

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-02/11-01/11  
Date: 12 September 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**

**Order scheduling a hearing in relation to Mr Gbagbo's fitness to take part in  
the proceedings against him**

**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**

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**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 (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,<sup>1</sup> hereby issues this order scheduling a hearing.

1. On 19 June 2012, the Defence submitted its “Defence application for additional medical and psychological evaluation of President Gbagbo”.<sup>2</sup>

2. On 26 June 2012, the Single Judge issued the “*Ordonnance aux fins de faire procéder à un examen médical*” whereby she appointed, with a view to determining whether Mr Gbagbo is fit to take part in the proceedings against him, three experts to undertake the examination of Mr Gbagbo.<sup>3</sup>

3. On 19 July 2012, the Registry filed in the record of the case the medical reports of the experts appointed by the Chamber (the “Expert Reports”).<sup>4</sup>

4. On 16 August 2012, the “Prosecution’s observations on the Expert Reports” were filed.<sup>5</sup>

5. On 23 August 2012, the OPCV submitted its “Observations on the legal principles applicable to the determination of a suspect’s fitness.”<sup>6</sup>

6. On 27 August 2012, the Defence filed the “*Observations de la Défense sur les rapports médicaux préparés par les experts nommés par la Chambre et sur la procédure à suivre*”.<sup>7</sup>

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<sup>1</sup> ICC-02/11-01/11-61.

<sup>2</sup> ICC-02/11-01/11-158-Conf-Exp-tENG and ICC-02/11-01/11-158-Conf-Red2.

<sup>3</sup> ICC-02/11-01/11-164-Conf.

<sup>4</sup> ICC-02/11-01/11-190-Conf.

<sup>5</sup> ICC/02/11-01/11-214-Conf.

<sup>6</sup> ICC/02/11-01/11-228.

<sup>7</sup> ICC/02/11-01/11-233-Conf.

7. On 29 August 2012, the Prosecutor filed the “Prosecution Requests in relation to the « *Observations de la Défense sur les rapports médicaux préparés par les experts nommés par la Chambre et sur la procédure à suivre* » (ICC-02/11-01/11-233-Conf)”, wherein she, *inter alia*, requests “leave to respond or reply to the discrete portion of the Defence Observations dealing with the Defence request for provisional release of Mr Gbagbo” (the “Prosecutor’s Request for Leave to Reply”).<sup>8</sup>

8. On 30 August 2012, the Defence filed its “*Réponse de la Défense à « Prosecution Requests in relation to the « Observations de la Défense sur les rapports médicaux préparés par les experts nommés par la Chambre et sur la procédure à suivre » »* (ICC-02/11-01/11-234-Conf)”, submitting, *inter alia*, that the Prosecutor’s Request for Leave to Reply should be rejected.<sup>9</sup>

9. On 4 September 2012, following an order from the Single Judge in this regard,<sup>10</sup> the Defence refiled the “*Observations de la Défense portant sur les rapports déposés par les experts médicaux nommés par la Chambre et sur la procédure à suivre déposées à la suite de l’ordonnance de la Chambre du 3 septembre 2012* (ICC-02/11-01/11-238)”.<sup>11</sup>

10. The Single Judge notes articles 61 and 67 of the Rome Statute, rules 113 and 135 of the Rules of Procedure and Evidence (“Rules”) and regulation 24(5) of the Regulations of the Court.

11. The Single Judge recalls that rule 135 of the Rules is intended to ensure that the crucial determination of the fitness of the person to participate in

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<sup>8</sup> ICC-02/11-01/11-234-Conf, para.4.

<sup>9</sup> ICC-02/11-01/11-235-Conf, paras 19-25.

<sup>10</sup> ICC-02/11-01/11-238.

<sup>11</sup> ICC-02/11-01/11-239-Conf.

proceedings is made following an impartial procedure resorting to approved experts only and with proper oversight by the Chamber and the parties.<sup>12</sup>

12. Having reviewed the Expert Reports, as well as the observations of the parties and participants, the Single Judge considers it necessary, before a decision is issued on the fitness of Mr Gbagbo to take part in the proceedings against him, to convene a hearing in order to provide the parties and the Chamber with the opportunity to seek clarification from the experts on issues of particular significance arising from their respective reports, as well as to receive additional relevant submissions and information from the parties. The hearing, before the full Chamber and in closed session, shall be held in the presence of the Prosecutor, the Defence, representatives of the Registry and the experts appointed by the Chamber. In light of the matter to be addressed, the Single Judge considers it of importance that Mr Gbagbo attends in person.

13. Considering that the parties will be given the opportunity to make oral submissions at the upcoming hearing, the Single Judge is of the view that it is not necessary to receive further submissions in writing. The Prosecutor's Request for Leave to Reply must therefore be rejected.

#### **FOR THESE REASONS, THE SINGLE JUDGE**

**DECIDES** to hold a hearing in closed session on Monday 24 September 2012 from 14.30 to 19.00 and on Tuesday 25 September 2012 from 9.00 to 13.00, in the presence of Mr Gbagbo, his Defence, the Prosecutor, representatives of the Registry and the experts appointed by the Chamber to discuss issues related to Mr Gbagbo's fitness to take part in the proceedings against him;

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<sup>12</sup> ICC-02/11-01/11-152-Conf, para. 26 and ICC-02/11-01/11-196-Conf, para. 8.

**REJECTS** the Prosecutor's Request for Leave to Reply.

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 12 September 2012

At The Hague, The Netherlands