

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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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

**RESPONSE ON BEHALF OF SIMONE GBAGBO TO 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"**

Source: DEFENCE

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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1. INTRODUCTION

1. Those Observations are submitted pursuant to the ‘*Decision on the conduct of proceedings following Côte d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo*’ (‘Decision on conduct of proceedings’) and to the *Decision on Côte d’Ivoire’s request to provide additional documents in support of its challenge to the admissibility of the case against Simone Gbagbo* (‘Decision on provision of additional documents’).¹

2. The Observations submitted by Counsel for Mme. Gbagbo (‘the Defence’) are, as directed in the ‘Decision on conduct of proceedings’, confined to the Admissibility Challenge (‘admissibility challenge’) pursuant to Article 19 (2) (b) as set out by the State of Côte d’Ivoire (hereinafter referred to as the ‘National Jurisdiction’) principally relying on the provisions of Article 17 (1) of the Rome Statute. They are submitted without prejudice to any future arguments or submissions which this or any Defence Counsel may put forward on behalf of Mme. Gbagbo either pursuant to the Rome Statute or in any proceedings in the National Jurisdiction or elsewhere.

3. Those Observations are presented as a Public document. Whilst acknowledging its right to do so, Mme Gbagbo takes issue with the assertion by the National Jurisdiction that it is crucial that details of the proceedings against her in Côte d’Ivoire remain confidential². For the most part, the details in question had already been widely disseminated within the National Jurisdiction and abroad and often, before being made known to her. The Defence submits that, transparency of proceedings against Mme. Gbagbo will advance her aspiration that Justice, not only be done but be seen to be done, especially by the people of Côte d’Ivoire. Notwithstanding, the confidentiality of all such documentation as submitted by the National Jurisdiction, will be preserved.

¹ No. ICC-02/11-01/12, page 9, para c, 15 November 2013 and ICC-02/11-01/12, 20 February 2014.

² ‘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’, 30 Septembre 2013, No. ICC-02/11-01/12, p.3, paras [ii] and [iii].

2. PROCEDURAL HISTORY

4. By Decision of 3 October 2011, Pre-Trial Chamber III, pursuant to Article 15 of the Rome Statute, authorised an investigation in the National Jurisdiction.³ *“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.”*⁴

5. By Application of 7 February 2012, the Prosecutor sought a warrant of arrest against Simone Gbagbo for her individual responsibility for 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 post-election crisis from 28 November 2010 by 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 country⁵.

6. On 29 February 2012, Pre-Trial Chamber III issued a Warrant of Arrest⁶ under seal against Simone Gbagbo, for 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)

³ Situation in the Republic of Côte d’Ivoire, 3 October 2011, ICC-02/11-14: a corrigendum to the decision was issued on 15th November 2011, ICC-02/11-14-Corr.

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, 30 November 2011, p. 9, para. 21.

⁵ Prosecutor’s Application pursuant to Article 58 as to Simone Gbagbo, 8 February, ICC-02/11-35-US-Exp. (The Defence has not been provided with a copy of this document, classified as ex parte).

⁶ Pre-Trial Chamber III, Under Seal, Warrant of Arrest for Simone Gbagbo, 29 February 2012, ICC-02/11-01/12, p. 8.

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. And stated that “...it is likely that this issue (i.e. Ms Gbagbo’s suggested liability as an “indirect co-perpetrator” under Article 25(3)(a) of the Statute) may well need to be revisited in due course with the parties and participants⁷ and “The Chamber will consider in due course the reclassification of the warrant of arrest, upon the surrender of Ms Gbagbo to the ICC.”⁸

7. On 2 March 2012, Pre-Trial Chamber III, rendered its written ‘Decision on the Prosecutor’s Application Pursuant to Article 58 for a Warrant of arrest against Simone Gbagbo’⁹ stating “The Prosecutor contends that there is a considerable degree of overlap between the [Laurent] Gbagbo Application and the present Application and he has incorporated references to the relevant portions of the [Laurent] Gbagbo Application (viz paras 5-73, 76-92, 94-131, 149-159, and 158 together with the underlying /supporting material).”

And

“Given the *extensive similarities* between the present Application and the [Laurent] Gbagbo Application, it is appropriate for the Chamber simply to adopt its earlier reasoning [in the Laurent Gbagbo application] as regards the jurisdictional requirements set out in the decision on the [Laurent] Gbagbo Application.¹⁰ 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.”¹¹ (emphasis added)

And

⁷ *Ibidem* at p. 7, para. 16.

⁸ *Ibidem* at p. 8, final sentence.

⁹ Public redacted version, Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant of arrest against Simone Gbagbo, 2 March 2012, p. 5, para. 6.

