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

Date: **9 March 2012**

PRE-TRIAL CHAMBER III

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Elizabeth Odio Benito
Judge Adrian Fulford

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF THE PROSECUTOR v. LAURENT GBAGBO

Public

With Annexes 1-8 – Confidential, *ex parte*, only available to the Prosecution

**Second Prosecution's request for redactions pursuant to Rule 81(2) and Rule 81(4)
and disclosure of identity of witnesses**

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 Emmanuel 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

Registrar

Ms Silvana Arbia

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

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”).¹ In the Disclosure Decision the Single Judge ruled, among others, that “any request for redactions to incriminating evidence collected between 25 October 2011 and 15 February 2012 shall be submitted to the Chamber no later than 9 March 2012”.²
2. The Prosecution hereby presents its second request for redactions pursuant to Rule 81(2) and Rule 81(4) relating to the content and metadata of 43 documents that the Prosecution collected between 25 October 2011 and 15 February 2012 and to the metadata of an additional 27 documents, whose content may be disclosed in unredacted form. Although all 70 documents to be disclosed contain incriminating information, the Prosecution has not yet made a final determination as to which of these documents it will rely on for the purposes of the confirmation hearing. A final determination to that effect will be made at the latest 30 days prior to the confirmation of charges hearing when the Prosecution will present its List of Evidence pursuant to Rule 121(3) of the Rules of Procedure and Evidence and the Disclosure Decision.³
3. The Prosecution includes in its present submission an additional transcript of the interview of witness CIV-OTP-P-0044 collected prior to 25 October 2011. This transcript was omitted from the Prosecution’s first request for redactions submitted on 13 February 2012.⁴
4. Pursuant to Regulation 23*bis* of the Regulations of the Court and the instruction of the Single Judge in the Disclosure Decision,⁵ the Prosecution files its annexes

¹ ICC-02/11-01/11-30.

² Disclosure Decision, para.52 and p.29-30.

³ Disclosure Decision, para.35.

⁴ ICC-02/11-01/11-38-Conf-Exp.

⁵ Disclosure Decision, paras.54-55.

confidential, *ex parte*, only available to the Prosecution, as knowledge by the Defence of the content of the filing and its annexes would defeat its purpose.

Requests for redactions

5. The Prosecution seeks authorisation to redact (a) the identity of all Prosecution staff members mentioned in the relevant documents; (b) the identity of translators and interpreters; (c) the date and location of interviews; and (d) any information identifying Prosecution sources (including investigative leads). These redactions are sought pursuant to Rule 81(2) to protect further and ongoing investigations. Revealing to the Defence any of the above information is likely to impact on the Prosecution's ability to conduct its investigations, as it may unduly attract attention to the movement of Prosecution staff and by extension to (potential) witnesses and their security.⁶ The above redactions ensure that the Prosecution can continue to use during its investigations the limited number of investigators, translators, sources or locations of interviews that it currently has at its disposal, without any need to replace them which would have negative implications both on the expeditious conduct of its investigations, as well as on the resources required to conduct such investigations. The Prosecution further submits that the redactions sought pursuant to Rule 81(2) would not result in unfairness to the suspect at the confirmation hearing, since they do not relate to information that is relevant for the preparation of the case of the Defence. Moreover, the Prosecution will request to lift these redactions when its investigation is at an advanced stage.
6. In addition, the Prosecution seeks authorisation to redact (a) identifying information of third parties at risk on account of the activities of the Court (also referred to as "innocent third parties") and (b) identifying information of family members of any witnesses. These redactions are sought pursuant to Rule 81(4) to protect the safety of witnesses and victims and members of their families as well

⁶ Although these redactions are sought pursuant to Rule 81(2), they also have security implications for victims and witnesses and they can therefore equally be justified under Rule 81(4).

as the safety of other persons at risk on account of the activities of the Court. These redactions are justified bearing in mind the general threats and risk to persons cooperating with the Prosecution as identified in the Situation Threat and Risk Assessment in relation to the Prosecution's investigations in Côte d'Ivoire ("STRA").⁷ In addition, the Prosecution refers to the findings of the Chamber in relation to the underlying facts justifying the arrest of Laurent GBAGBO,⁸ which equally warrant the requested redactions under Rule 81(4). At the same time, these redactions do not have any impact on the fairness of the proceedings and the rights of the Defence, as they do not cover any information that is relevant for the preparation of the case of the Defence.

7. In addition to the redactions to the content referred to above, the Prosecution seeks authorisation to redact the metadata of all 70 documents that it wishes to disclose. Redactions to the metadata are sought pursuant to Rule 81(2) and are based on the same grounds referred to in paragraph 5 above. They are limited to (a) the identity of Prosecution staff members; (b) information relating to the date of interviews; and c) Prosecution sources.
8. The annexes to this filing consist of 8 batches of documents. Annex 1 includes the missing transcript of the interview of witness CIV-OTP-P-0044 and Annexes 2 to 5 relate to 4 witnesses interviewed by the Prosecution between 25 October 2011 and 15 February 2012.⁹ Annexes 6 to 8 relate to open source documents, United Nations documents (maps) and a document from national judicial authorities. Each annex includes a table¹⁰ that identifies the exact redactions requested to the text of the documents as well as to its metadata and provides the factual basis for each individual redaction. By reference to the categories referred to above, it also provides the legal basis of each redaction. In addition, each annex includes copies of the relevant documents with highlighted text for which redactions are

⁷ ICC-02/11-01/11-16-US-Exp-Anx1.

⁸ See ICC-02/11-01/11-9-Red, paras.85-86.

⁹ CIV-OTP-P-0044, CIV-OTP-P-0046, CIV-OTP-P-0069, CIV-OTP-P-0087, and CIV-OTP-P-0108.

¹⁰ Disclosure Decision, para.55.

requested. For any portions highlighted in blue, the redactions are sought pursuant to Rule 81(2), while for portions highlighted in red, redactions are sought pursuant to Rule 81(4).



Luis Moreno-Ocampo, Prosecutor

Dated this 9th day of March 2012

At The Hague, The Netherlands