



Original: **French**

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

Date: **25 June 2012**

PRE-TRIAL CHAMBER I

Before:

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

**SITUATION IN CÔTE D'IVOIRE
IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO***

Public Document with public annex

Defence motion to deny requests, namely to attend the confirmation hearing and to file observations on the jurisdictional challenge, from Counsel claiming to represent the Republic of Côte d'Ivoire

Source: Defence team for President Gbagbo

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

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Other

1. The Defence for President Gbagbo (hereinafter “the Defence”) hereby files the present application pursuant to articles 12, 13 and 19 of the Rome Statute (“the Statute”), rules 58 and 59 of the Rules of Procedure and Evidence (“the Rules”) and regulation 24 of the Regulations of the Court (“the Regulations of the Court”).
2. In the present application, the Defence will demonstrate that:
 - the Republic of Côte d’Ivoire lacks *locus standi* and accordingly cannot take part in the confirmation hearing (II.A.);
 - the “*Observations de la République de Côte d’Ivoire sur la requête en incompétence de la Cour pénale internationale fondée sur les article 12(3), 19(2), 21(3), 55 et 59 du Statut de Rome présentée par la défense du Président Gbagbo*” are inadmissible (II.B.).

I. PROCEDURAL BACKGROUND

3. On 25 May 2012, the Defence for President Gbagbo filed a challenge to the jurisdiction of the International Criminal Court on the basis of articles 12(3), 19(2), 21(3), 55 and 59 of the Rome Statute.¹

4. On 11 June 2012, the Registry transmitted to the parties a “[C]ommunication transmitted by the Republic of Côte d’Ivoire”,² comprising two annexes, specifically a letter dated 28 May 2012 from two French counsel, Messrs Mignard and Benoit (“Counsel”), both claiming to represent the Republic of Côte d’Ivoire (“RCI”),³ and an e-mail dated 7 June 2012 purporting to confirm this representation agreement.⁴ Through this correspondence, they sought to attend the confirmation hearing as counsel for the RCI.

5. On 15 June 2012, Pre-Trial Chamber I issued its *Decision on the conduct of the proceedings following the defence challenge to the jurisdiction of the Court pursuant to article 19 of the Rome Statute*,⁵ whereby it invited the Prosecution and the Office of Public Counsel for Victims (hereinafter “OPCV”) to submit written observations on the jurisdiction of the Court by 27 June 2012.

¹ [English translation: ICC-02/11-01/11-129-Corr-tENG].

² ICC-02/11-01/11-150.

³ ICC-02/11-01/11-150-Anx1.

⁴ ICC-02/11-01/11-150-Anx2.

⁵ ICC-02/11-01/11-153.

6. On 18 June 2012, Counsel filed their “Request by the Republic of Côte d’Ivoire to submit observations on the challenge to the jurisdiction of the International Criminal Court on the basis of articles 12(3), 19(2), 21(3), 55 and 59 of the Rome Statute filed by the Defence for President Gbagbo”.⁶ That same day, they filed the “*Observations de la République de Côte d’Ivoire sur la requête en incompétence de la Cour pénale internationale fondée sur les article 12(3), 19(2), 21(3), 55 et 59 du Statut de Rome présentée par la défense du Président Gbagbo*”.⁷

II. DISCUSSION

7. First of all, the Defence notes that Counsel failed to submit any official agreement which could serve to verify that they were clearly and unequivocally “[TRANSLATION] appointed by President Alassane Ouattara”,⁸ as they claim. The Defence recalls that according to article 2 of the Code of Professional Conduct for counsel, the term “agreement” denotes an oral or written *legal relationship*.

