

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/15
Date: 7 September 2015

TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Bertram Schmitt

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
THE PROSECUTOR *v.* LAURENT GBAGBO *and* CHARLES BLÉ GOUDÉ**

**Confidential, *ex parte*, only available to the Prosecution, defence team for
Laurent Gbagbo and Registry**

**Decision granting in part the Prosecution request for an examination of
Mr Gbagbo pursuant to Rule 135 of the Rules and instructing the parties to file
supplemental submissions concerning the selection of expert(s)**

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Eric MacDonald

Counsel for Mr Laurent Gbagbo

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Mr Patrick Craig

**Victims Participation and Reparations
Section**

Others

Trial Chamber I ('Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Articles 63, 64(2), (6)(e) and 67 of the Rome Statute and Rules 113 and 135 of the Rules of Procedure and Evidence ('Rules'), issues the following 'Decision granting in part the Prosecution request for an examination of Mr Gbagbo pursuant to Rule 135 of the Rules and instructing the parties to file supplemental submissions concerning the selection of expert(s)'.

1. On 2 November 2012, Pre-Trial Chamber I ('Pre-Trial Chamber') ruled on the motion filed by the defence team for Mr Gbagbo ('Defence')¹ challenging, *inter alia*, his fitness to take part in the confirmation proceedings ('Decision on Fitness').² In its Decision on Fitness, the Pre-Trial Chamber found that Mr Gbagbo was physically and mentally fit to attend the proceedings.
2. On 6 May 2015, with a view to ensuring the expeditiousness of the forthcoming trial, the Chamber scheduled an *ex parte* status conference 'on the possible practical modalities to facilitate Mr Gbagbo's attendance at trial' ('Status Conference'), to be held on 16 June 2015, in private session, with the Defence, the Registry and the Office of the Prosecutor ('Prosecution') in attendance. In the order scheduling the Status Conference, the Chamber also instructed the Registry 'to provide updated information on Mr Gbagbo's health related needs'.³
3. On 7 May 2015, the Chamber set 10 November 2015 as the start date for trial.⁴

¹ *Requête de la Défense en report de l'audience de confirmation des charges prévue le 18 juin 2012*, 5 June 2012, ICC-02/11-01/11-140-Conf-Exp, with an *ex parte* annex. Confidential versions of the request and the annex were filed on the same day (ICC-02/11-01/11-140-Conf and ICC-02/11-01/11-140-Conf-Anx1). Public redacted versions were filed on 7 and 12 June 2012 (ICC-02/11-01/11-140-Red and Red2).

² Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court, 2 November 2012, ICC-02/11-01/11-286-Conf-Exp. Confidential and public redacted versions were filed on the same day (ICC-02/11-01/11-286-Conf and ICC-02/11-01/11-286-Red).

³ Order convening an *ex parte* status conference on 16 June 2015, 6 May 2015, ICC-02/11-01/15-57.

⁴ Order setting the commencement date for trial, 7 May 2015, ICC-02/11-01/15-58.

4. On 28 May 2015, the Registry filed in the record of the case a 'general statement' by the Detention Centre Medical Officer, whereby the latter indicated that 'from a medical point of view, there is currently no objection to Mr Gbagbo attending court proceedings, provided he has the opportunity to rest in between court sessions'. The Medical Officer further stated that it was not possible to make a prediction about Mr Gbagbo's ability to attend court proceedings later this year.⁵
5. On 16 June 2015, the Chamber held the Status Conference.⁶ During the course of it, the Defence stated, *inter alia*, that the 'proper participation' of Mr Gbagbo during trial proceedings was not possible, and that his presence at trial, even with facilitating measures, 'would lead to physical [...] and [...] nervous exhaustion or a breakdown'.⁷ The Defence argued that, absent any treatment for his illnesses, Mr Gbagbo 'has not been healed' and, because of his inability to concentrate, intimated that he was 'unable to take part in any kind of activity'.⁸
6. On 19 July 2015, the Prosecution filed a motion requesting that the Chamber order a medical and psychiatric examination of Mr Gbagbo, pursuant to Rule 135 of the Rules, 'to confirm that [he] is fit to attend the trial proceedings' ('Request').⁹ The Prosecution submits that, to the best of its knowledge, Mr Gbagbo has not been treated and understood based on the discussion at the status conference that 'the Defence [did] not consider [its] client to be fit to stand trial'.¹⁰

⁵ Updated Information on Mr Gbagbo's Health Related Needs Pursuant to The Chamber's Order of 6 May 2015, 28 May 2015, ICC-02/11-01/15-84-Conf-Exp with an *ex parte* annex. A confidential redacted version was filed on the same day (ICC-02/11-01/15-84-Conf-Exp-Red).

⁶ Transcript of hearing of 6 June 2015, ICC-02/11-01/15-T-2-Conf-Exp-ENG ET.

⁷ ICC-02/11-01/15-T-2-Conf-Exp-ENG ET, page 18, lines 2-7.

⁸ ICC-02/11-01/15-T-2-Conf-Exp-ENG ET, page 19, lines 13-16.

⁹ Prosecution's request for the medical examination of Laurent Gbagbo, 19 June 2015, ICC-02/11-01/15-94-Conf-Exp.

¹⁰ Request, ICC-02/11-01/15-94-Conf-Exp, para. 12.

