</sup> [REDACTED].<sup>65</sup>

51. The VWU in turn stated at the *ex parte* hearing that the Unit has had extensive consultations with the Office of the Prosecutor regarding both witnesses in question and that it considers the proposed course of action appropriate.<sup>66</sup>

52. The Single Judge considers that, on the basis of the available information submitted by the Prosecutor and the VWU, the security of witnesses 54 and 108 cannot properly be guaranteed if their identities were to be disclosed to the Defence at this moment.<sup>67</sup> At the same time, the Single Judge accepts that adequate protective measures permitting the disclosure of the identity: (i) are not currently missing due to reasons attributable to the Prosecutor; and (ii) will be in place shortly, at the latest by the first half of May 2012. In these circumstances, the Single Judge considers that a deviation from the 5-day time limit established in the Disclosure Decision is exceptionally warranted. The Single Judge has, in addition to the security related needs of the witnesses, considered the interests of the Defence, and is of the view that it is appropriate, in light of the particular circumstances, to instruct the Prosecutor to disclose, as an interim measure, anonymous summaries of statements of witnesses 54 and 108.

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<sup>61</sup> [REDACTED]

<sup>62</sup> [REDACTED]

<sup>63</sup> [REDACTED]

<sup>64</sup> [REDACTED]

<sup>65</sup> [REDACTED]

<sup>66</sup> ICC-02/11-01/11-T-5-CONF-EXP-ENG, p. 21, line 25 to p. 22, line 10.

<sup>67</sup> See below paragraph 65.

53. Finally, the Single Judge recalls that, pursuant to Rule 121(3) of the Rules, the Prosecutor may not rely at the confirmation of charges hearing on any evidence which has not been properly disclosed to the Defence and included in the list of evidence provided to the Chamber and the Defence at least 30 days before the hearing, in this case no later than 16 May 2012.

### *C. Requests for redactions*

54. As a preliminary matter, the Single Judge will address the objection of the Defence that it has not been properly informed of the First and Second Requests for Redactions. The Single Judge recalls that the Decision on Disclosure did not impose on the Prosecutor the duty to inform the Defence in advance of his intention to submit requests for redactions.<sup>68</sup> The Single Judge imposed on the Prosecutor the obligation to inform the Defence of the existence of such requests together with the underlying legal and factual basis of his requests for redactions to *the largest extent possible*, in line with the jurisprudence of the Appeals Chamber on this matter.<sup>69</sup>

55. Turning now to the analysis of the Prosecutor Requests for Redactions, the Single Judge recalls that the overriding principle is that of full disclosure, the authorisation of non-disclosure of information being therefore an exception.<sup>70</sup>

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<sup>68</sup> The Defence indeed misinterpreted the Decision in stating that "*le Juge unique a ordonné au Procureur d'informer au préalable la défense de l'existence d'une ou plusieurs demandes d'expurgations qu'il compterait déposer*" (ICC-02/11-01/11-58, p. 4, emphasis added).

<sup>69</sup> Appeals Chamber, "Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled 'Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81(2) and (4) of the Rules of Procedure and Evidence'", 13 October 2006, ICC-01/04-01/06-568, paras 66 and 67.

<sup>70</sup> Judgment of 13 October 2006, ICC-01/04-01/06-568, paras 36 and 39; Appeals Chamber, "Judgment on the Appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled 'First Decision on the Prosecution Request for Authorisation to Redact Witness Statements'", ICC-01/04-01/07-475, 13 May 2008, para. 70; Appeals Chamber, "Judgment on the appeal of Mr Germain Katanga against the decision of Pre-Trial Chamber I entitled 'First Decision on the

The Single Judge further recalls the relevant judgments of the Appeals Chamber, which provide guidance in addressing the present requests for redactions.<sup>71</sup>