¹⁰ ICC-02/11-01/11-9-Red, paras 8-16.

¹¹ Public redacted version, Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant of arrest against Simone Gbagbo, 2 March 2012, p. 6, para. 9.

“...The Chamber notes that the Prosecutor relies on the same four incidents that supported the charges against Mr. Gbagbo namely:

- (1) The attacks relating to the *Radiodiffusion Télévision Ivoirienne* (the state-sponsored radio-television; RTI) demonstrations between 16 and 19 December 2010.
- (2) The attack on the women’s march in Abobo on 3 March 2011.
- (3) The Abobo market shelling on 17 March 2011.
- (4) The Yopougon massacre on 12 April 2011.”¹²

And

“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**”¹³. (emphasis added)

8. On 19 March 2012, the Prosecutor filed a ‘Demande d’arrestation et de remise de Simone Gbagbo’.¹⁴

9. On 22 November 2012, Pre-Trial Chamber III ordered the lifting of the seal on the Warrant of Arrest against Mme. Gbagbo for her alleged criminal responsibility within the meaning of Article 25(3) (a) of the Statute for the crimes against humanity as therein set out and dated 29 February 2012.

10. Given that Laurent Gbagbo and Simone Gbagbo had both been charged with individual criminal responsibility pursuant to Article 25 (3) (a) of the Statute¹⁵ for exactly the **same** four offences, grounded on the **same** four incidents and relying on the **same**

¹² *Ibidem* at p. 9, para. 16.

¹³ Decision on the Prosecutor’s Application pursuant to Article 58 for a warrant of arrest against Simone Gbagbo, 2 March 2012, p. 9, para. 17.

¹⁴ La Chambre Préliminaire I, (Original: français) ICC-02/11-01/12, 19 March 2012.

¹⁵ Decision on the Prosecutor’s application pursuant to Article 58 for a warrant of arrest against Laurent Koudou Gbagbo, 30 November 2011, p. 3, para. 4, ICC-02/11 and Decision on the Prosecutor’s application pursuant to Article 58 for a warrant of arrest against Simone Gbagbo, ICC-02/11-01/12, 2 March 2012, p. 13, para. 26.

underlying/supporting material, the Decision of Pre-Trial Chamber I¹⁶ in the case against Laurent Gbagbo and affirmed on Appeal,¹⁷ is significant. (emphasis added)

11. Citing from the Appeal Judgment in Laurent Gbagbo, ‘*In the case against Laurent Gbagbo, in the DCC, the Prosecutor described four incidents during which the acts relevant to the crimes charged allegedly occurred* (hereinafter ‘charged Incidents’).

“*The Pre trial Chamber noted that during the confirmation hearing the Prosecutor contended that the four Charged Incidents alone, in and of themselves, were sufficient to establish the existence of a widespread or systematic attack but made clear that besides these four incidents, she was relying on the 41 incidents to establish her allegations of the existence of an “attack directed against any civilian population” under article 7 of the Statute*”¹⁸.

The Pre-Trial Chamber further observed that;

“[...] *Of these 45 incidents, the majority of them are proven solely with **anonymous hearsay** from NGO Reports, United Nations reports and press articles. As explained above, **the Chamber is unable to attribute much probative value to these materials**. Moreover, many of these incidents are described in very summary fashion, making it difficult for the Chamber to determine whether the perpetrators acted pursuant to or in furtherance of, a policy to attack a civilian population as required by article 7(2) (a) of the Statute.*”¹⁹ (emphasis added)

¹⁶ Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute, ICC-02/11-01/11, 3 June 2013.

¹⁷ The Appeals Chamber, ‘Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 3 June 2013 entitled “Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute’ ” 16 December 2013, No. ICC-02/11-01/11 OA 5.

¹⁸ *Ibidem* at p. 10, para. 20. And also see Impugned Decision, para. 36 and also, Impugned Decision, fn. 49.

¹⁹ The Appeals Chamber, ‘Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 3 June 2013 entitled “Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute’ ” 16 December 2013, No. ICC-02/11-01/11 OA 5, p. 10, para. 21.

12. Dated 30 September 2013, the National Jurisdiction filed an Admissibility Challenge pursuant to Articles 19, 17 and 95 of the Rome Statute²⁰. Therewith, were filed 17 Confidential Annexes (hereinafter referred to as ‘Group 1 Annexes’).

