

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 4 May 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

**Decision requesting observations from the parties on the schedule of the
confirmation of charges hearing**

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
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

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”), 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 requesting observations from the parties with a view to ensuring the proper preparation of the confirmation of charges hearing (“Hearing”).

1. On 23 November 2011, Pre-Trial Chamber III issued an arrest warrant for Laurent Gbagbo (“Mr Gbagbo”),² who was transferred to the Court on 30 November 2011. On 5 December 2011, the first appearance of Mr Gbagbo was held before the Court. During the first appearance hearing, Pre-Trial Chamber III scheduled the commencement of the Hearing for 18 June 2012.³

2. 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.⁴

3. On 27 March 2012,⁵ 3 and 20 April 2012,⁶ 2 May 2012,⁷ the Single Judge issued a number of decisions whereby she ruled on all requests for redactions advanced by the Prosecutor.

¹ Décision portant la désignation d’un juge unique, ICC-02/11-01/11-61.

² Warrant of Arrest For Laurent Gbagbo, 23 November 2011, ICC-02/11-01/11-1.

³ ICC-02/11-01/11-T-1-ENG, p. 8.

⁴ ICC-02/11-01/11-30 and Annex.

⁵ First Decision on the Prosecutor’s requests for redactions and other protective measures, ICC-02/11-01/11-74-Red; Addendum to the “First decision on the Prosecutor’s requests for redactions and other protective measures” ICC-02/11-01/11-75.

⁶ Decision on the “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”, ICC-02/11-01/11-81-Red; Decision on the ‘Prosecution’s request pursuant to Regulation 35 for variation of time limit to submit a request for redactions and for the extension of time for disclosure’, ICC-02/11-01/11-97.

4. On 14 April 2012, the Single Judge, underlining the importance of informing the parties “sufficiently in advance on the Protocols to be followed in the event they wish to call [...] witnesses to testify” *viva voce* at the confirmation hearing, instructed the Victims and Witnesses Unit (“VWU”) to file in the record of the case the “Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial” and the “Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses.”⁸

5. On 16 April 2012, the VWU filed the “Victims and Witnesses Unit’s Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony and Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses.”⁹

6. The Single Judge notes articles 61, 67, 68 and 69(4) of the Rome Statute (“Statute”) and rules 63, 76, 121 and 122(1) of the Rules of Procedure and Evidence (“Rules”).

7. Rule 122(1) of the Rules states that “[t]he Presiding Judge shall determine how the hearing is to be conducted and [...] may establish the order and the conditions under which [...] the evidence contained in the record of the proceedings [...] [is] to be presented.”

8. For this purpose, the Single Judge recalls that, in compliance with the Decision on Disclosure, the Prosecutor shall file its Document Containing the Charges and its List on Evidence at the latest, on 16 May 2012. The Single Judge also takes note that the *inter partes* disclosure is ongoing. In particular, the incriminating evidence on which the Prosecutor intends to rely on and

⁷ Second Decision on the Prosecutor’s request for redactions, ICC-02/11-01/11-106.

⁸ Instruction sent by email on 14 April 2012.

⁹ ICC-02/11-01/11-93 and its two annexes.

which were either (i) collected prior to 24 January 2012 and for which no protective measures were required or (ii) subjected to a Chamber's ruling on requests for redactions, were disclosed to the Defence.¹⁰ Furthermore, according to the Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony, "in order to facilitate the logistical arrangements and to ensure the timely appearance of a witness, the WIF needs to be submitted to the VWU not less than 35 days before the witness is scheduled to arrive at the location of testimony."¹¹

9. The Single Judge considers it appropriate at this juncture, to receive the observations of the Prosecutor and the Defence prior to establishing a detailed schedule of the Hearing.

10. In this regard, the Single Judge finds it necessary to remind the parties that the Hearing has a limited purpose and scope. Pursuant to Article 61(7) of the Statute, the Chamber's duty is only to determine "whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged" and not, as is the task of the Trial Chamber pursuant to Article 66(3) of the Statute, to determine whether the accused is guilty beyond a reasonable doubt.¹² Therefore, the Hearing needs to be concise whilst giving the parties an opportunity to present their arguments and respond to the other's party submissions.

11. In this respect, the Single Judge notes that article 61(5) of the Statute expressly states that, for the purposes of the confirmation of charges hearing, "the Prosecutor may rely on documentary or summary evidence and need not call the witnesses expected to testify at trial." Hence, although oral testimony

¹⁰ ICC-02/11-01/11-30. The Single further granted the Prosecutor's request for a delay in the disclosure of the statements of witnesses 54 and 108 and related documents thereto which shall be filed at the latest on 16 May 2012 (ICC-02/11-01/11-74-Conf-Exp, p.39).

¹¹ ICC-02/11-01/11-93-Anx1, para.14.

¹² ICC-02/11-01/11-30, para.20.

is permitted, the evidentiary debate at the confirmation of charges hearing can be based on the written statements of witnesses only.¹³ Therefore, the Single Judge expects that oral testimony at the hearing, if any, will be narrowly relied on and only to the extent that it cannot be properly substituted by documentary evidence or a written statement.

12. For the purposes of making its determination under article 61(7) of the Statute, the Chamber will consider all items of evidence included in the Prosecutor's List of Evidence and the items of evidence included in the Defence List of Evidence, to be filed at the latest on 16 May 2012 and 1 June 2012, respectively, without prejudice to any challenge from a party as to the admissibility of a piece of evidence. Hence, the parties are expected, also bearing in mind the suspect's rights to be tried without undue delay, to concentrate the presentation of their evidence during the Hearing to the most representative items supporting their arguments.

13. In light of the abovementioned, the Single Judge considers it appropriate to obtain from the Prosecutor and the Defence information as to (i) whether they intend to hear *viva voce* witnesses, if any, and an estimate of the time required for the questioning of witnesses, if any; and (ii) an estimate of the time required for the presentation of the arguments on the merits and of their evidence other than *viva voce* witnesses, if any.

14. The Single Judge notes that pursuant to rule 122(2) of the Rules the parties may raise questions or challenges concerning jurisdiction or admissibility. Pursuant to rule 122 (3) the parties may also raise objections or make observations concerning an issue related to the proper conduct of the

¹³ See also PTC II, Situation in the Republic of Kenya, *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, Decision Requesting the Parties to Submit Information for the Preparation of the Confirmation of Charges Hearing, ICC-01/09-02/11-181, para.8.

proceedings prior to the confirmation hearing. Therefore, the Single Judge also needs to receive, for the purposes of establishing the schedule for the Hearing, information as to whether the parties intend to raise any of these issues and if so, how much time they anticipate they will need for this purpose .

FOR THESE REASONS,

ORDERS the Prosecutor and the Defence to inform the Chamber no later than Monday 14 May 2012 on:

- (i) whether they intend to hear *viva voce* witnesses, if any; and
- (ii) an estimate of the time required for the questioning of witnesses, if any;

ORDERS the Prosecutor and the Defence to submit by Wednesday 23 May 2012 their observations for the purposes of establishing a schedule of the Hearing by detailing, in particular, the following:

- (i) whether they intend to raise questions or challenges concerning jurisdiction or admissibility, pursuant to rule 122(2) of the Rules, and/or to raise objections or make observations concerning issues related to the proper conduct of the proceedings prior to the confirmation hearing pursuant to rule 122(3) of the Rules; and

- (ii) an estimate of the time required for the presentation of the arguments on the merits and evidence, including audio and video based evidence and geographical maps, if any.

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



Judge Silvia Fernández de Gurmendi

Single Judge

Dated this 4 May 2012

At The Hague, The Netherlands