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TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Bertram Schmitt

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR

v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ

**Public
With confidential Annex A**

Public redacted version of "Prosecution's submission on the ninth detention review of Laurent Gbagbo", 11 June 2015

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Introduction

1. Upon the Chamber's request,¹ the Prosecution hereby files its submissions on the detention of the Accused Laurent Gbagbo. A review of the latest developments reveals no change since the last decision on the review of the detention of Laurent Gbagbo ("Eighth Decision"). The circumstances justifying the detention of the Accused continue to be met.

Confidentiality

2. The Prosecution files this submission, and its Annex A, as confidential since it refers to the evidence which should remain confidential for the time being and also in order to protect the safety and security of witnesses. A public redacted version will be filed promptly.

Submissions

Procedural Background

3. On 11 March 2015, the Chamber issued its Eighth Decision on the review of the detention of the Accused.² In deciding that the Accused should remain in detention,³ the Chamber: 1) dismissed Defence arguments rejected in the past,⁴ 2) rejected the Defence argument that the end of the Prosecution's investigations constituted a changed circumstance,⁵ and 3) rejected Defence arguments on the Accused's support network.⁶ The Chamber further reviewed additional information on the activities of the *Front Populaire Ivoirien* ("FPI") and concluded that the information provided "illustrate[s] the continued existence of the

¹ ICC-02/11-01/15-61 ("Order requesting the parties' and participants' observations under Article 60(3) of the Statute").

² ICC-02/11-01/11-808.

³ ICC-02/11-01/11-808, p.17.

⁴ ICC-02/11-01/11-808, para.25. Arguments the Chamber found repetitive were: i) the Accused's willingness to appear at trial; ii) whether the Accused has the personal means to abscond; and iii) whether the Accused has any reason to abscond.

⁵ ICC-02/11-01/11-808, paras.26-29.

⁶ ICC-02/11-01/11-808, paras.30-38.

Accused's support network, which only reinforces the previous findings pursuant to its Seventh Article 60(3) Decision."⁷

4. The Chamber also reaffirmed that it was "not yet in a position to assess the possibility of conditional release" and that "a decision on this topic is deferred to a later date".

The Prosecution's obligation at this stage

5. 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."⁸

Update on the network of supporters

6. In previous submissions, the Prosecution informed the Chamber that former pro-Gbagbo members of the government and FPI hardliners were involved in activities aimed at the destabilisation of Côte d'Ivoire, including by conducting cross-border attacks.⁹ This situation prevails and militates against releasing the Accused from detention.

Information from the Group of experts on Côte d'Ivoire

7. In keeping with Security Council Resolution 1572, the United Nations Group of Experts on Côte d'Ivoire filed its most recent report on 13 April 2015. The Group investigated and documented three sets of cross-border attacks committed by "individuals linked to the pro-Gbagbo radical wing" in western Côte d'Ivoire, which constitute a violation of the sanctions regime.¹⁰ The report corroborates and

⁷ ICC-02/11-01/11-808, para.39.

⁸ ICC-01/05-01/08-1019, para.51.

⁹ See for instance ICC-02/11-01/11-696-Red, paras.6-9 and ICC-02/11-01/11-696-Conf-AnxB, ICC-02/11-01/11-766-Red, paras.13-17.

¹⁰ http://www.un.org/ga/search/view_doc.asp?symbol=S/2015/252, paras.28-48.

expands on information previously provided by the Prosecution.¹¹ These additional facts further suggest that releasing the Accused is not warranted.

[REDACTED]

8. [REDACTED]. [REDACTED].

- a. [REDACTED]. [REDACTED].¹²
- b. [REDACTED].
- c. [REDACTED].
- d. [REDACTED].
- e. [REDACTED].
- f. [REDACTED].¹³

9. [REDACTED].¹⁴

Further arrest of FPI hardliners

10. Members of the pro-Gbagbo network were involved in crimes even after the Accused's arrest in April 2011. They remain active and were allegedly involved in the killing of seven UN peacekeepers¹⁵ in June 2012 in the west of Côte d'Ivoire.¹⁶ One of the members of this network is Hubert Oulaye, a former Gbagbo minister and FPI hardliner.¹⁷ He was arrested on 4 May 2015 by the Ivoirian authorities and is currently detained on charges, *inter alia*, relating to the above-mentioned killing of UN peacekeepers.

¹¹ In response to the unfounded and recurring allegations of the Defence (see Defence submission ICC-02/11-01/15-83, footnote 19), the Prosecution recalls the comments of the Appeals Chamber when it stated, in unequivocal terms, that "Mr Gbagbo fails to provide any concrete evidence establishing collusion between the Prosecutor and the Group of Experts and that his allegations are speculative at best", ICC-02/11-01/11-548-Red, para.82.

¹² [REDACTED].

¹³ [REDACTED]. [REDACTED].

¹⁴ [REDACTED]. [REDACTED].

¹⁵ <http://www.ivoirebusiness.net/?q=articles/scandale-dano-dj%C3%A9dj%C3%A9-hubert-oulaye-et-koua-justin-d%C3%A9port%C3%A9s-respectivement-%C3%A0-toumodi-dabou>.

