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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. LAURENT GBAGBO

PUBLIC

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 Prosecution submits that the circumstances that led to the detention of Laurent GBAGBO (“GBAGBO”) have not changed since the last decision of the Chamber on the review of his detention (“Fourth Decision”).¹

Submissions

2. On 11 November 2013, the Chamber issued its Fourth Decision on the review of the detention of GBAGBO.² The Chamber reviewed the circumstances of the detention of GBAGBO and concluded that the improved security situation in Côte d’Ivoire constituted a new fact that impacted on the Chamber’s assessment under Article 58(1)(b)(iii).³ Consequently, the continued detention of GBAGBO under this provision was not deemed to be necessary anymore.⁴ However, the Chamber ruled that this change in circumstances had no bearing on its previous findings as to the continued detention of GBAGBO pursuant to Article 58(1)(b)(i) and (ii).⁵ GBAGBO therefore continues to be detained pursuant to the first two grounds of Article 58(1)(b).
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.”⁶
4. Since the last detention review, the security situation in Côte d’Ivoire, while fragile, continues to be good; a number of former pro-Gbagbo detainees have been provisionally released from detention and former associates and supporters of the former GBAGBO government, including military members, have returned

¹ ICC-02/11-01/11-558.

² *Ibid.*

³ ICC-02/11-01/11-558, paras. 47-49.

⁴ *Ibid.*, para. 51.

⁵ *Ibid.*, para. 52.

⁶ ICC-01/05-01/08-1019, para. 51.

from exile. However, the information available to the Prosecution in relation to the grounds that have justified the detention of GBAGBO according to the Fourth Decision suggests that these grounds of detention continue to be met. In particular, since the Fourth Decision, assets in the amount of 21 million Swiss francs of former GBAGBO associates have been unfrozen. Moreover, the *Front Populaire Ivoirien* ("FPI"), the party of GBAGBO, including members living in exile, continues to advocate for his release and return to Côte d'Ivoire as a pre-condition to the reconciliation of the country.

The current security situation

5. During the last detention review hearing held on 9 October 2013, the Prosecution had noted the improved security situation in Côte d'Ivoire.⁷ The current security situation continues to be good.⁸ However, the situation remains fragile particularly along the porous border area between Liberia and Côte d'Ivoire as demonstrated by events as recently as 23 February 2014, when at least four people, including one Ivorian soldier, were killed after armed elements entered from Liberia and attacked the town of Grabo.⁹
6. The Prosecution is not aware of any information to suggest that improvements to the general security environment are due to a diminished capacity by the pro-Gbagbo network to fund such attacks, or the absence of intent to do so. According to the Panel of Experts on Liberia, likely contributing deterrent factors include (i) campaigns by the Ivorian government to resettle Ivorian combatants and to offer payments to Liberian so-called "generals" to discourage cross-border attacks; and (ii) reinforced border security. Other possible factors include possible theft of the money provided by the pro-Gbagbo networks to the combatants, and/or a failure

⁷ ICC-02/11-01/11-T-22-CONF-ENG ET, p. 10, line 9 and onwards.

⁸ http://reliefweb.int/sites/reliefweb.int/files/resources/A-HRC-25-73_en.pdf, para. 24.

⁹ See *Au moins quatre morts dans une attaque contre les forces de sécurité* (AFP) 23 février 2014, at <http://news.abidjan.net/h/488904.html>.

to further the strategic objectives of the group to de-stabilise the current Ivorian government.¹⁰

