

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 2 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 document

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

Second decision on the Prosecutor's requests for redactions

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

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”), 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 Prosecutor’s requests for redactions.

I. Procedural history

1. 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, *inter alia*, established a series of time limits for the Prosecutor to submit to the Chamber his requests for redactions, depending on the time of collection of evidence. The last of the said time limits, concerning evidence collected after 15 February 2012, was set for 19 April 2012.²

2. 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.”³

3. On 20 March 2012, the Prosecutor submitted, during an *ex parte* hearing, the latest “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”).⁴ On the same occasion, the Prosecutor also stated that he would rely at the confirmation of charges hearing only on the

¹ ICC-02/11-01/11-61.

² ICC-02/11-01/11-30 and Annex.

³ ICC-02/11-01/11-49 and Annex.

⁴ ICC-02/11-01/11-HNE-1-Conf-Exp.

statements of those crime-base witnesses who would provide consent to the disclosure of their identities to the Defence.⁵

4. On 27 March 2012, the Single Judge issued the “First decision on the Prosecutor’s requests for redactions and other protective measures” (“First Decision on Redactions”), deciding on of the Prosecutor’s first two requests for redactions.⁶

5. On 19 April 2012, the Prosecutor filed the “Prosecutor’s request for redactions pursuant to Rule 81(2) and Rule 81(4)” (“Request”).⁷ The Request concerns the statements of six witnesses (Annexes 1 to 6), documents originating from the Presidential Residence (Annex 7) and audio-video material (Annex 8).

6. On 20 April 2012, the Single Judge, by way of email, set, in line with Regulation 34 of the Regulations of the Court, the time limit for the Defence response to the Request for 26 April 2012. The Defence did not submit a response within this time limit.

II. Submissions of the Prosecutor

7. The Prosecutor requests authorisation to redact, under Rule 81(2) of the Rules: “(a) the identity of all Prosecution staff members mentioned in the relevant documents or identified in the metadata attached to the documents; (b) the identity of translators and interpreters; (c) the day and month and location of interviews; and (d) any information identifying Prosecution sources, including investigative leads”. He submits that revealing this information to the Defence is likely to “impact on the Prosecution’s ability to conduct investigations, as it may unduly attract attention to the movement of

⁵ ICC-02/11-01/11-T-5-CONF-EXP-ENG, p. 31, lines 13-24.

⁶ 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).

⁷ ICC-02/11-01/11-96 and its confidential ex parte Annexes.

Prosecution staff and by extension to (potential) witnesses and their security". Further, he submits that the requested redactions ensure that the Prosecution can continue to use the limited number of investigators, translators, sources or locations of interviews that it currently has at its disposal. He adds that the requested redactions do not relate to information that is relevant for the preparation of the Defence and that he will request to lift these redactions when the investigation is at an advanced stage.⁸

8. In addition, the Prosecutor seeks, under Rule 81(4) of the Rules, authorisation to redact: "(a) identifying information of third parties at risk on account of the activities of the Court (...) and (b) identifying information of family members of any witnesses". He maintains that the requested redactions are justified bearing in mind the general threats and risk to persons cooperating with the Prosecution as identified in the STRA, and avers that in light of the limited number of redactions and the type of information being redacted, the Defence will still have access to the essential information contained in the witness statements.⁹

9. Finally, the Prosecutor seeks permission to "redact the names of investigators that may appear in the metadata of the chain of custody of material collected after 19 April 2012". He submits that since the investigation is ongoing, he "may still collect material and intend to rely on it for the purpose of the confirmation of charges hearing" and refers to authorisation previously given by the Single Judge for the same type of redactions. Additionally, he suggests that "the Defence will always be in position to challenge the redactions to the names of the investigators in the metadata if it feels that they affect its ability to prepare for the confirmation hearing".¹⁰

⁸ ICC-02/11-01/11-96, para. 5.

⁹ ICC-02/11-01/11-96, para. 6.

¹⁰ ICC-02/11-01/11-96, para. 13.