56. In light of the Defence Observations, the Single Judge emphasises, for the sake of clarity, that for any redaction to be authorised pursuant to Rule 81(2) and (4) of the Rules, she must first and foremost, reach the conclusion that the disclosure to the Defence of the information sought to be redacted, at this stage of the proceedings, could: (i) prejudice further or ongoing investigations by the Prosecutor (Rule 81(2) of the Rules); (ii) affect the confidential character of the information under Articles 54, 72 and 93 of the Statute (Rule 81(4) of the Rules); or (iii) pose a danger to a particular person (Rule 81(4) of the Rules). As specified by the Appeals Chamber, “the alleged danger must involve an objectively justifiable risk” to either the safety of the person concerned or to the Prosecutor’s further or ongoing investigations.<sup>72</sup> The Appeals Chamber further held that the “circumstances of the individual suspect should be considered, including, *inter alia*, whether there are factors indicating that he or she may pass on the information to others or otherwise put an individual at risk by his or her actions.”<sup>73</sup>

57. After having ascertained the existence of such risk, the Single Judge will assess whether the requested redactions are necessary namely that the redactions sought could overcome or reduce such risk and that at this stage there are no less intrusive alternative protective measures available.

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Prosecution Request for Authorisation to Redact Witness Statements”, 13 May 2008, ICC-01/04-01/07-476, para. 64.

<sup>71</sup> Judgment of 14 December 2006, ICC-01/04-01/06-773; Judgment of 13 May 2008, ICC-01/04-01/07-475 and Appeals Chamber, “Judgment on the appeal of Mr Mathieu Ngudjolo against the decision of Pre-Trial Chamber I entitled ‘Decision on the Prosecution Request for Authorisation to Redact Statements of Witnesses 4 and 9’, 27 May 2008, ICC-01/04-01/07-521.

<sup>72</sup> Judgment of 13 May 2008, ICC-01/04-01/07-475, para.71.

<sup>73</sup> Judgment of 13 May 2008, ICC-01/04-01/07-475, para.71.

58. The Single Judge will also determine whether the redactions are not prejudicial to or inconsistent with the rights of the suspect, including the right to a fair and impartial trial. In so doing, particular attention will be given to the relevance of the information sought to be redacted to the Defence as well as the stage of the proceedings, and will ensure at all times that the non-disclosure of such information "would not result in the confirmation of the charges, viewed as a whole, to be unfair to the suspect."<sup>74</sup>

59. The Single Judge will only grant the requested redactions if she is satisfied that the abovementioned conditions are met. The Single Judge also underlines that information that has been withheld may need to be subsequently disclosed, should circumstances change. The Prosecutor should therefore bring to the attention of the Chamber any factors that may warrant a variation of a ruling on non-disclosure.

60. The Single Judge notes that in his First and Second Requests for Redactions, the Prosecutor has requested redactions with respect to the following five categories:

- (a) identifying information of family members of witnesses pursuant to Rule 81(4) of the Rules;
- (b) identifying information of other persons at risk on account of the activities of the Court, pursuant to Rule 81(4) of the Rules;
- (c) identity of persons working in or for the Office of the Prosecutor, pursuant to Rule 81(2) of the Rules;
- (d) information related to the date and location of interviews with the witness, pursuant to Rule 81(2) of the Rules; and

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<sup>74</sup> Judgment of 13 May 2008, ICC-01/04-01/07-475, para.72.

- (e) identifying information of Prosecutor's sources or leads, pursuant to Rule 81(2) of the Rules.

61. The Single Judge will set forth in the present decision the approach taken in the assessment of each requested redaction and will make it available to the Defence to the extent that they can be revealed to it without endangering the interests concerned and defeating the very purpose of redactions process. Accordingly, the overall reasons for granting or rejecting the requests for redactions within each category will be provided in the present decision. In the Annex, which is *ex parte* and only available to the Prosecutor and the VWU, the Single Judge, in compliance with the procedure prescribed by the Appeals Chamber, will specify to which of the five abovementioned categories each of the requested redactions belongs and whether the redaction is granted or rejected. Furthermore, when the specific nature of the requested redaction so requires, the Single Judge will further provide an additional explanation in the Annex of her decision.

