

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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PRE-TRIAL CHAMBER III

**Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Elizabeth Odio Benito
Judge Adrian Fulford**

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR v. SIMONE GBAGBO

Public redacted version

**Decision on the Prosecutor's Application Pursuant to Article 58 for a warrant of
arrest against Simone Gbagbo**

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

Counsel for the Defence

The Office of the Prosecutor

Mr Luis Moreno-Ocampo

Ms Fatou Bensouda

Legal Representatives of Victims

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

Ms Silvana Arbia

Detention Section

Victims and Witnesses Unit

Others

**Victims Participation and
Reparations Section**

Pre-Trial Chamber III (“Chamber”) of the International Criminal Court (“ICC” or “Court”) issues the following decision on the “Prosecutor’s Application Pursuant to Article 58 as to Simone GBAGBO” (“Prosecutor’s Application”).

I. Procedural history

1. On 3 October 2011, the Chamber authorised the commencement of an investigation in Côte d’Ivoire.¹
2. On 25 October 2011, the Prosecutor filed an application for a warrant of arrest against Laurent Gbagbo (“Gbagbo Application” and “Mr Gbagbo” respectively).²
3. On 23 November 2011, the Chamber issued a warrant of arrest against Mr Gbagbo for his alleged criminal responsibility within the meaning of Article 25(3)(a) of the Rome Statute (“Statute”) for the crimes against humanity of (1) murder under Article 7(1)(a), (2) rape and other forms of sexual violence under Article 7(1)(g), (3) other inhumane acts under Article 7(1)(k) and (4) persecution under Article 7(1)(h) of the Statute committed in the territory of Côte d’Ivoire during the period between 16 December 2010 and 12 April 2011.³ On 30 November 2011, the Chamber issued its *Decision on*

¹ Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d’Ivoire, 3 October 2011, ICC-02/11-14; a corrigendum to the decision was issued on 15 November 2011, ICC-02/11-14-Corr.

² Prosecutor’s Application Pursuant to Article 58 as to Laurent Koudou GBAGBO, 25 October 2011, ICC-02/11-24-US-Exp.

³ Warrant of Arrest for Laurent Koudou Gbagbo, 23 November 2011, ICC-02/11-01/11-1-US-Exp.

*the Prosecutor's Application Pursuant to Article 58 for a warrant of arrest against Laurent Koudou Gbagbo ("Decision on the Gbagbo Application").*⁴

4. On 7 February 2012, the Prosecutor filed an Application for a warrant of arrest against Simone Gbagbo ("Ms Gbagbo") for her individual responsibility for the crimes against humanity of murder, rape and other forms of sexual violence, persecution and other inhumane acts committed during the post-election crisis from 28 November 2010 onwards by the Ivorian Defence and Security Forces ("FDS"), reinforced by youth militias and mercenaries loyal to Mr Gbagbo ("pro-Gbagbo forces"), in Abidjan, including around the Golf Hotel, and elsewhere in the country.⁵
5. The Prosecutor submits that Ms Gbagbo, together with Mr Gbagbo and other individuals belonging to Mr Gbagbo's inner circle, adopted a policy of attacking Mr Gbagbo's political opponent Alassane Dramane Ouattara ("Mr Ouattara"), members of Mr Ouattara's political group and civilians who were believed to support Mr Ouattara, the objective being to retain power by all means, including by lethal force ("policy").⁶ According to the Prosecutor, they implemented this policy through the pro-Gbagbo forces who, under the joint authority and control of Ms Gbagbo, Mr Gbagbo and other members of Mr Gbagbo's inner circle, "committed widespread and systematic attacks on

⁴ Decision on the Prosecutor's Application Pursuant to Article 58 for a warrant of arrest against Laurent Koudou Gbagbo, ICC-02/11-01/11-9-US-Exp, 30 November 2011. A public redacted version was issued on 20 December 2011, ICC-02/11-01/11-9-Red.

⁵ Prosecutor's Application Pursuant to Article 58 as to Simone GBAGBO, 8 February, ICC-02/11-35-US-Exp, paragraph 1.