7. On 13 July 2015, the Defence filed a response opposing the Request ('Response').¹¹ The Defence submitted that it was filed prematurely and contended that the Chamber may only decide whether or not Mr Gbagbo is able to face trial after he has been treated. In the alternative, should the Chamber be minded to grant the Request, the Defence requested that the Chamber defer its decision, obtain Mr Gbagbo's consent, and invite supplemental submissions by the parties to set out the appropriate procedure.¹²
8. The Chamber notes the approaching commencement date for trial. It further notes that the Prosecution requested that a medical examination be conducted so as to dispel any doubt as to the fitness of the accused before trial and that during the Status Conference, the Defence indicated the existence of problems in relation to the ability of the accused to take part in the trial proceedings, including that it was difficult, 'even impossible', notwithstanding any arrangements, for the accused 'to take part at a distance or even intermittently on a number of days [to the proceedings]'.¹³
9. The Chamber recalls that, pursuant to Rule 135 of the Rules, a trial chamber may order *proprio motu* or at the request of a party 'a medical, psychiatric or psychological examination' in accordance with the conditions set forth in Rule 113 of the Rules. The Chamber further recalls that all experts who examined Mr Gbagbo in July 2012 found that he suffered from post-traumatic stress disorder ('PTSD') and hospitalisation syndrome,¹⁴ and that the Pre-Trial Chamber's assessment of Mr Gbagbo as fit to participate in proceedings indicated that his health required heightened attention.¹⁵ The Chamber notes

¹¹ *Réponse de la Défense à la «Prosecution's request for the medical examination of Laurent Gbagbo»* (ICC-02/11-01/15-94-Conf-Exp), 13 July 2015, ICC-02/11-01/15-133-Conf-Exp. A confidential *ex parte* version, available to the Prosecution, was filed on the same day (ICC-02/11-01/15-133-Conf-Exp-Red).

¹² Response, ICC-02/11-01/15-133-Conf-Exp, paras 67-68 and 69-95.

¹³ ICC-02/11-01/15-T-2-Conf-Exp-ENG ET, page 16, lines 5-20.

¹⁴ Report of Dr Chuc, ICC-02/11-01/11-190-Conf-Exp-Anx1-tENG, page 35; Report of Dr Daunizeau, ICC-02/11-01/11-190-Conf-Exp-Anx2-tENG, pages 14 and 16; Report of Dr. Lamothe, ICC-02/11-01/11-190-Conf-Exp-Anx3-tENG, page 23.

¹⁵ Decision on Fitness, ICC-02/11-01/11-286-Red, para. 103.

further that this assessment was made almost three years ago.¹⁶ Accordingly, the Chamber considers that it is timely to conduct a medical examination of Mr Gbagbo under Rule 135 of the Rules and is minded to grant the Prosecution request.

10. Mindful of its obligation to ensure the expeditiousness of the forthcoming trial, the Chamber is of the view that, upon receipt of new medical expert's opinions, the Chamber will be better positioned to adjudicate any issues as to Mr Gbagbo's fitness to attend trial proceedings. An updated medical evaluation will also be of assistance to the Chamber and the Registry in setting any practical modalities needed, should it be necessary, to facilitate Mr Gbagbo's attendance at trial.
11. The examination will be conducted with a view to assessing Mr Gbagbo's current medical condition, including whether he is still suffering from PTSD and hospitalisation syndrome, and if so, identifying the consequences of this, if any, on his ability to follow and take part in the forthcoming trial proceedings.
12. While Mr Gbagbo's consent may not be required under the legal framework,¹⁷ the Chamber is of the view that it is in the interests of justice to seek the parties' views prior to appointing one or more medical experts in light of the mandate set out above. Accordingly, in order to assist the Chamber, the parties are requested to file or supplement their submissions on the specific type of expertise that may be warranted to assess Mr Gbagbo's abilities with respect to participating in the trial (medical, psychiatric and/or psychological) and on the specific expert(s) who are best placed to conduct this examination. In this regard, the Chamber finds it appropriate that the Prosecution receive a lesser redacted version of the Response prior to filing its submissions.

¹⁶ Decision on Fitness, ICC-02/11-01/11-286-Red.

¹⁷ Rule 113 of the Rules.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

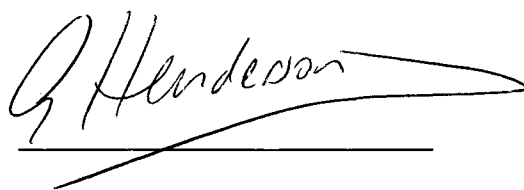
GRANTS, in part, the Prosecution Request;

DECIDES to defer the appointment of expert(s);

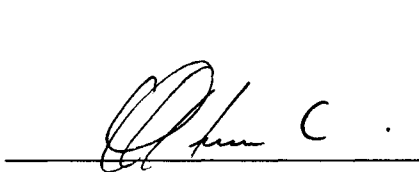
ORDERS the Prosecution and the Defence to file the submissions in accordance with paragraph 12 by 15 September 2015; and

ORDERS the Defence to file a lesser redacted version of its Response (ICC-02/11-01/15-133-Conf-Exp-Red), in which redactions to paragraph 95 shall be lifted, by 8 September 2015.

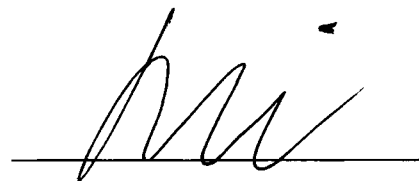
Done in both English and French, the English version being authoritative.



Judge Geoffrey Henderson, Presiding Judge



Judge Olga Herrera Carbuccion



Judge Bertram Schmitt

Dated 7 September 2015

At The Hague, The Netherlands