

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**Original: English**

**No. ICC-02/11-01/12  
Date: 19 July 2021**

**PRE TRIAL CHAMBER II**

**Before: Judge Rosario Salvatore Aitala, Presiding Judge  
Judge Antoine Kesia-Mbe Mindua  
Judge Tomoko Akane**

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE  
IN THE CASE OF  
*THE PROSECUTOR v. SIMONE GBAGBO***

**Confidential, *EX PARTE*, Prosecution and Registry only**

**Decision on the Prosecutor's request to vacate the effect of the Warrant of Arrest  
issued against Ms Simone Gbagbo**

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

**The Office of the Prosecutor**  
Karim A. A. Khan

**Counsel for the Defence**

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparations**

**The Office of Public Counsel for Victims**

**The Office of Public Counsel for the Defence**

**States Representatives**

*Amicus Curiae*

**REGISTRY**

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**Registrar**  
Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

**PRE TRIAL CHAMBER II** (the ‘Chamber’) of the International Criminal Court (the ‘Court’), having regard to article 58(4) of the Rome Statute (the ‘Statute’), issues the following decision on the Prosecutor’s ‘Request to Vacate Arrest Warrant’ for Simone Gbagbo (the ‘Request’).<sup>1</sup>

### **I. Procedural history**

1. On 7 February 2012, the Prosecution filed an Application pursuant to Article 58 of the Statute (the ‘Article 58 Application’), seeking the arrest of Simone Edivert Gbagbo (‘Simone Gbagbo’),<sup>2</sup> (i) indicating *inter alia* that the general case theory relied upon for the purposes of Laurent Gbagbo’s warrant of arrest,<sup>3</sup> issued by Pre-Trial Chamber III on 30 November 2011<sup>4</sup>, ‘equally applied’ with respect to Simone Gbagbo and (ii) incorporating by reference relevant portions of the warrant for Mr Gbagbo and its underlying supporting material.<sup>5</sup>

2. On 29 February 2012, Pre-Trial Chamber III issued a warrant of arrest against Simone Gbagbo (‘Warrant of Arrest for Simone Gbagbo’).<sup>6</sup>

3. On 2 March 2012, Pre-Trial Chamber III issued its Decision on the Prosecutor’s Application Pursuant to Article 58 (the ‘Article 58 Decision’).<sup>7</sup> Pre-Trial Chamber III noted the Prosecution’s contention that there was a considerable degree of overlap between the warrant of arrest application filed with respect to Laurent Gbagbo and the application for a warrant of arrest with respect to Simone Gbagbo.<sup>8</sup> According to the Article 58 Decision:

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<sup>1</sup> *The Prosecutor v. Simone Gbagbo*, [Request to Vacate Arrest Warrant](#), 15 June 2021, ICC-02/11-01/12-89-Conf-Exp.

<sup>2</sup> *The Prosecutor v. Simone Gbagbo*, [Prosecutor’s Application Pursuant to Article 58 as to SIMONE GBAGBO](#), ICC-02/11-35-US-Exp, 07 February 2012, para. 6.

<sup>3</sup> [Article 58 Application](#), para. 6.

<sup>4</sup> *The Prosecutor v. Laurent Gbagbo*, [Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant of arrest against Laurent Koudou Gbagbo](#), ICC-02/11-01/11-9-US-Exp, 30 November 2011. A public redacted version was issued on 20 December 2011, ICC-02/11-01/11-9-Red.

<sup>5</sup> *Ibid*, para. 6 and footnote 5; para 17.

<sup>6</sup> *The Prosecutor v. Simone Gbagbo*, [Warrant of Arrest for Simone Gbagbo](#), 29 February 2012, ICC-02/11-01/12-01.

<sup>7</sup> *The Prosecutor v. Simone Gbagbo*, [Public redacted version - Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant of arrest against Simone Gbagbo](#), 2 March 2012, ICC-02/11-01/12-2-Red.

<sup>8</sup> *Ibid*, para. 6.