⁶ Prosecutor's Application, paragraph 2.

civilians”, which included the crimes charged in the Prosecutor’s Application.⁷

6. The Prosecutor contends that there is a considerable degree of overlap between the Gbagbo Application and the present Application, and he has incorporated references to the relevant portions of the Gbagbo Application (*viz.* paragraphs 5-73, 76-92, 94-131, 149-150 and 158 together with the underlying/supporting material).⁸

II. The jurisdiction of the Court and the admissibility of the case against Ms Gbagbo

A. Jurisdiction

7. Article 19(1) of the Statute provides that “[t]he Court shall satisfy itself that it has jurisdiction in any case brought before it”. Consequently, it is necessary at the outset to determine whether the case against Ms Gbagbo falls within the jurisdiction of the Court.
8. For a crime to come under the Court’s jurisdiction, it is necessary that the following three conditions are met:

- (i) it is one of the crimes in Article 5 of the Statute (jurisdiction *ratione materiae*);

⁷ Prosecutor’s Application, paragraph 2.

⁸ Prosecutor’s Application, paragraph 6 and footnote 5.

- (ii) it was committed within the timeframe specified in Article 11 of the Statute (jurisdiction *ratione temporis*);
- (iii) it satisfies one of the two criteria laid down in Article 12 of the Statute:⁹ either it was committed on the territory of a State Party to the Statute or by a national of that State, or it was committed on the territory of a State which has made a declaration under Article 12(3) of the Statute or by nationals of that State.¹⁰

9. Given the extensive similarities between the present Application and the Gbagbo Application, it is appropriate for the Chamber simply to adopt its earlier reasoning as regards the jurisdictional requirements set out in the Decision on the Gbagbo Application.¹¹ Considering that the issues are identical in the two cases, the Chamber concludes that the case against Ms Gbagbo falls within the jurisdiction of the Court.

B. Admissibility

10. The Prosecutor submits that the instant case is admissible. Although there are domestic criminal proceedings against Ms Gbagbo in Côte d'Ivoire, they do not relate to the crimes alleged in the present Application, given that they solely concern "economic" crimes.¹² The Prosecutor also submits that "based

⁹ Pre-Trial Chamber I, *Decision on the evidence and information provided by the Prosecution for the issuance of a warrant of arrest for Germain Katanga*, ICC-01/04-01/07-55, paragraph 11; and Pre-Trial Chamber I, *Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6*, 17 January 2006, ICC-01/04-101-tEN-Corr (translation filed on 22 March 2006), paragraph 85.

¹⁰ ICC-01/04-101-tEN-Corr, paragraph 91.

¹¹ ICC-02/11-01/11-9-Red, paragraphs 8-16.

¹² Prosecutor's Application, paragraph 26.

on the scale, nature and manner of the commission of the crimes” that are the subject of his Application and the “impact that these crimes had and continue to have on the victims”, the case is of sufficient gravity to justify intervention by the Court.¹³

11. The Chamber recalls that in its Decision authorising the investigation in Côte d’Ivoire, it found that “due to the absence of national proceedings against those appearing to be most responsible for crimes committed during the post-election violence, and in light of the gravity of the acts committed, the Chamber is satisfied that there are potential cases that would be admissible in the situation in the Republic of Côte d’Ivoire”.¹⁴

12. Furthermore, in its Decision on the Gbagbo Application, the Chamber decided that it was inappropriate, at that stage, to investigate the admissibility of the case against Mr Gbagbo.¹⁵ The Chamber considers that the same approach applies, *mutatis mutandis*, to the present Application. Consequently, the Chamber has not examined further the admissibility of the case against Ms Gbagbo at this stage given that: (i) the Prosecutor’s Application is under seal and *ex parte*; and (ii) there are no apparent factors that require the Chamber to exercise its discretion pursuant to Article 19(1) of the Statute.

¹³ Prosecutor’s Application, paragraph 26.

¹⁴ ICC-02/11-14-Corr, paragraph 206.

¹⁵ ICC-02/11-01/11-9-Red, paragraphs 22-24.

III. Whether there are reasonable grounds to believe that one or more crimes falling within the jurisdiction of the Court have been committed

13. Under Article 58(1)(a) of the Statute, the Chamber shall determine whether there are reasonable grounds to believe that the person concerned has committed a crime within the jurisdiction of the Court.

14. It follows that the Chamber needs to analyse the information and supporting materials provided by the Prosecutor in order to determine (applying Article 58 of the Statute) whether there are reasonable grounds to believe that Ms Gbagbo committed the crimes alleged by the Prosecutor, and, if so, whether her arrest appears necessary.