62. In light of the Prosecutor's Requests for Redactions and the Single Judge's determination as to the other protective measures he requested (see paragraphs 32-53 above), the Single Judge clarifies that the witnesses' statements or transcript of interviews and documents related thereto (altogether referred to as "statement") addressed in the present decision are the following:

- (1) the statement of witness 9 (ICC-02/11-01/11-38-Conf-Exp-Anx1);
- (2) the statement of witness 10 (ICC-02/11-01/11-38-Conf-Exp-Anx2);
- (3) the statement of witness 11 (ICC-02/11-01/11-38-Conf-Exp-Anx3);
- (4) the statement of witness 44 (ICC-02/11-01/11-38-Conf-Exp-Anx4-Corr and ICC-02/11-01/11-53-Conf-Exp-Anx1);
- (5) the statement of witness 45 (ICC-02/11-01/11-38-Conf-Exp-Anx5);

- (6) the statement of witness 46 (ICC-02/11-01/11-38-Conf-Exp-Anx6 and ICC-02/11-01/11-53-Conf-Exp-Anx2);
- (7) the statement of witness 48 (ICC-02/11-01/11-38-Conf-Exp-Anx8);
- (8) the statement of witness 54 (ICC-02/11-01/11-38-Conf-Exp-Anx10-Corr);
- (9) the statement of witness 69 (ICC-02/11-01/11-53-Conf-Exp-Anx3-Corr and ICC-02/11-01/11-64-Conf-Exp-Anx1);
- (10) the statement of witness 87 (ICC-02/11-01/11-53-Conf-Exp-Anx4);  
and
- (11) the statement of witness 108 (ICC-02/11-01/11-53-Conf-Exp-Anx5-Corr).

63. In addition, the present decision also addresses the request for redactions to the following documents:

- (1) affidavits (ICC-02/11-01/11-38-Conf-Exp-Anx11)
- (2) open source documents (ICC-02/11-01/11-53-Conf-Exp-Anx6)
- (3) documents emanating from the United Nations (ICC-02/11-00/11-53-Conf-Exp-Anx7); and
- (4) documents emanating from Ivorian authorities (ICC-02/11-01/11-53-Conf-Exp-Anx8).

64. The Single Judge notes that in relation to the statement of witness 45 the Prosecutor submitted requests for redaction to both the English version (original) and the French translation of his statement. In that respect, the Single Judge underscores that, after obtaining the Chamber's authorisation to redact information on the text in one of the working languages of the Court, it is the duty of the Prosecutor, within the same timeframe set forth in the present decision, to accurately implement the same authorised redactions in the original

and the translated versions of the piece of evidence to be disclosed to the Defence. Accordingly, the Single Judge will address the requests for redaction only in one of the versions of the piece of evidence submitted to her.

65. Before turning to the analysis, the Single Judge finally underlines that in her assessment of the First and Second Requests for Redactions she took into consideration information contained in the updated STRA which was prepared by the Prosecutor and the VWU. In particular, she notes that according to the overall findings of the updated STRA, there is a risk for witnesses [REDACTED]<sup>75</sup>

66. In light of the abovementioned, the Single Judge will now turn to the Prosecutor's requested redactions and will address the Defence contentions where applicable.

(i) Requests for redactions pursuant to Rule 81(4) of the Rules

a) *Identifying information of family members of witnesses 45, 54 and 87*

67. The Prosecutor requests the authorisation pursuant to Rule 81(4) of the Rules to redact from the statements of witnesses 45, 54 and 87, the names and any identifying information of family members. The information sought to be redacted also includes the whereabouts of these family members or the whereabouts and phone numbers of the witnesses, disclosure of which could also endanger their family members' safety.

68. In light of the security situation and context referred to in paragraph 65, the Single Judge considers that disclosing the names and identifying information, including the whereabouts, of family members of witnesses 45, 54 and 87 poses

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<sup>75</sup> ICC-02/11-01/11-HNE-1-Conf-Exp.

an objectively justifiable risk to their safety and/or physical and psychological well-being.

69. Moreover, the Single Judge considers that the requested redactions, which are strictly limited to the place of residence and to the names of the witnesses' family members, are adequate to minimise this risk and that, at this stage, there is no less intrusive alternative measure that can be taken to achieve the same goal.

