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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

**Sixth 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, Prosecutor

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Unrepresented Victims

**Unrepresented Applicants for
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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,¹ hereby issues the sixth 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, formerly assigned with this case, issued an arrest warrant for Laurent Gbagbo (“Mr Gbagbo”),² 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”.³

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

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 of 13 July 2012”), rejecting the Defence request for interim release.⁵ The appeal of the Defence against this decision⁶ was dismissed by the Appeals Chamber on 26 October 2012.⁷

¹ “*Décision portant désignation d’un juge unique*”, 16 March 2012, ICC-02/11-01/11-61.

² ICC-02/11-01/11-1.

³ ICC-02/11-01/11-9-Conf. A public redacted version is available (ICC-02/11-01/11-9-Red).

⁴ ICC-02/11-01/11-105-Conf and confidential annexes. A public redacted version is available (ICC-02/11-01/11-105-Conf-Red-Corr).

⁵ ICC-02/11-01/11-180-Conf, p. 26. A public redacted version is available (ICC-02/11-01/11-180-Red).

⁶ ICC-02/11-01/11-193-Conf. A public redacted version is available (ICC-02/11-01/11-193-Red).

⁷ Appeals Chamber, “Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I of 13 July 2012 entitled ‘*Décision on the Requête de la Défense*’”.

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 Statute” (the “Decision of 12 November 2012”), in which she decided that Mr Gbagbo should remain in detention.⁸

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”, in which the request for conditional release made by the Defence was rejected.⁹

6. The confirmation of charges hearing took place from 19 to 28 February 2013.

7. On 12 March 2013, the Single Judge issued the “Second decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute” (the “Decision of 12 March 2013”), deciding that Mr Gbagbo should remain in detention.¹⁰

8. On 3 June 2013, the Chamber issued, by majority, Judge Silvia Fernández de Gurmendi dissenting, the “Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute”, in which it decided to adjourn the confirmation of charges hearing and requested the Prosecutor to consider providing further evidence or conducting further investigation with respect to all charges.¹¹

demandant la mise en liberté provisoire du président Gbagbo’”, 26 October 2012, ICC-02/11-01/11-278-Conf (the “Appeals Chamber Judgment of 26 October 2012”). A public redacted version is available (ICC-02/11-01/11-278-Red).

⁸ ICC-02/11-01/11-291, p. 25.

⁹ ICC-02/11-01/11-362-Conf, p. 15. A public redacted version is available (ICC-02/11-01/11-362-Red).

¹⁰ ICC-02/11-01/11-417-Conf, p. 16. A public redacted version is available (ICC-02/11-01/11-417-Red).

¹¹ ICC-02/11-01/11-432, p. 22.

9. On 11 July 2013, the Chamber issued the “Third decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute” (the “Decision of 11 July 2013”), deciding that Mr Gbagbo should remain in detention.¹² The appeal of the Defence against this decision¹³ was dismissed by the Appeals Chamber on 29 October 2013.¹⁴

10. On 11 November 2013, the Chamber issued the “Fourth decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute” (the “Decision of 11 November 2013”), deciding that Mr Gbagbo should remain in detention and ordering the Registry and the Defence to submit a report on the progress of efforts to address the issues concerning Mr Gbagbo’s health.¹⁵

11. On 12 March 2014, the Chamber issued the “Fifth decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute” (the “Decision of 12 March 2014”), deciding that Mr Gbagbo should remain in detention and ordering the Registry and the Defence to submit a report on the progress of efforts to address the issues concerning Mr Gbagbo’s health.¹⁶

12. The Registry and the Defence jointly filed reports on the progress of efforts to address the issues concerning Mr Gbagbo’s health on 3 December

¹² ICC-02/11-01/11-454, p. 19.

¹³ ICC-02/11-01/11-459-Conf. A public redacted version is available (ICC-02/11-01/11-459-Red).

¹⁴ Appeals Chamber, “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-Conf (the “Appeals Chamber Judgment of 29 October 2013”). A public redacted version is available (ICC-02/11-01/11-548-Red).

¹⁵ ICC-02/11-01/11-558, p. 20.

¹⁶ ICC-02/11-01/11-633, pp. 16-17.

