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**International
Criminal
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TRIAL CHAMBER I

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

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

Public

**Eighth 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:

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Counsel for Laurent Gbagbo

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Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

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REGISTRY

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Detention Section

Mr Patrick Craig

**Victims Participation and Reparations
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Others

Trial Chamber I ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Laurent Gbagbo* ('Gbagbo case' or 'case'), 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') issues the 'Eighth decision on the review of Mr Laurent Gbagbo's detention pursuant to Article 60(3) of the Statute.'

I. Procedural History

1. On 13 July 2012, Pre-Trial Chamber I ('Pre-Trial Chamber') rejected the request of Mr Laurent Gbagbo's defence team ('Defence') for interim release under Article 60(2) of the Statute ('Article 60(2) Decision').¹
2. On 12 November 2012, the Pre-Trial Chamber issued the first decision reviewing Mr Gbagbo's detention pursuant to Article 60(3) of the Statute,² deciding that he should remain in detention.
3. On 18 January 2013, the Pre-Trial Chamber rejected a request by Mr Gbagbo for conditional release,³ deciding that no medical reasons at that time justified ending his detention.
4. On 12 March 2013,⁴ 11 July 2013,⁵ 11 November 2013,⁶ 12 March 2014⁷ and 11 July 2014,⁸ the Pre-Trial Chamber issued decisions on Mr Gbagbo's

¹ Decision on the "Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo, 13 July 2012, ICC-02/11-01/11-180-Conf (public redacted version at ICC-02/11-01/11-180-Red). This decision was upheld by a majority of the Appeals Chamber on 26 October 2012; see 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-Conf, OA (public redacted version at ICC-02/11-01/11-278-Red) ('Gbagbo OA Judgment').

² Decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute, 12 November 2012, ICC-02/11-01/11-291.

³ Decision on the request for the conditional release of Laurent Gbagbo and on his medical treatment, 18 January 2013, ICC-02/11-01/11-362-Conf (public redacted version at ICC-02/11-01/11-362-Red).

⁴ Second decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute, 12 March 2013, ICC-02/11-01/11-417-Conf (public redacted version at ICC-02/11-01/11-417-Red).

⁵ Third decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute, 11 July 2013, ICC-02/11-01/11-454. The appeal of the Defence against this decision was dismissed by the Appeals Chamber on 29 October 2013; see 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

detention under Article 60(3) of the Statute, in which it decided that Mr Gbagbo should remain in detention.

5. On 12 June 2014, the Pre-Trial Chamber issued the 'Decision on the confirmation of charges against Mr Laurent Gbagbo',⁹ in which it decided to confirm the charges against Mr Gbagbo and committed him to trial.
6. On 11 November 2014, the Chamber issued the seventh decision on Mr Gbagbo's detention pursuant to Article 60(3) ('Seventh Article 60(3) Decision'), in which it decided that Mr Gbagbo should remain in detention and deferred any decision pertaining to conditional release for medical reasons until after the filing of a Registry and Defence joint report on options in this regard.¹⁰
7. On 2 December 2014, the Defence and Registry filed the eighth joint report concerning the issues of Mr Gbagbo's health ('Eighth Joint Report'),¹¹ and indicated that a ninth joint report would be filed in due course that would have more conclusive options in this regard.

pursuant to article 60(3) of the Rome Statute", 29 October 2013, ICC-02/11-01/11-548-Conf (public redacted version at ICC-02/11-01/11-548-Red)('Gbagbo OA4 Judgment').

⁶ Fourth decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute, 11 November 2013, ICC-02/11-01/11-558.

⁷ Fifth decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute 12 March 2014, ICC-02/11-01/11-633.

⁸ Sixth decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute, 11 July 2014, ICC-02/11-01/11-668.

⁹ Decision on the confirmation of charges against Laurent Gbagbo, 12 June 2014, ICC-02/11-01/11-656-Conf (public redacted version at ICC-02/11-01/11-656-Red) and annex.

