

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 16 July 2012

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Single Judge

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
*THE PROSECUTOR V. LAURENT GBAGBO***

Public

**Decision on the schedule for the confirmation of charges hearing and related
issues**

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor

Counsel for the Defence

Emmanuel Altit

Agathe Bahi Baroan

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Paolina Massidda

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

States Representatives

Jean-Pierre Mignard

Jean-Paul Benoit

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar

Silvana Arbia, Registrar

Didier Preira, Deputy Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Silvia Fernández de Gurmendi, Single Judge for Pre-Trial Chamber I (“Chamber”) of the International Criminal Court (“Court”), responsible for carrying out the functions of the Chamber in relation to the situation in the Republic of Côte d’Ivoire and the cases emanating therefrom,¹ hereby issues the decision on the schedule of the confirmation of charges hearing and related issues.

1. On 23 November 2011, Pre-Trial Chamber III issued an arrest warrant for Laurent Gbagbo (“Mr Gbagbo”),² who was transferred to the Court on 30 November 2011. On 5 December 2011, the first appearance of Mr Gbagbo was held before the Court. During the hearing, Pre-Trial Chamber III scheduled the commencement of the confirmation of charges hearing for 18 June 2012.³ On 12 June 2012, the Single Judge postponed the commencement of the hearing to 13 August 2012.⁴

2. On 4 May 2012, the Single Judge issued the “Decision requesting observations from the parties on the schedule of the confirmation of charges hearing.”⁵

3. On 16 May 2012, the Prosecutor submitted, pursuant to Rule 121(3) of the Rule of Procedure and Evidence (“Rules”), his first detailed description of the charges brought against Mr Gbagbo.⁶

4. On 23 May 2012, the Prosecutor and the Defence filed their observations on the schedule for the confirmation hearing.⁷

¹ ICC-02/11-01/11-61.

² ICC-02/11-01/11-1.

³ ICC-02/11-01/11-T-1-ENG, p. 8.

⁴ ICC-02/11-01/11-152-Red, p. 12.

⁵ ICC-02/11-01/11-107.

⁶ ICC-02/11-01/11-124-Anx1-Red.

⁷ ICC-02/11-01/11-127, ICC-02/11-01/11-128.

5. On 25 May 2012, the Defence submitted the *“Requête en incompétence de la Cour Pénale Internationale fondée sur les articles 12(3), 19(2), 21(3), 55 et 59 Du Statut de Rome présentée par la défense du Président Gbagbo”*.⁸

6. On 4 June 2012, the Single Judge issued the *“Decision on Victims’ Participation and Victims’ Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings”*, whereby she: (i) admitted victims to participate at the confirmation hearing and in related proceedings; (ii) determined their participatory rights; and (iii) designated the OPCV as their common legal representative.⁹

7. On 7 June 2012, the OPCV filed the *“Information as to the agreement between the Common Legal Representative and the Prosecution on access to documents and Requests in relation to the schedule of the confirmation of the charges hearing”*,¹⁰ wherein it also requests the Chamber to:

- Grant the Common Legal Representative’s Request in relation to opening and closing statements and written submissions on issues discussed during the confirmation of charges hearing referred to in paragraph 7 ; and
- Grant the Common Legal Representative’s Request to make submissions, either orally or in writing, on the definition of the mode of individual criminal liability under article 25(3)(a) of the Rome Statute.¹¹

8. On 11 June 2012, the Registry transmitted to the Chamber a communication from the Republic of Côte d’Ivoire (*“Côte d’Ivoire”*), whereby Côte d’Ivoire requests to be represented at the confirmation of charges hearing.¹²

⁸ ICC-02/11-01/11-129 and annexes.

⁹ ICC-02/11-01/11-138.

¹⁰ ICC-02/11-01/11-143.

¹¹ ICC-02/11-01/11-143, pp. 7-8.

¹² ICC-02/11-01/11-150 and its Anx1 and Anx2.

9. On 15 June 2012, the Chamber issued the “Decision on the conduct of the proceedings following the defence challenge to the jurisdiction of the Court pursuant to article 19 of the Rome Statute”.¹³

10. On 13 July 2012, the Prosecutor submitted, pursuant to Rule 121(3) of the Rule of Procedure and Evidence (“Rules”), his amended detailed description of the charges brought against Mr Gbagbo (“Amended Document Containing the Charges” or “Amended DCC”).¹⁴

11. The Single Judge notes articles 61, 67, 68 and 69(4) of the Rome Statute (“Statute”) and rules 63, 87, 103, 121 and 122(1) of the Rules of Procedure and Evidence (“Rules”).

