

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/11
Date: 4 December 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

Order scheduling a status conference

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

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

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 issues this order scheduling a status conference.

1. On 5 December 2011, the first appearance of Mr Gbagbo before the Court took place. During that hearing, Pre-Trial Chamber III scheduled the commencement of the confirmation of charges hearing for 18 June 2012.²

2. On 24 January 2012, the Single Judge issued the “Decision establishing a disclosure system and a calendar for disclosure”.³

3. 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.⁴ Specifically, the Single Judge also granted the OPCV the right “to attend all public sessions of the confirmation of charges hearing as well as all public hearings convened in the related proceedings”.⁵

4. On 5 June 2012, the Defence filed the “*Requête de la Défense en report de l’audience de confirmation des charges prévue le 18 juin 2012*”, in which it argued that the confirmation hearing scheduled for 18 June 2012⁶ should be postponed, *inter alia*, because Mr Gbagbo’s state of health made him unfit to stand trial.⁷

¹ ICC-02/11-01/11-61.

² ICC-02/11-01/11-T-1-ENG, p. 8.

³ ICC-02/11-01/11-30.

⁴ ICC-02/11-01/11-138.

⁵ *Ibid.*, p. 26.

⁶ ICC-02/11-01/11-T-1-ENG, p. 8.

⁷ ICC-02/11-01/11-140-Conf, paras 21-60. A public redacted version is also available, see ICC-02/11-01/11-140-Red2.

5. On 12 June 2012, the Single Judge issued the “Decision on the *‘Requête de la Défense en report de l’audience de confirmation des charges prévue le 18 juin 2012’*”, postponing the confirmation of charges hearing to 13 August 2012.⁸

6. On 19 June 2012, the Defence submitted its “Defence application for additional medical and psychological evaluation of President Gbagbo”.⁹

7. On 26 June 2012, the Single Judge issued the “Order to conduct a medical examination”, whereby she appointed medical experts in order to conduct medical, psychological and psychiatric examinations of Mr Gbagbo, with a view to determining whether he is fit to take part in the proceedings against him.¹⁰

8. On 2 August 2012, the Single Judge issued the “Decision on issues related to the proceedings under rule 135 of the Rules of Procedure and Evidence and postponing the date of the confirmation of charges hearing”, in which it was decided that the “commencement of the confirmation of charges hearing is postponed until the issue of Mr Gbagbo's fitness to take part in the proceedings against him is resolved”.¹¹

9. On 2 November 2012, the Chamber issued the “Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court” (the “Fitness Decision”), finding that Mr Gbagbo is fit to take part in the proceedings before this Court.¹²

10. On 6 November 2012, the Defence filed the “*Demande aux fins d’organisation d’une Conférence de mise en état*”, wherein it requests that a status

⁸ ICC-02/11-01/11-152-Red, p. 14.

⁹ ICC-02/11-01/11-158-Conf-Exp-tENG and annexes. Confidential redacted version is also available, see ICC-02/11-01/11-158-Conf-Red2.

¹⁰ ICC-02/11-01/11-164-Conf-tENG.

¹¹ ICC-02/11-01/11-201, p. 8.

¹² ICC-02/11-01/11-286-Conf. A public redacted version has been filed simultaneously.

conference be held during the first week of December 2012, in order to discuss the impact of Mr Gbagbo's medical treatments on the proceedings, the necessary arrangements and the date of the confirmation of charges hearing, the investigations and the disclosure of evidence and any other issue of relevance for the proper conduct of the confirmation of charges hearing.¹³

11. On 12 November 2012, the Defence filed the "*Demande d'autorisation d'interjeter appel de la « Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court » (ICC-02/11-01/11-286-Conf)*".¹⁴

12. On 13 November 2012, the Single Judge issued the "Decision on the 'Prosecution's Request pursuant to Regulation 35 for variation of time limit to disclose incriminating evidence and modify the list of evidence for the confirmation hearing, and Request for redactions'".¹⁵

13. On 29 November 2012, the Chamber rejected three applications by the Defence and the Prosecutor for leave to appeal decisions related to the determination of Mr Gbagbo's fitness to take part in the proceedings against him.¹⁶

14. The Single Judge notes article 61(1) of the Rome Statute, rule 121 of the Rules of Procedure and Evidence (the "Rules") and regulation 30 of the Regulations of the Court.

