

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/15

Date: 20 October 2015

TRIAL CHAMBER I

**Before: Judge Geoffrey Henderson, Presiding Judge
Judge Olga Herrera Carbuccion
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 provide Appointed Expert with access to
Mr Gbagbo's medical record**

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'), and Regulation 156 of the Regulations of the Registry issues the following 'Order to provide Appointed Expert with access to Mr Gbagbo's medical record'.

I. Procedural History

1. On 16 June 2015, the Chamber held a status conference.¹ During the course of it, counsel for Mr Laurent Gbagbo stated, *inter alia*, that the 'proper participation' of Mr Gbagbo during trial proceedings was not possible, and that his presence at trial, even with facilitating measures, 'would lead to physical [...] and [...] nervous exhaustion or a breakdown'.² The counsel for Mr Gbagbo argued that, absent any treatment for his illnesses, Mr Gbagbo 'has not been healed' and, because of his inability to concentrate, intimated that he was 'unable to take part in any kind of activity'.³
2. On 7 September 2015, the Chamber, ruling on a request of the Office of the Prosecutor ('Prosecution'),⁴ decided that it was 'timely to conduct a medical

¹ Transcript of hearing of 6 June 2015, ICC-02/11-01/15-T-2-Conf-Exp-ENG ET.

² ICC-02/11-01/15-T-2-Conf-Exp-ENG ET, page 18, lines 2-7.

³ ICC-02/11-01/15-T-2-Conf-Exp-ENG ET, page 19, lines 13-16.

⁴ 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. See also *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 lesser 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).

examination of Mr Gbagbo under Rule 135 of the Rules' ('Decision to conduct a medical examination').⁵

3. On 30 September 2015, having considered the supplemental submissions concerning the type of expertise and appropriate experts,⁶ the Chamber issued an 'Order to conduct an examination of Mr Gbagbo under Rule 135 of the Rules' ('Order appointing three experts'), appointing Dr Lamothe, Mr Dumez and Professor Ludes to undertake the medical examinations.⁷ The Chamber also ordered the defence team of Mr Gbagbo ('Gbagbo Defence') to seek Mr Gbagbo's consent in providing the Appointed Experts with Mr Gbagbo's medical and detention records or to provide his views by 2 October 2015.⁸
4. On 2 October 2015, the Gbagbo Defence filed a notification ('First Notification') of Mr Gbagbo's consent to communication of his medical and detention records to Mr Dumez and Professor Ludes. However, Mr Gbagbo indicated that he would need additional time to decide whether he consented to the transmission of his medical records to Dr Lamothe.⁹

⁵ 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 to conduct a medical examination'), ICC-02/11-01/15-206-Conf-Exp, para. 9.

⁶ *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.

⁷ Order to conduct an examination of Mr Gbagbo under Rule 135 of the Rules ('Order appointing three experts'), 30 September 2015, ICC-02/11-01/15-253-Conf.

⁸ Order appointing three experts, ICC-02/11-01/15-253-Conf.

⁹ *Notification par la Défense du consentement écrit de Laurent Gbagbo à la communication de son dossier médical et de son dossier de détention à M. M Ludes et Dumez*, ('First Notification') ICC-02/11-01/15-266-Conf-Exp.

5. On 6 October 2015, the Prosecution filed a request in relation to the First Notification, seeking an order of the Chamber transferring Mr Gbagbo's Detention Record to Dr Lamothe.¹⁰
6. On 8 October 2015, the Gbagbo Defence filed a response to the Prosecution's First Request, opposing it on the basis that (i) such a communication is not permitted without the express and written consent of the accused, (ii) the Prosecution misinterpreted Mr Gbagbo's reasonable request for more time as a refusal of consent, and (iii) the Prosecution conflated detention and medical records under the same analysis, even though the latter is governed by a requirement of express written consent.¹¹
7. On the same day, the Chamber issued an order to the Registry to transfer Mr Gbagbo's detention record to Dr Lamothe, and granted Mr Gbagbo's request for additional time to provide his written consent for (i) communication of his medical record to and (ii) a medical examination by Dr Lamothe.¹² In that order, the Chamber indicated that, '[i]n the absence of written consent by 13 October 2015, [it would] conclude that Mr Gbagbo has refused consent, and take this into consideration in deciding whether to nevertheless order the transmission of his medical record for the purposes of a medical examination pursuant to Articles 21 and 64(8)(a) of the Statute and Rules 113 and 135 of the Rules.'¹³
8. On 12 October 2015, one day before the aforementioned time limit, the Gbagbo Defence filed a second notification ('Second Notification') indicating only that Mr Gbagbo refused consent to communicate his medical record to Dr Lamothe, but