13. On 15 November 2013 Pre- Trial Chamber I rendered its ‘Decision on the conduct of the proceedings following Côte d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo’, inviting observations from, *inter alia*, the Defence, to be filed before 13 January 2014.²¹

14. By Motion dated 12 December 2013, the Defence applied for an extension of time in which to file any observations.²²

15. By Decision on 17 December 2013 of Pre-Trial Chamber I, the Defence, *inter alia*, was given an extension of time up to 24 February 2014 in which to file any observations.

16. On 14 February 2014, the National Jurisdiction applied for permission to provide additional documents in support of it’s admissibility challenge²³.

17. On 18 February 2014 the Defence applied for an extension of time of at least six weeks in the event of the Application of Côte d’Ivoire being granted²⁴.

18. On 20 February 2014, Pre-Trial Chamber I authorised ‘*Cote d’Ivoire to submit additional documentation relevant to its Admissibility Challenge, by Wednesday, 26 February 2014*’ and extended ‘*the time limit for the submissions by [...] the Defence [...] of their observations on the Admissibility Challenge until six weeks upon notification of Côte d’Ivoire’s additional documentation.*’²⁵

²⁰ ‘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’, 30 Septembre 2013, No. ICC-02/11-01/12.

²¹ Pre-Trial Chamber I, ‘Decision on the conduct of the proceedings following Côte d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo’, 15 November 2013, ICC-02/11-01/12.

²² Defence Request for an Extension of Time, Dated 12 December 2013, ICC-02/11-01/12-16.

²³ ICC-02/11-01/12-30. 14 February 2014.

²⁴ ICC-02/11-01/12. 18 February 2014.

²⁵ ICC-02/11-01/12. 20 February 2014.

19. Notification of Côte d'Ivoire's additional documentation was received on 26 February 2014. The said additional documentation comprised Confidential Annexes 1-21 (hereinafter referred to as 'Group 2 Annexes').

20. The Defence Observations are now filed in pursuance of the aforesaid Decisions.²⁶

3. APPLICABLE PROVISIONS OF THE STATUTE

Ever mindful of the fundamental principle of *iura novit curia*, the Defence respectfully submits the following;

Complementarity

21. *Complementarity* is a core guiding principle in the relationship between the Court and States. This is emphasised by the prominent position given to it in the Preamble to and at Article 1 of, the Rome Statute. In the preamble, the State Parties

Recall that

'it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes' and

Emphasise that

'the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions' and (thereby)

²⁶ Pre-Trial Chamber I, 'Decision on the Defence Request for Extension of Time', 17 December 2013, ICC-02/11-01/12-24, p. 6 and Decision on Côte d'Ivoire's request to provide additional documents in support of its challenge to the admissibility of the case against Simone Gbagbo. 20 February 2014.

Resolved to

‘guarantee lasting respect for and the enforcement of international justice...’

(emphasis added)

Article 1

Article 1 of the Statute mandates that, the International Criminal Court “*shall be complementary to national criminal jurisdictions*”. Primary responsibility therefore, for enforcing individual criminal responsibility for the most serious crimes of international concern rests with the State Parties. The Court is a court of last resort and “the principle of *complementarity* is integral to the functioning of the Rome Statute system and its long term efficacy”²⁷. (emphasis added)

The Prosecutor has stated “The Principle of Complementarity represents the *express will* of State Parties to create an institution that is global in scope while recognising the *primary responsibility of States themselves* to exercise criminal jurisdiction”.²⁸

Complementarity has been described as [...] *‘one of, if not the cornerstone of the Rome Statute. It strikes a balance between State sovereignty and an effective and credible ICC. Without it, there would be no agreement’*.²⁹

22. Where the imperatives of international justice and State sovereignty conflict, the issue of Admissibility falls to be determined by the Court pursuant to Article 17 (1) (a) and (b) of the Statute.

Article 17 (1) (a) and (b) of the Rome Statute

23. As manifest above, in drafting the Rome Statute, respect for the sovereignty and integrity of national criminal justice systems was to the forefront. The provisions of Article 17 further reinforce this. In determination of admissibility in general, there are two main limbs to be considered; first *-inactivity* and second *-unwillingness or genuine inability*. Under its provisions, the Court may exercise its jurisdiction over a case only when the case is either

²⁷ Report of the Bureau on stocktaking: Complementarity, ICC-ASP/8/5, 18 March 2010, para. 3.

²⁸ Paper on some policy issues before the Office of the Prosecutor, September 2003, p. 2.

