



Original: **French**

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

Date: **15 June 2012**

**PRE-TRIAL CHAMBER I**

**Before:** Judge Silvia Fernandez de Gurmendi, Presiding Judge  
Judge Hans-Peter Kaul  
Judge Christine Van den Wyngaert

**SITUATION IN CÔTE D'IVOIRE**

**IN THE CASE OF  
*THE PROSECUTOR v. LAURENT GBAGBO***

**Public Document**

**Request by the Republic of Côte d'Ivoire to submit observations on the challenge to the jurisdiction of the International Criminal Court on the basis of articles 12(3), 19(2), 21(3), 55 and 59 of the Rome Statute filed by the Defence for President Gbagbo**

**Source:** Republic of Côte d'Ivoire

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

**Office of the Prosecutor**  
Ms Fatou Bensouda, Prosecutor

**Counsel for the Defence**  
Mr Emmanuel Altit

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for Participation/Reparations**

**Office of Public Counsel for Victims**  
Ms Paolina Massidda

**Office of Public Counsel for the Defence**

**States' Representatives**

**Amicus Curiae**

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**REGISTRY**

**Registrar**

Ms Silvana Arbia

**Deputy Registrar**

Mr Didier Daniel Pereira

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Section**

**Other**

1. The Republic of Côte d'Ivoire hereby respectfully seeks leave from Pre-Trial Chamber I to submit written observations in response to the "*Requête en incompétence de la Cour pénale internationale fondée sur les articles 12(3), 19(2), 21(3), 55 et 59 du Statut de Rome présentée par la défense du Président Gbagbo*",<sup>1</sup> filed on 24 May 2012.
2. Côte d'Ivoire's request is based on the following reasons.
3. Firstly, Côte d'Ivoire notes that the challenge by the Defence is primarily based on the allegation that the Declaration of 18 April 2003, by which the Republic of Côte d'Ivoire accepted the jurisdiction of the Court pursuant to article 12(3) of the Statute, does not cover "the period and events referred to in the warrant of arrest issued against Laurent Gbagbo on 23 November 2011 and [the] Document Containing the Charges filed on 16 May 2012."<sup>2</sup> In support of this assertion, the Defence calls for a particularly restrictive interpretation of the Declaration of 18 April 2003, which would radically change the terms of the acceptance of jurisdiction established therein. If upheld, this interpretation would inevitably cast doubt on Côte d'Ivoire's express undertaking in that letter to "cooperate with the Court without delay or exception in accordance with Part 9 of the Statute." This would support an unconscionable accusation regarding the Ivorian government's true intention genuinely and legitimately to cooperate with the Court.
4. The Defence further claims that the letter by which Alassane Ouattara confirmed, upon becoming President of the Republic, the validity of the Declaration of 18 April 2003 is "of no judicial import",<sup>3</sup> and that "Alassane Ouattara was not empowered to make commitments to the ICC on behalf of Côte d'Ivoire on 14 December 2010."<sup>4</sup> In an attempt to substantiate this claim, the Defence for Laurent Gbagbo asserts that, "[w]hen Mr Ouattara wrote the letter, he was not in fact the President of Côte d'Ivoire and hence not a representative of the State authorised to make commitments on its behalf."<sup>5</sup> Such a biased claim is bound to cast grave doubts on the democratic legitimacy vested in Mr Ouattara, and ultimately, the freely expressed will of the Ivorian people; it is therefore in clear violation of the right of the Ivorian people to self-determination and to choose its own political system. Furthermore, the Defence submissions seek to undermine the international status of Côte d'Ivoire and its

<sup>1</sup> [English translation: ICC-02/11-01/11-129-Corr-tENG, 29 May 2012].

<sup>2</sup> *Ibid.*, p. 74.

<sup>3</sup> *Ibid.*, p. 73.

<sup>4</sup> *Ibidem*.

<sup>5</sup> *Ibid.*, para. 53.

representatives. Finally, their result is to diminish the importance of the confirmation embodied in the 14 December 2010 letter for the purposes of affirming the Court's jurisdiction.

5. The Republic of Côte d'Ivoire must further observe that, in its submissions regarding President Ouattara's letter of 3 May 2011 to the ICC Prosecutor, the Defence for Mr Gbagbo asserts that this document amounts to a "referral by stealth"<sup>6</sup> of a situation to the Prosecutor. In other words, the arguments therein insinuate a conspiracy between the Office of the Prosecutor and Côte d'Ivoire, intended to cover up the "desire of the Ivorian authorities to 'use' the Court for internal political ends, as if the ICC exists to serve a political clique."<sup>7</sup>
6. Finally, Côte d'Ivoire notes that the Defence for Laurent Gbagbo seeks, in the alternative, a finding from Pre-Trial Chamber I that the "breach of his rights, torture and other inhuman and degrading treatment"<sup>8</sup> allegedly endured by Laurent Gbagbo before his transfer to The Hague, and that the conditions surrounding his transfer "render a fair trial impossible."<sup>9</sup> The Defence avers in particular in this regard that Mr Gbagbo was detained under "unfit conditions of detention" amounting to torture. In the circumstances, the allegations against the Ivorian government are wholly unsubstantiated in fact and law.
7. Côte d'Ivoire strongly condemns the challenge to jurisdiction of 24 May 2012 on grounds that it largely relies on arguments which, if accepted, would be seriously be prejudicial to it. The arguments at issue allege:
  - The breach of the international undertaking by the Ivorian State on 18 April 2003;
  - The purported lack of legitimacy and representativeness of President Ouattara, elected by the Ivorian people on 28 November 2010;
  - That during the detention preceding his transfer to The Hague, Laurent Gbagbo endured treatment contrary to the most basic respect for humanity.
8. Côte d'Ivoire cannot idly stand by in the face of such serious and groundless accusations whereas, in the unlikely event that these accusations are upheld, these allegations would have profound implications for the continuation of the proceedings initiated against Laurent Gbagbo before the Court.

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<sup>6</sup> *Ibid.*, p. 26.

<sup>7</sup> *Ibid.*, para. 107.

<sup>8</sup> *Ibid.*, p. 74.

<sup>9</sup> *Ibidem.*

9. For this reason, Côte d'Ivoire wishes to exercise its right under regulation 24(3) of the Regulations of the Court<sup>10</sup> to submit observations on the challenge to jurisdiction filed by the Defence on 24 May 2012.

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**For these reasons**, Côte d'Ivoire requests that Pre-Trial Chamber I grant it leave to submit observations in response to the *“Requête en incompétence de la Cour pénale internationale fondée sur les articles 12(3), 19(2), 21(3), 55 et 59 du Statut de Rome présentée par la défense du Président Gbagbo”* filed on 24 May 2012;

The present request, which Côte d'Ivoire prays Pre-Trial Chamber I to examine urgently on account of the time limits under the Regulations of the Court, is without prejudice to the rights accorded to Côte d'Ivoire by the Statute, the Regulations of the Court and the Rules of Procedure and Evidence.

**[Signed]**

Jean-Pierre Mignard

**[Signed]**

Jean-Paul Benoit

Counsel for the Republic of Côte d'Ivoire

Dated this 15 June 2012

At Paris

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<sup>10</sup> “States participating in the proceedings may file a response to any document, subject to any order of the Chamber.”