

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/15
Date: 30 September 2015

TRIAL CHAMBER I

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

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ***

Confidential

Order to conduct an examination of Mr Gbagbo under Rule 135 of the Rules

Order to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Eric MacDonald

Counsel for Mr Laurent Gbagbo

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Mr Geert-Jan Alexander Knoops

Mr Claver N'dry

Legal Representatives of Victims

Ms Paolina Massidda

Legal Representatives of 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

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Mr Patrick Craig

**Victims Participation and Reparations
Section**

Others

Trial Chamber I ('Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Articles 63, 64(2), 64(6)(e) and 67 of the Rome Statute ('Statute'), and Rules 113 and 135 of the Rules of Procedure and Evidence ('Rules'), issues the following 'Order to conduct an examination of Mr Gbagbo under Rule 135 of the Rules'.

I. Procedural History

1. On 19 June 2015, the Prosecution filed a motion requesting that the Chamber order a medical and psychiatric examination of Mr Gbagbo, pursuant to Rule 135 of the Rules ('Request').¹
2. On 13 July 2015, the defence team for Mr Gbagbo ('Gbagbo Defence') filed a response opposing the Request ('Response').²
3. On 7 September 2015, the Chamber issued its '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)' ('Decision of 7 September 2015').³ The Chamber ordered the Gbagbo Defence to file a less redacted version of the response and instructed the parties to file supplemental submissions on i) the specific type of expertise that may be warranted to assess Mr Gbagbo's abilities to participate in the trial; and ii) the specific expert(s) who are best placed to conduct this examination.

¹ Prosecution's request for the medical examination of Laurent Gbagbo, 19 June 2015, ICC-02/11-01/15-94-Conf-Exp with a confidential, *ex parte* annex.

² *Réponse de la Défense à la «Prosecution's request for the medical examination of Laurent Gbagbo»* (ICC-02/11-01/15-94-Conf-Exp), 13 July 2015, ICC-02/11-01/15-133-Conf-Exp. A confidential, *ex parte* redacted version, available to the Prosecution, was filed on the same day (ICC-02/11-01/15-133-Conf-Exp-Red). On 8 September 2015, and in accordance with the Decision of 7 September 2015, the Gbagbo Defence filed a less redacted version of its response (*Version moins expurgée de la « Réponse de la Défense à la «Prosecution's request for the medical examination of Laurent Gbagbo»* (ICC-02/11-01/15-94-Conf-Exp) » déposée le 13 juillet 2015 (ICC-02/11-01/15-133-Conf-Exp), 8 September 2015, ICC-02/11-01/15-133-Conf-Exp-Red2).

³ ICC-02/11-01/15-206-Conf-Exp.

4. On 15 September 2015, the Gbagbo Defence and the Prosecution filed supplemental submissions on the type of expertise warranted and the experts they consider best placed to conduct the examination.⁴
5. The Chamber recalls that, in its Decision of 7 September 2015, it found it 'timely to conduct a medical examination of Mr Gbagbo under Rule 135 of the Rules'.⁵ The Chamber considered that this would facilitate the adjudication of any issue as to Mr Gbagbo's fitness to stand trial, as well as any practical modalities needed to facilitate his attendance at trial.⁶

II. Submissions and analysis

6. The Chamber notes that the Gbagbo Defence's and Prosecution's supplemental submissions as to the type of expertise warranted and the selection of experts to conduct the examination are considerably different.
7. The Prosecution considers that a psychiatric examination of Mr Gbagbo 'would be of necessary assistance to the Chamber' on the basis, *inter alia*, that a psychiatrist can appropriately make observations on post-traumatic stress disorder ('PTSD') and 'is in a unique position to render assessment on both a psychological, as well as a physiological level'.⁷ Accordingly, it submits that the appointment of Dr Pierre Lamothe, a psychiatrist, as well as Professor Bertrand Ludes, a clinical forensic examiner who would be in a position to conduct a physical examination of Mr Gbagbo, is appropriate and sufficient.⁸ The Prosecution, however, submits

⁴ *Soumissions de la Défense concernant le type d'expertise à ordonner pour évaluer la capacité à être jugé de Laurent Gbagbo et identifiant les experts les plus à même de mener une telle expertise*, 15 September 2015, ICC-02/11-01/15-221-Conf-Exp ('Defence Supplemental Submissions') with four confidential, *ex parte*, annexes; Prosecution's supplemental submissions concerning the selection of experts (ICC-02/11-01/15-206-Conf-Exp), 15 September 2015, ICC-02/11-01/15-219-Conf-Exp ('Prosecution Supplemental Submissions') with three confidential, *ex parte* annexes.