15. Ms Gbagbo is married to Mr Gbagbo¹⁶ and was an influential figure in her husband's government. Ms Gbagbo was member of the Parliament for Abobo,¹⁷ a founding member¹⁸ and a prominent figure within the party then in government, the *Front populaire ivoirien* (FPI),¹⁹ as well as the Secretary of the political group called the *Congrès national pour la résistance et la démocratie* (CNRD).²⁰ In addition, [REDACTED];²¹ she had her own cabinet within the structure of the Presidency, to assist her in managing political issues; and she was provided with her own staff.²²

¹⁶ Abidjan.net, Laurent Koudou Gbagbo Biographie, 9 September 2011 (retrieved), ICC-02/11-24-US-Exp-Anx6.46, page 2; L'Express, Côte d'Ivoire: Les femmes du président, 29 October 2010, ICC-02/11-24-US-Exp-Anx6.80, page 1 ; [REDACTED].

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED] CIV-Landinfo Côte d'Ivoire: Ethnicity, *Ivoirité* and Conflict, 2 November 2006, ICC-02/11-35-US-Exp-Anx1.10, page 31.

²¹ [REDACTED].

²² [REDACTED].

16. The Prosecutor contends that Ms Gbagbo was a key member of the inner circle of Mr Gbagbo²³ and it is alleged that she committed the same crimes as Mr Gbagbo, specifically the crimes against humanity of (1) murder, (2) rape and other forms of sexual violence, (3) persecution and (4) other inhumane acts. The Chamber notes that the Prosecutor relies on the same four incidents that supported the charges against Mr Gbagbo, namely:

- (i) The attacks relating to the *Radiodiffusion Télévision Ivoirienne* (the state-sponsored radio-television; RTI) demonstrations between 16 and 19 December 2010.
- (ii) The attack on the women's march in Abobo on 3 March 2011.
- (iii) The Abobo market shelling on 17 March 2011.
- (iv) The Yopougon massacre on 12 April 2011.²⁴

17. As indicated above, the Prosecutor submits that there are extensive similarities between the present Application and the Gbagbo Application and, accordingly, he has incorporated references to the relevant portions of the Gbagbo Application together with the underlying/supporting material in this Application.²⁵

²³ Prosecutor's Application, paragraph 3.

²⁴ Prosecutor's Application, paragraph 6 in combination with paragraph 55-66 from the Gbagbo Application.

²⁵ See above, paragraph 6.

18. On the basis of the evidence provided by the Prosecutor and for the reasons developed below,²⁶ the Chamber concludes that there are reasonable grounds to believe that Ms Gbagbo was part of Mr Gbagbo's inner circle.²⁷
19. In all the circumstances, the conclusions of the Chamber in its Decision on the Gbagbo Application are equally applicable to the present Application as regards the contextual elements of the alleged crimes against humanity, along with the underlying acts it is suggested were committed by the pro-Gbagbo forces.²⁸

(1) Contextual elements of the crimes against humanity

20. The Chamber determined in its Decision on the Gbagbo Application that "the material provided indicates that Mr Gbagbo and his inner circle constitute an organisation within the meaning of Article 7(2)(a) that had the means to carry out widespread and systematic attacks against a civilian population, in that they jointly exercised authority and control over the pro-Gbagbo forces, including the FDS, the youth militia and the mercenaries, who they recruited, integrated, financed and instructed, and who in turn reported back as to the unfolding events."²⁹
21. Furthermore, the Chamber concluded that "the supporting materials demonstrate that Mr Gbagbo and his inner circle adopted a policy to launch

²⁶ See below, paragraphs 24, 30-35.

²⁷ [REDACTED] Interview of Simone GBAGBO with L'Express, published on 20 February 2003; CIV-Landinfo Côte d'Ivoire: Ethnicity, *Ivoirité* and Conflict, ICC-02/11-35-US-Exp-Anx1.10, page 31.

²⁸ ICC-02/11-01/11-9-Red.

