

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/11
Date: 8 November 2013

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Hans-Peter Kaul
Judge Christine Van den Wyngaert

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
*THE PROSECUTOR V. LAURENT GBAGBO***

Public

Decision on the "Prosecution's request pursuant to Regulation 35 for variation of time limit to file updated document containing the charges, list of evidence and consolidated elements-based chart"

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

Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”) hereby issues the Decision on the “Prosecution’s request pursuant to Regulation 35 for variation of time limit to file updated document containing the charges, list of evidence and consolidated elements-based chart” (the “Request”).¹

1. On 3 June 2013, the Chamber issued, by majority, Judge Silvia Fernández de Gurmendi dissenting, the “Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute” (the “Adjournment Decision”).² In the Adjournment Decision, the Chamber decided to adjourn the confirmation of charges hearing, requested the Prosecutor to consider providing further evidence or conducting further investigation with respect to all charges, and established a calendar for further proceedings.³ In particular, the Chamber ordered the Prosecutor to “submit by no later than Friday, 15 November 2013 the Amended DCC, amended list of evidence and updated consolidated Element based Chart”.⁴

2. On 10 June 2013, the Prosecutor requested leave to appeal the Adjournment Decision.⁵ The Office of Public Counsel for victims (the “OPCV”) responded on 17 June 2013,⁶ and the Defence filed its response on 24 June 2013.⁷ On 25 June 2013, the Defence requested leave to appeal the Adjournment Decision.⁸ The OPCV⁹ and the Prosecutor¹⁰ responded on 1 July 2013.

3. On 31 July 2013, the Chamber issued, by majority, Judge Silvia Fernández de Gurmendi dissenting, the “Decision on the Prosecutor’s and Defence requests for leave to appeal the decision adjourning the hearing on the confirmation of

¹ ICC-02/11-01/11-547.

² ICC-02/11-01/11-432.

³ *Ibid.*, pp. 22-24.

⁴ *Ibid.*, p. 23.

⁵ ICC-02/11-01/11-435.

⁶ ICC-02/11-01/11-437.

⁷ ICC-02/11-01/11-438.

⁸ ICC-02/11-01/11-439.

⁹ ICC-02/11-01/11-442.

¹⁰ ICC-02/11-01/11-443.

charges”,¹¹ in which it rejected the Defence request for leave to appeal and partly granted the Prosecutor’s request for leave to appeal the Adjournment Decision.¹² The Prosecutor’s appeal is currently pending before the Appeals Chamber.

4. On 28 October 2013, the Prosecutor submitted the Request,¹³ seeking an extension of the time limit for the submission of the Amended Document Containing the Charges (the “Amended DCC”), amended list of evidence and updated consolidated element based chart “until two weeks after the Appeals Chamber has rendered its judgment on the Prosecution Appeal”.¹⁴

5. The Prosecutor submits that “[w]hen the 15 November date was originally set (on 3 June), the schedule was entirely reasonable”, but that the unexpected protraction of the proceedings on appeal has affected its viability.¹⁵ In particular, the Prosecutor submits that she has appealed the Adjournment Decision “on grounds that are critical to [her] ability to prepare the DCC and to select the evidence in support of the charges”,¹⁶ and that “[t]o file an Amended DCC before the delivery of the appellate decision will unduly tax resources of the Court, the parties, and the participants, since once the decision is delivered the Amended DCC and list of evidence might have to be revised yet again”.¹⁷ In the submission of the Prosecutor, the need for the Appeals Chamber’s guidance on core issues before the Amended DCC and list of evidence are filed provides good cause for the requested extension.¹⁸

¹¹ ICC-02/11-01/11-464.

¹² *Ibid.*, p. 33.

¹³ ICC-02/11-01/11-547, 28 October 2013.

¹⁴ Request, para. 11.

¹⁵ *Ibid.*, para. 8.

¹⁶ *Ibid.*, para. 2.

¹⁷ *Ibid.*, para. 8.

¹⁸ *Ibid.*, para. 9.

