

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 11 October 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 Document

Decision on the « Demande d'autorisation d'interjeter appel de la décision de la Juge unique portant sur la question de la participation des victimes à la procédure relative à l'état de santé du Président Gbagbo et à son aptitude à être jugé (ICC-02/11-01/11-211) »

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

The Office of the Prosecutor

Fatou Bensouda

Counsel for the Defence

Emmanuel Altit

Agathe Bahi Baroan

Legal Representatives of the Victims

Paolina Massidda

Sarah Pellet

Legal Representatives of the 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

Registrar & Deputy Registrar

Silvana Arbia

Didier Preira

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 (the “Chamber”) of the International Criminal Court (the “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 renders the decision on the Defence “Demande d’autorisation d’interjeter appel de la décision de la Juge unique portant sur la question de la participation des victimes à la procédure relative à l’état de santé du Président Gbagbo et à son aptitude à être jugé (ICC-02/11-01/11-211)” (the “Request for Leave to Appeal”).²

1. On 4 June 2012, the Single Judge granted 139 victims the right to participate at the confirmation of charges hearing and in related proceedings and appointed the Office of Public Counsel for victims (the “OPCV”) as their common legal representative (the “Decision on Victim Participation”).³

2. On 19 June 2012, the Defence submitted its application for a medical evaluation of Laurent Gbagbo (“Mr Gbagbo”).⁴

3. On 26 June 2012, the Single Judge appointed three medical experts to proceed with a medical examination of Mr Gbagbo, with a view to determining his fitness to participate in the hearing on the confirmation of charges against him.⁵

4. On 19 July 2012, the Registrar filed in the record of the case the medical reports of the three experts appointed by the Chamber (the “Expert Reports”).⁶

¹ ICC-02/11-01/11-61.

² ICC-02/11-01/11-222.

³ ICC-02/11-01/11-138.

⁴ ICC-02/11-01/11-158-Conf-Exp-tENG; ICC-02/11-01/11-158-Conf-Red2.

⁵ ICC-02/11-01/11-164-Conf.

⁶ ICC-02/11-01/11-190-Conf.

5. On 2 August 2012, the Single Judge ordered the Prosecutor and the Defence to file their observations, if any, on the Expert Reports and the subsequent procedure to be followed by 13 August 2012 and 21 August 2012 respectively.⁷

6. On 15 August 2012, the Single Judge, following a request from the OPCV for access to the Expert Reports and authorisation to submit observations thereon,⁸ authorised the OPCV to submit observations limited to the legal principles applicable to the determination on a suspect's fitness to stand trial and the procedure to be adopted following the submission of the Expert Reports, without granting the OPCV access to the contents of the Expert Reports (the "Decision").⁹

7. On 21 August 2012, the Defence filed its Request for Leave to Appeal, submitting that the appealable issue is the definition of the personal interests of victims with respect to the consequences that their participation could have on the implementation of the rights of the suspect and the fairness of the proceedings,¹⁰ and requesting that the filing of observations by the legal representative of victims be suspended pending resolution of the issue.¹¹

8. The Defence asserts that, in the Decision, the Single Judge found that the personal interests of victims are affected by the possibility of a delay in proceedings being occasioned by the determination as to Mr Gbagbo's fitness to participate in the hearing of the confirmation of charges against him.¹² In the view of the Defence, this finding allows victims the possibility to express

⁷ ICC-02/11-01/11-201.

⁸ ICC-02/01-01/11-203.

⁹ ICC-02/11-01/11-211.

¹⁰ Request for Leave to Appeal, para. 18: "*La Défense soumet que la question qui se pose ici est celle de la définition de la notion d'intérêt des victimes au regard des conséquences que pourrait avoir l'intervention des victimes sur la mise en œuvre des droits du Président Gbagbo et sur l'équité de la procédure*".

¹¹ Request for Leave to Appeal, paras 15-18.

¹² Request for Leave to Appeal, para. 17.

their opposition to every adjournment or postponement of the hearing, or release of the suspect.¹³

9. The Defence submits that permitting the intervention of victims in the proceedings related to Mr Gbagbo's fitness to participate in the proceedings on the confirmation of charges against him distorts the balance between the Prosecutor and the Defence and limits the possibility for the suspect to make his voice heard, thereby affecting the fairness of proceedings.¹⁴ The Defence further submits that the overly broad definition of the personal interests of victims given in the Decision opens the door for numerous requests for participation by victims, with the attendant responses and requests for leave to appeal from the Prosecutor and the Defence, thereby jeopardising the expeditious conduct of proceedings.¹⁵ Finally, the Defence submits that an immediate resolution of this issue by the Appeals Chamber may materially advance proceedings by providing legal certainty to the parties as to the concept of the personal interests of victims.¹⁶

10. On 24 August 2012, the OPCV filed its response to the Request for Leave to Appeal, submitting that the issue identified by the Defence did not arise from the Decision.¹⁷ The OPCV submits that the Single Judge did not provide a definition of the personal interests of victims in the Decision but merely applied the test for whether the participation of victims should be permitted as set out in the Decision on Victim Participation, which the Defence had not requested leave to appeal.¹⁸ On this basis, the OPCV submits that the Defence Request for Leave to Appeal amounts to a request for reconsideration of the Decision on Victim Participation that the Defence had

¹³ *Ibid.*, para. 16.