⁵ Decision of 7 September 2015, ICC-02/11-01/15-206-Conf-Exp, para. 9.

⁶ Decision of 7 September 2015, ICC-02/11-01/15-206-Conf-Exp, para. 10.

⁷ Prosecution Supplemental Submissions, ICC-02/11-01/15-219-Conf-Exp, para. 15.

⁸ Prosecution Supplemental Submissions, ICC-02/11-01/15-219-Conf-Exp, paras 14-16.

that, should the Chamber consider it would be assisted by the expertise of a psychologist, it 'does not oppose the Defence's proposal of Mr Alain Dumez'.⁹

8. The Gbagbo Defence argues that psychiatric expertise is not necessary as PTSD relates to the psychological domain, in the sense that PTSD relates to one's personal background and cultural context.¹⁰ Consequently, it submits that the expertise of Dr Lamothe is not indispensable to the matters at issue. Stressing, *inter alia*, the importance of the experts' acquaintance with Mr Gbagbo's health condition, as well as the existence of a relationship of trust between him and any expert appointed,¹¹ the Gbagbo Defence submits that the experts who met Mr Gbagbo in 2013 and 2014 should be appointed.¹² Accordingly, the following individuals should, in the Gbagbo Defence's view, be appointed: Dr An Chuc, general and forensic practitioner; Mr Alain Dumez, psychologist; and Dr Michael J. Eekhof, general practitioner.¹³ In the alternative, and should the Chamber decide not to appoint all of the experts who met Mr Gbagbo in 2013 and 2014, the Gbagbo Defence submits that the appointment of Dr Chuc and Mr Dumez would nonetheless be very useful, given that they are French, highly qualified, and familiar with the medical record of Mr Gbagbo.¹⁴
9. In light of the distinct health issues identified in relation to Mr Gbagbo,¹⁵ and in order to obtain a full picture of Mr Gbagbo's health situation and attendant capacities leading up to trial, the Chamber finds it appropriate to order that a medical examination of Mr Gbagbo under Rule 135 of the Rules be conducted by more than one individual. Recalling that it is ordering a medical examination to assist in the adjudication of any issue as to Mr Gbagbo's fitness, as well as the

⁹ Prosecution Supplemental Submissions, ICC-02/11-01/15-219-Conf-Exp, para. 17.

¹⁰ Defence Supplemental Submissions, ICC-02/11-01/15-221-Conf-Exp, paras 39-45.

¹¹ Defence Supplemental Submissions, ICC-02/11-01/15-221-Conf-Exp, paras 32 and 33.

¹² Defence Supplemental Submissions, ICC-02/11-01/15-221-Conf-Exp, paras 30-37.

¹³ Defence Supplemental Submissions, ICC-02/11-01/15-221-Conf-Exp, paras 13-70; Response, ICC-02/11-01/15-133-Conf-Exp-Red2, para. 95.

¹⁴ Defence Supplemental Submissions, ICC-02/11-01/15-221-Conf-Exp, paras 48-50. *See also*, para. 45.

¹⁵ Transcript of hearing of 6 June 2015, ICC-02/11-01/15-T-2-Conf-Exp-ENG ET, page 18, lines 2-7 and page 19, lines 13-16.

identification of any practical modalities needed to facilitate his attendance at trial, the Chamber considers that it can benefit by receiving assessments from specialists who have different areas of expertise. It will therefore appoint experts with those specialties identified in Rule 113(1) of the Rules, namely, medical, psychological and psychiatric.

