

**Cour
Pénale
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**International
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Court**

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PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Hans-Peter Kaul
Judge Christine Van den Wyngaert

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

Public

**Third 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
 James Stewart, Deputy Prosecutor

Counsel for the Defence
 Emmanuel Altit
 Agathe Bahi Baroan

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
 Participation/Reparation**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar
 Herman von Hebel, Registrar
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Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
 Section**

Other

Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”) hereby issues the third 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 issued an arrest warrant for Laurent Gbagbo (“Mr Gbagbo”),¹ 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”.²

2. On 1 May 2012, the Defence submitted the “*Requête de la Défense demandant la mise en liberté provisoire du Président Gbagbo*”.³

3. On 13 July 2012, the Single Judge⁴ 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 Defence⁶ was dismissed by the Appeals Chamber on 26 October 2012.⁷

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 rejected the request for interim

¹ ICC-02/11-01/11-1.

² ICC-02/11-01/11-9-US-Exp. A public redacted version is available (ICC-02/11-01/11-9-Red).

³ ICC-02/11-01/11-105-Conf-Red-Corr, p. 39.

⁴ Pre-Trial Chamber I, Décision portant designation d’un juge unique, 16 March 2012, ICC-02/11-01/11-61.

⁵ ICC-02/11-01/11-180-Red, p. 26.

⁶ ICC-02/11-01/11-193-Conf OA.

⁷ 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 ‘the ‘*Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo*’”, 26 October 2012, ICC-02/11-01/11-278-Red OA (the “Gbagbo Appeals Judgment”).

release advanced by the Defence and 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, the “Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute” (the “Adjournment Decision”), in which it decided to adjourn the confirmation of charges hearing and requested the Prosecutor to consider providing further evidence or conducting further investigation.¹¹

9. On 3 July 2013, the Office of Public Counsel for victims (the “OPCV”),¹² the Prosecutor,¹³ and the Defence¹⁴ submitted their respective observations on the continued detention or release of Mr Gbagbo (respectively, the “OPCV Observations”, the “Prosecutor’s Observations” and the “Defence Observations”).

⁸ ICC-02/11-01/11-291, para. 61, p. 25.

⁹ ICC-02/11-01/11-362-Red, p. 14.

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

¹¹ ICC-02/11-01/11-432, p. 22.

¹² ICC-02/11-01/11-444.

¹³ ICC-02/11-01/11-445-Conf and public annex. A public redacted version is available (ICC-02/11-01/11-445-Red).

¹⁴ ICC-02/11-01/11-446-Conf and annexes. A public redacted version is available (ICC-02/11-01/11-446-Red).

II. Submissions of the parties and participants

A. *The Prosecutor*

10. The Prosecutor submits that the relevant circumstances have not changed since the previous rulings issued by the Single Judge.¹⁵ She avers that there is new evidence related to pro-Gbagbo groups and the financial resources of Mr Gbagbo, which warrants the continued detention of Mr Gbagbo.¹⁶

11. In this regard, the Prosecutor submits that the “Final report of the Group of Experts on Côte d’Ivoire pursuant to paragraph 16 of Security Council resolution 2045 (2012)”¹⁷ (the “Group of Experts Final Report”) provides additional elements proving that pro-Gbagbo groups are well-organised and well-funded. The Prosecutor contends that Mr Gbagbo is still strongly supported and can rely on these groups to abscond, obstruct the investigation or commit crimes within the jurisdiction of the Court.¹⁸

12. Concerning the financial resources, the Prosecutor submits that Mr Gbagbo can rely on the financial support of the *Front Populaire Ivoirien*, as the interim Secretary-General of the party expressed several times his support for Mr Gbagbo. The Prosecutor further contends that the Final Report identified additional bank accounts belonging to Mr Gbagbo, although the Prosecutor has not determined yet whether these are different accounts from those which have already been frozen.¹⁹

13. In addition, the Prosecutor contends that the Adjournment Decision does not affect the reasons of Mr Gbagbo’s detention and, therefore, that there are still reasonable grounds to believe that Mr Gbagbo has committed the alleged crimes. In this regard, the Prosecutor argues that the Chamber applied the standard of proof

¹⁵ Prosecutor’s Observations, para. 13.

¹⁶ *Ibid.*, para. 14.

¹⁷ ICC-02/11-01/11-445-AnxA.

¹⁸ Prosecutor’s Observations, paras 14-22.

