

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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

Date: 12 March 2013

**PRE-TRIAL CHAMBER I**

**Before: Judge Silvia Fernández de Gurmendi, Single Judge**

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

**Public redacted version**

**Second decision on the review of Laurent Gbagbo's detention pursuant to  
article 60(3) of the Rome Statute**

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

**The Office of the Prosecutor**

Fatou Bensouda

**Counsel for the Defence**

Emmanuel Altit

Agathe Bahi Baroan

Natacha Faveau Ivanovic

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for Participation/Reparation**

**The Office of Public Counsel for Victims**

Paolina Massidda

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

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar & Deputy Registrar**

Silvana Arbia

Didier Preira

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Section**

**Other**

**Judge Silvia Fernández de Gurmendi**, Single Judge for Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”), responsible for carrying out the functions of the Chamber in relation to the situation in the Republic of Côte d’Ivoire and the cases emanating therefrom,<sup>1</sup> hereby issues the second decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute (the “Statute”).

## **I. Procedural history**

1. On 23 November 2011, Pre-Trial Chamber III issued an arrest warrant for Laurent Gbagbo (“Mr Gbagbo”),<sup>2</sup> who was transferred to the Court on 30 November 2011. On 30 November 2011, Pre-Trial Chamber III issued the “Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant of arrest against Laurent Koudou Gbagbo”.<sup>3</sup>

2. On 1 May 2012, the Defence submitted the “*Requête de la Défense demandant la mise en liberté provisoire du Président Gbagbo*”.<sup>4</sup>

3. On 13 July 2012, the Single Judge issued the “Decision on the ‘*Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo*’” (the “Decision on Interim Release”), rejecting the Defence request for interim release.<sup>5</sup> The appeal of the Defence<sup>6</sup> was dismissed by the Appeals Chamber on 26 October 2012.<sup>7</sup>

4. On 12 November 2012, the Single Judge issued the “Decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome

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<sup>1</sup> ICC-02/11-01/11-61.

<sup>2</sup> ICC-02/11-01/11-1.

<sup>3</sup> ICC-02/11-01/11-9-US-Exp. A public redacted version is available (ICC-02/11-01/11-9-Red).

<sup>4</sup> ICC-02/11-01/11-105-Conf-Red-Corr, p. 39.

<sup>5</sup> ICC-02/11-01/11-180-Red, p. 26.

<sup>6</sup> ICC-02/11-01/11-193-Conf OA.

<sup>7</sup> Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I of 13 July 2012 entitled “Decision on the ‘the ‘*Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo*’”, 26 October 2012, ICC-02/11-01/11-278-Red OA (the “Gbagbo Appeals Judgment”).

Statute” (the “Decision on the Review of Detention”), in which the Single Judge rejected the request for interim release advanced by the Defence and decided that Mr Gbagbo shall remain in detention.<sup>8</sup>

5. On 18 January 2013, the Single Judge issued the “Decision on the request for the conditional release of Laurent Gbagbo and on his medical treatment” (the “Decision on Conditional Release”), in which the request for conditional release made by the Defence was rejected.<sup>9</sup>

6. The confirmation of charges hearing took place from 19 to 28 February 2013.<sup>10</sup> In the course of the hearing, the Chamber ordered the parties and the Office of Public Counsel for victims (the “OPCV”), as common legal representative of the victims admitted to participate in the proceedings, to submit any observations on the continued detention or release of Mr Gbagbo in writing by 5 March 2013.<sup>11</sup>

7. On 5 March 2013, the OPCV,<sup>12</sup> the Prosecutor<sup>13</sup> and the Defence<sup>14</sup> submitted their respective observations on the continued detention or release of Mr Gbagbo.

## II. Submissions of the parties and participants

### A. *The Prosecutor*

8. The Prosecutor submits that the relevant circumstances have not changed since the previous ruling issued by the Single Judge and that the continued detention of Mr Gbagbo is justified.<sup>15</sup>

<sup>8</sup> ICC-02/11-01/11-291, para. 61, p. 25.

<sup>9</sup> ICC-02/11-01/11-362-Red, p. 14.

<sup>10</sup> ICC-02/11-01/11-T-14-FRA ET WT.

<sup>11</sup> ICC-02/11-01/11-T-15-CONF-FRA ET, p. 2.

<sup>12</sup> ICC-02/11-01/11-413.

