

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-02/11-01/15

Date: 8 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***

**URGENT  
Confidential**

**Order to provide Appointed Expert with access to  
Mr Gbagbo's detention record**

Order 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**

Mr Geert-Jan Alexander Knoops  
Mr Claver N'dry

**Legal Representatives of Victims**

Ms Paolina Massidda

**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**

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**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), 64(6)(e) and 67 of the Rome Statute ('Statute'), and Rules 113 and 135 of the Rules of Procedure and Evidence ('Rules'), and Regulation 92 of the Regulations of the Court issues the following 'Order to provide Appointed Expert with access to Mr Gbagbo's detention record'.

### **I. Procedural History**

1. On 7 September 2015, the Chamber, ruling on a request of the Office of the Prosecutor ('Prosecution'),<sup>1</sup> decided that it was 'timely to conduct a medical examination of Mr Gbagbo under Rule 135 of the Rules'.<sup>2</sup> The Chamber considered that this would facilitate the adjudication of any issue as to Mr Gbagbo's fitness to stand trial, as well as any practical modalities needed to facilitate his attendance at trial.<sup>3</sup>
2. On 30 September 2015, having considered the supplemental submissions concerning the type of expertise and appropriate experts,<sup>4</sup> the Chamber issued an 'Order to conduct an examination of Mr Gbagbo under Rule 135 of the Rules' ('Order'), appointing Dr Lamothe, Mr Dumez and Professor Ludes ('Appointed Experts') to undertake medical examinations. The Chamber also ordered the

<sup>1</sup> Prosecution's request for the medical examination of Laurent Gbagbo, 19 June 2015, ICC-02/11-01/15-94-Conf-Exp with a confidential, *ex parte* annex. See also *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* redacted version, available to the Prosecution, was filed on the same day (ICC-02/11-01/15-133-Conf-Exp-Red). On 8 September 2015, and in accordance with the Decision of 7 September 2015, the Gbagbo Defence filed a less redacted version of its response (*Version moins expurgée de la « Réponse de la Défense à la «Prosecution's request for the medical examination of Laurent Gbagbo»* (ICC-02/11-01/15-94-Conf-Exp) » déposée le 13 juillet 2015 (ICC-02/11-01/15-133-Conf-Exp), 8 September 2015, ICC-02/11-01/15-133-Conf-Exp-Red2).

<sup>2</sup> 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), ICC-02/11-01/15-206-Conf-Exp, para. 9.

<sup>3</sup> Decision of 7 September 2015, ICC-02/11-01/15-206-Conf-Exp, para. 10.

<sup>4</sup> *Soumissions de la Défense concernant le type d'expertise à ordonner pour évaluer la capacité à être jugé de Laurent Gbagbo et identifiant les experts les plus à même de mener une telle expertise*, 15 September 2015, ICC-02/11-01/15-221-Conf-Exp ('Defence Supplemental Submissions') with four confidential, *ex parte*, annexes; Prosecution's supplemental submissions concerning the selection of experts (ICC-02/11-01/15-206-Conf-Exp), 15 September 2015, ICC-02/11-01/15-219-Conf-Exp ('Prosecution Supplemental Submissions') with three confidential, *ex parte* annexes.

Gbagbo Defence to seek Mr Gbagbo's consent in providing the Appointed Experts with Mr Gbagbo's medical and detention records, or to provide his views in accordance with Regulation 92(4) of the Regulations, by 2 October 2015.<sup>5</sup>

3. On 2 October 2015, the Gbagbo Defence filed a notification ('Notification') of Mr Gbagbo's consent to communication of his medical and detention records to Mr Dumez and Professor Ludes. However, Mr Gbagbo indicated that he would need additional time to decide whether he consented to the transmission of his medical records to Dr Lamothe.<sup>6</sup>
4. On 6 October 2015, the Prosecution filed its response to the Notification requesting that the Chamber order the transfer of Mr Gbagbo's detention record to Dr Lamothe.<sup>7</sup>

## II. Submissions and analysis

5. In appointing the experts to conduct a medical examination of Mr Gbagbo, the Chamber did so '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.'<sup>8</sup>
6. In the Notification, Mr Gbagbo requests additional time to decide whether he consents to his detention<sup>9</sup> and medical records<sup>10</sup> being communicated to Dr Lamothe, on the basis of Mr Lamothe's suitability as an appointed expert and his concern that, in conducting his medical examination of Mr Gbagbo on 11 and 12

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<sup>5</sup> Order to conduct an examination of Mr Gbagbo under Rule 135 of the Rules, 30 September 2015, ICC-02/11-01/15-253-Conf.

<sup>6</sup> *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*, 2 October 2015, ICC-02/11-01/15-266-Conf-Exp.

<sup>7</sup> 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), 5 October 2015, ICC-02/11-01/15-269-Conf-Exp.

<sup>8</sup> Decision of 7 September 2015, ICC-02/11-01/15-206-Conf-Exp, para. 11.

<sup>9</sup> Regulation 189 of the Regulations of the Registry.

<sup>10</sup> Regulation 156 of the Regulations of the Registry.

July 2012,<sup>11</sup> Dr Lamothe did not conduct himself with a professional demeanour and did not report Mr Gbagbo's communications in context.