1. *Schedule of the confirmation hearing*

12. At the outset, the Single Judge reminds the parties and participants that:

[T]he Hearing has a limited purpose and scope. Pursuant to Article 61(7) of the Statute, the Chamber's duty is only to determine "whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged" and not, as is the task of the Trial Chamber pursuant to Article 66(3) of the Statute, to determine whether the accused is guilty beyond a reasonable doubt. Therefore, the Hearing needs to be concise whilst giving the parties an opportunity to present their arguments and respond to the other's party submissions (footnotes omitted).¹⁵

13. Moreover, rule 122(1) of the Rules states that “[t]he Presiding Judge shall determine how the hearing is to be conducted and [...] may establish the order and the conditions under which [...] the evidence contained in the record of the proceedings [...] [is] to be presented.”

14. In establishing the schedule annexed to the present decision, the Single Judge has taken into account the parties’ observations to the largest extent

¹³ ICC-02/11-01/11-153.

¹⁴ ICC-02/11-01/11-184-Anx1-Red.

¹⁵ ICC-02/11-01/11-107, para.10.

possible. In this respect, the Single Judge notes that the parties have, *inter alia*, requested the allocation of time to address the issue of jurisdiction. The Single Judge recalls that, as previously decided by the Chamber, the intervention of the parties and participants in the article 19 proceedings is confined to providing written submissions.¹⁶ Accordingly, issues of jurisdiction will not be further discussed orally at the confirmation of charges hearing.

15. The Single Judge also notes that the Prosecutor, in the Amended Document Containing the Charges, advances a position on the proper interpretation of article 25(3)(a) of the Statute, stating at the same time that different interpretations may be possible.¹⁷

16. In light of the relevance of this issue for the present case, the Single Judge considers it appropriate to give the parties and participants an opportunity to make submissions on the legal interpretation of indirect co-perpetration. The Chamber will also be assisted by submissions on whether, based on the same evidence, the elements of “ordering” under 25(3)(b) of the Statute would be covered by the allegation of indirect co-perpetration in the Amended Document Containing the Charges. However, the Single Judge does not consider it necessary to schedule separate sessions on this particular matter as the parties and the OPCV may address it within the global time allotted to them.

17. The time schedule as annexed to the present decision indicates the global time allotted to the parties and participants. It is thus the responsibility of each party and participant to organise its presentation within the allotted time. The Prosecutor is nonetheless expected to distinctively address to the extent possible: (i) the contextual elements of crimes against humanity; (ii) the

¹⁶ ICC-02/11-01/11-153, para. 9.

¹⁷ Amended DCC, para. 57; see also *The Prosecutor v. Thomas Lubanga Dyilo*, Trial Chamber I, “Judgment pursuant to Article 74 of the Statute”, 14 March 2012, ICC-01/04-01/06-2482.

specific constituent elements of the crimes charges; and (iii) the elements of individual criminal liability, including submissions on matters referred to in paragraph 16 above.

18. In addition, in the event that the parties or participants do not exhaust the allocated time, the Chamber may decide, where appropriate, to anticipate the next item on the schedule even if not scheduled for the same day. Accordingly, the parties are expected to be flexible and prepared at any time to proceed with their presentation.

19. Finally, the Single Judge recalls that for the purposes of making its determination under article 61(7) of the Statute, the Chamber will consider all items of evidence included in the Prosecution's Amended List of Evidence and the items of evidence included in the Defence List of Evidence, without prejudice to any challenge from a party as to the admissibility of a piece of evidence, regardless of whether they have been referred to during the hearing sessions.¹⁸

2. Technical issues related to the presentation of the evidence

20. In order for the proceedings to unfold in a timely manner, the parties are requested to comply with the procedure hereunder specified.

21. The Single Judge notes that a number of items of evidence contained in the Prosecutor and Defence's lists of evidence are in audio or video format. In order to avoid undue delay, the parties are expected to liaise in advance with the Registry to enable presentation of such evidence. Also, for the purpose of assisting interpretation, the party presenting evidence in audio or video format is expected to provide the court officer with either the transcript of the item, or, when not available, with the recording itself, at least one day prior to

¹⁸ ICC-02/11-01/11-107, para. 12.

its presentation in court. This will enable the court officer to take the necessary arrangements with the interpretation and translation services within the Registry.