‘19. In all the circumstances, the conclusions of the Chamber in its Decision on [the Application for a warrant of arrest with respect to Mr Gbagbo] are equally applicable to the present Application as regards the contextual elements of the alleged crimes against humanity, along with the underlying acts it is suggested were committed by the pro-Gbagbo forces’.<sup>9</sup>

4. On 15 January 2019, Trial Chamber I, by majority, rendered a decision in open court acquitting Mr Gbagbo and Mr Blé Goudé of all charges (the ‘15 January 2019 Decision’).<sup>10</sup> The written reasons for the 15 January 2019 Decision were filed on 16 July 2019.<sup>11</sup>

5. On 31 March 2021, the Appeals Chamber, by majority, upheld the acquittals.<sup>12</sup>

6. On 15 June 2021, the Prosecution filed the Request.<sup>13</sup> The Prosecution indicates that:

‘[it] has reviewed the evidence supporting the case against Ms Simone Gbagbo in light of both the majority and minority decisions in the Trial Chamber’s No Case to Answer decision, as well as the Appeals Chamber’s Judgment. It has done so pursuant to its duty under regulation 60 of the Regulations of the Office of the Prosecutor. Upon completion of that review, the Prosecution has concluded there is no reasonable prospect that it could prove the case against Ms Simone Gbagbo to the necessary evidentiary threshold should the warrant of arrest be executed’.<sup>14</sup>

7. To date, the Warrant of Arrest for Simone Gbagbo remains unexecuted.

## II. Classification

8. The Prosecution filed its Request Confidential, *ex parte* Prosecution and Registry for one specific reason, as follows:

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<sup>9</sup> *Ibid*, para. 19.

<sup>10</sup> *The Prosecutor v. Laurent Gbagbo*, [Transcript of the Hearing of 15 January 2019](#), ICC-02/11-01/15-T-232-ENG, pp. 1-3.

<sup>11</sup> *The Prosecutor v. Laurent Gbagbo*, [Reasons for oral decision of 15 January 2019 on the Requête de la Défense de Laurent Gbagbo afin qu'un jugement d'acquittement portant sur toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté immédiate soit ordonnée](#), 16 July 2019, ICC-02/11-01/15-1263.

<sup>12</sup> *The Prosecutor v. Laurent Gbagbo*, [Judgment in the appeal of the Prosecutor against Trial Chamber I's decision on the no case to answer motions](#), 31 March 2021, ICC-02/11-01/15-1400, para. 380.

<sup>13</sup> *The Prosecutor v. Simone Gbagbo*, [Request to Vacate Arrest Warrant](#), 15 June 2021, ICC-02/11-01/12-89-Conf-Exp.

<sup>14</sup> *Idem*, para. 6.

‘on 17 June 2021, Mr Laurent Gbagbo is expected to return to Abidjan, Côte d’Ivoire. The Prosecution considers it necessary to liaise with the relevant authorities of Côte d’Ivoire and with other partners, as required, in order to ascertain whether implementation of any security and/or preventive measures is required before the Request, and any ensuing order, are made public. The Prosecution will revert back to the Chamber as soon as it has completed this process’.

9. The Chamber has not received to date any additional information from the Prosecution about its inquiries with the authorities of Côte d’Ivoire and with other partners as to whether security and/or preventive measures are required before the Request and the present decision can be made public. The Chamber notes that the Warrant of Arrest for Simone Gbagbo is public. The Chamber intends to equally make public this decision as soon as practicable and notes that the events mentioned in the Request as advising caution in disclosing its existence and any ensuing measures have in the meantime taken place. The Prosecution is directed to inform the Chamber as to the result of its inquiries with no delay and either to confirm that this decision and the Request can be made public, or to indicate a time frame within which additional information relevant to this purpose would become available, no later than one week of the notification of this decision.

### III. Analysis

10. Pursuant to Article 58(4) of the Statute, a ‘warrant of arrest shall remain in effect until otherwise ordered by the Court’.

