

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/11-01/11
Date: 11 November 2013

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

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

States Representatives

Amicus Curiae

REGISTRY

Registrar
Herman von Hebel

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 fourth 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”),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

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

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-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 ‘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-Conf (the “*Appeals Chamber Judgment of 26 October 2012*”). A public redacted version is available (ICC-02/11-01/11-278-Red).

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”, 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” (the “Decision of 18 January 2013”), 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”, 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” (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 with respect to all charges.¹¹

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”

⁸ ICC-02/11-01/11-291, p. 25.

⁹ ICC-02/11-01/11-362-Conf, p. 14. A public redacted version is available (ICC-02/11-01/11-362-Red).

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.

(the “Decision of 11 July 2013”), deciding that Mr Gbagbo should remain in detention.¹²

10. On 19 July 2013, the Defence appealed the Decision of 11 July 2013.¹³

11. On 26 September 2013, the Single Judge issued an “Order scheduling a hearing pursuant to rule 118(3) of the Rules of Procedure and Evidence”, deciding that a hearing under rule 118(3) of the Rules of Procedure and Evidence (the “Rules”) would be held on 9 October 2013 in the presence of the Prosecutor, the Defence and the Office of Public Counsel for victims (the “OPCV”) on behalf of the victims participating in the proceedings, and ordering the parties and participants to file by 7 October 2013 any material that they wished to discuss at the hearing.¹⁴

12. On 30 September 2013, the Defence requested the postponement of the hearing to a date at least one week after the determination by the Appeals Chamber on the appeal of the Defence against the Decision of 11 July 2013, but no later than 11 November 2013.¹⁵ The Prosecutor responded on 2 October 2013.¹⁶

13. On 3 October 2013, the Single Judge issued the “Decision on the *‘Requête de la défense en report de l’audience portant sur le quatrième réexamen des conditions de maintien en détention fixée par la Chambre Préliminaire au 9 octobre 2013 dans son ordonnance du 26 septembre 2013 (ICC-02111-01/11-512)’*” (the “Decision of 3 October 2013”),¹⁷ rejecting the Defence request for

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 ICC-02/11-01/11-512.

¹⁵ ICC-02/11-01/11-515, p. 8.

¹⁶ ICC-02/11-01/11-519.

¹⁷ ICC-02/11-01/11-522.

postponement,¹⁸ and stating that “should the Appeals Chamber rule on the appeal before 11 November 2013, the Chamber will determine, in light of the content of the Appeals Chamber’s judgment, whether it is necessary and appropriate to accord the parties and participants an opportunity to make additional submissions”.¹⁹ A Defence application for leave to appeal the Decision of 3 October 2013, filed on 4 October 2013,²⁰ to which the OPCV and the Prosecutor responded on 7 October 2013,²¹ was rejected by majority, Judge Silvia Fernández de Gurmendi dissenting, on 8 October 2013.²²

14. On 7 October 2013, the Prosecutor filed the “Prosecution’s submission of material for the pre-trial detention hearing to be held on 9 October 2013”,²³ and the Defence filed the “*Communication par la défense de cinquante-deux annexes publiques, de deux annexes confidentielles et de dix-neuf annexes confidentielles ex parte, en vue de l’audience du 9 octobre 2013 portant sur le quatrième examen des conditions de maintien en détention du Président Gbagbo*”.²⁴

15. On 9 October 2013, the Chamber held a hearing pursuant to rule 118(3) of the Rules.²⁵

16. On 18 October 2013, the Registry filed in the record of the case a proposal by a State to host Mr Gbagbo in the event of an interim release.²⁶

¹⁸ *Ibid.*, p. 6.

¹⁹ *Ibid.*, para. 13.

²⁰ ICC-02/11-01/11-525.

²¹ ICC-02/11-01/11-526; ICC-02/11-01/11-529.

²² “Decision on the Defence Request for Leave to Appeal the Decision Rejecting the Postponement of the Rule 118(3) Hearing”, ICC-02/11-01/11-530.

²³ ICC-02/11-01/11-528-Conf and confidential Annexes 1-4.

²⁴ ICC-02/11-01/11-527 and public Annexes 1-9, 11-51, 70, 71A, confidential Annexes 10 and 71B, and confidential, *ex parte*, only available to the Defence and the Registry, Annexes 52-69 and 71C.

²⁵ See ICC-02/11-01/11-T-22-CONF-ENG, ICC-02/11-01/11-T-23-CONF-EXP-ENG.