70. Furthermore, in the view of the Single Judge, the redaction of this information would not result in the hearing to confirm the charges, viewed as a whole, to be unfair to the suspect insofar as (i) the Defence will have access to the identities of witnesses 45, 54 and 87; (ii) the family members of witnesses 45, 54 and 87 referred to in this subsection, are not involved in the Court's activities and (iii) the Defence will have access to the substantial information contained in the statements of witnesses 45, 54 and 87 and will have accordingly the possibility to challenge them. In addition, should the Defence wish to contact any of these witnesses, it will still be in a position to do so following the procedure set out in the "Decision on the Protocols concerning the disclosure of the identity of witnesses of the other party and the handling of confidential information in the course of investigations" issued on 6 March 2012.<sup>76</sup>

71. For these reasons, in light of a case-by-case assessment of the requested redactions which took into consideration the interests at stake and the relevance of the information sought to be redacted, the Single Judge authorises, pursuant to Rule 81(4) of the Rules, redactions of the names and identifying information, including the whereabouts, of family members of witnesses 45, 54 and 87, as set

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<sup>76</sup> ICC-02/11-01/11-49.



out in the Annex to the present decision. Redactions falling within this category will be marked as A.1.

*b) Information related to family members of witness 48*

72. Furthermore, the Single Judge notes that the Prosecutor requests authorisation to redact from the statement of witness 48 a piece of information that could endanger the safety of a member of the witness' family.

73. In light of the security situation and context referred to in paragraph 65, the Single Judge considers that disclosing the information, as specified in the Annex to this decision, poses an objectively justifiable risk to the safety and/or physical and psychological well-being of a member of witness 48's family.

74. Moreover, the Single Judge considers that the requested redactions are strictly limited to a specific and limited piece of information, are adequate to minimise this risk and that, at this stage, there is no less intrusive alternative measure that can be taken to achieve the same goal.

75. Furthermore, in the view of the Single Judge, the redaction of this information would not result in the hearing to confirm the charges, viewed as a whole, to be unfair to the suspect insofar as: (i) the Defence will have access to the identity of witnesses 48 who gave the statement; (ii) the family member of witnesses 48 is not a witness; and (iii) the information sought to be redacted is not providing any further information on the crimes with which Mr Gbagbo is charged other than the one already contained in the statement.

76. For these reasons, having balanced the interests at stake and the relevance of the information sought to be redacted, the Single Judge authorises, pursuant to Rule 81(4) of the Rules, redactions of information that could endanger the safety

a member of witness 48's family, as set out in the Annex to the present decision. Redactions falling within this category will be marked as A.1.

c) *Identifying information of persons at risk on the account of the Court activities*

77. The Prosecutor requests authorisation to redact in the statements of witnesses 10, 44, 45, 48, 54 and 108 and in the affidavits, identifying information of third parties at risk on account of the activities of the Court.

78. The Single Judge recalls that Rule 81(4) of the Rules - which provides a legal basis to seek redactions to "protect the safety of witness and victims and members of their family" - has also been interpreted by the Appeals Chamber as including the possibility to seek redaction to also protect "[other] persons at risk on account of the activities of the Court."<sup>77</sup> Accordingly, non disclosure of information related to third persons at risk on account of the activities of the Court is also subjected to the demonstration that the disclosure of the information would expose them to an objectively justifiable risk and that redaction is a necessary and proportionate measure to reduce or overcome this risk.

79. For the sake of clarity, the Single Judge highlights that redactions are not authorised on the mere reason that the names or identifying information of third persons are mentioned in the witness statements. Rather, the Single Judge takes into consideration, for the purposes of her assessment, the context in which such names or information appear and the justification provided by the Prosecutor. Such assessment will accordingly be done on a case-by-case basis. In light of these elements, redactions may be warranted if this third person may be wrongly perceived to be a Prosecutor witness, lead or to collaborate with the Court. The

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<sup>77</sup> Judgment of 13 May 2008, ICC-01/04-01/07-475, para. 56.

Single Judge will accordingly assess whether: (i) disclosure of the information sought to be redacted may expose these persons to an objectively identifiable risk; (ii) the redactions are limited to what is necessary to ensure their safety and are the adequate measure to minimise the risk to their safety; and (iii) there is no less restrictive alternative measure that can be taken to achieve the goal of protection.

