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No.: ICC-02/11-01/11
Date: 12 October 2012

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 redacted version
With confidential annexes 01A to 12**

**Prosecution's request pursuant to Article 69(3), Rule 135 and Regulation 35 to
submit additional information regarding the conditions of detention of
Mr Laurent Gbagbo in Korhogo**

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

Counsel for the Defence

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

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

Ms Silvana Arbia

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. Pursuant to Article 69(3) of the Rome Statute, Rule 135 of the Rules of Procedure and Evidence, and Regulation 35(2) of the Regulations of the Court, the Prosecution requests to submit additional new material for the consideration of the Pre-Trial Chamber, *i.e.* 10 videos and 29 pictures, relating to the conditions in which the Suspect, Laurent Gbagbo, was held in Korhogo, an issue that has repeatedly been pressed by the Defence in these proceedings.
2. The Prosecution submits that this new material is important for the completeness of the information before the Pre-Trial Chamber, and is relevant to the determination of Mr Gbagbo's fitness to stand trial.
3. The Prosecution was not in possession of this material before the hearing on Mr Gbagbo's fitness, held on 24 and 25 September 2012, as it only received it on 2 October 2012.
4. Pursuant to Regulation 23*bis*, paragraph 2, the Prosecution files the present Request and its annexes confidentially, as they refer to other documents that were filed with the same classification. A public redacted version of the present Request will be filed.

Procedural Background

5. On 5 June 2012, the Defence filed the "*Requête de la Défense en report de l'audience de confirmation des charges prévue le 18 juin 2012*" in which it argued that the confirmation hearing should be postponed in order to safeguard the fairness of the proceedings.¹ The Defence argued that Mr Gbagbo's health makes him unfit to stand trial.²

¹ ICC-02/11-01/11-40-Conf and ICC-02/11-01/11-140-Red.

² ICC-02/11-01/11-140-Conf, paras.21-60.

6. On 26 June 2012, the Single Judge issued an *Order to conduct a medical examination*,³ in which she appointed three experts to conduct [REDACTED] examinations of Mr Gbagbo.⁴ Between 3 and 6 August 2012, the Prosecution received the reports of the said experts.⁵ Both the Prosecution⁶ and the Defence⁷ filed their observations on the reports.
7. On 12 September 2012, the Chamber scheduled a hearing to further discuss Mr Gbagbo's fitness to take part in the proceedings against him.⁸ The Chamber invited the three experts to participate in the hearing, which was held on 24 and 25 September.⁹
8. After the hearing, on 2 October 2012, [REDACTED] provided the Prosecution with a DVD¹⁰ containing ten videos¹¹ and 73 photographs¹², all taken at the time of Mr Gbagbo's stay in Korhogo. The Prosecution prepared all this material for disclosure to the Defence under Rule 77 today. The Defence was not in a position to collect any disclosure package today because of the short notice, but will collect the package on 9 October 2012. Ten videos¹³ and 29¹⁴ out of the 73 photographs are attached in the annexes 01A to 11 of the present filing. The Prosecution chose to submit only a limited number of photographs as some of them are repetitive, merely taken from a different angle, or do not depict Mr Gbagbo.

³ ICC-02/11-01/11-164-Conf-tENG.

⁴ ICC-02/11-01/11-164-Conf-tENG, p.15.

⁵ ICC-02/11-01/11-190-Conf-Anx3.

⁶ ICC/02/11-01/11-214-Conf.

⁷ ICC-02/11-01/11-233-Conf.

⁸ ICC-02/11-01/11-241.

⁹ ICC-02/11-01/11-241, para.13.

¹⁰ CIV-OTP-0029-0499.

¹¹ CIV-OTP-0029-0573 to CIV-OTP-0029-0582.

¹² CIV-OTP-0029-0499 to CIV-OTP-0029-0572.

¹³ CIV-OTP-0029-0573 to CIV-OTP-0029-0582.