¹⁰ Prosecution's response to "*Notification par la Défense du consentement écrit de Laurent Gbagbo à la communication de son dossier médical et de son dossier de détention à M.M Ludes et Dumez*" (ICC-02/11-01/15-266-Conf-Exp) ('Prosecution's First Response'), 5 October 2015, ICC-02/11-01/15-269-Conf-Exp.

¹¹ *Réponse de la Défense à la demande du Procureur visant à ce que soit communiqué à Monsieur Lamothe le dossier médical de Laurent Gbagbo sans le consentement de ce dernier*, ICC-02/11-01/15-280-Conf-Exp.

¹² Order to provide Appointed Expert with access to Mr Gbagbo's detention record ('Order to transmit the detention record'), ICC-02/11-01/15-281-Conf.

¹³ Order to transmit the detention record, ICC-02/11-01/15-281-Conf, para. 9.

not whether he refused to be examined by Dr Lamothe.¹⁴ The Gbagbo Defence also reiterated its position that pursuant to Regulation 156 of the Regulations of the Registry and jurisprudence from courts of international human rights that it is the right of any person to be able to refuse consent to the disclosure of medical information to third parties.¹⁵ No further notice was received thereafter.

9. On 13 October 2015, the Prosecution filed a response to the Second Notification, requesting the Chamber to order the immediate transfer of Mr Gbagbo's medical record to Dr Lamothe. The Prosecution argued that 'Regulation 156(5) [of the Regulations of the Registry] provides that where the detained person refuses to consent to the Chamber being provided with his or her Medical Record, the Registrar shall inform the Chamber accordingly, anticipating the Trial Chamber's power – under the Statute – to so order'.¹⁶

II. Analysis

10. If doubts as to the accused's fitness to stand trial arise or it appears necessary to order practical measures to facilitate the accused presence at trial,¹⁷ the Chamber may order a medical examination of the accused pursuant to Rules 113 and 135 of the Rules for the purposes of discharging its obligations under Article 64(8)(a) of the Statute. In this regard, the Pre-Trial Chamber observed:

[T]he concept of fitness to stand trial must be viewed as an aspect of the broader notion of fair trial. It is rooted in the idea that whenever the accused is, for reasons of ill health, unable to meaningfully exercise his or her procedural rights, the trial cannot be fair and criminal proceedings must be adjourned until the obstacle ceases to exist. In this sense, fitness to stand trial can be defined as absence of such medical conditions which would prevent the accused from being able to meaningfully exercise his or her fair trial rights.¹⁸

¹⁴ *Notification par la Défense de l'absence de consentement de Laurent Gbagbo à ce que son dossier médical soit transmis à M. Lamothe* ('Second Notification'), ICC-02/11-01/15-285-Conf-Exp.

¹⁵ Second Notification, ICC-02/11-01/15-285-Conf-Exp, para. 3.

¹⁶ Prosecution's response to '*Notification par la Défense de l'absence de consentement de Laurent Gbagbo à ce que son dossier médical soit transmis à M. Lamothe*' (ICC-02/11-01/15-285-Conf-Exp), Order appointing three experts, ICC-02/11-01/15-287-Conf-Exp, para. 6.

¹⁷ Order to conduct an examination of Mr Gbagbo under Rule 135 of the Rules, 30 September 2015, ICC-02/11-01/15-253-Conf, para. 9; *see also*, Pre-Trial Chamber I, Decision on the fitness of Laurent Gbagbo to take part in proceedings before this Court, 2 November 2012, ('Pre-Trial Decision on Fitness') ICC-02/11-01/11-286-Conf, para. 43.