80. The Single Judge also balanced the rights of the Suspect, in particular the prejudice that might be caused by the non-disclosure of the information, with the duty to protect these third persons. In order to assess whether the non-disclosure of the information sought to be redacted would not result in the hearing to confirm the charge, viewed as a whole, to be unfair to the Defence, particular attention was given to the limited scope of the confirmation of charges hearing, whether the redactions sought were strictly limited to the names and identifying information of such individuals and whether the Defence would still have access to the substantial information contained in the witness statements.

81. For these reasons, the Single Judge partly grants, pursuant to Rule 81(4) of the Rules, authorisation to redact from the statements of witnesses 10, 48, 44, 45, 54 and 108 as well as in the affidavits, information related to identifying information of persons at risk on account of the activities of the Court as detailed in the Annex to this decision. Redactions falling within this category will be marked as A.2.

(ii) Requests for redactions pursuant to Rule 81(2) of the Rules

82. The Single Judge recalls that, according to the First Appeals Chamber Judgment, those findings made in relation to redactions sought pursuant to Rule 81(4) of the Rules “apply *mutatis mutandis* to redactions sought pursuant to Rule

81(2) of the Rules".<sup>78</sup> Accordingly, the Prosecutor will need to establish that (i) the potential prejudice to his investigations is objectively justifiable; (ii) such prejudice would result from disclosure to the Defence; (iii) the non disclosure of the information is a necessary and proportionate measure to reduce or overcome this risk and (iv) the redactions are not prejudicial to or inconsistent with the rights of the suspect.

83. The Single Judge notes that the Prosecutor requests in particular to redact pursuant to Rule 81(2) of the Rules identifying information of Prosecutor's staff, places and dates of interview as well as identifying information of Prosecutor's sources or leads.

*a) Identity of persons working in or for the Office of the Prosecutor*

84. The Prosecutor requests authorisation to redact the names, initials, identifying information and signatures of persons working in or for the Office of the Prosecutor from the statements of witnesses 9, 10, 11, 44, 45, 46, 48, 54, 69, 87, 108, including in the metadata, and in affidavits, documents emanating from Ivorian national authorities and open sources documents.

85. The Single Judge notes that the requested redactions relate more specifically to staff members who were present, shortly or throughout, the interview with the witness. The request covers in particular the following categories of persons working in or for the Office of the Prosecutor: investigators; translators; interpreters; analysts; psychosocial experts as well as other members of the Office of the Prosecutor.

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<sup>78</sup> Judgment of 13 May 2008, ICC-01/04-01/07-475, para. 97

86. The Single Judge recalls that as exemplified by the Appeals Chamber, she “would have to assess, on the basis of [her] knowledge of the factual situation as a whole, whether the danger sought to be protected could be overcome by redactions or arises simply from the fact that personnel of the OTP and of the VWU generally may be easily identifiable in the field.”<sup>79</sup> Accordingly, depending on the circumstances, disclosing the names or identifying information of some members of the Office of the Prosecutor would not pose a justifiable risk to the further or ongoing investigations of the Prosecutor when, for instance, their identity and profession within the Office of the Prosecutor is public since they may have for instance attended public hearings or been interviewed by journalists.

87. The Single Judge considers that, at this stage of the proceedings, with investigations still ongoing and in light of the general security situation in Côte d’Ivoire,<sup>80</sup> it is reasonable to believe that, regardless of the logistical reasons also brought forward by the Prosecutor, the presence of staff members of the Office of the Prosecutor involved in the field, if their identities are disclosed to the Defence, could become easily traced and, therefore, bring risk to the ongoing investigations of the Prosecutor. The Single Judge also believes that, at this stage of the proceedings, the non disclosure of the names of investigators, translators, interpreters, analysts, psychosocial experts and of other members of the Prosecution involved in arranging and participating in the interviews with witnesses, is the least intrusive protective measure available.

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<sup>79</sup> Judgment of 13 May 2008, ICC-01/04-01/07-475, para. 98.

<sup>80</sup> See above paragraph 65.

88. The Single Judge takes note of the Defence contention according to which the identification of staff members present during the interviews is a key guarantee of procedural propriety in the taking of the statements.

