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TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Geoffrey Henderson

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR

v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ

PUBLIC

with

**Confidential, EX PARTE Annex A, only available to the Prosecution, Defence and
Registry**

**Public redacted version of "Prosecution's request for the medical examination of
Laurent Gbagbo", 19 June 2015,
ICC-02/11-01/15-94-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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Introduction

1. In November 2012, the Pre-Trial Chamber declared the Accused fit to take part in the confirmation of charges proceedings before the Court. Notwithstanding its decision, the Pre-Trial Chamber also requested further information on possible avenues to provide adequate treatment to improve the physical and psychological health of the Accused. [REDACTED].
2. This trial is scheduled to start on 10 November 2015. In order to ensure the expeditiousness of the trial, the interests of justice and to implement any modalities to facilitate the attendance of the Accused at trial, the Prosecution requests the Chamber to order a medical and psychiatric examination of the Accused pursuant to rule 135 of the Rules of Procedure and Evidence to confirm that the Accused is fit to attend the trial proceedings.

Confidentiality

3. The Prosecution files this submission as confidential – *ex parte* only available to the Prosecution, Defence 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

4. On 2 November 2012, the Pre-Trial Chamber declared the Accused fit to take part in the confirmation of charges proceedings (“Decision on Fitness”).² The Pre-Trial Chamber found that the Accused was physically fit to attend the proceedings.³ It

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.

also concluded that the Accused was mentally fit. The Pre-Trial Chamber concluded that Dr Lamothe established “that Mr Gbagbo possesses the capacities to understand the charges against him, as well as the conduct and the possible consequences of proceedings against him, and is capable of giving instructions to counsel as well as of making a statement.”⁴ In its analysis of the evidence on record, the Pre-Trial Chamber attached limited weight to the findings of Dr Chuc⁵ and Mr Daunizeau⁶ in relation to the mental capacities of the Accused.⁷

5. In its Decision on Fitness, the Pre-Trial Chamber also instructed the Registry to “submit a report and to explore ‘any measures that can be taken to help physical recovery’ of Mr Gbagbo”.⁸

6. On 6 November 2012, the Single Judge further held that:

“[It] is necessary to obtain further specific information, by way of a report, about the available avenues to provide adequate treatment to improve Mr Gbagbo's physical and psychological health [REDACTED].⁹

7. [REDACTED],¹⁰ [REDACTED].

8. On 6 May 2015, the Chamber convened an *ex parte* status conference¹¹ which was held in private session on 16 June 2015.¹²

⁴ ICC-02/11-01/11-286-Conf, para.100.

⁵ In light of Prosecution submissions and Dr Chuc's own concession that the psychiatric expert would be better placed to provide more detailed information on PTSD and its consequences, the Pre-Trial Chamber considered it “more appropriate to be guided by the results of Dr Daunizeau and Dr Lamothe respectively”. ICC-02/11-01/11-286-Conf, paras.75-76.

⁶ The Pre-Trial Chamber found that “[Dr Daunizeau's] diagnosis, even if it were to be considered accurate, does not assist the Chamber for the purposes of the current determination as these alleged changes in the personality of Mr Gbagbo are not at issue.” It then concluded that “[f]or these reasons, the Chamber does not consider the report of Dr Daunizeau and his oral answers at the hearing provide a sufficient basis to find Mr Gbagbo mentally unfit to take part in proceedings against him.” ICC-02/11-01/11-286-Conf, para.86.

⁷ ICC-02/11-01/11-286-Conf, para.100.

⁸ ICC-02/11-01/11-286-Conf, para.103.

⁹ [REDACTED].

¹⁰ ICC-02/11-01/15-84-Conf.

¹¹ ICC-02/11-01/15-57.

¹² ICC-02/11-01/15-T-2-CONF-EXP-ENG ET.

Submissions

9. To the best knowledge of the Prosecution, [REDACTED].¹³ The record available to the Prosecution also appears to show that [REDACTED].¹⁴
10. [REDACTED].¹⁵
11. At the *ex parte* status conference held on 16 June 2015, [REDACTED]. [REDACTED]¹⁶
12. The Prosecution submits that (a) [REDACTED], (b) [REDACTED], and (c) [REDACTED], all indicate that the Defence do not consider their client to be fit to stand trial.
13. Therefore, in the interests of justice and in order to ensure the fairness and expeditiousness of the proceedings and the adoption of modalities necessary to facilitate the attendance of the Accused at trial, the Prosecution submits that the Chamber should order a medical and psychiatric examination of the Accused pursuant to rule 135.
14. The Chamber has the authority to review *proprio motu* the fitness of the Accused pursuant to rule 135.¹⁷ The Prosecution is mindful of [REDACTED].¹⁸ However, rule 135 also foresees that the Chamber can exercise its power “for any other reasons”. This open ended formula would certainly capture any modalities to be adopted pursuant to articles 64(2), 64(6)(f) and 64(8)(b) of the Rome Statute (i.e. the modalities to facilitate the fair and expeditious conduct of the proceedings and the attendance of the Accused). Finally, the Chamber may order a medical examination of the Accused “at the request of a party”.

¹³ [REDACTED].

¹⁴ [REDACTED]. [REDACTED].

¹⁵ [REDACTED]. This is an interpretation of the Defence since no such comment can be found in the Decision on Fitness.

¹⁶ [REDACTED].

15. It is of paramount importance to these proceedings that any doubt as to the fitness of the Accused be dispelled before the start of the trial. It is also imperative that the precise condition of the Accused be known well before the start of the trial to enable the Chamber to adopt the appropriate modalities to facilitate his attendance.
16. If the Chamber orders a medical and psychiatric examination of the Accused, the Prosecution submits that Professor Bertrand Ludes and Dr Pierre Lamothe should be appointed as experts. Dr Lamothe examined the Accused in July 2012 and would be in a position to describe any changes in his physical and psychiatric condition.¹⁹ Professor Ludes is a certified expert before the *Cour de cassation* in Paris and would be in a position to conduct a physical examination of the Accused. The Prosecution attaches a *curriculum vitae* for Professor Ludes at Confidential and *Ex Parte* Annex A hereto,²⁰ and will provide further details in relation to both experts, upon request by the Chamber.²¹

¹⁹ ICC-02/11-01/11-190-Conf-Anx2-Red and Conf-Anx3-Red. The Prosecution submits that in light of the field of expertise of Dr Daunizeau and the comments of the Pre-Trial Chamber as to the conclusion of his expertise in the Decision on Fitness, he should not be re-appointed. *See infra* fn.6.

²⁰ Professor Ludes is the Director of the Forensic Medicine Institute of Paris and the former Dean of the Faculty of Medicine of Nancy. He is an expert for the Supreme Court of Appeal of France *inter alia* in the specialisation “legal medicine of the living”, which includes clinical examinations as well as assessments of the status of health of detainees.

²¹ A short biography for Dr Lamothe is available at ICC-02/11-01/11-190-Conf-Anx3-Red.

Conclusion

17. For the foregoing reasons, the Prosecution requests the Chamber to order a medical and psychiatric examination of the Accused and, if deemed necessary, a schedule for corresponding written and oral submissions.



Fatou Bensouda, Prosecutor

Dated this 1st day of February 2016

At The Hague, The Netherlands