

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/15
Date: 2 November 2015

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

**Tenth decision on the review of Mr Laurent Gbagbo's detention pursuant to
Article 60(3) of the Statute**

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Eric MacDonald

Counsel for Laurent Gbagbo

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Mr Geert-Jan Alexander Knoops

Mr Claver N'dry

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Mr Patrick Craig

**Victims Participation and Reparations
Section**

Others

Trial Chamber I ('Chamber')¹ of the International Criminal Court, in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Articles 60(3), 61(11) and 64(6) of the Rome Statute ('Statute') and Rule 118(2) of the Rules of Procedure and Evidence ('Rules'), and incorporating by reference the applicable law as set out in the 'Seventh decision on the review of Mr Laurent Gbagbo's detention pursuant to Article 60(3) of the Statute',² issues the 'Tenth decision on the review of Mr Laurent Gbagbo's detention pursuant to Article 60(3) of the Statute'.

1. On 8 July 2015, the Chamber reviewed Mr Gbagbo's detention and decided that he shall continue to be detained.³
2. Pursuant to the Single Judge's order inviting submissions on Mr Gbagbo's detention, including on the existence of any changed circumstances pursuant to Article 60(3) of the Statute ('Order'),⁴ observations were filed on 9 October 2015 by the Defence team for Mr Gbagbo ('Defence'; 'Defence Submissions'),⁵ and on 16 October 2015 by the Legal Representative of Victims ('LRV'; 'LRV Submissions')⁶ and the Office of the Prosecutor ('Prosecution'; 'Prosecution Submissions').⁷ As further provided in the Order, the Defence filed a response

¹ Where 'Chamber' is used in this decision it refers to both Trial Chamber I as composed by the Presidency's 'Decision replacing a judge in Trial Chamber I', 18 March 2015, ICC-02/11-01/15-8, and to the chamber in its previous composition.

² Seventh decision on the review of Mr Laurent Gbagbo's detention pursuant to Article 60(3) of the Statute', 11 November 2014, ICC-02/11-01/11-718-Conf ('Seventh Article 60(3) Decision'), para. 31. A public redacted version was filed on the same day (ICC-02/11-01/11-718-Red).

³ Ninth decision on the review of Laurent Gbagbo's detention pursuant to Article 60(3) of the Rome Statute, ICC-02/11-01/15-127-Conf. A public redacted version was filed the same day (ICC-02/11-01/15-127-Red) ('Ninth Article 60(3) Decision'). See also Appeals Chamber, Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 8 July 2015 entitled "Ninth decision on the review of Mr Laurent Gbagbo's detention pursuant to Article 60(3) of the Statute", 8 September 2015, ICC-02/11-01/15-208 ('Appeals Chamber Judgment on Ninth Article 60(3) Decision').

⁴ See Transcript of hearing on 25 September 2015, ICC-02/11-01/15-T-4-ENG, page 4, line 16 to page 5, line 6.

⁵ *Soumissions de la défense portant sur les conditions d'application des dispositions de l'article 58(1)(b), faites à l'invitation de la Chambre, dans le cadre du dixième réexamen de la détention*, ICC-02/11-01/15-283-Conf. A public redacted version was filed the same day (ICC-02/11-01/15-283-Red).

⁶ Observations of the Common Legal Representative of Victims on the periodic review of Mr. Gbagbo's detention, ICC-02/11-01/15-295.

⁷ Prosecution's submissions on the tenth detention review of Mr Laurent Gbagbo, ICC-02/11-01/15-296.

to the Prosecution and LRV Submissions on 23 October 2015 ('Defence Response').⁸

3. In analysing whether there are any changed circumstances under Article 60(3) of the Statute, the Chamber notes that the Prosecution submits, *inter alia*, that there have been no changed circumstances since the issuance of the Chamber's last decision on the review of Mr Gbagbo's detention and therefore believes that his continued detention remains necessary.⁹ In support of its submissions, the Prosecution provides updated information pertaining to the activities of the pro-Gbagbo network and political developments in Côte d'Ivoire in the lead-up to the Presidential elections, including renewed calls for the release of Mr Gbagbo.¹⁰
4. Similarly, the LRV avers that no changed circumstances have arisen since the issuance of the Chamber's Ninth Article 60(3) Decision.¹¹ The LRV argues that the Defence Submissions do not refer to changed circumstances that would warrant a different ruling on Mr Gbagbo's detention, but rather 'mainly express [...] criticism towards the Chambers' previous rulings on Mr Gbagbo's detention'.¹²
5. To the contrary, the Defence avers, *inter alia*, that: (i) Article 66 of the Statute, and human rights law more generally, entrenches the exceptionality of detention, which may only be ordered in cases of strict necessity and must be justified by reference to specific conditions;¹³ (ii) in issuing successive decisions concerning the detention of Mr Gbagbo, Judges of the Court have