²⁹ S.A Williams, *‘Issues of Admissibility, Article 17’*, -O. Triffterer (ed) *Commentary on the Rome Statute of the International Criminal Court, Observer’s Notes, Article by Article, (NOMOS, Bade-Baden, 1st edition, 1999, p. 392, para. 20.*

(a) not taken up by the National Jurisdiction (giving rise to a situation of inactivity) or (b) if the case is or was taken up by the National Jurisdiction but it is or was, *unwilling or unable genuinely* to carry out the investigation or prosecution. This interpretation has been confirmed on Appeal in the case of *Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*.³⁰ Further, in general, the admissibility of a case is to be determined based on the facts as they exist *at the time* of the admissibility proceedings, before the Pre-Trial Chamber.

24. “[T]he defining elements of a concrete case before the Court are the individual and the alleged conduct. It follows that for such a case to be inadmissible under Article 17 (1) (a) of the Statute, the national investigation and or proceedings must cover *the same individual and substantially the same conduct* as alleged in the proceedings before the Court”.³¹ (emphasis added)

4. ADMISSIBILITY CHALLENGE OF THE NATIONAL JURISDICTION

25. Relying on Article 19 (2) (b) of the Rome Statute, the National Jurisdiction contests the Admissibility of the proceedings, *The Prosecutor v Simone Gbagbo*, pursuant to Article 17 of the Statute.³²

26. Pursuant to Article 95 of the Statute, the National Jurisdiction seeks the postponement of the execution of the request to surrender Simone Gbagbo to the jurisdiction of the Court, pending a Decision on Admissibility.³³

27. Relying on Confidential Group 1 and Group 2 Annexes, the National Jurisdiction seeks to demonstrate compliance with the requirements of Article 17 (1) (a). In summary, it informs the Chamber that the case against Simone Gbagbo is inadmissible because

³⁰ Judgment on Appeal: Mr. Germain Katanga against the Oral Decision of Trial Chamber 11, 12 June 2009 on the Admissibility of the Case, 25 September 2009, ICC-01/04-01/07-1497 OA 8, para. 78.

³¹ Judgment on the Appeal of the Republic of Kenya against the Decision of Pre-Trial Chamber 11 dated 30 May 2011 entitled ‘Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case pursuant to Article 19(2) (b) of the Statute’, 30 August 2011, para. 39, ICC-01/09-02/11-274.

³² ‘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’, 30 Septembre 2013, No. ICC-02/11-01/12, p. 4, para. 1.

³³ *Ibidem* at p. 4, para. 2 and pp. 21-22.

- (i) it has jurisdiction of the matter, as Simone Gbagbo is a citizen of the National Jurisdiction;
- (ii) the alleged crimes were committed within its jurisdiction;
- (iii) the accused is in preventive detention;
- (iv) it has an available, functioning national judicial system in the sense of Article 17 (3) under which the case is being investigated and/ or prosecuted by the National Jurisdiction;
- (v) it is willing and able to conduct the said investigations and /or prosecution;³⁴
- (vi) SIMONE EHIVET GBAGBO is the same person³⁵ who is the subject of the proceedings before this Court and the National Jurisdiction;
- (vii) the proceedings in the National Jurisdiction against SIMONE EHIVET GBAGBO are for substantially the same alleged crimes as those charged by this Court.³⁶

5. DEFENCE OBSERVATIONS ON ADMISSIBILITY CHALLENGE OF NATIONAL JURISDICTION

28. The National Jurisdiction has filed as ‘Confidential’ all of the Annexes grounding its admissibility challenge. In order to maintain continued confidentiality, reference to the said Annexes, where made, will be by number only, not by content, with one discrete variation at paragraph 34 (Annex 18) below.

29. The Defence informs the Chamber that Mme. Gbagbo has been in preventive detention - unbroken- from 11 April 2011 to the date hereof and continuing. With the exception of the first 11 days, she has been detained in Odienné. From its own personal knowledge, the Defence can confirm that this is a remote and difficult-to-access location, in the far North-West, approximately 1,000 klms distant from her closest family, her Ivorian lawyer and necessary medical treatment, in Abidjan.

³⁴ *Ibidem* at pp. 15-21.

³⁵ *Ibidem* at p. 11, para. 25.

³⁶ *Ibidem* at pp. 11-15.

30. The Defence further informs the Chamber that, as a cumulative consequence of her preventive detention, isolated location and absence of evidentiary proofs, Mme. Gbagbo is insufficiently informed to definitively agree or disagree with the submissions put forward by the National Jurisdiction, except where otherwise shown.

Re: ‘Group 1 Annexes’: 1 - 17

31. The Defence makes no observation on the following, namely, Annex 1, Annex 9, Annex 12, Annex 13, Annex 14, Annex 15, Annex 16.

32. As to Annex 3, Annex 11, Annex 17, Mme. Gbagbo agrees that they could, when produced in their entirety, refer to the matters as asserted in the admissibility challenge of the National Jurisdiction.

