



Original: English

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

Date: 12 March 2015

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 Prosecution's Response to Defence's « *Requête urgente, fondée sur des circonstances humanitaires exceptionnelles, déposée afin que le Président Gbagbo soit autorisé à se recueillir devant la dépouille de sa mère et à assister à son enterrement* », 24 October 2014, ICC-02/11-01/11-703-Conf

Source: Office of the Prosecutor

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

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Introduction

1. The Office of the Prosecutor (“Prosecution” or “OTP”) opposes Laurent Gbagbo’s (“Mr Gbagbo”) request to travel to Côte d’Ivoire (“CIV”) to attend his mother’s funeral based on a combination of legal, security and logistical reasons. In the alternative, should Trial Chamber I (“Chamber”) consider the request, very strict conditions should be ordered pursuant to security and logistical imperatives.

Confidentiality

2. The Prosecution submits its Response as confidential since it responds to an application of the Defence currently classified as confidential. The Prosecution will submit a public redacted version as soon as practicable.

Procedural History

3. On 21 October 2014, the Defence submitted its « *Requête urgente, fondée sur des circonstances humanitaires exceptionnelles, déposée afin que le Président Gbagbo soit autorisé à se recueillir devant la dépouille de sa mère et à assister à son enterrement* » (“Defence Request”).¹
4. On 22 October 2014, a public redacted version of the Defence Request was notified², but was later reclassified as confidential pursuant to the Chamber’s instructions.³
5. On 22 October 2014, the Chamber ordered the Prosecution and Legal Representatives to file their response by 24 October 2014 and the Registry to file their observations by that same date.⁴

¹ ICC-02/11-01/11-697-Conf.

² ICC-02/11-01/11-697-Red.

³ ICC-02/11-01/11-697-Red-Conf.

⁴ ICC-02/11-01/11-698-Conf.

Submissions

6. The Chamber should decline to exercise its discretion to release Mr Gbagbo to attend the funeral of his mother in CIV based on security and logistical reasons, and accordingly should reject the Defence Request.
7. As the Defence Request acknowledges,⁵ neither the Rome Statute ("Statute"), the Rules of Procedure and Evidence, nor the Regulations of the Court contain provisions concerning modification of the conditions of detention of the type sought by the Defence.
8. The Defence Request argues that the death of Mr Gbagbo's mother is an exceptional circumstance that justifies the Chamber exercising its inherent powers under Article 64 of the Statute to grant the request. The Defence relies on two decisions granting Mr Jean-Pierre Bemba Gombo permission to travel to Belgium to attend the funerals of his father and stepmother.⁶ However, these precedents are inapposite.
9. A number of factors distinguish the present request from the circumstances of Mr Bemba's previous requests, rendering the latter precedents inapplicable.⁷ These factors, *inter alia*, are as follows:
 - i. Country where the crimes are alleged to have occurred: Mr Gbagbo is requesting to travel to CIV, the very country where the crimes he is alleged to have committed occurred. As such, the security concerns raised by his potential visit to CIV, addressed below, are of an entirely different nature than those pertaining to Mr Bemba's case. Mr Bemba did not ask to travel to the Central African Republic ("CAR") where the alleged crimes were committed, nor even to his native country, the Democratic Republic of the

⁵ ICC-02/11-01/11-697-Conf, para.5.

⁶ ICC-01/05-01/08-437-Red and ICC-01/05-01/08-1099-Red.

⁷ *Ibid.*

Congo, which is adjacent to the CAR. Rather, he asked to travel to the greater Brussels area, a distance of less than 200km.

- ii. Scale of the event: While the funerals Mr Bemba attended in Belgium were of the order of just over a hundred of people, the funeral of Mr Gbagbo's mother could draw thousands of people.
- iii. Duration: Mr Gbagbo is requesting a stay of three or four days in CIV.⁸ Combined with the requisite travel time, this far exceeds the same-day visits to Belgium granted to Mr Bemba.
- iv. Travel: The Defence Request would necessitate Mr Gbagbo travelling by air to CIV, whereas Mr Bemba's authorisation allowed him to travel by land only.
- v. Cost: The Defence Request, if granted, would require the Court and the various national authorities and international organisations involved to incur significant costs, especially in light of the necessary air travel and security. Whereas Mr Bemba had to pay for all costs incurred by his travel requests, the Prosecution recalls that Mr Gbagbo is considered to be indigent.⁹

10. The ICTY jurisprudence relied on in the Defence Request provides little assistance to the present case since the factors relied upon by the ICTY Chambers in deciding upon applications for provisional release on humanitarian grounds are inapplicable in this case.¹⁰ The ICTY decisions all involved travel within one continent, and for shorter durations of time than that requested in the Defence Request. Further, the relevant national authorities had either provided guarantees or were under an obligation to comply with any order of the Trial Chamber as transmitted by the Registry. Finally, the security risk presented by the Defence

⁸ ICC-02/11-01/11-697-Conf, para.34.

⁹ ICC-02/11-01/11-22.