¹⁴ CIV-OTP-0029-0500; CIV-OTP-0029-0502; CIV-OTP-0029-0503; CIV-OTP-0029-0505; CIV-OTP-0029-0514; CIV-OTP-0029-0518; CIV-OTP-0029-0520; CIV-OTP-0029-0521; CIV-OTP-0029-0523; CIV-OTP-0029-0525; CIV-OTP-0029-0529; CIV-OTP-0029-0534; CIV-OTP-0029-0535; CIV-OTP-0029-0536; CIV-OTP-0029-0537; CIV-OTP-0029-0538; CIV-OTP-0029-0542; CIV-OTP-0029-0546; CIV-OTP-0029-0548; CIV-OTP-0029-0553; CIV-OTP-0029-0557; CIV-OTP-0029-0559; CIV-OTP-0029-0560; CIV-OTP-0029-0565; CIV-OTP-0029-0568; CIV-OTP-0029-0569; CIV-OTP-0029-0570; CIV-OTP-0029-0571; CIV-OTP-0029-0572.

9. This material is organized in the annexes to the present filing as follows:

- Annex 01A – CIV-OTP-0029-0573 – video;¹⁵
- Annex 01B – CIV-OTP-0029-0505 – photograph linked to video CIV-OTP-0029-0573;
- Annex 02A – CIV-OTP-0029-0576 – video;¹⁶
- Annex 02B – CIV-OTP-0029-0529, CIV-OTP-0029-0542, CIV-OTP-0029-0546, CIV-OTP-0029-0548, CIV-OTP-0029-0553, CIV-OTP-0029-0557, CIV-OTP-0029-0559, CIV-OTP-0029-0560 and CIV-OTP-0029-0565 – photographs linked to video CIV-OTP-0029-0576;
- Annex 03A – CIV-OTP-0029-0579 – video;¹⁷
- Annex 03B – CIV-OTP-0029-0500, CIV-OTP-0029-0502 and CIV-OTP-0029-0503 – photographs linked to video CIV-OTP-0029-0579;
- Annex 04A – CIV-OTP-0029-0581 – video;¹⁸
- Annex 04B – CIV-OTP-0029-0525 – photograph linked to video CIV-OTP-0029-0581;
- Annex 05 – CIV-OTP-0029-0574 – video;¹⁹
- Annex 06 – CIV-OTP-0029-0575 – video;²⁰
- Annex 07 – CIV-OTP-0029-0577 – video;²¹
- Annex 08 – CIV-OTP-0029-0578 – video;²²
- Annex 09 – CIV-OTP-0029-0580 – video;²³
- Annex 10 – CIV-OTP-0029-0582 – video;²⁴
- Annex 11 – CIV-OTP-0029-0514, CIV-OTP-0029-0518, CIV-OTP-0029-0520, CIV-OTP-0029-0521, CIV-OTP-0029-0523, CIV-OTP-0029-0534, CIV-OTP-0029-0535, CIV-OTP-0029-0536, CIV-OTP-0029-0537, CIV-

¹⁵ The name of the electronic file of this video is : « [REDACTED] ».

¹⁶ The name of the electronic file of this video is : « [REDACTED] ».

¹⁷ The name of the electronic file of this video is : « [REDACTED] ».

¹⁸ The name of the electronic file of this video is : « [REDACTED] ».

¹⁹ The name of the electronic file of this video is : « [REDACTED] ».

²⁰ The name of the electronic file of this video is : « [REDACTED] ».

²¹ The name of the electronic file of this video is : « [REDACTED] ».

²² The name of the electronic file of this video is : « [REDACTED] ».

²³ The name of the electronic file of this video is : « [REDACTED] ».

²⁴ The name of the electronic file of this video is : « [REDACTED] ».

OTP-0029-0538, CIV-OTP-0029-0568, CIV-OTP-0029-0569, CIV-OTP-0029-0570, CIV-OTP-0029-0571 and CIV-OTP-0029-0572 – photographs not linked to videos;

- Annex 12 – CIV-OTP-0029-0695 and CIV-OTP-0029-0698 - Report on the extraction of metadata from video and photographic files.²⁵

Argument

10. On 11 April 2011, Mr Gbagbo was arrested at the Presidential Residence in Abidjan, and soon thereafter he was transferred to Korhogo, where he was held until his transfer to the seat of the Court on 29 November 2011.
11. The Defence repeatedly argued before the Pre-Trial Chamber that the fundamental human rights of Mr Gbagbo were severely violated in Korhogo and that the conditions of his detention amounted to inhumane and degrading treatment and torture.²⁶ The Defence reiterated these submissions in its request for a postponement of the confirmation hearing. It argued that as a result of the conditions of detention in Korhogo, Mr Gbagbo's physical and psychological health is impaired to an extent that he cannot participate in the confirmation hearing.²⁷
12. According to the information submitted by the Defence, during his stay in Korhogo, Mr Gbagbo "remained imprisoned in a narrow cell for eight months, without any opportunity even to set foot outdoors. Prohibited from any contact with his family and cut off from the world, he was unaware of what was happening on the outside. He was mistreated by his jailers"²⁸ and he was "insulted and threatened".²⁹ The Defence further alleged that Mr Gbagbo "remained in total physical isolation" and "in solitary confinement in a very

²⁵ This report covers the entirety of the material received by the Prosecution.

