

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-02/11-01/15**

Date: **20 April 2018**

TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Geoffrey Henderson

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ***

Public Redacted Version of

Decision on Mr Gbagbo's Request for Interim Release

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 Mr 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

Paolina Massidda

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
Gbagbo Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber I (“Chamber”) of the International Criminal Court, in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Articles 58(1)(b), 60, 61(11) and 64(6)(a) of the Rome Statute (“Statute”), and Rules 118 and 119 of the Rules of Procedure and Evidence (“Rules”), issues by Majority, Judge Tarfusser dissenting, this Decision on Mr Gbagbo’s Request for Interim Release.

I. Procedural Background

1. On 2 November 2015, the Trial Chamber reviewed Mr Gbagbo’s detention and decided that he shall continue to be detained (“Tenth Decision”).¹
2. On 27 November 2015, the Trial Chamber determined that Mr Gbagbo was fit to stand trial and to attend trial proceedings.²
3. On 28 January 2016, the trial against Mr Gbagbo and Mr Blé Goudé commenced.³
4. On 10 March 2017, after having invited the parties to file submissions for the purpose of Article 60(3) of the Statute,⁴ the Chamber, by majority, decided that Mr Gbagbo shall remain in detention (“Decision of 10 March 2017”).⁵
5. On 19 July 2017, the Appeals Chamber reversed the Decision of 10 March 2017 and directed the Trial Chamber to carry out a new review as to whether Mr Gbagbo should continue to be detained or should be released, with or without conditions (“Appeals Chamber Judgment”).⁶

¹ Tenth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60(3) of the Statute, ICC-02/11-01/15-328.

² Decision on the fitness of Laurent Gbagbo to stand trial, ICC-02/11-01/15-349.

³ ICC-02/11-01/15-T-9-ENG ET.

⁴ Decision on the “Requête de la Défense à la suite de la transmission par le Greffe d’un rapport médical concernant Laurent Gbagbo”, ICC-02/11-01/15-770-Conf.

⁵ Decision on Mr Gbagbo’s Detention, ICC-02/11-01/15-846.

⁶ Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 10 March 2017 entitled “Decision on Mr Gbagbo’s Detention, ICC-02/11-01/15-992-Conf.

6. On 25 September 2017, after having requested new submissions on the matter, the Chamber, by majority, decided anew that Mr Gbagbo should remain in detention (“Decision of 25 September 2017”).⁷
7. On 2 and 4 October 2017, the Defence for Mr Gbagbo filed a notice of appeal against the Decision of 25 September 2017,⁸ and subsequently an appeal brief.⁹
8. On 5 October 2017, the Appeals Chamber, by majority, dismissed Mr Gbagbo’s appeal *in limine*, in light of its non-compliance with Regulation 64 of the Regulations of the Court.¹⁰
9. On 19 January 2018, the last witness called by the Prosecutor testified in court.¹¹
10. On 9 February 2018, the Chamber issued its “Order on the further conduct of proceedings”, inviting the Prosecutor to file a trial brief and ordering the Defence to make submissions as to the continuation of the trial proceedings.¹²
11. On 14 February 2018, the Defence for Mr Gbagbo filed its “*Requête de la Défense visant à ce que soit ordonnée la mise en liberté provisoire de Laurent Gbagbo*” (“Request”), in which it requests the Chamber to order Mr Gbagbo’s release for health reasons and complemented with treatment in an open environment. It also requests the Chamber to schedule a hearing to discuss the process and the conditions of release.¹³

⁷ Decision on Mr Gbagbo’s Detention, ICC-02/11-01/15-1038-Conf.

⁸ Acte d’appel de la Défense relatif à la « Decision on Mr Gbagbo’s Detention » (ICC-02/11-01/15-1038) de la Chambre de première instance I décidant du maintien en détention de Laurent Gbagbo, ICC-02/11-01/15-1042-Conf.

⁹ Document à l’appui de l’appel de la «Decision on Mr Gbagbo’s Detention» (ICC02/11-01/15-1038-Conf) Du 26 septembre 2017, ICC-02/11-01/15-1045-Conf.

¹⁰ Decision on Mr Laurent Gbagbo’s Notice of Appeal, ICC-02/11-01/15-1047.

¹¹ ICC-02/11-01/15-T-220.

¹² ICC-02/11-01/15-1124.

¹³ ICC-02/11-01/15-1130-Conf.

