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No.: ICC-02/11-01/12

Date: 14 September 2018

PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF *THE PROSECUTOR* v. *SIMONE GBAGBO***

Public

Order to the Registrar to Request Information from the
Competent National Authorities of the Republic of Côte d'Ivoire

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor
James Stewart, Deputy Prosecutor

Counsel for the Defence

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 Representative

Competent authorities of the
Republic of Côte d'Ivoire

Others

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section Other**

PRE-TRIAL CHAMBER II (the “Chamber”) of the International Criminal Court (the “Court”) issues this order to the Registrar to request information from the competent national authorities of the Republic of Côte d’Ivoire (“Côte d’Ivoire”).

1. On 29 February 2012, Pre-Trial Chamber III issued a warrant of arrest against Simone Gbagbo for alleged criminal responsibility within the meaning of article 25(3)(a) of the Rome Statute (the “Statute”) for the crimes against humanity of (i) murder under article 7(1)(a); (ii) rape and other forms of sexual violence under article 7(1)(g); (iii) other inhumane acts under article 7(1)(k); and (iv) persecution under article 7(1)(h) of the Statute, committed in the territory of Côte d’Ivoire between 16 December 2010 and 12 April 2011.¹

2. On 11 December 2014, Pre-Trial Chamber I issued the “Decision on Côte d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo”.² Pre-Trial Chamber I found the case against Simone Gbagbo to be admissible before the Court. It concluded that Côte d’Ivoire had not demonstrated that the case alleged in the proceedings before the Court was subject to domestic proceedings within the meaning of article 17(1)(a) of the Statute.³ Subsequently, on 27 May 2015, that decision was upheld by the Appeals Chamber.⁴

3. On 16 March 2018, the Presidency re-assigned the situation in Côte d’Ivoire to this Chamber.⁵

¹ Pre-Trial Chamber III, “Warrant of Arrest for Simone Gbagbo”, 29 February 2012, ICC-02/11-01/12-1. Subsequently, the Chamber issued the “Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant of arrest against Simone Gbagbo”, 2 March 2012, ICC-02/11-02/12-2-Red.

² Pre-Trial Chamber I, “Decision on Côte d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo”, 11 December 2014, ICC-02/11-01/12-47-Red.

³ Pre-Trial Chamber I, “Decision on Côte d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo”, 11 December 2014, ICC-02/11-01/12-47-Red, para. 79.

⁴ Appeals Chamber, “Judgment on the appeal of Côte d’Ivoire against the decision of Pre-Trial Chamber I of 11 December 2014 entitled ‘Decision on Côte d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo’”, 27 May 2015, ICC-02/11-02/12-75-Red.

⁵ The Presidency, “Decision assigning judges to divisions and recomposing Chambers”, 16 March 2018, ICC-02/11-01/12-81.

4. The Chamber notes articles 19(1) and 93(1)(i) of the Statute and rule 176 of the Rules of Procedure and Evidence.

5. Article 19(1) of the Statute vests the Chamber with the discretionary power to determine, on its own motion, the admissibility of a case.⁶ As previously held by the Court, the admissibility of a case is not static, as it must be determined on the basis of the facts as they exist at the time when the admissibility is assessed.⁷ Moreover, the Chamber has a duty to act on its own initiative when it appears that the grounds on which pending decisions were adopted may be altered. In this specific case, it is for the Chamber to establish whether the case is still admissible, with reference to articles 17(1)(c) and 20(3) of the Statute.

6. It has been repeatedly reported by the press that the judicial authorities of Côte d'Ivoire have allegedly rendered judicial decisions on Simone Gbagbo for crimes against humanity. To this end, the Chamber seeks to receive information concerning any acts taken by the judicial authorities of Côte d'Ivoire after 11 December 2014, when the Court ruled on the admissibility of the case on Simone Gbagbo, which could impact on the admissibility of the case. The Chamber seeks to receive all pertinent judicial decisions rendered on Simone Gbagbo and any other relevant information, including if the concerned judgements have become final according to national law. Such information will assist the Chamber to determine whether the admissibility of the case ought to be reviewed.

⁶ Appeals Chamber, *Prosecutor v. Joseph Kony et al.*, "Judgment on the appeal of the Defence against the 'Decision on the admissibility of the case under article 19(1) of the Statute' of 10 March 2009", 16 September 2009, ICC-02/04-01/05-408, para. 78; *Situation in the Democratic Republic of the Congo*, "Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled 'Decision on the Prosecutor's Application for Warrants of Arrest, Article 58'", 13 July 2006, ICC-01/04-169, para. 48.

⁷ Appeals Chamber, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, "Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case", 25 September 2009, ICC-01/04-01/07-1497, para. 56.

7. For these reasons, the Registrar is ordered to request, not later than 21 September 2018, the competent national authorities of Côte d'Ivoire to provide the Chamber, as expeditiously as possible, with any pertinent information and documentation, as set out in paragraph 6 of the present order.

FOR THESE REASONS, THE CHAMBER HEREBY

ORDERS the Registrar to request, not later than Friday, 21 September 2018, the competent national authorities of Côte d'Ivoire to provide the Chamber as expeditiously as possible with any pertinent information and documentation, including copies of decisions and other acts issued by national authorities, as set forth in paragraph 6 above.

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



Judge Antoine Kesia-Mbe Mindua
Presiding Judge



Judge Tomoko Akane



Judge Rosario Salvatore Aitala

Dated this Friday, 14 September 2018

At The Hague, The Netherlands