<sup>13</sup> ICC-02/11-01/11-414-Conf.

<sup>14</sup> ICC-02/11-01/11-415-Conf.

<sup>15</sup> *Ibid.*, paras 1, 12.

9. Moreover, the Prosecutor contends that, in light of the evidence presented in the course of the confirmation of charges hearing and the fact that Mr Gbagbo continues to enjoy wide support, the risk of flight has increased.<sup>16</sup> In addition, in the submission of the Prosecutor, knowledge of the incriminatory evidence together with the discussion at the confirmation of charges hearing concerning the Prosecutor's key witnesses would put Mr Gbagbo in a position to exercise pressure on them and obstruct the proceedings, if released.<sup>17</sup> The Prosecutor further contends that following the confirmation of charges hearing it appears that Mr Gbagbo still considers himself the legitimate president of Côte d'Ivoire. It follows, in the Prosecutor's view, that the risk that Mr Gbagbo will continue to commit crimes persists, also taking into account the network of supporters at his disposal.<sup>18</sup>

10. In addition, the Prosecutor submits that no new medical issue exists that would justify Mr Gbagbo's release with conditions. Finally, the Prosecutor avers that Mr Gbagbo's detention at the seat of the Court is not unreasonable and that the postponements of the confirmation of charges hearing are not attributable to the Prosecutor.<sup>19</sup>

#### ***B. The OPCV***

11. The OPCV submits that there has been no change of circumstances since the previous ruling on the release or detention of Mr Gbagbo and that the conditions justifying the suspect's detention pursuant to article 58(1) of the Statute continue to be met.<sup>20</sup> The OPCV further submits that the only change that has arisen since the previous decision under article 60(3) of the Statute is that the confirmation of charges hearing was held. In this regard,

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<sup>16</sup> *Ibid.*, para. 13.

<sup>17</sup> *Ibid.*, para. 14.

<sup>18</sup> *Ibid.*, para. 15.

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

<sup>20</sup> ICC-02/11-01/11-413, para. 16.

the OPCV contends that other chambers of this Court have stated that risk of flight of the detained person increases as proceedings advance.<sup>21</sup>

12. Furthermore, the OPCV underlines that the charges brought against Mr Gbagbo are of extreme gravity and, as confirmed by the Appeals Chamber, this is a factor to be taken into account when ruling on the continued detention or release of the suspect.<sup>22</sup> Lastly, the OPCV contends that the numerous demonstrations in support of Mr Gbagbo in and outside the Netherlands demonstrate the extent of the network of supporters capable of aiding the suspect.<sup>23</sup>

### *C. The Defence*

13. The Defence submits that Mr Gbagbo should be released, with or without conditions.<sup>24</sup> Should the Single Judge consider a release with conditions, the Defence requests that a hearing be held with a view to seeking additional information and clarification from [REDACTED] with regard to its offer to host Mr Gbagbo and enforce the conditions imposed by the Single Judge.<sup>25</sup>

14. The Defence submits that the circumstances justifying the continued detention of Mr Gbagbo have changed. First, the Defence submits that Mr Gbagbo's previous personal undertaking to appear before the Chamber when required has been confirmed in the course of the confirmation of charges hearing by Mr Gbagbo's determination to attend most sessions of the hearing and the statement that he made before the Chamber.<sup>26</sup>

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<sup>21</sup> *Ibid.*, para. 18.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*, para. 23.

<sup>24</sup> ICC-02/11-01/11-415-Conf, para. 105.

<sup>25</sup> *Ibid.*, para. 58.

<sup>26</sup> *Ibid.*, paras 16, 84.

15. Second, the Defence alleges that Mr Gbagbo does not have financial means to flee the jurisdiction of the Court. In this respect, the Defence underlines that the Prosecutor, since her previous submissions on the matter, has not provided the Single Judge with additional information on the resources to which Mr Gbagbo would allegedly have access. It is submitted that Mr Gbagbo does not have access to any bank accounts and there is little probability that any account linked to him is not yet frozen, since the [REDACTED].<sup>27</sup>