12. On 21 and 22 February 2018, the Prosecutor¹⁴ and the LRV¹⁵ filed their observations, opposing the Request.
13. On 4 April 2018, as instructed by the Chamber,¹⁶ the Registry filed an updated medical report of Mr Gbagbo (“Medical Report”).¹⁷
14. On 11 April 2018, the LRV¹⁸ and the Prosecutor¹⁹ submitted their responses to the Medical Report.
15. On 13 April 2018, the Defence for Mr Gbagbo submitted its response to the Medical Report.²⁰

II. Submissions

16. In general, the Defence for Mr Gbagbo submits that during his years in detention Mr Gbagbo’s state of health has not improved and that two years of trial hearings have generally affected his fatigue and weakness. The Defence for Mr Gbagbo states that if he is not released, Mr Gbagbo may die, particularly since he cannot be adequately treated while in detention. Accordingly, it submits Mr Gbagbo should be released.²¹

¹⁴ Prosecution’s Response to Mr Gbagbo’s request for interim release (ICC-02/11-01/15-1130-Conf), ICC-02/11-01/15-1132-Conf.

¹⁵ Response to the “Requête de la Défense visant à ce que soit ordonnée la mise en liberté provisoire de Laurent Gbagbo” (ICC-02/11-01/15-1130-Conf), ICC-02/11-01/15-1133-Conf.

¹⁶ E-mail of Trial Chamber I Communications dated 1 March 2018.

¹⁷ Registry Transmission of Medical Report Requested by the Chamber, ICC-02/11-01/15-1145-Conf-Exp and Conf-Exp Annex. Reclassified as confidential pursuant to e-mail from Trial Chamber I Communications on 6 April 2018.

¹⁸ Observations on the Medical Report concerning Mr Gbagbo’s health situation dated 4 April 2018, ICC-02/11-01/15-1147-Conf.

¹⁹ Prosecution’s observations on the Medical Report concerning Mr Gbagbo (ICC-02/11-01/15-1145-Conf-Anx), ICC-02/11-01/15-1149-Conf.

²⁰ Observations de la Défense portant sur le document émanant du Docteur Falke annexé à la « Registry Transmission of Medical Report Requested by the Chamber » du 4 avril 2018 (ICC-02/11-01/15-1145-Conf), ICC-02/11-01/15-1151-Conf. Via an e-mail from Trial Chamber I Communications on 6 April 2018, the Chamber set 13 April as the time limit for the parties and participants to submit their observations on the Medical Report. Via e-mail on 9 April 2018, the Defence for Mr Blé Goudé informed that they would not file submissions.

²¹ ICC-02/11-01/15-1130-Conf, paras 1-4.

In its submissions, the Defence for Mr Gbagbo also expresses its disagreement with the Decision of 25 September 2017.²²

17. The Defence for Mr Gbagbo refers to reports made by Detention Centre's Medical Officer, particularly the worsening of Mr Gbagbo's health condition, who it submits, is an aging, vulnerable and fragile person. The Defence for Mr Gbagbo states that this vulnerability is evident in Mr Gbagbo's [REDACTED]. It submits that the Medical Officer, instead of treating Mr Gbagbo, blames him for being non-compliant. The Defence for Mr Gbagbo further argues that the Medical Officer does not take responsibility for Mr Gbagbo's health decline and pretends that treatment at the Detention Centre is perfect and adapted to all of Mr Gbagbo's pathologies. The Defence for Mr Gbagbo also contends that the Medical Officer's reports (namely the two most recent reports dated 24 November 2017 and 18 December 2017) are vague and do not refer to the causes of Mr Gbagbo's fatigue, including [REDACTED].²³
18. The Defence for Mr Gbagbo briefly refers to meetings held with the Registry on 4 December 2017 and 1 February 2018.²⁴ It then makes an extensive description of proceedings related to Mr Gbagbo's detention and medical reports from 2011 and until the Decision of 25 September 2017 (reiterating its disagreement with most of the conclusions contained therein).²⁵
19. As regards the present Request, the Defence for Mr Gbagbo states that the accused will only recover if he is able to receive treatment in an open environment, particularly in the locations indicated by Dr Chuc in a report dated 18 August 2014 (submitted before the Pre-Trial Chamber).²⁶ The Defence for Mr Gbagbo argues that although it would have preferred to give concrete proposals to the Chamber in this regard, it is the Chamber's responsibility to decide on interim release and the

²² ICC-02/11-01/15-1130-Conf, para. 5.

