

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 8 July 2015

TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Olga Herrera Carbuca
Judge Bertram Schmitt

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

Public redacted version of

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

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Eric MacDonald

Counsel for Laurent Gbagbo

Mr Emmanuel Altit
Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Mr Geert-Jan Alexander Knoops
Mr Claver N'dry

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Mr Patrick Craig

**Victims Participation and Reparations
Section**

Others

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

1. On 11 March 2015, the Chamber reviewed Mr Gbagbo's detention and decided that he shall continue to be detained.³
2. Pursuant to the Single Judge's order inviting submissions on Mr Gbagbo's continued detention or release, including on the existence of any changed circumstances pursuant to Article 60(3) of the Statute ('Order'),⁴ observations were filed on 28 May 2015 by the Defence ('Defence Submissions'),⁵ and on 11 June 2015 by the Legal Representative of Victims ('LRV Submissions')⁶ and the Prosecution ('Prosecution Submissions').⁷ As further provided in the Order, the Defence filed a response to the Prosecution and LRV Submissions on 25 June 2015 ('Defence Response').⁸

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

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

³ Eighth decision on the review of Laurent Gbagbo's detention pursuant to Article 60(3) of the Rome Statute, ICC-02/11-01/11-808 ('Eighth Article 60(3) Decision').

⁴ Order requesting the parties' and participants' observations under Article 60(3) of the Statute, filed 8 May 2015 and notified on 11 May 2015, ICC-02/11-01/15-61.

⁵ *Soumissions de la défense portant sur les conditions d'application des dispositions de l'article 58(1)(b), faites à l'invitation de la Chambre, dans le cadre du neuvième réexamen de la détention*, ICC-02/11-01/15-83.

⁶ Observations of the Common Legal Representative of Victims on the periodic review of Mr. Gbagbo's detention, ICC-02/11-01/15-89.

⁷ Prosecution's submissions on the ninth detention review of Mr Laurent Gbagbo, ICC-02/11-01/15-90-Conf with confidential annex A. A public redacted version was filed on the same day (ICC-02/11-01/15-90-Red).

⁸ *Réponse de la Défense à la «Prosecution's submissions on the ninth detention review of Laurent Gbagbo» (ICC-02/11-01/15-90-Conf) et réponse de la Défense aux «Observations of the Common Legal Representative*

3. As a preliminary remark, the Chamber notes that the Defence argues that, by inviting its submissions on changed circumstances prior to that of the Prosecution and Legal Representative, the Chamber reversed the burden of proof.⁹ The Chamber notes that, when conducting a review of its previous decision concerning the detention of the accused under Article 60(3) of the Statute, it need only consider whether any changed circumstances exist, rather than conducting a *de novo* review of the conditions underpinning detention.¹⁰ Therefore, while the Chamber must, *inter alia*, ‘weigh the [Prosecution’s] submissions against the submissions, if any, of the detained person’, there is no requirement for the Prosecution to first ‘re-establish circumstances that have already been established’.¹¹ Consequently, in the Chamber’s view, given the limited nature of the detention review under Article 60(3) of the Statute,¹² the fact that the Defence was ordered to file its submissions first did not result in a reversal of the burden of proof. The Chamber therefore dismisses this argument.
4. Turning now to the analysis of whether there are any changed circumstances under Article 60(3) of the Statute, the Chamber notes that the Prosecution submits that there have been no changed circumstances since the issuance of this Chamber’s last decision on the review of Mr Gbagbo’s detention¹³ and therefore believes that his continued detention remains necessary. In support

of Victims on the periodic review of Mr. Gbagbo's detention» (ICC-02/11-01/15-89), ICC-02/11-01/15-103-Conf and public Annex. A public redacted version was filed on the same day (ICC-02/11-01/15-103-Red).

⁹ Defence Submissions, ICC-02/11-01/15-83, paras 22-24, referring to Order, ICC-02/11-01/15-61, page 5.

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

¹¹ *See The Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber HI 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 (OA 4) (*Bemba OA 4 Judgment*), paras 51-52.

¹² *See, inter alia, 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 president Gbagbo”*, 26 October 2012, ICC-02/11-01/11-278-Red (OA) (*Gbagbo OA Judgment*), para. 24.