89. The Single Judge is nonetheless of the view that the requested redactions do not collide with the rights of the suspect to a fair trial. Firstly, these redactions are strictly limited to their names or identifying information and do not encompass redaction to their specific professions. The Single Judge further believes that despite the redactions of some names of the Prosecutor's staff, the Defence will still be able to identify possible faults in the evidence itself and bring them to the attention of the Chamber. The Single Judge thus considers that the redaction of identifying information of Prosecutor's investigators does not impair the ability of the Defence to identify wrong techniques of investigations or investigator's omissions to explore relevant leads, as the Defence suggested. The same holds true in relation to other persons working in or for the Office of the Prosecutor. The Single Judge however considers that in order to enable the Defence to identify more efficiently possible faults, the Prosecutor should provide the Defence, in the format considered appropriate, with information as to which statements have been taken by the same investigator or in the presence of the same interpreter, translator or of another Prosecutor's staff.

90. As a result, the Single Judge considers that the Defence's concern about its ability to challenge evidence is not of such a nature as to affect the fairness of the proceedings at this stage.

91. For these reasons, the Single Judge grants authorisation, pursuant to Rule 81(2) of the Rules, for the redactions of the names, initials, identifying information and signatures of the investigators, analysts, psychosocial experts

and other members of the Office of the Prosecutor who assisted in the preparation or process of taking the witness statements. As detailed in the Annex to this decision, redactions falling within this category will be marked in the as falling within category B.1.

92. Finally, the Single Judge observes that the Prosecutor also requested redaction to the metadata accompanying the evidence. Accordingly, in case the Single Judge authorises redactions falling under category B.1, the authorisation also extends to the corresponding information in the metadata linked to the evidence concerned.

*b) Information related to the dates and places of interviews*

93. The Single Judge notes that the Prosecutor requests the redaction of the specific places of interview with witnesses in the statements of witnesses 9, 10, 11 and 46.

94. In that respect, the Single Judge considers that a distinction can be made between general reference to a location – such as a city with a considerable size – and specific description of a location within a city or a city of a smaller size. The Single Judge indeed considers that disclosing specific information of the locations used by the Prosecutor for conducting his interviews with the witnesses, in particular, where a specific address or description of such locations is provided, may unduly attract attention to the movements of the Prosecutor's staff as well as of the witnesses to be interviewed at that location and poses, in light of the situation referred to at paragraph 65 of the decision, an objectively justifiable risk to the Prosecutor's further or ongoing investigations.

95. The Single Judge also notes that the Prosecutor requests authorisation to redact the dates, surrounding dates of interviews with witnesses 9, 10, 11, 44, 45, 46, 48, 54, 69, 87, 108, and of preliminary meetings with them. The Single Judge considers that likewise disclosing the specific dates at which the interviews with these witnesses took place may contribute in attracting attention to the movements of the Prosecutor's staff as well as of the witnesses who have been interviewed. In light of the situation referred to at paragraph 65 of the decision, disclosing such information poses an objectively justifiable risk to the Prosecutor's further or ongoing investigations. The Single Judge nonetheless notes that the Prosecutor, at times, requests authorisation to redact the day, month and year of the interview. In this respect, the Single Judge is of the view that disclosing the year would not pose an objectively identifiable risk to the Prosecutor's further or ongoing investigations as it is broad enough to enable tracing the movement of Prosecutor's staff and witnesses.

96. In light of the above, the Single Judge considers that the disclosure of the specific locations of interviews as well as the specific dates (day and month) or surrounding dates when the interview took place would pose an objectively justifiable risk to further or ongoing investigations of the Prosecutor. Moreover, the Single Judge considers that the requested redactions are adequate to minimise this risk and are limited to what is strictly necessary to overcome such risk. Additionally, the Single Judge is of the view that, at this stage of the proceedings, there is no less intrusive measure that can be taken to mitigate the risk to the Prosecutor's further or ongoing investigations. Furthermore, redacting this information would not result in the hearing to confirm the charges, viewed as a whole, to be unfair to the suspect insofar as the information concerned is not, at this stage, relevant to the preparation of the Defence insofar as the Defence



will still have access to the substantial information contained in the statements and have the possibility to challenge them.