²³ ICC-02/11-01/15-1130-Conf, paras 8-21.

²⁴ ICC-02/11-01/15-1130-Conf, para. 23.

²⁵ ICC-02/11-01/15-1130-Conf, paras 25-79.

²⁶ ICC-02/11-01/15-1130-Conf, paras 80-82.

conditions. It submits that in fact the [REDACTED] authorities have reverted to the Chamber to obtain certain precisions on the conditions of release.²⁷ The Defence for Mr Gbagbo refers to Judge Tarfusser's opinion that: "It is a Chamber's duty to at least test, *motu proprio* if necessary, the existence of a solution for conditional release and its feasibility before concluding that continued detention is the only option. [...] to do otherwise is tantamount to putting an unjustified burden on the Defence and, ultimately, to failing the Court's duties and responsibilities vis-à-vis the paramount right to personal liberty".²⁸

20. Accordingly, the Defence for Mr Gbagbo requests the Chamber to order: (a) the interim release of Mr Gbagbo on reasons of health; (b) that this release is complemented with treatment in an open environment; and (c) a hearing to discuss the process and conditions of this release.

21. The Prosecutor opposes the Request, submitting that detention continues to be necessary and is entirely compatible with Mr Gbagbo's health.²⁹ The Prosecutor submits that the Medical Officer has reported that Mr Gbagbo's health is stable and that the treatment received is maximum and optimum. In her view, the Defence for Mr Gbagbo fails to show that the accused's health has changed and rendered his detention either incompatible or unnecessary. Accordingly, the Prosecutor submits that Mr Gbagbo should remain in detention as there are no changed circumstances warranting a modification to the Decision of 25 September 2017.³⁰

22. The Prosecutor contends that the Decision of 25 September 2017 was issued recently and that two subsequent medical reports of the Medical Officer have confirmed that Mr Gbagbo's health has neither changed nor deteriorated since.³¹ She also submits that adequate treatment is prevented and that the fact that his condition has not

²⁷ ICC-02/11-01/15-1130-Conf, para. 83.

²⁸ ICC-02/11-01/15-1130-Conf, para. 83, referring to ICC-02/11-01/15-1038-Anx, para. 12.

²⁹ ICC-02/11-01/15-1132-Conf, para. 1.

³⁰ ICC-02/11-01/15-1132-Conf, paras 2-5.

³¹ ICC-02/11-01/15-1132-Conf, paras 8-9, 11.

markedly improved is mainly due to Mr Gbagbo's refusal to follow medical advice and not to the conditions of his detention.³² The Prosecutor submits that the Defence for Mr Gbagbo thus misrepresents and attempts to discredit the Medical Officer's reports, without offering any evidence but only mere speculation.³³ Lastly, the Prosecutor states that detention remains necessary under Articles 58(1)(b)(i) and (ii) and 60(2) of the Statute, since the situation has not changed since the Decision of 25 September 2017.³⁴

23. The LRV equally opposes the Request and submits that the reasons for the Decision of 25 September 2017 are still valid to date.³⁵ In her view, the notion of "changed circumstances" under Article 60(3) of the Statute "ports 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".³⁶

24. The LRV submits that the Appeals Chamber has established that a Chamber must first "determine whether changed circumstances exist to warrant the disturbing of a previous ruling on detention, rather than addressing each factor underpinning detention in a de novo manner to determine whether any of these have changed".³⁷ In this regard, the LRV argues that a detailed assessment of Mr Gbagbo's health was carried out recently in the context of the Decision of 25 September 2017 and remains valid today.³⁸ The LRV also contends that the Defence of Mr Gbagbo misrepresents the Medical Officer's findings and its allegations are wholly unfounded or

³² ICC-02/11-01/15-1132-Conf, para. 10.

³³ ICC-02/11-01/15-1132-Conf, paras 12-19.

³⁴ ICC-02/11-01/15-1132-Conf, paras 20-21.

³⁵ ICC-02/11-01/15-1133-Conf, para. 15.

³⁶ ICC-02/11-01/15-1133-Conf, para. 16, referring to the Appeals Chamber's "Judgment on the appeal of the Prosecutor against Pre-Trial Chamber II's "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" (Appeals Chamber), No. ICC-01/05-01/08-631-Red, December 2009, para. 60.

³⁷ ICC-02/11-01/15-1133-Conf, para. 17.

