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Date: **27 June 2014**

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. LAURENT GBAGBO

PUBLIC
With public Annex A

Prosecution's submissions on the detention review

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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Other

1. The circumstances that led to the detention of Laurent GBAGBO (“GBAGBO”) continue to be met. The Prosecution submits that confirmation of the charges against GBAGBO is the only significant change since the last decision of the Chamber on the review of his detention (“Fifth Decision”).¹

Submissions

2. On 12 March 2014, the Chamber issued its Fifth Decision on the review of the detention of GBAGBO.² The Chamber reviewed the circumstances of his detention and concluded that there had been “no change in the relevant circumstances concerning the apparent necessity of Mr Gbagbo's detention to ensure his appearance before the Court, and to ensure that he does not obstruct or endanger the investigation or the court proceedings. The grounds justifying detention under Article 58(l)(b)(i) and (ii) of the Statute continue to exist, and interim release cannot be granted.”³
3. 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.”⁴

The charges have been confirmed

4. The Prosecution submits that the only significant change since the Chamber’s Fifth Decision is the confirmation of the charges. On 12 June 2014, the Chamber, by majority, confirmed all charges against 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 the Chamber has now

¹ ICC-02/11-01/11-633.

² *Ibid.*

³ *Ibid.*, para. 34.

⁴ ICC-01/05-01/08-1019, para. 51.

confirmed that there is sufficient evidence to establish substantial grounds to believe that GBAGBO committed the crimes charged and decided the case should proceed to trial. In its confirmation decision, the Chamber also provided a detailed analysis of its reasoning including the evidence on which it relied to confirm the charges.⁵ Consequently, now that the charges against the Accused have been confirmed, there exists an even firmer evidential basis for arguing that these same considerations pursuant to Article 58(l)(b)(i) and (ii) necessitate his continued detention.

5. The Prosecution also notes that GBAGBO co-authored a book – *Pour la vérité et la justice* – released yesterday, 26 June 2014.⁶ Without having yet had an opportunity to read and evaluate its contents, the Prosecution notes that media reports and the release of a few excerpts⁷ are contributing to increase existing tensions in an Ivorian society already quite polarised about the GBAGBO case.⁸ The Prosecution is concerned that even from the ICC detention centre, GBAGBO may be arguing his case in the public arena, which could in turn have the collateral effect of influencing both current and potential witnesses.⁹ Consequently, the publication of this book could be a relevant factor for the Chamber to consider pursuant to Article 58(l)(b)(ii).

⁵ ICC-02/11-01/11-656-Conf.

⁶ http://www.amazon.fr/Pour-v%C3%A9rit%C3%A9-justice-Laurent-Gbagbo/dp/2354171757/ref=sr_1_1?s=books&ie=UTF8&qid=1403768586&sr=1-1&keywords=pour+la+v%C3%A9rit%C3%A9+et+la+justice;
http://www.lepoint.fr/afrique/actualites/quand-gbagbo-balance-22-06-2014-1838607_2031.php#xtor=CS1-31.

⁷ <http://www.politicomag.com/article.php?item=3871&cat=0&t=exclusif.-gbagbo--->; <http://www.politicomag.com/article.php?item=3850&cat=0&exclusif.-gbagbovillepin-et-bourgi-m-ont-demande-de-financer-chirac-en-2002->.

⁸ http://www.francetvinfo.fr/monde/afrique/laurent-gbagbo-regle-ses-comptes-avec-sarkozy-et-hollande_629807.html; <http://www.tv5.org/cms/chaine-francophone/info/Les-dossiers-de-la-redaction/Cote-d-ivoire-2014/p-28618-Cote-d-Ivoire-la-riposte-de-Gbagbo.htm>. See also <http://www.linfodrome.com/vie-politique/16174-me-boble-felix-collectif-des-avocats-des-pro-gbagbo-laurent-gbagbo-a-le-pied-sur-quelque-chose>; <http://www.connectionivoirienne.net/100548/cote-divoire-proces-gbagbo-cpi-altit-va-appeler-sarkozy-soro-ouattara-barre>.

⁹ The Prosecution takes this opportunity to recall the Lubanga decision ICC-01/04-01/06-2433, para. 39 regarding the role of the parties in making public statements.