¹⁸ Pre-Trial Decision on Fitness, ICC-02/11-01/11-286-Conf, para. 43.

[...]

The primary purpose of Rule 135 of the Rules is to enable the Chamber to “discharg[e] its obligations” in relation to ensuring that the accused understands the charges and ultimately that proceedings are fair. Even in the absence of a request from one of the parties, the Chamber must ensure, as spelled out in rule 135 of the Rules, that proceedings do not take place against an unfit suspect.¹⁹

11. In deciding whether to order an examination under Rule 135 of the Rules, the Chamber must consider both the nature and purpose of the examination and whether the person consents to the examination.²⁰ However, consent is not determinative.²¹

12. In the present proceedings, the Chamber, ‘mindful of its obligation to ensure the expeditiousness of the forthcoming trial’ found it ‘timely to conduct a medical examination of Mr Gbagbo under Rule 135 of the Rules’.²² The Chamber considered that this would facilitate the adjudication of any issues as to Mr Gbagbo’s fitness to stand trial, as well as any practical modalities needed to facilitate his attendance at trial.²³ In turn, the Chamber deliberately chose three experts with different specialties – namely, medical, psychological and psychiatric – ‘in order to obtain a full picture of Mr Gbagbo’s health situation and attendant capacities leading up to trial’.²⁴

13. In particular, Dr Lamothe was appointed because: (i) he previously examined Mr Gbagbo in the fitness proceedings before the Pre-Trial Chamber;²⁵ (ii) the Pre-Trial Chamber heavily relied upon his assessment;²⁶ (iii) the Chamber considered that evaluation by a psychiatrist would be beneficial to the Chamber in making its

¹⁹ Pre-Trial Decision on Fitness, ICC-02/11-01/11-286-Conf, para. 56.

²⁰ See Rule 113 of the Rules.

²¹ See Rule 113 of the Rules; Christopher K. Hall, ‘Article 55: Rights of persons during an investigation’ in *Commentary on the Rome Statute of the International Criminal Court*, 2008, p. 1104.

²² Decision to conduct a medical examination, ICC-02/11-01/15-206-Conf-Exp, paras 9-12.

²³ Decision to conduct a medical examination, ICC-02/11-01/15-206-Conf-Exp, paras 9-12.

²⁴ Order appointing three experts, ICC-02/11-01/15-253-Conf, para. 9; 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.

²⁵ Order appointing three experts, ICC-02/11-01/15-253-Conf, para. 10.

²⁶ Order appointing three experts, ICC-02/11-01/15-253-Conf, para. 10; Pre-Trial Decision on Fitness, ICC-02/11-01/11-286-Conf, para. 100.

assessment;²⁷ and (iv) he has extensive experience and credentials, including standing before the French *Cour de Cassation*.²⁸

14. The Chamber recalls that throughout this process, the Chamber consistently sought the views of Mr Gbagbo with respect to conducting a medical examination and concerning the appointment of experts.²⁹ The fact that it was not until the First Notification that Mr Gbagbo raised specific – but to date, unsubstantiated – concerns regarding Dr Lamothe calls into question his good faith concerning these submissions.³⁰

15. In light of the foregoing, the Chamber considers that Dr Lamothe may proceed with the medical examination for which he was appointed, notwithstanding Mr Gbagbo's lack of consent.³¹ Having so decided, the Chamber must consider whether to provide the accused's medical records to Dr Lamothe for the purposes of his appointment under Rule 135 of the Rules.

16. The Gbagbo Defence invites the Chamber to rule that Dr Lamothe cannot found his evaluation on Mr Gbagbo's medical records as Mr Gbagbo has refused

²⁷ Order appointing three experts, ICC-02/11-01/15-253-Conf, paras 7-8, and 10; see also, Pre-Trial Decision on Fitness, ICC-02/11-01/11-286-Conf, para. 75: '[Dr Chuc] conceded, both in her written report and at the hearing, that the psychiatric expert would be better placed to provide more detailed information on PTSD and its consequences.'