6. On 31 October 2013, the OPCV responded to the Request,¹⁹ supporting the submissions of the Prosecutor, and adding that the requested extension of time is also justified on the basis of the principle of judicial economy.²⁰

7. On 5 November 2013, the Defence filed its response to the Request.²¹ The Defence agrees with the Request, submitting that, in light of the issue on appeal, it is logical that the Prosecutor wishes to wait for the resolution of the appeal.²²

8. In addition, the Defence submits that to grant the Request must have as a consequence a revision of other time limits imposed in the Adjournment Decision, in particular in order to place the Defence in position to actively participate in the proceedings.²³ The Defence emphasises the limited means at its disposal and submits that the whole calendar needs to be revisited.²⁴

9. On this basis, the Defence requests: (i) that it be accorded two months after the filing by the Prosecutor of the Amended DCC, the list of evidence and the element based chart, to submit its observations on the Prosecutor's evidence, to disclose its evidence, file its amended list of evidence, permit inspection under rule 78 of the Rules and submit any requests for redactions; (ii) that the period of five and a half weeks for the submission of the final written submissions of the Prosecutor and the OPCV be maintained; and (iii) that the Defence be equally accorded five and a half weeks following the submission of the Prosecutor's and the OPCV's final written submissions for the filing of its final written submissions.²⁵ For the case that the Chamber does not grant this request, the Defence seeks, on a subsidiary basis, the establishment of time periods between the various time limits as follows: (i) five weeks after the filing by the Prosecutor of the Amended DCC, the list of evidence

¹⁹ ICC-02/11-01/11-551.

²⁰ *Ibid.*, para. 13.

²¹ ICC-02/11-01/11-553.

²² *Ibid.*, paras 15-18.

²³ *Ibid.*, para. 19.

²⁴ *Ibid.*, paras 21-22.

²⁵ *Ibid.*, paras 23-47 and pp. 15-16.

and the element based chart, to submit its observations on the Prosecutor's evidence, to disclose its evidence and to file its amended list of evidence; (ii) four weeks after the filing by the Prosecutor of the Amended DCC, the list of evidence and the element based chart, to permit inspection under rule 78 of the Rules and submit any requests for redactions; (iii) five and a half weeks for the submission of the final written submissions of the Prosecutor and the OPCV in response to its observations, evidence and amended list of evidence; and (iv) two weeks after the submission of the Prosecutor's and the OPCV's final written submissions for the filing of its final written submissions.²⁶

10. The Chamber notes regulation 35(2) of the Regulations of the Court, according to which, "the Chamber may extend or reduce a time limit if good cause is shown".

11. As submitted by all parties and participants, the Chamber is of the view that, considering the significance of the issue currently on appeal, it is in the interest of the proper conduct of the proceedings in the present case that the Prosecutor not be required to present her Amended DCC, amended list of evidence, and updated consolidated element based chart before the Appeals Chamber has resolved the appeal and before she has had the opportunity to properly analyse the judgment. Accordingly, the Chamber concludes that good cause has been shown for the requested variation of the 15 November 2013 time limit. The Chamber also accepts the submission of the Defence that an extension of time for the Prosecutor must have as a consequence a revision of all other time limits envisaged in the Adjournment Decision.²⁷

12. The Prosecutor requests that the time limit for the submission of the Amended DCC, the amended list of evidence, and the amended consolidated

²⁶ *Ibid.*, paras 32, 34, 36 and pp. 16-17.

²⁷ ICC-02/11-01/11-551, para. 19.

element based chart be set at “two weeks after the Appeals Chamber has rendered its judgment on the Prosecution Appeal”.²⁸ In principle, the Chamber accepts this submission. However, in order to provide certainty to the parties and participants, the Chamber will issue a decision setting out a definite calendar once the date of the Appeals Chamber’s judgment is known.

13. In that decision, the Chamber will seek to mitigate the delaying impact of the extension of time granted in the present decision. In particular, the Chamber notes that in the Adjournment Decision, due to the timing of the Winter Judicial Recess, an unusually long period of five and a half weeks was accorded to the Prosecutor and the OPCV for the filing of the final written submissions. The Chamber intends to vary this time limit to two weeks, which is also the time limit that has already been set for the Defence final written submissions.

14. The Chamber notes the Defence request that longer periods than those envisaged in the Adjournment Decision be granted to it in the new calendar. However, the Chamber is of the view that this request does not rest on any new factual circumstances that would constitute good cause to vary previously established time limits. Thus, the Chamber rejects it without prejudice to considering in the future specific requests for extensions if circumstances give rise to a good cause.

FOR THESE REASONS, THE CHAMBER

GRANTS the Prosecutor’s request for variation of time limit and **SUSPENDS** the calendar established by the Adjournment Decision pending another calendar to be issued by the Chamber as soon as the date of the Appeals Chamber’s judgment on the Prosecutor’s appeal against the Adjournment Decision is known; and

²⁸ Request, para. 11.

REJECTS the Defence request for variation of time limits.

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



Judge Silvia Fernández de Gurmendi
Presiding Judge



Judge Hans-Peter Kaul



Judge Christine Van den Wyngaert

Dated this Friday, 8 November 2013

At The Hague, The Netherlands