⁸ *Réponse de la Défense aux «Prosecution's submissions on the tenth detention review of Laurent Gbagbo» (ICC-02/11-01/15-296) et réponse de la Défense aux «Observations of the Common Legal Representative of Victims on the periodic review of Mr. Gbagbo's detention» (ICC-02/11-01/15-295)*, 23 October 2015, ICC-02/11-01/15-311.

⁹ Prosecution Submissions, ICC-02/11-01/15-296, paras 1 and 12.

¹⁰ Prosecution Submissions, ICC-02/11-01/15-296, paras 7-11.

¹¹ LRV Submissions, ICC-02/11-01/15-295, paras 1 and 7.

¹² LRV Submissions, ICC-02/11-01/15-295, para. 10.

¹³ Defence Submissions ICC-02/11-01/15-283-Red, paras 2-5.

failed to provide justification for maintaining Mr Gbagbo's detention, nor have they given due weight to Defence submissions;¹⁴ (iii) the Prosecution has failed to establish the ongoing existence of a network of supporters linked to Mr Gbagbo;¹⁵ and (iv) the calls for Mr Gbagbo's release, and the existence of supporters of Mr Gbagbo, constitute a legitimate aspect of Ivorian politics.¹⁶

6. The Chamber recalls that it is not required 'to entertain submissions by the detained person that merely repeat arguments that the Chamber has already addressed in previous decisions'.¹⁷ This principle was recently affirmed in the Appeals Chamber Judgment on Ninth Article 60(3) Decision, in which it was held that, without more, by raising the same arguments already considered and rejected by the Chamber, 'Mr Gbagbo demonstrates mere disagreement with the Trial Chamber's finding that his arguments are irrelevant'.¹⁸
7. In this regard, the Chamber notes with concern that the aforementioned arguments made by the Defence, particularly those noted above at points (i) and (iii) of paragraph 5, have been raised previously and already dismissed by the Chamber as irrelevant to its assessment of Mr Gbagbo's detention under Article 60(3) of the Statute.¹⁹ The Chamber shall therefore not adjudicate these arguments further.

¹⁴ Defence Submissions ICC-02/11-01/15-283-Red, paras 5-19. *See also* paras 20-25 and Defence Response, ICC-02/11-01/15-311, para. 1.

¹⁵ Defence Submissions, ICC-02/11-01/15-283-Red, paras 26-38. *See also* paras 20-25 and Defence Response, ICC-02/11-01/15-311, para. 7.

¹⁶ Defence Submissions, ICC-02/11-01/15-283-Red, para. 30; Defence Response, ICC-02/11-01/15-311, paras 4 and 7-25.

¹⁷ Seventh Article 60(3) Decision, ICC-02/11-01/11-718-Red, para. 44, referring to 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", 19 November 2010, ICC-01/05-01/08-1019 ('*Bemba* OA 4 Judgment'), para. 53.

¹⁸ Appeals Chamber Judgment on Ninth Article 60(3) Decision, ICC-02/11-01/15-208, para. 53.

¹⁹ *See for example*, Seventh Article 60(3) Decision, ICC-02/11-01/11-718-Red, paras 48-51, 54-65. *See also* Ninth Article 60(3) Decision, ICC-02/11-01/15-127-Red, paras 5-6; Appeals Chamber Judgment on Ninth Article 60(3) Decision, ICC-02/11-01/15-208, paras 51-53.