10. The Chamber observes that, as submitted by the parties, some of the suggested experts, including Dr Lamothe (psychiatrist), Mr Dumez (psychologist) and Professor Ludes (clinical forensic examiner), have standing as experts before the French *Cour de Cassation*.¹⁶ The Chamber further notes that both Dr Lamothe and Mr Dumez have already examined Mr Gbagbo, and are therefore familiar with his health condition, thereby enabling them to assess any changes in his condition from 2012 to the present. The Chamber also notes that the Pre-Trial Chamber primarily based its conclusions as to Mr Gbagbo's mental fitness on the psychiatric examination conducted by Dr Lamothe, attaching only limited weight to the findings of Dr Chuc.¹⁷
11. In light of the above, and having given due regard to the qualifications and competence of the individuals suggested by the parties, the Chamber finds it appropriate to appoint Dr Lamothe, Mr Dumez and Professor Ludes ('Appointed Experts') to conduct an examination of Mr Gbagbo under Rule 135 of the Rules.
12. The Chamber has decided that the examination should be conducted 'with a view to assessing Mr Gbagbo's current medical condition, including whether he is still suffering from PTSD and hospitalisation syndrome, and if so, identifying the consequences of this, if any, on his ability to follow and take part in the forthcoming trial proceedings.'¹⁸

¹⁶ ICC-02/11-01/11-190-Conf-Anx3-Red, page 3; ICC-02/11-01/15-221-Conf-Exp-Anx2, page 2; ICC-02/11-01/15-219-Exp-AnxA, page 3.

¹⁷ Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court, 2 November 2012, ICC-02/11-01/11-286-Conf, para. 100.

¹⁸ Decision of 7 September 2015, ICC-02/11-01/15-206-Conf-Exp, para. 11.

13. Article 67(1) of the Statute requires that an accused must have the capacity to understand and defend himself against the charges, which includes, *inter alia*, the capacity to:

- Understand the purpose, including the consequences, of the proceedings;
- Understand the course of the proceedings, including the nature and significance of pleading to the charges;
- Understand the evidence;
- Testify or give an unsworn statement (should the accused so choose); and
- Instruct counsel in the preparation and conduct of a defence.

14. The Chamber emphasises that the Appointed Experts are not required to themselves make a determination of Mr Gbagbo's fitness to stand trial; that is a legal determination to be made by the Chamber. However, the Chamber considers that the aforementioned considerations will assist its assessment.

15. The Chamber also wishes the Appointed Experts to assess and address in their reports whether Mr Gbagbo is physically and psychologically able to withstand full-time trial proceedings (approximately 4.5 hours per day, in 1.5 hour sessions, five days per week, for periods of approximately four or five weeks at a time), including:

- a) Details on any perceived consequences on the health of the accused resulting from the trial proceedings, including any deleterious impact on his physical and/or psychological health as a consequence of attending the proceedings and following the evidence on a daily basis; and
- b) Whether Mr Gbagbo's health situation requires any particular accommodation – for example, any treatment, physical assistance, or adjustment to the trial schedule set out above – to facilitate his attendance at and participation in the trial.

16. The Appointed Experts should, to the extent possible and as considered appropriate, collaborate in the preparation of their individual reports, which are to be provided by the filing deadline on 29 October 2015. The Registry shall file

the reports of the Appointed Experts confidential *ex parte* (Gbagbo Defence and Registry only), and no later than 29 October 2015.

17. The Chamber recalls that Mr Gbagbo has previously been examined by medical professionals who have reported on his health condition and whose reports were subsequently filed in the record of the case. In this regard, the Gbagbo Defence requested that these reports, along with other related filings, be provided to any appointed experts not part of the related proceedings.¹⁹ The Chamber considers that these reports may indeed be of assistance and should therefore be provided to the Appointed Experts. The Chamber, however, does not find it necessary to provide the Appointed Experts with related party submissions or other filings.
18. In order to obviate any delay, the Gbagbo Defence is directed to promptly seek Mr Gbagbo's written consent to the disclosure of his medical and detention records to the Appointed Experts, pursuant to Regulation 156(2) of the Regulations of the Registry and Regulation 92(4) of the Regulations of the Court ('Regulations'), respectively. Should Mr Gbagbo refuse consent, the Chamber requests the Gbagbo Defence to submit his views in accordance with Regulation 92(4) of the Regulations.
19. Moreover, the Chamber instructs the Gbagbo Defence to, no later than 30 October 2015, propose and indicate the justification for any reasonable redactions to the Appointed Experts' reports for the purpose of notification to the parties and participants. Redactions should not be applied to facts, conclusions or recommendations which concern Mr Gbagbo's fitness to stand trial or relate to any impact his health may have on the trial, such as trial modalities or scheduling, and, in any event, they may not be applied in a manner that would prevent sensible observations being made thereon.