¹⁰ 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 (public redacted version available at ICC-02/11-01/11-718-Red), para. 74. On 24 November 2014, the Chamber granted a request by the Registry and Defence for an extension of time to file the eighth joint report (Decision granting extension of time, 24 November 2014, ICC-02/11-01/11-727-Conf-Exp).

¹¹ *Huitième rapport commun du Greffe et de la Défense sur les avancées concernant la mise en oeuvre de mesures propres à assurer l'amélioration de l'état de santé de M. Laurent Gbagbo*, 2 December 2014, ICC-02/11-01/11-734-Conf-EXP.

8. On 20 January 2015, the Single Judge ordered the parties and participants to submit observations pertaining to the periodic review of Mr Gbagbo's detention pursuant to Article 60(3) of the Statute.¹²
9. On 5 February 2015, pursuant to the Single Judge's order, the Defence filed its observations ('Defence Submissions').¹³ Subsequently, on 11 and 12 February 2015, the LRV ('LRV Submissions')¹⁴ and the Prosecution ('Prosecution Submissions'),¹⁵ respectively, filed their submissions on the matter. On 19 February 2015 the Defence filed further observations ('Defence Response')¹⁶ in response to the submissions from the Prosecution and the LRV.

II. Submissions

A. Defence Submissions and Response

10. The Defence requests the Chamber to find that the conditions under Article 58(1) of the Statute ('Article 58(1) Conditions') are not met and to order the release of Mr Gbagbo.¹⁷ The Defence submits that Mr Gbagbo's detention is primarily based on the purported existence of an organised network of people supporting him and argues that this network no longer exists, if indeed it ever existed.¹⁸
11. The Defence asserts that changed circumstances have transpired in relation to the risks associated with such a network, arguing that the very idea of an

¹² Order requesting the parties and participants' observations under Article 60(3) of the Statute, 20 January 2015, ICC-02/11-1/11-750.

¹³ *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 huitième réexamen de la détention*, 5 February 2015, ICC-02/11-01/11-758-Conf-Exp (public redacted version at ICC-02/11-01/11-758-Red2) and 3 confidential annexes and 27 public annexes.

¹⁴ Observations of the Common Legal Representative of victims on the periodic review of Mr Gbagbo's detention, 11 February 2015, ICC-02/11-01/11-764.

¹⁵ Prosecution's submissions on the eight detention review, 12 February 2015, ICC-02/11-01/11-766-Conf (public redacted version at ICC-02/11-01/11-766-Red) with confidential annexes A and B.

¹⁶ *Réponse de la Défense aux soumissions du Procureur (ICC-02/11-01/11-766-Conf) et du Représentant légal des victimes (ICC-02/11-01/11-764), déposée à l'invitation de la Chambre, dans le cadre du huitième réexamen de la détention*, 19 February 2015, ICC-02/11-01/11-774-Conf.

¹⁷ Defence Submissions, ICC-02/11-01/11-758-Red2, page 20.

¹⁸ Defence Submissions, ICC-02/11-01/11-758-Red2, paras 4-5. *See also*, paras 31-34.

illegal network is now implausible to Ivorian nationals.¹⁹ The Defence invokes as evidence that there is no risk attributable to this network²⁰ four factors: i) the release of political prisoners;²¹ ii) the return of exiled individuals to Côte D'Ivoire;²² iii) the unfreezing of assets by the government;²³ and iv) the lifting of international sanctions imposed on certain individuals.²⁴

12. The Defence urges the Chamber to have the Prosecution precisely define what is meant by 'network'. In the view of the Defence, it is for the Prosecution to demonstrate: i) the existence of a clandestine organisation; ii) that it has the means to carry out activities; and iii) that its members are organised with a criminal purpose, including to facilitate Mr Gbagbo's liberation from detention.²⁵

13. The Defence also argues that the conditions justifying Mr Gbagbo's detention under Article 58(1)(b) of the Statute are no longer met. On the need to detain Mr Gbagbo to ensure his appearance at trial, the Defence submits that an illegal network aimed at enabling him to abscond does not exist²⁶ and recalls that Mr Gbagbo himself does not have any means or reason to abscond.²⁷ In this regard, the Defence notes the Chamber's previous finding that the gravity of the charges cannot, in and of itself, justify long periods of detention on remand.²⁸

¹⁹ Defence Submissions, ICC-02/11-01/11-758-Red2, para. 7.

