

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/12
Date: 15 November 2013

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Hans-Peter Kaul
Judge Christine Van den Wyngaert

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

Public

**Decision on the conduct of the proceedings following Côte d'Ivoire's
challenge to the admissibility of the case against Simone Gbagbo**

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

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Counsel for the Defence

Clédor Ciré Ly

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Paolina Massidda

**The Office of Public Counsel for the
Defence**

States Representatives

Jean-Pierre Mignard

Jean-Paul Benoit

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Pre-Trial Chamber I (“Chamber”) of the International Criminal Court (“Court”) issues the following decision on the conduct of the proceedings following the *“Requête de la République de Côte d’Ivoire sur la recevabilité de l’Affaire Le Procureur c. Simone Gbagbo, et demande de sursis à exécution en vertu des articles 17, 19 et 95 du Statut de Rome”* (the “Admissibility Challenge”), challenging the admissibility of the case against Simone Gbagbo (“Ms Gbagbo”) before the Court.¹

1. On 29 February 2012, the Chamber issued a warrant of arrest for Ms Gbagbo (the “Warrant of Arrest”), which was made public on 22 November 2012.²
2. On 19 March 2012, the Registrar notified Côte d’Ivoire of the Warrant of Arrest and requested it to arrest and surrender Ms Gbagbo to the Court (the “Surrender Request”).³
3. On 1 October 2013, Côte d’Ivoire filed the Admissibility Challenge.
4. On 24 October 2013, the Prosecutor filed the *“Requête de l’Accusation pour l’émission d’une ordonnance aux fins de divulgation de documents essentiels à l’analyse de la question de la recevabilité de l’affaire menée contre Madame Gbagbo”* (the “Prosecutor’s Request”).⁴

¹ ICC-02/11-01/12-11-Conf. A public redacted version is also available (ICC-02/11-01/12-11-Red).

² Warrant of Arrest for Simone Gbagbo, ICC-02/11-01/12-1. See also Pre-Trial Chamber I, Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant of arrest against Simone Gbagbo, 2 March 2012, ICC-02/11-01/12-2-Red.

³ ICC-02/11-01/12-6.

⁴ ICC-02/11-01/12-13-Conf.

5. On 1 November 2013, the Registrar filed in the record of the case a power of attorney executed by Ms Gbagbo in favour of Clédor Ciré Ly to represent her in the proceedings before the Court.⁵

6. The Chamber notes articles 19 and 95 of the Rome Statute (the “Statute”), rules 58 and 59 of the Rules of Procedure and Evidence (the “Rules”), and regulation 80 of the Regulations of the Court (the “Regulations”).

7. By virtue of rule 58(2) of the Rules, the Chamber has the discretionary power to decide on the procedure to be followed upon receipt of an admissibility challenge.

8. Without prejudice to this broad discretion, pursuant to rule 58(3) of the Rules, the Chamber shall allow the Prosecutor and “the person referred to in article 19, paragraph 2, who has been surrendered to the Court or who has appeared voluntarily or pursuant to a summons” to submit written observations to challenges made pursuant to article 19(2) of the Statute. The Chamber notes in this respect that Ms Gbagbo, although under arrest in Côte d’Ivoire, has so far not been surrendered to or appeared before the Court. However, as previously determined by this Chamber in other cases before it,⁶ the Chamber takes the view that Ms Gbagbo’s exercise of procedural rights in relation to the Admissibility Challenge cannot be made contingent on Côte d’Ivoire’s compliance with the Surrender Request. Accordingly, the Defence of Ms Gbagbo shall be allowed to submit written observations on the Admissibility Challenge.

⁵ ICC-02/11-01/12-14-Conf-Exp and annexes attached thereto.

⁶ See Pre-Trial Chamber I, Decision on the Conduct of the Proceedings Following the “Application on behalf of the Government of Libya pursuant to Article 19 of the Statute”, ICC-01/11-01/11-134, para. 11; and *id.*, Decision on the conduct of the proceedings following the “Application on behalf of the Government of Libya relating to Abdullah Al-Senussi pursuant to Article 19 of the ICC Statute”, 26 April 2013, ICC-01/11-01/11-325, para. 8.

9. The Chamber further notes that, pursuant to article 19(3) of the Statute, read in conjunction with rule 59(1) and (3) of the Rules, the victims who have already communicated with the Court in relation to this case or their legal representatives may also submit observations within a time limit that the Chamber considers appropriate.

