

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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TRIAL CHAMBER I

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

SITUATION IN CÔTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. LAURENT Gbagbo AND CHARLES BLÉ GOUDÉ***

Public Document

Redacted version of "Observations on the Medical Report concerning Mr Gbagbo's health situation dated 4 April 2018", ICC-02/11-01/15-1147-Conf, 11 April 2018

Source: Office of Public Counsel for Victims

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. Introduction

1. The Common Legal Representative of the victims admitted to participate in the proceedings (the “Legal Representative”)¹ submits that the updated Medical Report concerning Mr Gbagbo’s health situation (the “April 2018 Report”)² reaffirms her previous submissions for the rejection of Mr Gbagbo’s request for interim release (the “Request”).³

2. The April 2018 Report, indeed, endorses the results of previous medical reports and shows that Mr Gbagbo’s state of health is compatible with the conditions of his detention and has not worsened since the latest detention review so as to justify his conditional release for medical reasons.

3. Accordingly, the Legal Representative submits that Mr Gbagbo’s state of health has not changed since it was last assessed in late September 2017. Therefore, there are no changed circumstances in the sense of article 60(3) of the Rome Statute (the “Statute”) which could justify a modification of either the current decision to keep Mr Gbagbo in detention or of the conditions of his detention.

II. Background

4. On 25 September 2017, Trial Chamber I (the “Chamber”), Judge Tarfusser dissenting, issued a decision on Mr Gbagbo’s detention under article 60(3) of the

¹ See the “Decision on victim participation” (Trial Chamber I), No. ICC-02/11-01/11-800, 6 March 2015; and the “Decision on victims’ participation status” (Trial Chamber I), No. ICC-02/11-01/15-379, 7 January 2016, p. 23.

² See the “Annex to the Registry Transmission of Medical Report Requested by the Chamber”, No. ICC-02/11-01/15-1145-Conf-Anx, 4 April 2018 (the “April 2018 Report”).

³ See the “Version publique expurgée de la « 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).”, No. ICC-02/11-01/15-1130-Red, 3 May 2018 (the “Request”).

Statute (the “Eleventh Decision on Detention”),⁴ finding, *inter alia*, that there was no evidence that his conditions of detention are incompatible with his age and health, and deciding that he shall remain in detention.⁵

5. On 14 February 2018, the Defence of Mr Gbagbo filed the Request,⁶ asking the Chamber (i) to grant Mr Gbagbo interim release for medical reasons under an obligation of treatment outside the ICC detention premises; and (ii) to hold a hearing in order to discuss the conditions to be applied to Mr Gbagbo’s release.

6. On 21 February 2018, the Prosecution filed its Response to the Request.⁷

7. On 22 February 2018, the Legal Representative filed her Response to the Request (the “Legal Representative’s Response”).⁸

8. On 6 April 2018, the Single Judge ordered the reclassification of the April 2018 Report and set a time limit for the parties and participants to submit their observations thereon, if they so wished.⁹

III. Confidentiality

9. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this submission is filed confidentially because it makes reference to submissions filed with the same classification. A public redacted version will be filed in due course.

⁴ See the “Public redacted version of the Decision on Mr Gbagbo’s Detention” (Trial Chamber I), No. ICC-02/11-01/15-1038-Red, 26 September 2017 (the “Eleventh Decision on Detention”).

⁵ *Idem*, paras. 46 and 74.

⁶ See *supra* note 3.

⁷ See the “Public redacted version of ‘Prosecution’s Response to Mr Gbagbo’s request for interim release (ICC-02/11-01/15-1130-Conf)’”, 21 February 2018, ICC-02/11-01/15-1132-Conf”, No. ICC-02/11-01/15-1132-Red, 30 April 2018.

⁸ See the “Redacted version of ‘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-Red, 22 February 2018”, No. ICC-02/11-01/15-1133-Red, 19 June 2018 (the “Legal Representative’s Response”).

⁹ See the e-mail received from Trial Chamber I on 6 April 2018 at 10h53.

IV. Submissions

10. The Legal Representative recalls her submissions of 22 February 2018,¹⁰ and submits that the April 2018 Report confirms the previous conclusions of the Chamber on the absence of medical reasons justifying Mr Gbagbo's interim release.¹¹

11. In this regard, the Legal Representative also recalls that, following the instructions of the Appeals Chamber,¹² a detailed assessment of Mr Gbagbo's age impairments and state of health was carried out by the Chamber in the Eleventh Decision on Detention,¹³ on the basis of a medical report containing information updated to 4 September 2017 (the "September 2017 Report").¹⁴

12. As a result of this analysis, the Chamber found, on the one hand, that "*nothing before [it], including the Medical Report, allows [...] to conclude that given his present state of health, Mr Gbagbo would be unable to abscond or obstruct court proceedings*",¹⁵ and, on the other hand, that "*the Detention Centre provides adequate medical treatment and all requirements compatible with human dignity*".¹⁶

13. The Legal Representative submits that said conclusions remain valid today in light of the latest report on Mr Gbagbo's state of health provided by the Medical Officer on 4 April 2018. The conclusions in said report are almost identical to those in

¹⁰ See the Legal Representative's Response, *supra* note 8.

¹¹ See the Eleventh Decision on Detention, *supra* note 4, paras. 42, 46-47, 60 and 67.