8. The sole document advanced in support by Counsel is an unheaded e-mail of 7 June 2012 signed by “Fodjo Kadjo Abo, magistrate and author”.⁹ Mr Fodjo Kadjo Abo is, according to the signature of this e-mail, “Director of Cabinet for the Minister of Justice”. No official document is furnished in support of this assertion. With the e-mail address expunged, the only available information, save for the name and purported position of Mr Jodjo Kadjo Abo, is a link to the following website: <http://www.fodjo.net>. Yet, were the Bench to attempt to enter the site, it would be warned as follows: “[TRANSLATION] Warning: A problem has been detected on this page. fodjo.net contains malicious software. Your computer could be infected by a virus if you access this site.” The nebulousness of the “agreement” and doubts as to its authorship render it formally defective.

9. The Defence notes furthermore that the ambit of said “agreement” is unspecified. As they put it in their e-mail, Counsel were purportedly “[TRANSLATION] appointed by the State of Côte d’Ivoire to defend its interests before the International Criminal Court, specifically [sic] in the Gbagbo case”. Any vigilant reader would instantly question how the interests of

⁶ ICC-02/11-01/11-154-tENG.

⁷ ICC-02/11-01/11-156.

⁸ ICC-02/11-01/11-150-Anx1.

⁹ ICC-02/11-01/11-150-Anx2.

Côte d'Ivoire are affected by proceedings aimed at determining individual criminal responsibility. Moreover, the terms of reference of the "agreement" are unspecified. Even had that been the case, is there not a specific internal procedure to follow? Uncertainty as to its ambit renders the "agreement" formally defective.

10. Since this e-mail cannot be considered to constitute a legal relationship between Counsel and their putative principal, the Defence submits that it is not an "agreement" within the meaning of the founding instruments of the Court.

11. In this respect, the Defence considers it necessary to recall that when transmitting these documents, the Registry stated that it had received "by fax a communication from the Counsel representing the Republic de Côte d'Ivoire. [...] The Registry received the confirmation from the Ivorian authorities stating the two Counsel had been appointed by the State of Côte d'Ivoire to represent its interests before the International Criminal Court".¹⁰ The Defence is disquieted at the Registry's failure to undertake any verification and afford consideration to the formal defects identified by the Defence.

A. The Republic of Côte d'Ivoire lacks *locus standi* to attend the confirmation hearing

12. In their letter of 28 May 2012, Counsel sought "[TRANSLATION] the possibility for the Republic of Côte d'Ivoire to attend the confirmation hearing". Having referred to the "[TRANSLATION] desire to cooperate [on the part of their principal] with the International Criminal Court for the purposes of prosecuting and securing the conviction of the perpetrators of and accomplices to the human rights violations committed since the presidential election results were announced on 2 December 2012", Counsel cite Alassane Ouattara's 14 December 2010 letter to the President of the Court and the judicial cooperation agreement between the RCI and the Prosecutor of the Court, "[TRANSLATION] the objective of which was to facilitate their cooperation in relation to investigative missions undertaken on Ivorian territory by the Prosecutor", to argue that a sufficiently close relationship between the Court and the RCI exists to allow their attendance at the hearing. Furthermore, they observe that "[TRANSLATION] the events *sub judice* took place on the territory of the Ivorian State and Mr Laurent Gbagbo, being of Ivorian nationality, is amenable to incurring criminal liability

¹⁰ ICC-02/11-01/11-150, p. 3.

before the Court”. They conclude that “[TRANSLATION] [a]s such, Côte d’Ivoire enjoys the status of State participating in the proceedings.”¹¹

1. The absence of a formal application

13. First, the Defence notes that:

- Counsel did not consider it necessary to file a formal application and that their request by simple letter is hence vitiated by formal defect;¹² and
- the letter is devoid of any substantive legal argument.

2. The status of participating State

14. Counsel argue that the RCI has the status of State participating in the proceedings. Yet, such status ought to have been substantiated by the texts and jurisprudence of the Court, which, however, they would have great difficulty in achieving.

