

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/11-01/15
Date: 27 November 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***

Public

Decision on the fitness of Laurent Gbagbo to stand trial

Decision 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

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 21, 64 and 67, of the Rome Statute ('Statute'), Rules 113 and 135 of the Rules of Procedure and Evidence ('Rules'), and Regulation 103 of the Regulations of the Court, issues the following 'Decision on the fitness of Laurent Gbagbo to stand trial'.

I. Classification

1. Due to the private nature of the matters discussed in relation to this litigation, numerous filings within the record have been classified as confidential. The Chamber issues this decision publicly, and in due course, will issue an order setting a timetable for the parties and participants to file public redacted versions of their related filings.

II. Procedural History

2. On 2 November 2012, Pre-Trial Chamber I ('Pre-Trial Chamber') ruled on the motion filed by the defence team for Mr Gbagbo ('Gbagbo Defence')¹ challenging, *inter alia*, his fitness to take part in the confirmation proceedings ('First Decision on Fitness').² In this First Decision on Fitness, the Pre-Trial Chamber found that Mr Gbagbo was physically and mentally fit to attend the proceedings, but determined that his health required heightened attention.³
3. Between 2013 and 2015, upon instruction from the Pre-Trial Chamber,⁴ the Registry and the Defence filed a total of nine joint reports on the progress of

¹ *Requête de la Défense en report de l'audience de confirmation des charges prévue le 18 juin 2012*, 5 June 2012, ICC-02/11-01/11-140-Conf-Exp, with a confidential, *ex parte* annex. Confidential versions of the request and the annex were filed on the same day (ICC-02/11-01/11-140-Conf and ICC-02/11-01/11-140-Conf-Anx1). Public redacted versions were filed on 7 and 12 June 2012 (ICC-02/11-01/11-140-Red and Red2).

² 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-Exp. Confidential and public redacted versions were filed on the same day (ICC-02/11-01/11-286-Conf and ICC-02/11-01/11-286-Red).

³ First Decision on Fitness, ICC-02/11-01/11-286-Red, para. 103.

⁴ See, *inter alia*, Decision on the request for the conditional release of Laurent Gbagbo and on his medical treatment, 18 January 2013, ICC-02/11-01/11-362-Conf. A public redacted version was filed on 18 January 2013

efforts to address Mr Gbagbo's health condition.⁵ In the course of this reporting process, on 2 April 2014, a report prepared by four experts selected by the Gbagbo Defence and the Registry was filed in the record of the case identifying the measures that should be taken to ensure the improvement of Mr Gbagbo's health.⁶

4. On 6 May 2015, the Chamber scheduled an *ex parte* status conference 'on the possible practical modalities to facilitate Mr Gbagbo's attendance at trial' held, in private session with the Defence, the Registry and the Office of the Prosecutor ('Prosecution').⁷

(ICC-02/11-01/11-362-Red). Transcript of the hearing held on 9 October 2013, ICC-02/11-01/11-T-23-CONF-EXP-ENG ET, page 24, lines 9-20.

⁵ *Rapport commun du Greffe et de la Défense sur les avancées concernant la mise en œuvre de mesures propres à assurer l'amélioration de l'état de santé de M. Laurent Gbagbo, déposé conformément à la décision de la Chambre ICC-02/11-01/11-558 du 11 novembre 2013*, 3 December 2013, ICC-02/11-01/11-566-Conf-Exp; *Deuxième rapport commun du Greffe et de la Défense sur les avancées concernant la mise en œuvre de mesures propres à assurer l'amélioration de l'état de santé de M. Laurent Gbagbo, déposé conformément à la décision de la Chambre ICC-02/11-01/11-558 du 11 novembre 2013*, 20 December 2013, ICC-02/11-01/11-581-Conf-Exp, with confidential *ex parte* annexes; *Troisième rapport commun du Greffe et de la Défense sur les avancées concernant la mise en œuvre de mesures propres à assurer l'amélioration de l'état de santé de M. Laurent Gbagbo, déposé conformément à la décision de la Chambre ICC-02/11-01/11-558 du 11 novembre 2013 et aux instructions de la Chambre datées du 6 février 2014*, 26 February 2014, ICC-02/11-01/11-623-Conf-Exp; *Quatrième rapport commun du Greffe et de la Défense sur les avancées concernant la mise en œuvre de mesures propres à assurer l'amélioration de l'état de santé de M. Laurent Gbagbo, déposé conformément à la décision de la Chambre ICC-02/11-01/11-633 du 12 mars 2014*, 2 April 2014, ICC-02/11-01/11-644-Conf-Exp with a confidential *ex parte* annex; *Cinquième rapport commun du Greffe et de la Défense sur les avancées concernant la mise en œuvre de mesures propres à assurer l'amélioration de l'état de santé de M. Laurent Gbagbo*, 23 May 2014, ICC-02/11-01/11-651-Conf-Exp; *Sixième rapport commun du Greffe et de la Défense sur les avancées concernant la mise en œuvre de mesures propres à assurer l'amélioration de l'état de santé de M. Laurent Gbagbo, déposé conformément aux décisions de la Chambre ICC-02/11-01/11-633 du 12 mars 2014 et ICC-02/11-01/11-668 du 11 juillet 2014*, 22 July 2014, ICC-02/11-01/11-675-Conf-Exp with a confidential *ex parte* annex; *Septième rapport commun du Greffe et de la Défense sur les avancées concernant la mise en œuvre de mesures propres à assurer l'amélioration de l'état de santé de M. Laurent Gbagbo, déposé conformément aux décisions de la Chambre ICC-02/11-01/11-633 du 12 mars 2014 et ICC-02/11-01/11-668 du 11 juillet 2014*, 11 September 2014, notified on 2 September 2014, ICC-02/11-01/11-681-Conf-Exp-Anx4.1, ICC-02/11-01/11-681-Conf-Exp-Anx4.2 and ICC-02/11-01/11-681-Conf-Exp-Anx4.2; *Huitième rapport commun du Greffe et de la Défense sur les avancées concernant la mise en œuvre de mesures propres à assurer l'amélioration de l'état de santé de M. Laurent Gbagbo*, 2 December 2015, ICC-02/11-01/11-734-Conf-Exp with confidential *ex parte* annexes; *Neuvième rapport commun du Greffe et de la Défense sur les avancées concernant la mise en œuvre de mesures propres à assurer l'amélioration de l'état de santé de Monsieur Laurent Gbagbo*, 7 April 2015, ICC-02/11-01/15-23-Conf-Exp with confidential *ex parte* annexes.

⁶ Confidential *ex parte* annex to *Quatrième rapport commun du Greffe et de la Défense sur les avancées concernant la mise en œuvre de mesures propres à assurer l'amélioration de l'état de santé de M. Laurent Gbagbo, déposé conformément à la décision de la Chambre ICC-02/11-01/11-633 du 12 mars 2014*, 2 April 2014, ICC-02/11-01/11-644-Conf-Exp-Anx.

⁷ Order convening an *ex parte* status conference on 16 June 2015, ICC-02/11-01/15-57. In preparation for the status conference, the Registry filed in the record of the case a 'general statement' by the Detention Centre Medical Officer, whereby the latter indicated that 'from a medical point of view, there [was] currently no

5. During the course of the status conference held on 16 June 2015, the Gbagbo Defence submitted that, *inter alia*, 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’.⁸ The Defence 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’.⁹
6. 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, ‘to confirm that [he] is fit to attend the trial proceedings’.¹⁰ The Prosecution submitted that, to the best of its knowledge, Mr Gbagbo had not been treated and understood, based on the discussion at the status conference, that ‘the Defence [did] not consider [its] client to be fit to stand trial’.¹¹
7. On 13 July 2015, the Defence filed a response opposing the Prosecution’s request for a medical examination of Mr Gbagbo,¹² contending that the Chamber may only decide whether or not Mr Gbagbo is able to face trial after he has been treated. In the alternative, the Defence requested that the Chamber defer its order on the medical examination, obtain Mr Gbagbo’s consent, and

objection to Mr Gbagbo attending court proceedings, provided he has the opportunity to rest in between court sessions’. The Medical Officer further stated that it was not possible to make a prediction about Mr Gbagbo’s ability to attend court proceedings later this year. 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 with an *ex parte* annex. A confidential *ex parte* redacted version, available to the Prosecution, was filed on the same day (ICC-02/11-01/15-84-Conf-Exp-Red).

⁸ Transcript of hearing held on 6 June 2015, ICC-02/11-01/15-T-2-Conf-Exp-ENG ET, page 18, lines 2-7.

⁹ ICC-02/11-01/15-T-2-Conf-Exp-ENG ET, page 19, lines 13-16 and page 21, lines 10-13.

