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TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Cuno Tarfusser
Judge Olga Herrera-Carbuccia

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF THE PROSECUTOR v. LAURENT GBAGBO

PUBLIC

Public Redacted Version of the Prosecution's submissions on the eighth detention review, 12 February 2015, ICC-02/11-01/11-766-Conf

With Annexes A and B - confidential

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Eric MacDonald

Counsel for the Defence

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

Legal Representatives of the Victims

Ms Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The circumstances that led to the detention of Mr Laurent Gbagbo (“Mr Gbagbo”) continue to be met. The Office of the Prosecutor (“Prosecution” or “OTP”) submits that there has not been any change since the last decision on the review of the detention of Mr Gbagbo (“Seventh Decision”).

Confidentiality

2. The Prosecution submits Annexes A and B as confidential since they contain information on current prosecutions in Côte d’Ivoire (“CIV”). This submission is also filed as confidential as its content includes references to information that should be treated as confidential. A public redacted version will be filed.

Submissions

3. On 11 November 2014, Trial Chamber I (“Chamber”) issued its Seventh Decision on the review of the detention of Mr Gbagbo.¹ The Chamber reviewed the circumstances of Mr Gbagbo’s detention, including whether there were changed circumstances with regard to the existence of a network of supporters and concluded that “in the absence of any further information on circumstances already established in relation to Mr Gbagbo’s network of supporters, the Chamber considers that the condition of article 58(l)(b)(i) of the Rome Statute (“Statute”) continue to be met.”²
4. The Chamber also arrived at the same conclusion in relation to the conditions underpinning article 58(1)(b)(ii) of the Statute: “in light of the Chamber’s findings above confirming the ongoing existence of a network of Mr Gbagbo’s supporters, the Chamber can discern no changed circumstances in relation to the conditions underpinning Article 58(l)(b)(ii) of the Statute, which continue to be met.”³

¹ ICC-02/11-01/11-718-Red.

² ICC-02/11-01/11-718-Red, para. 60.

³ ICC-02/11-01/11-718-Red, para. 65.

5. Furthermore, the Chamber stated that it was “not yet in a position to assess the possibility of conditional release” and postponed “the exploration of all possible options for conditional release until: (i) receipt of an Eighth Joint Report; and, following this, ii) the receipt of the submissions and observations of parties, participants, and any relevant State on any proposals for conditional release, which the Chamber will request once an Eighth Joint Report is filed.”⁴ The report was filed on 2 December 2014 but to date it has not been made available, including other relevant documents ⁵ to the Prosecution or the Legal Representatives of the victims.⁶

The Prosecution’s obligation at this stage

6. The Prosecution recalls that it has the obligation to “make submissions as to whether there has been any change in the circumstances that previously justified detention and [it] must bring to the attention of the Chamber any other relevant information of which [it] is aware that relates to the question of detention or release.”⁷

No change since the Seventh Decision

7. The Prosecution submits that there have been no changes since the Chamber’s Seventh Decision. On 17 November 2014, the Chamber set to 7 July 2015 the start of the trial⁸ and ordered the Prosecution to disclose all evidence in its possession, including its List of Evidence and the List of Witnesses it intends to call at trial.⁹ Contrary to the Defence’s assertion,¹⁰ the fact that the Prosecution’s investigations are nearly completed does not mean that the risk pursuant to article 58(l)(b)(ii) does not exist anymore. First, the Accused is now in possession of almost the totality of the evidence the Prosecution intends to rely on at trial and of the

⁴ ICC-02/11-01/11-718-Red, para. 75.

⁵ ICC-02/11-01/11-727-Red, p. 4.

⁶ See email response from the Chamber to the Parties and the Legal representatives on 4 December 2014 at 10:40am.

⁷ ICC-01/05-01/08-1019, para.51.

⁸ ICC-02/11-01/11-723, p. 4.

⁹ ICC-02/11-01/11-723, par. 10.

¹⁰ ICC-02/11-01/11-788-Red2, para. 67.

identity of its witnesses. Second, article 58(1)(b)(ii) makes it clear, the detention of an Accused is necessary not only to ensure that he does not obstruct the investigations but also “the court proceedings.”¹¹

8. The Defence, in part 1 of its submissions, purports to raise changed circumstances in favour of Mr Gbagbo’s provisional release. The Prosecution will now address these events (see *infra* paragraphs 9-19), pursuant to its duty to update the Chamber, but also to place these developments in their proper context. The Prosecution submits that they should have no bearing on the Chamber’s most recent assessment of the criteria for provisional release under article 58(1)(b)(i) and (ii).