15. Indeed, it is worth recalling that in *Muthaura et al*, the single judge ruled that “a State becomes participant to the proceedings on admissibility **only in particular instances where the interests of a State are envisaged by the Court’s statutory documents**”. By way of example, the single judge cited the situation contemplated by article 19(2)(b) of the Statute, wherein a State Party may contest the admissibility of a case.¹³

16. In *Muthaura et al*, the single judge relied, firstly, on the application of the founding instruments of the Court pure and simple (namely the fact that States’ interests are defined by article 19(2)(b) of the Statute), and secondly, on the discretion vested in the bench, empowering it to conduct proceedings effectively and expeditiously in order to safeguard the right of the accused to be tried without undue delay (which specifically includes limiting participants in the proceedings to those strictly necessary). The solution endorsed in *Muthaura et al* must, logically, find application in the proceedings envisioned by the Statute and the Rules, in this instance the confirmation hearing.

¹¹ ICC-02/11-01/11-150-Anx1.

¹² The Defence notes, for example, that in *Muthaura et al*, the Republic of Kenya filed a formal application to attend the confirmation hearing (*The Prosecutor v. Muthaura, Kenyatta and Ali*, “Request by the Government of Kenya in respect of the Confirmation of Charges Proceedings”, ICC-01/09-02/11-334, 16 September 2011).

¹³ *The Prosecutor v. Muthaura et al, Decision on the “Request by the Government of Kenya in respect of the Confirmation of Charges Proceedings”*, ICC-01/09-02/11-340, 20 September 2011, para. 11.

17. Having failed to demonstrate or prove that in respect of the confirmation hearing the RCI's interests lie at stake within the meaning of the basic texts of the Court, Counsel cannot assert that the RCI enjoys the status of a State participating in the proceedings. Accordingly, their request must be denied.

3. The right to attend

18. Counsel further sought "[TRANSLATION] the possibility for the Republic of Côte d'Ivoire to attend the confirmation hearing". If accepted, such request would enable them, *inter alia*, to attend closed sessions and potentially entitle them to access confidential documents filed by the participants to the proceedings.

19. In making such a far-reaching request, Counsel dispense with any jurisprudential reference or support; what is more, they fail to expound on the foundation of their position. They merely mention the 14 December 2010 letter to the President of the Court and the judicial cooperation agreement between the RCI and the Court, further contending that "[TRANSLATION] the events *sub judice* took place on the territory of the Ivorian State and Mr Laurent Gbagbo, being of Ivorian nationality, is amenable to incurring criminal liability before the Court" – an unsubstantiated statement of position.

20. Even were Counsel to assert that the RCI does have an interest – in the legal sense consonant with the jurisprudence of the Court, and not in the sense of political interest which they argue – in participating in the proceedings irrespective of its status (which it does not enjoy since the RCI cannot be considered a State participating in the proceedings), the following points would have to be taken into account.

21. A close survey of the jurisprudence of the Court shows that the Government of Kenya twice sought leave to attend confirmation hearings: in *Ruto et al*¹⁴ and *Muthaura et al*.¹⁵ These two requests were denied by Pre-Trial Chamber II.

¹⁴ *The Prosecutor v. Ruto et al*, "Request by the Government of Kenya in respect of the Confirmation of Charges Proceedings", ICC-01/09-01/11-310, 1 September 2011.

¹⁵ *The Prosecutor v. Muthaura et al*, "Request by the Government of Kenya in respect of the Confirmation of Charges Proceedings", ICC-01/09-02/11-334, 16 September 2011.

22. In its first ruling, in *Ruto et al*, having recalled rule 122(1), which prescribes that “[the Presiding Judge of the Chamber] shall determine how the hearing is to be conducted [...]”, Pre-Trial Chamber II observed that the Appeals Chamber had heretofore ruled on the admissibility challenge raised by the Government of Kenya, and thus “no issue concerning the Government of Kenya or brought by the latter to the attention of this Chamber [wa]s currently pending before the bench”. Hence, the Single Judge found “that the Government of Kenya has no procedural standing before the Chamber for the purpose of the confirmation of charges hearing”.¹⁶

23. Naturally, the Chamber stated that it could only have ruled otherwise in the event of a *sub judice* “issue concerning the Government of Kenya or brought by the latter to the attention of this Chamber”, which is not the case here.