10. In order to conduct the proceedings following the Admissibility Challenge efficiently and expeditiously, the Chamber considers it appropriate to appoint, under regulation 80 of the Regulations, Paolina Massidda from the Office of Public Counsel for victims (the "OPCV") to represent, in the proceedings following the Admissibility Challenge, the victims who have communicated with the Court in relation to the case. Accordingly, the Registrar is hereby instructed to provide the OPCV with information about victims who have communicated with the Court in relation to this case, as well as with any necessary assistance to contact them as soon as possible.

11. The Chamber notes that the annexes to the Admissibility Challenge are classified as "confidential" and, that, as a result of this classification, also the Admissibility Challenge has been filed as a "confidential" document since it refers to the nature and content of its annexes.

12. The Chamber notes the reasons provided by Côte d'Ivoire for the classification of the annexes to the Admissibility Challenge as "confidential", in order to respect the "*secret nécessaire de l'instruction*" as well as the right of the defence in the national proceedings, the presumption of innocence and the fair conduct of the domestic proceedings.⁷ In light of the explanations provided and the content and nature of the annexes attached to the Admissibility Challenge, the Chamber accepts that said documents retain the current classification and not be made public. However, the Chamber is of the

⁷ Admissibility Challenge, para. [IV].

view that access to this material should be provided also to the Defence and the OPCV, which were not notified thereof as neither was yet appointed to participate in the proceedings at the time when the Admissibility Challenge was filed. The Chamber is of the view that no prejudice would arise from sharing these documents with the Defence and the OPCV. In this regard, the Chamber also notes Côte d'Ivoire's own submission that “[l]’identité des parties et participants auxquels [the Admissibility Challenge] sera accessible ‘ex parte’ garantit au surplus le bon déroulement de la procédure ainsi engagée devant la Court”, which indicates that Côte d'Ivoire has accepted that the parties and participants in the admissibility proceedings have access to these documents.⁸

13. Rules 58(3) and 59(3) of the Rules also specify that the Chamber shall determine an appropriate time limit for the submission of any observations by the Prosecutor, the Defence of Ms Gbagbo and the victims who have communicated with the Court in relation to this case.

14. In this regard, the Chamber takes note of the Prosecutor's request that the Chamber, before receiving observations on the Admissibility Challenge from the parties and participants, seeks from Côte d'Ivoire the provision of a number of documents,⁹ without which, she submits, “l’Accusation ne peut soumettre une réponse éclairée et utile à la Chambre” in relation to the Admissibility Challenge.¹⁰ The Chamber is not persuaded by the Prosecutor's argument that, in the absence of certain documents in support of the Admissibility Challenge, she is unable to provide any observations under rule 58(3) of the Rules. Indeed, in principle, and as provided for in rule 58(3) of the Rules, it is on the Admissibility Challenge as received from the State that the Prosecutor and the Defence shall be allowed to present their observations. The

⁸ Admissibility Challenge, para. 4.

⁹ ICC-02/11-01/12-13-Conf, paras 8 to 15.

¹⁰ *Ibid.*, para. 5.

Chamber considers it more appropriate to receive observations from all parties and participants as required by rules 58 and 59 of the Rules, before determining whether or not it would be in the interest of justice, taking into account all prevailing interests, to request further information from Côte d'Ivoire in relation to the Admissibility Challenge. In any case, the Chamber notes that Côte d'Ivoire – which has been notified of the Prosecutor's Request – may at any time request the Chamber to be authorised to complement its Admissibility Challenge and provide additional evidence, if it so wishes. Accordingly, the Prosecutor's Request must be rejected at this stage.

15. The Chamber thus considers that the first procedural step is to allow the Prosecutor, the Defence and the OPCV to provide written observations on the Admissibility Challenge, and to set an appropriate time limit for this purpose. In light of the upcoming judicial recess and considering that both the Defence and the OPCV may need to contact their respective clients with a view to submitting their respective observations, the Chamber finds it appropriate to set the time limit for the parties and participants' written observations on the Admissibility Challenge at Monday, 13 January 2014. Upon receipt of these observations, the Chamber will determine whether any further procedural steps would be appropriate prior to its ruling on the Admissibility Challenge.