²⁶ ICC-02/11-01/11-539-Conf-Exp and annex, confidential, *ex parte*, Defence and Registry only. The filing and its annex were reclassified as “confidential” on 4 November 2013.

17. On 22 October 2013, the Registry filed the “*Rapport du Greffe sur les discussions avec la défense de Laurent Gbagbo relativement à sa situation médicale*”.²⁷

18. On 29 October 2013, the Appeals Chamber issued the “Judgment on the appeal of 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’” (the “Appeals Chamber Judgment of 29 October 2013”), confirming the Decision of 11 July 2013 and dismissing the appeal.²⁸

19. On 31 October 2013, the Defence filed the “*Observations de la défense portant sur le « Rapport du Greffe sur les discussions avec la défense de Laurent Gbagbo relativement à sa situation médicale » (ICC-02/11-01/11-542-Conf-Exp) déposé le 22 octobre 2013*”.²⁹

II. Submissions of the parties and participants

A. The Prosecutor

20. The Prosecutor submits that no new circumstances have arisen since the Decision of 11 July 2013.³⁰

21. Concerning the financial resources of Mr Gbagbo, the Prosecutor submits that the two bank accounts of which they first became aware in February 2012, one belonging to Simone Gbagbo and the other belonging to Mr Gbagbo and Simone Gbagbo jointly, have been identified as “being different from those identified by the group of experts”.³¹ The Prosecutor submits that she has no knowledge, despite repeated requests to the officials

²⁷ ICC-02/11-01/11-542-Conf-Exp.

²⁸ ICC-02/11-01/11-548-Conf. A public redacted version is available (ICC-02/11-01/11-548-Red).

²⁹ ICC-02/11-01/11-550-Conf-Exp and annex, confidential, *ex parte*, only available to the Defence and the Registry.

³⁰ ICC-02/11-01/11-T-22-CONF-ENG, p. 20, lines 4-6.

³¹ ICC-02/11-01/11-T-22-CONF-ENG, p. 7, lines 17-21.

of Côte d'Ivoire, as to whether these two accounts contain any money and as to whether they have been frozen.³²

22. The Prosecutor further contends that Mr Gbagbo is still strongly supported by a group of well-organised persons in exile which have the resources to support their activities in relation to Côte d'Ivoire.³³

23. The Prosecutor submits that the national security situation in Côte d'Ivoire has improved over the last months, and that there is also improved cooperation between Côte d'Ivoire, Ghana and Liberia with an improved situation at the border between Côte d'Ivoire and Ghana.³⁴

24. In relation to Mr Gbagbo's health, the Prosecutor submits that should there be grounds for conditional release, she must first be informed of the factual elements in support of a potential conditional release and then be given the opportunity to be heard on the matter.³⁵

25. The Prosecutor contends that from the information available to her, it is clear that Mr Gbagbo is able to receive visitors, have exchanges with these visitors and follow the situation in Côte d'Ivoire.³⁶

26. Finally, the Prosecutor notes that the current political leader of the *Front Populaire Ivoirien* (the "FPI") continues to advocate the release of Mr Gbagbo, and that he links his release to the national reconciliation effort in Côte

³² ICC-02/11-01/11-T-22-CONF-ENG, p. 8, lines 1- 24.

³³ ICC-02/11-01/11-T-22-CONF-ENG, p.9 line 12 – p. 10 line 8.

³⁴ ICC-02/11-01/11-T-22-CONF-ENG, p. 10 line 9 – p. 11 line 6.

³⁵ ICC-02/11-01/11-T-22-CONF-ENG, p. 11 line18 – p. 12 line 15.

³⁶ ICC-02/11-01/11-T-22-CONF-ENG, p. 11, line 10 – p. 13, line 2.

d'Ivoire.³⁷ The Prosecutor states that this political influence is irrelevant to the legal principles to which this Court is bound.³⁸

B. *The OPCV*

27. The OPCV submits, in terms of procedure to be followed, that pursuant to rule 119(3) of the Rules, the Chamber, before imposing or modifying any conditions restricting liberty, shall seek the views of the Prosecutor, the States concerned and victims who have communicated with the Court in the case, and request them to submit observations.³⁹ The OPCV also submits that rule 119(3) of the Rules applies regardless of any concerns relating to disclosure raised by States.⁴⁰

28. The OPCV submits that the conditions justifying Mr Gbagbo's detention pursuant to article 58(1) of the Statute continue to be met and 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.⁴¹

29. The OPCV contends that it is not in a position to address Mr Gbagbo's state of health as it has not been provided access to the relevant material submitted by the Defence, and submits that the health of the suspect can only be evaluated on the basis of psychological and medical expert reports as approved by the Chamber and not on the basis of speculation of the Defence and press articles.⁴²

³⁷ ICC-02/11-01/11-T-22-CONF-ENG, p. 18, lines 19-23; ICC-02/11-01/11-528-Conf-Anx2.