²⁹ ICC-02/11-01/11-9-Red, paragraphs 41.

violent attacks against Mr Gbagbo's political opponent, Mr Ouattara, members of the latter's political group and civilians believed to support him, in order to retain power by all means. The policy was acknowledged by Mr Gbagbo and his inner circle, and this can be inferred from the fact that pro-Gbagbo forces mainly targeted individuals who were perceived to be supporters of Mr Ouattara. The targets were often identified on ethnic, religious or national grounds. Pro-Gbagbo forces used excessive force against civilians and heavy weaponry was utilised in densely populated areas in order to disperse pro-Ouattara supporters."³⁰

22. The Chamber found that [REDACTED]³¹

(2) Underlying acts

23. When addressing the issue of the underlying acts, the Chamber held in its Decision on the Gbagbo Application that on the evidence, there were reasonable grounds to believe that acts of murder,³² rape and other forms of sexual violence,³³ other inhumane acts³⁴ as well as several acts of persecution³⁵ had been committed, by pro-Gbagbo forces, during the incidents referred to by the Prosecutor in support of the charges. The Chamber concluded:

³⁰ ICC-02/11-01/11-9-Red, paragraph 42.

³¹ ICC-02/11-01/11-9-US-Exp, paragraphs 43.

³² ICC-02/11-01/11-9-Red, paragraph 57.

³³ ICC-02/11-01/11-9-US-Exp, paragraph 59.

³⁴ ICC-02/11-01/11-9-Red, paragraph 61.

³⁵ ICC-02/11-01/11-9-Red, paragraphs 63, 67, 68.

“On the evidence, there are reasonable grounds to believe that the crimes against humanity of murder under Article 7(1)(a), rape and other forms of sexual violence under Article 7(1)(g), other inhumane acts under Article 7(1)(k) and persecution under Article 7(1)(h) of the Statute, were committed in Côte d’Ivoire during the period between 16 December 2010 and 12 April 2011.

Furthermore, the Chamber finds that there are reasonable grounds to believe that these acts occurred in the context of a widespread or systematic attack directed against Côte d’Ivoire civilian population within the meaning of Article 7(1) of the Statute.³⁶

IV. Whether there are reasonable grounds to believe that Ms Gbagbo is criminally responsible for the crimes alleged by the Prosecutor

24. The Prosecutor submits that Ms Gbagbo bears individual criminal responsibility for the crimes charged in the Prosecutor’s Application, as “an indirect co-perpetrator” pursuant to Article 25(3)(a) of the Statute on the basis that she:

- (i) adopted the Policy/Common Plan;³⁷
- (ii) exercised control over the pro-Gbagbo forces jointly with others;³⁸
- (iii) provided a coordinated essential contribution to the common plan resulting in the commission of the crimes;³⁹ and
- (iv) acted with the necessary degree of intent and knowledge.⁴⁰

³⁶ ICC-02/11-01/11-9-Red, paragraphs 69-70.

³⁷ Prosecutor’s Application, paragraphs 9-13.

³⁸ Prosecutor’s Application, paragraphs 14-18.

³⁹ Prosecutor’s Application, paragraphs 19-22.

⁴⁰ Prosecutor’s Application, paragraphs 23-25.

25. It is suggested that her criminal responsibility (as “an indirect co-perpetrator”) under Article 25(3)(a) of the Statute is established by the coordinated, essential contribution that it is said was made by Ms Gbagbo and other members of Gbagbo’s inner circle, resulting in the commission of the crimes.⁴¹ Furthermore, it is argued that Ms Gbagbo and other members of Mr Gbagbo’s inner circle were mutually aware and mutually accepted that implementing their common plan might result in the realisation of the objective elements of the crimes.⁴² Finally, it is suggested that Ms Gbagbo was aware of the factual circumstances that enabled her and other members of Mr Gbagbo’s inner circle to exercise joint control over the crimes.⁴³

26. For the purposes of this Application, the Prosecutor has focused exclusively on individual criminal responsibility under Article 25(3)(a) of the Statute, as opposed to the other provisions of that Article or, alternatively, command responsibility under Article 28 of the Statute.

27. As previously determined by this Chamber in its Decision on the Gbagbo Application, it is undesirable, particularly at this early stage of the case, for the Chamber to limit the options that may exist for establishing criminal responsibility under the Statute, because this will ultimately depend on the evidence and the arguments in the case.⁴⁴ Until the Chamber has heard full arguments from the parties, it is premature to decide, certainly with any finality, whether Article 25(3)(a) of the Statute is the correct basis for proceeding against Ms Gbagbo (either standing alone or along with other

⁴¹ Prosecutor’s Application, paragraphs 19-22.

⁴² Prosecutor’s Application, paragraph 24.

⁴³ Prosecutor’s Application, paragraph 25.

