

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 8 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 THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF THE PROSECUTOR v. LAURENT GBAGBO

Public Redacted Version

Prosecution's response to « Requête de la Défense en report de l'audience de confirmation des charges prévue le 18 juin 2012 »

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Counsel for the Defence
Mr Emmanuel Altit

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants
(Participation/Reparation)

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar
Ms Silvana Arbia

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Prosecution opposes the Defence's request to postpone the confirmation hearing scheduled to begin on 18 June 2012.¹
2. The Defence is seeking the postponement of the Confirmation Hearing on two grounds: 1) the current health of Laurent Gbagbo – alleging he is not currently fit to stand trial, and 2) Article 67 (1)b) - Defence would not have had the proper time, financial and staffing resources to prepare for the confirmation hearing.² The Defence seeks the postponement of the confirmation hearing until the Chamber decides two pending applications, their « *requête en incompétence de la Cour pénale Internationale déposée par la Défense* »³ and their [REDACTED].⁴ Alternatively, it requests that the hearing be delayed until not earlier than 27 August 2012. Thus, even if the Chamber soon resolves the jurisdictional and [REDACTED] applications, the Defence makes clear that it is not ready to participate in an 18 June confirmation hearing as currently scheduled, given the complexity of the case and the resources at its disposal.⁵
3. The Defence last-minute claim that it cannot proceed is unjustified. Its submission that the Chamber should delay the hearing until it resolves two pending Defence applications are meritless; those applications have no bearing on the feasibility of proceeding to confirmation, as shown in the Kenya cases.⁶ Its assertion that the Suspect is not healthy enough [REDACTED] to participate in his defence is based on unreliable sources of information that the Prosecution has already addressed in its response to the Defence [REDACTED].⁷ Moreover, the Suspect's health could be addressed in the interim; the Registry can ensure that he is evaluated by doctors [REDACTED] who are competent to make such assessments. His claim that the case is complex, and on that ground alone the hearing must be delayed, is meritless; all cases before this Court are complex and

¹ ICC-02/11-01/11-140-Conf.

² See ICC-02/11-01/11-140-Conf, paras 38 to 113.

³ ICC-02/11-01/11-129-Corr and ICC-02/11-01/11-140-Conf, p. 32.

⁴ ICC-02/11-01/11-105-Conf and ICC-02/11-01/11-140-Conf, p. 32.

⁵ ICC-02/11-01/11-140-Conf, p. 32.

⁶ ICC-01/09-01/11-373, para. 28-38 .

⁷ ICC-02/11-01/11-137-Conf, paras 49-69.

this one is not unique in that regard. Nor does this Defence appear to be singularly shortchanged or unfairly denied equality of arms.

4. The purported need for equal time to investigate in order to present a case at confirmation is not consistent with the nature and purpose of the confirmation process. As the Appeals Chamber recently reiterated, the confirmation of charges hearing “serves to ensure the efficiency of judicial proceedings and to protect the rights of persons by ensuring that cases and charges go to trial only when justified by sufficient evidence”.⁸ It is not, the Chamber also explained, the equivalent of the criminal trial itself; it is instead for the “limited purpose” of “filtering out those cases and charges for which the evidence is insufficient to justify a trial”.⁹ In addition, the Prosecution bears the burden of proof at the confirmation hearing. The Defence has had ample time, notice and resources to find evidence, contest the Prosecution’s presentation and urge the Chamber to find that the evidence presented is not sufficient to reach the threshold required by the Statute.
5. Finally, the context in which this case arose should not be ignored. The victims and the population of Cote d’Ivoire, regardless of their political affiliation, are expecting justice. Timely progress in the judicial process will help to keep peace and stability. None of the issues or challenges by the Defence need be decided before or delay the confirmation hearing.
6. The Prosecution has worked diligently to adhere to the Chamber’s schedule. The process should start on 18 June, as long planned.¹⁰

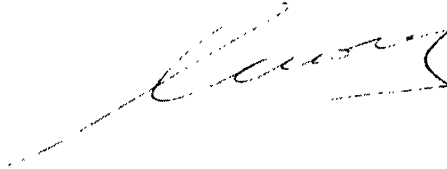
⁸ ICC-01/04-01/10-514 OA4, para. 39

⁹ ICC-01/04-01/10-514 OA4, para. 47.

¹⁰ ICC-02/11-01/11-30.

Confidentiality

7. The Prosecution submits its response with the same confidentiality level as the Defence's request. The Prosecution will also submit a public redacted version consistent with the current public redacted version submitted by the Defence.¹¹



Luis Moreno-Ocampo, Prosecutor

Dated this 8th day of June 2012

At The Hague, The Netherlands

¹¹ ICC-02/11-01/11-140-Red. The Prosecution submits that the redactions applied by the defence are far-reaching and to a great extent unjustified, especially when compared to filing ICC-02/11-01/11-129-Corr. The redactions to ICC-02/11-01/11-140-Red should be reviewed under the guidance of the Chamber.