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No.: **ICC-02/11-01/15**
Date: **5 October 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**

**Prosecution's response to "Notification par la Défense du consentement écrit de
Laurent Gbagbo à la communication de son dossier médical et de son dossier de
détention à M.M Ludes et Dumez" (ICC-02/11-01/15-266-Conf-Exp)**

Source: Office of the Prosecutor

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

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Confidentiality

1. The Prosecution files this submission as confidential – *ex parte* only available to the Prosecution, Defence team of Laurent Gbagbo and Registry since it refers to information discussed during an *ex parte* private hearing.¹ The Prosecution will submit a redacted version of this request upon the further instruction of the Chamber.

Procedural Background

2. On 2 November 2012, Pre-Trial Chamber I declared the Accused Laurent Gbagbo fit to take part in the confirmation of charges proceedings, following a hearing in which expert testimony was called and expert reports submitted.² In its decision, Pre-Trial Chamber I primarily relied on the expert report and the evidence of Dr Pierre Lamothe.³
3. On 7 September 2015, the Chamber ordered a further medical examination of the Accused Mr Gbagbo pursuant to rule 135 of the Rules of Procedure and Evidence, and ordered the Prosecution and the Defence to file supplemental submissions.⁴
4. On 30 September 2015, following the filing of the Parties' supplemental submissions on 15 September 2015,⁵ the Chamber appointed Dr Pierre Lamothe, Mr Alain Dumez and Professor Bertrand Ludes to undertake an examination of Mr Gbagbo pursuant to rule 135.⁶ To this end, the Chamber ordered the Gbagbo Defence to seek Mr Gbagbo's consent to the disclosure of his medical and detention records, or to provide his views in accordance with regulation 92(4) of the Regulations of the Court by 2 October 2015.⁷

¹ Hearing of 16 June 2015, ICC-02/11-01/15-T-2-CONF-EXP-ENG ET.

² ICC-02/11-01/11-286-Conf.

³ ICC-02/11-01/11-286-Conf, para. 100.

⁴ ICC-02/11-01/15-206-Conf-Exp.

⁵ ICC-02/11-01/15-219-Conf-Exp and ICC-02/11-01/15-221-Conf-Exp.

⁶ ICC-02/11-01/15-253-Conf, para. 11 and p. 9.

⁷ ICC-02/11-01/15-253-Conf, para. 19 and p. 10.

5. On 2 October 2015, the Gbagbo Defence notified the Chamber that Mr Gbagbo had consented to the disclosure of these records to Mr Dumez and Professor Ludes, but not to Dr Lamothe. According to the notification, *“Laurent Gbagbo considère que Monsieur Lamothe n’a pas eu un comportement professionnel lors de la première expertise, privilégiant une approche prétendument de connivence à une approche professionnelle et trahissant dans ses rapports le sens de leurs échanges, sortant par exemple des déclarations de Laurent Gbagbo de leur contexte.”*⁸

Submissions

6. To date, the Gbagbo Defence has not explicitly called Dr Lamothe’s professionalism into question. The Gbagbo Defence had the opportunity to raise any issues with Dr Lamothe’s conduct in the course of proceedings to determine Mr Gbagbo’s fitness to participate in the confirmation of charges hearing in 2012. It did not take this opportunity to cross-examine Dr Lamothe on any misrepresentations that may have been contained in his report about his meetings with Mr Gbagbo.⁹ Nor did it raise such issues in its response of 13 July 2015¹⁰ to the Prosecution’s request for a medical examination.¹¹
7. The only suggestion of wrongdoing, if any by Dr Lamothe appears in the Gbagbo Defence’s supplemental submissions on the selection of experts of 15 September 2015.¹² In these submissions, the Gbagbo Defence appears to suggest that parts of Dr Lamothe’s 2012 report had been leaked to the media, and that consequently *“une relation de confiance peut être longue à reconstruire...”*.¹³ The submissions make reference to an online *Le Monde* article, dated 19 February 2013, stating that according to a report authored by Dr Lamothe, *“Laurent Gbagbo est très soucieux ‘de la façon dont il sera jugé par l’Histoire’ et ‘attend impatiemment l’opportunité’ de faire*

⁸ ICC-02/11-01/15-266-Conf-Exp, para. 3.

⁹ Hearing of 25 September 2012, ICC-02/11-01/11-T-7-CONF-ENG, p. 25, l. 19 to p. 60, l. 5.

¹⁰ ICC-02/11-01/15-133-Conf-Exp.

¹¹ ICC-02/11-01/15-94-Conf-Exp.

¹² ICC-02/11-01/15-221-Conf-Exp.

¹³ ICC-02/11-01/15-221-Conf-Exp, para. 38 and fn. 43.

valoir ses thèses."¹⁴ However, it would be inaccurate to suggest that this information was leaked to the media. The Prosecution recalls that a public redacted version in English of Pre-Trial Chamber I's decision on fitness of 2 November 2012 contained excerpts of Dr Lamothe's report, including the information translated and cited in the *Le Monde* article.¹⁵

8. The Gbagbo Defence has not therefore, prior to its notification of 2 October 2015, raised any valid issue about Dr Lamothe's professional conduct. It follows that there is no valid justification to delay the transfer of Mr Gbagbo's detention record to Dr Lamothe either pursuant to regulation 92 of the Regulations of the Court or regulation 156 of the Regulations of the Registry. The opening statements are scheduled to start on 10 November 2015.¹⁶ In order to avoid any delay, the Prosecution requests that the Chamber order the immediate transfer of the relevant medical documents to Dr Lamothe.¹⁷

Conclusion

9. For the foregoing reasons, the Prosecution requests that the Chamber, having heard Mr Gbagbo's views on the matter pursuant to regulation 92(4) of the Regulations of the Court, order the transfer Mr Gbagbo's detention record to Dr

¹⁴ *Le Monde*, 20 February 2013, http://www.lemonde.fr/afrique/article/2013/02/19/premiere-audience-devant-la-cour-penale-internationale-pour-laurent-gbagbo_1834924_3212.html (consulted 5 October 2015).

¹⁵ See ICC-02/11-01/11-286-Red, para. 87. The French public redacted version of decision ICC-02/11-01/11-286-Red was only made available on 15 May 2013 according the TRIM metadata.

¹⁶ ICC-02/11-01/15-58, p. 12.

¹⁷ ICC-02/11-01/15-253-Conf, p. 9.

Lamothe so that the medical examination of Mr Gbagbo may proceed without delay.



Fatou Bensouda, Prosecutor

Dated this 5th day of October 2015

At The Hague, The Netherlands