¹⁰ ICC-02/11-01/11-697-Conf, para.9.

Request far exceeds that in the ICTY cases given that the countries where travel was envisaged were not as polarised and fragile as CIV currently is, nor were many of the detainees of such a high profile as a former head of state as is the case with Mr Gbagbo.

Security Concerns

11. The Defence Request should also be rejected as it very likely presents serious national security concerns for CIV as well as for Mr Gbagbo's personal security. In this regard, the views and submissions of the CIV authorities should be sought and accommodated since the Defence Request may well impact on their national security.
12. On 2 June 2014, Pre-Trial Chamber I, by majority, confirmed all charges against Mr Gbagbo. As such, the grounds justifying detention under Article 58(l)(b)(i) and (ii) of the Statute continue to exist, and interim release should not be granted. As noted in the last decision on detention: "[...] the confirmation of charges against Mr Gbagbo has, if anything, increased the risk of absconding."¹¹ This factor resonates even more, now that the Defence's request to appeal the confirmation decision has been denied thus rendering the confirmation of charges final.¹²
13. The presence of Mr Gbagbo in CIV presents significant security risks. The post-election violence of 2010-2011 is still recent and the security situation remains fragile. CIV is still very much a polarised society. Almost half of the population presently recognises Mr Gbagbo as the true winner of the 2010 Presidential election. This large segment of the population also sees his transfer and trial by the International Criminal Court ("ICC") as an injustice. The *Front Populaire Ivoirien* ("FPI") - Mr Gbagbo's former political party - has been advocating that

¹¹ ICC-02/11-01/11-668, para.41.

¹² ICC-02/11-01/11-680.

reconciliation can only be achieved if Mr Gbagbo is released from the ICC detention centre and returns to CIV.

14. Since Mr Gbagbo enjoys a great deal of support in CIV, his mere presence and known whereabouts would likely increase the risk of public mass gatherings, turmoil and violence. Even if the Court were to impose strict conditions on Mr Gbagbo during any period of release, it would have no control over the pro-Gbagbo groups and supporters that may wish, by the thousands, to show their support to Mr Gbagbo while he is in CIV.
15. In addition, Mr Gbagbo's network of supporters has regularly been considered by Pre-Trial Chamber I in its detention reviews.¹³ In its recent submission on the detention of Mr Gbagbo, the Prosecution provided further evidence of the network of supporters of Mr Gbagbo [REDACTED].¹⁴ Witness [REDACTED] described and confirmed that since April 2011, former close associates of Mr Gbagbo have been attempting to destabilise CIV and overthrow its government and how these activities are ongoing. More specifically, these activities include: [REDACTED].
16. Witness [REDACTED] also provided evidence about the identity of the individuals who were involved or continue to be involved in these insurrectional activities.¹⁵ These include but are not limited to members of Mr Gbagbo's inner circle at the time of the post-election crisis, such as former cabinet members, FPI party members and youth group leaders or former members of CIV's Defence and Security Forces ("FDS").¹⁶
17. Furthermore, the FPI has not cut its ties with Mr Gbagbo.¹⁷ This is illustrated by recent media reports indicating that FPI vice-president Aboudramane Sangaré

¹³ See e.g., ICC-02/11-01/11-180-Conf.

¹⁴ ICC-02/11-01/11-696-Conf, para.6 and following.

¹⁵ See for instance CIV-OTP-0057-0754, at pages 0760 to 0763 and CIV-OTP-0060-0028, at page 0030.

¹⁶ ICC-02/11-01/11-661, para.10.

¹⁷ ICC-02/11-01/11-661, para.10.

would have been appointed to organise the funeral of Mr Gbagbo's mother.¹⁸ Mr Sangaré is considered a hardliner of the FPI.¹⁹ He is also currently charged with 82 others, including Simone Gbagbo and other former members of the inner circle of Mr Gbagbo of "*atteinte à la sûreté de l'État*" for events that took place during the post-election crisis.²⁰

18. In order to guarantee Mr Gbagbo's return to the seat of the Court and his personal security, the CIV authorities would have to provide significant military personnel to protect Mr Gbagbo. His movement by land, between the various places he requests to visit would further increase the risk to his personal safety. In light of the above, all land travel should be avoided. Consequently, air travel, possibly *via* helicopter, would have to be envisaged. To the Prosecution's knowledge, only the United Nations Operation in the CIV ("UNOCI") would have helicopters available to support such travel. Consequently, the UNOCI's consent and logistical support would have to be obtained. The security related questions raised in the Defence Request and addressed to CIV demonstrate Mr Gbagbo's very acknowledgment of the dangers he might face.²¹

19. [REDACTED].²² [REDACTED],²³ [REDACTED].

Logistical Considerations

20. A number of important logistical considerations would also need to be taken into account in evaluating the Defence Request.

¹⁸ <http://abidjantv.net/2014/10/22/lenterrement-de-la-mere-de-gbagbo-coinces-les-raisons/>; <http://koaci.com/cote-divoire-lieu-denterrement-mere-gbagbo-famille-yeux-rives-haye-95753.html>.