⁴⁴ ICC-02/11-01/11-9-Red, paragraph 74.

provisions) or whether the various elements of the prosecution's theory of "indirect co-perpetration" are relevant to, or applicable in, this case.

28. However, as indicated in the Chamber's Decision on the Gbagbo Application, given the Prosecutor's Application is brought under Article 25(3)(a) of the Statute, it is necessary to address the basis advanced by the Prosecutor. As previously indicated, the test for indirect co-perpetration pursuant to Article 25(3)(a) of the Statute involves establishing the following elements:

- i) the existence of a common plan between Ms Gbagbo and other members of Mr Gbagbo's inner circle;
- ii) Ms Gbagbo and other members of Mr Gbagbo's inner circle were each aware that implementing the common plan would in the ordinary course of events result in the commission of the crimes set out above;
- iii) Ms Gbagbo was aware of the relevant circumstances that enabled her and other members of Mr Gbagbo's inner circle to exercise joint control over the crimes;
- iv) Ms Gbagbo had the necessary intent and knowledge;
- v) the coordinated and essential contribution to the crimes on the part of Ms Gbagbo and other members of Mr Gbagbo's inner circle; and
- vi) the crimes were executed by pro-Gbagbo forces who complied on an almost automatic basis with the orders given by Ms Gbagbo and other members of Mr Gbagbo's inner circle.⁴⁵

⁴⁵ ICC-02/11-01/11-9-Red, paragraph 75.

29. As described below, the Chamber is satisfied that each of these elements is fulfilled to the required evidential threshold.

30. The Chamber has previously decided that there are reasonable grounds to believe that the plan (and the policy) existed and that [REDACTED].⁴⁶ Ms Gbagbo was ideologically and professionally very close to her husband. [REDACTED].⁴⁷ [REDACTED].⁴⁸ Although not elected, Ms Gbagbo acted as an *alter ego* for her husband, and she took state decisions.⁴⁹ Ms Gbagbo was close to other members of Mr Gbagbo's inner circle who were involved in the implementation of the common plan.⁵⁰ Together with Mr Gbagbo and others, Ms Gbagbo is subject to United Nations ("UN") sanctions for "obstruction of the peace and reconciliation process, public incitement to hatred and violence".⁵¹ [REDACTED],⁵² and instructed the pro-Gbagbo forces to commit crimes against those who posed a threat to her husband's power.⁵³

31. Furthermore, the Chamber finds that there are reasonable grounds to believe that Ms Gbagbo and other members of Mr Gbagbo's inner circle were aware that implementing the common plan would, in the ordinary course of events, lead to the commission of the offences set out above.⁵⁴

⁴⁶ ICC-02/11-01/11-9-US-Exp, paragraph 43.

⁴⁷ [REDACTED].

⁴⁸ [REDACTED].

⁴⁹ [REDACTED].

⁵⁰ [REDACTED].

⁵¹ UN Security Council Committee established pursuant UNSC Resolution 1572 (2004) concerning Côte d'Ivoire, List of individuals subject to paragraphs 9 and 11 of Resolution 1572 (2004), and paragraph 1 of Resolution 1980 (2011), ICC-02/11-24-US-Exp-Anx5.37, page 2.

⁵² [REDACTED].

⁵³ [REDACTED].

⁵⁴ [REDACTED]

32. The Chamber concludes there are reasonable grounds to believe that, by implementing the common plan, Ms Gbagbo as a member of Mr Gbagbo's inner circle exercised joint control over the crimes because she had the power to control and instruct the youth militia who were systematically recruited, armed, trained and integrated into the FDS chain of command with a view to supporting the implementation of the common plan.⁵⁵ Throughout the post-election crisis, [REDACTED].⁵⁶ The evidence shows that she also instructed other senior FDS officers regarding the measures to be adopted in order to dissuade anti-Gbagbo demonstrations,⁵⁷ and she asked them to put troops at her disposal to provide security for a Minister.⁵⁸ Moreover, the Chamber is of the view that there is sufficient evidence to establish reasonable grounds to believe that Ms Gbagbo ensured that the regular FDS forces were given the necessary military equipment.⁵⁹

33. Furthermore, there are reasonable grounds to believe that, given Ms Gbagbo's position as a member of Mr Gbagbo's inner circle and her role as regards the common plan, she made a coordinated and essential contribution to its realisation. She [REDACTED] and [REDACTED]. [REDACTED]⁶⁰ Moreover, the evidence indicates that Ms Gbagbo played a key role in recruiting, arming and integrating thousands of volunteers and enlisting them into the FDS chain of command.⁶¹

⁵⁵ [REDACTED] Interview of Simone GBAGBO with L'Express, published on 20 February 2003, [REDACTED] CIV-Landinfo Côte d'Ivoire: Ethnicity, *Ivoirité* and Conflict, ICC-02/11-35-US-Exp-Anx1.10, page 31.

