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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

Second decision on the "Requête aux fins de divulgation de documents et d'éléments indispensables à la préparation de la défense, en vertu des articles 17, 54(1)(a), 57(3)(b), 67(1)(b) et 67(2) du Statut et des règles 77 et 84 du Règlement de Procédure et de Preuve"

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

The Office of the Prosecutor
Fatou Bensouda

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
Didier Preira

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 second decision on the Defence “*Requête aux fins de divulgation de documents et d’éléments indispensables à la préparation de la défense, en vertu des articles 17, 54(1)(a), 57(3)(b), 67(1)(b) et 67(2) du Statut et des règles 77 et 84 du Règlement de Procédure et de Preuve*” (the “Request”).²

1. On 10 December 2012, the Defence filed the Request, asking the Chamber to:

ORDONNER au Procureur, en vertu de l’article 67(2), de divulguer à la Défense :

- l’ensemble des « written and oral communications » du Procureur avec les autorités ivoiriennes concernant les témoins [REDACTED];
- l’ensemble des « written and oral communications » du Procureur avec les autorités ivoiriennes concernant les témoins [REDACTED] et les déclarations assermentées y afférentes;
- tout document, lettre, email, compte-rendu ou procès-verbal de conversation ou de réunion et la liste des interlocuteurs ivoiriens du Bureau du Procureur ainsi que l’historique des rapports du Bureau du Procureur avec les Autorités gouvernementales de l’époque d’une part, Alassane Ouattara, ses proches notamment Guillaume Soro, d’autre part ;

et

ORDONNER au Procureur, en vertu de la règle 77, de permettre à la Défense de prendre connaissance de :

- l’ensemble des procès-verbaux ou compte-rendus de conversations ou de réunions pouvant être utilisés dans le cadre de l’irrecevabilité de l’affaire, au moins à partir du mois de novembre 2010, de la liste des interlocuteurs ivoiriens du Procureur, l’historique des rapports avec les Autorités gouvernementales ivoiriennes (comprenant la liste des missions en Côte d’Ivoire, leur date et leur durée);
- toute correspondance (lettre, email, procès-verbal etc.) entre le Bureau du Procureur et les Autorités gouvernementales ivoiriennes pouvant

¹ ICC-02/11-01/11-61.

² ICC-02/11-01/11-316-Conf and annexes.

être utile dans le cadre de l'irrecevabilité de l'affaire, au moins à partir du mois novembre 2010.³

2. On 19 December 2012, the Prosecutor filed the "Prosecution response to Defence request for disclosure (ICC-02/11-01/11-316-Conf)".⁴ She argued for rejection of the Request, stating that it is "both unwarranted and unnecessary", as "[t]he Prosecution has already fully met its disclosure duties pursuant to Article 67(2) and Rule 77 [...] in response to a similar request that the Defence made directly to the Prosecution in May 2012".⁵

3. On 15 January 2013, the Single Judge issued the "Decision on the *Requête aux fins de divulgation de documents et d'éléments indispensables à la préparation de la défense, en vertu des articles 17, 54(1)(a), 57(3)(b), 67(1)(b) et 67(2) du Statut et des règles 77 et 84 du Règlement de Procédure et de Preuve*", ordering the Prosecutor to file in the record of the case the communications with the Ivorian authorities for which she has determined that they include information falling under article 67(2) of the Rome Statute (the "Statute") and rule 77 of the Rules of Procedure and Evidence (the "Rules"), in order to determine whether additional disclosure regarding such communications is required.⁶ Save for this specific issue, the Single Judge rejected the Request, holding that judicial interference in the disclosure process was not justified.⁷

4. On 18 January 2013, the Prosecutor filed the "Prosecution's provision of communication with the Côte d'Ivoire authorities as ordered in decision ICC-02/11-01/11-351-Conf", annexing the letter sent to the Defence on 25 June 2012, which contained the extracted information; and internal email reports of the communications held between members of the OTP and the Ivorian

³ Request, pp. 18-19.

⁴ ICC-02/11-01/11-335-Conf.

⁵ *Ibid.*, para. 2.

⁶ ICC-02/11-01/11-351-Conf, para. 21 and p. 10.

⁷ *Ibid.*, para. 19 and p. 10.

authorities.⁸ The Prosecutor states that while the emails are reports of the conversations and meetings held between the OTP and Ivorian authorities, they do not provide *verbatim* account of those communications. Therefore, the Prosecutor submits that the letter of 25 June 2012 was drafted “in a manner that was consistent with the content and spirit of the email reports, including where appropriate additional clarification [...] deemed necessary to understand the email summaries”.⁹

5. The Prosecutor also informs the Chamber that the letter of 25 June 2012 also contains information that is not expressly included in the emails provided, but comes from the memory of the staff of the OTP present during the conversations with the Ivorian authorities.¹⁰

6. Finally, the Prosecutor reiterates that the email reports refer to diplomatic communications that should be treated as confidential, and, “apart from the information extracted and disclosed in the 25 June 2012 disclosure response, do not contain potentially exonerating information or anything that would be material to the preparation of the defence case”.¹¹

7. The Single Judge notes article 67(2) of the Statute and rules 77 and 81(1) of the Rules.

8. Following the Prosecutor’s submission in compliance with the first decision, the Single Judge has reviewed the material provided by the Prosecutor in order to assess whether further disclosure to the Defence would be required, in accordance with article 67(2) of the Statute and rule 77 of the Rules. The Single Judge has specifically sought to determine whether more information needed to be extracted from the documents available, whether

⁸ ICC-02/11-01/11-365-Conf-Exp and annexes A and B.

⁹ *Ibid.*, para. 6.

¹⁰ *Ibid.*, para. 7.

¹¹ *Ibid.*, para. 10.

some of the documents needed to be disclosed *per se*, or whether additional measures were warranted, such as requiring sworn declarations from relevant members of the OTP in relation to certain oral communications with the Ivorian authorities. In doing this review, the Single Judge has also considered the disclosure already effected of relevant information to the Defence, including all screenings and statements taken from witnesses [REDACTED].

9. In light of this review, the Single Judge is satisfied that the scope of the disclosure that has been made by the Prosecutor in relation to the communications at issue is appropriate. In these circumstances, no further intervention by the Single Judge is warranted.

FOR THESE REASONS, THE SINGLE JUDGE

REJECTS the Request.

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

[signed]

Judge Silvia Fernández de Gurmendi

Single Judge

Dated this 22 January 2013

At The Hague, The Netherlands