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

Views and concerns of victims in relation to the “Order scheduling a hearing in relation to Mr. Gbagbo’s fitness to take part in the proceedings against him” and on the Defence’s request for postponement

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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**Victims Participation and Reparations
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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.

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 (the “Expert Reports”), 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’” (the “Decision”)¹¹ recognising 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”*.¹² However, 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.¹³ 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*

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, 8 August 2012 (dated 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 *Idem.*, par. 13.

¹³ *Ibid.*, par. 14.

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".¹⁴

7. On 23 August 2012, the Common Legal Representative filed her observations on the legal principles applicable to the determination of a suspect's fitness.¹⁵ A Corrigendum was filed on 24 August 2012.¹⁶

8. On 12 September 2012, Pre-Trial Chamber I issued an order scheduling a hearing to be held on 24 and 25 September 2012 to discuss the issue of the fitness of Mr. Gbagbo to participate in the proceedings against him (the "Fitness Hearing").¹⁷ Despite the fact that the issue of the suspect's fitness to take part in the proceedings against him has been recognised by the Single Judge as relevant for the personal interests of the victims participating at the pre-trial stage, the Common Legal Representative has not been invited to attend said hearing.

9. On 14 September 2012, the Defence filed a request for the postponement of the Fitness Hearing (the "Request for postponement").¹⁸

10. On 17 September 2012, the Prosecution responded to the Request for postponement¹⁹ requesting the Pre-Trial Chamber to reject such request.

¹⁴ *Ibid.*

¹⁵ See the "Observations on the legal principles applicable to the determination of a suspect's fitness", No. ICC-02/11-01/11-228, 23 August 2012.

¹⁶ See the "Corrigendum of Public Document ICC-02/11-01/11-228 - Observations on the legal principles applicable to the determination of a suspect's fitness", No. ICC-02/11-01/11-228-Corr, 24 August 2012.

¹⁷ See the "Order scheduling a hearing in relation to Mr Gbagbo's fitness to take part in the proceedings against him", No. ICC-02/11-01/11-241, 12 September 2012.

¹⁸ See the "Demande de report de l'audience de 'fitness hearing' prévue pour les 24 et 25 septembre 2012 (ICC-02/11-01/11-241)", No. ICC-02/11-01/11-243, 17 September 2012 (dated 14 September 2012) (the "Request for postponement").

¹⁹ See the "Réponse de l'Accusation à la Demande de la Défense de report de l'audience de 'fitness hearing' prévue pour les 24 et 25 septembre 2012 (ICC-02/11-01/11-243)", No. ICC-02/11-01/11-244, 17 September 2012.

11. The Principal Counsel of the OPCV, acting as Common legal representative of the victims (the “Common Legal Representative”), hereby submits the following views and concerns of victims in relation to the Fitness Hearing and the Defence’s request for the postponement of said hearing.

II. VIEWS AND CONCERNS OF PARTICIPATING VICTIMS ON THE ISSUE OF THE SUSPECT’S FITNESS

12. The Common Legal Representative recalls her observations on the issue of the suspect’s fitness filed on 23 August 2012²⁰. The Common Legal Representative wishes to further inform the Pre-Trial Chamber that the issue of the fitness of Mr. Gbagbo to take part in the proceedings against him is a matter of serious concern for victims in Côte d’Ivoire who are unable to understand and follow the developments in the case.

13. Indeed, it has to be reminded that victims authorised to participate in the proceedings are normally not familiar with the complexity of an international criminal proceedings, live far from where the proceedings are conducted and fail to feel that justice is being done in the current circumstances. In this regard, the victims consulted on the matter have expressed to the Common Legal Representative their fear that the issue at stake is simply a Defence manoeuvre to avoid criminal proceedings to be carried out and therefore lead to the impossibility to establish the truth about the events they have suffered from. The victims, while acknowledging that some information might remain confidential, do not understand the reason why said information could not be provided to their counsel in order for her to fully represent their interests in the proceedings.

14. These concerns are all the more vivid insofar all the submissions by the parties with regard to the issue at stake are filed confidential and therefore fuelling any kind of speculation on the matter. On the contrary, should the Common Legal

²⁰ See *supra* footnote 15.

Representative be fully informed of the issue at stake, she would be able – without endangering the right of the suspect to his privacy – to explain to the victims the extent of the matter and reassure them.

15. In this regard, the Common Legal Representative reiterates that some arguments contained in the parties' submissions concerning the issue of the suspect's fitness to participate in the hearing on the confirmation of the charges could be redacted for the benefit of the participating victims. The Common Legal Representative therefore respectfully requests the Pre-Trial Chamber to order the parties to submit suitable redacted versions of their respective submissions in the case record before the Fitness Hearing is taking place in order to allow the victims, as well as the general public, to follow the proceedings. This measure will alleviate the victims' concerns and will greatly contribute to the understanding of the proceedings by the general public.

16. Moreover, it is practically impossible for the Common Legal Representative herself to represent the interests of her clients in these circumstances. She is also seriously concerned by the fact that she is unable to fulfil another main obligation under the Code of Professional Conduct, namely the duty to keep her clients informed of the proceedings.²¹

III. VIEWS AND CONCERNS OF PARTICIPATING VICTIMS IN RELATION TO THE REQUEST FOR POSTPONEMENT OF THE FITNESS HEARING

17. The Common Legal Representative has taken note of the Defence's request for the postponement of the Fitness Hearing.²² She wishes to underline that said request only aims at prolonging indefinitely the proceedings and that the Defence has not shown good cause for said postponement.

²¹ See article 15 of the Code of Professional Conduct for Counsel.

²² See the Request for postponement, *supra* note 18.

18. As regard the first argument put forward by the Defence, namely the fact that several issues are pending since the Pre-Trial Chamber is yet to issue a decision on the leave to appeal filed by the Defence,²³ the Common Legal Representative contends that the matter is not of a nature to justify a suspension of the normal course of the proceedings.

19. As regard the second, third and fourth arguments of the Defence,²⁴ namely the preparation of the Defence for the hearing, the Common Legal Representative submits that the Defence has knowledge of the Expert Reports since July 2012. Moreover, the Defence itself raised the issue of the fitness of Mr. Gbagbo to take part in the proceedings against him, providing its own expert report dealing with the matter. It is therefore unconceivable that the Defence is not ready for the hearing or has not yet assimilated the complexity or technicality of the medical issues at stake.

20. Finally, the Common Legal Representative wishes to reiterate that it is in the interest of victims that the matter is solved as expeditiously as possible.

For the foregoing reasons, the Common Legal Representative respectfully requests the Pre-Trial Chamber:

- To order the parties to file suitable redacted versions of their respective submissions in the case record before the Fitness Hearing;
- To evaluate whether certain parts of the Fitness Hearing might be held in public session with the attendance of the Common Legal Representative;

²³ *Idem*, paras. 17-20.

²⁴ *Ibid.*, paras. 21-28.

- To take into account the views and concerns of victims on the matter;
- To reject the Defence's request for postponement of the Fitness Hearing.

A handwritten signature in black ink, reading 'Paolina Massidda', with a horizontal line underneath the name.

Paolina Massidda
Principal Counsel

Dated this 17th day of September 2012

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

At The Hague, The Netherlands