

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

**ANNEX 21  
Public Document**

**Opinion No. CI-2010-A-035/22-12/CC/SG of 22 December 2010 of the  
Constitutional Council concerning the oath of office of Alassane Ouattara**

**REPUBLIC OF CÔTE D'IVOIRE**Unity – Discipline – Labour  
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**Opinion No. CI-2010-A-035/22-12/CC/SG  
of 22 December 2010 of the Constitutional Council concerning the  
written oath of office of Mr Alassane Ouattara and the ensuing actions**

**CERTIFIED COPY**

**IN THE NAME OF THE PEOPLE OF CÔTE  
D'IVOIRE  
THE CONSTITUTIONAL COUNCIL,**

**Noting** Law No. 2000-513 of 1 August 2000 establishing the Constitution of the Republic of Côte d'Ivoire;

**Noting** Law No. 2000-514 of 1 August 2000 establishing the Electoral Code;

**Noting** Institutional Law No. 2001-303 of 5 June 2001 governing the organisation and functioning of the Constitutional Council;

**Noting** Decision No. 2005-01/PR of 5 May 2005 on the extraordinary nomination of candidates for the October 2005 presidential election;

**Noting** Decision No. 2008-15/PR of 14 April 2008 on special modalities for amendments to the Electoral Code;

**Noting** Order No. 2008-133 of 14 April 2008 amending the Electoral Code;

**Noting** Decree No. 2010-207 of 5 August 2010 convening the electoral college of the Republic of Côte d'Ivoire for the purpose of the election of the President of the Republic;

**Noting** Decree No. 2010-282 of 12 October 2010 determining the duration of the electoral campaign for the election of the President of the Republic;

**Noting** Decree No. 2010-301 of 9 November 2010 convening the electoral college of the Republic of Côte d'Ivoire for the purpose of the second round of the election of the President of the Republic;

**Noting** Decision No. 2010-023/PR of 9 November 2010 determining the period of the second round of the election of the President of the Republic;

**Noting** Decisions Nos. CI-2009-EP/028/19-11/CC/SG of 19 November 2009, CI-2010-EP-32/06-11/CC/SG of 6 November 2010 and CI-2010-EP-34/03-12/CC/SG of 3 December 2010 of the Constitutional Council;

**Whereas** by letter of 16 December 2010, registered with the General Secretariat of the Constitutional Council on 16 December 2010 under number 083, the President of the Republic of Côte d'Ivoire applied to the Chair of the Constitutional Council pursuant to articles 34 and 88 of the Constitution, seeking its opinion on the following matters:

- The oath of office taken by Mr Alassane Ouattara by letter;
- The legal effect of the various actions performed by Mr Alassane Ouattara, claiming the status of President of the Republic:
  - a. The appointment of a Prime Minister, Mr Guillaume Kigbafori Soro, and the members of his government;
  - b. The appointment of officials to high office;
  - c. The appointment and recalling of ambassadors;
  - d. The use of the coat of arms and seals of the Republic of Côte d'Ivoire;
  - e. Letters to national and international financial institutions, requesting that they seek the prior authorisation of the Prime Minister appointed by Mr Ouattara as regards all transactions of the State of Côte d'Ivoire.

#### **As to form**

**Whereas** the opinion of the Constitutional Council may be sought by the President of the Republic in those cases set forth in the Constitution, the fact remains that the President of the Republic, mandated by article 34 of the Constitution to ensure that the Constitution and international commitments are upheld, may, as such, consult the Constitutional Council, the organ which regulates the functioning of public authorities, to ascertain whether a given situation is violative of the Constitution;

**Whereas** the request for an opinion was duly submitted;

It should be entertained.

#### **As to substance**

##### ***The validity of the oath taken by Mr Alassane Ouattara***

**Whereas** it is apparent from the request for an opinion and the material furnished that Mr Alassane Ouattara, purporting to be President-elect of the Republic further to the provisional proclamation of the results of the second round of the presidential election by the Chair of the Independent Electoral Commission (IEC) at the Golf Hotel, took an oath of office in writing on 3 December 2010;

**Whereas** he wrote to the Constitutional Council on 4 December 2010, apprising it of the purported oath;

**Whereas** under article 36 of the Constitution, *the President of the Republic shall be elected by an absolute majority of the votes cast;*

**Whereas** article 63 of the Electoral Code lays down that *the final result of the election of the President of the Republic shall be proclaimed by the Constitutional Council, after consideration of objections, if any, and published pursuant to the emergency procedure, within 7 days of receipt of the reports;*

**Whereas**, furthermore, article 39 of the Constitution prescribes that *within forty-eight hours of the proclamation of the final results, the President-elect of the Republic shall be inaugurated before a formal session of the Constitutional Council;*