Update on the conditional release of political prisoners and unfreezing of assets

9. On 21 January 2015, the CIV government announced the conditional release of 50 Ivorian officials who had served under former President Laurent Gbagbo and detained for active participation during the 2010-2011 post electoral crisis. Their conditional release (*liberté provisoire*) was instructed by the *Procureur de la République* Christophe Richard Adou.¹² In the official communiqué of the Ministry of Justice it was added that the bank accounts of 31 pro-Gbagbo politicians have been unfrozen. This follows the resumption of political dialogue, which was held up since May 2014, between the *Front Populaire Ivoirien* (“FPI”) and the Government.¹³ On the same day, the United Nations Special Representative of the Secretary-General for Côte d’Ivoire, Mrs Aïchatou Mindaoudou, welcomed the announcement by the CIV government. This action, according to the Special Representative, will contribute to strengthening mutual trust between Ivorian political actors and consolidate political dialogue. She also congratulated the Ivorian judiciary for all its efforts and encouraged them to continue to deal as quickly as possible with the cases of the postelectoral crisis detainees. She finally

¹¹ Article 58(1)(b)(ii), *in fine*.

¹² <http://news.abidjan.net/h/521093.html>.

¹³ <http://nouveaucourrier.net/cote-divoire-liberation-de-50-prisonniers-de-la-crise-postelectorale-et-degel-des-comptes-de-31-pro-gbagbo/>; <http://news.abidjan.net/h/521093.html>.

urged all Ivorian actors to persevere with the national reconciliation process to which the country is already committed.¹⁴

10. On 4 February 2015, the Government Spokesperson stated that the CIV Government will grant presidential pardon to detainees who do not pose a threat to security and sentence reductions to prisoners facing remaining jail time to as low as four years. This measure that is expected to affect about 3,000 persons is not applicable to postelectoral and military detainees.¹⁵

Update on lifting of sanctions

11. On 14 January 2015, the General Court of the European Union ("EU"), while rejecting a number of Mr Marcel Gossio's arguments (some for being essentially political arguments not within the Court's jurisdiction), annulled his 2014 designation because the Council of the EU had no evidence that Mr Gossio constituted a threat to stability and security in the Ivory Coast in 2014 (emphasis added).¹⁶
12. On 20 November 2014, the entry of Mr Alcide Djedje was deleted from the United Nations Security Council Sanctions list, after a delisting request submitted by Cote d'Ivoire.¹⁷ On 29 January 2015, the Minister for Dialogue, Jeannot Ahoussou Kouadio, stated that, based on a request from the CIV Government in the reconciliation framework, the United Nations had lifted all sanctions imposed in 2011 on Mr. Alcide Djédjé, a prominent FPI figure and former foreign minister in

¹⁴ <http://reliefweb.int/report/c-te-divoire/retranscription-du-point-de-presse-hebdomadaire-de-l-op-ration-des-nations-uni-3>.

¹⁵ <http://www.fratmat.info/politique/item/17896-gr%C3%A2ce-pr%C3%A9sidentielle-plus-de-3000-prisonniers-bient%C3%B4t-lib%C3%A9r%C3%A9s>.

¹⁶ <http://curia.europa.eu/juris/document/document.jsf?text=&docid=161375&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=93760>.

¹⁷ UN press release, 25 November 2014, <http://www.un.org/press/en/2014/sc11672.doc.htm>

the last Gbagbo government, in connection with his role in the post elections crisis.¹⁸

Update on the network of supporters

13. Mr GBAGBO's network of supporters has regularly been considered by Pre-Trial Chamber I.¹⁹ In its Seventh Decision, the Chamber found that there had been "no changed circumstances in this regard."²⁰

14. The Prosecution submits that the network of supporters still exists. In its last observations, the Prosecution provided documents to support this assertion.²¹ These documents, which have been obtained from the CIV government, [REDACTED], are part of the investigation file which led to the arrest of Mr Lida Kouassi, a former Defence minister and key ally of Mr Gbagbo.²²

15. On 7 January 2015, Mr Assoa Adou, the current Director of the national campaign ("DNC")²³ of Mr Gbagbo for the presidency of the FPI, was arrested and he is currently detained on a number of charges including *Attentat contre l'autorité de l'État*.²⁴ In confidential Annex A, the Prosecution provides [REDACTED].

16. The Prosecution recalls that both Messrs Kouassi and Adou are considered FPI hardliners and members of the party wing identified as *Gbagbo ou rien*, which is advocating for the release of Mr Gbagbo before any negotiations or reconciliation

¹⁸ <http://news.abidjan.net/h/523813.html>; <http://www.fratmat.info/politique/item/22403-ahoussou-jeannot-%E2%80%98%E2%80%98avant-les-%C3%A9lections-nous-ne-parlerons-plus-de-d%C3%A9tenu%E2%80%99%E2%80%99>.

¹⁹ See for instance decision ICC-02/11-01/11-180-Conf.

²⁰ ICC-02/11-01/11-718-Red, para. 62 *in fine*. See also para.3 above.

²¹ ICC-02/11-01/11-696-Conf-AnxB.

²² ICC-02/11-01/11-714-Anx1.

²³ <http://www.linfodrome.com/vie-politique/18482-devant-le-qg-de-gbagbo-ferme-assoa-adou-parle-a-la-presse-en-plein-air>.