24. In the case at bar, the RCI has not raised any matter awaiting adjudication by the Chamber. In accordance with the jurisprudence in *Ruto et al*, the RCI lacks *locus standi* to attend the confirmation hearing.

25. This jurisprudence was upheld and set forth in *Muthaura et al* by the same Chamber. Seized of a similar request and, having regard to the jurisprudence established in *Ruto et al*, the single judge denied the Government of Kenya’s request.¹⁷

26. In particular, when Kenya argued that a certain number of matters remained pending as regards possible assistance from the Court to Kenya pursuant to article 93(10), the Chamber opined:

More importantly, the purpose of the confirmation of charges hearing is to consider, in principle, the charges presented by the Prosecutor against the suspects **and not matters that pertain to cooperation between States and the Court**.¹⁸

27. The Defence notes that Counsel make reference, *inter alia*, to a judicial cooperation agreement between the RCI and the Office of the Prosecutor of the Court without employing it as an explicit argument. Had they done so, the Defence would recall that the jurisprudence

¹⁶ *The Prosecutor v. Ruto et al*, Decision on the “Request by the Government of Kenya in respect of the Confirmation of Charges Proceedings”, ICC-01/09-01/11-313, 1 September 2011, paras. 7-8.

¹⁷ *The Prosecutor v. Muthaura et al*, Case No., Decision on the “Request by the Government of Kenya in respect of the Confirmation of Charges Proceedings”, ICC-01/09-02/11-340, 20 September 2011.

¹⁸ *Idem*, para. 6 [emphasis added].

in *Muthaura et al* precludes such an agreement being raised in support of the right of the RCI to attend the confirmation hearing.

28. Of further note is another argument raised by the Government of Kenya and also rejected by the Chamber. Recalling that it was in the process of “actively investigating the suspects in the present case”, the Government of Kenya invoked a “legitimate interest in being present in the courtroom and to hear the evidence presented and submissions made by all parties whether given publicly or confidentially”.¹⁹

29. The Chamber dismissed the argument, explaining that “national investigative activities are conducted independently from the Court and based on the national laws of the Republic of Kenya. Accordingly, the pure assertion of the existence of national investigations cannot justify *per se* the presence of the Government of Kenya in the courtroom, contrary to the statutory documents providing for explicit instances of State participation in the proceedings before the Court”.²⁰

30. It is therefore manifest that the Pre-Trial Chambers have taken a very restrictive approach vis-à-vis the possibility of States’ attendance at confirmation hearings. This jurisprudence is established and grounded in the letter and spirit of the founding instruments, particularly as regards the nature of the confirmation hearing. It also bears mentioning that Counsel, unlike those of the Republic of Kenya, raise no meaningful argument and do not even care to demonstrate their assertions, and that the RCI is not a State Party to the Rome Statute.

31. In light of the arguments raised by the Defence, the Bench will, perforce, draw the conclusion that Counsel’s request for the RCI to attend the confirmation hearing must be denied.

¹⁹ *Idem*, para. 12.

²⁰ *Idem*, para. 6.

B. The Observations of the Republic of Côte d'Ivoire are inadmissible

1. Inadmissibility of the Observations

- a) Regulation 24(3) makes no provision for the submission of observations by the Republic of Côte d'Ivoire

32. Having recalled on 18 June 2012, in their request for leave to submit observations, a certain number of points raised by the Defence in its jurisdictional challenge, Counsel assert – absent, yet again, any relevant jurisprudential reference – that the RCI ought to be able to submit observations, since it “cannot idly stand by in the face of such serious and groundless accusations whereas, in the unlikely event that these accusations are upheld, these allegations would have profound implications for the continuation of the proceedings initiated against Laurent Gbagbo before the Court”.²¹ Counsel state that the RCI “wishes to exercise its right under regulation 24(3) of the Regulations of the Court to submit observations on the challenge to jurisdiction filed by the Defence on 24 May 2012”.²²

33. Regulation 24(3) of the Regulations of the Court prescribes:

Regulation 24 – Responses and replies

[...]

