

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 12 June 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 redacted version
URGENT**

***Decision on the "Requête de la Défense en report de l'audience de confirmation
des charges prévue le 18 juin 2012"***

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

The Office of the Prosecutor

Luis Moreno Ocampo

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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

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States Representatives

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar

Silvana Arbia, Registrar

Didier Preira, Deputy Registrar

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 of the International Criminal Court (“Chamber”), 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 therefrom¹ hereby issues the decision² on the “*Requête de la Défense en report de l’audience de confirmation des charges prévue le 18 juin 2012.*”³

I. Procedural history

1. On 23 November 2011, Pre-Trial Chamber III issued an arrest warrant for Laurent Gbagbo (“Mr Gbagbo”),⁴ who was transferred to the Court on 30 November 2011. On 5 December 2011, the first appearance of Mr Gbagbo was held before the Court. During the hearing, Pre-Trial Chamber III scheduled the commencement of the confirmation of charges hearing for 18 June 2012.⁵

2. On 16 May 2012, the Prosecutor submitted, pursuant to Rule 121(3) of the Rules of Procedure and Evidence (“Rules”), his detailed description of the charges brought against Mr Gbagbo (“Document containing the Charges” or “DCC”).⁶

3. On 1 June 2012, the Defence submitted the “Communication par la Défense du Président Gbagbo de l’inventaire des éléments de preuve à décharge.”⁷

¹ ICC-02/11-01/11-61.

² The Single Judge, being aware of the confidential *ex parte* nature of some filings, does not consider their mention in this decision to be inconsistent with the confidential *ex parte* nature of these documents or of their content as such.

³ ICC-02/11-01/11-140-Conf and ICC-02/11-01/11-140-Red.

⁴ Warrant Of Arrest For Laurent Gbagbo, 23 November 2011, ICC-02/11-01/11-1.

⁵ ICC-02/11-01/11-T-1-ENG, p. 8.

⁶ ICC-02/11-01/11-124-Anx1-Red.

⁷ ICC-02/11-01/11-135 as amended on 8 June 2012.

4. On 5 June 2012, the Defence submitted the “*Requête de la Défense en report de l’audience de confirmation des charges prévue le 18 juin 2012*” (“Defence request for postponement”)⁸ whereby the Defence requests the postponement of the date of the confirmation hearing to a date later to 27 August 2012.

5. On 6 June 2012, the Single Judge ordered the Registry [REDACTED].⁹

6. On 6 June 2012, the Registrar filed the “Urgent Information Communicated by the Registrar in Relation to Filing ICC-02/11-01/11-140-Conf”¹⁰ related to a Defence request for additional means submitted on 29 April 2012.

7. On 8 June 2012, the Prosecutor filed his “Prosecution’s response to « *Requête de la Défense en report de l’audience de confirmation des charges prévue le 18 juin 2012* »”.¹¹

8. On 11 June 2012, upon request of the Single Judge,¹² [REDACTED].¹³

II. Parties’ submissions

A. Defence request for postponement

9. The Defence requests the postponement of the date of the confirmation hearing on the basis that a fair trial cannot be safeguarded because (i) Mr Gbagbo’s health condition makes him unfit to stand trial¹⁴ and (ii) the Defence’s resources are insufficient to properly prepare for the confirmation hearing.¹⁵

⁸ ICC-02/11-01/11-140-Conf and ICC-02/11-01/11-140-Red.

⁹ ICC-02/11-01/11-141-Conf-Exp.

¹⁰ ICC-02/11-01/11-142-Conf-Exp and its related annexes.

¹¹ ICC-02/11-01/11-146-Conf.

¹² ICC-02/11-01/11-141-Conf-Exp.

¹³ ICC-02/11-01/11-149-Conf-Exp and ICC-02/11-01/11-149-Conf-Exp-AnxA.

¹⁴ ICC-02/11-01/11-140-Conf, paras 21-60.

¹⁵ ICC-02/11-01/11-140-Conf, paras 61-113.

10. The Defence argues that in light of his health condition, Mr Gbagbo is unfit to stand trial. The Defence provides, in support of his allegations, a medical report submitted by a medical practitioner of the Defence's choosing ("medical report").¹⁶ According to this report, [REDACTED] he "cannot be considered fit to prepare his defence nor fit to attend the proceedings of a trial."¹⁷

11. The Defence contends in particular that, [REDACTED].¹⁸ It further states that Mr Gbagbo [REDACTED].¹⁹

12. In light of the foregoing, the Defence submits that Mr Gbagbo [REDACTED].²⁰ According to the Defence, [REDACTED].²¹

13. The Defence further contends that the resolution of this matter is intertwined with [REDACTED].²² Relying on the medical report, the Defence submits that [REDACTED] and that, [REDACTED].