²⁰ Defence Submissions, ICC-02/11-01/11-758-Red2, paras 6-30 with further reference to, amongst others, Annexes 2,3,4,5.

²¹ Defence Submissions, ICC-02-01/11-758-Red2, para 12-15 with further references to Annexes 6, 7, 8, 9, 10, 11 and 30.

²² Defence Submissions, ICC-02-01/11-758-Red2, para 19-23 with further references to Annexes 13, 14, 15, 16, 17, 18, 19, 20.

²³ Defence Submissions, ICC-02-01/11-758-Red2, para 16-18 with further references to Annexes 6, 7 and 12.

²⁴ Defence Submissions, ICC-02-01/11-758-Red2, para 24-30 with further references to Annexes 18, 20, 21, 22, 23, 24 and 25.

²⁵ Defence Submissions, ICC-02/11-01/11-758-Red2, paras 35-39.

²⁶ Defence Submissions, ICC-02/11-01/11-758-Red2, paras 49-50.

²⁷ Defence Submissions, ICC-02/11-01/11-758-Red2, paras 51-58.

²⁸ Defence Submissions, ICC-02/11-01/11-758-Red2, page 15 referring to Seventh Article 60(3) Decision, ICC-02/11-01/11-718-Red, para. 46.

14. On the risk to obstruct or endanger investigations or court proceedings, the Defence posits that the end of the Prosecution's investigations, on 6 February 2015, removes the potential for obstruction to investigations. In addition, the Defence refers to the adoption of protocols on the confidentiality of disclosed material and submits that their adoption mitigates any risk to investigations. It also recalls that the Prosecution has not, so far, attributed any instances of obstruction to the accused.²⁹
15. Responding to the submissions made by the Prosecution and the LRV, the Defence claims that neither the Prosecutor nor the LRV provides the least evidence in support of the theory of an illegal network.³⁰ According to the Defence, the LRV notably failed to submit any elements that would prove that the Article 58(1) Conditions are met.³¹ In order to conceal the lack of tangible elements that would demonstrate the existence of a criminal network, the Prosecution deliberately confounded the facts underlying the case, assimilating members of an alleged criminal network with simple partisans of the *Front Populaire Ivoirien* ('FPI') and pro-Gbagbo supporters.³²

B. Prosecution Submissions

16. The Prosecution submits that there has been no change of circumstances since the issuance of the Seventh Article 60(3) Decision by the Chamber to warrant the release of Mr Gbagbo³³ and believes continued detention is necessary under Article 58(1) Conditions.
17. The Prosecution posits, contrary to the Defence's submission, that the end of investigations does not negate risks under Article 58(1)(b)(ii) because the

²⁹ Defence Submissions, ICC-02/11-01/11-758-Red2, paras 69-74.

³⁰ Réponse de la Défense aux submissions du Procureur (ICC-02/11-01/11-766-Conf) et du Représentant légal des victimes (ICC-02/11-01/11-764), déposée à l'invitation de la Chambre, dans le cadre du huitième réexamen de la détention, 19 February 2015, ICC-02/11-01/11-774-Conf ('Defence response').

³¹ Defence Response, ICC-02/11-01/11-774-Conf, paras 23-26.

³² Defence Response, ICC-02/11-01/11-774-Conf, paras 40-51.

³³ Prosecution Submissions, ICC-02/11-01/11-766-Red, paras 1 and 7 with further references to Annexes 28 and 29.