¹⁹ *Ibid.*, paras 23-27.

required for decisions on the confirmation of charges, which is higher than the standard required by articles 58(1) and 60(3) of the Statute.²⁰

14. The Prosecutor submits that the facts on which the previous decisions maintaining the detention were based remain unchanged and that there are still risks of interference with the proceedings and risks that Mr Gbagbo may abscond and continue the commission of crimes.²¹ Furthermore, the Prosecutor points out the absence of appropriate guarantees for a release of Mr Gbagbo.²² As regards the length of Mr Gbagbo's detention, the Prosecutor submits that it is not unreasonable given the complexity of the case and the gravity of the alleged crimes, and that it is in line with the jurisprudence of the European Court of Human Rights.²³

B. *The OPCV*

15. The OPCV relies upon its previous observations on the continued detention or release of Mr Gbagbo dated 5 March 2013 and submits that there has been no change of circumstances within the meaning of article 60(3) of the Statute since the previous ruling on the release or detention of Mr Gbagbo and that the conditions justifying his detention pursuant to article 58(1) of the Statute continue to be met.²⁴

16. The OPCV further submits that the only change that has arisen since the previous decision under article 60(3) of the Statute is that the confirmation of charges hearing was held. In this regard, the OPCV contends that other chambers of this Court have stated that risk of flight of the detained person increases as proceedings advance. Furthermore, the OPCV underlines that the charges brought against Mr Gbagbo are of extreme gravity and, as confirmed by the Appeals Chamber, this is

²⁰ *Ibid.*, paras 31-32.

²¹ *Ibid.*, para. 33.

²² *Ibid.*, para. 34.

²³ *Ibid.*, paras 35-37.

²⁴ OPCV Observations, paras 26-29.

a factor to be taken into account when ruling on the continued detention or release of the suspect.²⁵

17. The OPCV contends that the numerous demonstrations in support of Mr Gbagbo in and outside of the Netherlands demonstrate the extent of the network of supporters capable of aiding the suspect.²⁶

18. In addition, the OPCV submits that the findings of the Single Judge in her previous decisions reviewing Mr Gbagbo's detention are confirmed by the Group of Experts Final Report. In particular as regards the network of Mr Gbagbo's supporters, the OPCV underlines the existence of destabilising pro-Gbagbo groups, which are well-founded and are still operating from Ghana, and therefore create risks under article 58(1)(b) of the Statute.²⁷ As concerns the financial resources of Mr Gbagbo, the OPCV refers to active and operational bank accounts identified in the Group of Experts Final Report as belonging to Mr Gbagbo.²⁸

19. Furthermore, the OPCV contends that the existence of reasonable grounds to believe that Mr Gbagbo has committed the alleged crimes has not been affected by the Adjournment Decision, since the charges could still be confirmed later.²⁹

20. Finally, the OPCV underlines the need to maintain Mr Gbagbo's detention, stating that victims fear for their security as violence in the localities of their residence has increased following the Adjournment Decision.³⁰

C. The Defence

21. The Defence submits that Mr Gbagbo should be released on the basis that there are no reasonable grounds to believe that Mr Gbagbo has committed a crime

²⁵ *Ibid.*, para. 28.

²⁶ *Ibid.*, para. 29.

²⁷ *Ibid.*, paras 30-31.

²⁸ *Ibid.*, paras 32-33.

²⁹ *Ibid.*, para. 34.

³⁰ *Ibid.*, para. 40.

within the jurisdiction of the Court. Should the Chamber decide otherwise, the Defence submits that detention is not necessary. Alternatively, the Defence requests that Mr Gbagbo be released with conditions, and proposes that a status conference be held for this purpose if necessary.³²

22. The Defence submits that the circumstances relevant to the detention of Mr Gbagbo have changed. First, the Defence submits that the Adjournment Decision constitutes in itself a new circumstance. It argues that the previous decisions on the review of Mr Gbagbo's detention relied on a finding that there was sufficient evidence to issue a warrant of arrest against Mr Gbagbo dating from 2011. The Defence submits that the Adjournment Decision, in which the Chamber concluded that the evidence presented by the Prosecutor was insufficient to confirm the charges, constitutes a new element which should be taken into account in the present decision. The Defence argues that, since the Chamber could not conclude on the existence of substantial grounds to believe that Mr Gbagbo has committed the alleged crimes, there cannot be reasonable grounds to maintain his detention. The Defence further adds that the "reasonable grounds to believe" that the person has committed a crime within the jurisdiction of the Court should be assessed in light of the current stage of the proceedings.³³