8. With respect to Mr Gbagbo's argument raised at point (ii) of paragraph 5 above, that, over the course of successive decisions, the Judges of the Court have failed to provide justification for maintaining Mr Gbagbo's detention, nor have they given due weight to Defence submissions,²⁰ the Chamber considers that, rather than addressing the existence of any 'changed circumstances' that have arisen since the Ninth Article 60(3) Decision, such submission constitutes a 'mere disagreement' with the Chamber's previous findings. Notably, regarding certain of the issues raised, including, *inter alia*, the existence of Mr Gbagbo's network of supporters, the legitimacy of the *Front Populaire Ivoirien* ('FPI') and its members, and Mr Gbagbo's access to financial means, this argument seeks to challenge not only the previous findings of the present Chamber but also of the Appeals Chamber.²¹
9. Given the focus of the present inquiry on the existence of any changed circumstances under Article 60(3) of the Statute, and the fact that the Chamber is not required 'to entertain submissions by the detained person that merely repeat arguments that the Chamber has already addressed in previous

²⁰ Defence Submissions ICC-02/11-01/15-283-Red, paras 6-19. *See also* paras 20-25 and Defence Response, ICC-02/11-01/15-311, para. 1.

²¹ (i) for previous findings on the existence of a network of supporters, *see for example* Appeals Chamber, 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 'Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo'", 26 October 2012, ICC-02/11-01/11-278-Red, ('Appeals Chamber Judgment on Article 60(2) Decision'), paras 59-60, 63; Judgment on the appeal of Mr Laurent Gbagbo against the decision of Pre-Trial Chamber I of 11 July 2013 entitled "Third decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute", 29 October 2013, ICC-02/11-01/11-548-Red ('Appeals Chamber Judgment on Third Article 60(3) Decision'), paras 54, 102-3; Appeals Chamber Judgment on Ninth Article 60(3) Decision, ICC-02/11-01/15-208, paras 61, 74-75.

(ii) for previous findings on the irrelevancy of arguments on the legitimacy / lack of criminal intent of the FPI, *see for example* Appeals Chamber Judgment on Article 60(2) Decision, ICC-02/11-01/11-278-Red, para. 59 ('The existence of a political party that supports the detained person is a factor that is relevant to the determination of whether the continued detention appears necessary under article 58(1) (b) (i) of the Statute...') and para. 63; Appeals Chamber Judgment on Ninth Article 60(3) Decision, ICC-02/11-01/15-208, paras 76-77.

(iii) for previous findings on Mr Gbagbo's access to financial means, *see for example* Appeals Chamber Judgment on Article 60(2) Decision, ICC-02/11-01/11-278-Red, paras 55-58; Appeals Chamber Judgment on Third Article 60(3) Decision, ICC-02/11-01/11-548-Red, paras 94-96.

decisions’,²² the Chamber therefore dismisses Defence argument (ii) at paragraph 5 above and the sub-arguments raised thereunder.

10. The Chamber notes, however, that it has previously considered the broader issue of Mr Gbagbo’s network of supporters to be a relevant circumstance underpinning the need for his continued detention under Article 58(1)(b)(i) and (ii) of the Statute.²³ Indeed, the Chamber previously noted that ‘[t]he extent of this network’s political and military organisation was found by the Pre-Trial Chamber to increase and decrease over the course of the time Mr Gbagbo has been detained’.²⁴ Given this finding, as in its Ninth Article 60(3) Decision, the Chamber considers it appropriate to assess whether there are any changed circumstances with respect to Mr Gbagbo’s network that would affect the Chamber’s previous ruling on the conditions underpinning Article 58(1)(b)(i) and (ii) of the Statute.

11. In support of the ongoing activities of Mr Gbagbo’s network of supporters, the Prosecution cites a number of newspaper articles referring to, *inter alia*, continued calls for Mr Gbagbo’s release.²⁵ The Prosecution avers that the statements from various political parties cited therein invoke ‘the prospect of the Accused’s liberation as an election platform’, and demonstrate that Mr Gbagbo’s network of supporters continues to be active.²⁶

12. In the Defence Response, the Defence argues that the Prosecution has not provided any new material attesting of the existence of a network ‘*dont le but serait de faire échapper Laurent Gbagbo à la justice*’, and that calls for Mr Gbagbo’s

²² Seventh Article 60(3) Decision, ICC-02/11-01/11-718-Red, para. 44, referring to *Bemba* OA 4 Judgment, para. 53.

²³ See for example Ninth Article 60(3) Decision, ICC-02/11-01/15-127-Red, paras 7-11.

²⁴ Seventh Article 60(3) Decision, ICC-02/11-01/11-718-Conf, para. 54 [footnotes omitted]; cited in the Ninth Article 60(3) Decision, ICC-02/11-01/15-127-Red, para. 7.