2013,¹⁷ 20 December 2013,¹⁸ 26 February 2014,¹⁹ 2 April 2014²⁰ and 23 May 2014.²¹

13. On 12 June 2014, the Chamber, by majority, Judge Christine Van den Wyngaert dissenting, confirmed the charges against Mr Gbagbo.²²

14. On 27 June 2014, the Prosecutor,²³ the Office of Public Counsel for victims (the “OPCV”)²⁴ and the Defence²⁵ filed their respective submissions for the purpose of the sixth review of Mr Gbagbo’s detention.

II. The applicable law

15. The Chamber notes articles 21(3), 58(1) and 60(3) of the Statute, and rules 118 and 119 of the Rules of Procedure and Evidence (the “Rules”).

16. 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.

¹⁷ ICC-02/11-01/11-566-Conf-Exp.

¹⁸ ICC-02/11-01/11-581-Conf-Exp.

¹⁹ ICC-02/11-01/11-623-Conf-Exp.

²⁰ ICC-02/11-01/11-644-Conf-Exp.

²¹ ICC-02/11-01/11-651-Conf-Exp.

²² ICC-02/11-01/11-656-Conf. A public redacted version is available (ICC-02/11-01/11-656-Red).

²³ ICC-02/11-01/11-661 (the “Prosecutor’s Submissions”).

²⁴ ICC-02/11-01/11-662 (the “OPCV’s Submissions”).

²⁵ ICC-02/11-01/11-663-Conf-Exp (the “Defence Submissions”) and public annexes 1-27. A public redacted version of the submissions is available (ICC-02/11-01/11-663-Red).

17. 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”.

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

[T]he 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.²⁶

19. 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”.²⁷ The Appeals Chamber held on another occasion:

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.²⁸

²⁶ 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’”, 19 November 2010, ICC-01/05-01/08-1019, para. 52.

²⁷ Appeals Chamber, “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’”, 2 December 2009, ICC-01/05-01/08-631-Red, para. 60.

²⁸ 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

20. Lastly, the Chamber recalls that the Appeals Chamber stated in this case 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”.²⁹ In the case of *Prosecutor v. Jean-Pierre Bemba Gombo*, 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”.³⁰

III. Analysis

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

21. In line with the applicable law, the Chamber will assess whether the information newly made available by the parties and participants gives rise to “changed circumstances” which would warrant modification of the Chamber’s previous ruling on detention.

22. The Single Judge first notes the Defence submissions with regard to the continuing reconciliation process in Côte d’Ivoire which is illustrated by (i) the willingness of both government and the *Front Populaire Ivoirien* (“FPI”) to overcome differences and the central role of the FPI in the reconciliation process;³¹ (ii) the release of further political opponents;³² (iii) the further

December 2011 ‘Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo’’, ICC-01/05-01/08-2151-Red, 5 March 2012, para. 1. See also Appeals Chamber Judgment of 29 October 2013, paras 1 and 53.

²⁹ Appeals Chamber Judgment of 26 October 2012, para. 24.

³⁰ 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’”, 19 November 2010, ICC-01/05-01/08-1019, para. 53.

³¹ Defence Submissions, paras 3-9, 26.

³² *Ibid.*, paras 10-12.

unfreezing of assets of persons associated with Mr Gbagbo;³³ and (iv) the return of refugees as well as of persons associated with Mr Gbagbo from exile.³⁴ The Defence also submits that (i) the security situation in the border region to Liberia has improved;³⁵ (ii) the United Nations Operation in Côte d'Ivoire ("UNOCI") continues to reduce its presence in Côte d'Ivoire; (iii) the international community supports the process of normalisation and reconciliation by providing financial aid; and (iv) the FPI is considered to be viable interlocutor in negotiations.³⁶

23. The Prosecutor confirms the provisional release of additional numbers of former pro-Gbagbo detainees and former associates and supporters of the former Gbagbo government.³⁷ While the Prosecutor states that the security situation in Côte d'Ivoire continues to remain stable and that the mandate and presence of UNOCI will be reduced, she also indicates that the Security Council established a quick-reaction force and authorised continued deployment of French troops in light of remaining difficulties in dialogue and security issues, combined with security threats posed by the upcoming 2015 presidential elections.³⁸ The Prosecutor submits that the continued security improvements do not constitute a significant change in the circumstances relevant to Mr Gbagbo's detention status pursuant to article 58(1)(b)(i) and (ii) of the Statute.³⁹

24. In the Decision of 11 November 2013, the Chamber noted "that the security situation in Côte d'Ivoire seems to be improving and that reconciliatory efforts suggest a reduced level of tension between the

³³ *Ibid.*, paras 21-25.