¹⁶ <http://www.bbc.com/news/world-africa-18376625>.

¹⁷ ICC-02/11-01/11-766-Red. para.19.

11. The Prosecution recalls that Oulaye was an influential pro-Gbagbo executive (“cadre”) in the region of Guiglo (west Côte d’Ivoire) during the Accused’s Presidency.¹⁸ [REDACTED].¹⁹ It is submitted that the activities of the pro-Gbagbo network further militate against releasing the Accused.

Update on the activities of the FPI and upcoming elections

12. The Prosecution has previously submitted that “the activities of the FPI are relevant to the issue of the extent of Mr Gbagbo’s network of supporters”.²⁰

13. The FPI continues to be further divided. At the end of April 2015, in the symbolic village of Mama,²¹ the FPI hardliners elected the Accused as president of the party.²²

14. On 22 May 2015, Affi N’Guessan was designated by the other half of the FPI to be their candidate for the upcoming presidential elections.²³

15. On 15 May 2015, dissidents of the *Parti démocratique de Côte d’Ivoire* (“PDCI”),²⁴ FPI hardliners, supporters of *Liberté et Démocratie pour la République* (“Lider”) and some other opposition parties, signed the Charter of the *Coalition Nationale pour le changement* (“CNC”).²⁵ Laurent Akoun, a hardliner, signed for the FPI.²⁶

16. Protocol no. 1 of the Charter calls, *inter alia*, for the government to release political prisoners, and “primarily President Laurent Gbagbo”.

¹⁸ See Prosecution Witness P-0472, at CIV-OTP-0070-1207, lns.950-979.

¹⁹ [REDACTED].

²⁰ ICC-02/11-01/11-766-Red, paras.18-20.

²¹ The birth place of the Accused.

²² <http://news.abidjan.net/h/550329.html>; <http://www.jeuneafrique.com/231361/politique/c-te-d-ivoire-mama-les-partisans-de-laurent-gbagbo-le-d-clarent-pr-sident-du-fpi/>; <http://koaci.com/cote-divoire-gbagbo-president-affi-radie-lessentiel-fait-pour-laurent-akoun-101100.html>.

²³ <http://www.jeuneafrique.com/232719/politique/c-te-d-ivoire-pascal-affi-n-guessan-le-fpi-n-est-pas-divis/>.

²⁴ <http://www.jeuneafrique.com/225636/politique/c-te-d-ivoire-kkb-il-y-a-dor-navant-un-pdci-rda-et-un-pdci-rdr/>.

²⁵ <http://news.abidjan.net/h/551798.html>.

²⁶ <http://www.connectionivoirienne.net/wp-content/uploads/2015/05/CNC-charte-signee15mai2015.pdf>; <http://fratmat.info/politique/item/23921-fpi-laurent-akoun-remplace-aboudramane-sangar%C3%A9-d%C3%A9bout%C3%A9-par-la-justice>.

17. Some of the signatories of the CNC Charter are the same persons who recently visited the Accused at the ICC detention centre and are themselves presidential candidates for the upcoming elections.²⁷
18. The Defence submits that these “unanimous” calls for the Accused’s release are an important and new development.²⁸ The Defence states that the Accused’s release “*permettrait d’avancer sur la voie de la réconciliation*”.²⁹ The Prosecution recalls that “the consequences of an eventual release of Mr Gbagbo on the national reconciliation process”³⁰ was previously considered as irrelevant for the purposes of a review under article 60(3) by the single Judge of the Pre-Trial Chamber,³¹ and also rejected by the Chamber.³² Moreover, the Defence never demonstrates how the Accused’s release would have a positive effect on reconciliation. This factor does not constitute a change of circumstances warranting the Accused’s release.
19. The Prosecution submits again that the recognition by FPI hardliners that the Accused is the president of the party, the visits of presidential candidates at the ICC detention centre and the CNC advocating for Gbagbo’s release, exemplify how the Accused remains a staple of Ivorian politics. The Prosecution submits this is further evidence “which only reinforces the previous findings” of the Chamber to maintain the Accused in detention.³³

²⁷ For instance Charles Konan Banny and Kouadio Konan Bertin have visited the Accused, http://www.lemonde.fr/afrique/article/2015/03/30/pelerinage-a-la-haye-les-figures-de-l-opposition-defilant-chef-laurent-gbagbo_4605816_3212.html#xEilzypT8hVuCp0O.99. Essy Amara another dissident of the PDCI, also visited the Accused, <http://koaci.com/cote-divoire-coalition-lopposition-divise-essy-amara-autres-101661.html>.

²⁸ Defence submission, para.56.

²⁹ ICC-02/11-01/15-83, para.61.

³⁰ ICC-02/11-01/11-718-Red, para.51.

³¹ ICC-02/11-01/11-668, para.26.

³² ICC-02/11-01/11-718-Red, para.51.

³³ ICC-02/11-01/11-808, para.39.

Conclusion

20. For the foregoing reasons, the Prosecution submits that the requirements of articles 58(1)(b)(i) and (ii) of the Rome Statute are met and that the continued detention of the Accused is necessary.



Fatou Bensouda, Prosecutor

Dated this 11th day of June 2015

At The Hague, The Netherlands