The release of former pro-Gbagbo detainees

7. The authorities of Côte d'Ivoire, as noted at the last hearing,¹¹ continued to release pro-Gbagbo detainees.¹² In an attempt to increase reconciliation efforts, President OUATTARA had instructed the Minister of Justice to grant freedom to some of the detainees in relation to the post-election violence.¹³ The provisional release of these detainees may raise questions as to the independence of the judiciary,¹⁴ since, as noted by the Independent Expert on the situation of human rights in Côte d'Ivoire, "the prosecution of perpetrators of serious human rights violations committed by any party" should be non-negotiable.¹⁵ The Prosecution recalls that the Chamber in its Fourth Decision stated that "the release of the political associates of Mr Gbagbo in Côte d'Ivoire, which according to the available information is a reconciliatory move by the Ivorian Government, supports the more general conclusion that the security situation in Côte d'Ivoire has improved and continues to improve".¹⁶

The return from exile of former pro-Gbagbo associates and supporters

8. For the last few months, the Côte d'Ivoire authorities have attempted to normalise their relationship with the FPI by not only releasing from detention a number of its members, including its current president, but also by encouraging

¹⁰ http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/683 , paras. 29-34.

¹¹ ICC-02/11-01/11-T-22-CONF-ENG ET, p. 19, line 4 and onwards.

¹² http://www.rfi.fr/afrique/20140202-cote-ivoire-70-detenus-pro-gbagbo-liberte-provisoire-abidjan/#/?&_suid=139334358371307447493759264903.

¹³ See for example AFP, 1 January 2014, Côte d'Ivoire: Ouattara évoque une mise en liberté provisoire pour des pro-Gbagbo. IRIN News, 'Politics undermining Cote d'Ivoire trials, activists say', at <http://www.irinnews.org/report/99549/politics-undermining-c%C3%B4te-d-ivoire-trials-activists-say>, and http://www.rfi.fr/afrique/20140202-cote-ivoire-70-detenus-pro-gbagbo-liberte-provisoire-abidjan/#/?&_suid=139334358371307447493759264903.

¹⁴ http://www.rfi.fr/afrique/20140202-cote-ivoire-70-detenus-pro-gbagbo-liberte-provisoire-abidjan/#/?&_suid=139334358371307447493759264903.

¹⁵ http://reliefweb.int/sites/reliefweb.int/files/resources/A-HRC-25-73_en.pdf, para. 13.

¹⁶ ICC-02/11-01/11-558, para. 48.

former pro-Gbagbo members living in exile to return to Côte d'Ivoire.¹⁷ In the spirit of reconciliation, these former pro-Gbagbo ministers, associates or supporters, including hundreds of former military members, are returning without fear of being prosecuted.¹⁸ The Prosecution submits that the same reasoning of the Chamber on the impact of the release of former associates of GBAGBO should apply here. It simply "supports the more general conclusion that the security situation in Côte d'Ivoire has improved and continues to improve".¹⁹

9. The Prosecution notes that while former pro-Gbagbo supporters may be returning in large numbers and may be being re-integrated in their former position (such as the army), it is still too early to determine the impact this may have on the stability and security situation of the country.
10. The Prosecution also submits that while former ministers and associates of GBAGBO, including financial contributors for the purchase of weapons,²⁰ are back in Côte d'Ivoire, most of the hardliners continue to live in exile²¹ and remain very critical of any reconciliation efforts that would not include the release and return of GBAGBO to Côte d'Ivoire.²²

The release of 21 million Swiss francs to former GBAGBO associates

11. In January 2011, the Swiss authorities had requested that Swiss banks freeze the assets, if any, of GBAGBO and a number of his former associates, ministers and Ivorian institutions.²³ In mid-January 2014, 21 million Swiss francs were unfrozen

¹⁷ http://www.jeuneafrique.com/Articleimp_ARTJAWEB20140126220719_cote-d-ivoire-y.

¹⁸ <http://news.abidjan.net/h/488362.html>; see also http://www.rfi.fr/afrique/20140202-cote-ivoire-70-detenus-pro-gbagbo-liberte-provisoire-abidjan/#/?&_suid=139334358371307447493759264903.

¹⁹ ICC-02/11-01/11-558, para. 48.

²⁰ <http://www.rfi.fr/afrique/20140117-exclusivite-rfi-rencontre-marcel-gossio-pilier-ancien-regime-retour-cote-ivoire>.

