

### Separate Opinion of Judge Erkki Kourula

1. I agree with the Majority that grounds 1 and 3 to 10 of the appeal must be dismissed. However, I respectfully disagree with the reasoning under the second ground of appeal relating to the Pre-Trial Chamber's findings under article 58 (1) (b) (ii) and (iii) of the Statute.

2. As expressed in my Dissenting Opinion in the *Gbagbo* OA Judgment,<sup>1</sup> I agree with the Pre-Trial Chamber's findings under article 58 (1) (b) (i) of the Statute that Mr Gbagbo's detention appears necessary to ensure his appearance at trial. However, my concerns persist in relation to the insufficiency of the Pre-Trial Chamber's reasoning to support its initial finding that there is a risk that Mr Gbagbo would obstruct or endanger the investigation or the court proceedings, or that he would continue to commit any of the crimes he is alleged to have committed or any related crimes. As previously stated, I believe that in the absence of sufficient reasoning in the Decision of 13 July 2012, an assessment of "changed circumstances" in the current review of detention is problematic. In my view, this is reflected in the Pre-Trial Chamber's assessment of the grounds for detention under article 58 (1) (b) (ii) and (iii) of the Statute in paragraphs 38-44 of the Impugned Decision.

3. Given that the grounds for detention under article 58 (1) (b) of the Statute are in the alternative, I would have found that Mr Gbagbo's continued detention is justified under article 58 (1) (b) (i) alone, and not pursuant to article 58 (1) (b) (ii) or (iii) of the Statute.

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



**Judge Erkki Kourula**

Dated this 29<sup>th</sup> day of October 2013

At The Hague, The Netherlands

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<sup>1</sup> 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-Red, p. 54.