16. Third, the Defence contends that Mr Gbagbo does not have a network of supporters with unlawful intentions within or outside Côte d'Ivoire. In particular, the Defence alleges that the Prosecutor does not distinguish between the alleged network of supporters, on the one hand, and the *Front Populaire Ivoirien* (the "FPI"), a lawful political party actively promoting dialogue with the opposing political party, in and outside Côte d'Ivoire.<sup>28</sup> As for the existence of groups of Mr Gbagbo's supporters and representatives of his former regime in neighbouring countries, the Defence submits that the information relied on by the Prosecutor to request the continued detention of the suspect is vague and unsubstantiated.<sup>29</sup>

17. Finally, the Defence submits that Mr Gbagbo's continued detention may not be justified on the basis of a risk that other individuals will commit crimes, but only on the basis that there is a risk that the suspect himself will engage in the commission of crimes.<sup>30</sup> In addition, the Defence contends that Mr Gbagbo does not have the powers of a sitting head of State and that he appeals for reconciliation in Côte d'Ivoire.<sup>31</sup> The Defence also alleges that the atmosphere in Côte d'Ivoire has changed since the time of Mr Gbagbo's arrest

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<sup>27</sup> [REDACTED].

<sup>28</sup> *Ibid.*, paras 72-74, 78.

<sup>29</sup> *Ibid.*, para. 78.

<sup>30</sup> *Ibid.*, para. 91.

<sup>31</sup> *Ibid.*, para. 101.

and that the latter's release would not have any impact on the security situation in the country.<sup>32</sup>

18. Concerning the release of Mr Gbagbo with conditions, the Defence submits that the guarantees provided by [REDACTED] have been reiterated several times in writing and that all relevant issues seem to have been satisfactorily discussed in the course of the meetings between representatives of that State and the Registry.<sup>33</sup> The Defence contends that, if the Single Judge does not have sufficient information as to [REDACTED] offer to host Mr Gbagbo, if released, it would be logical to seek the necessary clarifications and information from the authorities of that State.<sup>34</sup> To this effect, the Defence requests the Single Judge to hold a hearing in the presence of the parties, the State's representatives and the Registry.<sup>35</sup>

### III. The applicable law

19. The Single Judge notes articles 58(1), 60(3) of the Statute and rules 118 and 119 of the Rules.

20. Article 58(1) of the Statute provides:

At any time after the initiation of an investigation, the Pre-Trial Chamber shall, on the application of the Prosecutor, issue a warrant of arrest of a person if, having examined the application and the evidence or other information submitted by the Prosecutor, it is satisfied that:

- (a) There are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court; and
- (b) The arrest of the person appears necessary:
  - (i) To ensure the person's appearance at trial;
  - (ii) To ensure that the person does not obstruct or endanger the investigation or the court proceedings; or
  - (iii) Where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.

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<sup>32</sup> *Ibid.*, paras 102, 104.

<sup>33</sup> *Ibid.*, paras 34, 38.

<sup>34</sup> *Ibid.*, para. 45.

<sup>35</sup> *Ibid.*, para. 58.



21. Article 60(3) of the Statute, in conjunction with rule 118(2) of the Rules, mandates the Chamber to review its ruling on the release or detention of the person at least every 120 days. According to article 60(3) of the Statute, upon such review the Chamber “may modify its ruling as to detention, release or conditions of release, if it is satisfied that changed circumstances so require”.

22. The Appeals Chamber has stated, in relation to a periodic review of a ruling on detention under article 60(3) of the Statute:

The Chamber must revert to the ruling on detention to determine whether there has been a change in the circumstances underpinning the ruling and whether there are any new circumstances that have a bearing on the conditions under article 58(1) of the Statute. For this reason, the Chamber should not restrict itself to only considering the arguments raised by the detained person. The Chamber must weigh the Prosecutor’s submissions against the submissions, if any, of the detained person. The Chamber must also consider any other information which has a bearing on the subject. Finally, in its decision on review, the Chamber must clearly set out reasons for its findings.<sup>36</sup>

23. The Appeals Chamber has clarified that the notion of “changed circumstances” within the meaning of article 60(3) of the Statute entails “either a change in some or all of the facts underlying a previous decision on detention, or a new fact satisfying a Chamber that a modification of its prior ruling is necessary.”<sup>37</sup> The Appeals Chamber has further held:

If there are changed circumstances, the Pre-Trial or Trial Chamber will need to consider their impact on the factors that formed the basis for the decision to keep the person in detention. If, however, the Pre-Trial or Trial Chamber finds that there are no changed circumstances, that Chamber is not required to further review the ruling on release or detention.<sup>38</sup>

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<sup>36</sup> Appeals Chamber, “Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 28 July 2010 entitled ‘Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence’”, ICC-01/05-01/08-1019 OA 4, 19 November 2010 (“*Bemba Appeals Judgment (OA 4)*”), para. 52.