¹⁰ Prosecution’s request for the medical examination of Laurent Gbagbo, 19 June 2015, ICC-02/11-01/15-94-Conf-Exp (‘Prosecution Request’). A confidential redacted version was filed on 29 October 2015, (ICC-02/11-01/15-94-Conf-Red).

¹¹ Prosecution Request, ICC-02/11-01/15-94-Conf-Red, para. 12.

¹² *Réponse de la Défense à la «Prosecution’s request for the medical examination of Laurent Gbagbo»* (ICC-02/11-01/15-94-Conf-Exp), ICC-02/11-01/15-133-Conf-Exp (‘Gbagbo Defence Response’). A confidential *ex parte* version, available to the Prosecution, was filed on the same day (ICC-02/11-01/15-133-Conf-Exp-Red). A confidential version was filed on 29 October 2015 (ICC-02/11-01/15-133-Conf-Red3).

invite supplemental submissions by the parties to set out the appropriate procedure.¹³

8. 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)'.¹⁴ In this decision, the Chamber found it 'timely to conduct a medical examination of Mr Gbagbo under Rule 135 of the Rules' in order to 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.¹⁵
9. On 30 September 2015, having received parties' supplemental submissions on the type of expertise warranted and the experts they considered best placed to conduct the examination,¹⁶ the Chamber issued an 'Order to conduct an examination of Mr Gbagbo under Rule 135 of the Rules' appointing Dr Pierre Lamothe, Mr Alain Dumez and Dr Bertrand Ludes ('Appointed Experts') for this purpose.¹⁷ The Chamber also ordered the 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 2015,¹⁸ and once the Appointed Experts' reports were notified, to propose confidential, redacted versions of them for transmission to the parties and participants.¹⁹ In

¹³ Gbagbo Defence Response, ICC-02/11-01/15-133-Conf-Exp-Red, paras 67-95.

¹⁴ ICC-02/11-01/15-206-Conf-Exp ('Decision of 7 September 2015'), In accordance with the Chamber's instruction, this decision was reclassified as 'confidential' on 20 October 2015 (ICC-02/11-01/15-206-Conf).

¹⁵ Decision of 7 September 2015, ICC-02/11-01/15-206-Conf, paras 9-10.

¹⁶ *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 with four confidential, *ex parte*, annexes. A confidential redacted version was filed on 29 October 2015 (ICC-02/11-01/15-221-Conf-Red); 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 with three confidential, *ex parte* annexes. A confidential redacted version was also filed on 29 October 2015 (ICC-02/11-01/15-219-Conf-Red).

¹⁷ ICC-02/11-01/15-253-Conf ('Order of 30 September 2015').

¹⁸ Order of 30 September 2015, ICC-02/11-01/15-253-Conf, page 10.

¹⁹ Order of 30 September 2015, ICC-02/11-01/15-253-Conf, para. 19.

the same order, the Chamber convened a hearing to be held in private session on 5 November 2015, in order to give the Gbagbo Defence, Prosecution and Registry an opportunity to submit any observations on the Appointed Experts' reports prior to trial.²⁰ The Gbagbo Defence subsequently requested leave to appeal this order,²¹ which was opposed by the Prosecution²² and was rejected in an oral decision by the Chamber on 10 November 2015.²³

10. On 27 October 2015, Gbagbo Defence filed a request that the Chamber order the attendance of the Appointed Experts at the hearing, in order to provide the parties an opportunity to question the experts.²⁴ On 28 October 2015, the Prosecution filed its response to this request.²⁵ On the same day, the Chamber granted the request, considering that allowing the Appointed Experts to be questioned would further facilitate the adjudication of any issues which may arise therefrom.²⁶ To accommodate this request, the Chamber re-scheduled the hearing which had been convened for 5 November 2015 to 10-12 November 2015 to allow enough time for the Appointed Experts to be questioned ('Fitness Hearing'). In so doing, the Chamber re-scheduled opening statements to coincide with the commencement of the presentation of evidence by the Prosecution to 28-29 January 2016.²⁷ The Gbagbo Defence subsequently

²⁰ Order of 30 September 2015, ICC-02/11-01/15-253-Conf, para. 20.

²¹ *Demande d'autorisation d'interjeter appel du «Order to conduct an examination of Mr Gbagbo under Rule 135 of the Rules»* (ICC-02/11-01/15-253-Conf), 6 October 2015, ICC-02/11-01/15-274-Conf-Exp.

²² Prosecution's response to Laurent Gbagbo's application for leave to appeal the "Order to conduct an examination of Mr Gbagbo under Rule 135 of the Rules", 12 October 2015, ICC-02/11-01/15-286-Conf-Exp.

²³ ICC-02/11-01/15-T-5-ENG ET, page 8, line 14 to page 11, lines 11.

²⁴ *Requête aux fins d'ordonner la présence des trois experts nommés par la Chambre lors de l'audience du 5 novembre 2015*, ICC-02/11-01/15-318-Conf. A confidential redacted version was filed on 29 October 2015 (ICC-02/11-01/15-318-Conf-Red). On 28 October 2015, by way of email, the Chamber shortened the time limit for the Prosecution to respond to the Request (Email Communication of Trial Chamber I on 28 October 2015 at 10:07).

²⁵ Prosecution's Response to Laurent Gbagbo's '*Requête aux fins d'ordonner la présence des trois experts nommés par la Chambre lors de l'audience du 5 novembre 2015*', ICC-02/11-01/15-321-Conf. A confidential, redacted version was filed on 30 October 2015 (ICC-02/11-01/15-321-Conf-Red).

²⁶ Decision granting the request of the Gbagbo Defence and re-scheduling opening statements, ICC-02/11-01/15-322 ('Decision of 28 October 2015').

²⁷ Decision of 28 October 2015, ICC-02/11-01/15-322, para. 10.

requested leave to appeal this order,²⁸ which was opposed by the Prosecution²⁹ and the Legal Representative of victims ('LRV'),³⁰ and was rejected in an oral decision by the Chamber on 10 November 2015.³¹

11. On 29 October 2015, the Registry filed the Appointed Expert's reports ('Expert Reports') in the record of the case.³² Having been so ordered, on 30 October 2015, the Gbagbo Defence proposed redacted versions of the Expert Reports.³³

12. On 2 November 2015, the Single Judge accepted the Gbagbo Defence's proposed redactions in their entirety, but rejected the Gbagbo Defence's

²⁸ *Demande d'autorisation d'interjeter appel de la «Decision granting the request of the Gbagbo Defence and re-scheduling opening statements» (ICC-02/11-01/15-322) et du «Order on the classification of the Expert Reports and other related documents» (ICC-02/11-01/15-329-Conf)*, 3 November 2015, ICC-02/11-01/15-330-Conf.

²⁹ Prosecution's response to Laurent Gbagbo's application for leave to appeal the "Decision granting the request of the Gbagbo Defence and re-scheduling opening statements" and the "Order on the classification of the Expert Reports and other related documents", 6 November 2015, ICC-02/11-01/15-337-Conf.

³⁰ Response to Mr Gbagbo's request for leave to appeal the "Decision granting the request of the Gbagbo Defence and re-scheduling opening statements" and the "Order on the classification of the Expert Reports and other related documents" (ICC-02/11-01/15-330-Conf), 6 November 2015, ICC-02/11-01/15-339-Conf.

³¹ ICC-02/11-01/15-T-5-ENG ET, page 14, line 3 to page 5, lines 12.

³² Transmission by the Registry pursuant to ICC-02/11-01/15-253-Conf of Appointed Experts' reports, ICC-02/11-01/15-325-Conf and three confidential, *ex parte*, annexes only available to the Gbagbo Defence and Registry ('Report of Dr Ludes', 'Report of Mr Dumez' and 'Report of Dr Lamothe', *respectively*). Regarding Mr Gbagbo's medical records, he withheld his consent for Dr Lamothe to receive his records and to be examined by him. The Chamber ordered Mr Gbagbo's records to be transferred to Dr Lamothe, and the Gbagbo Defence subsequently requested leave to appeal this order, which was rejected in an oral decision. The related filings are: *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*, 2 October 2015, ICC-02/11-01/15-266-Conf with confidential *ex parte* annexes; 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), 5 October 2015, ICC-02/11-01/15-269-Conf; *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*, 8 October 2015, ICC-02/11-01/15-280-Conf-Exp; Order to provide Appointed Expert with access to Mr Gbagbo's detention record, 8 October 2015, ICC-02/11-01/15-281-Conf; *Notification par la Défense de l'absence de consentement de Laurent Gbagbo à ce que son dossier médical soit transmis à M. Lamothe*, 12 October 2015, ICC-02/11-01/15-285-Conf; 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), 13 October 2015, ICC-02/11-01/15-287-Conf; Order to provide Appointed Expert with access to Mr Gbagbo's medical record, 20 October 2015, ICC-02/11-01/15-302-Conf; *Demande d'autorisation d'interjeter appel du «Order to provide Appointed Expert with access to Mr Gbagbo's medical record» (ICC-02/11-01/15-302-Conf)*, 26 October 2015, ICC-02/11-01/15-315-Conf-Exp; Prosecution's response to Laurent Gbagbo's application for leave to appeal the 'Order to provide Appointed Expert with access to Mr Gbagbo's medical record', 30 October 2015, ICC-02/11-01/15-326-Conf-Exp; ICC-02/11-01/15-T-5-ENG ET, page 11, line 12 to page 14, line 2.