²⁶ See ICC-02/11-01/11-105-Conf, paras.130, 132; ICC-02/11-01/11-129, paras.20, 109-110, 210; ICC-02/11-01/11-240, p. 29.

²⁷ ICC-02/11-01/11-140-Conf, paras.3, 47; and ICC-02/11-01/11-239-Conf, para.19.

²⁸ ICC-02/11-01/11-105-Conf-Red-Corr-tENG, paras.109, 118; see also ICC-02/11-01/11-129-Corr-tENG, paras.21, 198-199, 201, 209, 215, 220.

²⁹ ICC-02/11-01/11-105-Conf-Red-Corr-tENG, para.111; ICC-02/11-01/11-129-Corr-tENG, para.201.

small room without natural light and was not permitted to leave it except for meals, which were eaten in another room”.³⁰ In addition, the Defence argued that while in Korhogo, Mr Gbagbo did not receive appropriate medical care.³¹

13. The experts who examined Mr Gbagbo for the fitness hearing, [REDACTED]³² [REDACTED].

*The videos and photographs have been recorded at the time
of Mr Gbagbo's stay in Korhogo*

14. Examination of the videos and photographs received by the Prosecution show that this material was recorded at the time of Mr Gbagbo's stay in Korhogo. In particular, the following observations can be made with regard to the videos:

- On video CIV-OTP-0029-0573, at 00'17", Mr Gbagbo asks “*ici à Korhogo?*” and Mr Choi responds “*à Korhogo*”; in light of the conversation recorded on video CIV-OTP-0029-0577 from 01'29" to 01'50", video CIV-OTP-0029-0573 appears to have been recorded at the beginning of July 2011;
- The furniture and the room depicted on videos CIV-OTP-0029-00576, CIV-OTP-0029-00578, CIV-OTP-0029-0579 and CIV-OTP-0029-0581 are identical to the furniture and the room depicted in video CIV-OTP-0029-0573; therefore, all these videos appear to have been recorded in Korhogo;
- The conversation recorded from 04'44" to 05'18" on video CIV-OTP-0029-0577, depicting a visit by UNOCI representatives,³³ shows that the place where the video is recorded is Korhogo. Also, in light of the

³⁰ ICC-02/11-01/11-105-Conf-Red-Corr-tENG, paras.114, 117-118; see also ICC-02/11-01/11-129-Corr-tENG, paras.201, 204, 207, 209.

³¹ ICC-02/11-01/11-105-Conf-Red-Corr-tENG, paras.112, 117; ICC-02/11-01/11-129-Corr-tENG, paras.202, 225.

³² ICC-02/11-01/11-105-Conf-Anx8-Red.

³³ The same place is depicted in photographs CIV-OTP-0029-0534 to 0538.

conversation recorded from 01'29'' to 02'09'', this video has been recorded in September 2011;

- The furniture and the room depicted on video CIV-OTP-0029-0580 are identical to the ones depicted on video CIV-OTP-0029-0577. The Prosecution therefore concludes that this video was also recorded in Korhogo.

15. The Prosecution attaches in annex 12 a report listing the metadata of the videos and photographs. According to the Prosecution's analysis of the metadata, the photographs were taken on various occasions using three different devices. The photographs taken with two of the camera devices contain the following date stamps: 4, 8, 19 and 30 July 2011, 4 August 2011 and 17 September 2011. On some photographs, like the ones depicting Mr Gbagbo in the company of Mr Choi, the date of 4 July 2011 in the metadata field "[Date] created" is corroborated by information obtained from the corresponding video taken on the same occasion (*cf.* first bullet point in the previous paragraph). The pictures taken with one particular camera³⁴ show a date stamp from January 2009: it is likely that the date and time of the device were not set up by the user before these photographs were taken.³⁵ In addition, the photographs in question, – such as CIV-OTP-0029-0560 or CIV-OTP-0029-0570 - depict Mr Gbagbo at the same location in Korhogo with visitors and UNOCI staff in the background or depict him with his attorney, Maître Altit,³⁶ which supports the Prosecution's contention that the date on the camera was not set up by its user.

