

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/11
Date: 3 September 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

Order on the re-filing of the "Observations de la Défense sur les rapports médicaux préparés par les experts nommés par la Chambre et sur la procédure à suivre"

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**

Paolina Massidda

**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, 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 renders the order on the re-filing of the *“Observations de la Défense sur les rapports médicaux préparés par les experts nommés par la Chambre et sur la procédure à suivre”*.

1. On 26 June 2012, the Single Judge issued the “Order to conduct a medical examination” whereby she appointed three medical experts to proceed with the medical evaluation of Mr Gbagbo, with a view to determining whether he is fit to take part in the proceedings against him.²

2. On 19 July 2012, the Registry filed in the record of the case the medical reports of the three experts appointed by the Single Judge (the “Expert Reports”).³

3. On 2 August 2012, the Single Judge issued the “Decision on issues related to the proceedings under rule 135 of the Rules of Procedure and Evidence and postponing the date of the confirmation hearing” (the “Decision of 2 August 2012”) whereby she, *inter alia*, ordered the Defence to file observations on the Expert Reports and on the subsequent procedure to be followed, not exceeding 45 pages, by 21 August 2012.⁴ Following a Defence request to this effect,⁵ the time limit was subsequently extended to 27 August 2012.⁶

4. On 27 August 2012, the Defence filed the *“Observations de la Défense sur les rapports médicaux préparés par les experts nommés par la Chambre et sur la*

¹ ICC-02/11-01/11-61.

² ICC-02/11-01/11-164-Conf-tENG.

³ ICC-02/11-01/11-190-Conf.

⁴ ICC-02/11-01/11-201.

⁵ ICC-02/11-01/11-215-Conf.

⁶ ICC-02/11-01/11-218.

procédure à suivre” (the “Defence Observations”).⁷ A corrigendum thereof was filed on 29 August 2012.⁸

5. On 29 August 2012, the Prosecutor filed the “Prosecution Requests in relation to the « *Observations de la Défense sur les rapports médicaux préparés par les experts nommés par la Chambre et sur la procédure à suivre* » (ICC-02/11-01/11-233-Conf), wherein she, *inter alia*, submits that the filing of the Defence Observations appears to be inconsistent with regulations 36(3) and 37 of the Regulations of the Court (the “Regulations”), for the reason that the maximum average of words per page has been exceeded. The Prosecutor also submitted that “the Chamber may consider ordering the Defence to re-file its observations in a format that complies with the requirements of Regulations 36(3) and 37”.⁹

6. On 30 August 2012, the Defence filed the “*Réponse de la Défense à « Prosecution Requests in relation to the « Observations de la Défense sur les rapports médicaux préparés par les experts nommés par la Chambre et sur la procédure à suivre » » (ICC-02/11-01/11-234-Conf)*”, submitting that excluding the title and notification pages the Defence Observations really amount to 43 pages. For the event that the Chamber considers that the word limit prescribed by regulation 36 of the Regulations has been exceeded, the Defence presents its excuses and submits that it acted in good faith and in compliance with the page limit ordered by the Single Judge. The Defence also submits that it would be disproportionate to reject the Defence Observations considering the importance of the matter. In the submission of the Defence, it was necessary to cite extensively from the Expert Reports. The Defence submits that to reject the Defence Observations or to order their re-filing

⁷ ICC-02/11-01/11-233-Conf.

⁸ ICC-02/11-01/11-233-Conf-Corr.

⁹ ICC-02/11-01/11-234-Conf, paras 6-7.

would slow down the proceedings.¹⁰ Finally, the Defence requests authorisation to use the maximum of 380 words per page (the “Defence Request”).¹¹

7. The Single Judge notes regulations 29(1), 36(3) and 37 of the Regulations.

8. The Single Judge has granted in the Decision of 2 August 2012 an extension of page limit and authorised the filing of Defence Observations of up to 45 pages. Pursuant to regulation 36(3) of the Regulations, which states that “[a]n average page shall not exceed 300 words”, the Defence has effectively been authorised to file observations not exceeding 13,500 words.

9. The Single Judge agrees with the Defence that the title and notification pages, since they do not include substantive submissions, should not be taken into account for the purpose of calculating the page limit. Accordingly, the Defence Observations amount to 15,369 words and the corrigendum thereof to 15,339 words, exceeding the word limit respectively by 1,869 and 1,839 words. Taking into account the allowed maximum average of 300 words per page, the Defence Observations, as originally filed and as corrected, exceed the authorised page limit by seven pages.

10. The Single Judge is not persuaded by the submissions of the Defence in relation to the necessity of exceeding the authorised page count. As held previously by the Appeals Chamber, non-compliance with regulation 36(3) of the Regulations cannot be corrected by retroactively granting an extension of the page limit.¹² The Defence has had ample opportunity to present all

¹⁰ ICC-02/11-01/11-235-Conf, paras 13-18.

¹¹ ICC-02/11-01/11-235-Conf, p. 8.

¹² Appeals Chamber, “Decision on the re-filing of the document in support of the appeal”, 22 July 2008, ICC-01/04-01/06-1445, para. 8; “Decision on the “Observations de la Défense relatives à l’irrecevabilité du «Prosecution’s Document in Support of Appeal against Trial

relevant circumstances to the Chamber and to request in advance a corresponding extension of page limit under regulation 37(2) of the Regulations. Indeed, the Defence, invoking the complexity of the questions to be addressed and the fact that the issue touches upon the fairness of the proceedings, only requested,¹³ and was accordingly granted,¹⁴ an extension up to 45 pages. The Defence Request cannot but be considered tardy and must therefore be rejected.

11. Regulation 29(1) of the Regulations states that “[i]n the event of non-compliance by a participant with the provisions of any regulation, or with an order of the Chamber made thereunder, the Chamber may issue any order that is deemed necessary in the interests of justice”. For the reasons stated above, the Single Judge deems it necessary to order the Defence to re-file the Defence Observations, in compliance with the page limit set in the Decision of 2 August 2012 and the Regulations.

FOR THESE REASONS, THE SINGLE JUDGE

REJECTS the Defence Request;

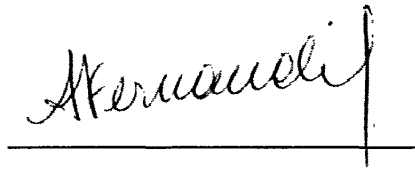
ORDERS the Defence to re-file the Defence Observations, in compliance with the page limit set in the Decision of 2 August 2012 and the Regulations of the Court, by 4 September 2012.

Chamber I’s decision of 8 July to stay the proceedings for abuse of process», daté du 26 juillet 2010”, 30 July 2010, ICC-01/04-01/06-2543, para. 11.

¹³ ICC-02/11-01/11-199-Conf, paras 26-34,

¹⁴ Decision of 2 August 2012, p. 8.

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

A handwritten signature in black ink, appearing to read 'Fernández', is written above a horizontal line. A vertical line extends downwards from the right side of the signature.

Judge Silvia Fernández de Gurmendi

Single Judge

Dated this 3 September 2012

At The Hague, The Netherlands