³³ *Observations portant sur les expurgations à effectuer dans les rapports des trois experts et soumissions quant aux parties et participants à qui ces rapports doivent être communiqués*, ICC-02/11-01/15-327-Conf-Exp ('Gbagbo Defence Observations') and three confidential, *ex parte*, only available to the Gbagbo Defence and Registry, annexes. A confidential redacted version was filed on 3 November 2015 (ICC-02/11-01/15-327-Conf-Red).

objection³⁴ to notifying confidential redacted versions of the Expert Reports to the defence team for Mr Blé Goudé ('Blé Goudé Defence') and the LRV.³⁵

13. On 4 and 5 November 2015, upon instruction from the Single Judge,³⁶ the Chamber received notifications from the Prosecution,³⁷ LRV,³⁸ Gbagbo Defence³⁹ and Blé Goudé Defence⁴⁰ concerning their requested participation in the Fitness Hearing. The Prosecution and LRV indicated that, in light of the content of the Expert Reports, they did not intend to question the Appointed Experts.⁴¹ In addition to indicating the estimated time needed for its submissions and for questioning the experts, the Gbagbo Defence made a number of related requests concerning the conduct of the Fitness Hearing.⁴² The Blé Goudé Defence requested that the Chamber accept Mr Blé Goudé's waiver from attending the Fitness Hearing.⁴³

14. Also on 5 November 2015, Mr Blé Goudé's waiver was accepted by the Chamber, provided that he knowingly waived his right to make submissions

³⁴ Gbagbo Defence Observations, ICC-02/11-01/15-327-Conf-Red, paras 8-28, and page 9.

³⁵ Order on the classification of the Expert Reports and other related documents, 2 November 2015, ICC-02/11-01/15-329-Conf ('Order on Classification'). The Gbagbo Defence request seeking leave to appeal this order was subsequently rejected (para. 10 *supra*). Confidential redacted versions of the Expert Reports were notified on 3 November 2015 (ICC-02/11-01/15-325-Conf-Anx1-Red, ICC-02/11-01/15-325-Conf-Anx2-Red, ICC-02/11-01/15-325-Conf-Anx3-Red).

³⁶ Order on Classification, ICC-02/11-01/15-329-Conf, para. 8.

³⁷ Prosecution's Notification in relation to the questioning of experts and oral submissions at the hearing of 10-12 November 2015, ICC-02/11-01/15-334-Conf.

³⁸ Notification of the Legal Representative of Victims in relation to questioning of experts and oral submissions at the hearing of 10-12 November 2015, ICC-02/11-01/15-335-Conf.

³⁹ *Soumissions de la Défense faites à la suite des instructions de la Chambre du 2 Novembre 2015, concernant la conduite des débats lors de l'audience relative à l'aptitude à être jugé de Laurent Gbagbo fixée aux 10, 11 et 12 novembre 2015*, 5 November 2015, ICC-02/11-01/15-336-Conf. See also, email Communication of Trial Chamber I on 5 November 2015 at 16:43; and *Notification par la Défense des documents additionnels dont elle pourrait se servir lors des audiences des 12 et 18 novembre 2015*, 9 November 2015, ICC-02/11-01/15-341-Conf-Exp with six confidential *ex parte* annexes.

⁴⁰ Email Communication of Trial Chamber I on 4 November 2015 at 17:51.

⁴¹ The Prosecution reserved its right to address any matters raised through questioning, and the LRV indicated that should any issue arise during the hearing which could impact the victims' interests, the LRV would request leave of the Chamber to intervene.

⁴² *Soumissions de la Défense faites à la suite des instructions de la Chambre du 2 Novembre 2015, concernant la conduite des débats lors de l'audience relative à l'aptitude à être jugé de Laurent Gbagbo fixée aux 10, 11 et 12 novembre 2015*, 5 November 2015, ICC-02/11-01/15-336-Conf. The Defence further requested authorisation to notify the other parties and participants of any additional documents it may use during the hearing (Email Communication of Trial Chamber I on 5 November 2015 at 16:43).

⁴³ Email Communication of Trial Chamber I on 4 November 2015 at 17:51.

on the impact, if any, on his Article 67(1)(c) rights from any matter arising from the Fitness Hearing.⁴⁴ This was confirmed by counsel for Mr Blé Goudé *via* email on 6 November 2015.⁴⁵

15. On 6 November 2015, the Single Judge answered each of the Gbagbo Defence's requests concerning the conduct of the hearing *via* email, indicating that reasons for his decision would be given at the start of the Fitness Hearing.⁴⁶
16. Also on 6 November 2015, the Chamber received a request from Mr Gbagbo requesting leave not to attend the Fitness Hearing.⁴⁷ The Chamber granted the request in respect of the session to be held on 10 November 2015, but rejected it for the sessions to be held on 12 and 19 November 2015.⁴⁸
17. On 10 November 2015, the Chamber rendered a number of oral decisions⁴⁹ and set out the framework for the conduct of the Fitness Hearing.⁵⁰ Due to the availability of the experts, the Single Judge also re-scheduled the Fitness Hearing for 10, 12, and 19 November 2015.⁵¹
18. On 12 November 2015, Dr Lamothe and Dr Ludes testified.⁵² On 19 November 2015, the Chamber heard testimony from Dr Dumez,⁵³ and received the parties' submissions.⁵⁴

⁴⁴ Email Communication of Trial Chamber I on 5 November 2015 at 14.00.

⁴⁵ Email Communication of Trial Chamber I on 5 November 2015 at 16.21.

⁴⁶ Email Communication of Trial Chamber I on 6 November 2015 at 14.58.

⁴⁷ *Éléments d'information concernant la non présence de Laurent Gbagbo lors de l'audience des 10, 11 et 12 novembre 2015*, ICC-02/11-01/15-338-Conf with confidential annex (ICC-02/11-01/15-338-Conf-Anx). See also Prosecution's response to the Gbagbo Defence's «*Éléments d'information concernant la non présence de Laurent Gbagbo lors de l'audience des 10, 11 et 12 novembre 2015*» (ICC-02/11-01/15-338-Conf), ICC-02/11-01/15-342-Conf.

⁴⁸ Email Communication of Trial Chamber I on 9 November 2015 at 16.31. See also ICC-02/11-01/15-T-5-ENG ET, page 21, line 5 to page 22, line 4.

⁴⁹ ICC-02/11-01/15-T-5-ENG ET, page 4, line 13 to page 22, line 4.

⁵⁰ ICC-02/11-01/15-T-5-ENG ET, page 22, line 7-23.

⁵¹ Transcript of hearing held on 10 November 2015 ICC-02/11-01/15-T-5-ENG ET, page 2, lines 21-24.

⁵² Transcript of hearing held on 12 November 2015, ICC-02/11-01/15-T-6-CONF-ENG ET.

⁵³ Transcript of hearing held on 19 November 2015, ICC-02/11-01/15-T-7-CONF-ENG ET, page 3, line 14 to page 33, line 10.

⁵⁴ ICC-02/11-01/15-T-7-CONF-ENG ET, page 33, line 22 to page 72, line 18.