*The videos and photographs are relevant
to the issue of Mr Gbagbo's fitness*

³⁴ Pictures taken with the photographic camera SONY DSC-W230.

³⁵ The date 01/01/2009 is the default setting for the date&time stamp for this particular type of camera, according to its user's manual. For additional details *cf.* the analysis in the Report attached in Annex 12.

³⁶ Counsel of Mr Gbagbo visited his client in Korhogo six times (ICC-02/11-01/11-129-Corr-tENG, para.215). [REDACTED]

16. The Prosecution submits that the videos and photographs are reliable depictions of the circumstances of Mr Gbagbo's detention and of Mr Gbagbo's condition at the time. As such they are relevant to the present state of health of Mr Gbagbo, especially since the Defence argued that the conditions under which Mr Gbagbo was held in Korhogo constitute a key contributing factor to his present alleged unfitness. The information that the Prosecution hereby seeks to introduce in the proceedings sheds new light on these conditions, and contradicts several of the Defence's contentions regarding Mr Gbagbo's detention conditions.
17. In particular, the new material indicates that during the time spent in Korhogo, Mr Gbagbo received numerous visits from lawyers and various national and international delegations, that these visits took place in what appears to be a friendly and relaxed environment, demonstrated by Mr Gbagbo's demeanour (he can be observed to be relaxed, in good humour and laughing). The information shows that Mr Gbagbo was not in solitary confinement and had opportunities to go outside the premises where he was held.
18. On video CIV-OTP-0029-0578, Desmond Tutu, one of Gbagbo's high profile visitors, is heard commenting that Laurent Gbagbo is "relaxed" (see at 05'11"). One of the videos specifically indicates that Mr Gbagbo was visited and examined by nine medical doctors [REDACTED]³⁷ and that [REDACTED]³⁸ (a transcript of this video is being prepared and will be made available as soon as practicable³⁹).
19. Another video shows that Mr Gbagbo had access to functioning television programs.⁴⁰ On another video,⁴¹ a person who appears to be Dr Blé indicates that [REDACTED] (from 06'05" to 06'28"). On that same video, Mr Gbagbo [REDACTED] (see at 02'47").

³⁷ CIV-OTP-0029-0582, at 00:00-08:40.

³⁸ CIV-OTP-0029-0582, at 08:40-18:40.

³⁹ The Prosecution intends to file it as soon as practicable.

⁴⁰ CIV-OTP-0029-0580, at 00:17-00:19, and at 00'54".

⁴¹ CIV-OTP-0029-0577.

20. Lastly, several pictures show Mr Gbagbo outside a building (*cf.* CIV-OTP-0029-0542) or in the company of Roland Dumas and Jacques Verges (CIV-OTP-0029-0537) or other visitors (CIV-OTP-0029-0500). Photograph CIV-OTP-0029-0520 depicts a [REDACTED].

The Prosecution was not in a position to communicate this information prior to the fitness hearing

21. The Prosecution became aware of the existence of this additional evidence only after the conclusion of the fitness hearing on 25 September 2012.
22. The Prosecution submits that this constitutes good cause within the meaning of Regulation 35(2) and requests that the Chamber receive and take into consideration the attached information pursuant to Article 69(3) for the purposes of its determination on whether Mr Gbagbo is fit to participate in the confirmation hearing.
23. The Prosecution submits that the information that the Prosecution seeks to introduce pursuant to Regulation 35(2) should be taken into consideration to assess the Defence's claims, which derive from Mr Gbagbo's own accounts, concerning the conditions of detention at Korhogo.

Relief sought

24. For the reasons stated above, the Prosecution requests that the Pre-Trial Chamber allow the Prosecution, pursuant to article 69(3) and Regulation 35(2), to tender the items of evidence (annexed to the present filing) into the record of the case insofar as they are relevant to the determination of Mr Gbagbo's fitness to attend the confirmation hearing.



Fatou Bensouda, Prosecutor

Dated this 12th day of October 2012

At The Hague, The Netherlands