¹⁹ Defence Supplemental Submissions, ICC-02/11-01/15-221-Conf-Exp, para. 65; Annex 4 to Defence Supplemental Submissions, ICC-02/11-01/15-221-Conf-Exp-Anx4.

20. Finally, the Chamber finds it appropriate to afford the Gbagbo Defence, Prosecution and Registry an opportunity to submit any observations on the Appointed Experts' reports prior to trial. Accordingly, the Chamber convenes a hearing on 5 November 2015 to discuss any matter arising from the reports.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

RECALLS that it ordered an examination of Mr Gbagbo pursuant to Rule 135 of the Rules;

APPOINTS Dr Lamothe, Mr Dumez and Professor Ludes to undertake this examination;

ORDERS the Registry to notify the present decision to the Appointed Experts and to provide them all logistical assistance necessary to the performance of their task;

ORDERS the Registry to provide the Appointed Experts access to the following documents:

- ICC-02/11-01/11-105-Conf-Anx3
- ICC-02/11-01/11-105-Conf-Anx 4 (same as ICC-02/11-01/11-129-Conf-Anx7)
- ICC-02/11-01/11-105-Conf-Exp-Anx8 (same as ICC-02/11-01/11-129-Conf-Anx8)
- ICC-02/11-01/11-132-Conf-Exp
- ICC-02/11-01/11-149-Conf-Exp-AnxA
- ICC-02/11-01/11-190-Conf-Exp-Anx1
- ICC-02/11-01/11-190-Conf-Exp-Anx2
- ICC-02/11-01/11-190-Conf-Exp-Anx3
- ICC-02/11-01/11-T-6-CONF-FRA
- ICC-02/11-01/11-T-7-CONF-FRA
- ICC-02/11-01/11-257-Conf
- ICC-02/11-01/11-257-Conf-Exp-Anx
- ICC-02/11-01/11-644-Conf-Exp-Anx
- ICC-02/11-01/11-681-Conf-Exp-Anx4.2
- ICC-02/11-01/15-84-Conf-Exp-Anx1

ORDERS the Gbagbo Defence to seek Mr Gbagbo's consent in accordance with paragraph 18 above, or to otherwise provide his views in accordance with Regulation 92(4) of the Regulations, by 2 October 2015;

ORDERS the Registry to provide, upon receiving consent from Mr Gbagbo, his detention and medical records to the Appointed Experts;

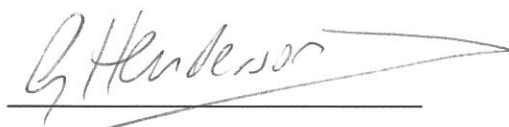
ORDERS the Appointed Experts to provide their respective reports on Mr Gbagbo's current health condition, in accordance with paragraphs 12-16 above, to a designated representative of the Registry on 29 October 2015, by 16:00;

INSTRUCTS the Registry to file confidential *ex parte* (Gbagbo Defence and Registry only) the Appointed Experts' reports in the record of the case by 29 October 2015;

ORDERS the Gbagbo Defence to propose reasonable redactions to the Appointed Experts' reports, in accordance with the instructions given in paragraph 19 above, by 30 October 2015; and

CONVENES a hearing to be held in private session on 5 November 2015.

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



Judge Geoffrey Henderson, Presiding Judge



Judge Olga Herrera Carbuca



Judge Bertram Schmitt

Dated 30 September 2015

At The Hague, The Netherlands