33. As to Annex 2, Annex 4, Annex 5, Annex 6, Annex 7, Annex 8, Annex 10, the Defence observes that Mme. Gbagbo has noted those Annexes and submits they speak for themselves.

Re: ‘Group 2 Annexes’: 1 – 21.

34. On a consideration of the Group 2 Annexes, the following are the Defence observations;

Annexes 1-11 and 19-21 inclusive, are matters for the National Jurisdiction.

Annexes 12-17 inclusive, speak for themselves.

Annex 18 – in so far as any of its contents can /or could be understood to be reported, to allegedly refer to any alleged utterance of Mme. Gbagbo, they are without foundation.

35. Recalling that a determination of inadmissibility of a ‘case’ requires that national proceedings encompass both the *same* person and *substantially the same* conduct as forms the subject of the case before the Court,³⁷ strictly without prejudice to any present, ongoing or

³⁷ See above at p. 9, para. 21, fn. 29.

future proceedings either before this jurisdiction, the National Jurisdiction or elsewhere, the Defence further informs the Chamber as follows;

- (i) SIMONE EHIVET GBAGBO is one and the same person as referred to in the Warrant of Arrest dated 29 February 2012.
- (ii) She is a citizen of the National Jurisdiction.
- (iii) At all material times, she was and continues to be, resident within the National Jurisdiction.
- (iv) As stated above, she is in preventive detention.
- (v) Proceedings in the National Jurisdiction have been instituted against her.
- (vi) In light of the proceedings in the National Jurisdiction it would not be unreasonable to believe that, on the balance of probability, some investigations should have been carried out. However, as earlier stated, given the cumulative consequence of her preventive detention, isolated location and absence of evidentiary proofs, Mme. Gbagbo can neither confirm nor deny the existence, nature or scope of any such investigation/s.

36. The Defence submits that, in any event, it is for the National Jurisdiction to provide the Chamber with any specificity and/or probative value it may require to demonstrate the nature and scope of its investigation and/or prosecution of its case against Mme. Gbagbo.³⁸

6. DEFENCE POSITION

37. The Defence does not oppose the Application of the National Jurisdiction. Neither is it joining its Challenge.

38. The Defence further informs the Chamber that Mme. Gbagbo was born, educated and has lived all her life in the National Jurisdiction.

39. She has devoted most of her adult life, striving to advance the education of the people of Côte d'Ivoire in so far as they came under her sphere of influence in general and the women and children of Abidjan in particular.

³⁸ ICC-01/09-02/11-274 OA, paras 2, 61.

40. As a University Professor in Abidjan for many years, she strove to impart her knowledge to the young and to imbue in them, respect for human rights of all persons irrespective of nationality or creed.

41. In the new Multi-Party State which emerged in 1990, Mme. Gbagbo was elected to serve as a Parliamentarian from 1995 until December 2011.

7. SUMMARY OF DEFENCE POSITION

42. In summary:

- Given that, the Principle of Complementarity represents the *express will* of State Parties to create an institution that is global in scope, while recognising the *primary responsibility of States themselves* to exercise criminal jurisdiction and
- Given that Complementarity has been described as [...] ‘*one of, if not the cornerstone of the Rome Statute. It strikes a balance between State sovereignty and an effective and credible ICC. Without it, there would be no agreement*’ and.
- Given that, ‘*it is the Sovereign duty of every State to exercise its criminal jurisdiction*’ and
- Given that, the State of Côte d’Ivoire appears desirous of exercising its sovereignty, of adhering to its primary responsibility and of fulfilling its duty and to this end, pursuant to Article 19(2)(b), it has asserted its national jurisdiction on the grounds of Article 17(1)(a) of the Rome Statute and additionally, has informed the Chamber that, it is both willing and able genuinely to and actively is, investigating or prosecuting the case, the Defence informs the Chamber that,
- Given her unwavering espousal of the Sovereignty of the State of Côte d’Ivoire, Democracy and the Rule of Law and

- Given her continuous advocating for peace and national reconciliation based on fairness and justice,

It is the wish of Simone GBAGBO that she be tried in public, in full transparency, in her National Jurisdiction of Côte d'Ivoire.

43. The Defence reserves all its right to independently challenge Admissibility at a subsequent stage of the proceedings, should this Challenge be rejected.³⁹



SYLVIA GERAGHTY.

Lead Counsel to Mme. Simone GBAGBO

Dated this 8th day of April, 2014.

At Dublin, Ireland.

³⁹ Prosecutor v Kony et al, Decision on admissibility of the case under article 19(1) of the Statute, 10 March 2009, ICC-02/04-01/05-377, para. 25.