³⁸ ICC-02/11-01/11-T-22-CONF-ENG, p. 18, line 24 to p. 19, line 3.

³⁹ ICC-02/11-01/11-T-22-CONF-ENG, p. 21, lines 14-25.

⁴⁰ ICC-02/11-01/11-T-22-CONF-ENG, p. 22, lines 3-6.

⁴¹ ICC-02/11-01/11-T-22-CONF-ENG, p. 22, lines 10-19.

⁴² ICC-02/11-01/11-T-22-CONF-ENG, p. 23, lines 4-21.

30. Finally, the OPCV contends that the material contained in the 52 public annexes to the Defence's submissions, upon which the Defence relies to show a change of circumstances, are largely press articles, press communiques and interviews lacking probative value.⁴³

C. The Defence

31. The Defence submits that there has been a change of circumstances in Côte d'Ivoire in that the current Government appears to have recently decided to act in favour of national reconciliation, and in this effort, has released from detention 14 political opponents, "under pressure from high power".⁴⁴ The Defence states that the Ivorian Government, as well as leaders of the international community and international political institutions, are engaged in discussions with FPI leaders.⁴⁵

32. The Defence contends that in accordance with its objectives, the Court must, as far as possible, support the peace process and under no circumstances "help increase discord and violence",⁴⁶ and must consider the changed environment in Côte d'Ivoire when reviewing the continued detention of Mr Gbagbo.⁴⁷ The Defence submits that "because the context has changed, the perception of risk has changed".⁴⁸ The Defence notes, in this regard, that the government of Côte d'Ivoire sees provisional release as a possibility and therefore not as a danger. The Defence points out that the Prime Minister of Côte d'Ivoire has said that "If [Mr Gbagbo] is released he will come back

⁴³ ICC-02/11-01/11-T-22-CONF-ENG, p. 23, line 22 to p. 24, line 9.

⁴⁴ ICC-02/11-01/11-T-22-CONF-ENG, p. 26, lines 14-21.

⁴⁵ ICC-02/11-01/11-T-22-CONF-ENG, p. 26, line 14 to p. 27, line 8.

⁴⁶ ICC-02/11-01/11-T-22-CONF-ENG, p. 27, lines 21-24.

⁴⁷ ICC-02/11-01/11-T-22-CONF-ENG, p. 28, lines 8-10.

⁴⁸ ICC-02/11-01/11-T-22-CONF-ENG, p. 28, lines 11-14.

where he wants to and that includes Côte d'Ivoire. There will not be any problem."⁴⁹

33. The Defence submits that the Prosecutor fails to prove that Mr Gbagbo has any financial means, bank accounts or a network of supporters with financial means that give rise to an objective risk that Mr Gbagbo will flee the jurisdiction of the Court.⁵⁰ The Defence adds that the fact that there are supporters for Mr Gbagbo cannot preclude his conditional release.⁵¹

34. The Defence also submits that the security situation in Côte d'Ivoire has improved as shown by the fact that over 10,000 citizens have returned to Côte d'Ivoire from the neighbouring Liberia.⁵²

35. The Defence argues that the recent developments in Côte d'Ivoire, in particular the release of former officials of the Gbagbo administration from prison, indicate that there are no reasons to believe that Mr Gbagbo would obstruct the Prosecutor's on-going investigations in Côte d'Ivoire or continue the commission of crimes.⁵³

36. The Defence submits that the Prosecutor has failed to prove that any risks exist and has failed to furnish evidence in support of her arguments for continued detention.⁵⁴ The Defence contends that the Prosecutor relies on old evidence that has either been disproved or is founded in circumstances that have since changed.⁵⁵

⁴⁹ ICC-02/11-01/11-T-22-CONF-ENG, p. 29, lines 10-19; ICC-02/11-01/11-527-Conf-Anx49 and ICC-02/11-01/11-527-Conf-Anx50.