3. States participating in the proceedings may file a response to any document, subject to any order of the Chamber.

34. In accordance with the aforecited jurisprudence in *Muthaura et al* that “a State becomes participant to the proceedings on admissibility **only in particular instances where the interests of a State are envisaged by the Court’s statutory documents**”,²³ the Defence would first recall that the RCI is not a State participating in the proceedings.

35. Since the founding instruments of the Court make no provision for the filing of observations by a non-participating State and the RCI certainly has no “interests” within the meaning of the *Muthaura et al* jurisprudence, it may not participate in the proceedings.

²¹ ICC-02/11-01/11-154-tENG, para. 9.

²² *Idem*.

²³ *The Prosecutor v. Muthaura et al, Decision on the “Request by the Government of Kenya in respect of the Confirmation of Charges Proceedings”*, ICC-01/09-02/11-340, 20 September 2011, para. 11.

36. The filing of observations on jurisdiction by participants to the proceedings is circumscribed by the provisions of article 19 of the Statute and its third paragraph in particular, which alludes to rules 58 and 59 of the Rules.

37. As to the Prosecutor, rule 58(3) mandates: “The Court shall transmit a request [on jurisdiction] to the Prosecutor [...], and shall allow [the Prosecutor] to submit written observations to the request or application [...]”. Thus, in the case at bar, the Bench invited the Prosecutor to present her observations, in accordance with this rule.²⁴

38. As to the victims, the Chamber, acting pursuant to article 19(3) and rule 59(3), authorised them “to submit written observations on the Challenge to jurisdiction within a time period determined by the Chamber”.²⁵ Rule 59(3) applies to victims, insofar as it lays down: “Those receiving the information, as provided for in sub-rule 1 [of rule 59] may make representation in writing to the competent Chamber [...]”. Rule 59(1) reads: “For the purpose of article 19, paragraph 3, the Registrar shall inform the following of any question or challenge of jurisdiction [...] which has arisen pursuant to article 19, paragraphs 1, 2 and 3: [...] (b) The victims who have already communicated with the Court in relation to that case or their legal representatives.”

39. Neither article 19(3) nor rule 59 – the sole provisions to allow the filing of observations – are applicable to the intervention of a non-participating State, such as the RCI.

40. In fact, article 19(3) provides: “In proceedings with respect to jurisdiction or admissibility, *those who have referred the situation under article 13* [...] may also submit observations to the Court.” In this respect, the Defence recalls that the procedure provided for by the second sentence of article 19(3) is applicable to all of the proceedings mentioned in article 19, rather than solely those envisioned by the first sentence of article 19(3).²⁶

²⁴ ICC-02/11-01/11-153, para. 6.

²⁵ *Idem*, para. 7.

²⁶ “In the penultimate draft of [article 19], proposed by the Coordinator three days before the conclusion of the Rome Conference, paragraphs 2 and 3 were combined, so that the final sentence concerning notification applied unquestionably to applications by States, the accused person, and the Prosecutor without distinction. There is nothing in the Official Records of the Rome Conference to indicate that placement of the final sentence of paragraph 3 in such a way as to imply that it only applies to that paragraph was anything but inadvertent. Although the reference to participation by victims and those who have referred the situation under article 13 is found in the provision dealing with by [sic] the Prosecutor, the Appeals Chamber seems to have interpreted this

41. Rule 59 elaborates on the provisions of article 19(3) and provides for the filing of representations in writing, but only by “[t]hose who have referred a situation pursuant to article 13”.

