

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **10 March 2016**

PRE-TRIAL CHAMBER I

Before: Judge Joyce Aluoch, Presiding Judge
Judge Cuno Tarfusser
Judge Péter Kovács

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

**IN THE CASE OF
THE PROSECUTOR *v.* SIMONE GBAGBO**

Confidential

***Ex Parte* Defence, Registry and OPCD only
with Confidential *Ex Parte* Annex - Defence, Registry and OPCD only**

Application pursuant to Article 67(1)(d) of the Rome Statute, Regulation 78 of the Regulations of the Court and Article 18(3) of the Code of Professional Conduct for Counsel.

Source: Counsel for Mme. Gbagbo

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

The Office of the Prosecutor

Counsel for the Defence

Ms. Sylvia Geraghty

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(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

Victims Participation and Reparations

Other

I. INTRODUCTION

1. This Application is brought pursuant to Article 67(1)(d) of the Rome Statute, Regulation 78 of the Regulations of the Court and Article 18(3) of the Code of Professional Conduct for Counsel. Filings, specifically pertinent to this application only, are referenced below.

II. PROCEDURAL HISTORY BEFORE THE COURT

2. 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 of Côte d'Ivoire.¹

3. On 29 February 2012, a Warrant of Arrest and Surrender to the ICC was issued for Simone Gbagbo and rendered public on 22 November 2012, for alleged criminal responsibility within the meaning of Article 25(3)(a) of the Rome Statute.

4. On 19 March 2012, the Registrar notified Côte d'Ivoire of the Warrant of Arrest and requested its execution.²

5. On 30 September 2013, Côte d'Ivoire filed an Admissibility Challenge pursuant to Articles 19, 17 and 95 of the Rome Statute.³ It submitted that it was willing and able to try Mme. Gbagbo and that, on 6 February 2012, domestic proceedings had been instituted against Mme. Gbagbo, based on allegations similar to those made in the case before this Court.

¹ ICC-02/11-14(3 October 2011): a corrigendum to the decision was issued on 15 November 2011 ICC-02/11-14-Corr.

² ICC-02/11-01/12-6.

³ ICC-02/11-01/12-11-Red.

6. On 1 November 2013, the Registrar filed in the record of the case, a power of attorney, dated 30 July 2011, signed by Simone Gbagbo in favour of Ciré Clédor Ly, to represent her in the proceedings before the Court.⁴

7. On 25 November 2013, Simone Gbagbo personally executed the "*Annulation mandate CPI de Maître Ciré Clédor Ly*", which was filed in the record of the case in February 2014.⁵ On the same day, Simone Gbagbo issued a power of attorney appointing Sylvia Geraghty as her Lead Counsel in the proceedings before the Court, retaining Ciré Clédor Ly as Assistant.

8. On 22 January 2014, Simone Gbagbo issued the "*Confirmation de Mandat Special*", whereby she confirmed her power of attorney in favour of Sylvia Geraghty, the discharge of Ciré Clédor Ly from her defence team and the appointment of her principal Ivorian Lawyer Rodrigue Dadjé and also Habiba Touré, as Legal Assistants.⁶

9. Thereafter, Ciré Clédor Ly withdrew from the proceedings and thenceforth Simone Gbagbo was defended throughout the Pre-Trial stage by Sylvia Geraghty, in her capacity as Lead Counsel.

10. On 8 April 2014, the Defence filed its Observations on the aforesaid Admissibility challenge by Côte d'Ivoire, on the basis of complementarity, pursuant to the preamble to the Rome Statute and Articles 1 and 17(1) (a) and (b) thereof.⁷

11. On 11 December 2014, Pre-Trial Chamber I rendered its Decision,⁸ rejecting the Admissibility challenge of Côte d'Ivoire and finding the case to be admissible

⁴ ICC-02/11-01/12-14-Conf-Exp-Anx 1.

⁵ ICC-02/11-01/12-31-Conf-Anx1,p.4 and ICC-02/11-01/12-36-Conf-Anx1V.

⁶ ICC-02/11-01/12-39-Conf-Anx1,p.5.

⁷ ICC-02/11-01/12-39.

before the Court and reminding Côte d'Ivoire of its obligations to surrender Simone Gbagbo.

12. On 17 December 2014, Côte d'Ivoire filed an Appeal pursuant to Article 82(1)(a) of the Statute of Rome against the aforesaid Decision⁹ and on 9 January 2015, it filed a Document in Support of its said Appeal.¹⁰

13. On 6 February 2015, the Defence filed a Response thereto, pursuant to Regulation 64(4) of the Regulations of the Court. Subject to certain expressed reservations,¹¹ the Defence fully supported the Appeal of Côte d'Ivoire and reiterated the right of a sovereign State, which has affirmed its willingness and ability to judge its citizens within its own jurisdiction and is in the process of carrying out investigations pertinent thereto, pursuant to Articles 1 and 17(1) (a) and (b) of the Rome Statute and also, paragraph 10 of the preamble, which the Defence submitted, compels the conclusion that the ICC is intended to supplement the domestic punishment of international violations, rather than supplant domestic enforcement.