7. The Chamber notes that these specific issues were not raised when the Gbagbo Defence had an opportunity to file submissions as to the type of expertise required and on the selection of the specific experts who would conduct the examination.<sup>12</sup> On the basis of these submissions, the Chamber appointed Dr Lamothe, Mr Dumez and Professor Ludes to conduct examinations of Mr Gbagbo pursuant to Rule 135 of the Rules.<sup>13</sup> The Chamber also notes the observations of the Prosecution that the Gbagbo Defence has never explicitly raised any issues concerning Mr Lamothe's professionalism, despite that he examined Mr Gbagbo, reported and testified thereon more than three years ago.<sup>14</sup>
8. Concerning the Accused's detention record, maintained pursuant to Regulation 189 of the Regulations of the Registry, the Chamber notes that, under Regulation 92 of the Regulations of the Court, a detained person's views must be sought when the Chamber considers ordering that the detention record or part thereof is to be disclosed.<sup>15</sup> The Chamber further recalls that in issuing the Order, it considered, *inter alia*, that receiving complete information from the records kept in the Detention Centre concerning Mr Gbagbo would be of assistance to the

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<sup>11</sup> *Transmission du Greffe des rapports médicaux soumis en vertu de l'ordonnance aux fins de procéder à un examen médical* ICC-02/11-01/11-164-Conf, 19 July 2012, ICC-02/11-01/11-190-Conf-Exp-Anx3-tENG.

<sup>12</sup> Defence Supplemental Submissions, ICC-02/11-01/15-221-Conf-Exp, para. 38, '*Concernant de Docteur Lamothe, il n'a pas vu Laurent Gbagbo depuis trois ans. Dans ces conditions, une relation de confiance peut être longue à reconstruire, d'autant que des éléments du précédent rapport du Docteur Lamothe ont été reproduits dans les médias*'. Notification, ICC-02/11-01/15-266-Conf-Exp, para. 3, '*En effet, 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. Par conséquent, du point de vue de Laurent Gbagbo il n'existe pas de relation de confiance, pourtant indispensable à la bonne menée d'une expertise de ce type, entre l'intéressé et l'expert désigné.*'

<sup>13</sup> Order to conduct an examination of Mr Gbagbo under Rule 135 of the Rules, 30 September 2015, ICC-02/11-01/15-253.

<sup>14</sup> *Transmission du Greffe des rapports médicaux soumis en vertu de l'ordonnance aux fins de procéder à un examen médical* ICC-02/11-01/11-164-Conf, 19 July 2012, ICC-02/11-01/11-190-Conf-Exp-Anx3. Transcript of hearing on 25 September 2015, ICC-02/11-01/11-T-7-CONF-ENG ET.

<sup>15</sup> See Regulation 92 of the Regulations of the Court (only requiring that the detained person be informed of any request for access to his or her detention record and be given the opportunity to be heard or to submit his or her views).

Appointed Experts in performing their evaluations. The Chamber has considered the Gbagbo Defence's preliminary objections to the provision of Mr Gbagbo's detention records to Dr Lamothe. The Chamber nevertheless considers that it will be of assistance to the Chamber to ensure that Dr Lamothe has the relevant information in Mr Gbagbo's detention record to assess his current medical condition in light of the forthcoming trial proceedings. In this regard, the Chamber also considers it appropriate to clarify that, in conducting their examination, the Experts may, as appropriate, consult with Detention Centre staff regarding the accused's detention records.

9. Concerning the transfer of Mr Gbagbo's medical record to Dr Lamothe, in the absence of Mr Gbagbo's consent at this stage, the Chamber grants the request of Mr Gbagbo for additional time to provide his written consent for (i) communication of his medical record to and (ii) for a medical examination by Dr Lamothe. In the absence of written consent by the time-limit indicated below, the Chamber will conclude that Mr Gbagbo has refused consent, and take this into consideration in deciding whether to nevertheless order the transmission of his medical record for the purposes of a medical examination pursuant to Articles 21 and 64(8)(a) of the Statute and Rules 113 and 135 of the Rules.
10. Noting that the report by Dr Lamothe is to be submitted to the Chamber at the latest by 29 October 2015,<sup>16</sup> the Chamber orders that Mr Gbagbo's detention record maintained pursuant to Regulation 189 of the Regulations of the Registry shall be communicated to Dr Lamothe without delay.

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<sup>16</sup> Order to conduct an examination of Mr Gbagbo under Rule 135 of the Rules, 30 September 2015, ICC-02/11-01/15-253.

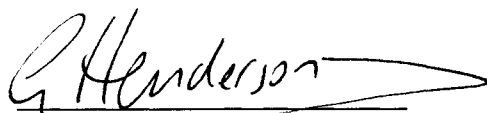
**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**ORDERS** the Registry to provide Mr Gbagbo's detention records to Dr Lamothe without delay; and

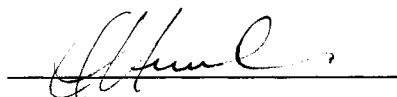
**ORDERS** the Defence to seek Mr Gbagbo's written consent to the disclosure of his medical record to and a medical examination by Dr Lamothe, by 12 October 2015;

**ORDERS** the Registry to transmit the present order to Dr Lamothe.

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



**Judge Geoffrey Henderson, Presiding Judge**



**Judge Olga Herrera Carbuca**



**Judge Bertram Schmitt**

Dated 8 October 2015

At The Hague, The Netherlands