

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

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

Date: **27 January 2012**

PRE-TRIAL CHAMBER III

Before: Judge Silvia Fernández de Gurmendi, Single Judge

SITUATION IN CÔTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO***

Confidential

***Ex parte* only available to the Defence and the Registry**

Decision on “Requête de la Défense sur le champ de l’aide judiciaire”

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

Office of the Prosecutor

Counsel for the Defence

Mr Emmanuel Altit

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

**Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Detention Section

Ms Silvana Arbia, Registrar

Victims and Witnesses Unit

Other

**Victims Participation and Reparations
Section**

I, Judge Silvia Fernández de Gurmendi, Single Judge for **Pre-Trial Chamber III** of the International Criminal Court (“the Chamber” and “the Court” respectively) responsible for carrying out the functions of the Chamber in relation to the case of *The Prosecutor v. Laurent Gbagbo*,¹ hereby render the following decision on the “Defence request on legal aid”.

I. Procedural background

1. On 23 November 2011, the Chamber issued a warrant of arrest for Laurent Gbagbo (“Mr Gbagbo”),² who was surrendered to the Court on 30 November 2011.
2. On 6 December 2011, the Defence filed an application for legal assistance with the Registry.³
3. At the 15 December 2011 status conference, the single judge instructed the Registry to submit a report within two weeks informing the Chamber of the situation in respect of (i) the offices and equipment at the disposal of the Defence; (ii) the status of the application for legal assistance, in particular whether the necessary information had been received; and (iii) provisional legal assistance.⁴
4. On 28 December 2011, the Registry informed the single judge that a fully equipped temporary office had been assigned to the Defence team.⁵ On the same day, the Registrar issued a decision declaring Mr Gbagbo eligible for full payment of legal assistance and providing provisional assistance pending the

¹ Oral decision of the Chamber, 5 December 2011, ICC-02/11-01/11-T-I-FRA ET WT, pages 9 and 10.

² *Warrant Of Arrest For Laurent Koudou Gbagbo*, 23 November 2011, ICC-02/11-01/11-1.

³ “*Requête de la Défense sur le champ de l’aide judiciaire*”, 13 January 2012, ICC-02/11-01/11-26-Conf-Exp, para. 2.

⁴ ICC-02/11-01/11-T4-CONF-EXP-FRA ET, 15 December 2011, p. 10, lines 23-28; p. 11, lines 23-27; and p. 11, lines 25-27.

⁵ “*Rapport du Greffe conformément à la décision orale de la Chambre rendue lors de la conférence de mise en état du 15 décembre 2011*”, 29 December 2011, ICC-02/11-01/11-21-Conf-Exp, pp. 3 and 4.

outcome of the Registry's investigation into Mr Gbagbo's financial situation ("Registrar's Decision").⁶

5. The Registrar's decision states that the costs of Mr Gbagbo's defence during the pre-trial phase of the case will provisionally be paid by the Court as of the date on which the decision was notified,⁷ whilst the expenses incurred by the Defence from 6 December 2011 will be paid by the Court "[TRANSLATION] provided they are reasonably necessary for an effective and efficient defence in accordance with regulation 83(1) of the Regulations of the Court".⁸
6. On 13 January 2012, the Defence filed an application ("Defence Application") requesting, *inter alia*, the Chamber to order the Registrar (i) to review the amount of legal assistance granted; (ii) to provide Mr Gbagbo with legal assistance with effect from 30 November 2011; and (iii) to provide the Defence with a second equipped office, secure means of communication and a sum of money for the purchase of computer equipment.⁹
7. In particular, the Defence alleges that the amount of legal assistance granted to Mr Gbagbo is insufficient to mount an effective defence or to ensure equality of arms between the parties and Mr Gbagbo's right to a fair trial.¹⁰ The Defence states that it will require additional sums by way of legal assistance in order to cover sundry costs, including the fees of members of its team,¹¹ daily subsistence allowance (DSA),¹² reimbursable non-DSA costs,¹³ costs related to field investigations,¹⁴ proofing costs,¹⁵ and translation costs.¹⁶

⁶ "Corrigendum à la « Décision du Greffier sur la demande d'aide judiciaire aux frais de la Cour déposée par M. Laurent Gbagbo »", 3 January 2012, ICC-02/11-01/11-22-Anx-Corr, p. 5.

⁷ Decision dated 28 December 2011, notified on 29 December 2011.

⁸ *Ibidem*.

⁹ "Requête de la Défense sur le champ de l'aide judiciaire", 30 January 2012, ICC-02/11-01/11-26-Conf-Exp.

¹⁰ *Idem*, paras. 10-22, 25-31, 33-39, 41-45 and 48-51.

¹¹ *Idem*, para. 23.

¹² *Idem*, para. 40.

¹³ *Idem*, para. 32.

¹⁴ *Idem*, para. 46.