14. The Defence concludes that postponing the confirmation of charges hearing would thus allow the Chamber to decide on [REDACTED].²³

15. The Defence also contends that the means available to the Defence are insufficient in light of the complexity of the case and the range of the allegations, which call for an analysis of war crimes and crimes against humanity, which were committed in different locations and on different dates and which allegedly involved different actors. The Defence contends that additional means are necessary as it also needs to contemplate the questions

¹⁶ [REDACTED] the Defence appended a medical report: ICC-02/11-01/11-105-Conf-Exp-Anx8.

¹⁷ ICC-02/11-01/11-105-Conf-Anx8-Red, p. 5.

¹⁸ ICC-02/11-01/11-140-Conf, para. 47.

¹⁹ ICC-02/11-01/11-140-Conf, para. 52.

²⁰ ICC-02/11-01/11-140-Conf, paras 52-55.

²¹ ICC-02/11-01/11-140-Conf, para. 55.

²² [REDACTED]

²³ ICC-02/11-01/11-140-Conf, para. 5.

of the legitimacy of the intervention of external powers, the legitimacy of the taking over of the power by the rebels, the lawfulness of the support of United Nations and France to the rebel forces as well as the recent redistribution of Ivorian cacao resources.²⁴

16. On 1 May 2012, the Defence submitted to the Registrar a request for additional means,²⁵ which was still pending at the moment of the filing of the Defence request for postponement.

B. Prosecutor's response

17. The Prosecutor's submits that the Defence request for postponement is unjustified.

18. He contends that the allegations in relation to Mr Gbagbo's health are based on unreliable sources of information and that such allegations can also be addressed in the interim without postponing the confirmation of charges hearing.²⁶ He refers to his observations developed in relation to [REDACTED] whereby he submits that the Defence has not followed the appropriate procedure to request a medical examination of the accused set forth in rule 135 of the Rules. According to this rule, the Defence should have requested to the Chamber a medical, psychiatric or psychological examination by an expert from the list of experts approved by the Registrar or an expert approved by the Chamber. The Prosecutor also alleges that the medical conclusions relied upon by the Defence are unqualified because the medical practitioner is a general and house doctor [REDACTED]²⁷ The Prosecutor further points to the incompleteness and imprecision of the report and that the medical

²⁴ ICC-02/11-01/11-140-Conf-Anx1, pp. 3-4 and 6.

²⁵ ICC-02/11-01/11-140-Conf, para. 112.

²⁶ ICC-02/11-01/11-146-Conf, para. 3.

²⁷ [REDACTED]

practitioner is unqualified to make a legal characterization of the relevant facts as to whether Mr Gbagbo is “unfit to stand trial.”²⁸

19. The Prosecutor adds that the allegations as to the complexity of the case in order to justify a delay are meritless as this case is not unique in comparison to the other cases brought before the Court.²⁹

20. He further states that the Defence contentions as to the time to investigate “is not consistent with the nature and purpose of the confirmation process.”³⁰

III. Applicable law

21. The Single Judge notes articles 61 and 67 of the Rome Statute (“Statute”) and rules 76 to 81, 101, 121 and 135 of the Rules.

22. The Single Judge notes in particular that pursuant to rule 121(7) of the Rules, “[t]he Prosecutor or the person may ask the Pre-Trial Chamber to postpone the date of the confirmation hearing”.

IV. Single Judge determination

23. The Single Judge will hereunder address the two prongs of the Defence request for postponement.

1. Mr Gbagbo’s health condition

24. The Single Judge emphasizes the crucial importance of the issue of the fitness of the person charged to take part in proceedings. Indeed, as a matter of principle, proper consideration must be given to issues related to the health condition of the person charged, as they may have an adverse impact on the

²⁸ ICC-02/11-01/11-137-Conf, paras 62-64.

²⁹ ICC-02/11-01/11-146-Conf, para. 3.