III. Summary of the Appointed Experts' qualifications and main findings

19. In the section below, the Chamber briefly summarises the Appointed Experts' qualifications and the central conclusions they reached in their reports and provided in their testimony.
20. Dr Lamothe is a psychiatrist, a forensic doctor and an expert certified by the French *Court the Cassation*.⁵⁵ During his career, he was in charge of creating and leading a number of penitentiary institutions.⁵⁶ Dr Lamothe is also a teacher of criminology and medical expertise⁵⁷ and has testified previously in several countries including Switzerland, Belgium, the United States of America and France, by his submission, has testified as an expert in too many trials to enumerate.⁵⁸ In his report, Dr Lamothe concluded that he observed 'no significant impairment of [Mr Gbagbo's] cognitive abilities or executive functions',⁵⁹ that Mr Gbagbo is 'no longer suffering from clinical post-traumatic stress syndrome',⁶⁰ that he displays 'no positive signs of hospitalisation syndrome'.⁶¹ He also concluded that, in his opinion, Mr Gbagbo 'displays a satisfactory capacity to understand and defend himself against the charges, including the capacity to understand the purpose and the consequences'⁶² of the charges, 'is able to understand the course of the proceedings, including the nature and significance of pleading to the charges'⁶³, is 'able to understand the evidence presented by the Court', 'able to testify or give [an] unsworn statement (should he so choose)' and 'able to instruct counsel in the preparation and conduct of his defence'.⁶⁴ Notably, Dr Lamothe also reported

⁵⁵ ICC-02/11-01/15-T-6-CONF-ENG ET 12-11-2015, page 5, lines 7-8.

⁵⁶ ICC-02/11-01/15-T-6-CONF-ENG ET 12-11-2015, page 5, lines 8-9.

⁵⁷ ICC-02/11-01/15-T-6-CONF-ENG ET 12-11-2015, page 5, lines 13-14.

⁵⁸ ICC-02/11-01/15-T-6-CONF-ENG ET 12-11-2015, page 5, lines 17-20.

⁵⁹ Report of Dr Lamothe, ICC-02/11-01/15-325-Conf-Anx3-tENG-Red, page 8.

⁶⁰ Report of Dr Lamothe, ICC-02/11-01/15-325-Conf-Anx3-tENG-Red, page 9.

⁶¹ Report of Dr Lamothe, ICC-02/11-01/15-325-Conf-Anx3-tENG-Red, page 9.

⁶² Report of Dr Lamothe, ICC-02/11-01/15-325-Conf-Anx3-tENG-Red, page 9.

⁶³ Report of Dr Lamothe, ICC-02/11-01/15-325-Conf-Anx3-tENG-Red, page 9.

⁶⁴ Report of Dr Lamothe, ICC-02/11-01/15-325-Conf-Anx3-tENG-Red, page 9.

that Mr Gbagbo's 'current state of health appears to have improved since [2012]'.⁶⁵ During questioning by counsel, Dr Lamothe reiterated that he stands by his findings.⁶⁶

21. Dr Ludes is a forensics expert, forensics teacher at Paris V University, head of a forensics institute in Paris, and is an accredited expert with the *Cour de Cassation* and the Appellate Administrative Court in Nancy.⁶⁷ He has previously testified many times before several different courts.⁶⁸ In his expert report, Dr Ludes concluded that 'on the whole' his examination 'revealed nothing clinical to prevent Mr Laurent Gbagbo from attending trial' and that 'there was no impairment of [Mr Gbagbo's] cognitive functions reducing his capacity to understand and reason or likely to obstruct his comprehension or ability to react with respect to the course of proceedings against him'.⁶⁹ He indicated that Mr Gbagbo formulated a number of complaints, which were assessed during his physical examination.⁷⁰ Concerning this, Dr Ludes concluded that Mr Gbagbo was in 'good condition' and, 'subject to appropriate monitoring [...], the medical care and treatment described to me seem appropriate'.⁷¹ During questioning by counsel, Dr Ludes stated repeatedly that he stood by the findings in his report,⁷² that he did not see anything that would prevent Laurent Gbagbo from participating in the trial,⁷³ but that he recommended regular breaks and rest for Mr Gbagbo during trial and monitoring of his condition.⁷⁴

⁶⁵ Report of Dr Lamothe, ICC-02/11-01/15-325-Conf-Anx3-tENG-Red, page 8. *See also* ICC-02/11-01/15-T-6-CONF-ENG ET, page 12, line 11 to page 13, line 7.

⁶⁶ *See, inter alia*, ICC-02/11-01/15-T-6-CONF-ENG ET, page 34, lines 7-12.

⁶⁷ ICC-02/11-01/15-T-6-CONF-ENG, page 37, line 10-11 and 14-16.

⁶⁸ ICC-02/11-01/15-T-6-CONF-ENG, page 37, lines 17-19.

⁶⁹ Report of Dr Ludes, ICC-02/11-01/15-325-Conf-Anx1-tENG-Red, page 13.

⁷⁰ Report of Dr Ludes, ICC-02/11-01/15-325-Conf-Anx1-tENG-Red, pages 4-5 and 11-12.

⁷¹ Report of Dr Ludes, ICC-02/11-01/15-325-Conf-Anx1-tENG-Red, pages 11-13.

⁷² ICC-02/11-01/15-T-6-CONF-ENG, page 64, line 4; page 64, lines 11-14; page 71, lines 18-19.

⁷³ ICC-02/11-01/15-T-6-CONF-ENG, page 77, lines 6-7.

⁷⁴ ICC-02/11-01/15-T-6-CONF-ENG, page 61, lines 2-4; page 75, line 23 to page 76, line 7.

22. Mr Dumez is a clinical psychologist and specialises in forensic psychology.⁷⁵ He is an expert approved by the *Cour de Cassation*,⁷⁶ has been working as a psychologist in hospital psychiatric units for 35 years,⁷⁷ and is the head of the French National Association of Forensic Psychologists.⁷⁸ He also has a psychotherapy practice and works with victims.⁷⁹ He has provided expert services in various areas and has generally provided more than 4,000 expert reports relating to forensic psychology.⁸⁰ In his report, Mr Dumez concluded that 'Mr Gbagbo possesses psychological resources that allow him not only to understand the proceedings brought against him and the elements of the charges to which he must respond but also to put forward, in an appropriate manner, his subjective position by participating actively in his trial'.⁸¹ Notably, he indicated that the 'psychological examination of [Mr Gbagbo] showed a significant improvement in his mental health, with a clear decrease in the intensity of his [psycho-traumatic] symptoms'.⁸² He found that Mr Gbagbo's memory corresponded perfectly to his age, and that the interview demonstrated 'a correct understanding of the mechanisms of the proceedings that he must undergo'.⁸³ He noted, however, Mr Gbagbo's propensity for fatigue, due partly to his age and the lack of social stimuli of being in a detention setting, but concluded that sessions of 1.5 hours, preferably in the afternoon, would be conducive to effective participation.⁸⁴

⁷⁵ ICC-02/11-01/15-T-7-CONF-ENG ET, page 4, lines 10-11.

⁷⁶ ICC-02/11-01/15-T-7-CONF-ENG ET, page 4, lines 11-13.

⁷⁷ ICC-02/11-01/15-T-7-CONF-ENG ET, page 4, lines 16-17.

⁷⁸ ICC-02/11-01/15-T-7-CONF-ENG ET, page 4, lines 19-21.

⁷⁹ ICC-02/11-01/15-T-7-CONF-ENG ET, page 4, lines 17-18.

⁸⁰ ICC-02/11-01/15-T-7-CONF-ENG ET, page 4, lines 18-19.

⁸¹ Report of Mr Dumez, ICC-02/11-01/15-325-Conf-Anx2-tENG-Red, page 9.

⁸² Report of Mr Dumez, ICC-02/11-01/15-325-Conf-Anx2-tENG-Red, page 9.

⁸³ Report of Mr Dumez, ICC-02/11-01/15-325-Conf-Anx2-tENG-Red, page 8.

⁸⁴ Report of Mr Dumez, ICC-02/11-01/15-325-Conf-Anx2-tENG-Red and ICC-02/11-01/15-325-Conf-Anx2-Red, page 8.

IV. Submissions of the parties and participants

A. Prosecution

23. Relying on the jurisprudence of other international tribunals,⁸⁵ the Prosecution submits that the applicable standard in assessing an accused's fitness is one of 'meaningful participation, which allows the accused to exercise his fair trial rights to such a degree that he is able to participate effectively in his trial, and has an understanding of the essentials of the proceedings.'⁸⁶ In its view, the Accused need only understand the general thrust of the proceedings,⁸⁷ and therefore submits that Laurent Gbagbo does not need to possess the legal and strategic capabilities of a lawyer, as he can avail himself of his lawyers' expertise.⁸⁸ The Prosecution further submits that the expected length and breadth of trial would not form a sufficient basis to find that Mr Gbagbo is unfit to stand trial.⁸⁹

24. In the view of the Prosecution, the Appointed Expert's provide a clear view of Mr Gbagbo's health.⁹⁰ In its view, and based on the three Expert Reports and the Appointed Experts' testimony, Mr Gbagbo's cognitive and physical capacities are at such a level that it is possible for him to exercise his fair trial rights.⁹¹

25. The Prosecution submits, however, that the real issue is that of modalities of Mr Gbagbo's attendance at trial.⁹² In this regard, the Prosecution proposes that accommodations should be made to reflect Mr Gbagbo's physical condition, such as allowing breaks over the course of the day, but it suggests that

⁸⁵ Email communication of Trial Chamber I on 18 November 2015 at 17h15.