Defence is now in possession 'of almost the totality of the evidence the Prosecution intends to rely on at trial and of the identity of its witnesses'.³⁴ The Prosecution further notes that the detention of the Accused under Article 58(1)(b)(ii) is justified to avoid obstruction 'to court proceedings', and not only during investigations.³⁵

18. Additionally, pursuant to its duty to inform the Chamber of any changed circumstances, the Prosecution provides information on issues raised in the Defence Submissions. The updated information pertains to, *inter alia*: i) the conditional release of political prisoners and unfreezing of assets in Côte D'Ivoire;³⁶ ii) the lifting of sanctions on certain individuals;³⁷ iii) Mr Gbagbo's current network of supporters;³⁸ and iv) the FPI and its current activities.³⁹ The Prosecution argues that these developments 'should have no bearing on the Chamber's most recent assessment of the criteria of provisional release under Article 58(1)(b)(i) and (ii)'.⁴⁰

19. Finally, the Prosecution submits that the remaining arguments raised by the Defence 'have already been raised' and 'duly rejected by the Chamber' in the Seventh Article 60(3) Decision.⁴¹

C. LRV Submissions

20. The LRV submits that Mr Gbagbo must remain in detention because there have been no relevant changed circumstances since the Seventh Article 60(3) Decision.⁴² Furthermore, the LRV recalls that 'there is no requirement to give

³⁴ Prosecution Submissions, ICC-02/11-01/11-766-Red, para. 7.

³⁵ Prosecution Submissions, ICC-02/11-01/11-766-Red, para. 7.

³⁶ Prosecution Submissions, ICC-02/11-01/11-766-Red, paras 9-10.

³⁷ Prosecution Submissions, ICC-02/11-01/11-766-Red, paras 11-12.

³⁸ Prosecution Submissions, ICC-02/11-01/11-766-Red, paras 13-17.

³⁹ Prosecution Submissions, ICC-02/11-01/11-766-Red, paras 18-20.

⁴⁰ Prosecution Submissions, ICC-02/11-01/11-766-Red, para. 8.

⁴¹ Prosecution Submissions, ICC-02/11-01/11-766-Red, para. 21.

⁴² LRV Submissions, ICC-02/11-01/11-764, para. 9.

reasoning or engage in a *de novo* review of detention where no changed circumstances are established.⁴³

21. The LRV also contends that the detention of Mr Gbagbo is warranted to ensure the accused's appearance at trial as, in its view, 'there is public information indicating that the pro-Gbagbo network is still very active.'⁴⁴ Specifically, the LRV notes the comments by leaders of the FPI party indicating their plans to 'liberate Mr Gbagbo,' as well as other statements, which the LRV believes suggests that 'Mr Gbagbo would have ample means to evade justice if he were to be released'.⁴⁵
22. In addition, the LRV submits that there is evidence of a group of persons capable of hindering the Court's proceedings by providing the accused with the means to obstruct investigations and trial proceedings.⁴⁶ Contrary to the submissions of the Defence, the LRV believes that the adoption of protocols on confidential information would not be enough to counteract the risks that the release of Mr Gbagbo may pose for the Court.⁴⁷

III. The Applicable Law

23. The Chamber incorporates by reference the applicable law as set out in the Seventh Article 60(3) Decision.⁴⁸

IV. Analysis

24. At the outset, the Chamber recalls that Mr Gbagbo's detention has been reviewed seven times; six times by the Pre-Trial Chamber and once by this Chamber. The Chamber considers it in the interests of justice to continue to

⁴³ LRV Submissions, ICC-02/11-01/11-764, para. 8. Referring to

⁴⁴ LRV Submissions, ICC-02/11-01/11-764, paras 12-13.

⁴⁵ LRV Submissions, ICC-02/11-01/11-764, paras 14-15.

⁴⁶ LRV Submissions, ICC-02/11-01/11-764, para. 16.

⁴⁷ LRV Submissions, ICC-02/11-01/11-764, para. 17.