³⁴ *Ibid.*, paras 13-19.

³⁵ *Ibid.*, paras 46-48.

³⁶ *Ibid.*, paras 32-35.

³⁷ Prosecutor's Submissions, para. 8.

³⁸ *Ibid.*, para. 6.

³⁹ *Ibid.*, para. 7.

Government and the supporters of Mr Gbagbo".⁴⁰ In this regard, the Chamber held that the continued detention of Mr Gbagbo for reasons stipulated under article 58(1)(b)(iii) of the Statute appeared not to be necessary.⁴¹ In its Decision of 12 March 2014, the Chamber stated that the information available at the time showed the continuing improvement of the security situation in Côte d'Ivoire, but "[did] not consider this as constituting a change in the relevant circumstances underpinning the need for the continued detention of Mr Gbagbo so as to ensure his appearance at trial and ensure that he does not obstruct or endanger the investigation or the court proceedings".⁴²

25. The Single Judge notes that the available information indicates that the security situation in Côte d'Ivoire continues to improve.⁴³ However, in the view of the Single Judge, and as found in previous decisions,⁴⁴ this improvement does not constitute a change in the relevant circumstances underpinning the need for the continued detention of Mr Gbagbo so as to ensure his appearance at trial and to ensure that he does not obstruct or endanger the investigation or the court proceedings.

26. The Single Judge takes note of the related argument of the Defence that the release of Mr Gbagbo plays an important role in the continuing reconciliation process.⁴⁵ The sources referenced by the Defence appear to call for the release of Mr Gbagbo and a termination of proceedings against him.⁴⁶ The Single Judge is of the view, as also indicated by the Chamber in its Decision of 12 March 2014,⁴⁷ that considerations of this type are not relevant

⁴⁰ Decision of 11 November 2013, para. 51.

⁴¹ *Id.*

⁴² Decision of 12 March 2014, para. 22.

⁴³ ICC-02/11-01/11-663-Anx4; ICC-02/11-01/11-663-Anx5; ICC-02/11-01/11-663-Anx6; ICC-02/11-01/11-663-Anx10; ICC-02/11-01/11-663-Anx11; ICC-02/11-01/11-663-Anx25.

⁴⁴ See above, para. 24.

⁴⁵ Defence Submissions, paras 31, 36-38, 72.

⁴⁶ ICC-02/11-01/11-663-Anx26; ICC-02/11-01/11-663-Anx27.

⁴⁷ Decision of 12 March 2014, para. 23.

for the purpose of determining the need for Mr Gbagbo's detention. As stated in prior decisions, the existence of grounds justifying the continued detention of Mr Gbagbo can only be determined in light of article 58(1) of the Statute.⁴⁸

27. The Defence further submits that a network of supporters of Mr Gbagbo does not exist.⁴⁹

28. The Prosecutor submits that the FPI continues to advocate for the release and return to Côte d'Ivoire of Mr Gbagbo, that it has clearly not cut its ties with Mr Gbagbo and that therefore there exists a genuine possibility that members may provide means and assistance that could be used by Mr Gbagbo to abscond or interfere with the investigation. The Prosecutor further notes that according to reports, Mr Gbagbo is in a position to give instructions to visitors at the detention centre.⁵⁰

29. The OPCV submits that demonstrations in support of Mr Gbagbo have not diminished and that the network of supporters of Mr Gbagbo has reportedly increased its activity since the confirmation of the charges against Mr Gbagbo.⁵¹

30. In the Decision of 13 July 2012, the Single Judge found that there appeared to be a large and well-organised network of political supporters of Mr Gbagbo in Côte d'Ivoire and abroad and there was risk that this network could provide Mr Gbagbo with the means to abscond, to obstruct the investigation, or to commit crimes within the jurisdiction of the Court.⁵² In the Decision of 12 November 2012, the Single Judge found that the network of supporters had strengthened its organisation and that, accordingly, the risks

⁴⁸ Decision of 11 November 2013, para. 48; Decision of 12 March 2014, para. 23.