³⁸ ICC-02/11-01/15-1133-Conf, paras 18-21.

deliberately disregard previous findings [REDACTED].³⁹ The LRV further submits that the Defence extensively refers to outdated reports of 2012 in an attempt to challenge the Medical Officer's recent reports on the basis of pure speculation and wholly unsupported arguments.⁴⁰

25. Lastly, the LRV submits that, even if release on medical grounds could be found appropriate, the Defence of Mr Gbagbo has failed to provide with concrete and solid proposals but merely requests holding a hearing. It submits that the victims' concerns about the possibility of granting Mr Gbagbo release with or without conditions should be taken into account when evaluating the Request.⁴¹

26. The Medical Report states that since last year, "Mr Gbagbo is still in a stable, though vulnerable health condition".⁴² The Medical Report reiterates previous reports indicating that Mr Gbagbo is a fragile person and that his vulnerability is related to his "accelerate ageing, which is present, eminent though mild".⁴³ The Medical Report gives an update on the several medical specialists that have treated Mr Gbagbo since December 2017.⁴⁴ The Medical Report also reiterates that Mr Gbagbo has displayed non-compliant behaviour, which is often seen in patients. It concludes that Mr Gbagbo: (a) is "receiving maximum and optimum treatment in relation to his ailments"; (b) is "still a vulnerable person, eminent though mild"; (c) has a stable "mental and physical condition" and "deterioration is still not evident"; and (d) "continues to struggle with his intrinsic motivation to exercise".⁴⁵

27. The LRV submits that the Medical Report confirms previous conclusions of the Chamber on the absence of medical reasons justifying interim release. She contends

³⁹ ICC-02/11-01/15-1133-Conf, paras 22-29. The LRV refers to: Decision on the fitness of Laurent Gbagbo to stand trial, 27 November 2015, ICC-02/1101/15-349.

⁴⁰ ICC-02/11-01/15-1133-Conf, paras 30-33.

⁴¹ ICC-02/11-01/15-1133-Conf, paras 34-35.

⁴² ICC-02/11-01/15-1145-Conf-Exp-Anx, page 2.

⁴³ ICC-02/11-01/15-1145-Conf-Exp-Anx, page 2.

⁴⁴ ICC-02/11-01/15-1145-Conf-Exp-Anx, pages 2-3.

⁴⁵ ICC-02/11-01/15-1145-Conf-Exp-Anx, page 4.

that all conclusions remain valid today in light of the Medical Report, which does not indicate any increase in Mr Gbagbo's vulnerability. The report reiterates his age impairments, [REDACTED] (which although persists, shows positive outcomes). The LRV also submits that the report does not indicate any cardiovascular condition or PTSD or hospitalisation syndrome. The LRV further contends that although Mr Gbagbo is fragile, it is reported that Mr Gbagbo receives maximum and optimum treatment in relation to his ailments. Finally, the LRV reiterates her clients concerns as to the eventual interim release of Mr Gbagbo.⁴⁶

28. The Prosecutor submits that the Medical Report confirms that Mr Gbagbo's detention remains compatible with his current health situation (which remains stable, though vulnerable). The Prosecutor also remarks the Medical Report's finding that the [REDACTED]of Mr Gbagbo have had positive outcomes and that Mr Gbagbo is receiving maximum and optimum treatment by a team of specialists. The Prosecutor finally refers to the Medical Report's conclusions that Mr Gbagbo is [REDACTED]. Accordingly, the Prosecutor submits that better [REDACTED] could potentially ameliorate his overall health condition.⁴⁷

29. The Defence for Mr Gbagbo contends that the Medical Report lacks scientific standards, structure, methodology and precision. The Defence for Mr Gbagbo argues that the Medical Report does not give any detail on the interaction between Mr Gbagbo and the Medical Officer and other specialists, particularly as regards the language. The Medical Report also omits any analysis as regards the duration of detention, its relation to age and other factors that are necessary to have a global analysis. The Defence for Mr Gbagbo further contends that the document is a copy-paste of previous reports with theoretical and abstract conclusions and lack of precision as regards the conclusions made by other specialists either in the past or more recently. The Defence for Mr Gbagbo also argues that the Medical Officer

⁴⁶ ICC-02/11-01/15-1147-Conf.