⁴⁸ Seventh Article 60(3) Decision, ICC-02/11-01/11-718-Red, para. 31.

review Mr Gbagbo's detention until the commencement of trial.⁴⁹ Consequently, the statutory function of the Chamber here, under Article 60(3), is to ascertain the existence of any changed circumstances in relation to the previous ruling on detention. Furthermore, the Chamber is not required 'to entertain submissions by the detained person that merely repeat arguments that the [c]hamber has already addressed in previous decisions.'⁵⁰

25. The Chamber notes that several of the Defence arguments submitted for the current review of detention have been raised previously and dismissed by the Chamber. Specifically, the Defence arguments which the Chamber finds repetitive are: i) Mr Gbagbo's willingness to appear at trial;⁵¹ ii) whether Mr Gbagbo has the personal means to abscond;⁵² and iii) whether Mr Gbagbo has any reason to abscond.⁵³ The Chamber does not believe, in this regard, that new facts have been elicited or new material produced by the Defence. Therefore, the Chamber considers that the Defence submissions on these topics merely repeat submissions previously made and addressed by the Chamber in the Seventh Article 60(3) Decision and thus do not warrant a finding of changed circumstances. Accordingly, the Chamber dismisses these three Defence arguments.

A. The end of Prosecution investigations and adoption of the protocol on confidentiality as changed circumstances

26. The Defence submits that the end of the Prosecution investigations, as of 6 February 2015, constitutes a changed circumstance which vitiates the

⁴⁹ See *The Prosecutor v. Jean-Pierre Bemba Gombo*, Trial Chamber III, Transcript of hearing on 8 December 2009, ICC-01/05-01/08-T-18-Red-ENG, page 24 lines 14-17; see also *The Prosecutor v. Bosco Ntaganda*, Trial Chamber VI, Fourth decision on Mr Ntaganda's interim release, 31 October 2014, ICC-01/04-02/06-391, para. 5(c).

⁵⁰ Seventh Article 60(3) Decision, ICC-02/11-01/11-718-Red, para. 44, referring to Bemba OA 4 Judgment, ICC-01/05-01/08-1019, para. 53.

⁵¹ Seventh Article 60(3) Decision, ICC-02/11-01/11-718-Red, para. 45.

⁵² Seventh Article 60(3) Decision, ICC-02/11-01/11-718-Red, para. 49.

⁵³ Seventh Article 60(3) Decision, ICC-02/11-01/11-718-Red, para. 47.

potential risk of witness interference and obstruction of justice.⁵⁴ Conversely, the Prosecution asserts that because the Defence is now in possession of a full list of witnesses and evidence the risks under Article 58(1)(b)(ii) remain.⁵⁵

27. The Chamber is mindful of the specific wording of Article 58(1)(b)(ii) which states that an arrest can be effectuated '[t]o ensure that the person does not obstruct or endanger the investigation or the court proceedings.'⁵⁶ Therefore, the risks meant to be counteracted by the terms of the article are not specific to investigations, but rather extend throughout the trial.

28. The Chamber recalls that the applicable standard in assessing Article 58(1) Conditions 'revolves around the possibility, not the inevitability, of a future occurrence'.⁵⁷ The Chamber is of opinion that the end of the Prosecution investigations is not a changed circumstance which abrogates all potential risks to the trial proceedings or fundamentally impacts the existing risk assessment under Article 58(1)(b)(ii). The Chamber also recalls its finding that investigations can properly continue throughout the trial phase⁵⁸ and therefore holds, having assessed the material before it, that the latent risk of obstruction by Mr Gbagbo which previously justified detention during the investigative stage remains, despite the beginning of trial proceedings.

⁵⁴ Defence Submissions, ICC-02/11-01/11-758-Red2., paras 69-74.

⁵⁵ Prosecution Submissions, ICC-02/11-01/11-766-Red, para. 7.

⁵⁶ Emphasis added.