⁸⁶ ICC-02/11-01/15-T-7-CONF-ENG ET, page 38, lines 2-6 referring to ICTY, *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Appeals Chamber, Judgment, 17 July 2008 ('Strugar Appeals Judgment'), para. 55.

⁸⁷ ICC-02/11-01/15-T-7-CONF-ENG ET, page 39, lines 7-11.

⁸⁸ ICC-02/11-01/15-T-7-CONF-ENG ET, page 39, lines 10-15 and 21-23.

⁸⁹ ICC-02/11-01/15-T-7-CONF-ENG ET, page 44, lines 21-23.

⁹⁰ ICC-02/11-01/15-T-7-CONF-ENG ET, page 36, lines 13-15; page 40, line 11 to page 41, line 2.

⁹¹ ICC-02/11-01/15-T-7-CONF-ENG ET, page 36, lines 16-22; page 40, line 11 to page 41, line 2.

⁹² ICC-02/11-01/15-T-7-CONF-ENG ET, page 36, lines 16-17; page 40, lines 12-13.

hearings held throughout the day, in 1.5 hour sessions, would be suitable.⁹³ The Prosecution also proposes that the Chamber direct the Registry to communicate the results of continued medical monitoring conducted as a part of Mr Gbagbo's care in the detention centre.⁹⁴

B. Legal Representative of Victims

26. The LRV firstly points to the 'unequivocal' conclusions of the Appointed Experts that Mr Gbagbo is fit to stand trial and take part in the proceedings.⁹⁵ Referring to jurisprudence from the International Criminal Tribunal for the former Yugoslavia ('ICTY'),⁹⁶ she submits that the Accused's capacity must be viewed in a 'reasonable and [common sense] manner' and that each capacity need not be at its 'notionally highest level'.⁹⁷ In the view of the LRV, '[n]othing in the medical report suggests that Mr Gbagbo is unable to understand the essentials of the proceedings and to provide instruction to his lawyer'.⁹⁸ In relation to the Defence's submission that the trial could trigger a breakdown, the LRV submits that Mr Dumez gave no such indication and that the possibility of deterioration is 'speculative in nature' and should not be taken into account.⁹⁹

27. The LRV submits that the health of Mr Gbagbo is a concern about which the victims are keenly aware, is something frequently addressed by the media in Côte d'Ivoire, and something that they believe could have a detrimental effect on the proceedings.¹⁰⁰ The victims have expressed a shared desire for an expeditious trial and have indicated their willingness to concede to Mr Gbagbo

⁹³ ICC-02/11-01/15-T-7-CONF-ENG ET, page 43, lines 10-12; page 45, lines 2-13.

⁹⁴ ICC-02/11-01/15-T-7-CONF-ENG ET, page 45, lines 10-25.

⁹⁵ ICC-02/11-01/15-T-7-CONF-ENG ET, page 47, lines 10-13.

⁹⁶ ICTY, *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-T, Trial Chamber, Consolidated decision on the continuation of the proceedings, 26 October 2015 ('Hadžić Decision'), paras 39-40.

⁹⁷ ICC-02/11-01/15-T-7-CONF-ENG ET, page 47, line 16 to page 48, line 8.

⁹⁸ ICC-02/11-01/15-T-7-CONF-ENG ET, page 49, lines 5-6.

⁹⁹ ICC-02/11-01/15-T-7-CONF-ENG ET, page 49, lines 10-22.

¹⁰⁰ ICC-02/11-01/15-T-7-CONF-ENG ET, page 49, line 24 to page 50, line 11.

certain necessary arrangements if this will avoid the trial being suspended.¹⁰¹

C. Gbagbo Defence

28. The Defence, relying on previous medical reports submitted in 2012 and 2014, and the three Expert Reports, submits that Mr Gbagbo is 'sick', 'tired' and 'fragile', and therefore, unfit to stand trial.¹⁰² The Defence further submits that the members of the defence team have also witnessed Mr Gbagbo's exhaustion and weakness on a daily basis.¹⁰³ Pointing to the recent report of Mr Dumez, the Defence recalls that Mr Gbagbo's pathologies have not disappeared.¹⁰⁴
29. As to the Expert Reports, the Gbagbo Defence submits that Dr Ludes and Dr Lamothe lacked professionalism in the way they conducted their examinations.¹⁰⁵ The Defence refers to certain insufficiencies in respect of their examinations, a lack of understanding as to the remit of the Appointed Experts' duties, lack of preparation and lack of acknowledgment of the findings from previous expert reports.¹⁰⁶ The Gbagbo Defence further submits that the Chamber should not attach any weight in particular to the 'two physicians' reports due to their lack of understanding of proceedings at the Court and Mr Gbagbo's role in these proceedings.¹⁰⁷
30. Moreover, the Defence submits that because of Mr Gbagbo's age and other physical medical conditions, he is currently at risk.¹⁰⁸ Elaborating on these risks, the Defence submits that further medical examinations must be

¹⁰¹ ICC-02/11-01/15-T-7-CONF-ENG ET, page 50, lines 9-17.

¹⁰² ICC-02/11-01/15-T-7-CONF-ENG ET; page 51, line 22 and 24; page 68, lines 10-12; page 70, lines 17-18. *See, inter alia*, annexes 1 to 3 to *Notification par la Défense des documents additionnels dont elle pourrait se servir lors des audiences des 12 et 18 novembre 2015*, 9 November 2015, ICC-02/11-01/15-341-Conf-Exp-Anx1, ICC-02/11-01/15-341-Conf-Exp-Anx2 and ICC-02/11-01/15-341-Conf-Exp -Anx3.

¹⁰³ *See, inter alia*, ICC-02/11-01/15-T-7-CONF-ENG ET, page 51, line 21 to page 52, line 1; page 67, line 17 to page 68, line 13.

¹⁰⁴ ICC-02/11-01/15-T-7-CONF-ENG ET, page 67, lines 21-24.

¹⁰⁵ ICC-02/11-01/15-T-7-CONF-ENG ET, page 57, lines 7-24.

¹⁰⁶ *See, inter alia*, ICC-02/11-01/15-T-7-CONF-ENG ET, page 54, line 20 to page 59, line 10; page 60, lines 2-11; page 60, line 21 to page 61, line 2; and page 63, lines 5-24.

¹⁰⁷ ICC-02/11-01/15-T-7-CONF-ENG ET, page 63, line 2 to page 64, line 16.

¹⁰⁸ ICC-02/11-01/15-T-7-CONF-ENG ET, page 66, line 19 to page 67, line 16. *See also*, page 68, lines 8-9.

conducted and a physician should be appointed to afford the Chamber a better understanding of the real risk to the health of the Accused.¹⁰⁹

31. As for modalities of his attendance at trial, should Mr Gbagbo be determined fit to stand trial, the Defence submits that it is 'absolutely necessary' that the hearings are held only in the afternoon and sessions divided into short periods of time.¹¹⁰ Based on the conclusion that under current conditions Mr Gbagbo's propensity to fatigue is based on a lack of social and relational stimuli, the Defence suggests that hearings are organised so that in the middle of the week Mr Gbagbo may have one day to receive visits from family and friends.¹¹¹ Finally, the Defence argues that opportunities for the Accused to get fresh air, as well as regular rest, would be beneficial.¹¹²

V. Applicable law

32. Pursuant to Article 64(6)(a) of the Statute, and Rule 135 of the Rules, the Chamber must satisfy itself that the accused understands the nature of the charges against him. This assessment necessarily includes a determination not only that the accused understands the nature of charges, but also has the capacity to exercise his procedural rights, including with the assistance of his counsel, as enumerated under Article 67(1) of the Statute.

33. In this regard, the Chamber fully endorses the statement made by Pre-Trial Chamber I that:

[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

¹⁰⁹ ICC-02/11-01/15-T-7-CONF-ENG ET, page 66, line 19 to page 67, line 16. *See also*, page 68, lines 8-9.

¹¹⁰ ICC-02/11-01/15-T-7-CONF-ENG ET, page 68, line 25 to page 69, line 5.

¹¹¹ ICC-02/11-01/15-T-7-CONF-ENG ET, page 69, lines 6-7 referring to Report of Dr Dumez, ICC-02/11-01/15-325-Conf-Anx2-tENG-Red, page 9.