³⁰ ICC-02/11-01/11-146-Conf, para. 4.

person's ability to understand the nature of the charges brought against him, and, therefore, on the fairness of the proceedings.³¹

25. The Single Judge notes in particular that, pursuant to rule 135 of the Rules, the Trial Chamber may order *proprio motu* or at the request of a party "a medical, psychiatric or psychological examination of the accused" to be performed by an expert from the list of experts approved by the Registrar or an expert approved by the Chamber.³² Where the Trial Chamber is satisfied that the person is unfit to stand trial, it shall order that the trial be adjourned.³³

26. The Single Judge is of the view that rule 135 of the Rules, although placed within provisions relating to trial, and explicitly referring to the "Trial Chamber", is also applicable during pre-trial proceedings. The right to understand the nature, cause and content of the charges is a fundamental right enshrined in article 67 (1) of the Statute which, pursuant to rule 121 (1) of the Rules, applies throughout the proceedings before the Court. Rule 135 of the Rules is intended to ensure that the crucial determination of the fitness of the person to participate in proceedings is made following an impartial procedure resorting to approved experts only and with proper oversight by the Chamber and the parties.

27. In this respect, the Single Judge notes that in support of its request, the Defence presents a medical report signed by a general practitioner, which concludes that in light of his conditions Mr Gbagbo "cannot be considered fit to prepare his defence nor fit to attend the proceedings of a trial."³⁴ This conclusion with far reaching consequences is drawn despite other indications contained in the same report according to which:

³¹ See article 67 of the Statute read in conjunction with rule 121(1) of the Rules.

³² Rule 135 of the Rules makes clear reference to the procedure set forth in rule 113 of the Rules.

³³ Rule 135 (4) of the Rules.

³⁴ ICC-02/11-01/11-105-Conf-Exp-Anx8, p.6

(i) [REDACTED]³⁵ ; and

(ii) [REDACTED]³⁶

28. The Single Judge considers that she does not need to address the concerns raised by the Prosecutor regarding the content of the report as well as the competence of the general practitioner to draw the conclusions therein mentioned.³⁷ Indeed, the Single Judge is in any event of the view that such a report, could not *per se* guide the conclusions of the Chamber as to the fitness of the suspect to take part in judicial proceedings. The general practitioner was chosen by the Defence.³⁸ He was not appointed by the Chamber from the list of experts approved by the Registrar nor approved by the Chamber at the request of the Defence, as required by rule 135 of the Rules.

29. The Single Judge also notes that the content of the report, regardless of its accuracy at the time it was issued, appears to have been either contradicted by other practitioners or superseded by ulterior events. The general practitioner relied upon by the Defence [REDACTED]³⁹ and completed his report [REDACTED] almost four months before the date of the Defence request for postponement.

30. Upon request by the Single Judge,⁴⁰ the Registry filed, on 28 May 2012, the [REDACTED] (“Registry Report”).⁴¹ According to the Registry Report, [REDACTED]⁴²

31. The Registry Report contains details of [REDACTED]. The Defence does not mention these conclusions, far less question them, in its submissions.

³⁵ ICC-02/11-01/11-105-Conf-Exp-Anx8, p. 5.

³⁶ ICC-02/11-01/11-105-Conf-Exp-Anx8, p. 5.

³⁷ See para. 18 above.

³⁸ [REDACTED] See also ICC-02/11-01/11-132-Conf-Exp, para. 2.

³⁹ ICC-02/11-01/11-132-Conf-Exp, para. 2.

⁴⁰ [REDACTED].

⁴¹ ICC-02/11-01/11-132-Conf-Exp.

⁴² ICC-02/11-01/11-132-Conf-Exp, para. 1.

32. The Registry report also details [REDACTED]⁴³

33. The Registry report also indicates that Mr Gbagbo [REDACTED]⁴⁴ [REDACTED].

34. In addition to the Registry Report, the Single Judge has also requested [REDACTED].

35. The Single Judge recalls that [REDACTED].⁴⁵ His report to the Chamber does not point to any conditions, physical or psychological, that would impair the ability of Mr. Gbagbo to attend the confirmation hearing. [REDACTED]⁴⁶

Conclusion

36. Therefore, in light of the information at her disposal, the Single Judge is not satisfied that the assertion that Mr Gbagbo is unfit to participate in the confirmation hearing is sufficiently substantiated.

37. However, in light of the importance of this matter for the fairness of the proceedings, the Single judge is prepared to consider a request for an additional medical, psychiatric or psychological examination of Mr. Gbagbo pursuant to rule 135 of the Rules if the Defence, after having considered the two additional reports referred to above, still so requires.