**Whereas** article 98 of the Constitution stipulates that *the decisions of the Constitutional Council are not amenable to any form of appeal or review. They shall be binding on all administrative, judicial and military authorities and all natural and legal persons;*

**Whereas** by Decision No. CI-2010-EP-34/03-12/CC/SG of 3 December 2010, the Constitutional Council, sitting in public, proclaimed Mr Laurent Gbagbo President-elect of the Republic of Côte d'Ivoire with **51.45%** of the vote compared to **48.55%** garnered by Mr Alassane Ouattara;

**Whereas** further to that decision, and in accordance with article 39 of the Constitution, the President-elect, Mr Laurent Gbagbo, was inaugurated on 4 December 2010 before a formal session of the Constitutional Council;

**Whereas** such inauguration vests in Mr Laurent Gbagbo the right to exercise fully the functions of President of the Republic and Head of State of Côte d'Ivoire;

**Whereas** in light of the foregoing, Mr Alassane Ouattara cannot claim to have been elected, or even inaugurated;

**Whereas** the written oath of office on which he relies is not even contemplated by the Ivorian Constitution;

**Whereas** he may not validly rely on the proclamation of the Independent Electoral Commission, insofar as it was only provisional and the prerogative to

proclaim the final results of the presidential election lies with the Constitutional Council;

**Whereas** at this stage, it must be noted that the provisional proclamation issued unilaterally by the Chair of the Independent Electoral Commission, Mr Youssouf Bakayoko, is unlawful insofar as it violates the provisions of the Electoral Code;

**Whereas**, lastly, the decision of the Constitutional Council proclaiming Mr Laurent Gbagbo President of the Republic of Côte d'Ivoire is binding upon Mr Alassane Ouattara;

**Whereas** it must, accordingly, be found that the purported oath of office taken in writing by Mr Alassane Ouattara is null and void;

***The validity of the actions performed by Alassane Ouattara***

**Whereas** article 34 of the Constitution provides that *the President of the Republic is the Head of State. He is the embodiment of national unity. He ensures that the Constitution is upheld. He ensures the continuity of the State. He is the guarantor of national independence, territorial integrity and adherence to international commitments;*

**Whereas** article 41 of the Constitution makes clear that the *President of the Republic is the sole vestee of executive power;*

*He shall appoint the Prime Minister, who is the Head of Government and reports to him, and shall terminate his appointment;*

**Whereas** that same provision ordains that *on the recommendation of the Prime Minister, the President of the Republic shall appoint the other members of the government and shall determine their functions. He shall terminate their appointments, subject to the same conditions;*

**Whereas**, furthermore, article 84 of the Constitution states that *the President of the Republic shall negotiate and ratify international treaties and agreements;*

**Whereas** article 23 of the Constitution mandates that *the Constitution, laws and rules of the Republic are binding on all persons residing on national territory;*

**Whereas**, lastly, under article 98 of the Constitution, *the decisions of the Constitutional Council are not amenable to any form of appeal or review. They shall be binding on all administrative, judicial and military authorities and all natural and legal persons;*

**Whereas** Mr Alassane Ouattara, who has usurped the office of President of the Republic, has appointed a Prime Minister and officials to high office;

**Whereas** he has appointed and recalled ambassadors and used the coat of arms and seals of the Republic of Côte d'Ivoire;

**Whereas** all such actions are the prerogative of the President-elect of the Republic, in this instance Mr Laurent Gbagbo;

**Whereas**, accordingly, all of the actions performed by Mr Alassane Ouattara are null and void and are in no way binding upon the State of Côte d'Ivoire;

**ISSUES THE OPINION HEREUNDER:**

**Article 1:** The oath taken in writing by Mr Alassane Ouattara is null and void;

**Article 2:** The acts performed by Mr Alassane Ouattara are null and void and cannot bind the State of Côte d'Ivoire;

**Article 3:** The present opinion shall be served upon the President of the Republic and published in the Official Gazette of the Republic of Côte d'Ivoire.

**Rendered after deliberation** by the Constitutional Council at its session of 22 December 2010;

At which the following members were present:

Messrs	<b>Paul Yao-N'dre</b>	<b>Chair</b>
	<b>Timothée Ahoua-N'Guetta</b>	<b>Member</b>
	<b>Jacques André Monoko Daligou</b>	<b>Member</b>
	<b>Bruno Ekpo Wale</b>	<b>Member</b>
Ms	<b>Hortense Angora Sess, née Kouassi</b>	<b>Member</b>
Mr	<b>Félix Kouakou Tano</b>	<b>Member</b>
Ms	<b>Suzanne Joséphine Ebah, née Toure</b>	<b>Member</b>

Assisted by the Secretary-General of the Constitutional Council who signed together with the Chair.

**The Secretary-General**

**The Chair**

**Kouadiané Gbassi**

**Prof. Paul Yao-N'Dre**

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**The Secretary-General**

**Kouadiané Gbassi**