¹¹² ICC-02/11-01/15-T-7-CONF-ENG ET, page 69, lines 7-8. *See also*, lines 8-11.

prevent the accused from being able to meaningfully exercise his or her fair trial rights.¹¹³

34. The Chamber also endorses the Pre-Trial Chamber's observation that 'meaningful exercise of one's fair trial rights does not require that the person be able to exercise them as "if he or she were trained as a lawyer or judicial officer"',¹¹⁴ and notes relevant jurisprudence from the Appeals Chamber of the ICTY in *Strugar* that that:

An accused represented by counsel cannot be expected to have the same understanding of the material related to the case as a qualified and experienced lawyer. Even persons in good physical and mental health, but without advanced legal education and relevant skills, require considerable legal assistance, especially in case of such complex legal and factual nature as in those brought before the Tribunal.¹¹⁵

35. As a recalled previously,¹¹⁶ to ascertain fitness to stand trial, an accused must have the capacity to: (i) understand the purpose, including the consequences of the proceedings; (ii) understand the course of the proceedings, including the nature and significance of pleading to the charges; (iii) understand the evidence; (iv) testify or give an unsworn statement (should the accused so choose); and (v) instruct counsel in the preparation and conduct of his defence.¹¹⁷

36. Having enumerated the various capacities an accused must possess in order for the Chamber to satisfy itself that he can meaningfully participate in the trial – to such a degree that he has an understanding of the essentials of the proceedings, and in such way that it allows him to effectively exercise his fair

¹¹³ First Decision on Fitness, ICC-02/11-01/11-286-Red, para. 43.

¹¹⁴ First Decision on Fitness, ICC-02/11-01/11-286-Red, para. 52.

¹¹⁵ First Decision on Fitness, ICC-02/11-01/11-286-Red, para. 53; ICTY, *Strugar Appeals Judgment*, para. 55 (cited above).

¹¹⁶ Decision of 7 September 2015, ICC-02/11-01/15-206-Conf, para. 10; Order of 30 September 2015, ICC-02/11-01/15-253-Conf, para. 9.

¹¹⁷ See, Order of 30 September 2015, ICC-02/11-01/15-253-Conf, para. 13. See also *Hadžić* Decision, para. 38 (cited above), citing *Strugar Appeals Judgment*, para. 55 (cited above); ICTY, *Prosecutor v. Pavle Strugar, Case No. IT-01-42-T*, Trial Chamber Decision re the defence motion to terminate the proceedings, 26 May 2004 ('*Strugar Trial Decision*'), para. 36.

trial rights¹¹⁸ – the Chamber is guided by the notion that:

An accused's ability to participate in his trial should be assessed by looking at whether his capacities are, "viewed overall and in a reasonable and [common sense] manner, at such a level that it is possible for [him or her] to participate in the proceedings (in some cases with assistance) and sufficiently exercise the identified rights. [...] Effective participation requires a "broad understanding" of the trial process with a comprehension of the "general thrust" of what is said in court.¹¹⁹

VI. Analysis

A. Mr Gbagbo's fitness to stand trial

37. On 2 November 2012, the Pre-Trial Chamber found that Mr Gbagbo was physically and mentally fit to take part in the proceedings before the Court, but determined that his health required heightened attention.¹²⁰ Having considered the Experts Reports received on 29 October 2015; having heard on 12 and 19 November 2015 the testimony of the Appointed Experts in relation to the methodologies they used and the findings in their reports; and, having heard the submissions of the parties and participants on 19 November 2015; this Chamber is satisfied that, for the reasons set out below, Mr Gbagbo possesses the requisite capacities to meaningfully participate in the trial proceedings.¹²¹

38. As set out below, the Chamber finds that all three of the Chamber's Appointed Experts unanimously conclude that Mr Gbagbo is physically and mentally able to attend and follow the trial proceedings.¹²² All three Appointed Experts conclude that Mr Gbagbo has the cognitive capacity to understand the nature, cause and consequence of the charges¹²³ and the details of the evidence.¹²⁴ All

¹¹⁸ *Strugar Appeals Judgment*, para. 55 (cited above).

¹¹⁹ *Hadžić Decision*, paras 37 and 39 (cited above); *citing Strugar Appeals Judgment*, paras 47 and 55 (cited above), *citing Strugar Trial Decision*, para. 3 (cited above).

¹²⁰ *First Decision on Fitness*, ICC-02/11-01/11-286-Red, para. 103.

¹²¹ See para. 35, *supra*.

¹²² Report of Dr Ludes, ICC-02/11-01/15-325-Conf-Anx1-tENG-Red, pages 11-13; Report of Mr Dumez, ICC-02/11-01/15-325-Conf-Anx2-tENG-Red, page 9; Report of Dr Lamothe, ICC-02/11-01/15-325-Conf-Anx1-tENG-Red, pages 8-10.

¹²³ Report of Dr Ludes, ICC-02/11-01/15-325-Conf-Anx1-tENG-Red, page 12; *see also* ICC-02/11-01/15-T-6-CONF-ENG ET, page 69, lines 2-5; Report of Mr Dumez, ICC-02/11-01/15-325-Conf-Anx2-tENG-Red, page 9; confirmed in questioning by counsel ICC-02/11-01/15-T-7-CONF-ENG ET, page 19, lines 11-12; Report of Dr

three find Mr Gbagbo has the requisite capacities necessary to communicate with and instruct his counsel,¹²⁵ and testify or make an unsworn statement on his behalf, should he so choose.¹²⁶ In fact, both experts who previously examined Mr Gbagbo in the context of earlier proceedings conclude that Mr Gbagbo's state of health has significantly improved.¹²⁷

39. The Chamber has not been persuaded by submissions of the Gbagbo Defence calling into question the methodologies used by the Appointed Experts and the extent of their experience with court proceedings. The Chamber recalls the Appointed Experts' impeccable credentials and that each has extensive experience not only as a practitioner in his respective field, but also in providing expert testimony before various courts.¹²⁸ Further, the Chamber considers that the means by which each Appointed Expert conducted his assessment – in fulfilling his Court appointed mandate – is essentially within his professional discretion, within the confines, of course, of what is accepted practice in his respective field.¹²⁹ In relation to their experience with court proceedings, each Appointed Expert demonstrated, both in his report as well

Lamothe, ICC-02/11-01/15-325-Conf-Anx3-tENG-Red, page 9; *see also*, ICC-02/11-01/15-T-6-CONF-ENG ET, page 34, lines 2-12 in which Dr Lamothe confirms these findings when questioned by counsel.

¹²⁴ Report of Mr Dumez, ICC-02/11-01/15-325-Conf-Anx2-tENG-Red, pages 5-6, 8 and ICC-02/11-01/15-T-7-CONF-ENG ET, page 19, lines 6-8. Report of Dr Lamothe, ICC-02/11-01/15-325-Conf-Anx3-tENG-Red, page 4, *see in particular* lines 15, 22-27, and 28; Report of Dr Ludes, ICC-02/11-01/15-325-Conf-Anx1-tENG-Red, pages 12-13; *see also* ICC-02/11-01/15-T-6-CONF-ENG ET, page 69, lines 2-5.

¹²⁵ Report of Mr Dumez, ICC-02/11-01/15-325-Conf-Anx2-tENG-Red, pages 5, 8-9; Report of Dr Ludes, ICC-02/11-01/15-325-Conf-Anx1-tENG-Red, pages 9 and 12; Report of Dr Lamothe, ICC-02/11-01/15-325-Conf-Anx3-tENG, page 9; this finding was also confirmed during questioning by counsel, ICC-02/11-01/15-T-6-CONF-ENG ET, page 12, lines 20-25, page 13, lines 1-11; *see also*, ICC-02/11-01/15-T-6-CONF-ENG ET, page 46, lines 22-23 and ICC-02/11-01/15-T-7-CONF-ENG ET, page 19, lines 13-15.

¹²⁶ Report of Mr Dumez, ICC-02/11-01/15-325-Conf-Anx2-tENG-Red, page 8; Report of Dr Lamothe, ICC-02/11-01/15-325-Conf-Anx3-tENG-Red, page 9; Report of Dr Ludes, ICC-02/11-01/15-325-Conf-Anx1-tENG-Red, pages 9 and 12-13.

¹²⁷ Report of Dr Lamothe, ICC-02/11-01/15-325-Conf-Anx3-tENG-Red, page 8; Report of Mr Dumez, ICC-02/11-01/15-325-Conf-Anx2-tENG-Red, page 8.