⁵⁶ [REDACTED].

⁵⁷ [REDACTED].

⁵⁸ [REDACTED].

⁵⁹ [REDACTED].

⁶⁰ [REDACTED].

⁶¹ [REDACTED]; UNHCHR "Report on the situation of human rights in Côte d'Ivoire", 15 February, ICC-02/11-24-US-Exp-Anx5.38, page 14; See Reportage France 24, Côte d'Ivoire: "Jeunes patriots", les

34. The Chamber further finds that there are reasonable grounds to believe that the pro-Gbagbo forces that put the common plan into effect did so by almost automatic compliance with the orders they received from Ms Gbagbo and other members of Mr Gbagbo's inner circle.⁶²

35. Finally, the Chamber concludes that there are reasonable grounds to believe Ms Gbagbo acted with the necessary degree of intent and knowledge by i) adopting the common plan; ii) being aware of its implementation and the means other members of the inner circle had at their disposal to implement the common plan; iii) [REDACTED] iv) playing a key role in recruiting and instructing the *galaxie patriotique*, and integrating them into the FDS; and v) being aware of the contribution of other members of Mr Gbagbo's inner circle to the implementation of the common plan. Furthermore, the Chamber is of the view that Ms Gbagbo was fully conscious of the factual circumstances that enabled her and other members of Mr Gbagbo's inner circle to exercise joint control over the crimes.⁶³

hommes de Laurent Gbagbo, ICC-02/11-24-US-Exp-Anx7.2, at 3:39-8:51; Transcript of video ICC-02/11-24-US-Exp-Anx7.2, ICC-02/11-24-US-Exp-Anx7.22; UNHCHR, Rapport de la Commission d'enquête internationale indépendante sur la Côte d'Ivoire, 8 June 2011, ICC-02/11-24-US-Exp-Anx5.4, page 9; UNSC, Twenty-eight report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, 24 June 2011, S/2011/387 ICC-02/11-24-US-Exp-Anx5.43, page 9; Richard Banegas, Briefing Post-election crisis in Cote d'Ivoire: The Gbonhi war, in African Affairs, 17 June 2011, ICC-02/11-24-US-Exp-Anx5.28, pages 5-6; Video (YouTube), Cote d'Ivoire: "Mobilisation des patriotes ivoirien", 19 January 2011, Uploaded by votonsgbagbo on 22 January 2011, ICC-02/11-24-US-Exp-Anx7.8; Transcript of video ICC-02/11-24-US-Exp-Anx7.8, ICC-02/11-24-US-Exp-Anx7.28; UNSC, Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, 30 March 2011, ICC-02/11-24-US-Exp-Anx5.36, page 13; RTI, Extrait du Journal télévisé, undated, ICC-02/11-24-US-Exp-Anx7.3, at 3:59-4:39, Transcript of video ICC-02/11-24-US-Exp-Anx7.3, ICC-02/11-24-US-Exp-Anx7.23; Twitter, Bruce Banter, 22 March 2011, ICC-02/11-24-US-Exp-Anx6.89.

⁶² [REDACTED].

⁶³ [REDACTED] Interview of Simone GBAGBO with L'Express, published on 20 February 2003, ICC-02/11-35-US-Exp-Anx1.12; The Guardian, Gbagbo's Iron Lady 7 April 2011, ICC-02/11-35-US-Exp-Anx1.6; AbidjanNet, Escadrons de mort et assassinats politiques de 2002 à 2010, 31 October 2011, ICC-02/11-35-US-Exp-Anx1.14, pages 2-3.