97. For these reasons and following a case-by-case assessment of each requested redactions, the Single Judge, authorises pursuant to Rule 81(2) of the Rules, the Prosecutor to redact reference to the specific locations of interview and to the specific dates (day and month) or surrounding dates when the interview took place. As detailed in the Annex to this decision, redactions falling within this category will be marked as falling within category B.2.

98. Finally, the Single Judge observes that the Prosecutor also requested redaction to the metadata accompanying the evidence. Accordingly, in case the Single Judge authorises redactions falling under category B.2, the authorisation also extends to the corresponding information in the metadata linked to the evidence concerned.

*c) Identifying information of Prosecutor's sources or leads*

99. The Prosecutor requests authorisation to redact pursuant to Rule 81(2) of the Rules the names and identifying information of Prosecutor's sources or leads from the statements of witnesses 10, 45, 44 and 54.

100. The terms "Prosecutor's sources" or "Prosecutor's leads" are not referred to in Rule 81(2) of the Rules. According to the Appeals Chamber, "further or ongoing investigations may be prejudiced if potential prosecution witnesses are interfered with in a manner that could lead them being unable to co-operate further with the Prosecutor."<sup>81</sup> The Appeals Chamber further held that "[a]s such, if it can be demonstrated by the Prosecutor that the disclosure of the identities

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<sup>81</sup> Judgment of 13 May 2008, ICC-01/04-01/07-476, para. 49.

and identifying information of such individuals to the Defence could lead to the intimidation of or interference with such individuals, further or ongoing investigations could be prejudiced.”<sup>82</sup> Accordingly, the Single Judge considers that non-disclosure of identities and identifying information of Prosecutor’s sources or leads, as requested by the Prosecutor, can be sought and, if adequately justified, granted pursuant to Rule 81(2) of the Rules.<sup>83</sup>

101. In light of the situation referred to in paragraph 65 of the present decision, the Single Judge is of the view that disclosure of the names and identifying information of Prosecutor’s sources or leads would, in certain circumstances as set out in Annex I to the decision, pose an objectively justifiable risk to the further or ongoing investigations of the Prosecutor. Having assessed on a case by case basis the requested redactions, the Single Judge is of the view that they are adequate to minimise the risk identified and are strictly necessary to overcome any risk of prejudice to the Prosecutor’s further or ongoing investigations. In addition, the Single Judge is of the view that, at this stage of the proceedings, there is no less intrusive alternative measure that can be taken to achieve the goal of protecting the further or ongoing investigations of the Prosecutor. The Single Judge considers furthermore that authorising the requested redactions would not result in the hearing to confirm the charges, viewed as a whole, to be unfair to the Defence insofar as the Defence will still have access to the substantial information contained in the witness statements and have the possibility to challenge them.

102. For these reasons, following a case-by-case analysis of the relevance of the information to the Defence and balancing the different interests at stake, the

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<sup>82</sup> Judgment of 13 May 2008, ICC-01/04-01/07-476, para. 49.

<sup>83</sup> Judgment of 13 May 2008, ICC-01/04-01/07-476, para. 46.

Single Judge authorises pursuant to Rule 81(2) of the Rules, redactions of the names and identifying information of Prosecutor's sources or leads, as set out in the Annex to the present decision. These redactions will be marked in the Annex as falling within category B.3.

*D. Lifting of redactions from the Prosecutor's confidential redacted version of his application for a warrant of arrest*

103. The Single Judge notes that the Prosecutor requests authorisation to lift certain redactions from the confidential redacted version of his application for a warrant of arrest against Laurent Gbagbo pursuant to Article 58 of the Statute.<sup>84</sup>

104. Having reviewed the information for which lifting of redactions is sought, the Single Judge is of the view that at this stage of the proceedings and in light of the adoption of the Protocol on the handling of confidential information,<sup>85</sup> the redactions are no longer justified. Accordingly, the Prosecutor is authorised to lift the redactions referred to at paragraph 10 of his First Request for Redactions and to file in the record of the case a corresponding new version of the confidential redacted version of his application for a warrant of arrest against Laurent Gbagbo pursuant to Article 58 of the Statute.