⁵⁷ Seventh Article 60(3) Decision, ICC-02/11-01/11-718-Red, para. 64. *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo*, Appeals Chamber, Judgment in the appeal of Mathieu Ngudjolo Chui of 27 March 2009 against the Decision of Pre-Trial Chamber I on the Application of the Appellant for Interim Release, ICC-01/04-01/07-572, OA4, 9 June 2008, para. 21. See also, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Appeals Chamber, Judgment on the appeal of Mr Aimé Kilolo Musamba against the decision of Pre-Trial Chamber II of 14 March 2014 entitled 'Decision on the "Demande de mise en liberté provisoire de Maître Aimé Kilolo Musamba"', 11 July 2014, ICC-01/05-01/13-558, OA2, para. 107; *The Prosecutor v. Callixte Mbarushimana*, Appeals Chamber, Judgment on the Appeal, of Mr Mbarushimana against the Decision of Pre-Trial Chamber I entitled "Decision on the 'Defence Request for Interim Release'", ICC-01/04-01/10-283, OA, 14 July 2011, para. 60; *The Prosecutor v. Jean-Pierre Bemba Gombo*, Appeals Chamber, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the Decision of Pre-Trial Chamber III entitled "Decision on the application for interim release", 16 December 2008, ICC-01/05-01/05-323, OA, para. 55.

⁵⁸ Seventh Article 60(3) Decision, ICC-02/11-01/11-718-Red, para. 64. In this regard, the Chamber notes that the Prosecution is currently conducting investigations in relation to the case of *The Prosecutor v. Charles Blé Goudé* (Decision on the 'Prosecution's Request for Partial Suspension of the "Order setting the Commencement date for the trial and the time limit for disclosure"', 13 January 2015, ICC-02/11-01/11-746, paras 13-17).

29. Additionally, the future adoption of a protocol on the handling of confidential information during investigations and contact between a party or participant and witnesses of the opposing party or participant, while binding on the accused, will not act as an absolute safeguard against illegal actions. Therefore, the Chamber is of the opinion that the forthcoming adoption of said protocol is not a changed circumstance warranting a modification of the previous ruling on Mr Gbagbo's detention.

B. Updates regarding Mr Gbagbo's support network and whether or not it constitutes a changed circumstance under Article 58(1)(b)(ii)

30. The Chamber recalls previous findings by the Pre-Trial Chamber,⁵⁹ this Chamber,⁶⁰ and the Appeals Chamber⁶¹ that there exists a large and well organized network of supporters for Mr Gbagbo. Further, 'the capacity of the network of supporters has never been held to slip below the threshold of risk outlined in the Article 60(2) decision.'⁶² This Chamber finds it necessary to reiterate, in light of Defence's submission to the contrary, that the existence of a network of supporters was considered a relevant circumstance underpinning the need for the continued detention of Mr Gbagbo.⁶³

31. However, in light of the submission of new materials by the parties in this regard, the Chamber will analyse whether any new facts have been established which may warrant revision of the previous ruling on detention.

32. The Defence asserts that the very idea that pro-Gbagbo individuals constitute a criminal and illegal network is now implausible to Ivorian nationals. As

⁵⁹ Decision on the "Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo", ICC-02/11-01/11-180-Conf, paras 59-62.

⁶⁰ See Seventh Article 60(3) Decision, ICC-02/11-01/11-718-Red, paras 54-60..

⁶¹ 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-Conf, OA (public redacted version at ICC-02/11-01/11-278-Red) paras 59 and 63.

⁶² See Seventh Article 60(3) Decision, ICC-02/11-01/11-718-Red, para. 54.

⁶³ See Seventh Article 60(3) Decision, ICC-02/11-01/11-718-Red, para. 58.

evidence of this, the Defence refers to the return to Côte D'Ivoire from exile of alleged members of the network, the 'conditional release' of political prisoners and the unfreezing of their assets by the Ivorian government, and the lifting of international sanctions against prominent figures of the alleged network. The Chamber has previously dealt with and dismissed the Defence suggestion that the release of political prisoners and the return of exiles were relevant changed circumstances,⁶⁴ and will therefore deal only with the unfreezing of assets and removal of international sanctions hereunder. In addition, the Chamber will also assess the impact that recent activities of the FPI, as presented by the Prosecution, may have on the existence of the pro-Gbagbo network.

i. The unfreezing of assets by Ivorian government

33. The Chamber is informed that the Ministry of Justice in Côte D'Ivoire recently unfroze the bank accounts of 31 pro-Gbagbo politicians⁶⁵ in an attempt to further the national reconciliation process. The Defence submits that the national government would not have taken such an action if it believed the pro-Gbagbo network posed a threat.⁶⁶ The Prosecution, for its part, believes that the unfreezing of assets by the Ivorian government does not constitute a changed circumstance and therefore should not alter the Chamber's previous decision.⁶⁷

34. The Chamber is not persuaded by the Defence argument as its submissions conflate the Ivorian government's interest to seek stability through reconciliation with the Court's prerogative to avoid risks to the trial proceedings by ordering the pre-trial detention of the accused. Therefore, the

⁶⁴ Seventh Article 60(3) Decision, ICC-02/11-01/11-718-Red, para. 58.