15. The Single Judge recalls that on 2 August 2012, the confirmation of charges hearing was postponed "until the issue of Mr Gbagbo's fitness to take part in the proceedings against him is resolved".¹⁷ Considering that the

¹³ ICC-02/11-01/11-288-Conf, p. 13.

¹⁴ ICC-02/11-01/11-292-Conf. A corrigendum and public redacted version thereof were filed on 15 November 2012, see ICC-02/11-01/11-292-Conf-Corr and ICC-02/11-01/11-292-Corr-Red.

¹⁵ ICC-02/11-01/11-294.

¹⁶ ICC-02/11-01/11-307.

¹⁷ ICC-02/11-01/11-201, p. 8 and para. 12.

proceedings under rule 135 of the Rules have resulted in a finding of the Chamber that Mr Gbagbo is fit to take part in the proceedings against him, it is now appropriate to set a date for the confirmation of charges hearing.

16. The Chamber also stated in the Fitness Decision:

[A]djustments will need to be made in order to enable Mr Gbagbo to participate fully at the confirmation of charges hearing. These adjustments may include, *inter alia*, shorter court sessions, the provision of appropriate facilities for Mr Gbagbo to rest during breaks, the possibility for Mr Gbagbo to excuse himself from all or part of the proceedings and to follow them via video-link if he so wishes. [...] [T]he Chamber is of the view that Mr Gbagbo, together with his counsel, should be given the opportunity to provide views on appropriate arrangements. Accordingly, the Chamber shall, in due course, determine the appropriate practical arrangements for the conduct of the hearings in consultation with the Defence and the Registry.¹⁸

17. Furthermore, the Single Judge recently decided that “the parties shall be allowed to rely at the confirmation of charges hearing on additional evidence not previously included in their respective lists of evidence” and observed that it will be necessary to establish appropriate time limits for the parties in accordance with rule 121 of the Rules.¹⁹

18. In light of the foregoing, before taking a decision on the date of the confirmation of charges hearing and on related matters, the Single Judge considers it necessary to hold a status conference with a view to discussing:

- (i) the possible dates of the confirmation of charges hearing;
- (ii) issues concerning disclosure of evidence, including the need for any further redaction requests to the Chamber; and
- (iii) the practical arrangements to be made for the conduct of the confirmation of charges hearing, taking into account Mr Gbagbo’s medical condition.

¹⁸ ICC-02/11-01/11-286-Conf, para. 102.

¹⁹ ICC-02/11-01/11-294, p. 7.

19. In addition, the Chamber would like to receive submissions by the parties on whether they intend to call *viva voce* witnesses to the confirmation of charges hearing. In this respect, the Single Judge recalls what has been said on the matter in an earlier decision in this case:

[A]lthough oral testimony is permitted, the evidentiary debate at the confirmation of charges hearing can be based on the written statements of witnesses only. Therefore, the Single Judge expects that oral testimony at the hearing, if any, will be narrowly relied on and only to the extent that it cannot be properly substituted by documentary evidence or a written statement.²⁰

20. The status conference shall be held in open session before the Single Judge, in the presence of the Prosecutor, the Defence of Mr Gbagbo, the OPCV and representatives of the Registry. The Single Judge informs the parties that, should the need arise, the status conference may be partly conducted in private or closed session.

21. Finally, the Single Judge considers, in light of the purpose of the status conference, that the interests of Mr Gbagbo may be properly safeguarded by the presence of his counsel at the hearing. Thus, the attendance of Mr Gbagbo is not necessary, without prejudice to his right to attend, if he so wishes.

FOR THESE REASONS, THE SINGLE JUDGE

DECIDES to hold a status conference in open session on Tuesday, 11 December 2012 at 14.30, in the presence of the Prosecutor, the Defence of Mr Gbagbo, the OPCV and representatives of the Registry, to receive observations on the issues listed at paragraphs 18 and 19 above.

²⁰ ICC-02/11-01/11-107, para. 11 (footnotes omitted).

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 over a horizontal line.

Judge Silvia Fernández de Gurmendi

Single Judge

Dated this 4 December 2012

At The Hague, The Netherlands