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No.: ICC-02/11-01/11
Date: 13 November 2012

PRE-TRIAL CHAMBER I

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

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

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

Public Document

**Request in relation to the "Decision on the fitness of Laurent Gbagbo to take part
in the proceedings before this Court"**

Source: Office of Public Counsel for Victims

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

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Ms. Fatou Bensouda

Mr. Eric MacDonald

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Ms. Agathe Bahi Baroan

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Ms. Paolina Massidda

Ms. Sarah Pellet

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms. Paolina Massidda

**The Office of Public Counsel for the
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States Representatives

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar

Ms. Silvana Arbia & Mr. Didier Preira

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. PROCEDURAL HISTORY

1. On 23 November 2011, Pre-Trial Chamber III issued an arrest warrant for Mr. Laurent Gbagbo,¹ who was surrendered to the Court on 30 November 2011. During the first appearance of Mr. Gbagbo, on 5 December 2011, the Chamber scheduled the commencement of the confirmation of charges hearing for 18 June 2012.²

2. On 4 June 2012, the Single Judge of Pre-Trial Chamber I issued a “Decision on Victims’ Participation and Victims’ Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings”³ by which she granted 139 victims the right to participate at the confirmation of charges hearing and in related proceedings.⁴ Furthermore, the Single Judge appointed a counsel from the Office of Public Counsel for Victims (the “OPCV” or the “Office”) as the Common Legal Representative of all the victims admitted to participate in the proceedings.⁵

3. On 12 June 2012, the Single Judge of Pre-Trial Chamber I decided to postpone the commencement of the confirmation of charges hearing to 13 August 2012.⁶

4. On 3 August 2012, the Single Judge of Pre-Trial Chamber I issued a “Decision on issues related to the proceedings under rule 135 of the Rules of Procedure and

¹ See the “Warrant of Arrest For Laurent Gbagbo” (Pre-Trial Chamber III), No. ICC-02/11-01/11-1, 23 November 2011.

² See the transcripts of the hearing of 5 December 2011, No. ICC-02/11-01/11-T-1-ENG, p. 8.

³ See the “Decision on Victims’ Participation and Victims’ Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-138, 4 June 2012 (the “Decision of 4 June 2012”).

⁴ *Idem.*, p. 25.

⁵ *Ibid.*, p. 26.

⁶ See the “Decision on the “Requête de la Défense en report de l’audience de confirmation des charges prévue le 18 juin 2012”” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-152-Red, 12 June 2012, p. 12.

Evidence and postponing the date of the confirmation of charges hearing”⁷ by which she *inter alia* (i) requested the Prosecutor and the Defence to submit observations on the medical reports of the three experts, filed by the Registry in the record of the case on 19 July 2012 “, as well as on the subsequent procedure to be followed before delivering a decision on the issue of Mr. Gbagbo’s fitness to take part in the proceedings against him, by 13 and 21 August 2012 respectively,⁸ and (ii) to postpone the confirmation of charges hearing until such issue is resolved.⁹

5. On 7 August 2012, the OPCV filed its request to be granted access to the Expert Reports and to be authorised to submit observations on said reports as well as on the subsequent procedure to be followed.¹⁰

6. On 15 August 2012, the Single Judge of Pre-Trial Chamber I issued her “Decision on the OPCV’s ‘Request to submit observations and Request to access the Expert Reports”¹¹ wherein she did not consider appropriate that information contained in the Expert Reports be shared with the legal representative of the victims, even in a redacted form.¹² The Single Judge nevertheless considered that “*despite lacking knowledge of the content of the Expert Reports and the nature of Mr Gbagbo’s medical condition, the OPCV is in a position to submit useful observations of a general nature on procedural and legal issues related to the question of a suspect’s fitness to participate in the proceedings against him*”.¹³

⁷ See 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 of charges hearing” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-201, 3 August 2012 (dated 2 August 2012).

⁸ *Idem.*, par. 16 and p. 8.