<sup>37</sup> Appeals Chamber, “Judgment on the appeal of the Prosecutor against Pre-Trial Chamber IIs ‘Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa’”, ICC-01/05-01/08-631-Red (OA2), 2 December 2009, para. 60.

<sup>38</sup> Appeals Chamber, “Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 6 January 2012 entitled ‘Decision on the defence’s 28 December 2011 ‘Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo’”, ICC-01/05-01/08-2151-Red (OA 10), 5 March 2012, para. 1.

24. Lastly, the Single Judge recalls that the Appeals Chamber stated in the Gbagbo Appeals Judgment that “the scope of the review carried out in reaching a decision under article 60 (3) is potentially much more limited than that to be carried out in reaching a decision under article 60 (2) of the Statute”.<sup>39</sup> In the Bemba Appeals Judgment (OA 4), the Appeals Chamber specified that “[t]he Chamber does not have to enter findings on the circumstances already decided upon in the ruling on detention” and does not have to “entertain submissions by the detained person that merely repeat arguments that the Chamber has already addressed in previous decisions”.<sup>40</sup>

25. A review of a previous ruling on detention may result in the person’s continued detention, release, or release with conditions. In this regard, the Appeals Chamber has stated:

[T]he examination of conditions of release is discretionary and that conditional release is possible in two situations: (1) where a Chamber, although satisfied that the conditions under article 58 (1) (b) are not met, nevertheless considers it appropriate to release the person subject to conditions; and (2) where risks enumerated in article 58 (1) (b) exist, but the Chamber considers that these can be mitigated by the imposition of certain conditions of release.<sup>41</sup>

26. Finally, the Single Judge notes that in the Gbagbo Appeals Judgment, the Appeals Chamber stated that “where the Pre-Trial Chamber is of the view that no condition could mitigate the identified risks there is no obligation on the Chamber to address the State’s proposals any further”.<sup>42</sup>

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<sup>39</sup> *Gbagbo Appeals Judgment*, para. 24.

<sup>40</sup> *Bemba Appeals Judgment (OA 4)*, para. 53.

<sup>41</sup> Appeals Chamber, “Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 27 June 2011 entitled ‘Decision on Applications for Provisional Release’”, ICC-01/05-01/08-1626-Red (OA 7), 12 September 2011, para. 55.

<sup>42</sup> *Gbagbo Appeals Judgment*, para. 1.

#### IV. Analysis and conclusions of the Single Judge

##### *A. Whether there are changed circumstances that would require a modification of the previous ruling on detention*

27. In accordance with the above, the Single Judge will assess whether there has been any change in the circumstances underpinning her previous ruling under article 60(3) of the Statute, which would require its modification.

##### (i) Mr Gbagbo's commitment to appear before the Court

28. In the Decision on the Review of Detention, the Single Judge found that the reiterated commitment by Mr Gbagbo to appear before the Chamber at any time and the absence of any intent of revenge, as allegedly identified also by the medical experts, do not constitute a changed circumstance.<sup>43</sup>

29. The Single Judge considers that Mr Gbagbo's attendance at the confirmation of charges hearing and the unsworn statement made before the Chamber do not constitute a changed circumstance in respect of his commitment to appear before the Court. The presence of the suspect at the confirmation of charges hearing is envisaged in article 61(1) of the Statute, which provides that the hearing "shall be held in the presence of the Prosecutor and the person charged" unless one of the conditions set forth in paragraph 2 of that provision is met. The Single Judge when establishing the schedule of the confirmation of charges hearing, emphasised "the importance of the personal attendance of Mr Gbagbo at the confirmation of charges hearing and expects that he will be present throughout the sessions, unless exceptional circumstances arise".<sup>44</sup> With regard to the statement addressed by Mr Gbagbo to the Chamber, the Single Judge recalls that the Defence informed the Chamber of Mr Gbagbo's intention to exercise his right to make

<sup>43</sup> Decision on the Review of Detention, paras 38, 44.

