

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 5 November 2015

TRIAL CHAMBER I

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

SITUATION IN CÔTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLÉ GOUDÉ***

Confidential

**Notification of the Legal Representative of Victims in relation to questioning of
experts and oral submissions at the hearing of 10-12 November 2015**

Source: Office of Public Counsel for Victims

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

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Mr James Stewart

Mr Eric Macdonald

Counsel for Mr Laurent Gbagbo

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Mr Geert-Jan Alexander Knoops

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Legal Representatives of the Victims

Ms Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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Victims**

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**Victims Participation and Reparations
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Other

I. Introduction

1. The Common Legal Representative of the victims admitted to participate in the proceedings (the "Legal Representative")¹ files this notification in accordance with Trial Chamber I's Order on the classification of the Experts' Reports (the "Order").²

II. Confidentiality

2. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, the present notification is filed confidential because it contains references to filings and orders currently classified as confidential.

III. Background

3. On 7 September 2015, the Chamber issued the "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)",³ ordering a medical examination of Mr Gbagbo with a view of assessing his current medical condition.⁴

¹ See the "Directions on the conduct of the proceedings" (Trial Chamber I), No. ICC-02/11-01/15-205, 3 September 2015, p. 24.

² See the "Order on the classification of the Expert Reports and other related documents" (Trial Chamber I), No. ICC-02/11-01/15-329-Conf, 2 November 2015, pp. 7 and 8 (the "Order").

³ See the "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)" (Trial Chamber I), No. ICC-02/11-01/15-206-Conf-Exp, 7 September 2015, reclassified as confidential pursuant to Trial Chamber I's order dated 20 October 2015.

⁴ *Idem*, para. 11.

4. On 30 September 2015, Trial Chamber I (the "Chamber") issued the "Order to conduct an examination of Mr Gbagbo under Rule 135 of the Rules",⁵ *inter alia*, appointing three medical experts,⁶ detailing the issues which should be addressed in the Experts' Reports to be filed by 29 October 2015,⁷ and convening a hearing to be held in private session on 5 November 2015 in the presence of the Gbagbo Defence, the Prosecution and the Registry.⁸

5. On 28 October 2015, the Chamber granted the Gbagbo Defence's Request to order the attendance at hearing of the three appointed medical experts, rescheduling said hearing for 10-12 November 2015.⁹

6. On 2 November 2015, the Chamber issued the Order instructing, *inter alia*, the Legal Representative to file a notification by 5 November 2015 indicating 1) whether she intends to question the experts, which ones and the estimated time needed to do so; and 2) an estimation of time needed to make any oral submissions at the conclusion of the hearing.¹⁰

7. On 3 November 2015, the Legal Representative was notified of the redacted versions of the Experts Reports.¹¹

⁵ See the "Order to conduct an examination of Mr Gbagbo under Rule 135 of the Rules" (Trial Chamber I), No. ICC-02/11-01/15-253-Conf, 30 September 2015.

⁶ *Idem*, para. 11.

⁷ *Ibid.*, para. 15

⁸ *Ibid.*, para. 20.

⁹ See the "Decision granting the request of the Gbagbo Defence and re-scheduling opening statements" (Trial Chamber I), No. ICC-02/11-01/15-322, 28 October 2015.

¹⁰ See *supra* note 2, pp. 7 and 8.

¹¹ See the "Confidential redacted version of the Annexes 1, 2 and 3 to the Transmission by the Registry pursuant to ICC-02/11-01/15-253-Conf of Appointed Experts' reports", Nos. ICC-02/11-01/15-325-Conf-Anx1-Red, ICC-02/11-01/15-325-Conf-Anx2-Red, and ICC-02/11-01/15-325-Conf-Anx3-Red, 3 November 2015.

IV. Submissions

8. The Legal Representative indicates that the Experts Reports fully explore the medical conditions of the Accused and that they are unequivocal on the fact that Mr Gbagbo is fit to stand trial and able to follow and take part in the proceedings.

9. Therefore, the Legal Representative considers that it is not necessary for the interests of victims to question the experts. Should any issue arise during the hearing which could have an impact on said interests, she will request leave of the Chamber to intervene.

10. In relation to oral submissions at the end of the hearing, the Legal Representative informs the Chamber that no more than 10 minutes will be required.

11. In this regard, the Legal Representative wishes to reiterate her previous observations according to which the issues related to Mr Gbagbo's fitness to attend trial are of crucial importance for the victims she represents. Indeed, said issues may determine the outcome of the proceedings and any potential delay in the trial will have more important consequences on the victims' personal interests at this stage of the proceedings, where Mr Gbagbo's alleged criminal responsibility will be eventually determined.¹²

12. Finally, the Legal Representative observes that the victims she represents are aware of the ongoing discussions on Mr Gbagbo's health condition because this matter is frequently addressed by the media in Côte d'Ivoire. Unsurprisingly, this

¹² See the "Request to attend the *ex parte* hearing scheduled on 16 June 2015 and to access the Registry Report", No. ICC-02/11-01/15-79, 22 May 2015, paras. 6, 8 and 13. See also the "Request for leave to submit observations and Request to access the Expert Reports", No. ICC-02/11-01/11-203, 7 August 2012, paras. 9-13. See also ICTY, *Prosecutor v. Strugar*, Case No. IT-01-42-A, Judgement (Appeals Chamber), 17 July 2008, para. 34; ECHR, *S.C. v. the United Kingdom*, No. 60958/00, Judgment, 15 June 2004, para. 29; ECHR, *T. v. the United Kingdom* [GC], No. 24724/94, Judgment, 16 December 1999, para. 83; ECHR, *V. v. the United Kingdom* [GC], No. 24888/94, Judgment, 16 December 1999, para. 90; and ECHR, *Stanford v. the United Kingdom*, No. 16757/90, Judgment, 23 February 1994, para. 26.

issue has been and still is a matter of serious concern for them, who constantly ask for information on the consequences that the health condition of the Accused might have on the course of the proceedings. Victims have repeatedly expressed their views on this matter and the Legal Representative has an obligation to convey her clients' concerns to the Chamber.



Paolina Massidda
Principal Counsel

Dated this 5th day of November of 2015

At The Hague, The Netherlands