¹² See the "Public Redacted Version of 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'" (Appeals Chamber), No. ICC-02/11-01/15-992-Red OA10, 19 July 2017, paras. 53-59 and 81.

¹³ See the Eleventh Decision on Detention, *supra* note 4, paras. 33-47.

¹⁴ See the "Annex I to the Transmission of the Medical Officer's Report on the state of Mr Gbagbo's health pursuant to Trial Chamber I's order of 25 August 2017", No. ICC-02/11-01/15-1018-Conf-AnxI, 26 September 2017 (the "September 2017 Report").

¹⁵ See the Eleventh Decision on Detention, *supra* note 4, para. 45.

¹⁶ *Idem*, para. 38.

the Medical Officer's reports dated 24 November 2017 (the "November 2017 Report")¹⁷ and 18 December 2017 (the "December 2017 Report").¹⁸

14. Firstly, in his latest report the Medical Officer does not indicate any increase in Mr Gbagbo's vulnerability that would in turn increase the risk of a negative health status outcome. On the contrary, he clearly reiterates that "*since last year, Mr. Gbagbo is still in a stable, though vulnerable health condition*",¹⁹ that "*deterioration is still not evident*",²⁰ and that Mr Gbagbo's "*accelerate aging*" appears to be "*eminent though mild*".²¹ [REDACTED].²²

15. Secondly, the April 2018 Report reiterates that ancillary causes of the reduction in Mr Gbagbo's daily performance include age impairments, [REDACTED].²³ However, Mr Gbagbo's lack of physical exercise is due to his lack of motivation to exercise, [REDACTED].²⁴

16. [REDACTED],²⁵ [REDACTED],²⁶ [REDACTED].²⁷

17. Thirdly, in his latest report the Medical Officer does not indicate any cardiovascular condition allegedly suffered by Mr Gbagbo nor any alleged clinical

¹⁷ See the "Rapport [REDACTED] en date du 24 novembre 2017", No. ICC-02/11-01/15-1130-Conf-Anx1, 14 February 2018 (the "November 2017 Report").

¹⁸ See the "Rapport [REDACTED] en date du 18 décembre 2017", No. ICC-02/11-01/15-1130-Conf-Anx2, 14 February 2018 (the "December 2017 Report").

¹⁹ See the April 2018 Report, *supra* note 2, paras. 1 and 6. Cf. the December 2017 Report, *supra* note 18, para. 1; and the November 2017 Report, *supra* note 17, paras. 1 and 6. In the same vein, see also the September 2017 Report, *supra* note 14, para. 1.

²⁰ See the April 2018 Report, *supra* note 2, para. 6. Cf. the December 2017 Report, *supra* note 18, para. 1; and the November 2017 Report, *supra* note 17, para. 6.

²¹ See the April 2018 Report, *supra* note 2, paras. 2 and 6. Cf. the November 2017 Report, *supra* note 17, para. 3. Similarly, see also the September 2017 Report, *supra* note 14, para. 3.

²² [REDACTED].

²³ See the April 2018 Report, *supra* note 2, para. 5. Cf. the November 2017 Report, *supra* note 17, para. 8.

²⁴ See the April 2018 Report, *supra* note 2, paras. 3.g and 6.

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED].

post-traumatic stress disorder (the “PTSD”) and/or hospitalisation syndrome.²⁸ In fact, the results of the medical specialist visits and diagnostic tests undertaken by Mr Gbagbo since December 2017 and reported in the latest Medical Officer’s Report do not disclose any of the aforementioned conditions.²⁹

18. [REDACTED].³⁰

19. Lastly, the April 2018 Report states that Mr Gbagbo is considered to be a “*fragile person*”,³¹ thereby reiterating the findings by the Medical Officer in prior reports.³² [REDACTED].³³ Moreover, Mr Gbagbo is reportedly receiving “*maximum and optimum treatment in relation to his ailments*”.³⁴

20. Finally, the Legal Representative conveys again the serious concerns expressed by the victims participating in this case about the possibility of Mr Gbagbo being granted release, even with conditions. During the course of meetings held with the Legal Representative at the end of March 2018, victims have reiterated that this matter is an issue of outmost concern to them, since they fear that an eventual interim release of Mr Gbagbo will be exploited for political purposes and will affect the confidence in the proper administration of justice by the Court.

²⁸ Cf. the Request, *supra* note 3, paras. 13 and 16-20.

²⁹ See the April 2018 Report, *supra* note 2, para. 3.

³⁰ [REDACTED].

³¹ See the April 2018 Report, *supra* note 2, para. 2.

³² See the November 2017 Report, *supra* note 17, para. 2; the September 2017 Report, *supra* note 14, para. 2; and the Annex II to the “Registry’s Transmission of Mr Gbagbo’s Medical Report”, No. ICC-02/11-01/15-657-Conf-AnxII, 31 August 2016, para. 1.

³³ See the April 2018 Report, *supra* note 2, paras. 5-6.

³⁴ *Idem*, para. 6.

V. Conclusion

21. The Legal Representative respectfully submits that the April 2018 Report confirms the previous conclusions of the Chamber on the absence of medical reasons justifying Mr Gbagbo's interim release and therefore she reiterates her conclusion that he should remain in detention.

A handwritten signature in black ink, reading 'Paolina Massidda', with a horizontal line underneath the name.

Paolina Massidda
Principal Counsel

Dated this 19th day of June 2018

At The Hague, The Netherlands