23. Second, the Defence alleges that Mr Gbagbo does not have financial means to flee the jurisdiction of the Court. In this respect, the Defence underlines that the Group of Experts Final Report does not prove the existence of any valid bank account of Mr Gbagbo to which he still has access. It is submitted that Mr Gbagbo does not have access to any other resources. The Defence further submits that the Prosecutor fails to prove that there is a risk that Mr Gbagbo's release could endanger the proceedings. It argues in particular that Mr Gbagbo does not have a network of supporters with unlawful intentions within or outside Côte d'Ivoire. In this regard,

³² Defence Observations, paras 120-122.

³³ *Ibid.*, paras 16-45.

the Defence relies on the Chamber's findings in the Adjournment Decision that the evidence related to the organisational structure of the "pro-Gbagbo forces" is not sufficient.³⁴

24. Finally, the Defence submits that Mr Gbagbo's continued detention is not justified on the basis of medical reasons. It contends that no medical treatment appropriate to Mr Gbagbo's pathologies has been set up yet and underlines the effects of the detention of Mr Gbagbo for more than two years.³⁵

25. Alternatively, the Defence requests the Chamber to consider interim release with conditions. In case the Chamber does not have sufficient information on the matter, the Defence suggests that the Chamber seek necessary clarifications and, if necessary, hold a status conference on this issue.³⁶

III. The applicable law

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

27. 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.

³⁴ *Ibid.*, paras 46-95.

³⁵ *Ibid.*, paras 97-105.

³⁶ *Ibid.*, paras 107-117.

28. 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”.

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

The 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.³⁷

30. 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.”³⁸

The Appeals Chamber further held:

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.³⁹

³⁷ 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’”, ICC-01/05-01/08-1019 OA 4, 19 November 2010 (“*Bemba Appeals Judgment (OA 4)*”), para. 52.

³⁸ Appeals Chamber, “Judgment on the appeal of the Prosecutor against Pre-Trial Chamber IIs ‘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’”, ICC-01/05-01/08-631-Red (OA2), 2 December 2009, para. 60.

³⁹ 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 December 2011 ‘Requête

31. 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”.⁴⁰ In the case of the *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”.⁴¹

32. A review of a previous ruling on detention may result in the person’s continued detention, release, or release with conditions. In this regard, the Appeals Chamber stated:

[T]he examination of conditions of release is discretionary and that 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.⁴²

IV. Analysis and conclusions of the Chamber

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

33. In accordance with the above, the Chamber will assess whether there has been any change in the circumstances underpinning the previous ruling under article 60(3) of the Statute, which would require its modification.

de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo”, ICC-01/05-01/08-2151-Red (OA 10), 5 March 2012, para. 1.

⁴⁰ *Gbagbo* Appeals Judgment, para. 24.

⁴¹ *Bemba* Appeals Judgment (OA 4), para. 53.

⁴² 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’”, ICC-01/05-01/08-1626-Red (OA 7), 12 September 2011, para. 55.

(i) The issuance of the Adjournment Decision

34. The Defence argues that the Adjournment Decision constitutes a new circumstance negating reasonable grounds to believe that Mr Gbagbo has committed a crime within the jurisdiction of the Court, as required by article 58(1)(a) of the Statute. The Chamber does not accept this argument which inappropriately seeks to approximate a decision adjourning the hearing under article 61(7)(c) of the Statute to a decision declining to confirm the charges under article 61(7)(b) of the Statute. Indeed, under the explicit provision of article 61(10) of the Statute, the effect of the latter is that “[a]ny warrant previously issued shall ceased to have effect”. Crucially, no such provision exists with respect to adjournment of the hearing under article 61(7)(c) of the Statute.

35. A decision to adjourn the hearing under article 61(7)(c) of the Statute does not represent a final disposal of the merits of the case by the Pre-Trial Chamber, but is an intermediate procedural step of which the purpose is to allow the Prosecutor to consider providing further evidence or conducting further investigation, or amending a charge. As such, an adjournment decision does not affect the previous finding by the Chamber issuing the warrant of arrest or summons to appear that there are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court. Moreover, findings under article 58(1)(a) of the Statute are made to a significantly lower standard of proof. Consequently, contrary to what is argued by the Defence, a finding that the available evidence does not meet the evidentiary threshold of article 61(7) of the Statute does not imply that there is insufficient evidence for the purposes of article 58(1)(a) of the Statute.