¹⁹ <http://www.linfodrome.com/vie-politique/13453-transferelement-de-gbagbo-a-la-cpi-aboudramane-sangare-a-ouattara-rira-bien-qui-rira-le-dernier>; <http://philippehua.com/2014/08/18/cote-divoire-fpiaboudramane-sangare-parle-enfin-quon-redonne-le-fpi-a-gbagbo-vers-un-retrait-du-fpi-de-la-cei-ago-marthe-nommee-sn-chargee-de-la-liberation-de-gbagbo/>.

²⁰ <http://www.jeuneafrique.com/Article/ARTJAWEB20141015184449/>; <http://www.jeuneafrique.com/actu/20141022T191755Z20141022T191731Z/>.

²¹ Defence Request, para.43.

²² Defence Request, paras.34 and 42.

²³ ICC-02/11-01/11-286-Red; ICC-02/11-01/11-528-Conf; ICC-02/11-01/11-T-22-CONF-ENG, p.11, l.18-p.13, l.15 and ICC-02/11-01/11-558, paras.24, 57-62.

21. First, there are currently no commercial flights that fly directly between the Netherlands and CIV. Given the already significant security risks and complications presented by a stopover in a third country, a private flight would be the only viable option for this journey. This, combined with other logistical arrangements, would likely lead to any release of Mr Gbagbo proving to be a very expensive endeavour. Given Mr Gbagbo's inability to incur the costs, the cooperation of States Parties may even be necessary.
22. Second, Mr Gbagbo is still the subject of travel restrictions by both the UN Security Council²⁴ and the Council of the European Union.²⁵ These restrictions would have to be temporarily lifted.²⁶
23. Finally, Mr Gbagbo's CIV passport will expire on 11 November 2014, raising further logistical challenges to his release and travel.

²⁴ Pursuant to UNSC, Resolution 1572 (2004), paragraphs 9 and 11, 15 November 2004, CIV-OTP-0007-0151, and UNSC Resolution 1643 (2005) paragraph 5, and UNSC, Resolution 2153 (2014) for an extension of the travel ban until 30 April 2015, 29 April 2014, [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2153%20\(2014\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2153%20(2014)); see also Security Council Committee established pursuant to resolution 1572 (2004) concerning Côte d'Ivoire, CIV-OTP-0007-0161; see also <http://www.un.org/sc/committees/1572/>.

²⁵ Pursuant to EU COUNCIL DECISION 2010/801/CFSP (22 December 2010) amending Article 4 of the EU COUNCIL, DECISION 2010/656/CFSP that renewed the restrictive measures against Côte d'Ivoire adopted under EU COUNCIL COMMON POSITION 2004/852/CFSP (13 December 2004), 29 October 2010, CIV-OTP-0002-013.

²⁶ ICC-02/11-01/11-12-Conf-Exp-Anx2.

Conditions

24. If, *arguendo*, the Chamber were inclined to grant the Defence Request, *very* strict conditions should be ordered to ensure that the Accused: a) appears at trial; b) does not interfere with the witnesses and victims or the proceedings and that c) the overall integrity of legal proceedings is preserved.

25. At a minimum, the Chamber would have to set the following conditions:

- i. Mr Gbagbo's funeral attendance would constitute a transfer from the detention centre to CIV and should not be considered the equivalent of an interim release.
- ii. Mr Gbagbo's presence on CIV's territory should be limited to a maximum of 48 hours, in order to minimise all security risks and concerns.
- iii. Mr Gbagbo's presence and internal travel plans and whereabouts should remain confidential as far as practicable. Mr Gbagbo and all members of his Defence team should be ordered not to contact the public or speak to the press to reveal any information relating to Mr Gbagbo's presence on Ivorian territory, prior to and during the entirety of his stay in CIV.
- iv. Mr Gbagbo should be housed in an undisclosed location with high security, including UN support if need be.
- v. Mr Gbagbo's travel within the CIV should be limited and restricted to air travel, and with the support of the UN, as appropriate.
- vi. Mr Gbagbo's travel must be limited to what is strictly necessary for the purposes of the funeral.
- vii. Mr Gbagbo should not have any contact with any persons other than his relatives, and persons necessary to his mother's funeral services.

- viii. Mr Gbagbo should not have any contact or in any way interfere with any witnesses or otherwise interfere in any way with the ongoing investigations, pre-trial proceedings or the administration of justice.
- ix. Mr Gbagbo's communications should be restricted and limited as per the ICC's detention unit rules and regulations. He should not be allowed to discuss the case against him with anyone except current members of his ICC Defence team.
- x. Mr Gbagbo should comply strictly with any order of the Chamber.

Conclusion

26. The Prosecution submits that the Defence Request should be rejected. Alternatively, if the Chamber were nevertheless to grant the Defence Request, very strict conditions should be ordered, taking into consideration the suggestions of CIV and any other relevant authorities.



Fatou Bensouda, Prosecutor

Dated this 12th day of March 2015

At The Hague, The Netherlands