

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/12

Date: 29 February 2012

PRE-TRIAL CHAMBER III

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Elizabeth Odio Benito
Judge Adrian Fulford

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR v. SIMONE GBAGBO

UNDER SEAL

***Ex parte* Prosecution and Registry only**

Warrant of Arrest for Simone Gbagbo

Decision to be notified, in accordance with Regulation 31 of the Regulations of the Court, to:

Counsel for the Defence

The Office of the Prosecutor

Mr Luis Moreno-Ocampo

Ms Fatou Bensouda

Legal Representatives of Victims Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
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

Detention Section

Victims and Witnesses Unit

Others

**Victims Participation and
Reparations Section**

1. On 3 October 2011, Pre-Trial Chamber III ("Chamber") issued a *Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire*, in which it authorised an investigation.
2. On 7 February 2012, the Prosecutor filed an application for a warrant of arrest against Simone Gbagbo ("Ms Gbagbo") for her individual criminal responsibility as regards the crimes against humanity of murder, rape and other forms of sexual violence, persecution and other inhumane acts committed during the post-election crisis from 28 November 2010 onwards by the Ivorian Defence and Security Forces ("FDS"), which were reinforced by youth militias and mercenaries loyal to President Gbagbo ("pro-Gbagbo forces"), in Abidjan, including around the Golf Hotel and elsewhere in the country.
3. The Chamber notes Articles 7, 19(1), 25 and 58 of the Rome Statute ("Statute") and observes that the analysis of the evidence and other information submitted by the Prosecutor will be set out in a decision to be issued hereafter.
4. The Chamber considers, on the basis of the evidence and information submitted by the Prosecutor, and without prejudice to its determination of any future challenge to the admissibility of the case under Articles 19(2)(a) and (b) of the Statute, that the case against Ms Gbagbo falls within the jurisdiction of the Court and is admissible.

5. On the evidence, the Chamber concludes that there are reasonable grounds to believe that in the aftermath of the presidential elections in Côte d'Ivoire pro-Gbagbo forces attacked the civilian population in Abidjan and in the west of the country, from 28 November 2010 onwards. They targeted civilians who they believed were supporters of Alassane Ouattara, and the attacks were often directed at specific ethnic or religious communities.

6. The Chamber finds that there are reasonable grounds to believe that these attacks by pro-Gbagbo forces during the post electoral violence were committed pursuant to an organisational policy. Furthermore, they were widespread and systematic, as demonstrated, *inter alia*, by the extended time period during which crimes were committed (between 28 November 2010 and May 2011), their geographic spread (many of the neighbourhoods of Abidjan and the west of Côte d'Ivoire), the high number of reported victims and the general pattern of the way in which the offences were committed.

7. On the evidence, the Chamber finds that there are reasonable grounds to believe that the crimes against humanity of murder under Article 7(1)(a), rape and other forms of sexual violence under Article 7(1)(g), other inhumane acts under Article 7(1)(k) and persecution under Article 7(1)(h) of the Statute, were committed in Côte d'Ivoire during the period between 16 December 2010 and 12 April 2011.

8. Furthermore, the Chamber finds that there are reasonable grounds to believe that these acts occurred in the context of a widespread or systematic attack directed against the Côte d'Ivoire civilian population within the meaning of Article 7(1) of the Statute.

9. The Chamber finds that there are reasonable grounds to believe that Ms Gbagbo bears individual criminal responsibility for the crimes charged in this Application, as “an indirect co-perpetrator” pursuant to Article 25(3)(a) of the Statute.

10. The Chamber finds, on the basis of the evidence provided by the Prosecutor, that there are reasonable grounds to believe that the plan (and the policy) existed and that Mr Gbagbo’s inner circle, to which Ms Gbagbo belonged, met frequently to discuss the implementation and coordination of the plan. Ms Gbagbo was ideologically and professionally very close to her husband, Mr Gbagbo. She participated in all the meetings during the relevant period. Although not elected, Ms Gbagbo acted as an *alter ego* for her husband, exercising the power to make State decisions. Ms Gbagbo was also close to other members of Mr Gbagbo’s inner circle who were involved in the implementation of the Common Plan. Moreover, at meetings or public gatherings during the post-election crisis, Ms Gbagbo expressed her support for the Common Plan, and instructed the pro-Gbagbo forces to commit crimes against individuals who posed a threat to her husband’s power.

11. Furthermore the Chamber finds that there are reasonable grounds to believe that Ms Gbagbo and other members of Mr Gbagbo’s inner circle were aware that implementing the common plan would, in the ordinary course of events, lead to the commission of the offences set out above.

12. The Chamber finds that there are reasonable grounds to believe that, by implementing the common plan, Ms Gbagbo as a member of Mr Gbagbo’s

inner circle exercised joint control over the crimes by having the power to control and give instructions directly to the youth militia who were systematically recruited, armed, trained and integrated into the FDS chain of command with a view to supporting the implementation of the common plan. Throughout the post-election crisis, Ms Gbagbo convened frequent meetings with the most senior FDS generals to discuss, in particular, the situation in Abobo. She also instructed other senior FDS officers regarding measures to dissuade anti-Gbagbo demonstrations, and she asked them to put troops at her disposal to provide security for a Minister. Moreover, The Chamber believes that there is sufficient evidence that Ms Gbagbo ensured that the regular FDS forces were given military equipment.