²⁴ <http://www.linfodrome.com/vie-politique/18618-tentative-de-destabilisation-plusieurs-arrestations-dont-le-presume-financier-de-graves-revelations>; <http://www.linfodrome.com/vie-politique/18688-les-raisons-de-l-arrestation-d-assoa-adou>.

can take place.²⁵ They are also strong supporters of Mr Gbagbo's candidacy for the position of President of the FPI.²⁶

17. On 9 January 2015, a camp of the *Forces Républicaines de Côte d'Ivoire* ("FRCI") in Grabo was attacked by an armed group.²⁷ In confidential Annex B, the Prosecution provides [REDACTED].

The FPI and its current activities

18. In its last submission, the Prosecution noted the "political infighting within the FPI between the "hardliners" and those who favour engagement in the political and reconciliation process."²⁸ In the last months, the FPI political infighting has been exacerbated by the candidacy of Mr Gbagbo for the position of President of the FPI.²⁹
19. On 26 November 2014, the candidacy of Mr Gbagbo was confirmed by the *comité de contrôle* of the FPI,³⁰ a committee led by Mr Hubert Oulaye, another former minister of Mr Gbagbo and hardliner.³¹ On 29 December 2015, at the request of Mr Affi N'Guessan, the current opponent of Mr Gbagbo, a national court invalidated the candidacy of Mr Gbagbo.³² To date, the internal turmoil between the hardliners and the group supporting Mr Affi N'Guessan continues.³³

²⁵ <http://fr.allafrica.com/stories/201501262533.html>.

²⁶ <http://www.linfodrome.com/vie-politique/18482-devant-le-qg-de-gbagbo-ferme-assoa-adou-parle-a-la-presse-en-plein-air>; <http://fr.allafrica.com/stories/201501262533.html>.

²⁷ <https://interviewscotedivoire.wordpress.com/2015/01/10/cote-divoire-attaque-armee-de-la-gendarmerie-de-grabo-dans-le-sud-ouest/>; <http://www.linfodrome.com/vie-politique/18731-cote-d-ivoire-grabo-et-dahioke-attaques-3-morts-11-interpelles>.

²⁸ ICC-02/11-01/11-696-Red, para.10.

²⁹ <http://fr.allafrica.com/stories/201501262533.html>. <http://www.linfodrome.com/vie-politique/19025-crise-au-fpi-les-dernieres-confidences-de-gbagbo-sur-affi>.

³⁰ <http://www.jeuneafrique.com/Article/ARTJAWEB20141126165406/laurent-gbagbo-front-populaire-ivoirien-fpi-vie-des-partis-vie-des-partis-cote-d-ivoire-le-fpi-valide-la-candidature-de-laurent-gbagbo-a-la-presidence-du-parti.html>.

³¹ <http://www.linfodrome.com/vie-politique/18971-fonctionnement-du-fpi-crise-au-sein-du-parti-de-gbagbo-hubert-oulaye-fait-de-graves-revelations>.

³² <http://www.connectionivoirienne.net/106062/cote-divoire-alerte-fpi-la-justice-en-soutien-affi-interdit-la-candidature-gbagbo>.

³³ <http://koaci.com/cote-divoire-crise-limpossible-entente-entre-affi-nguessan-hubert-oulaye-98253.html>; <http://koaci.com/cote-divoire-international-socialiste-arrive-pour-regler-crise-odette-lorougnon-revele-griefs-contre-affi-98351.html>.

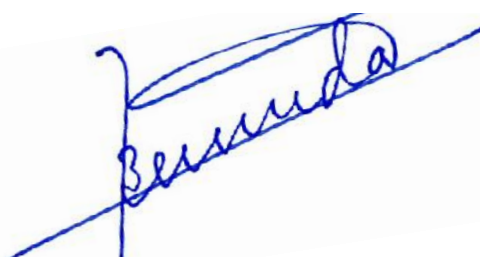
20. The Prosecution submits that the activities of the FPI are relevant to the issue of the extent of Mr Gbagbo's network of supporters. The Prosecution also notes that despite the fact that Mr Gbagbo is facing serious charges committed in the aftermath of the last CIV presidential election and that he is currently in preventive detention, he still has great influence on political developments in CIV politics and is trying to remain relevant for the upcoming presidential elections.

Other Defence arguments

21. In relation to the matters raised in part 2 of the Defence's submissions, the Prosecution submits that these matters have already been raised,³⁴ and duly rejected by the Chamber in its Seventh Decision.

Conclusion

22. The Prosecution submits that the grounds pursuant to article 58(1)(b)(i) and (ii) of the Statute continue to be met and the continued detention is necessary.



Fatou Bensouda, Prosecutor

Dated this 16th day of February 2015

At The Hague, The Netherlands

³⁴ ICC-02/11-01/11-758-Red2, paras. 46 to 74.