

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/11
Date: 30 October 2013

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 on the "Prosecution's request for redactions to the statement of
witness CIV-OTP-P-0369 pursuant to Rule 81(2)"**

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor

James Stewart, 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**

Paolina Massidda

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

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 (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 hereby issues the decision on the “Prosecution’s request for redactions to the statement of witness CIV-OTP-P-0369 pursuant to Rule 81(2)” (the “Request”).²

1. On 24 January 2012, the Single Judge issued the “Decision establishing a disclosure system and a calendar for disclosure” (the “Decision on Disclosure”).³

2. On 27 March 2012, the Single Judge issued the “First decision on the Prosecutor’s requests for redactions and other protective measures” (the “First Decision on Redactions”).⁴

3. On 3 June 2013, the Chamber issued the “Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute”, in which it decided to adjourn the confirmation of charges hearing and requested the Prosecutor to consider providing further evidence or conducting further investigation.⁵ The Chamber ordered the Prosecutor to submit “as soon as practicable and no later than Tuesday, 15 October 2013 any requests for redactions with regard to the evidence she has collected in the

¹ ICC-02/11-01/11-61.

² ICC-02/11-01/11-523 and confidential Annex ‘A’, *ex parte* only available to the Prosecutor, and confidential Annex ‘B’.

³ ICC-02/11-01/11-30 and annexes.

⁴ ICC-02/11-01/11-74-Conf-Exp. A public redacted version has also been filed, see ICC-02/11-01/11-74-Red.

⁵ ICC-02/11-01/11-432, p. 22.

course of her further investigation and on which she intends to rely for the purposes of the confirmation of charges”.⁶

4. On 4 October 2013, the Prosecutor filed the Request.

5. Pursuant to rule 81(2) of the Rules of Procedure and Evidence (the “Rules”), the Prosecutor seeks authorisation to redact from the content and metadata of the statement of witness P-0369 and its annex the identity of the investigator present during the interview of the witness.⁷ The Prosecutor submits that “[r]evealing to the Defence the identity of the investigator is likely to impact on the Prosecution’s ability to conduct its investigations in the field, as it may unduly attract attention to the movement of Prosecution staff and by extension to (potential) witnesses and their security”.⁸

6. The Prosecutor contends that the redactions to the investigator’s identity would ensure that she can continue to use during its investigations the limited number of investigators that she currently has at her disposal, without any need to replace them, which would have negative implications both on the expeditious conduct of the investigations, as well as on the resources required to conduct such investigations.⁹ The Prosecutor further submits that “absent some showing of a specific need or justification for the disclosure of the identities of investigators, the OTP seeks, as a matter of practice, to maintain their confidentiality”.¹⁰

7. The Prosecutor submits that the redactions sought do not affect the fairness of the proceedings as they do not relate to information that is relevant

⁶ *Ibid.*, p. 23.

⁷ Request, para. 3.

⁸ *Id.*

⁹ *Ibid.*, para. 4.

¹⁰ *Ibid.*, para. 5.

for the preparation of the Defence.¹¹ Furthermore, in the submission of the Prosecutor, “the profile of Witness P-0369 and the fact that the identities of other Prosecution staff members are being disclosed, should alleviate any concerns as to ‘possible faults’”.¹² The Prosecutor adds that the redactions sought are consistent with the Chamber’s prior decisions authorising redactions in this matter, and that the need to request their lifting will be periodically reviewed.¹³

8. Finally, the Prosecutor requests that the authorisation to redact the name of the investigator extend to the French translation of the witness statement, which is currently being finalised.¹⁴

9. The Defence did not respond to the Request within the time limit prescribed by regulation 34(b) of the Regulations of the Court.

10. The Single Judge notes articles 54(3)(f), 57(3)(c), 61 and 67 of the Rome Statute, and rule 81 of the Rules.

11. The Single Judge makes reference to the Decision on Disclosure, wherein the procedure related to requests for redactions to incriminating evidence under rule 81 of the Rules has been established, and to the First Decision on Redactions, wherein the overall reasons for granting or rejecting redactions have been provided.¹⁵ For the present decision, the Single Judge has adhered to the same approach.