⁵⁰ ICC-02/11-01/11-T-22-CONF-ENG, p. 34, lines 1- 16; p. 36, lines 4-25.

⁵¹ ICC-02/11-01/11-T-22-CONF-ENG, p. 32, lines 8-11.

⁵² ICC-02/11-01/11-T-22-CONF-ENG, p. 32, lines 16-24.

⁵³ ICC-02/11-01/11-T-22-CONF-ENG, p. 37, lines 1-20.

⁵⁴ ICC-02/11-01/11-T-22-CONF-ENG, p. 38, line 21 to p. 39, line 4; p. 39, line 11 to p. 40, line 14.

⁵⁵ ICC-02/11-01/11-T-22-CONF-ENG, p. 38, lines 1-17.

37. Finally, the Defence submits that Mr Gbagbo's continued detention is not justified on the basis of medical reasons as it would have irredeemable consequences on Mr Gbagbo's health.⁵⁶

III. The applicable law

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

39. 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.

40. 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".

41. 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

⁵⁶ ICC-02/11-01/11-T-22-CONF-ENG, p. 40, lines 21-23.

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.⁵⁷

42. 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."⁵⁸ 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.⁵⁹

43. 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".⁶⁰ 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

⁵⁷ 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.

⁵⁸ 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'", 2 December 2009, ICC-01/05-01/08-631-Red, para. 60.

⁵⁹ 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 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.

⁶⁰ Appeals Chamber Judgment of 26 October 2012, para. 24.

submissions by the detained person that merely repeat arguments that the Chamber has already addressed in previous decisions”.⁶¹

IV. Analysis

A. *Preliminary matter*

44. The Chamber notes that the Decision of 3 October 2013 stated that “should the Appeals Chamber rule on the appeal before 11 November 2013, the Chamber will determine, in light of the content of the Appeals Chamber’s judgment, whether it is necessary and appropriate to accord the parties and participants an opportunity to make additional submissions”.⁶²

45. Considering the content of the Appeals Chamber Judgment of 29 October 2013 and the fact that none of the parties requested to make additional submissions, the Chamber is of the view that no further submissions from the parties and participants are necessary.

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

46. 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. Conversely, the Chamber will not entertain those Defence submissions which reiterate arguments that have been addressed by the Chamber in previous decisions, in particular relating to the

⁶¹ 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.

⁶² Decision of 3 October 2013, para. 13.

financial means at the disposal of Mr Gbagbo and to the existence of a well-organised network of supporters.⁶³

47. Upon analysis of the submissions before it, the Chamber is of the view that a single issue needs to be assessed as a “changed circumstance” relevant for the present exercise, namely the improving security situation in Côte d’Ivoire. In this respect, the Chamber notes that the parties are in agreement,⁶⁴ and the material provided to the Chamber confirms,⁶⁵ that the security situation in Côte d’Ivoire has improved.

48. It is equally not contested that certain political associates of Mr Gbagbo have recently been released from custody pending criminal proceedings.⁶⁶ In the view of the Chamber, this fact cannot have *per se*, contrary to what appears to be the submission of the Defence,⁶⁷ an impact on the grounds justifying the continued detention of Mr Gbagbo pending proceedings before the Court, which can only be determined under article 58(1) of the Statute. Nevertheless, the release of the political associates of Mr Gbagbo in Côte d’Ivoire, which according to the available information is a reconciliatory move by the Ivorian

⁶³ ICC-02/11-01/11-T-22-CONF-ENG, p. 34, lines 1- 16; p. 36, lines 4-25. The Chamber notes that the Defence has presented material in support of its argument that “*les autorités ghanéennes ont considéré que les accusations portées contre un ancien ministre du gouvernement Gbagbo répondaient à des motifs politiques*” (see ICC-02/11-01/11-T-22-CONF-FRA, p. 29, lines 9-11, ICC-02/11-01/11-527-Conf-Anx10). However, the Chamber does not deem it necessary to consider this alleged new circumstance, as the possible political motivation of charges against an individual, even if established, is without bearing on the relevant fact, which is the existence of a network of supporters of Mr Gbagbo with the capacity to provide support to abscond, interfere with the investigation or the court proceedings, or commit crimes within the jurisdiction of the Court.

⁶⁴ ICC-02/11-01/11-T-22-CONF-ENG, p. 10 line 9 – p. 11 line 6; ICC-02/11-01/11-T-22-CONF-ENG, p. 32, lines 16-24.