III. Applicable law

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

IV. Analysis and conclusions of the Single Judge

A. Assessment of individual proposals for redactions in the Annexes to the Request

11. The Single Judge makes reference to the relevant parts of the First Decision on Redactions, wherein the overall reasons for granting or rejecting requests for redactions have been provided.¹¹ For the present decision, the Single Judge has adhered to the same approach.

12. Accordingly the Single Judge will specify in the Annex to the present decision, *ex parte* only available to the Prosecutor and the VWU, to which category each requested redaction belongs and whether the request is granted or rejected. Furthermore, when the specific nature of the requested redaction so requires, the Single Judge will provide additional explanation in the Annex.

13. The Single Judge notes that following the present decision, copies of identity documents bearing photographs of witnesses 105 and 106 will be disclosed to the Defence. In this respect, the Single Judge recalls that prior to showing the documents to any third parties in the course of its investigation, the Defence is, by virtue of the *Protocole régissant l'utilisation de matériel confidentiel par les parties pendant les enquêtes*, obliged to seek the authorisation of the Chamber.¹²

14. The Single Judge recalls that in the First Decision on Redactions she held that "in order to enable the Defence to identify more efficiently possible faults, the Prosecutor should provide the Defence, in the format considered

¹¹ ICC-02/11-01/11-74-Red, paras 55-102.

¹² ICC-02/11-01/11-49-Anx, p. 5.

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".¹³ In light of the fact that statements of six witnesses will be disclosed shortly upon notification of the present decision, the Single Judge deems it appropriate, for the same reason as stated in the First Decision on Redactions, to order the Prosecutor to update this information.

B. Request for authorisation of redactions to evidence collected after 19 April 2012

15. The Single Judge recalls that pursuant to the Decision on Disclosure, the final time limit for the Prosecutor's submission of requests for redactions is "subject to any further decision of the Chamber setting more specific deadlines".¹⁴ The Single Judge notes that the Prosecutor's Request foresees only minor redactions to the metadata of the evidence to be collected after 19 April 2012. Accordingly, the Single Judge considers that a limited modification of the original system of time limits for submission of requests for redactions is warranted.

16. However, the Single Judge is not persuaded by the way in which the Prosecutor proposes to address this matter, and believes that to authorise redactions by type and on a prospective basis, rather than individually and upon review, would be inconsistent with the duty of the Chamber to review redaction proposals on a case-by-case basis as prescribed by the Appeals Chamber.

17. Nevertheless, having weighed up the competing interests at stake, the Single Judge considers it appropriate to permit the Prosecutor to disclose to the Defence the evidence with redactions as proposed, as soon as possible,

¹³ ICC-02/11-01/11-74-Red, para. 89.

¹⁴ ICC-02/11-01/11-30, p. 30.

and to present to the Chamber, preferably simultaneously, proper reasoning for each individual redaction, in order for the Chamber upon review to either confirm the redactions or to order their withdrawal.

18. The Single Judge wishes to emphasise that the present exemption from the obligation to obtain prior authorisation of redactions is granted in light of the proximity of the confirmation of charges hearing, and applies exclusively to redactions of names of investigators in the metadata of evidence collected after 19 April 2012.

FOR THESE REASONS, THE SINGLE JUDGE

PARTLY GRANTS the Prosecutor's requests for redactions to witness statements and other documents as specified in the Annex to the present decision;

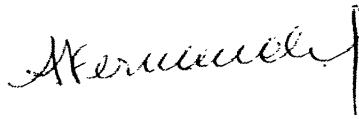
RECALLS that the Prosecutor shall disclose to the Defence the evidence dealt with in the present decision as soon as practicable and no later than 5 days upon notification of the present decision;

ORDERS the Prosecutor to provide the Defence, no later than 11 May 2012, 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 Prosecution staff member;

AUTHORISES the Prosecutor to disclose to the Defence the evidence collected after 19 April 2012 with redactions of names of investigators in the

metadata, and **ORDERS** the Prosecutor to submit to the Chamber justification for such redactions within 3 days following any such disclosure of evidence and in any case no later than 14 May 2012 at 12.00 hours.

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



Judge Silvia Fernández de Gurmendi
Single Judge

Dated this 2 May 2012

At The Hague, The Netherlands