²⁵ Prosecution Submissions, ICC-02/11-01/15-296, paras 7-11. See in particular footnotes 19, 21, 22, 23, 24 and 26.

²⁶ Prosecution Submissions, ICC-02/11-01/15-296, para. 11.

release by the FPI form a legitimate part of Ivorian political dialogue that cannot be equated with a desire to see Mr Gbagbo evade justice.²⁷

13. The Chamber notes that, unlike its submissions in connection with previous reviews of Mr Gbagbo's detention under Article 60(3) of the Statute, the Prosecution has not put forward a significant amount of further material to attest to the ongoing activities of the pro-Gbagbo network.²⁸

14. However, the Chamber recalls that, in conducting a review of detention under Article 60(3) of the Statute, '[w]hen addressing changed circumstances, the Prosecution does not have to re-establish the same underlying facts if these facts continue to apply'.²⁹ In the present circumstances, the Chamber notes that the Defence argues that the Prosecution has failed to address the fact that calls for release of Mr Gbagbo, and his popular support, are functions of Ivorian politics, and that, *inter alia*, '*on ne pouvait imputer d'intentions criminelles aux membres du FPI appelant à la libération de Laurent Gbagbo puisque le FPI est un parti légal*'.³⁰ However, according to the Appeals Chamber's finding that '[t]he existence of a political party that supports the detained person is a factor that is relevant to the determination of whether the continued detention appears necessary under article 58(1)(b)(i) of the Statute';³¹ there is no need for the Prosecution to establish the criminality of Mr Gbagbo's network of supporters, but merely its ongoing existence, on the basis, *inter alia*, that 'such support could indeed facilitate absconding'.³² Accordingly, the Chamber considers that the further material provided by the Prosecution supporting calls for release

²⁷ Defence Response, ICC-02/11-01/15-311, paras 17 and 20.

²⁸ *See, in contrast, the material cited to in Ninth Article 60(3) Decision*, ICC-02/11-01/15-127-Red, para. 8.

²⁹ Seventh Article 60(3) Decision, ICC-02/11-01/11-718-Conf, para. 31 (f), referring to *Bemba* OA 4 Judgment, ICC-01/05-01/08-1019, para. 51.

³⁰ Defence Submissions ICC-02/11-01/15-283-Red, para. 12.

³¹ Appeals Chamber Judgment on Article 60(2) Decision, ICC-02/11-01/11-278-Red, para. 59.

³² Appeals Chamber Judgment on Article 60(2) Decision, ICC-02/11-01/11-278-Red, para. 59. It is also noted at para. 63 that the existence of such party 'may also assist in obstructing or endangering the investigation or the court proceedings' under Article 58(1)(b)(ii) of the Statute.

of Mr Gbagbo,³³ while sparse, clearly illustrates the continued existence of Mr Gbagbo's support network.

15. Having reviewed the material before it, the Chamber is therefore satisfied that there are no changed circumstances regarding Mr Gbagbo's network of supporters which would warrant a modification of its risk assessment under Article 58(1)(b)(i) and (ii) of the Statute, insofar as there remains a need for Mr Gbagbo to be detained to ensure his appearance at trial and to ensure that he does not obstruct or endanger the proceedings.
16. The Chamber notes that Mr Gbagbo has not made any application for conditional release. In the absence of a concrete or self-evident proposal for conditional release, the Chamber recalls that its discretion to consider conditional release is unfettered.³⁴ Accordingly, the Chamber shall not consider the issue further at this stage.

³³ Prosecution Submissions, ICC-02/11-01/15-296, paras 7-11. *See in particular* footnotes 19, 21, 22, 23, 24 and 26.

³⁴ *See* Rule 119 of the Rules; Appeals Chamber Judgment on Article 60(2) Decision, ICC-02/11-01/11-278-Red, para. 79.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DECIDES that Mr Gbagbo shall remain in detention.

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

A handwritten signature in black ink, appearing to read 'G. Henderson', with a long horizontal stroke extending to the right.

Judge Geoffrey Henderson, Presiding Judge

A handwritten signature in black ink, appearing to read 'Olga Herrera Carbuca', with a horizontal line underneath.

Judge Olga Herrera Carbuca

A handwritten signature in black ink, appearing to read 'Bertram Schmitt', with a horizontal line underneath.

Judge Bertram Schmitt

Dated 2 November 2015

At The Hague, The Netherlands