13. Furthermore, there are reasonable grounds to believe, given the position of Ms Gbagbo as a member of Mr Gbagbo's inner circle and her role as regards the common plan, that she made a coordinated and essential contribution to its realisation. She attended meetings of Mr Gbagbo's inner circle and participated in making decisions on the implementation of the common plan. During one of those meetings, a pro-Gbagbo youth leader proposed attacking members of Mr Ouattara's political party, the *Rassemblement des houphouëtistes pour la démocratie et la paix* ("RHDP"), and destroying or looting their belongings, so that they would suffer like other Ivorians had suffered because of the actions of Mr Ouattara. During this meeting, Ms Gbagbo openly expressed her agreement with this proposal. Moreover, Ms Gbagbo played a key role in recruiting, arming and integrating thousands of volunteers and enlisting them into the FDS chain of command.

14. The Chamber further finds that there are reasonable grounds to believe that the pro-Gbagbo forces that put the common plan into effect did so by almost automatic compliance with the orders they received from Ms Gbagbo and other members of Mr Gbagbo's inner circle.
15. The Chamber concludes that there are reasonable grounds to believe that Ms Gbagbo acted with the necessary degree of intent and knowledge by: i) adopting the common plan; ii) being aware of its implementation and the means other members of the inner circle had at their disposal to implement the common plan; iii) meeting with members of Mr Gbagbo's inner circle to discuss and coordinate the implementation of the common plan; iv) playing a key role in recruiting and instructing the *galaxie patriotique*, and integrating them into the FDS; and v) being aware of the contribution of other members of Mr Gbagbo's inner circle to the implementation of the common plan. Furthermore, the Chamber is of the view that Ms Gbagbo was fully conscious of the factual circumstances that enabled her and other members of Mr Gbagbo's inner circle to exercise joint control over the crimes.
16. Although the Chamber is satisfied that this substantial test (as proposed by the Prosecution), is made out, it is likely that this issue (*i.e.* Ms Gbagbo's suggested liability as an "indirect co-perpetrator" under Article 25(3)(a) of the Statute) may well need to be revisited in due course with the parties and participants.
17. The Chamber is satisfied that her arrest is necessary to: i) ensure her appearance before the Court; ii) ensure that she does not use her political or

economical resources to obstruct or endanger the investigation; and
iii) prevent the commission of further crimes.

18. The Chamber notes that Ms Gbagbo is subject to a travel ban imposed by United Nations Security Council Resolutions 1572 and 1980 and Council of the European Union Decisions 2010/656/CFSP and 2011/18/CFSP.

FOR THESE REASONS, THE CHAMBER

HEREBY ISSUES a warrant of arrest against Simone Gbagbo, who was born on 20 June 1949 in Moosou, Grand-Bassam prefecture in Côte d'Ivoire, an Ivorian national and a member of the Akan tribe, for her alleged criminal responsibility within the meaning of Article 25(3)(a) of the Statute for the crimes against humanity of (1) murder under Article 7(1)(a), (2) rape and other forms of sexual violence under Article 7(1)(g), (3) other inhumane acts under Article 7(1)(k) and (4) persecution under Article 7(1)(h) of the Statute committed in the territory of Côte d'Ivoire during the period between 16 December 2010 and 12 April 2011;

DECIDES that the warrant of arrest is to remain under seal, *ex parte* the Prosecution and the Registry only, but in order to effect Ms Gbagbo's transfer to the seat of the Court, it may be communicated as necessary to third parties (such as the authorities in Côte d'Ivoire and any other State or international organisation) in order to implement it. The Chamber will consider in due course the reclassification of the warrant of arrest, upon the surrender of Ms Gbagbo to the ICC;

DECIDES that, as soon as practicable, the Registry: (i) shall prepare a request for cooperation seeking the arrest and surrender of Ms Gbagbo and containing the information and documents required by Articles 89(1) and 91 of the Statute, and by Rule 187 of the Rules of Procedure and Evidence ("Rules"); and (ii) shall transmit, in consultation and coordination with the Prosecutor, the request to the competent authorities in the Republic of Côte d'Ivoire in accordance with Rule 176(2) of the Rules;

FURTHER DIRECTS the Registrar, pursuant to Article 89(3) of the Statute, to prepare and transmit to any relevant State and international organisation any request for transit which may be necessary for the surrender of Ms Gbagbo to the Court;

ORDERS the Prosecutor to transmit to the Registry, as far as his confidentiality obligations allow, and to the Chamber all information available to him that may assist in averting any risks to victims or witnesses associated with the transmission of the abovementioned cooperation request;

INVITES the Prosecutor to transmit to the Registry, as far as his confidentiality obligations allow, and to the Chamber all information available to him that, in his view, would facilitate the transmission and execution of the above-mentioned cooperation request.

INSTRUCTS the Registry to liaise with the Prosecution in order to invite the Republic of Côte d'Ivoire and the Kingdom of The Netherlands to request an exemption from the travel ban imposed by the UN Security Council and the

Council of the European Union to allow the surrender of Ms Gbagbo to the ICC
and to enter the territory of the The Netherlands;

URGES the Registry to make all possible efforts for the immediate
implementation of this warrant of arrest.

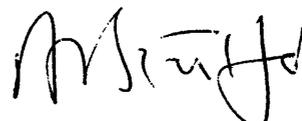
Done in both English and French, the English version being authoritative.



Judge Silvia Fernández de Gurmendi



Judge Elizabeth Odio Benito



Judge Adrian Fulford

Dated this 29 February 2012

At The Hague, The Netherlands