⁴⁷ ICC-02/11-01/15-1149-Conf.

blames Mr Gbagbo for his current state of health, without going any further as to why Mr Gbagbo [REDACTED]. Accordingly, the Defence for Mr Gbagbo submits that the Medical Report is a bureaucratic attempt from the Medical Officer to protect himself and evade responsibility.⁴⁸

III. Analysis

30. A request for provisional released should be based on new information: (a) either a change in some or all of the facts underlying a previous decision on detention, (b) or a new fact satisfying the Chamber that a modification of its prior ruling is necessary.⁴⁹ This is particularly applicable in the present case, considering the Chamber recently reviewed Mr Gbagbo's detention.⁵⁰
31. However, the Chamber notes that the Defence for Mr Gbagbo merely reiterates its previous submissions related to Mr Gbagbo's detention at the seat of the court and in Cote d'Ivoire, not only before this Chamber, but also before the Pre-Trial Chamber. The Defence for Mr Gbagbo also questions the Chamber's previous findings, and particularly the conclusions of the majority in the Decision of 25 September 2017. Moreover, the Defence for Mr Gbagbo fails to refer to any legal provision in its Request; neither does it make any submission on the criteria under Article 58(1)(b) and 60(3) of the Statute.
32. The Appeals Chamber has determined that the Chamber should consider new information provided by the parties, but also current circumstances as a whole that justify detention.⁵¹ It has also concluded that a review of an individual's detention under Article 60(3) of the Statute is based on whether the conditions of Article 58(1)(a) and (b) of the Statute have changed such that detention is no longer

⁴⁸ ICC-02/11-01/15-1151-Conf.

⁴⁹ ICC-01/05-01/08-631-Red, December 2009, para. 60.

⁵⁰ ICC-02/11-01/15-846.

⁵¹ ICC-02/11-01/15-992-Conf, para. 39.

justified.⁵² Hence, motions for provisional release must have a minimum legal or factual basis to enable the Chamber's assessment under Article 58(1)(b) of the Statute, particularly at the trial stage where periodic detention review is not required (contrary to Rule 118(2) of the Rules), and even more in this particular case, in which the Chamber very recently decided on this matter.⁵³ Although the accused has the right to request provisional release at any stage of the proceedings, the Chamber also has the duty vis-à-vis all parties in the proceedings, to ensure an expeditious trial and avoid unsubstantiated litigation.

33. [REDACTED].⁵⁴

34. [REDACTED]. In its submissions it raises mere speculation against the Medical Officer's reports without any reasoning except for the manifest disagreement with

⁵² Judgment on the appeals against Pre-Trial Chamber II's decisions regarding interim release in relation to Aimé Kilolo Musamba, Jean-Jacques Mangenda, Fidèle Babala Wandu, and Narcisse Arido and order for reclassification, 29 May 2015, ICC-01/05-01/13-969, para. 44.

⁵³ It is necessary for an accused to satisfy the Chamber that release is appropriate in a particular case. Toichilovsky, V. Jurisprudence of the International Criminal Courts and the European Court of Human Rights, Procedure and Evidence, 2008, page 611. The author refers to: ICTY, Prosecutor v. Lukic M and Lukic S., Decision on Sredoje Likic's Motion for Provisional Release, Case No IT-98-32/1-PT, Trial Chamber III, 13 December 2006, para. 2; Prosecutor v. Milutinovic et al., Decision on Joint Motion for Provisional Release during Winter Recess, Case No. IT-05-87-T, Trial Chamber III, 5 December 2006, para. 19; Prosecutor v. Halilovic, Decision on Motion for Provisional Release, Case No. IT-01-48-T, Trial Chamber I, 21 April 2005, page. 4.