⁶⁵ ICC-02/11-01/11-527-Anx17, p. 2; ICC-02/11-01/11-527-Anx20;

⁶⁶ ICC-02/11-01/11-527-Anx22; ICC-02/11-01/11-527-Anx23; ICC-02/11-01/11-527-Anx31; ICC-02/11-01/11-527-Anx32; ICC-02/11-01/11-527-Anx33; ICC-02/11-01/11-527-Anx34; ICC-02/11-01/11-527-Anx36; ICC-02/11-01/11-527-Anx37; ICC-02/11-01/11-527-Anx38

⁶⁷ ICC-02/11-01/11-T-22-CONF-ENG, p. 27, lines 13-24.

Government,⁶⁸ supports the more general conclusion that the security situation in Côte d'Ivoire has improved and continues to improve.

49. In the view of the Chamber, this improved situation constitutes a new fact which impacts on the Chamber's assessment under article 58(1)(b)(iii) of the Statute.

50. The Single Judge held in the Decision of 13 July 2012 that "the continued detention of Mr Gbagbo appears necessary to prevent him from continuing with the commission of crimes within the jurisdiction of the Court".⁶⁹

51. For the purposes of the present review, the Chamber takes into consideration the following factors which may have a bearing on the condition envisaged in article 58(1)(b)(iii) of the Statute. As indicated, the Chamber notes that the security situation in Côte d'Ivoire seems to be improving and that reconciliatory efforts suggest a reduced level of tension between the Government and the supporters of Mr Gbagbo. Given these circumstances on the ground at present, and, more importantly, in the absence of any information relating to efforts of Mr Gbagbo to continue with the commission of crimes, which are within the jurisdiction of the Court, the Chamber considers that the scenario envisaged under article 58(1)(b)(iii) of the Statute is unlikely. Accordingly, the continued detention of Mr Gbagbo for reasons stipulated under article 58(1)(b)(iii) of the Statute appears not necessary.

52. Nevertheless, the Chamber is of the view that the change in circumstances as described above does not have a bearing on its previous

⁶⁸ ICC-02/11-01/11-527-Anx34; ICC-02/11-01/11-527-Anx39; ICC-02/11-01/11-527-Anx40; ICC-02/11-01/11-527-Anx41; ICC-02/11-01/11-527-Anx47; see also ICC-02/11-01/11-527-Anx11; ICC-02/11-01/11-527-Anx12; ICC-02/11-01/11-527-Anx13; ICC-02/11-01/11-527-Anx14; ICC-02/11-01/11-527-Anx15; ICC-02/11-01/11-527-Anx16.

⁶⁹ Decision of 13 July 2012, para. 71.

findings as concerns the apparent necessity of the continued detention of Mr Gbagbo to ensure his appearance before the Court, and to ensure that he does not obstruct or endanger the investigation or the court proceedings. As there is no change of circumstances in this regard, the grounds justifying detention pursuant to article 58(1)(b)(i) or (ii) of the Statute therefore still exist and the continued detention of Mr Gbagbo appears necessary.

C. *Conditional release*

53. 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.⁷⁰

54. 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.⁷¹

55. As stated in the Decision of 11 July 2013⁷² and above,⁷³ risks envisaged in article 58(1)(b) of the Statute continue to exist in respect of Mr Gbagbo. Nevertheless, as already stated in the Decision of 11 July 2013,⁷⁴ the Chamber

⁷⁰ 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.

⁷¹ Appeals Chamber Judgment of 26 October 2012, para. 87.

⁷² Decision of 11 July 2013, para. 54.

⁷³ See para. 52 above.

⁷⁴ Decision of 11 July 2013, para. 56.

is aware of its continuing obligation to explore the possibility of conditional release, if it would be possible to sufficiently mitigate the identified risks.

56. The Chamber notes the recent offer to host Mr Gbagbo should the Chamber grant conditional release as well as the progressive steps that have been taken by the Registry, in consultation with the Defence, for the purpose of according Mr Gbagbo appropriate medical treatment.

57. In this regard, the Chamber shares the view expressed by the Defence that conditional release, either to the State which recently offered to host Mr Gbagbo in the event of an interim release or to another State, should be considered after the necessary steps have been completed to determine Mr Gbagbo's health-related needs.⁷⁵ In fact, considering that the latter may have a significant impact on the possible destination and conditions for conditional release, the Chamber deems it appropriate to postpone the exploration of all possible options for conditional release until all the relevant information about Mr Gbagbo's state of health and need for treatment has been received. Indeed, the Chamber is of the view 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.