¹⁴ *Ibid.*, para. 21.

¹⁵ *Ibid.*, paras 27-28.

¹⁶ *Ibid.*, para. 31.

¹⁷ ICC-02/11-01/11-230, paras 18-24.

¹⁸ *Ibid.*, paras 19-22.

not requested leave to appeal or merely a difference of opinion with the conclusions of the Single Judge, which does not arise from the Decision.¹⁹

11. The OPCV submits that, even if the issue identified in the Request for Leave to Appeal were to be considered to constitute an issue within the meaning of article 82(1)(d) of the Rome Statute (“Statute”), it would not affect the fair and expeditious conduct of proceedings or the outcome of the trial.²⁰ Finally, the OPCV argues that the Request for Leave to Appeal, if granted, would not materially advance proceedings.²¹

12. On 27 August 2012, the Prosecutor filed her response to the Request for Leave to Appeal, submitting that the issue identified by the Defence (i) has not been defined with sufficient clarity and (ii) appears to constitute a disagreement with the Single Judge, and partly, a disagreement with what it misconstrues as the Single Judge’s ruling.²² In the alternative, the Prosecutor argues that the issue does not affect the fair and expeditious conduct of proceedings and an immediate resolution of the issue will not materially advance the proceedings.²³

13. The Chamber notes article 82(1)(d) of the Statute, rule 155 of the Rules of Procedure and Evidence and regulation 65 of the Regulations of the Court.

14. Article 82(1)(d) of the Statute sets out the following prerequisites to the granting of a request for leave to appeal:

- (a) the decision involves an issue that would significantly affect (i) the fair and expeditious conduct of the proceedings, or (ii) the outcome of the trial; and

¹⁹ *Ibid.*, paras 23-24.

²⁰ *Ibid.*, paras 25-33.

²¹ *Ibid.*, para. 34.

²² ICC-02/11-01/11-231, paras 15-17.

²³ *Ibid.*, paras 18-25.

(b) in the opinion of the Pre-Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

15. The Appeals Chamber has found that an “issue” is an identifiable subject “the resolution of which is essential for the determination of matters arising in the judicial cause under examination” and is “not merely a question over which there is disagreement or conflicting opinion”.²⁴

16. The Single Judge notes that, in accordance with the Decision on Victim Participation, the question of whether the personal interests of victims are affected at a particular stage in proceedings must be determined on a case-by-case basis. The Decision that is the subject of the Defence Request for Leave to Appeal was, therefore, limited to resolving the isolated question of whether the personal interests of victims are affected by the specific proceedings related to the determination on the fitness of Mr Gbagbo to participate in the hearing on the confirmation of charges against him.²⁵

17. As such, the Decision did not, as suggested by the Defence, define the notion of the personal interests of victims in any broader sense and is not determinative of any question which may arise in the future as to whether the personal interests of victims are affected at other stages of the proceedings. The Single Judge underlines that, pursuant to article 68(3) of the Statute, and as set out in the Decision on Victim Participation, even where the personal interests of victims are affected, their participation shall only be permitted at stages of proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the suspect and the principles of a fair and impartial trial.

²⁴ ICC-01/04-168, para. 9.

²⁵ Decision, para. 13.

18. Viewed in this light, it is clear that the issue identified in the Defence Request for Leave to Appeal does not arise from the Decision. Even when reduced to the more limited question of whether the personal interests of victims may be affected by the specific question of Mr Gbagbo's fitness to participate in the hearing on the confirmation of charges against him, the issue thus framed would merely represent a disagreement by the Defence with the conclusion of the Single Judge that the personal interests of victims may be affected by this particular matter and would not constitute an issue within in the meaning of article 82(1)(d) of the Statute.

19. Given that the Defence has failed to identify an issue within the meaning of article 82(1)(d) of the Statute arising from the Decision, the Single Judge will not assess the remaining requirements for a leave to appeal to be granted.

FOR THESE REASONS, THE SINGLE JUDGE

REJECTS the Request for Leave to Appeal.

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



Judge Silvia Fernández de Gurmendi

Single Judge

Dated this 11 October 2012

At The Hague, The Netherlands