36. By the same token, and contrary to the argument of the Defence,⁴³ a decision to adjourn the hearing under article 61(7)(c) of the Statute does not have any effect

⁴³ Defence Observations, paras 92-95.

on previous findings of the Chamber that arrest appears necessary to “prevent the person from continuing with the commission of that crime or a related crime”.⁴⁴

37. Accordingly, the Chamber considers that the Adjournment Decision does not constitute a new circumstance affecting the grounds for the detention of Mr Gbagbo.

(ii) The existence of a network of Mr Gbagbo’s supporters in and outside of Côte d’Ivoire

38. In the Decision of 13 July 2012, the Single Judge found the existence of a “large and well-organised network of political supporters of Mr Gbagbo” and that there was a risk that Mr Gbagbo, if released, would use the means that his support network could provide in order to abscond, obstruct the investigation or continue with the commission of crimes within the jurisdiction of the Court.⁴⁵ In the Decision of 12 November 2012, it was further found that “the network of Mr Gbagbo’s supporters, based in countries neighbouring Côte d’Ivoire, in particular in Ghana, has strengthened its level of military and political organization in the last months” and that the development of this network increased the risks under article 58(1)(b)(i) to (iii) of the Statute.⁴⁶ In the most recent decision under article 60(3) of the Statute, these circumstances were found not to have changed.⁴⁷

39. The Defence challenges the existence of this support network. It argues, first, that it is not the supporters of Mr Gbagbo who are responsible for the unrest in the west of Côte d’Ivoire.⁴⁸ However, the Chamber does not believe that this specific question has any bearing on the facts at issue. Indeed, what is at issue is not the responsibility for unrest in any particular region of Côte d’Ivoire but the existence of a network of supporters loyal to Mr Gbagbo in Côte d’Ivoire and elsewhere.

⁴⁴ Article 58(1)(b)(iii) of the Statute.

⁴⁵ Decision of 13 July 2012, paras 60-62, 65, 69.

⁴⁶ Decision of 12 November 2012, para. 59.

⁴⁷ Decision of 12 March 2013, para. 39.

⁴⁸ Defence Observations, paras 80-85.

40. Second, the Defence contends that the conclusions in the Group of Experts Final Report are unfounded.⁴⁹ It appears that the Defence thereby seeks to challenge a previous finding of the Single Judge, arguing that the evidentiary basis for it was unsound. However, the Chamber is of the view that the existence of new or additional evidence for the same facts does not, as such, constitute a changed circumstance, insofar as it does not establish previously unknown facts that could amount to changed circumstances. To the extent that the Defence's arguments are limited to challenging the previous findings by the Single Judge, the Chamber will not address them, in light of the Appeals Chamber jurisprudence.⁵⁰

41. Concerning the Group of Experts Final Report, the Chamber is of the view that it provides, as also submitted by the Prosecutor and the OPCV,⁵¹ relevant information confirming continued activities of the support network. In particular, the Group of Experts Final Report notes the existence of organised groups of supporters of Mr Gbagbo and states that "[t]hese groups have the capacity to conduct military operations with weapons and related materiel obtained in violation of the sanctions regime and to recruit combatants, inside and outside Côte d'Ivoire".⁵² The Chamber notes that the Group of Experts concluded that the "military actions planned and carried out by groups loyal to Mr Gbagbo [in Ghana] have diminished, both in frequency and in scope"⁵³ and that "[t]heir operational capacity has been severely diminished since the Ghanaian authorities began to address the threats posed by the groups and their leaders to national security and peace".⁵⁴ Nevertheless, it cannot be concluded, at present, that the capacity of the network of Mr Gbagbo's supporters, although somewhat diminished, is reduced to such an extent that the risks identified in the Decision of 13 July 2012 no longer exist.

⁴⁹ *Ibid.*, paras 86-87.

⁵⁰ See above, para. 32.

⁵¹ Prosecutor's Observations, paras 15-21; OPCV Observations, para. 31.

⁵² ICC-02/11-01/11-445-AnxA, para. 19, see also activities described in paras 24-39.

⁵³ *Ibid.*, para. 27.

⁵⁴ *Ibid.*, para. 29.