The current security situation

6. Since the last detention review, the security situation in Abidjan and in Côte d'Ivoire continues to remain stable.¹⁰ On 25 June 2014, the United Nations Security Council unanimously adopted Resolution 2162, extending the mandate of the United Nations Operation in Côte d'Ivoire ("UNOCI") until 30 June 2015.¹¹ Noting the improved security situation in Côte d'Ivoire, Resolution 2162 reduces UNOCI's military and police component and provides for a narrowing of its mandate across its military, police and civilian components.¹² The Security Council nonetheless noted the continued difficulties in dialogue between the government and the political opposition as well as certain remaining security issues in parts of the country.¹³ These, combined with the security threats posed by the upcoming October 2015 presidential elections led to the Security Council's establishment of a quick-reaction force and its authorisation of the continued deployment of French troops supporting UNOCI for an additional year.¹⁴
7. The Prosecution submits that the improving security situation in Côte d'Ivoire and the accompanying reduced UNOCI mandate and presence are important and would be a relevant circumstance with respect to Article 58(l)(b)(iii) but recalls the Chamber's previous finding that "[...] at the present time, the Chamber notes that the information available shows the continuing improvement of the security situation in Côte d'Ivoire. However, as also indicated in the Decision of 11 November 2013, the Chamber does not consider this as constituting a change in the relevant circumstances underpinning the need for the continued detention of Mr Gbagbo so as to ensure his appearance at trial and ensure that he does not obstruct or endanger the investigation or the court proceedings".¹⁵ The Prosecution submits that as with the Fifth Decision, the continued security improvements in Côte d'Ivoire do not constitute a significant change in the

¹⁰ <http://reliefweb.int/sites/reliefweb.int/files/resources/N1431815.pdf>.

¹¹ UN Security Council Resolution 2162.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ ICC-02/11-01/11-633, para. 22.

circumstances relevant to GBAGBO's detention status pursuant to Article 58(l)(b)(i) and (ii).

The release of former pro-Gbagbo detainees

8. The Prosecution can further confirm that the authorities of Côte d'Ivoire have provisionally released an additional number of former pro-Gbagbo detainees and former associates and supporters of the former GBAGBO government.¹⁶

The FPI and its comments on the confirmation of the charges

9. The current president of the *Front Populaire Ivoirien* ("FPI"), continues to advocate for the release and return of GBAGBO before any reconciliation can take place, "*la libération du Président Gbagbo est le moteur de la réconciliation nationale. Mobilisons-nous et agissons pour la réussir*".¹⁷ He also announced the creation of a National Secretariat that will be specifically responsible for the coordination of activities aimed at obtaining the release of GBAGBO.¹⁸
10. The FPI clearly has not cut its ties with GBAGBO and as stated by the Chamber in its Fifth Decision, there exists a genuine possibility that its members may provide the means and assistance "that could then be used by him [GBAGBO] to abscond or to interfere with the investigation, if granted interim release".¹⁹
11. The Prosecution also notes reports indicating that GBAGBO is in a position to provide instructions to his visitors at the ICC detention centre (see Annex A).²⁰

¹⁶ <http://www.fratmat.info/une/item/16025-libert%e9-provisoire-la-liste-compl%e8te-des-50-inculp%e9s-lib%e9r%e9s-le-samedi-31-mai-2014>.

¹⁷ <http://fr.starafrica.com/actualites/la-liberation-de-laurent-gbagbo-est-le-moteur-de-la-reconciliation-nationale-selon-affi-nguessan.html>; http://www.rfi.fr/afrique/20140625-cote-ivoire-fpi-reagit-charges-contre-gbagbo/#./?&_suid=140376843923806842364874170672.

¹⁸ <http://www.linfodrome.com/vie-politique/16252-affi-n-guessan-gbagbo-est-en-danger-de-mort>.

¹⁹ ICC-02/11-01/11-633, para. 26.

²⁰ The co-author of the book *Pour la vérité et la justice* describes how in the spring of 2012 he was able to meet with GBAGBO between 12 to 15 times, <https://www.youtube.com/watch?v=kw9Ek8pb42I>.

Conclusion

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



Fatou Bensouda, Prosecutor

Dated this 27th day of June 2014

At The Hague, The Netherlands