⁹ *Ibid.*, par. 22.

¹⁰ See the “Request for leave to submit observations and Request to access the Experts Reports”, No. ICC-02/11-01/11-205, 7 August 2012.

¹¹ See the “Decision on the OPCV’s ‘Request to submit observations and Request to access the Expert Reports”, No. ICC-02/11-01/11-211, 15 August 2012.

¹² *Ibid.*, par. 14.

¹³ *Ibid.*

7. On 23 August 2012, the OPCV filed its “Observations on the legal principles applicable to the determination of a suspect’s fitness”.¹⁴

8. On 24 and 25 September 2012, a hearing was held in closed session, in the absence of the Legal Representative of the victims.¹⁵

9. On 2 November 2012, the Pre-Trial Chamber issued its “Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court” (the “Decision”).¹⁶

II. SUBMISSIONS

10. The Common Legal Representative is grateful to the Chamber to have issued a public redacted version of its decision despite the fact that virtually all the submissions by the parties concerning the issue of the suspect’s fitness have been classified confidential.

11. The Office is unaware at this point in time of whether an application for leave to appeal the Decision has been filed before the Chamber. However, considering that practically all documents submitted so far by the parties on this matter have been filed confidential as noted above, it might also be that an application for leave to appeal the Decision has been filed confidentially and therefore not notified to the Common Legal Representative. In this regard, the Office notes that pursuant to article 82(1)(d) of the Rome Statute, Rule 155 of the Rules of Procedure and Evidence and Regulation 33(1)(c) of the Regulations of the Court, and considering that the

¹⁴ See the “Observations on the legal principles applicable to the determination of a suspect’s fitness”, No. ICC-02/11-01/11-228-Corr, 23 August 2012.

¹⁵ See the “Order scheduling a hearing in relation to Mr Gbagbo’s fitness to take part in the proceedings against him” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-241, 12 September 2012. See also the “Decision on issues related to the hearing on Mr Gbagbo’s fitness to take part in the proceedings against him” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-249, 20 September 2012.

¹⁶ See the “Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court” (Pre-Trial Chamber I), No. ICC-02/11-01/11-286-Red, 2 November 2012 (the “Decision”).

public redacted version of the Decision was notified to the Common Legal Representative on 2 November 2012, the deadline for requesting leave to appeal the Decision has elapsed.

12. In accordance with Regulation 24(2) and Regulation 65(3) of the Regulations of the Court, victims have the right to file a response, right which cannot be enforced without knowing whether a request for appeal has been filed or of the content thereof. In particular, Regulation 65(3) of the Regulations of the Court clearly established that :

“Participants may file a response within three days of notification of the application [for leave to appeal under rule 155 of the Rules of Procedure and Evidence].”

13. Incidentally, the Common Legal Representative recalls that the Single Judge of Pre-Trial Chamber I has already recognised that *“the personal interests of victims may, in principle, be affected by a determination as to the fitness of Mr Gbagbo to participate in the hearing on the confirmation of charges against him, in particular by any delay in the proceedings which may result therefrom”*.¹⁷ Victims have therefore the right to present their views and concerns in the matter.

14. Consequently, the Common Legal Representative respectfully requests the Chamber, should an application for leave to appeal has been filed,

- a) To verify whether said application – which in principle should deal with legal issues – could be reclassified as public or could be made accessible to her even in its confidential version. In the negative, to order the party who has filed the application for leave to appeal to file a suitable redacted version of the document in the record of the case within a deadline to be determined by the Chamber;

¹⁷ *Idem.*, par. 13.

- b) To order the other party to file its response in a version which can be notified to the Common Legal Representative; and
- c) To order that the deadline of three days for the submission by the Common Legal Representative of the response to the application for leave to appeal the Decision shall run from the notification of the document to the OPCV.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line underneath.

Paolina Massidda
Principal Counsel

Dated this 13th day of November 2012

At The Hague, The Netherlands