22. For the same purpose, the parties are expected to provide the court officer at the end of each hearing day with a list of the evidence they intend to present during the following day's hearing, in the intended order of presentation.

3. Request of Côte d'Ivoire to be represented at the confirmation hearing

23. The Single Judge notes that Côte d'Ivoire has requested to be represented at the hearing to defend its interests, submitting that because the facts under the Court's examination occurred on the territory of Côte d'Ivoire and because Mr Gbagbo is an Ivorian citizen, Côte d'Ivoire must be considered as a participant in the proceedings.¹⁹

24. The Single Judge recalls that the confirmation of charges hearing has a limited purpose: it is for the Chamber to determine whether the Prosecutor has provided sufficient evidence to establish substantial grounds to believe that Mr Gbagbo committed each of the crimes charged.²⁰

25. Under the Statute, States, including States where the alleged crime is committed and States of nationality of the suspect, do not have the general right to participate in confirmation proceedings.

26. Notwithstanding this, under rule 103 of the Rules leave may be granted to a State to present observations on any issue deemed appropriate. The Single Judge however considers that in the present circumstances, there is no such issue on which it would be necessary to obtain oral submissions of Côte

¹⁹ ICC-02/11-01/11-150-Anx1.

²⁰ Article 61(7) of the Statute.

d'Ivoire during the confirmation hearing. Accordingly, the request of the government of Côte d'Ivoire shall be rejected.

FOR THESE REASONS, THE SINGLE JUDGE

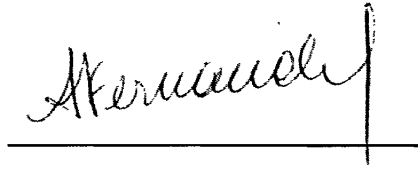
DECIDES that the presentations at the confirmation of charges hearing shall be made in accordance with paragraphs 16 to 22 of the present decision and according to the schedule annexed hereto;

DECIDES that the Prosecutor, the Defence and the OPCV shall be entitled to submit, after the conclusion of the confirmation of charges hearing, written submissions in relation to issues discussed during the hearing, within a time limit to be set in due course;

ORDERS the parties and participants to only refer during the hearing to the pseudonyms or the codes assigned to the witnesses and the participating victims;

REJECTS the request of Côte d'Ivoire to be represented at the confirmation of charges hearing.

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

A handwritten signature in black ink, appearing to read 'S. Fernández de Gurmendi', is written above a horizontal line. A vertical line extends downwards from the right end of the horizontal line.

Judge Silvia Fernández de Gurmendi

Single Judge

Dated this 16 July 2012

At The Hague, The Netherlands

ANNEX

**SCHEDULE OF THE CONFIRMATION HEARING
IN THE CASE OF *THE PROSECUTOR v. LAURENT GBAGBO***

Monday 13 August 2012

First Session 13h30 – 15h00

13h30 – 14h00 Opening of the confirmation hearing by the Presiding Judge

14h00 – 14h30 Defence observations on procedural matters

14h30 – 15h00 Response by the Prosecutor on the Defence observations on
procedural matters

Second Session 15h30 – 16h30

15h30 – 16h30 Opening statement by the Prosecutor

Third Session 16h45 – 18h15

16h45 – 17h15 Opening statement by the OPCV

17h15 – 18h15 Opening statement by the Defence

Tuesday 14 August 2012

First Session 14h30 – 16h30

Presentation by the Prosecutor (part I)

Second Session 17h00 – 19h00

Presentation by the Prosecutor (part II)

Wednesday 15 August 2012

First Session 14h30 – 16h30

Presentation by the Prosecutor (part III)

Second Session 17h00 – 19h00

Presentation by the Defence (Part I)

Thursday 16 August 2012

First Session 14h30 - 16h30

Presentation by the Defence (part II)

Second Session 17h00 – 19h00

Presentation by the Defence (Part III)

Friday 17 August 2012

First Session 14h30 – 16h00

14h30 – 15h30 Closing statement by the Prosecutor

15h30 – 16h00 Closing statement by the OPCV

Second Session 16h30 – 17h30

16h30 – 17h30 Closing statement by the Defence