42. The Defence points out a list of factors which in its submission militate against reliance on the work of the Group of Experts who produced the report in question and a previous report relied upon by the Single Judge.⁵⁵ The Chamber, bearing in mind the nature of the present exercise and the principles applicable to factual findings,⁵⁶ concludes, however, that the Group of Experts Final Report provides sufficiently detailed information which can be relied upon for the purpose of determining, in line with article 58(1)(b) of the Statute, whether “[t]he arrest of the person appears necessary”.

43. Finally, the Defence argues that the Adjournment Decision, wherein the Chamber requested the Prosecutor to consider providing further evidence or conducting further investigation, *inter alia*, with respect to the “organizational structure of the ‘pro-Gbagbo forces’” – implying that this fact had not been sufficiently proven by the Prosecutor, must be interpreted as negating the existence of a support network. However, the Chamber considers that no such conclusions can be drawn. The merits of the case concern a time period in the years 2010-2011, while the continued detention of Mr Gbagbo is to be justified by the circumstances existing at present. They concern different facts than those under examination at present, *i.e.* whether there is currently a network of persons who, in the case of Mr Gbagbo’s release, could provide support for him to abscond, obstruct the investigation, or commit crimes. Furthermore, the evidentiary standard applied by the Chamber under article 61(7) of the Statute is different than that employed for the determination of facts under article 58(1)(b) of the Statute.

44. Therefore, no change in the relevant circumstances can be detected with regard to the existence of a network of Mr Gbagbo’s supporters, which would affect the grounds justifying detention under article 58(1)(b)(i) to (iii) of the Statute.

⁵⁵ Defence Observations, paras 46-47.

⁵⁶ See Decision of 13 July 2012, para. 48.

(iii) Mr Gbagbo's lack of financial resources

45. The Decision of 13 July 2012 found that certain assets belonging to Mr Gbagbo or his wife might not have been frozen and, in addition, that there was a risk that Mr Gbagbo might have access to means provided by the network of his supporters, in order to abscond.⁵⁷ No change in the relevant circumstances was found in the ensuing decisions under article 60(3) of the Statute.⁵⁸

46. The Defence focuses its observations on the matter on demonstrating that the accounts referred to in the Group of Experts Final Report are not being used by Mr Gbagbo.⁵⁹ The Prosecutor declares herself unable to determine whether these accounts are frozen.⁶⁰ Upon review, in particular upon comparison of account numbers, the Chamber considers that the accounts referred to by the Group of Experts are in all likelihood those previously reported as frozen.⁶¹ The Chamber thus considers it appropriate to accept the argument of the Defence that Mr Gbagbo could not make use of the assets on these accounts in order to abscond.

47. However, the freezing of these accounts was known to the Single Judge at the time of the issuance of the Decision of 13 July 2012, and the finding that certain accounts may not have been frozen was made in relation to other accounts.⁶² With respect to these latter accounts, no information has emerged that they have been frozen and previous findings remain valid.

48. Further, the Defence contests the previous findings of the Single Judge with respect to the possibility that the support network would provide Mr Gbagbo with the resources to abscond.⁶³ Again, insofar as the Defence does not seek to identify

⁵⁷ Decision of 13 July 2012, paras 59-61

⁵⁸ Decision of 12 November 2012, paras 45-48; Decision of 12 March 2013, paras 31-34.

⁵⁹ Defence Observations, paras 50-68.

⁶⁰ Prosecutor's Observations, para. 27.

⁶¹ See ICC-02/11-01/11-137-Conf-Anx3.

⁶² Decision of 13 July 2012, para. 59; see also ICC-02/11-01/11-137-Conf-Anx1, pp. 2-3; ICC-02/11-01/11-137-Conf-Anx4, p. 2; ICC-02/11-01/11-137-Conf-Anx5, pp. 2-3.

⁶³ Defence Observations, paras 69-70.

changed circumstances but repeats previously unsuccessful submissions, the Chamber will not respond to its submissions.

49. Accordingly, the Chamber will address only the argument of the Defence that the Group of Experts Final Report has abandoned an assertion from its previous report which formed a basis for one particular finding in the Decision of 12 November 2012, namely that Mr Gbagbo's supporters appeared to be raising funds in Europe in his support.⁶⁴ The Defence correctly states that this specific fact is not reflected in the Group of Experts Final Report. Nevertheless, the Chamber does not consider this to be of significance, as the Group of Experts Final Report contains other specific information elucidating the financial capabilities and activities of the network of Mr Gbagbo's supporters, and makes reference also to collection of funds in the Ivorian diaspora.⁶⁵

50. In light of the above, the Chamber considers that there has been no change in the relevant circumstances as concerns the possibility of Mr Gbagbo having access to resources that might be employed to assist him to abscond, in the event that he is released from detention at the seat of the Court.