⁶⁵ *See, inter alia*, Prosecution Submissions, ICC-02/11-01/11-766-Red, para 9; Annexes 6 and 7 to the Defence Submissions, ICC-02/11-01/11-758-Red2, para. 7.

⁶⁶ Defence Submissions, ICC-02/11-01/11-758-Red2, section 1.1.3, with references to Annexes 13-20.

⁶⁷ Prosecution Submissions, ICC-02/11-01/11-766-Red, para. 8.

Chamber is of the view that risk assessments by the national government are not binding on this Chamber and do not necessarily impact on its review under Article 60(3) of the Statute.

35. To the contrary, the Chamber is of the opinion that the additional assets that pro-Gbagbo politicians now have access to is further evidence of the risk that the accused's network poses to the trial proceedings, as it confirms that it has resources at its disposal.⁶⁸ Thus, it does not alter the Chamber's risk analysis under Article 58(1)(b)(i) or (ii) and therefore does not warrant the accused's release from detention.

ii. The lifting of international sanctions levied against certain individuals

36. The Defence and Prosecution have informed the Chamber of two people part of the accused's network who have recently had international sanctions removed.⁶⁹ The Prosecution, for its part, submits that these events do not constitute changed circumstances requiring the Chamber to alter its previous ruling on detention.⁷⁰ The Defence asserts that the lifting of international sanctions against specific individuals reaffirms the notion that those people, and therefore the pro-Gbagbo network, do not pose a threat.⁷¹

37. The Defence argument in this context suffers from a similar shortcoming as its assertions in the previous section. Namely, it does not consider the fact that risk assessments conducted by different institutions, with different mandates, may not weigh all factors and circumstances in a similar manner. Further, the particular actions that sanctioning organizations may analyse when making a decision to add or remove an individual from a sanctions list may be wholly

⁶⁸ Seventh Article 60(3) Decision, ICC-02/11-01/11-718-Red, para. 54.

⁶⁹ Defence Submissions, ICC-02/11-01/11-758-Red2, paras. 24-29 and Annexes 18, 21-25. Prosecution Submissions, ICC-02/11-01/11-766-Conf, paras 11-12. Specifically, the Prosecution notes the lifting of sanctions against Mr Marcel Gossio by the General Court of the European Union and Mr Alcide Djedje being deleted from the United Nations Security Council Sanctions list.

⁷⁰ Prosecution Submissions, ICC-02/11-01/11-766-Conf, para. 8.

⁷¹ Defence Submissions, ICC-02/11-01/11-758-Red2, paras 6-30.

different than those the Court deems appropriate to consider when specifically assessing risks to trial proceedings.

38. Thus, the Chamber does not consider the removal of select individuals from international sanctions lists to be a changed circumstance, and therefore does not affect the Chamber's Article 58(1)(b)(ii) analysis in the instant case.

iii. Current FPI activities

39. The Prosecution has provided the Chamber with an update pertaining to the current activities of the FPI and its members. According to the Prosecution, the FPI has recently suffered a schism within its ranks with one faction continuing its support for Mr Gbagbo and the other favouring political participation and reconciliation.⁷² Further, the pro-Gbagbo faction has publicly stated its desire to have Mr Gbagbo run as the FPI candidate in the upcoming Ivorian Presidential elections.⁷³ The Prosecution submits that these events indicate the level of influence Mr Gbagbo retains in Côte D'Ivoire and his potential impact on the upcoming elections. The LRV has also provided the Chamber with additional materials that indicate the level of support that Mr Gbagbo possesses within the FPI⁷⁴ and submitted its belief that the pro-Gbagbo network is still active.⁷⁵ The Chamber is of the opinion that the information provided by the Prosecution and LRV illustrate the continued existence of the Accused's support network, which only reinforces the previous findings pursuant to its Seventh Article 60(3) Decision.