14. On 27 May 2015, Judgment on Appeal was delivered. The Decision on Côte d'Ivoire's challenge to the admissibility of the case against Simone Gbagbo was confirmed.¹²

15. Procedurally, before this Court, there the matter has rested.

16. The trial of Laurent Gbagbo on charges mirroring those against Simone Gbagbo, is presently under way. Regrettably, no provision has been or is to be made for Lead Counsel to have access to the contemporaneous testimony of the

⁸ ICC-02/11-01/12-47-Red.

⁹ ICC-02/11-01/12-48.

¹⁰ ICC-02/11-01/12-54-Red.

¹¹ ICC-02/11-01/12-62 (OA), paras 6, 19, 58.

¹² ICC-02/11-01/12-75-Red.

Prosecution witnesses, whether by way of a 'watching brief' or otherwise, although Simone Gbagbo is repeatedly referenced therein.

III. PROCEDURAL HISTORY IN CÔTE D'IVOIRE

17. From the outset, it has been the submission on behalf of the Republic of Côte d'Ivoire that: A sovereign State, it had both the capacity and the will to judge Simone Gbagbo, within its own jurisdiction, pursuant to Article 17(1) of the Rome Statute.

18. To this end, the trial of Simone Gbagbo commenced before the *Cour d'Assises* d'Abidjan on 9 December 2014 for crimes '*contre l'Etat*'.

19. At all material times throughout those proceedings, Simone Gbagbo was represented by her principal Ivorian Lawyer, Rodrigue Dadje.

20. On 10 March 2015, Simone Gbagbo was convicted and sentenced to serve 20 years in prison, in Côte d'Ivoire. Mme. Gbagbo is presently serving that sentence.

21. Lead Counsel has been reliably informed that, further proceedings in Côte d'Ivoire, mirroring more closely the proceedings before this Court, are envisaged against Simone Gbagbo.

22. In a further re-affirmation of the intention of the State of Côte d'Ivoire, not to transfer Simone Gbagbo to the jurisdiction of this Court, now or at any time in the future, on 4 February 2016, at a meeting at the Elysee Palace with President Hollande, as widely reported in the National and International Media, the President

of Côte d'Ivoire Mr. Ouattara, publicly stated, "*I won't send any more Ivorians to the ICC*" (*sic*).¹³

IV. SUBMISSIONS

23. It is therefore submitted that, the proceedings before this honourable Court are becalmed.

24. Neither has there been any indication to Lead Counsel nor Simone Gbagbo, particularly since the Judgment on Appeal of 27 May 2015, but generally since 19 March 2012, of any likelihood that the Surrender Warrant of this Court (as referenced at paragraph 3 above), would be acted upon by the authorities in Côte d'Ivoire – now or at all.

V. APPLICATION

25. Therefore, ever mindful of the rights of Simone Gbagbo pursuant to Article 67 (1) (d) of the Rome Statute and given:

- (i) that the proceedings before this Honourable Court are becalmed;
- (ii) the public statement of intent by the President of Côte d'Ivoire, reported to have been made in the presence of the President of France that, '*no more Ivorians will be sent to the ICC*';
- (iii) that Simone Gbagbo is already serving a 20-year sentence in Abidjan, Côte d'Ivoire, in which Rodrigue Dadjé has acted as her principal Ivorian lawyer;

¹³ For example, Côte d'Ivoire /International Centre for Transitional Justice, ICTJ (Justice, Truth; Dignity) 5 February 2016, "Alassane Ouattara 'No more Ivorians will go to ICC'". BBC News -Africa, 05/02/2016, beneath a photograph of Presidents Ouattara and Hollande standing together, at a meeting at the Elysee Palace, President Ouattara "No more Ivorians will go to ICC"; AFP-World, 04/02/2016, "President Ouattara says 'won't send any more Ivorians to ICC'"; Mail Online, by AFP, published 20.31 GMT, 4 February 2016, "President Ouattara says 'won't send any more Ivorians to ICC'"; Business Standard AFP/Paris, February 5, 2016, "President Ouattara says 'won't send any more Ivorians to ICC'".

(iv) the possibility of further proceedings in Abidjan against Mme. Gbagbo;

(v) that Rodrigue Dadjé, as her longstanding principal Ivorian lawyer and also as Assistant in these proceeding, is already immersed in the many aspects of the cases against Mme. Gbagbo;

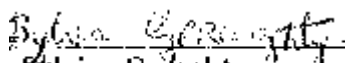
(vi) that, being ever mindful of judicial economy, Rodrigue Dadjé, residing in Abidjan, can have more immediate access to Mme. Gbagbo in detention in Abidjan, for the purpose of taking any instructions, should that become necessary into the future, Lead Counsel therefore submits, that it makes good sense and is in full accord that Rodrigue Dadjé now take over as new Lead Counsel to Mme. Gbagbo before this honourable Court.

26. The new "Mandat" of Simone Gbagbo is annexed hereto.

VI. PRAYER

27. For all of the foregoing reasons and pursuant to Regulation 78 of the Regulations of the Court, Lead Counsel hereby seeks the leave of the Chamber for permission to withdraw from the mandate first given to her by Mme. Gbagbo on 25 November 2013. Counsel respectfully submits that any withdrawal authorised by the Chamber should take effect from the date of appointment of the replacement counsel so as to ensure continuity of representation.

May it please the Court.


Sylvia Geraghty

Dated this 10th day of March 2016.

At Dublin, Ireland.