(iv) Other relevant circumstances

51. The Defence invokes the state of health of Mr Gbagbo as a changed circumstance which would necessitate a review of the ruling on detention.⁶⁶ However, the Chamber notes that the Defence's submissions are limited to repeating arguments which were previously heard by the Chamber, and do not raise any new circumstance. Nevertheless, the Chamber, aware of the ongoing concerns in relation to the state of health of Mr Gbagbo, and the passage of time, will explore the possibility for conditional release, as also explained below.

⁶⁴ *Ibid.*, para. 71; see also Decision of 12 November 2012, para. 48; ICC-02/11-01/11-285-Anx1, paras 132-133.

⁶⁵ ICC-02/11-01/11-445-AnxA, paras 30-33, 40.

⁶⁶ Defence Observations, paras 97-105

52. Finally, the Chamber notes the argument of the Defence that the continued detention of Mr Gbagbo is inconsistent with the decisions in the cases arising out of the *Situation in the Republic of Kenya*.⁶⁷ As the choice between a warrant of arrest and a summons to appear depends primarily on the Office of the Prosecutor and must be made on the basis of the specific circumstances of each particular case, the Chamber will not entertain this argument.

53. No other change in the relevant circumstances has been alleged by the parties and participants or otherwise brought to the attention of the Chamber.

(v) Conclusion

54. The Chamber is satisfied, on the basis of the above analysis, that the circumstances requiring Mr Gbagbo's detention have not changed since the previous ruling under article 60(3) of the Statute. The grounds justifying detention pursuant to article 58(1)(b)(i) to (iii) of the Statute therefore still exist and the continued detention of Mr Gbagbo appears necessary.

B. Conditional release

55. In the Decision of 12 March 2013, the Single Judge considered that "the risks associated with Mr Gbagbo's release and knowledge by the outside world of such release can at present only be effectively managed in the Court's detention centre".⁶⁸ As stated above, the risks continue to exist. Nevertheless, the Chamber considers it appropriate, in light of the specific circumstances of this case, and having due regard to the fundamental principle that deprivation of liberty should be an *exception* and not the rule,⁶⁹ to explore whether it may now be possible to mitigate them

⁶⁷ *Ibid.*, para. 96.

⁶⁸ Decision of 12 March 2013, para. 44.

⁶⁹ Inter-American Court of Human Rights, *Case of Tibi v. Ecuador*, Judgment of 7 September 2004, Series C No 114, para. 106; *id.*, *Case of Acosta-Calderón v. Ecuador*, Judgment of 24 June 2005, para. 74; *id.*, *Case of Children's Rehabilitation*, Judgment of 2 September 2004, Series C No. 112, para. 228; Human Rights Committee, Communication 526/1993, *Hill and Hill v. Spain*, 23 June 1997, para. 12.3; European

sufficiently by way of conditional release. However, it should be stressed that at this point in time, no concrete option to release Mr Gbagbo under conditions that would sufficiently mitigate those risks, is known to the Chamber.⁷⁰ Thus, conditional release can at present not be granted.

56. Nevertheless, the Chamber emphasises that this determination is without prejudice to the possibility of considering conditional release in the future, should a viable avenue for conditional release be found together with the imposition of appropriate conditions. Indeed, the Chamber remains open to considering, and will itself seek to identify, potential arrangements for conditional release which would sufficiently mitigate the identified risks. If it becomes necessary, the Chamber will hold a status conference for this purpose.

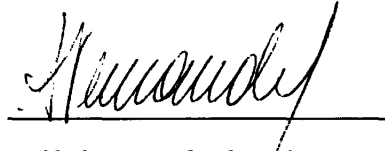
FOR THESE REASONS, THE CHAMBER

DECIDES that Mr Gbagbo shall remain in detention.

Court of Human Rights, *Ilykov v. Bulgaria*, Judgment of 26 July 2001, Application no. 33977/96, para. 85.

⁷⁰ 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", ICC-01/05-01/08-631-Red (OA2), 2 December 2009, paras 104-109.

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



Judge Silvia Fernández de Gurmendi

Presiding Judge



Judge Hans-Peter Kaul



Judge Christine Van den Wyngaert

Dated this Thursday, 11 July 2013

At The Hague, The Netherlands