¹²⁸ *See paras 20-22 supra.*

¹²⁹ For example, with regard to Dr Lamothe's 'semi-structured' approach in conducting his examination, the Chamber accepts his submission that not only was this 'the most used technique' in his clinical practice, but also that it enabled him 'to obtain a better view in a less formal structure and generally leads more or less to the same results as a formal interview.' *See* ICC-02/11-01/15-T-6-CONF-ENG ET, page 32 line 24 to page 33, line 9. The Chamber also accepts the submission of Dr Ludes that his examination, which lasted approximately 2 hours, 'followed the usual protocol [for] conducting a medical examination' and that in his opinion his examination was 'quite complete' *See* ICC-02/11-01/15-T-6-CONF-ENG ET, page 39, lines 14-15.

as in his testimony in court, to be exceedingly familiar with legal proceedings in general,¹³⁰ and sufficiently familiar with these proceedings, in particular.¹³¹ Finally, the Chamber finds no issue with the fact that Dr Ludes and Dr Lamothe conducted their examinations concurrently, considering that the Chamber itself directed the Appointed Experts to consult one another 'to the extent possible';¹³² the experts regarded this approach to be more efficient for the purposes their examination and for the patient himself;¹³³ and both experts noted that Mr Gbagbo himself did not object.¹³⁴ In sum, the Chamber finds that the Appointed Experts are credible, that the methodologies they used were appropriate, and therefore finds that the conclusions of the Appointed Experts may be relied on for the purposes for which the experts were appointed.

40. In respect of Mr Gbagbo's ability to follow and understand the nature of the proceedings and the evidence, and to understand the consequences of the proceedings, all three Appointed Experts unanimously concluded that Mr Gbagbo is physically and mentally able to attend and follow the trial proceedings.¹³⁵ In particular, the Appointed Experts indicate that: '[h]is ability to reason and make his own judgment is unimpaired;'¹³⁶ and that '[results of the tests and clinical observation] showed efficient intellectual and cognitive abilities with very good abstract thinking and understanding.'¹³⁷ Mr Dumez further remarked that 'Mr Gbagbo possesses psychological resources that allow him not only to understand the proceedings brought against him and the

¹³⁰ ICC-02/11-01/15-T-6-CONF-ENG ET, page 5, lines 7-9 and 17-20; ICC-02/11-01/15-T-6-CONF-ENG, page 37, lines 15-19; ICC-02/11-01/15-T-7-CONF-ENG, page 4, lines 11-13 and 18-19.

¹³¹ ICC-02/11-01/15-T-6-CONF-ENG ET, page 23, lines 2-10; page 24, lines 11-14; Report of Dr Ludes, ICC-02/11-01/15-325-Conf-Anx1-tENG-Red, page 13, *but noting* ICC-02/11-01/15-T-6-CONF-ENG ET page 58, lines 16-21; Report of Mr Dumez, ICC-02/11-01/15-325-Conf-Anx2-tENG-Red, page 8.

¹³² Order of 30 September 2015, ICC-02/11-01/15-253-Conf, para. 16.

¹³³ ICC-02/11-01/15-T-6-CONF-ENG ET, page 8, lines 16-18; page 40, lines 12-13.

¹³⁴ ICC-02/11-01/15-T-6-CONF-ENG ET, page 9, line 22 to page 10, line 1; page 41, lines 19-21.

¹³⁵ Report of Mr Dumez, ICC-02/11-01/15-325-Conf-Anx2-tENG-Red, pages 8-9; Report of Dr Lamothe, ICC-02/11-01/15-325-Conf-Anx3-tENG-Red, pages 5 and 9; Report of Dr Ludes, ICC-02/11-01/15-325-Conf-Anx1-tENG-Red, page 13.

¹³⁶ Report of Dr Ludes, ICC-02/11-01/15-325-Conf-Anx1-tENG-Red, page 9; *see also*, Report of Dr Lamothe, ICC-02/11-01/15-325-Conf-Anx3-tENG-Red, page 8.

¹³⁷ Report of Mr Dumez, ICC-02/11-01/15-325-Conf-Anx2-tENG-Red, page 8.

elements of the charges to which he must respond but also to put forward, in an appropriate manner, his subjective position by participating actively in his trial.¹³⁸ He testified that 'Mr Gbagbo is perfectly capable of understanding, analysing, putting things in perspective, relating everything to his own personal experience when it comes to all the aspects of the trial.'¹³⁹

41. In respect of Mr Gbagbo's capacity to instruct counsel in the preparation and conduct of his defence, all three Appointed Experts conclude that Mr Gbagbo is fully able to express himself, exchange with counsel and prepare for and conduct his defence.¹⁴⁰ Mr Dumez reported that '[a] thorough examination of [Mr Gbagbo's] intellectual efficiency showed that it has not changed: his levels of expression, understanding and abstract thinking were perfectly correct and within the normal ranges, showing no signs of having weakened or suffered pathological deterioration.'¹⁴¹ It was reported that he 'expresses himself fluently and appropriately'¹⁴² and that 'he appeared capable of orientating himself and expressing, in an appropriate, balanced and willing manner, his personal position on any fact that was put to him.'¹⁴³ Mr Dumez also observed that '[t]he basic psychological functions governing relationships and communication were in place.'¹⁴⁴ Dr Lamothe noted that Mr Gbagbo 'eloquently link[ed] together historical associations, recent geopolitical contexts and his own memories and experiences as Head of State.'¹⁴⁵

42. Finally, the Appointed Experts underline vast improvement in Mr Gbagbo's

¹³⁸ Report of Mr Dumez, ICC-02/11-01/15-325-Conf-Anx2-tENG-Red, page 9.

¹³⁹ ICC-02/11-01/15-T-7-CONF-ENG ET, page 19, lines 6-8.

¹⁴⁰ Report of Mr Dumez, ICC-02/11-01/15-325-Conf-Anx2-tENG-Red, page 9; Report of Dr Lamothe, ICC-02/11-01/15-325-Conf-Anx3-tENG-Red, pages 8-9, lines 10-15; Report of Dr Ludes, ICC-02/11-01/15-325-Conf-Anx1-tENG-Red, pages 9-13.

¹⁴¹ Report of Mr Dumez, ICC-02/11-01/15-325-Conf-Anx2-tENG-Red, page 8.

¹⁴² Report of Dr Ludes, ICC-02/11-01/15-325-Conf-Anx1-tENG-Red, page 12.

¹⁴³ Report of Mr Dumez, ICC-02/11-01/15-325-Conf-Anx2-tENG-Red, page 7.

¹⁴⁴ Report of Mr Dumez, ICC-02/11-01/15-325-Conf-Anx2-tENG-Red, page 5.

¹⁴⁵ Report of Dr Lamothe, ICC-02/11-01/15-325-Conf-Anx3-tENG-Red, page 4.

state of health.¹⁴⁶ The Expert Reports demonstrate that Mr Gbagbo no longer suffers from clinical post-traumatic stress syndrome or hospitalisation syndrome.¹⁴⁷ Dr Lamothe observed that '[Mr Gbagbo's] current state of health appears to have improved since the 2012 examination in terms of his alertness, his general physical condition and his ability to express himself and handle an interview. [N]o significant impairment of his cognitive abilities or executive functions is apparent.'¹⁴⁸ Notably, Mr Dumez testified that he had been 'quite surprised to find out that Mr Gbagbo had recovered practically all of his intellectual functions.'¹⁴⁹

43. In light of the above, the Chamber is satisfied that Mr Gbagbo has the requisite capacities to exercise his procedural rights as enumerated under Article 67(1) of the Statute. The Chamber confirms that Mr Gbagbo is fit to stand trial. On this basis, the Chamber proceeds with preparation for trial in accordance with Rule 132 of the Rules.¹⁵⁰

B. Modalities for Mr Gbagbo's attendance at trial

44. Each of the Appointed Experts agrees that very little accommodation is

¹⁴⁶ Report of Dr Lamothe, ICC-02/11-01/15-325-Conf-Anx3-tENG-Red, page 8; Report of Mr Dumez, ICC-02/11-01/15-325-Conf-Anx2-tENG-Red, pages 6 and 8. *See also*, ICC-02/11-01/15-T-6-CONF-ENG ET, page 46, lines 11-12.