⁴⁹ Defence Submissions, paras 39-45.

⁵⁰ Prosecutor's Submissions, paras 9-11; ICC-02/11-01/11-661-AnxA.

⁵¹ OPCV's Submissions, paras 20-21.

⁵² Decision of 13 July 2012, paras 60-62, 65, 69.

under article 58(1)(b) of the Statute had increased.⁵³ In its Decision of 11 July 2013, the Chamber found that while the capacity of the network had somewhat diminished, it could not be concluded that the risks identified in the Decision of 13 July 2012 no longer existed.⁵⁴ In the Decision of 12 March 2014, the Chamber found that the status of the FPI in the political reconciliation process had no direct bearing on the more general question of whether a network of supporters of Mr Gbagbo existed and that the information available did not suggest that the FPI cut its ties with or was no longer supporting Mr Gbagbo, while the legality or prominence of the party did not exclude the possibility that its members might provide means to Mr Gbagbo that he could use to abscond or to interfere with the investigation, if granted interim release.⁵⁵ The Chamber concluded that it could not ascertain any changed circumstances.⁵⁶

31. The Single Judge notes that the Defence repeats arguments submitted on previous occasions.⁵⁷ In the view of the Single Judge, the information provided in support of the argument concerning the important role and status of the FPI in the political life of Côte d'Ivoire and the reconciliation process⁵⁸ does not include any new information which would indicate that the FPI is no longer supporting Mr Gbagbo or that a larger support network of which the FPI is but one constituent does not exist.⁵⁹ On this basis, the Single Judge cannot ascertain any changed circumstances.

⁵³ Decision of 12 November 2012, para. 59.

⁵⁴ Decision of 11 July 2013, para. 41.

⁵⁵ Decision of 12 March 2014, para. 26.

⁵⁶ *Id.*

⁵⁷ See ICC-02/11-01/11-625-Conf, paras 21-30, 43-48. A public redacted version is available (ICC-02/11-01/11-625-Red).

⁵⁸ ICC-02/11-01/11-663-Anx2; ICC-02/11-01/11-663-Anx3; ICC-02/11-01/11-663-Anx10; ICC-02/11-01/11-663-Anx12; ICC-02/11-01/11-663-Anx13; ICC-02/11-01/11-663-Anx18; ICC-02/11-01/11-663-Anx20; ICC-02/11-01/11-663-Anx25.

⁵⁹ See also Decision of 12 March 2013, para. 37; Decision of 12 March 2014, para. 26.

32. The Defence also submits that Mr Gbagbo does not have the financial means or the support which would enable him to abscond.⁶⁰ The Single Judge cannot ascertain any changed circumstances in relation to this submission as the Defence does not provide any additional information as opposed to the information which was available to the Chamber at the time of the issuance of the Decision of 13 July 2012.⁶¹

33. In relation to the necessity to detain Mr Gbagbo in order to prevent his obstruction of the investigation or of the proceedings, the Defence submits that the confirmation of the charges against Mr Gbagbo signifies the end of the Prosecutor's investigation and therefore there can be no risk of interference, and that there has been no indication of obstruction of the investigation or proceedings, interference with witnesses by Mr Gbagbo, or of interference with proceedings on the national level.⁶²

34. The Single Judge is of the view, as pointed out by the Chamber previously,⁶³ that the mere fact that the Prosecutor has so far not reported any interference with the investigation, or that Mr Gbagbo has not obstructed the proceedings while in detention, does not bear, in and of itself, on the determination whether the continued detention of Mr Gbagbo appears necessary. In relation to the Defence submission that national judicial authorities have not reported any interference in other cases related to the post-election crisis, including concerning persons close to Mr Gbagbo,⁶⁴ the Single Judge is of the view that the conduct of domestic proceedings in Côte d'Ivoire in other cases and their potential obstruction are of no relevance to

⁶⁰ *Ibid.*, paras 49-50.

⁶¹ Decision of 12 March 2014, para. 27.

⁶² Defence Submissions, paras 56-66.

⁶³ Decision of 12 March 2014, para. 31.

⁶⁴ Defence Submissions, para. 62.

the determination of the continued necessity of Mr Gbagbo's detention before this Court.