⁵⁴ See for example, ICTY, Decision on Defence Motion for provisional Release, Prosecutor v. Drljica and Kovačević (IT-07-24-PT), 20 January 1998, paras 12-14. 12. Provisional release may be ordered when the accused's state of health is not compatible with any form of detention. [...] We are of the view that the medical condition of the accused is not such as amounts to an exceptional circumstance warranting his provisional release. [...]. Although it is clear from these medical opinions and notes that the accused has a serious illness, there is no indication that the condition of the accused is terminal or immediately life-threatening. In addition, there is no suggestion that the accused cannot be treated effectively in the Netherlands. The fact that an accused who is ill would be in better spirits and more receptive to medical treatment in his home country with the support of his family does not, in our view, amount to an exceptional circumstance. See also, ICTR, Decision on the Defense's Motion for Provisional Release Pursuant to Rule 65 of the Rules, Prosecutor v. Bicomupaka (ICTR-99-50-T), 25 July 2001, paras 22- 24. 22. On the question of serious illness as amounting to "exceptional circumstances" [...] "[s]erious illness does not in itself justify the provisional release of an accused as long as adequate medical treatment can be administered to him by the Tribunal", further adding at para.8 for want of demonstration of "exceptional circumstances" that, "[t]he Chamber has not been provided with satisfactory documentation of any general and serious regression in the accused's medical condition, calling for an immediate change of the conditions under which the accused is currently held in custody". [...] The Chamber has not been provided with any documentation of a general and serious regression in the Accused's medical condition, or indication that the Accused's condition is terminal or immediately life threatening calling for an immediate change in the conditions of his custody. On this basis, the Chamber finds that it has not been shown that the Accused's illness is so serious as to amount to "exceptional circumstances" within the meaning of Rule 65 (B) of the Rules.

his medical findings. Conversely, the Defence for Mr Gbagbo refers profusely to outdated reports. In fact, most of its submissions are based on the Defence of Mr Gbagbo's own opinion and the report of Dr Chuc, which was submitted before the Pre-Trial Chamber in the context of that initial phase of the proceedings.

35. In light of the above, and considering the limited up-to-date information provided in the Request as regards any change of circumstances to grant provisional release, the Chamber instructed the Registry to prepare an up-to-date report that would enable it to make an informed decision on the matter.⁵⁵
36. The Chamber notes that the Medical Report submitted on 4 April 2018, not only reiterates the Medical Officer's previous reports, but also confirms his earlier findings, on the basis of medical examinations and treatment carried out by other medical professionals, including specialists in [REDACTED]. This Medical Report also clearly indicates that Mr Gbagbo is receiving holistic treatment, not only from the ICC's Detention Centre Medical Officer, but also from a wide array of health professionals.
37. Accordingly, the Chamber finds that there is no change in circumstances as regards Mr Gbagbo's health. In actual fact, pursuant to the updated Medical Report, the Chamber is satisfied that Mr Gbagbo's health is stable and that he is receiving optimal treatment for his current state of health and age.
38. As regards the other criteria that need to be considered under Article 58(1)(b), the Chamber does not have before it any information that would justify ordering the release of the accused. Accordingly, its findings of the Decision of 25 September 2017 remain valid today. The only change in circumstances as noted above is that the Prosecutor has concluded with the presentation of her case. However, while the burden remains on the Prosecutor, the Defence for Mr Gbagbo has not satisfied the

⁵⁵ See, ECHR, *Ilijkov v Bulgaria*, Judgment, 26 July 2001, para. 85.

Chamber that the risks under Article 58(1)(b) of the Statute no longer exist at this stage of the proceedings. Without any new evidence or information before the Chamber there are no new facts that would justify divergence from the Chamber's previous findings contained in its Decision of 25 September 2017.⁵⁶

39. In light of the above findings, the Chamber considers it unnecessary to hold a hearing to discuss the conditions of provisional release.⁵⁷ It also considers it unnecessary to request further information from the [REDACTED] authorities, as the Gbagbo Defence has failed to demonstrate how treatment in that country would be required in light of the wide-ranging and holistic treatment already offered to Mr Gbagbo in The Netherlands, not only by the Detention Centre's Medical Officer, but by multiple medical specialists.⁵⁸

⁵⁶ ICC-01/05-01/13-969, para. 54.

⁵⁷ ICC-01/05-01/13-969, para. 48.

⁵⁸ The application for provisional release on medical grounds cannot be granted unless it is demonstrated that the accused's medical needs cannot be met in the host country. Tochilovsky, V. Jurisprudence of the International Criminal Courts and the European Court of Human Rights, Procedure and Evidence, 2008, page 643. The author refers to: ICTY, Prosecutor v. Milosevic, Decision on Assigned Counsel Request for Provisional Release, Case No. IT-02-54-T, Trial Chamber III, 23 February 2006, para. 17.

**FOR THE FOREGOING REASONS, THE CHAMBER, BY MAJORITY, JUDGE
TARFUSSER DISSENTING, HEREBY**

REJECTS the Request in its entirety.

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



Judge Cuno Tarfusser, Presiding Judge



Judge Olga Herrera Carbuccia



Judge Geoffrey Henderson

Dated 20 April 2018

At The Hague, The Netherlands