¹⁴⁷ Mr Dumez states that the symptoms of PTSD have not gone away completely, *see, inter alia*, ICC-02/11-01/15-T-7-CONF-ENG ET, page 10, line 15. 'It does not mean that the PTSD has completely disappeared. There are psychological disorders that are present on the sidelines. In fact, these are not serious symptoms. So PTSD will always be more or less present; but in any case it no longer affects his intellectual faculties, particularly thanks to a very solid mental constitution, which he has recovered.' ICC-02/11-01/15-T-7-CONF-ENG ET, page 12, lines 6-17. In respect of hospitalisation syndrome, Report of Dr Lamothe, ICC-02/11-01/15-325-Conf-Anx3-tENG-Red, page 9; repeated during questioning by counsel, ICC-02/11-01/15-T-6-CONF-ENG ET, page 11, line 19 to page 12, line 10 and page 17, lines 5-17. *Compare, e.g.* ICC-02/11-01/15-T-6-CONF-ENG ET, page 11, lines 7-15 and page 11, lines 20-23, describing the condition as he saw it in 2012. *See also*, Report of Dr Ludes, ICC-02/11-01/15-325-Conf-Anx1-tENG-Red, pages 10-11 and ICC-02/11-01/15-T-6-CONF-ENG ET, page 55, lines 3-8.

¹⁴⁸ Report of Dr Lamothe, ICC-02/11-01/15-325-Conf-Anx3-tENG-Red, page 8.

¹⁴⁹ ICC-02/11-01/15-T-7-CONF-ENG ET, page 12, lines 6-11. *See also*, ICC-02/11-01/15-T-7-CONF-ENG ET, page 12, lines 12 to page 13, line 6..

¹⁵⁰ Rule 135(4) of the Rules.

necessary in order to facilitate Mr Gbagbo's attendance in court proceedings.¹⁵¹ All of the Appointed Experts considered that the Court's standard sitting schedule – 5 days per week, with 1.5 hour sessions, for 4-5 week blocks¹⁵² – was adequate.¹⁵³

45. However, both Dr Lamothe and Mr Dumez observed that Mr Gbagbo has a propensity for fatigue which Dr Dumez associated partly with his age and with a 'lack of social stimuli [from] being in detention.'¹⁵⁴ In respect of this, the Defence suggests hearings are held only four days per week to allow Mr Gbagbo an opportunity to receive visitors,¹⁵⁵ and requests that sessions be held only in the afternoon.¹⁵⁶ In this regard, the Chamber notes that none of the Appointed Experts make either a pre-condition for his attendance. All of the Appointed Experts reported that providing for adequate rest periods would be sufficient to accommodate Mr Gbagbo.¹⁵⁷ Concerning Mr Dumez's suggestion that sessions be held '*plutôt l'après-midi*',¹⁵⁸ the Chamber recalls that he later clarified that his recommendation was based on Mr Gbagbo's current rhythm of life in detention, which could change as a result of a regular Court schedule.¹⁵⁹ In light of the above, the Chamber does not find it necessary to hold hearings four days per week and only in the afternoon. However, the

¹⁵¹ Report of Dr Ludes, ICC-02/11-01/15-325-Conf-Anx1-tENG-Red, page 13, *but see* ICC-02/11-01/15-T-6-CONF-ENG ET, page 61, lines 2-4; Report of Mr Dumez, ICC-02/11-01/15-325-Conf-Anx2-tENG-Red, page 8; Report of Dr Lamothe, ICC-02/11-01/15-325-Conf-Anx3-tENG-Red, pages 9-10.

¹⁵² Decision of 30 September 2015, ICC-02/11-01/15-253-Conf, para. 15.

¹⁵³ Report of Dr Lamothe, ICC-02/11-01/15-325-Conf-Anx3-tENG-Red, page 9 *and* ICC-02/11-01/15-T-6-CONF-ENG ET page 22 line 25 to page 23, line 3 *and* page 34 line 17 to page 35, line 7; Report of Dr Ludes, ICC-02/11-01/15-325-Conf-Anx1-tENG-Red, page 13 *and* ICC-02/11-01/15-T-6-CONF-ENG ET, page 69, lines 2-5, page 76, line 19 to page 77, 10; Report of Mr Dumez, ICC-02/11-01/15-325-Conf-Anx2-tENG-Red, pages 8-9, *but see* ICC-02/11-01/15-T-7-CONF-ENG ET, page 27, line 22 to page 28, line 4 *and* ICC-02/11-01/15-T-7-CONF-ENG ET, page 28, line 15 to page 29, line 1.

¹⁵⁴ Report of Mr Dumez, ICC-02/11-01/15-325-Conf-Anx2-tENG-Red, pages 8-9; Report of Dr Lamothe, ICC-02/11-01/15-325-Conf-Anx3-tENG-Red, page 7.

¹⁵⁵ ICC-02/11-01/15-T-7-CONF-ENG ET, page 69, lines 6-7.

¹⁵⁶ ICC-02/11-01/15-T-7-CONF-ENG ET, page 68, line 25 to page 69, line 3. *But see* Report of Mr Dumez, ICC-02/11-01/15-325-Conf-Anx2-tENG-Red, page 8 *and* ICC-02/11-01/15-T-7-CONF-ENG ET page 28, line 22 to page 29, line 7.

¹⁵⁷ Report of Dr Lamothe, ICC-02/11-01/15-325-Conf-Anx3-tENG-Red, pages 9-10; Report of Dr Ludes, ICC-02/11-01/15-325-Conf-Anx1-tENG-Red, page 13; Report of Mr Dumez, ICC-02/11-01/15-325-Conf-Anx2-tENG-Red, pages 8-9.

¹⁵⁸ Report of Mr Dumez, ICC-02/11-01/15-325-Conf-Anx2-Red, page 8.

¹⁵⁹ ICC-02/11-01/15-T-7-CONF-ENG ET, page 27, line 22 to page 29, line 10.

Registry is directed to ensure that the necessary facilities are in place to accommodate Mr Gbagbo's ability to rest between court sessions. In addition, Mr Gbagbo will be provided reasonable accommodation to be able to leave briefly during court sessions, as necessary.¹⁶⁰

46. In respect of the other requests made by the Defence in relation to Mr Gbagbo's health and the medical care,¹⁶¹ the Chamber considers that such matters are within the competence of the Registry.¹⁶² In this regard, however, the Chamber notes that two of the Appointed Experts reported that the ongoing medical care provided to Mr Gbagbo was 'perfectly adapted to his condition',¹⁶³ 'satisfactory',¹⁶⁴ and, subject to proper monitoring, 'appropriate'.¹⁶⁵ In this regard, the Chamber also notes the submissions of the Registry that the Court's facilities include a resident doctor and medical unit and that these services are provided both within the detention centre and are available during the proceedings.¹⁶⁶

¹⁶⁰ Report of Dr Lamothe, ICC-02/11-01/15-325-Conf-Exp-Anx3-tENG, page 10. *See also* Report of Dr Ludes, ICC-02/11-01/15-325-Conf-Exp-Anx1-tENG, page 4, the information cited herein was redacted in ICC-02/11-01/15-325-Conf-Anx1-tENG-Red, page 4.

¹⁶¹ ICC-02/11-01/15-T-7-CONF-ENG ET, page 66, line 19 to page 67, line 16.

¹⁶² *See* Regulation 103 of the Regulations of the Court; Regulations 155-157 of the Regulations of the Registry.

¹⁶³ Report of Dr Ludes, ICC-02/11-01/15-325-Conf-Anx1-tENG-Red, page 11.

¹⁶⁴ Report of Dr Lamothe, ICC-02/11-01/15-325-Conf-Anx3-tENG-Red, page 8.

¹⁶⁵ Report of Dr Ludes, ICC-02/11-01/15-325-Conf-Anx1-tENG-Red, pages 12. *See also*, ICC-02/11-01/15-T-6-CONF-ENG ET, page 49, lines 17-19.

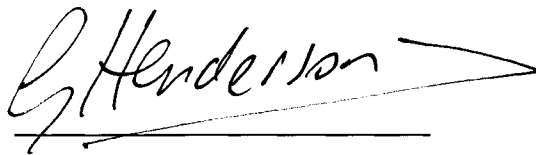
¹⁶⁶ ICC-02/11-01/15-T-7-CONF-ENG ET, page 71, lines 22 to page 72, line 9.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

FINDS that Mr Gbagbo is fit to stand trial and to attend trial proceedings; and

DECIDES that accommodations to facilitate Mr Gbagbo's attendance at trial shall be made in accordance with paragraph 45 of the present decision.

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

A handwritten signature in black ink that reads "G. Henderson". The signature is written in a cursive style and is positioned above a solid horizontal line.

Judge Geoffrey Henderson, Presiding Judge

A handwritten signature in black ink that appears to read "O. Herrera Carbuccion". The signature is written in a cursive style and is positioned above a solid horizontal line.

Judge Olga Herrera Carbuccion

A handwritten signature in black ink that appears to read "B. Schmitt". The signature is written in a cursive style and is positioned above a solid horizontal line.

Judge Bertram Schmitt

Dated 27 November 2015

At The Hague, The Netherlands