<sup>44</sup> Pre-Trial Chamber I, "Decision on the schedule for the confirmation of charges hearing", ICC-02/11-01/11-397, 13 February 2013, para. 9.

an unsworn oral statement in his defence, as provided for in article 67(1)(h) of the Statute.<sup>45</sup>

30. This exercise by Mr Gbagbo of his rights under the Statute can thus not be considered as an indication of changed circumstances within the meaning of article 60(3) of the Statute.

(ii) Mr Gbagbo's lack of financial resources

31. In the Decision on the Review of Detention, the Single Judge concluded that "there is a risk that Mr. Gbagbo would use the means that his support network could provide in order to abscond in the event he is granted interim release".<sup>46</sup>

32. The Single Judge observes that the Defence does not submit evidence to demonstrate that the circumstances establishing this risk have changed but merely argues that there is no updated information, since the previous review of Mr Gbagbo's detention, as to whether he has access to financial means to abscond. The Single Judge further observes that the Defence repeats arguments already made in the course of the previous review of detention<sup>47</sup> and which have been decided upon by the Single Judge.<sup>48</sup>

33. The Single Judge considers that the absence of updated information on circumstances previously established in support of the continued detention of the suspect is not necessarily indicative of a change of such circumstances. In addition, [REDACTED] is not determinative of the unavailability of funds and assets at the suspect's disposal.

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<sup>45</sup> ICC-02/11-01/11-391, paras 31-32.

<sup>46</sup> Decision on the Review of Detention, para. 48.

<sup>47</sup> ICC-02/11-01/11-415-Conf, paras 17-18. See ICC-02/11-01/11-T-9-ENG ET WT, p. 23, lines 20-25 and p. 24, lines 1-3.

<sup>48</sup> Decision on the Review of Detention, paras 46, 48.

34. Therefore, the Single Judge considers that there continues to be a risk that Mr Gbagbo could use the means that his network of supporters could provide in order to abscond in the event he is granted interim release.

(iii) The existence of a network of Mr Gbagbo's supporters in and outside Côte d'Ivoire

35. In the Decision on the Review of Detention, it was found that "the network of Mr Gbagbo's supporters, based in countries neighbouring Côte d'Ivoire, in particular in Ghana, has strengthened its level of military and political organization in the last months" and that the development of this network increased the risks under article 58(1)(b)(i) to (iii) of the Statute.<sup>49</sup> This finding was based on the information submitted by the Prosecutor at the time and contained in the "*Rapport de mi-mandat du Groupe d'expert sur la Côte d'Ivoire en application du paragraphe 16 de la résolution 2045 (2012) du Conseil de sécurité, 15 octobre 2012*".<sup>50</sup> On the basis of this information, the Single Judge found that

High-ranking representatives of Mr Gbagbo's former regime, members of militias such as the *Jeunes Patriotes* and officials of the armed and security forces, took refuge in neighbouring countries like Benin, Ghana, Liberia and Togo after the post-electoral violence in Côte d'Ivoire. According to the same document, these groups of exiled representatives of the former Ivorian regime are suspected of organising and financing military operations in Côte d'Ivoire, recruiting mercenaries and purchasing weapons. The available material alleges specifically that a meeting took place in Takoradi, Ghana, on 12 July 2012, in which supporters of Mr Gbagbo's former regime discussed the establishment of a joint action plan to regain power in Côte d'Ivoire. The material available further suggests that the network of Mr Gbagbo's supporters is well organized and capable of conducting military operations. The report also lists operations recently launched on Ivorian territory which could be attributable to the pro-Gbagbo network referred to above.<sup>51</sup>

36. The Single Judge notes the arguments of the Defence as set out in paragraphs 16-17 above. In particular the Single Judge notes the Defence's submissions with respect to recent efforts by representatives of the FPI in Côte

<sup>49</sup> Decision on the Review of Detention, para. 59.

<sup>50</sup> ICC-02/11-01/11-285-Anx I. See the Decision on the Review of Detention, para. 55.

<sup>51</sup> Decision on the Review of Detention, para. 55.

d'Ivoire to engage in dialogue with the current Ivorian government.<sup>52</sup> The Defence also mentions a meeting dated 14 February 2013 in Accra, in which representatives of the FPI met with a senior official of the United Nations.<sup>53</sup> After this meeting, the FPI allegedly reiterated in a press release its willingness to begin a reconciliation process in Côte d'Ivoire.<sup>54</sup>

37. However, the Single Judge considers that Mr Gbagbo's appeals for reconciliation and the recent activities of the FPI aimed at dialogue with the Ivorian government are not at all incompatible with the continued existence of an organised network of prominent representatives of Mr Gbagbo's former regime, militias, *Jeunes Patriotes* and officials of the armed and security forces based in neighbouring countries, suspected of engaging in illegal activities with the ultimate goal to regain power in Côte d'Ivoire, as found in the Decision on the Review of Detention and set out above.