¹³ Prosecution Submissions, ICC-02/11-01/15-90-Red, paras 1 and 20.

of its submissions, the Prosecution provides updated information pertaining to ongoing activities of pro-Gbagbo organised network [REDACTED],¹⁴ the apparent recent arrest of a key member of this network, Mr Hubert Oulaye,¹⁵ and political developments in Côte d'Ivoire, including continuing calls for the release of Mr Gbagbo.¹⁶

5. To the contrary, the Defence avers that: (i) the conditions underpinning detention must be re-assessed to maintain consistency with human rights principles;¹⁷ (ii) there is currently no organised network of people supporting Mr Gbagbo;¹⁸ (iii) the calls for Mr Gbagbo's release are legitimate;¹⁹ and (iv) Mr Gbagbo's release will have positive consequences on the national reconciliation process.²⁰

6. The Chamber recalls that it is not required 'to entertain submissions by the detained person that merely repeat arguments that the Chamber has already addressed in previous decisions'.²¹ In this regard, the Chamber notes with concern that the aforementioned arguments made by the Defence have been raised previously and already dismissed by the Chamber as irrelevant to its assessment of Mr Gbagbo's detention under Article 60(3) of the Statute.²² The Chamber shall therefore not adjudicate these arguments further.

7. However, the Chamber considers that the issue of Mr Gbagbo's network of supporters has been considered as a relevant circumstance underpinning the need for his continued detention under Article 58(1)(b)(i) and (ii) of the

¹⁴ Prosecution Submissions, ICC-02/11-01/15-90-Conf, paras 7-8 and confidential Annex A.

¹⁵ Prosecution Submissions, ICC-02/11-01/15-90-Red, paras 10-11.

¹⁶ Prosecution Submissions, ICC-02/11-01/15-90-Red, paras 13-17.

¹⁷ Defence Submissions ICC-02/11-01/15-83, paras 14-17; Defence Response, ICC-02/11-01/15-103-Red, paras 7-17.

¹⁸ Defence Submissions, ICC-02/11-01/15-83, *see e.g.* paras 31-37.

¹⁹ Defence Response, ICC-02/11-01/15-103-Red, paras 39-49.

²⁰ Defence Submissions, ICC-02/11-01/15-83, paras 37, 41-61.

²¹ 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.

²² *See e.g.* Seventh Article 60(3) Decision, ICC-02/11-01/11-718-Red, paras 50-52, 54, 58-60.

Statute. Indeed, the Chamber previously noted that '[t]he extent of this network's political and military organisation was found by the Pre-Trial Chamber to increase and decrease over the course of the time Mr Gbagbo has been detained'.²³ Given this finding, the Chamber considers it appropriate to assess whether there are any changed circumstances with respect to Mr Gbagbo's network that would affect the Chamber's previous ruling on the conditions underpinning Article 58(1)(b)(i) and (ii) of the Statute.

8. In support of the ongoing existence of this network, the Prosecution cites to: (i) the 'Final report of the [United Nations] Group of Experts on Côte d'Ivoire', dated 13 April 2015 ('Group of Experts' Report')²⁴ which refers, *inter alia*, to the activities of '[a]rmed elements linked to the pro-Gbagbo radical wing';²⁵ (ii) an investigation note referring to an interview with [REDACTED]²⁶ (iii) [REDACTED] the role of recently-arrested Mr Hubert Oulaye, 'a former Gbagbo minister and FPI hardliner';²⁷ and (iv) evidence, including newspaper articles, supporting, *inter alia*, calls for release of political prisoners across Côte d'Ivoire including 'primarily President Laurent Gbagbo'.²⁸
9. In the Defence Response, the Defence argues that the Prosecution has not provided any new material attesting of the current necessity of Mr Gbagbo's detention²⁹ and submits, amongst other things, that [REDACTED].³⁰
10. In the absence of being furnished with the statement of [REDACTED], the Chamber shall not consider further the contents of the Investigator's Report purporting to summarise this, and shall not therefore rely on it for the present

²³ Seventh Article 60(3) Decision, ICC-02/11-01/11-718-Conf, para. 54 [footnotes omitted].