35. With regard to the Defence argument that continued detention is unnecessary because the confirmation of charges signifies the end of the investigation, the Single Judge considers, as observed in the Decision of 12 March 2014,⁶⁵ that article 58(1)(b)(ii) of the Statute explicitly refers to the necessity of detention to ensure that the person does not obstruct or endanger not only the investigation but also "the court proceedings". In the view of the Single Judge, the need to ensure that Mr Gbagbo does not obstruct or endanger not only the investigation but in particular the court proceedings is even heightened in light of the impending trial after the confirmation of the charges against Mr Gbagbo.⁶⁶ Furthermore, the Single Judge notes that while it may be desirable that investigations are largely complete before confirmation of charges, completion of the investigation prior to confirmation of charges is not a legal requirement under the Statute.⁶⁷

36. In addition, the Defence argues that the passage of time itself justifies a need for additional reasoning of continued detention and that the Chamber cannot limit itself to refer to prior decisions but has to provide reasons for which continued detention is considered necessary at the time.⁶⁸ The Defence also submits that the passage of time further allows concluding that there exists no risk of absconding or obstruction of the investigation,⁶⁹ and that the

⁶⁵ Decision of 12 March 2014, para. 32.

⁶⁶ See also below, para. 41.

⁶⁷ See also Appeals Chamber, "Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled 'Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 (2) and (4) of the Rules of Procedure and Evidence'", 13 October 2006, ICC-01/04-01/06-568, para. 54.

⁶⁸ Defence Submissions, para. 76.

⁶⁹ *Ibid.*, paras 77-78.

consideration of the gravity of the charges does not withstand the passage of time.⁷⁰

37. The Single Judge recalls that the Appeals Chamber has held that it is not necessary to entertain submissions by the detained person that merely repeat arguments that a Chamber has already addressed in previous decisions.⁷¹ In the view of the Single Judge, despite reference to the finding of the Chamber in the Decision of 12 March 2014,⁷² the Defence still does not specify which factual finding(s) of the Chamber have, in its submission, become obsolete through the passage of time.⁷³ The Single Judge recalls that the Chamber has kept the reasons justifying the continued detention of Mr Gbagbo under periodic review and has determined, upon each review, whether and to what extent the reasons remained applicable.

38. In the submission of the Prosecutor, the only significant change since the Decision of 12 March 2014 lies in the Chamber's confirmation of the charges against Mr Gbagbo on the basis of a detailed analysis of its reasoning including the evidence on which it relied. The Prosecutor submits that this means that "there exists an even firmer evidential basis for arguing that these same considerations pursuant to Article 58(1)(b)(i) and (ii) necessitate his continued detention".⁷⁴

39. The OPCV submits that the confirmation of the charges against Mr Gbagbo does not constitute a "changed circumstance" in the sense of article

⁷⁰ *Ibid.*, paras 67-70.

⁷¹ See above, para. 20.

⁷² *Ibid.*, para. 75.

⁷³ Decision of 12 March 2014, para. 33.

⁷⁴ Prosecutor's Submissions, para. 4.

60(3) of the Statute, but tends to favour Mr Gbagbo's continued detention rather than mitigate in favour of his release.⁷⁵

40. The Defence argues that in the specific circumstances of the case, the fact that the charges against Mr Gbagbo were confirmed does not increase the flight risk because the evidence provided in support of the charges is still considered insufficient by some, and because Mr Gbagbo has continuously expressed his wish to participate in a judicial process to uncover the truth, which means that the confirmation of the charges against him is a further step on the way leading to the truth as the trial will give Mr Gbagbo an opportunity to explain what really happened.⁷⁶

41. In the view of the Single Judge, and as held in other cases before this Court,⁷⁷ the confirmation of charges against Mr Gbagbo has, if anything, increased the risk of absconding. Accordingly, despite the Defence submission that Mr Gbagbo is committed to participate in the trial, the Single Judge finds that Mr Gbagbo's continued detention is necessary to ensure his appearance at trial and to ensure that he does not obstruct or endanger the investigation or the court proceedings.

42. Following the above analysis, the Single Judge is of the view that there has been no change in the relevant circumstances concerning the apparent necessity of Mr Gbagbo's detention to ensure his appearance before the Court,

⁷⁵ OPCV's Submissions, paras 17-18.