²¹ <http://www.jeuneafrique.com/Article/ARTJAWEB20140126220719>.

²² <http://www.jeuneafrique.com/Article/ARTJAWEB20140219114333>.

²³ <http://www.admin.ch/opc/fr/classified-compilation/20110125/201101190000/946.231.128.9.pdf>.

and would have been given back to former associates of GBAGBO, including two former members of his cabinet, according to reports.²⁴

12. Since the initial order of January 2011, over 70 million Swiss francs would have been unfrozen and given back to former associates and cabinet members of GBAGBO.²⁵ Consequently, the network of GBAGBO supporters continues to have access to large amounts of money.

The FPI and its pre-condition for reconciliation

13. The FPI's 8th extraordinary convention was held on 21 and 22 February 2014. It has been noted recently that some members of the party, including its current president, had seemed to soften their position in relation to reconciliation and the OUATTARA government.²⁶ This line of thinking does not seem to be advancing, as the FPI continues to advocate for the release and return of GBAGBO to Côte d'Ivoire before any reconciliation can take place.²⁷

14. A vice-president of the party stated that « *On ne peut parler de participation du FPI aux élections sans libération de son chef (Laurent Gbagbo)* » and adding further « *C'est par la réconciliation qu'on ira aux élections et non le contraire (...) Il faut y aller (aux élections) en chantant* ».²⁸ The president of the FPI declared that « *la libération de Laurent Gbagbo est une obligation politique et un impératif catégorique* » and that « *La libération de Gbagbo est celle de la Côte d'Ivoire* ».²⁹

15. The Prosecution is concerned with this recurring concerted rhetoric of pro-Gbagbo associates and supporters attempting to influence the judicial process for political reasons. As stated above, "the prosecution of perpetrators of serious

²⁴ <http://www.connectionivoirienne.net/95652/degel-des-37-milliards-le-fiasco-de-lentraide-judiciaire-la-suisse-la-cote-divoire>; see also <http://www.rts.ch/info/suisse/5541371-berne-leve-le-gel-des-fonds-ivoiriens-bloques-en-suisse-depuis-2011.html>.

²⁵ <http://fr.allafrica.com/stories/201401210732.html>.

²⁶ <http://www.jeuneafrique.com/Article/ARTJAWEB20140219114333>.

²⁷ <http://news.abidjan.net/h/489050.html>; see also <http://www.rfi.fr/afrique/20140222-cote-ivoire-fpi-reclame-liberation-gbagbo-presidentielle-2015-cpi-cour-penale-internationale>.

²⁸ <http://news.abidjan.net/h/489050.html>.

²⁹ *Ibid.*

human rights violations committed by any party” should not be negotiable.³⁰ And such discourse, leading to the next presidential elections of 2015, continues to polarise a society that is just recovering from the last post-election violence.³¹

16. The Prosecution repeats its previous submission that political considerations must not play a role or have any influence on any aspect of the judicial process, such as detention reviews. The judicial integrity of this institution depends upon the Court’s independence and removal from political influences.³²

Conclusion

17. The Prosecution submits that the security situation in Côte d’Ivoire is a relevant circumstance but, as noted by the Chamber in its Fourth Decision, it is relevant to the third ground of detention pursuant to Article 58(1)(b)(iii). The evolving security situation at present simply reinforces the Chamber’s previous conclusion that GBAGBO’s detention is no longer required under the third ground.
18. The Prosecution submits that with respect to the other grounds of detention, the information provided above does not constitute a change of circumstances. 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 26th day of February 2014

At The Hague, The Netherlands

³⁰ http://reliefweb.int/sites/reliefweb.int/files/resources/A-HRC-25-73_en.pdf, para. 13.

³¹ *Ibid.*, para. 14.

³² ICC-02/11-01/11-T-22-CONF-ENG ET, p. 18, line 25 and onwards.