11. The Chamber notes the submission of the Prosecution that the general ‘case theory’ relied upon with respect to Laurent Gbagbo also applied to the Article 58 Application filed with respect to Simone Gbagbo,<sup>15</sup> including as regards the charged crimes, and that the overlap between the cases has been so wide that it has allowed to incorporate significant portions of the application for a warrant of arrest against Laurent Gbagbo as well as the ‘underlying supporting material’ by reference in the Article 58 Application for Simone Gbagbo.

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<sup>15</sup> [Article 58 Application](#), para. 6.

12. Such overlap has been acknowledged by Pre-Trial Chamber III.<sup>16</sup> Significantly, Pre-Trial Chamber III indicated that the conclusions arrived at in the Application for a warrant of arrest with respect to Laurent Gbagbo were equally applicable to the Article 58 Decision as regards the contextual elements of the alleged crimes against humanity.<sup>17</sup>

13. In the view of the Chamber, the Request must be granted. Whilst the judgments issued by Trial Chamber I and the Appeals Chamber have obviously not addressed the guilt or innocence of Simone Gbagbo, both the ‘case theory’ and the ‘supporting material’ underpinning the allegations against her have been largely tested in the trial against Laurent Gbagbo and Charles Blé Goudé, including in particular the contextual elements of the crimes against humanity pleaded, which underpin the allegations against both Mr and Ms Gbagbo equally. The evidence presented was found unable to support a conviction *inter alia* because the Prosecutor ‘failed to demonstrate the existence of the alleged policy to attack a civilian population on the basis of the alleged patterns of violence and other circumstantial evidence cited in support’, as well as ‘to demonstrate that the crimes as alleged in the charges were committed pursuant to or in furtherance of a State or organisational policy to attack the civilian population’.<sup>18</sup>

14. The Chamber finds that developments at the trial and appeal stage of the case of Mr Gbagbo make it apparent that the evidence upon which the Warrant of Arrest for Simone Gbagbo was grounded can no longer be considered as satisfying the evidentiary threshold required in Article 58(1)(a) of the Statute. Accordingly, the Chamber considers it appropriate to decide that the Warrant of Arrest for Simone Gbagbo shall cease to have effect.

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<sup>16</sup> *The Prosecutor v. Simone Gbagbo*, [Public redacted version - Decision on the Prosecutor's Application Pursuant to Article 58 for a warrant of arrest against Simone Gbagbo](#), 2 March 2012, ICC-02/11-01/12-2-Red, para. 6.

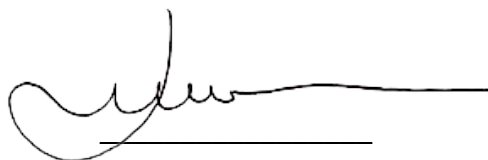
<sup>17</sup> *Idem*, para. 19.

<sup>18</sup> *The Prosecutor v. Gbagbo and Blé Goudé*, [Reasons for oral decision of 15 January 2019 on the Requête de la Défense de Laurent Gbagbo afin qu'un jugement d'acquittement portant sur toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté immédiate soit ordonnée, and on the Blé Goudé Defence no case to answer motion](#), 16 July 2019, ICC-02/11-01/15-1263, para. 28.

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

- i. **GRANTS** the Request;
- ii. **ORDERS** that the Warrant of Arrest for Simone Gbagbo ceases to have effect;
- iii. **ORDERS** the Prosecutor, no later than one week of the notification of this decision, either to confirm that this decision and the Request can be made public, or to indicate a time frame within which additional information relevant to this purpose would become available; and
- iv. **ORDERS** the Registrar, as soon practicable once this decision is made public, to inform all States which were notified of the Warrant of Arrest for Simone Gbagbo that the Warrant of Arrest is no longer in effect and to withdraw the requests for arrest and surrender.

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



**Judge Rosario Salvatore Aitala**



**Judge Antoine Kesia-Mbe Mindua**



**Judge Tomoko Akane**

Dated 19 July 2021

At The Hague, The Netherlands