12. At the outset, the Single Judge notes the argument of the Prosecutor that “absent some showing of a specific need or justification for the disclosure

¹¹ *Ibid.*, para. 6.

¹² *Id.*

¹³ *Ibid.*, paras 6-7.

¹⁴ *Ibid.*, para. 8.

¹⁵ First Decision on Redactions, paras 55-102.

of the identities of the investigators, the OTP seeks, as a matter of practice, to maintain their confidentiality".¹⁶

13. In this regard, the Single Judge emphasises that redactions are an exceptional remedy and cannot be authorised in a systematic manner, or "as a matter of practice". Rather, redactions need to be assessed individually and can be authorised only in specific circumstances when disclosure would give rise to an objectively justifiable prejudice to the further or ongoing investigations of the Prosecutor.¹⁷

14. Upon analysis of the present request for redactions, the Single Judge is of the view that disclosure to the Defence of the identity of the investigator would give rise to an objectively justifiable prejudice to the Prosecutor's investigations still ongoing in Côte d'Ivoire. It is reasonable to believe that the investigator's presence in the field, if his/her identity was to be disclosed, could become easily traced, and, as a consequence, the investigation could be interfered with. The Single Judge is of the view that at this stage of the proceedings, the non-disclosure of the investigator's identity is adequate and necessary to reduce the prejudice, and further, is the least restrictive protective measure available.

15. In addition, the Single Judge is of the view that the redaction of the investigator's identity is not incompatible with Mr Gbagbo's fair trial rights, also taking into account the present stage of the proceedings in the case, as the requested redaction only relates to the investigator's identity and does not relate to the content of the statement of Witness P-0369. The Single Judge further notes in this respect that redaction is authorised only to the name of

¹⁶ Request, para. 5.

¹⁷ See also Pre-Trial Chamber I, "Decision on the "Prosecution's request for redactions pursuant to Rule 81(2) and Rule 81(4) and to the new disclosure calendar", 27 September 2013, ICC-02/11-01/11-514, para. 21.

the investigator, and not as to the investigator's specific profession.¹⁸ Furthermore, the identities of other prosecution staff present at the interview of Witness P-0369 are not proposed for redaction.

16. Furthermore, the Single Judge notes that in the First Decision on Redactions, the Prosecutor was ordered, in order to enable the Defence to identify more efficiently possible faults, to provide to the Defence 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 member of the Prosecutor's staff,¹⁹ and considers that it is appropriate to require the Prosecutor to update this information when disclosing the evidence subject to the present Decision.

17. In conclusion, the Single Judge considers that the request to redact the identity of an investigator from the statement of Witness P-0369, the annex of the statement, and from their metadata, is justified, and must be granted. The Single Judge clarifies that, pursuant to this decision, the redactions authorised to the original (English) version of the evidence are to be applied equally to the French translation thereof.

FOR THESE REASONS, THE SINGLE JUDGE

GRANTS the Prosecutor's request to redact the identity of the investigator from the statement of Witness P-0369, the annex of the statement, and from their metadata;

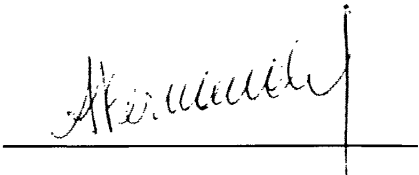
¹⁸ See also First Decision on Redactions, para. 89.

¹⁹ *Ibid.*, para. 89 and p. 37.

RECALLS that the Prosecutor shall disclose to the Defence the evidence dealt with in the present decision as soon as practicable and no later than 5 days upon notification of the present decision; and

ORDERS the Prosecutor to provide the Defence, at the time of disclosure of the witness statement dealt with in the present decision, with updated information as to which statements have been taken by the same investigator or in the presence of the same interpreter, translator or other OTP staff member.

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



Judge Silvia Fernández de Gurmendi
Single Judge

Dated this Wednesday, 30 October 2013

At The Hague, The Netherlands