42. The RCI did not refer the situation pursuant to article 13. In *Muthaura et al*, Pre-Trial Chamber II further stated that jurisdiction or admissibility proceedings could only be instituted if the situation had been received by way of referral:

The language of article 19(3) of the Statute and rule 59(1)(a) of the Rules makes clear that **a State shall be informed about an admissibility challenge and provided with a summary of its grounds only if the situation was received by way of a State Party referral** as opposed to a *proprio motu* request submitted by the Prosecutor in the present case. This approach suggests **that the drafters intended to exclude State Parties from proceedings in a scenario such as the one *sub judice***. Thus, the Republic of Kenya cannot be considered as a participant in the instant proceedings [...].²⁷

43. The present state of affairs is analogous: the situation in Côte d’Ivoire was not referred to the Court by a State Party (article 13(a)) or the United Nations Security Council (article 13(b)).

44. Furthermore, the RCI is not a State Party to the Rome Statute. Therefore, the alleged jurisdiction of the Court, which the Defence contests, would fall under the head of article 12, and its third paragraph in particular, not article 13. In any event, the Prosecutor himself drew those conclusions since in the “Document containing the Charges”, stating: “This [18 April 2003] Declaration authorizes the Court to exercise jurisdiction in accordance with Article 12(3) of the Rome Statute.”²⁸

45. The situation envisioned by article 12(3) falls outwith the list set forth in article 13 and is therefore not contemplated by that article. Further still, it must be noted that article 19(3) and rule 59(1)(a) refer only to article 13 and not other provisions, such as article 12(3) – manifest proof that the drafters of the Statute intended to exclude those States who entered a declaration pursuant to article 12(3) from article 19 proceedings.

as being applicable generally to any proceedings under article 19”. (*The International Criminal Court: A Commentary on the Rome Statute*, William A. Schabas, Oxford University Press, 2010, p. 370).

²⁷ *The Prosecutor v. Muthaura et al, Decision on the “Request by the Government of Kenya in respect of the Confirmation of Charges Proceedings”*, ICC-01/09-02/11-340, 20 September 2011, para. 11 [emphasis added]; We note, *obiter*, that article 19 and hence rules 58 and 59 apply both to challenges to jurisdiction and the admissibility of a case.

²⁸ ICC-02/11-01/11-124-Red-Anx1, para. 16.

46. Accordingly, the Court's founding instruments do not afford a State in the RCI's position – that is, where the jurisdiction of the Court ensues from article 12(3) alone – the possibility of submitting observations on a jurisdictional challenge raised by the Defence.

47. Since neither article 19(3) nor rule 59 is applicable in the instant case, and the RCI is therefore not a “State participating in the proceedings” within the meaning of regulation 24(3), Counsel may not rely on this regulation to submit their observations on the Defence jurisdictional challenge.

b) The Chamber confined the submission of observations to the Prosecutor and the OPCV

48. In its 15 June 2012 Decision, the Chamber recalled: “Rule 58 of the Rules [...] gives discretion to the Chamber in taking the appropriate measures for the proper conduct of the proceedings related to a challenge to jurisdiction”, thereby inviting observations on the Defence motion from the Prosecution and OPCV alone.²⁹

49. The Chamber therefore did not exercise the discretion conferred by rule 58(2) to invite the RCI to participate in the proceedings. That rule prescribes:

When a Chamber receives a request or application raising a challenge or question concerning its jurisdiction or the admissibility of a case in accordance with article 19, paragraph 2 or 3, [...] it shall decide on the procedure to be followed and may take appropriate measures for the proper conduct of the proceedings. [...]

