



Original: **English**

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

Date: **16 March 2012**

**PRE-TRIAL CHAMBER I**

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

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE**

***IN THE CASE OF THE PROSECUTOR v. LAURENT GBAGBO***

**Public**

**Prosecution's request pursuant to Regulation 35 for variation of time limit to disclose incriminating evidence**

**Source: Office of the Prosecutor**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

**The Office of the Prosecutor**

**Counsel for the Defence**

Mr Emanuel Altit

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

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

**States' Representatives**

**Amicus Curiae**

## **REGISTRY**

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**Detention Section**

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Section**

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## Introduction

1. On 24 January 2012, the Single Judge of Pre-Trial Chamber III (“Single Judge”) issued the “Decision establishing a disclosure system and a calendar for disclosure” (“Disclosure Decision”).<sup>1</sup> In the Disclosure Decision the Single Judge ruled, among others, that the prosecutor shall disclose “as soon as practicable and no later than 10 February 2012 any evidence on which he intends to rely on at the confirmation hearing which was collected between 25 October 2011 and the filing of the present decision and in relation to which no protective measures are required”.<sup>2</sup>
2. Pursuant to Regulation 35 of the Regulations of the Court, the Prosecution hereby requests the Chamber for an extension of the time limit to disclose two additional items containing incriminatory evidence. One, in fact, is not truly additional, but rather is an alternative form of previously disclosed evidence.
3. The two items – an open source video recording and a written transcript of a previously-disclosed recording -- were collected between 25 October 2011 and 24 January 2012. Due to an oversight by the Prosecution, these documents were not included in the Prosecution’s Communication of Incriminatory Evidence Disclosed to the Defence on 13 February 2012.<sup>3</sup>

## Submission

4. In order to meet the deadlines set out in the Disclosure Decision, the Prosecution undertook the analysis and review of the entire Prosecution database up to 15 February 2012. The review comprises more than 1,500 documents. On 12 March

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<sup>1</sup> ICC-02/11-01/11-30

<sup>2</sup> Disclosure Decision, para.39; dispositiv, p.29.

<sup>3</sup> ICC-02/11-01/11-39

2012, the Prosecution realised it had made an oversight in its review process and started immediately assessing the concerned documents.

5. The Prosecution submits that the oversight regarding the deadline for disclosing information collected between 25 October 2011 and 24 January 2012 affects two items, including one open source video which lasts 10 minutes and 22 seconds<sup>4</sup> and one transcript of a different video-recording. The latter video-recording itself was used in support of the Application pursuant to Article 58 as to Laurent Gbagbo<sup>5</sup> and was disclosed to the Defence on 20 December 2011 on CDs, and again on 3 February 2012 once the E-court Protocol had been adopted and implemented.<sup>6</sup>
6. Regulation 35 of the Regulations of the Court provides that “[t]he Chamber may extend or reduce a time limit if good cause is shown”. The magnitude of the preparation required by an applicant,<sup>7</sup> especially where a short extension of time was requested,<sup>8</sup> has previously been considered to constitute good cause for granting an extension of time.
7. The Prosecution respectfully submits that the Defence will not suffer any undue prejudice as a result of this disclosure. The Defence is already in possession of the video recording whose transcript the Prosecution intends to disclose. Thus, this is simply another form of a particular piece of evidence previously disclosed. The other evidence, the new video recording, is very short, less than 11 minutes. The Defence will still have sufficient time to analyse these new items before the Confirmation Hearing.

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<sup>4</sup> See ICC-02/11-35-US-Exp-Anx1.5.a and 1.5.b.

<sup>5</sup> ICC-02/11-24-US-Exp-Anx 7.10.

<sup>6</sup> CIV-OTP-0003-0013.

<sup>7</sup> ICC-01-04-01/06-190 OA3, paras.4-5; ICC-01/04-01/07-653 OA7, 27 June 2008, para.5.

<sup>8</sup> ICC-01/04-01/06-562 OA3, para.5; ICC-01/04-01/06-190 OA3, paras.2, 4, 5; ICC-01/04-01/07-653 OA7, para.5.

### Conclusion

8. For the reasons set out above, the Prosecution requests the Chamber to grant, pursuant to Regulation 35, the extension of time for the disclosure of two additional elements of incriminatory evidence collected between 25 October 2011 and 24 January 2012.



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Luis Moreno-Ocampo, Prosecutor

Dated this 16<sup>th</sup> day of March 2012

At The Hague, The Netherlands