2. Adequate time and facilities for the preparation of the defence

⁴³ ICC-02/11-01/11-132-Conf-Exp, para. 15.

⁴⁴ ICC-02/11-01/11-132-Conf-Exp, para. 12.

⁴⁵ [REDACTED]

⁴⁶ ICC-02/11-01/11-149-Conf-Exp-AnxA.

38. The Single Judge notes that on 29 April 2012 the Defence applied to the Registrar for additional means pursuant to regulation 83(2) of the Regulations and that this request was partly granted on 6 June 2012.⁴⁷

39. In making its assessment, pursuant to regulation 83 of the Regulations, the Registry analysed whether such additional means were reasonably necessary for an effective and efficient defence. The Registrar concluded that in light of the workload of the Defence team, there was a need to put at the Defence's disposal additional means equivalent to the remuneration of a legal assistant.⁴⁸ More specifically, the decision of the Registrar was supported by the following facts (i) that 101 individual victims applications, including supporting materials thereon, were notified to the Defence for observations; (ii) that 837 pages were filed in the record of the Case by other participants and (iii) that 9060 pages and 409 videos were, according to the Defence, disclosed by the Prosecutor, which need to be analysed prior to the commencement of the confirmation hearing.⁴⁹

40. For a variety of reasons, including a need to receive supplementary information from the Defence, the Registry was not in a position to grant the additional means until more than a month after the filing of such request and only seven working days before the scheduled start of the confirmation hearing. This appears to have left barely any time for the Defence to apply effectively these additional means for its preparation for the confirmation hearing scheduled to start on 18 June 2012. Accordingly, the Single Judge considers that in order to safeguard the rights of the Defence, it is necessary to postpone the confirmation hearing to a date which will take into account the delay in allocating the funds to the Defence.

⁴⁷ ICC-02/11-01/11-142-Conf-Exp-AnxII, p. 3.

⁴⁸ ICC-02/11-01/11-142-Conf-Exp-AnxII, p. 8.

⁴⁹ ICC-02/11-01/11-142-Conf-Exp-AnxII, p. 8.

FOR THESE REASONS, THE SINGLE JUDGE

PARTLY GRANTS the Defence request for postponement of the date of the confirmation of charges hearing;

DECIDES that the commencement of the confirmation of charges hearing is postponed to 13 August 2012;

ORDERS the Defence to indicate by 18 June 2012 whether it requests, pursuant to rule 135 of the Rules, an additional medical, psychiatric or psychological examination of Mr Gbagbo in order to determine whether he is fit to participate in the pre-trial proceedings and **ORDERS** the Prosecutor to file his observations on any such request by 22 June 2012;

ORDERS the Prosecutor to file in the record of the Case, by 13 July 2012, any amendment to his DCC and List of Evidence;

ORDERS the Prosecutor to submit no later than 28 June 2012 any request under Rule 81 of the Rules for redactions to evidence collected by the Prosecutor after 19 April 2012;

ORDERS the Defence:

- (i) pursuant to Rule 78 of the Rules, to permit, as soon as practicable and no later than 27 July 2012, the Prosecutor to inspect any books, documents, photographs and other tangible object in its possession or control which are intended for use for the purposes of the

confirmation hearing at a location and time and in a manner agreed by the parties;

- (ii) to provide to the Prosecutor, at his request during inspection, electronic copies or electronic photographs, in the case of tangible objects, of all evidence or material subject to inspection;

ORDERS the Defence in the event it intends to raise the existence of an alibi or to raise a ground for excluding criminal responsibility, pursuant to Rule 79 of the Rules, to notify the Prosecutor no later than 25 July 2012;

ORDERS the Defence:

- (i) to submit no later than 12 July 2012 any request under Rule 81 of the Rules for redactions to evidence collected by the Defence; and
- (ii) to make *ex parte* applications for protective measures other than redactions as expeditiously as possible but no later than 5 July 2012;

ORDERS the Defence to file in the record of the Case no later than 27 July 2012 the Defence List of Evidence, if any, to be presented at the confirmation hearing.

DECIDES that any other deadlines decided in the present case are not altered by the present decision.

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



Judge Silvia Fernández de Gurmendi

Single Judge

Dated this 12 June 2012

At The Hague, The Netherlands