50. Furthermore, the nature of this discretion was clarified by Pre-Trial Chamber II in *Muthaura et al*: “[G]iven the language used in rule 58 of the Rules, the Chamber is bestowed with the necessary discretion to organize the proceedings related to an admissibility challenge in a manner that best suits the circumstances of each particular case”.³⁰

51. In light of this holding, the Defence moves Pre-Trial Chamber I to deny the Request for leave of 18 June 2012 solely on account of the inadmissibility of said observations.

2. Counsel's failure to comply with procedure

²⁹ ICC-02/11-01/11-153, para. 5, disposition.

³⁰ *The Prosecutor v. Muthaura et al, Decision on the Conduct of the Proceedings Following the Application of the Government of Kenya Pursuant to Article 19 of the Rome Statute*, ICC-01/09-02/11-40, 4 April 2011, para. 8.

52. Not waiting for a determination of the Chamber on the submission of observations, on that same day, 18 June 2012, Counsel filed Observations on the jurisdictional challenge, thereby seeking to confront the Chamber and parties with a *fait accompli*. These “Observations” run to 26 pages and canvass the Defence jurisdictional challenge.

53. Yet, regulation 24(5) of the Regulations of the Court makes clear: “Participants may only reply to a response with the leave of the Chamber [...]”. This regulation applies by analogy to the instant case.

54. Counsel’s request must be denied for failure to comply with this procedure. Above all, such action shows disinterest in the Court’s ruling.

55. In *Lubanga*, the Appeals Chamber denied the Prosecutor’s application for leave to reply and made the following pointed observation in respect of the Prosecutor’s incorporation of a substantive reply into his application for leave to that effect:

The Appeals Chamber also notes that the content of the Prosecutor’s Application for Leave to Reply is of such a character as to in fact constitute a substantive reply to issues raised by the Appellant. ***The Appeals Chamber disapproves of a practice of the filing of a substantive reply prior to leave being granted by the Appeals Chamber, which in and of itself may also give rise to the rejection of an application for leave.*** If a participant anticipates that the Appeals Chamber might not be in a position to dispose of such an application prior to the expiration of the time limit for the filing of a reply, the proper procedural avenue is to file, together with the application for leave to reply, an application for the extension of the time limit.³¹

56. Counsel’s decision to append substantive observations to their request for leave is, according to the jurisprudence and common sense, a reprehensible practice, as the Appeals Chamber recalled above. Attempting to circumvent the proper procedural avenue provided by the texts and thereby bypass the Chamber so as to influence the ruling on leave is unacceptable. In *Lubanga*, the Appeals Chamber “disapproved” of such practice. This Chamber will undoubtedly reason by analogy and also deprecate the practice in this instance.

³¹ *The Prosecutor v. Lubanga*, Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled “*Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo*”, ICC-01/04-01/06-824, 13 February 2007, para. 68 [emphasis added].

57. In this regard, the Defence is disturbed at the prior publication of the Observations in the 22 to 25 June 2012 edition of *L'éléphant déchainé* as if they form part of the official record.³²

3. The need to expunge the Observations of the Republic of Côte d'Ivoire from the record of the case

58. Since the Observations ought never to have been filed, it would be desirable, should the Chamber deny Counsel's 18 June 2012 Request for leave, to direct the expunction of all references to the Observations from the record.

FOR THESE REASONS, MAY IT PLEASE PRE-TRIAL CHAMBER I TO:

In the main:

- **DENY** Counsel's intervention as representatives of the RCI, absent any proof, including a valid and formal agreement;

In the alternative:

- **DENY** Counsel's request to attend the confirmation hearing;

In the main:

- **DENY** their 18 June 2012 request to file observations on jurisdiction; and
- **FIND** that the Observations filed by Counsel also on 18 June 2012 are inadmissible;

And furthermore,

³² Annex 1.

- **EXPUNGE** from the record all references to the 18 June 2012 Observations.

[signed]

Emmanuel Altit

Lead Counsel for Mr Laurent Gbagbo

Dated this 25 June 2012

At The Hague, The Netherlands