16. Finally, the Chamber notes that, in its Admissibility Challenge, Côte d'Ivoire states that "*[d]urant le temps nécessaire à l'examen de la présente requête en irrecevabilité, la République de Côte d'Ivoire entend se prévaloir du droit que lui confère l'article 95 du Statut de surseoir à l'exécution de la demande de remise de Mme Gbagbo à la Cour*".¹¹

17. According to article 95 of the Statute, "[w]here there is an admissibility challenge under consideration by the Court pursuant to article 18 or 19 the

¹¹ Admissibility Challenge, para. 2.

requested State may postpone the execution of a request under [Part 9] pending a determination by the Court". In interpreting the scope and applicability of article 95 of the Statute, this Chamber has previously held that: (i) the execution of all requests for cooperation under Part 9 of the Statute, including requests for arrest and surrender, may be postponed pursuant to article 95 of the Statute pending the resolution of an admissibility challenge; (ii) the postponement of the execution of a surrender request while an admissibility challenge is pending falls within the prerogatives of the requested State and does not require a Chamber's prior authorization; however, (iii) when a dispute arises as to whether the pre-requisites for the application of article 95 of the Statute are met, such dispute cannot be unilaterally settled by the State, but it is for the Chamber to determine whether an admissibility challenge has been duly made within the terms of the applicable statutory provisions.¹²

18. The Chamber considers that the Admissibility Challenge has been properly made within the terms of article 19(2) of the Statute and rule 58(1) of the Rules and that Côte d'Ivoire may thus legitimately decide to postpone, pursuant to article 95 of the Statute, the execution of the Surrender Request pending a final determination by the Chamber of the Admissibility Challenge.

19. The Chamber emphasises that such postponement is only temporary and that, in accordance with article 19(9) of the Statute, the Warrant of Arrest issued by the Chamber against Ms Gbagbo remains valid. Accordingly, during the postponement, Côte d'Ivoire must refrain from taking any action which could frustrate or hinder a prompt execution of the Surrender Request

¹² See Pre-Trial Chamber I, Decision on Libya's postponement of the execution of the request for arrest and surrender of Abdullah Al-Senussi pursuant to article 95 of the Rome Statute and related Defence request to refer Libya to the UN Security Council, 14 June 2013, ICC-01/11-01/11-354, paras 18 to 28; see also Pre-Trial Chamber I, Decision on the postponement of the execution of the request for surrender of Saif Al-Islam Gaddafi pursuant to article 95 of the Rome Statute, 1 June 2012, ICC-01/11-01/11-163, paras 37 and, 39.

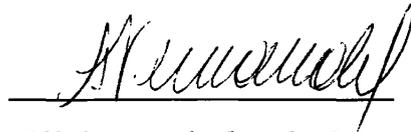
should the case be found admissible, and must take all the positive measures that are necessary to this effect. In the same vein, the Chamber highlights that the postponement of the Surrender Request in no way affects Côte d'Ivoire's continuing obligation to cooperate with the Court and to provide the assistance required by the Court with a view to ensuring, in particular, Ms Gbagbo's effective exercise of her statutory rights, and a timely disposal of the Admissibility Challenge.

FOR THESE REASONS, THE CHAMBER

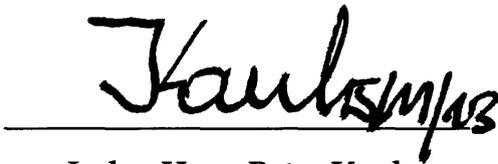
- a) **APPOINTS**, for the purposes of the proceedings following the Admissibility Challenge, Paolina Massidda from the OPCV as legal representative of the victims who have already communicated with the Court in relation to the case against Ms Gbagbo;
- b) **INSTRUCTS** the Registrar to provide the OPCV with information about victims who have communicated with the Court in relation to the case, as well as with any necessary assistance to contact them as soon as possible;
- c) **INVITES** the Prosecutor, the Defence of Ms Gbagbo and the OPCV to submit observations on the Admissibility Challenge, if any, no later than Monday, 13 January 2014;
- d) **ORDERS** the Registrar to notify document ICC-02/11-01/12-11-Conf, together with its annexes, and document ICC-02/11-01/12-13-Conf to the Defence of Ms Gbagbo and the OPCV;
- e) **DECIDES** that Côte d'Ivoire, pursuant to article 95 of the Statute, may postpone the execution of the Surrender Request pending determination of the Admissibility Challenge; and

f) **REJECTS** the Prosecutor's Request.

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



Judge Silvia Fernández de Gurmendi
Presiding Judge



Judge Hans-Peter Kaul



Judge Christine Van den Wyngaert

Dated this Friday, 15 November 2013

At The Hague, The Netherlands