V. Whether the requirements for the arrest of Ms Gbagbo under Article 58(1)(b) of the Statute have been met

36. The Prosecutor submits, based on the information referred to above, that if the Chamber finds that there are reasonable grounds to believe that Ms Gbagbo committed crimes within the jurisdiction of the Court, a warrant of arrest should be issued.⁶⁴

37. The Prosecutor further submits that all the three grounds for arrest under Article 58(1)(b)(i) – (iii) of the Statute are satisfied.⁶⁵

38. Pursuant to Article 58(1) of the Statute, the Pre-Trial Chamber shall issue a warrant of arrest if (a) there are reasonable grounds to believe that a person has committed crimes within the jurisdiction of the Court; and (b) the arrest of the person appears necessary: (i) to ensure the person's appearance at trial; (ii) to ensure that the person does not obstruct or endanger the investigation or the court proceedings; or (iii) where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.

39. The Appeals Chamber has determined that in order to "justify arrest [...]" under Article 58(1)(b) of the Statute [...] it must 'appear' to be necessary. The

⁶⁴ Prosecutor's Application, paragraph 27.

⁶⁵ Prosecutor's Application, paragraphs 27-31.

question revolves around the possibility, not the inevitability, of a future occurrence” (when addressing the risk of further offending).⁶⁶ The Appeals Chamber has held that the seriousness of the crimes allegedly committed is a relevant factor, given this may make a person more likely to abscond.⁶⁷

40. In the Case of the *Prosecutor v. Ahmad Harun and Ali Kushayb*, Pre-Trial Chamber I held that issuing a summons to appear for a person already detained by national authorities would be contrary to the object and purpose of Article 58(7) of the Statute. The Pre-Trial Chamber concluded that the possibility provided for in the Statute to issue a summons to appear with conditions restricting liberty clearly indicates that the summons is intended to apply only to those individuals who are not already detained.⁶⁸

41. Although the Chamber notes that Ms Gbagbo is reportedly detained,⁶⁹ it considers it necessary to evaluate whether any of the three alternate grounds under Article 58(1)(b) of the Statute are met. Critically, immediately after the warrant of arrest against Ms Gbagbo is executed, she will be detained under the Court’s jurisdiction.

⁶⁶ Appeals Chamber, *Judgment in the Appeal by Mathieu Ngudjolo Chui of 27 March 2008 against the Decision of Pre-Trial Chamber I on the Application of the Appellant for Interim Release*, 9 June 2008, ICC-01/04-01/07-572, paragraph 21; Appeals Chamber, *Judgment on the appeal of Mr. Jean-Pierre Bemba Gombo against the decision of Pre-Trial Chamber III entitled “Decision on application for interim release”*, 16 December 2008, ICC-01/05-01/08-323, paragraphs 55 and 67.

⁶⁷ ICC-01/04-01/07-572, paragraph 21; ICC-01/05-01/08-323, paragraph 55.

⁶⁸ ICC-02/05-01/07-1-Corr, paragraph 120.

⁶⁹ Al Jazeera, “Gbagbo being held by Ouattara forces”, 12 April 2011, ICC-02/11-24-US-Exp-Anx6.105, pages 1 and 2; Abidjan.net, “L’immunité parlementaire de Mme Gbagbo n’exclut pas qu’elle soit poursuivie”, 16 August 2011, ICC-02/11-24-US-Exp-Anx6.106, page 2; *Statement by the Procureur de la République Simplicie Kouadio Koffi speaking at a press conference*, at Reuters, I. Coast’s Gbagbo, wife charged with economic crimes, 19 August 2011, ICC-02/11-24-US-Exp-Anx6.111, page 2; *Point de Pressed du Parquet*, 18 August 2011, retrieved from Abidjan Net, *Infraction économique : Gbagbo et son épouse inculpés*, ICC-02/11-35-US-Exp-Anx1.2, page 2; AFP, Côte d’Ivoire: Annan, Tutu et Robinson rendent visite à Gbagbo à Korhogo”, 2 May 2011, ICC-02/11-24-US-Exp-Anx6.107, page 3.