²⁴ See Prosecution Submissions, ICC-02/11-01/15-90-Red, para. 7 referring to Final report of the Group of Experts on Côte d'Ivoire pursuant to paragraph 27 of the Security Council resolution 2153 (2014), S/2015/252, 13 April 2015, online: http://www.un.org/ga/search/view_doc.asp?symbol=S/2015/252.

²⁵ Group of Experts' Report, page 3.

²⁶ Prosecution Submissions, ICC-02/11-01/15-90-Conf, para. 8 and confidential Annex.

²⁷ Prosecution Submissions, ICC-02/11-01/15-90-Red, paras 10-11.

²⁸ Prosecution Submissions, ICC-02/11-01/15-90-Red, para. 16. See also paras 13-16.

²⁹ Defence Response, ICC-02/11-01/15-103-Red, see e.g. paras 21, 23, 26-29, 32.

³⁰ Defence Response, ICC-02/11-01/15-103-Conf, paras 26-32.

review of Mr Gbagbo's detention or the concomitant assessment of the present existence of a network of supporters.

11. However, the Chamber is of the view that the further material provided by the Prosecution, particularly that supporting calls for release of Mr Gbagbo,³¹ a fact which is not refuted by the Defence,³² clearly illustrates the continued existence of Mr Gbagbo's support network. The Chamber is therefore satisfied that there are no changed circumstances regarding Mr Gbagbo's network of supporters which would warrant a modification of its risk assessment under Article 58(1)(b)(i) and (ii) of the Statute. Noting that the Chamber previously held that 'the consequences of an eventual release of Mr Gbagbo on the national reconciliation process' was not considered relevant for the purposes of assessing changed circumstances under Article 60(3) of the Statute,³³ the Chamber finds that no changed circumstances exist that would render a modification of its prior ruling necessary, insofar as there remains a need for Mr Gbagbo to be detained to ensure his appearance at trial and to ensure that he does not obstruct or endanger the proceedings.

12. Finally, as concerns the fleeting suggestion by the Defence as to the possibility of Mr Gbagbo being detained '*par une solution alternative*', such as '[TRANSLATION] house arrest',³⁴ the Chamber recalls it has indicated that 'requests for conditional release can [...] be made at any time' and that it does not consider that it is currently seised of any such request.³⁵ In the absence of a concrete proposal for conditional release, the Chamber recalls that its

³¹ Prosecution Submissions, ICC-02/11-01/15-90-Red, paras 15-19.

³² Defence Submissions, ICC-02/11-01/15-83, paras 57-60.

³³ Seventh Article 60(3) Decision, ICC-02/11-01/11-718-Red, para. 51.

³⁴ Defence Submissions, ICC-02/11-01/15-83, para. 62.

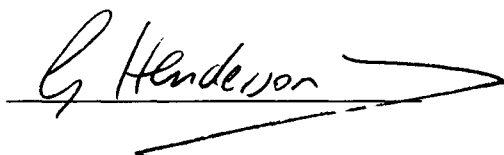
³⁵ Hearing of 16 June 2015, ICC-02/11-01/15-T-2-CONF-EXP-ENG, page 7, lines 16-24. *See also Demande d'autorisation d'interjeter appel de la décision orale de la Chambre de première instance I du 16 juin 2015 rejetant la requête déposée par la Défense le 9 juin 2015 (ICC-02/11-01/15-87-Conf-Exp)*, 22 June 2015, ICC-02/11-01/15-97-Conf-Exp.

discretion to consider conditional release is unfettered.³⁶ Accordingly, the Chamber shall not consider the issue further at this stage.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DECIDES that Mr Laurent Gbagbo shall remain in detention.

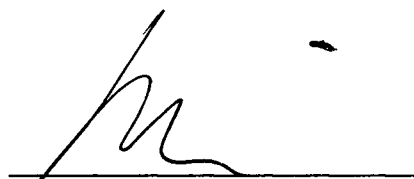
Done in both English and French, the English version being authoritative.



Judge Geoffrey Henderson, Presiding Judge



Judge Olga Herrera Carbuccion



Judge Bertram Schmitt

Dated 8 July 2015

At The Hague, The Netherlands

³⁶ See Rule 119 of the Rules; *Gbagbo* OA Judgment, ICC-02/11-01/11-278-Red, para. 79.