⁷⁶ Defence Submissions, paras 51-55.

⁷⁷ See also Pre-Trial Chamber I, "Review of the 'Decision on the Application for the Interim Release of Thomas Lubanga Dyilo'", 14 February 2007, ICC-01/04-01/06-826, p. 6; Pre-Trial Chamber II, "Deuxième réexamen de la Décision sur les conditions du maintien en détention de Germain Katanga", 12 December 2008, ICC-01/04-01/07-794, paras 9-10; Appeals Chamber, "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'", 2 December 2009, ICC-01/05-01/08-631-Red, para. 70.

and to ensure that he does not obstruct or endanger the investigation or the court proceedings. The grounds justifying detention under article 58(1)(b)(i) and (ii) of the Statute continue to exist, and interim release cannot be granted.

B. Conditional release

43. As stated by the Appeals Chamber, a review of a previous ruling on detention may result in the person's continued detention, release, or release with conditions:

[T]he examination of conditions of release is discretionary and [...] 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.⁷⁸

44. In the present case, the Appeals Chamber has also held in relation to conditional release that:

[T]he medical condition of the detained person may be a reason for a Pre-Trial Chamber to grant interim release with conditions. As stated above, the Pre-Trial Chamber enjoys discretion when deciding on conditional release; the ill health of a detained person may be a factor in the exercise of its discretion.⁷⁹

45. As stated above,⁸⁰ risks envisaged in article 58(1)(b) of the Statute continue to exist in respect of Mr Gbagbo. Nevertheless, as stated previously,⁸¹ the Single Judge is aware of the continuing obligation to assess the possibility of conditional release, if it would be feasible to sufficiently mitigate the identified risks.

46. In this regard and taking into account the health condition of Mr Gbagbo, the Chamber stated in the Decision of 11 November 2013 that

⁷⁸ 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'", 12 September 2011, ICC-01/05-01/08-1626-Red, para. 55.

⁷⁹ Appeals Chamber Judgment of 26 October 2012, para. 87.

⁸⁰ See above, para. 42.

⁸¹ Decision of 11 July 2013, para. 56; Decision of 11 November 2013, para. 55; Decision of 12 March 2014, para. 38.

conditional release should be considered after the necessary steps have been completed to determine Mr Gbagbo's health-related needs.⁸² Considering that the latter may have a significant impact on the possible destination and conditions for conditional release, the Chamber found it appropriate to postpone the exploration of all possible options for conditional release until all relevant information about Mr Gbagbo's state of health and his need for treatment has been received.⁸³ The Chamber also specifically observed that the proper management of the health of Mr Gbagbo is a central matter to be taken into account in the consideration of a possible location, should conditional release be granted.⁸⁴

47. The Single Judge notes that the relevant process for determining Mr Gbagbo's health-related needs is currently being conducted by the Registry in consultation with the Defence. The Chamber has been provided with information on the progress of this process by way of five reports in the record of the case.⁸⁵ The information currently available suggests that at present the process is not yet complete.⁸⁶

48. The Single Judge is therefore not in a position to assess the possibility of conditional release. Once the process is completed, the Single Judge will assess the possibility of granting conditional release and seek, if appropriate, the views of the Prosecutor, the Defence, any relevant State, and the victims that have communicated with the Court in relation to this case, in accordance with rule 119(3) of the Rules.⁸⁷

⁸² Decision of 11 November 2013, para. 57.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ See above, para. 12.

⁸⁶ ICC-02/11-01/11-651-Conf-Exp; Defence Submissions, p. 20.

⁸⁷ Decision of 11 November 2013, para. 62; Decision of 12 March 2014, para. 41.

49. For this purpose, the Single Judge considers it appropriate to order the Registry and the Defence to submit, by 25 July 2014, a report on the progress achieved in relation to the matter at issue.

FOR THESE REASONS, THE SINGLE JUDGE

DECIDES that Laurent Gbagbo shall remain in detention; and

ORDERS the Registry and the Defence to submit, by Friday, 25 July 2014, a report on the progress of efforts to address the issues concerning Mr Gbagbo's health.

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



Judge Silvia Fernández de Gurmendi
Single Judge

Dated this Friday, 11 July 2014

At The Hague, The Netherlands