42. Pre-Trial Chamber III has determined that a person's "past and present political position, his international contacts, his financial and professional background, and the fact that he has the necessary network and financial resources" are factors that may lead the individual to abscond or avoid arrest.⁷⁰ The Appeals Chamber has also determined that the person's financial status is a relevant factor in determining whether he or she would have the means to abscond or even to interfere with the investigation or the safety of witnesses.⁷¹ In addition, the Appeals Chamber has ruled that the length of a sentence that a suspect is likely to receive if convicted may provide a further incentive for him to abscond.⁷²

43. The Chamber considers that, given the authority exercised by Ms Gbagbo in her husband's regime and her position within the FPI,⁷³ she appears to have the necessary political contacts as well as the economic resources to abscond. The information available to the Chamber demonstrates in particular that Ms Gbagbo has numerous supporters within and outside Côte d'Ivoire, mainly linked to the FPI, who have called for her release, oppose an eventual transfer of Ms Gbagbo to the ICC and have discussed strategies for regaining power in Côte d'Ivoire.⁷⁴ Furthermore, as set out above, there are reasonable

⁷⁰ Pre-Trial Chamber III (composed differently), *Decision on the Prosecutor's Application for a Warrant of Arrest against Jean-Pierre Bemba Gombo*, 17 July 2008, ICC-01/05-01/08-14-tENG, paragraph 87.

⁷¹ Judgment on the appeal of the Prosecutor against Pre-Trial Chamber II's "*Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa*", 2 December 2009, ICC-01/05-01/08-631-Red, paragraph 74.

⁷² ICC-01/05-01/08-631-Red, paragraph 70.

⁷³ See above, paragraphs 15-16, 28-35.

⁷⁴ La Grande Marche de la Liberté le 18 Février 2012 à la Haye, 9 January 2012, ICC-02/11-35-US-Exp-Anx1.17, page 2; La Grande Marche européenne en faveur de la libération du président Gbagbo : la diaspora ivoirienne et africaines dans les rues de Paris le 12 novembre – FPI-Allemagne, 10 November 2011, ICC-02/11-35-US-Exp-Anx1.18, page 3; FPI Europe Lettre à Mamadou Koulibaly - FPI-Allemagne, 19 June 2011, ICC-02/11-35-US-Exp-Anx1.19, page 3. Interview notes, [REDACTED].

grounds to believe that Ms Gbagbo is personally responsible for serious crimes under the jurisdiction of the Court.⁷⁵

44. The evidence further indicates that pro-Gbagbo forces have previously concealed crimes committed by Mr Gbagbo's inner circle, including Ms Gbagbo. A particular source suggests that journalists were allegedly threatened during, and banned from, demonstrations in December 2010 by pro-Gbagbo forces.⁷⁶ There is information from the UN that pro-Gbagbo forces allegedly committed murder and other human rights violations in Côte d'Ivoire, and they prevented UN representatives from investigating their crimes (i.e. access was denied to alleged mass graves).⁷⁷ Finally, given that during the post-election violence Ms Gbagbo declared her intention to fight until the end,⁷⁸ and in light of her political connections, there is a real possibility that she will continue to commit the crimes that are the subject of this decision, if released.

45. In view of the foregoing, the Chamber is satisfied that Ms Gbagbo's arrest is necessary to: i) ensure her appearance before the Court; ii) ensure that she does not use her connections and resources to obstruct or endanger the investigation; and iii) prevent the further commission of crimes within the jurisdiction of the Court.

⁷⁵ See above, paragraphs 24-35.

⁷⁶ Center for International Media Assistance, Local and International Media Hit by the Battle Between Rival Camps for Control of News, 17 December 2010, ICC-02/11-24-US-Exp-Anx6.11, page 2.

⁷⁷ United Nations Security Council. Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, 30 March 2011, ICC-02/11-24-US-Exp-Anx5.36, page 14; United Nations Human Rights Council, Report of the High Commissioner for Human Rights on the situation of human rights in Côte d'Ivoire, 15 February 2011, ICC-02/11-24-US-Exp-Anx5.38, page 12.

⁷⁸ [REDACTED].

FOR THESE REASONS, THE CHAMBER

DECIDES that the conditions established by Article 58(1) of the Statute in order to issue a warrant of arrest against Simone Gbagbo are met in relation to her alleged criminal responsibility within the meaning of Article 25(3)(a) of the Statute for the crimes against humanity of (1) murder under Article 7(1)(a), (2) rape and other forms of sexual violence under Article 7(1)(g), (3) other inhumane acts under Article 7(1)(k) and (4) persecution under Article 7(1)(h) of the Statute committed in the territory of Côte d'Ivoire during the period between 16 December 2010 and 12 April 2011.

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

Judge Silvia Fernández de Gurmendi

Judge Elizabeth Odio Benito

Judge Adrian Fulford

Dated this 2 March 2012

At The Hague, The Netherlands