²⁸ 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.

²⁹ Decision to conduct a medical examination, ICC-02/11-01/15-206-Conf-Exp, p. 7; Order appointing three experts, ICC-02/11-01/15-253-Conf, para. 18; and Order to transmit the detention record, ICC-02/11-01/15-281-Conf, para. 9.

³⁰ See Defence Supplemental Submissions, ICC-02/11-01/15-221-Conf-Exp, para. 38, in which the Defence raised a concern about whether information had been leaked to the media, without substantiating this assertion: «*Concernant le Docteur Lamothe, il n'a pas vu Laurent Gbagbo depuis trois ans. Dans ces conditions, une relation de confiance peut être longue à reconstruire, d'autant que des éléments du précédent rapport du Docteur Lamothe ont été reproduits dans les médias*»; see also Prosecution's First Response, ICC-02/11-01/15-269-Conf-Exp, para 7; First Notification, ICC-02/11-01/15-266-Conf-Exp, para. 3, «*En effet, Laurent Gbagbo considère que Monsieur Lamothe n'a pas eu un comportement professionnel lors de la première expertise, privilégiant une approche prétendument de connivence à une approche professionnelle et trahissant dans ses rapports le sens de leurs échanges, sortant par exemple des déclarations de Laurent Gbagbo de leur contexte. Par conséquent, du point de vue de Laurent Gbagbo il n'existe pas de relation de confiance, pourtant indispensable à la bonne menée d'une expertise de ce type, entre l'intéressé et l'expert désigné*»; Second Notification, ICC-02/11-01/15-285-Conf-Exp, para. 2, «*la Défense de Laurent Gbagbo informe la Chambre que ce dernier ne souhaite pas que son dossier médical soit transmis à M. Lamothe.*»

³¹ Order to transmit the detention record, ICC-02/11-01/15-281-Conf; Second Notification, ICC-02/11-01/15-285-Conf-Exp.

consent, based on the Gbagbo Defence's understanding of the applicability of Regulation 156 of the Regulations of the Registry. For the reasons set out below, the Chamber declines to so rule. Not only does Regulation 156 of the Regulations of the Registry not pronounce upon the Chamber's power to order the disclosure of medical records after being informed of non-consent, but also, to rule as Mr Gbagbo suggests would prevent the Chamber from fully exercising its obligations under the Statute and the Rules on the basis of a Regulation of the Registry, an outcome incompatible with Article 21(1) of the Statute, as duly reflected in Regulation 1(1) of the Regulations of the Registry.

17. In addition, while an accused has the right to privacy, including to the protection of his personal data, this right is not absolute.³² In situations where an accused does not consent to the consultation of his medical records, but the information is essential to central issues bearing on the trial, the Chamber finds that disclosure may be ordered pursuant to Article 64(8)(a) of the Statute and Rules 113 and 135 of the Rules if it is necessary and proportionate to the legitimate aim pursued,³³ including the Chamber's obligation to ensure that the accused is able to exercise his fair trial rights pursuant to, *inter alia*, Article 67(1) of the Statute.³⁴

³² See, e.g., Regulation 156(3) of the Regulations of the Registry; the ECtHR has cautioned that '[r]especting the confidentiality of health data is crucial [...] Nevertheless, the interests [...] in protecting the confidentiality of medical data may be outweighed by the interests of investigating and prosecuting crime [...], where such interests are shown to be of even greater importance'. ECtHR, *Avilkina and others v. Russia*, Application No. 1585/09, Judgment, 6 June 2013, para. 45. ECtHR, *L.L. v. France*, Case No. 7508/02, 2006-XI; *N.N. and T.A. v. Belgium*, Case No. 52019/07, 2008; and *Z v Finland*, Case No. 22009/93, 1997-I. See also Rules 34(D) and (E) of the ICTY Rules of Detention.