**FOR THESE REASONS,**

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<sup>84</sup> First Request for Redactions, paras 10-11.

<sup>85</sup> ICC-02/11-01/11-49.

**GRANTS** the Prosecutor's request to lift redactions in the redacted version of the application for warrant of arrest, as specified in paragraph 104 of the present decision;

**ORDERS** the Prosecutor to disclose to the Defence the two incriminating evidence referred to in his Request to Disclose Incriminating Evidence as soon as possible but no later than 5 April 2012;

**GRANTS** the Prosecutor's request for non disclosure of the identity of witness 49;

**REJECTS** the Prosecutor's request for non disclosure of the identity of witness 47;

**DECIDES** that the Prosecutor may rely at the confirmation of charges hearing on the statement of witness 47, provided that any request for redactions to his statement is re-submitted to the Chamber no later than 19 April 2012;

**PARTLY GRANTS** the Prosecutor's First and Second Requests for Redactions to the witness statements and other documents as specified in the Annex to the present decision;

**ORDERS** the Prosecutor to provide the Defence, no later than 5 April 2012, with information as to which statements have been taken by the same investigator or in the presence of the same interpreter, translator or of another Prosecutor's staff;

**RECALLS** that the Prosecutor shall disclose to the Defence the evidence dealt with in the present 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;

**GRANTS** the Prosecutor's request for a delay in the disclosure of the statements of witnesses 54 and 108 and related documents thereto;

**ORDERS** the Prosecutor to do its utmost to implement as soon as possible the protective measures other than delayed disclosure in relation to witness 54 and 108;

**DECIDES** that the Prosecutor may rely at the confirmation of charges hearing on the statements of witnesses 54 and 108, provided that:

- (i) pending the implementation of the relevant protective measures, he discloses to the Defence no later than 5 April 2012 anonymous summaries of the statements of witnesses 54 and 108; and
- (ii) he discloses to the Defence the non-anonymous statements of witnesses 54 and 108, with redactions authorised in the present decision, as soon as possible and no later than 16 May 2012;

**ORDERS** the Prosecutor to promptly inform the Chamber of any changes in the security situation of the witnesses referred to in the present decision;

**ORDERS** the parties and participants at all times to only refer to witnesses by their numbers so far assigned to them.

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



Judge Silvia Fernández de Gurmendi  
Single Judge

Dated this 27 March 2012

At The Hague, The Netherlands

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 29 March 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**

**With confidential Annex, *ex parte* Prosecutor and VWU only**

**Addendum to the "First decision on the Prosecutor's requests for redactions  
and other protective measures"**

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

**The Office of the Prosecutor**  
Luis Moreno-Ocampo, Prosecutor  
Fatou Bensouda, Deputy Prosecutor

**Counsel for the Defence**  
Emmanuel Altit

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

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

**States Representatives**

**Amicus Curiae**

## **REGISTRY**

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**Registrar & Deputy Registrar**  
Silvana Arbia, Registrar  
Didier Preira, Deputy Registrar

**Defence Support Section**

**Victims and Witnesses Unit**  
Maria Luisa Martinod-Jacome

**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, 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,<sup>1</sup> hereby issues an addendum to the "First decision on the Prosecutor's requests for redactions and other protective measures".

1. On 27 March 2012, the Single Judge issued the "First decision on the Prosecutor's requests for redactions and other protective measures" ("Decision").<sup>2</sup>

2. The Single Judge notes that specific determination in relation to two redaction proposals advanced in the "Prosecution's request pursuant to Regulation 35 for variation of time limit to submit request for redactions and Prosecution's additional request for redactions to incriminatory evidence"<sup>3</sup> was omitted from the Annex to the Decision. Accordingly, the determination of the Single Judge in relation to these two redaction proposals is provided in the confidential *ex parte* Annex to the present filing.

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



**Judge Silvia Fernández de Gurmendi**  
**Single Judge**

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<sup>1</sup> ICC-02/11-01/11-61.

<sup>2</sup> 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).

<sup>3</sup> ICC-02/11-01/11-64-Conf-Exp-Anx2.

Dated this 29 March 2012

At The Hague, The Netherlands