

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 15 August 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**

**Decision on the OPCV's "Request for leave to submit observations and Request  
to access the Expert Reports"**

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**

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**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 (the “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,<sup>1</sup> hereby renders the decision on the Office of Public Counsel for victims’ (the “OPCV”) “Request for leave to submit observations and Request to access the Expert Reports”<sup>2</sup> (the “Request”).

1. On 4 June 2012, the Single Judge granted 139 victims the right to participate at the confirmation of charges hearing and in related proceedings and appointed the OPCV as their common legal representative (the “Decision on Victim Participation”).<sup>3</sup>

2. On 19 June 2012, the Defence submitted its application for a medical evaluation of Laurent Gbagbo (“Mr Gbagbo”).<sup>4</sup>

3. On 26 June 2012, the Single Judge appointed three medical experts to proceed with a medical examination of Mr Gbagbo, with a view to determining his fitness to participate in the hearing on the confirmation of charges against him.<sup>5</sup>

4. On 19 July 2012, the Registrar filed in the record of the case the medical reports of the three experts appointed by the Chamber, as confidential *ex parte* only available to the Defence and Registry (the “Expert Reports”).<sup>6</sup>

5. On 2 August 2012, the Single Judge (i) postponed the commencement of the confirmation hearing, scheduled for 13 August 2012, until the issue of Mr Gbagbo’s fitness to take part in the proceedings against him is resolved,

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<sup>1</sup> ICC-02/11-01/11-61.

<sup>2</sup> ICC-02/11-01/11-203.

<sup>3</sup> ICC-02/11-01/11-138.

<sup>4</sup> ICC-02/11-01/11-158-Conf-Exp-tENG; ICC-02/11-01/11-158-Conf-Red2.

<sup>5</sup> ICC-02/11-01/11-164-Conf.

<sup>6</sup> ICC-02/11-01/11-190-Conf.

(ii) ordered that redacted versions of two of the Expert Reports be disclosed to the Prosecutor and that the third be disclosed to the Prosecutor in full, and (iii) ordered the Prosecutor and the Defence to file their observations, if any, on the Expert Reports and the subsequent procedure to be followed by 13 August 2012 and 21 August 2012 respectively.<sup>7</sup>

6. On 7 August 2012, the OPCV filed its Request to be granted access to the Expert Reports on the same basis as the Prosecutor, or, with redactions which should not jeopardise the capacity of the OPCV to make comprehensive observations on the issue and for authorisation to submit observations on the Expert Reports and the subsequent procedure to be followed.<sup>8</sup>

7. On 9 August 2012, the Prosecutor filed her response, stating that she does not object to the OPCV Request.<sup>9</sup>

8. On 13 August 2012, following a request to this effect,<sup>10</sup> the Single Judge extended the time limit for the filing of the Prosecutor's observations on the Expert Reports and the subsequent procedure to be followed to 16 August 2012.<sup>11</sup>

9. On 13 August 2012, the Defence filed its response to the Request, submitting that the OPCV fails to demonstrate that the personal interest of victims are affected by proceedings related to the determination of Mr Gbagbo's fitness to stand trial, which is a procedural issue exclusively related to the rights of the Defence, and that participation therein should be limited to the parties.<sup>12</sup> The Defence also submits that disclosure of the Expert Reports to

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<sup>7</sup> ICC-02/11-01/11-201.

<sup>8</sup> ICC-02/11-01/11-203.

<sup>9</sup> ICC-02/11-01/11-205.

<sup>10</sup> ICC-02/11-01/11-204-Conf-Exp.

<sup>11</sup> ICC-02/11-01/11-208-Conf.

<sup>12</sup> ICC-02/11-01/11-209, paras 31-66.

the OPCV would be prejudicial to the rights of the suspect *inter alia* because the information contained therein is either covered by medical privilege or is part of the medical record of Mr Gbagbo in detention, which, pursuant to regulation 156 of the Regulations of the Registry shall be kept strictly confidential.<sup>13</sup>

10. The Chamber notes articles 57(3)(c), 61, 67 and 68(3) of the Rome Statute (the “Statute”) and rules 91, 113 and 135 of the Rules of Procedure and Evidence (the “Rules”).

11. In the Decision on Victim Participation, the Single Judge determined that the legal representative of victims’ right to access confidential filings would be decided on a case-by-case basis, either *proprio motu* or upon receipt of a specific and motivated request.<sup>14</sup>

12. The Single Judge further found, in accordance with article 68(3) of the Statute, that the legal representative of victims may be authorised by the Chamber to make written submissions on specific issues “upon the conditions that (i) the legal representative proves, by way of an application to that effect, that the victims’ personal interests are affected by the issue(s) at stake; and (ii) the Chamber deems it appropriate, in light of, *inter alia*, the stage of the proceedings, the nature of the issue(s) concerned, the rights of the suspects and the principle of fairness and expeditiousness of the proceedings.”<sup>15</sup>

13. The Single Judge recognises 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 and that it may be appropriate to receive their observations in this regard.

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<sup>13</sup> ICC-02/11-01/11-209, paras 67-77.

<sup>14</sup> Decision on Victim Participation, para. 57.

<sup>15</sup> Decision on Victim Participation, para. 60.

14. However, in light of the sensitive and personal nature of the information contained in the Expert Reports, the Single Judge does not consider it appropriate that they be shared with the legal representative of the victims, even in redacted form. Nevertheless, the Single Judge considers 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.

15. The Single Judge is of the view that, thus limited, the participation of victims in the issue of Mr Gbagbo's fitness to participate in the proceedings against him would not be prejudicial to or inconsistent with the rights of the suspect and the principle of fairness and expeditiousness of the proceedings.

16. Accordingly, the Single Judge deems it appropriate to authorise the legal representative of victims to submit observations on the legal principles applicable to the determination of a suspect's fitness to stand trial and the procedure to be adopted following the submission of the Expert Reports by 24 August 2012.

#### **FOR THESE REASONS, THE SINGLE JUDGE**

**REJECTS** the request for access to the Expert Reports; and

**AUTHORISES** the OPCV to submit observations on the legal principles applicable to the determination of a suspect's fitness to stand trial and the procedure to be adopted following the submission of the Expert Reports by 24 August 2012.

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

A handwritten signature in black ink, appearing to read 'Silvia Fernández de Gurmendi', is written over a horizontal line.

**Judge Silvia Fernández de Gurmendi**

**Single Judge**

Dated this 15 August 2012

At The Hague, The Netherlands