³³ In relation to infringements on the right of privacy, in particular, medical records, the ECtHR has defined 'necessary in a democratic society' as meaning 'whether, in the light of the case as a whole, the reasons adduced to justify them were relevant and sufficient and the measures were proportionate to the legitimate aims pursued'. *Avilkina and others v. Russia*, 1585/09, Judgment, 6 June 2013, para. 43. Article 17 of the ICCPR protects persons against arbitrary or unlawful interference with, *inter alia*, privacy rights. The UN Human Rights Council has clarified that 'unlawful' means that no interference can take place except in cases envisaged by law. Further, 'the introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances'. UN Human Rights Committee (HRC), *CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, 8 April 1988.

³⁴ Various Chambers of the Court have held that any infringement on the privacy rights of an accused must be lawful, necessary and proportionate. *The Prosecutor v. Ntaganda*, Trial Chamber VI, Decision on restrictions in relation to certain detainees, 18 August 2015, ICC-01/04-02/06-786-Red4, para. 33; *The Prosecutor v. Dominic*

18. In the present case, the Chamber is satisfied that disclosure of the medical records to Dr Lamothe is necessary for him to fulfil the terms of his appointment. As noted above, the Chamber chose experts with three different specialties;³⁵ thus, the expertise provided by one of the experts is not interchangeable with another. In addition, Dr Lamothe, having previously examined Mr Gbagbo and produced the report upon which the Pre-Trial Chamber heavily relied in reaching its decision on Mr Gbagbo's fitness,³⁶ is in a unique position to assist the Chamber in the present proceedings. In the view of the Chamber, allowing Dr Lamothe to report on the basis of Mr Gbagbo's complete medical record is an important component for ensuring that the report produced by Dr Lamothe can be used by the Chamber in adjudicating any matter which may arise from these proceedings.³⁷ Access to the medical records allows Dr Lamothe's assessment to take place having been privy to the same material as the other Appointed Experts, as well as permitting him to fully consult with the other Appointed Experts as necessary and appropriate. There is no other reasonable measure available that would adequately serve this purpose.

19. The Chamber is also satisfied that allowing Dr Lamothe's access to the medical record results in limited interference with Mr Gbagbo's privacy rights, and is proportionate to the legitimate aim sought. First, Mr Gbagbo has already consented to transmission of his medical records to Professor Ludes and Mr

Ongwen, Pre-Trial Chamber II, Decision concerning the restriction of communications of Dominic Ongwen, 3 August 2015, ICC-02/04-01/15-283, paras 13 and 15; Decision on Request 1200 of the Prosecutor for Prohibition and Restrictive Measures Against Mathieu Ngudjolo with Respect to Contacts Both Outside and Inside the Detention Centre, 24 June 2009, ICC-01/04-01/07-1243-tENG-Red, paras 19-20. See also *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Judgment on the Appeal of the Prosecutor against the "Decision on Request 1200 of the Prosecutor for Prohibition and Restrictive Measures Against Mathieu Ngudjolo with Respect to Contacts Both Outside and Inside the Detention Centre", 9 December 2008, ICC-01/04-01/07-1718, para. 52; Judgment on the Prosecutor's appeal against the decision of Trial Chamber II entitled "Judgment pursuant to article 74 of the Statute", 7 April 2015, ICC-01/04-02/12-271-Corr, paras 268-270.

³⁵ Order appointing three experts, ICC-02/11-01/15-253-Conf, para. 9; 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.

³⁶ Pre-Trial Decision on Fitness, 2 November 2012, ICC-02/11-01/11-286-Conf, para. 57.

³⁷ See e.g., Pre-Trial Decision on Fitness, ICC-02/11-01/11-286-Conf, paras 57-60.

Dumez for purposes of the medical examination ordered by the Chamber pursuant to Rule 135 of the Rules;³⁸ he consented to the Chamber receiving an update from the Medical Officer in the Detention Centre and to the release of relevant medical information concerning his health;³⁹ and he also previously consented to the transmission of his medical records to Dr Lamothe for purposes of proceedings before the Pre-Trial Chamber.⁴⁰ Accordingly, it is only a limited portion of the accused's medical record – indeed, the part most relevant to any issue relating to the accused's fitness and any necessary practical modalities at this stage of the proceedings – that has not yet been communicated to Dr Lamothe. Second, the Chamber notes that Dr Lamothe – like Mr Dumez and Professor Ludes – has signed a confidentiality agreement prior to receiving any material in respect of these proceedings.⁴¹

20. In sum, in balancing the privacy rights of the accused with the obligations of the Chamber under the Statute and the Rules, the Chamber finds that for the reasons provided above, Dr Lamothe may be permitted to consult Mr Gbagbo's medical records for the purposes of the medical examination ordered by the Chamber under Rule 135 of the Rules.