58. In that regard, the Chamber recalls that in the Decision of 18 January 2013, the Single Judge ordered the Registry "to liaise with the Defence on an expeditious basis, in order to determine what additional medical treatment is required, if any, to address the physical condition of Mr Gbagbo and to agree

⁷⁵ ICC-02/11-01/11-T-23-CONF-EXP-FRA, p. 2, lines 11-15.

on the selection of a specialist of the [post-traumatic stress disorder], subject to Mr Gbagbo's consent".⁷⁶

59. The record of the case contains documentation attesting to discussions between the Registry and the Defence since 18 January 2013.⁷⁷ However, at the time of the hearing on 9 October 2013, no substantial progress had been made. The Chamber, after hearing submissions, ordered the Defence and the Registry to complete the selection of experts who would be contacted and report to the Chamber in two weeks.⁷⁸

60. On 22 and 31 October 2013, the Registry⁷⁹ and the Defence⁸⁰ reported separately to the Chamber on the progress made in order to identify suitable doctors that could recommend and administer appropriate treatment to Mr Gbagbo.

61. The Chamber notes the progress made by the Registry in consultation with the Defence aimed at determining the appropriate ways to address the persisting concerns related to Mr Gbagbo's health and considers it appropriate to finalise this exploratory process so that adequate treatment, if any, may be provided without delay as may be recommended by the doctors.

62. For this purpose, the Chamber considers it appropriate to order the Registry and the Defence to submit by 2 December 2013, preferably jointly, a report on the progress achieved in relation to the matter at issue. Once the

⁷⁶ Decision of 18 January 2013, p. 15.

⁷⁷ See ICC-02/11-01/11-527-Conf-Exp-Anx59; ICC-02/11-01/11-527-Conf-Exp-Anx60; ICC-02/11-01/11-527-Conf-Exp-Anx61; ICC-02/11-01/11-527-Conf-Exp-Anx62; ICC-02/11-01/11-527-Conf-Exp-Anx63; ICC-02/11-01/11-527-Conf-Exp-Anx64; ICC-02/11-01/11-527-Conf-Exp-Anx65; ICC-02/11-01/11-527-Conf-Exp-Anx66; ICC-02/11-01/11-527-Conf-Exp-Anx67; ICC-02/11-01/11-527-Conf-Exp-Anx68; ICC-02/11-01/11-527-Conf-Exp-Anx69.

⁷⁸ ICC-02/11-01/11-T-23-CONF-EXP-ENG, p. 16, lines 16-20.

⁷⁹ ICC-02/11-01/11-542-Conf-Exp.

⁸⁰ ICC-02/11-01/11-550-Conf-Exp.

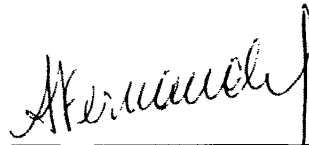
process is completed, the Chamber will assess the possibility of granting conditional release and seek, if appropriate, the views of the Prosecutor, the Defence, any relevant State and the victims that have communicated with the Court in relation to this case, in accordance with rule 119(3) of the Rules.

FOR THESE REASONS, THE CHAMBER

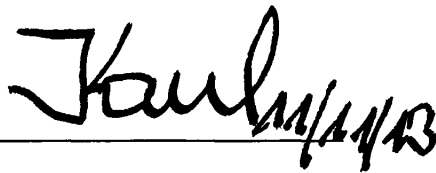
DECIDES that Mr Gbagbo shall remain in detention; and

ORDERS the Registry and the Defence to submit, by Monday, 2 December 2013, a report on the progress of efforts to address the issues concerning Mr Gbagbo's health.

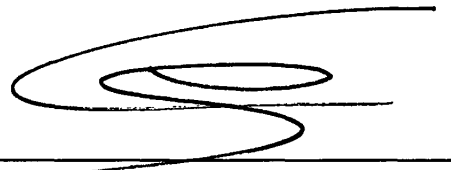
Done in both English and French, the English version being authoritative.



Judge Silvia Fernández de Gurmendi
Presiding Judge



Judge Hans-Peter Kaul



Judge Christine Van den Wyngaert

Dated this Monday, 11 November 2013

At The Hague, The Netherlands