8. The Defence further submits that, under rule 132(3) of the Regulations of the Registry, Mr Gbagbo had the right, pending a decision from the Registrar on his indigence, to receive legal assistance as of his arrival in The Hague on 30 November 2011.¹⁷
9. Lastly, the Defence alleges that the office and computer equipment placed at its disposal are insufficient and that the communication system is not secure.¹⁸
10. On 19 January 2012, the Registrar filed her observations on the Defence application ("Registrar's Observations"), requesting the Chamber to declare the Defence Application inadmissible because the request for additional resources should have been submitted to the Registrar beforehand, pursuant to regulation 83(3) of the Regulations of the Court. In the alternative, the Registrar requests the Chamber to dismiss the Defence Application in its entirety as unfounded. The Registrar further requests that the Defence Application, as well as her own observations and any related filings, be reclassified as public.¹⁹
11. On 24 January 2012, the Defence filed observations on the Registrar's Observations in which it requested the Chamber (i) in the main, to declare the Registrar's observations inadmissible inasmuch as they are not in the format stipulated in regulations 36(3) and 37 of the Regulations of the Court or, in the alternative, (ii) to grant the Defence leave to file a response and (iii) to dismiss the Registrar's request to reclassify the Defence application as public, contending that the application contains information on the Defence's strategy.²⁰

¹⁵ *Idem*, paras. 52 and 53.

¹⁶ *Idem*, para. 80.

¹⁷ *Idem*, paras. 58 and 59.

¹⁸ *Idem*, paras. 74, 15, 77, 82 and 83.

¹⁹ "Observations du Greffier sur la « Requête de la Défense sur le champ de l'aide judiciaire » déposée par Maître Emmanuel Altit le 13 janvier 2012", 19 January 2012, ICC-02/11-01/11-28-Conf-Exp.

²⁰ "Observations sur l'irrecevabilité du document soumis à la Chambre par le Greffe le 19 janvier 2012 et subsidiairement demande d'autorisation de réplique aux observations du Greffe et demande de rejet de la requête du Greffe visant à rendre la présente procédure publique", 24 January 2012, ICC-02/11-01/11-31-Conf-Exp.

II. Discussion and Findings

12. The single judge notes that the Defence application addresses two main issues: the scope of legal assistance paid by the Court to Mr Gbagbo and the office, secure means of communication and computer equipment provided to the Defence team by the Registry.
13. The single judge further notes that, under regulation 83(1) of the Regulations of the Court, the scope of legal assistance paid by the Court shall be determined by the Registrar. Regulation 83(3) further stipulates that any application for additional means shall be submitted to the Registrar. The Chamber's jurisdiction, pursuant to regulation 83(4) of the Regulations of the Court, is confined to reviewing the Registrar's decision at the request of the person receiving legal assistance.
14. Furthermore, Trial Chamber III held in the case of *The Prosecutor v. Jean Pierre Bemba Gombo* that the amount of funds paid to a defence team is a matter for the Registrar and not within the Chamber's competence.²¹ This decision highlights the review role of the Chamber and asserts the fact that applications for additional means must be submitted to the Registry in the first instance.²²
15. Since the Registrar has not rendered a decision on an application for additional means by Mr Gbagbo, the single judge is of the view that it is not within the Chamber's competence to rule on the merits of the application submitted by the Defence with respect to the scope of legal assistance.
16. As for the Defence requests in respect of the office, the secure means of communication and the computer equipment provided to the Defence by the

²¹ Redacted version of *Decision on the defence request for adjustment of fees advanced by the Registry pursuant to Trial Chamber III's Decision on legal assistance for the accused of 20 October 2009* (ICC-01/05-01/08-897-Conf), 7 December 2010, ICC-01/05-01/08-897-Red, para. 21.

²² *Idem*, paras. 22 and 23.

Registry, the single judge notes that the Court texts do not expressly provide for a procedure requiring a prior decision by the Registrar. Nevertheless, since these matters fall within the competence of the Registrar pursuant to rule 20 of the Rules of Procedure and Evidence, the single judge is of the opinion that any applications in this regard must first be submitted to the Registrar.

17. Moreover, the Registrar has filed her observations on the two main issues – the scope of legal assistance and the services provided by the Registry. Nevertheless, the single judge considers the Registrar's observations to be inadmissible, as they are not in the format stipulated in regulations 36 and 37 of the Regulations of the Court. In particular, the document considerably exceeds the average permitted word count and fails to adhere to the required 1.5 line spacing.

18. Finally, the Single Judge reminds the Defence of the principle that proceedings before the Court shall be public and points out that under regulation 23 *bis* of the Regulations of the Court, participants filing documents marked "*ex parte*", "under seal" or "confidential" shall state the factual and legal basis for the chosen classification. In the instant case, although the Defence did not state the reasons for the chosen level of confidentiality when filing its application, it does provide reasons in its observations of 24 January 2012. Notwithstanding, the single judge is satisfied by the reasons given by the Defence for the chosen level of confidentiality and is of the view that the Defence should be requested to file a public redacted version of its application and observations. The single judge nevertheless wishes to emphasize the importance of providing reasons in future for the chosen classification when filing documents.

FOR THESE REASONS,

DECLARE the Defence application inadmissible in respect of the scope of legal assistance;

DECLARE the Registrar's observations inadmissible; and

REMINDE the participants that all documents submitted to the Court shall adhere to the stipulations of regulations 36-38 of the Regulations of the Court;

ORDER the Defence first to submit to the Registrar any application concerning the scope of legal assistance as well as any application concerning the offices, secure means of communication and computer equipment the Defence team has been provided with by the Registrar;

ORDER the Defence to submit by 4 p.m. on Wednesday, 1 February 2012 a public redacted version of its application and observations and the Registrar to submit by 4 p.m. on Friday, 3 February 2012, a public, redacted version of its observations reflecting the redactions made to the Defence filings.

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

[signed]

Judge Silvia Fernández de Gurmendi, Single Judge

Dated this Friday, 27 January 2012

At The Hague, The Netherlands