C. Conditional Release

40. The Chamber notes that the Defence submissions briefly discussed the conditional release of Mr Gbagbo. In this regard, the Chamber recalls that it is

⁷² Prosecution Submissions, ICC-02/11-01/11-766-Red, paras 19-20.

⁷³ Prosecution Submissions, ICC-02/11-01/11-766-Red, para. 19.

⁷⁴ LRV Submissions, ICC-02/11-01/11-764, paras 13-18.

⁷⁵ LRV Submissions, ICC-02/11-01/11-764, para. 18.

not yet in a position to assess the possibility of conditional release and informs the parties and participants that a decision on this topic is deferred to a later date.⁷⁶

D. Reclassification of Documents

41. The LRV informed the Chamber that they have only been notified of the confidential redacted version of the Defence Submissions and seeks an order reclassifying the document as confidential.⁷⁷ The Defence submits that the LRV received the same version of their submission as the Prosecution and any redactions were warranted as they pertained to information that should remain *ex parte*.⁷⁸

42. The Chamber notes that the information redacted from the confidential, *ex parte*, version of the Defence submissions only mentions the existence of the negotiations without providing substantive details on Mr Gbagbo's medical condition. As the parties and participants were already aware of the ongoing negotiations,⁷⁹ the Chamber considers that there is no basis for these filings to remain confidential *ex parte*. Therefore, the Chamber orders the reclassification of ICC-02/11-01/11-774-Conf-Exp to confidential.

⁷⁶ See Seventh Article 60(3) Decision, ICC-02/11-01/11-718-Red, para. 75 (also deferring a conditional release assessment pending receipt of this information, which ultimately was not fully contained in the Eight Joint Report).

⁷⁷ LRV Submissions, ICC-02/11-01/11-764, para. 20. See also Email from LRV to the Chamber on 6 February 2015, at 9:01.

⁷⁸ Defence Response, ICC-02/11-01/11-774-Conf, para. 28.

⁷⁹ Transcript of hearing on 4 November 2014, ICC-02/11-01/11-T-25-CONF-ENG CT, page 91, lines 6-12.

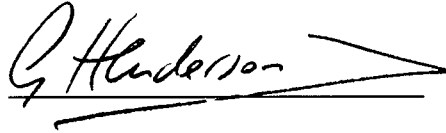
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DECIDES that Mr Laurent Gbagbo shall remain in detention;

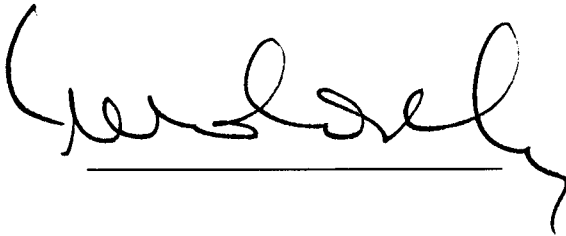
DECIDES to defer its decision on the conditional release of Mr Laurent Gbagbo; and

INSTRUCTS the Registry to reclassify filing ICC-02/11-01/11-758-Conf-Exp as confidential, accessible to the parties and LRV.

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

A handwritten signature in black ink, appearing to read 'G. Henderson', written over a horizontal line. The signature is stylized and includes a long horizontal stroke extending to the right.

Judge Geoffrey Henderson, Presiding Judge

A handwritten signature in black ink, appearing to read 'Cuno Tarfusser', written over a horizontal line. The signature is highly stylized and cursive.

Judge Cuno Tarfusser

A handwritten signature in black ink, appearing to read 'Olga Herrera Carbuca', written over a horizontal line. The signature is stylized and cursive.

Judge Olga Herrera Carbuca

Dated 11 March 2015

At The Hague, The Netherlands