38. With regard to the Defence arguments concerning the vagueness and unreliability of the information previously presented by the Prosecutor, the Single Judge underlines that the Defence essentially seeks to re-litigate issues that were already decided by the Single Judge in the Decision on the Review of Detention.<sup>55</sup>

39. Therefore, no changed circumstance can be detected with regard to the existence of a network of Mr Gbagbo's supporters, which does not change the grounds justifying detention under article 58(1)(b)(i) to (iii) of the Statute.

(iv) Other relevant circumstances

40. With regard to the remaining circumstances underlying the previous ruling on Mr Gbagbo's continued detention or release, the Single Judge

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<sup>52</sup> ICC-02/11-01/11-415-Conf, para. 73.

<sup>53</sup> *Ibid.*, para. 78.

<sup>54</sup> *Ibid.*

<sup>55</sup> Decision on the Review of Detention, paras 56-59.

considers that there is no information indicating any change in those circumstances.<sup>56</sup>

(v) Conclusion

41. In conclusion, the Single Judge is satisfied, on the basis of the above analysis, that there are no changed circumstances since the previous ruling under article 60(3) of the Statute that affect the reasons requiring Mr Gbagbo's detention. The grounds justifying detention pursuant to article 58(1)(b)(i) to (iii) of the Statute still exist and the continued detention of Mr Gbagbo appears necessary. Interim release cannot be granted.

**B. *Conditional release***

42. In the Decision on Conditional Release, the Single Judge concluded that:

37. [...] there are no medical reasons that would justify the conditional release of Mr. Gbagbo, despite the existing risks under article 58(1)(b) of the Statute as confirmed in the Decision on the Review of Detention.

38. Accordingly, the Single Judge considers it is unnecessary to entertain any further the offer made by the potential host State, including by holding a hearing as requested by the Defence. This is, however, without prejudice to the possibility of considering this or another offer in the future, should the circumstances change.<sup>57</sup>

43. In the Gbagbo Appeals Judgment, the Appeals Chamber stated that "where the Pre-Trial Chamber is of the view that no condition could mitigate the identified risks there is no obligation on the Chamber to address the State's proposals any further".<sup>58</sup>

44. Based on the existing circumstances that justify Mr Gbagbo's detention under article 58(1)(b)(i) to (iii) as set out in the present decision, the Single Judge considers that the risks associated with Mr Gbagbo's release and

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<sup>56</sup> See para. 60 of the Decision on the Review of Detention and the references in footnote 101 to the circumstances previously established in the Decision on Interim Release.

<sup>57</sup> Decision on Conditional Release, para. 37-38.

<sup>58</sup> *Gbagbo Appeals Judgment*, para. 1.

knowledge by the outside world of such release can only be effectively managed in the Court's detention centre. Therefore, Single Judge is of the view that no conditions short of detention at the Court's detention facilities can mitigate these risks. Conditional release cannot be granted.

45. Accordingly, the Single Judge considers it unnecessary to convey a hearing to seek additional information from [REDACTED] with regard to its offer to host Mr Gbagbo, if released.

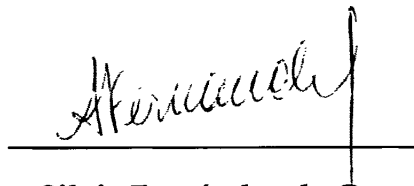
46. Finally, the Single Judge stresses that this determination is, however, without prejudice to the possibility of considering this or another offer in the future, should the circumstances change.

**FOR THESE REASONS, THE SINGLE JUDGE**

**DECIDES** that Mr Gbagbo shall remain in detention;

**REJECTS** the Defence request to hold a hearing.

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

A handwritten signature in black ink, appearing to read 'S. Fernández de Gurmendi', is written over a horizontal line. A vertical line extends downwards from the right side of the signature.

**Judge Silvia Fernández de Gurmendi**

**Single Judge**

Dated this 12 March 2013

At The Hague, The Netherlands