21. Noting that the report by Dr Lamothe is to be submitted to the Chamber no later than 29 October 2015,⁴² the Chamber orders that Mr Gbagbo's medical record maintained pursuant to Regulation 156 of the Regulations of the Registry shall be communicated to Dr Lamothe without delay.

³⁸ First Notification, ICC-02/11-01/15-266-Conf-Exp.

³⁹ Transmission of the Detention Centre Medical Officer's assessment of the health condition of Mr. Laurent Gbagbo with reference to ICC-02/11-01/15-214, ICC-02/11-01/15-270-Conf-Exp, p. 3; *See also*, Updated Information on Mr Gbagbo's Health Related Needs Pursuant to the Chamber's Order of 6 May 2015, 28 May 2015, ICC-02/11-01/15-84-Conf-Exp (a confidential, *ex parte*, redacted version was filed on 28 May 2015, ICC-02/11-01/15-84-Conf-Exp-Red).

⁴⁰ Pre-Trial Decision on Fitness, 2 November 2012, ICC-02/11-01/11-286-Conf, para. 60.

⁴¹ Email from an Associate Legal Officer in the Registry to the Chamber on 13 October 2015 at 11:36.

⁴² Order appointing three experts, 30 September 2015, ICC-02/11-01/15-253.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

ORDERS the Registry to provide Mr Gbagbo's medical record to Dr Lamothe without delay;

ORDERS the Registry to transmit the present order to Dr Lamothe;

ORDERS the Prosecution to file by 29 October 2015 confidential versions of the following documents, with redactions, if necessary:

- ICC-02/11-01/15-94-Conf-Exp;
- ICC-02/11-01/15-94-Conf-Exp-AnxA
- ICC-02/11-01/15-219-Conf-Exp
- ICC-02/11-01/15-219-Conf-Exp-AnxA
- ICC-02/11-01/15-219-Conf-Exp-AnxB
- ICC-02/11-01/15-219-Conf-Exp-AnxC
- ICC-02/11-01/15-269-Conf-Exp
- ICC-02/11-01/15-287-Conf-Exp.

ORDERS the Gbagbo Defence to file by 29 October 2015 confidential versions of the following documents, with redactions, if necessary:

- ICC-02/11-01/15-133-Conf-Exp;
- ICC-02/11-01/15-221-Conf-Exp;
- ICC-02/11-01/15-221-Conf-Exp-Anx2;
- ICC-02/11-01/15-221-Conf-Exp-Anx3;
- ICC-02/11-01/15-221-Conf-Exp-Anx4;

- ICC-02/11-01/15-266-Conf-Exp
- ICC-02/11-01/15-280-Conf-Exp
- ICC-02/11-01/15-285-Conf-Exp

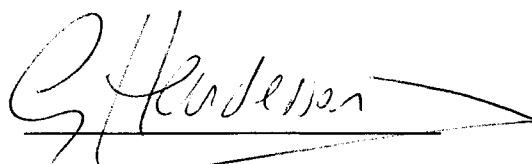
ORDERS the Gbagbo Defence to file by 29 October 2015 an *ex parte*, Prosecution-only, confidential version of the following document, with redactions , if necessary:

- ICC-02/11-01/15-270-Conf-Exp-Anx1

ORDERS the Registry to reclassify as confidential, available to the parties and participants:

- ICC-02/11-01/15-206-Conf-Exp.

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



Judge Geoffrey Henderson, Presiding Judge



Judge Olga Herrera Carbuccia



Judge Bertram Schmitt

Dated 20 October 2015

At The Hague, The Netherlands