

**Cour
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**International
Criminal
Court**

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TRIAL CHAMBER I

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

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

Public redacted version

**Seventh 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:

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Counsel for Laurent Gbagbo

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Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
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REGISTRY

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Counsel Support Section

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Detention Section

Mr Patrick Craig

**Victims Participation and Reparations
Section**

Others

Trial Chamber I ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Laurent Gbagbo*, having regard to Articles 21(3), 60(3), 61(11) and 64(6) of the Rome Statute ('Statute'), and Rule 118(2) of the Rules of Procedure and Evidence ('Rules'), issues the following 'Seventh decision on the review of Mr Laurent Gbagbo's detention pursuant to Article 60(3) of the Statute'.

I. Procedural history

1. On 13 July 2012, Pre-Trial Chamber I ('Pre-Trial Chamber') rejected the request of Mr Laurent Gbagbo's defence team ('Defence') for interim release under Article 60(2) of the Statute ('Article 60(2) Decision'), deciding that Mr Gbagbo must remain in detention.¹
2. On 30 October 2012, the Pre-Trial Chamber held a first hearing on detention pursuant to Rule 118(3) of the Rules.²
3. On 12 November 2012, the Pre-Trial Chamber issued the first decision reviewing Mr Gbagbo's detention pursuant to Article 60(3) of the Statute ('First Article 60(3) Decision'),³ deciding that he should remain in detention.
4. On 18 January 2013, the Pre-Trial Chamber rejected Mr Gbagbo's request for conditional release,⁴ considering that no medical reasons at that time justified putting an end to his detention.

¹ Decision on the "Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo, 13 July 2012, ICC-02/11-01/11-180-Conf (public redacted version at ICC-02/11-01/11-180-Red). This decision was upheld by a majority of the Appeals Chamber on 26 October 2012; 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-Conf, OA (public redacted version at ICC-02/11-01/11-278-Red) ('Gbagbo OA Judgment').

² Transcripts of hearings on 30 October 2012, ICC-02/11-01/11-T-9-ENG ET; ICC-02/11-01/11-T-10-CONF-EXP-ENG ET.

³ Decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute, 12 November 2012, ICC-02/11-01/11-291.

⁴ Decision on the request for the conditional release of Laurent Gbagbo and on his medical treatment, 18 January 2013, ICC-02/11-01/11-362-Conf (public redacted version at ICC-02/11-01/11-362-Red).

5. On 12 March 2013⁵ and 11 July 2013,⁶ the Pre-Trial Chamber issued the second and third decisions on Mr Gbagbo's detention under Article 60(3) of the Statute ('Second Article 60(3) Decision' and 'Third Article 60(3) Decision', respectively), in which it decided that Mr Gbagbo should remain in detention.
6. On 9 October 2013, the Pre-Trial Chamber held a second hearing on detention pursuant to Rule 118(3) of the Rules.⁷
7. On 11 November 2013,⁸ 12 March 2014⁹ and 11 July 2014,¹⁰ the Pre-Trial Chamber issued the fourth, fifth and sixth decisions on Mr Gbagbo's detention under Article 60(3) of the Statute ('Fourth Article 60(3) Decision', 'Fifth Article 60(3) Decision' and 'Sixth Article 60(3) Decision', respectively), in which it decided that Mr Gbagbo should remain in detention and ordered the Registry and the Defence to submit joint reports on the progress of efforts to address the issues concerning the accused's health.
8. On 12 June 2014, the Pre-Trial Chamber issued the 'Decision on the confirmation of charges against Laurent Gbagbo' ('Confirmation Decision'),¹¹ in which it decided to confirm the charges against Mr Gbagbo and committed him to trial.

⁵ Second decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute, 12 March 2013, ICC-02/11-01/11-417-Conf (public redacted version at ICC-02/11-01/11-417-Red).

⁶ Third decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute, 11 July 2013, ICC-02/11-01/11-454. The appeal of the Defence against this decision was dismissed by the Appeals Chamber on 29 October 2013; see Judgment on the appeal of Mr 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", 29 October 2013, ICC-02/11-01/11-548-Conf (public redacted version at ICC-02/11-01/11-548-Red) ('Gbagbo OA4 Judgment').

⁷ Transcripts of hearings on 9 October 2013, ICC-02/11-01/11-T-22-Red-ENG WT; ICC-02/11-01/11-T-23-CONF-EXP-ENG ET.

⁸ Fourth decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute, 11 November 2013, ICC-02/11-01/11-558.

⁹ Fifth decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute, 12 March 2014, ICC-02/11-01/11-633.

¹⁰ Sixth decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute, 11 July 2014, ICC-02/11-01/11-668.

¹¹ Decision on the confirmation of charges against Laurent Gbagbo, 12 June 2014, ICC-02/11-01/11-656-Conf (public redacted version at ICC-02/11-01/11-656-Red) and annex.

9. On 7 October 2014, the Chamber issued an order scheduling a third hearing on detention on 9 October 2014, pursuant to Rule 118(3) of the Rules.¹² On the same date, the Defence requested that the hearing be postponed,¹³ which the Office of the Prosecutor ('Prosecution') did not oppose.¹⁴
10. On 8 October 2014, the Chamber granted the Defence's request to postpone the hearing pursuant to Rule 118(3) and set a new date for hearing to 4 November 2014.¹⁵
11. On 20 October 2014, the Prosecution¹⁶ and the Legal Representative of victims ('LRV')¹⁷ filed their submissions on the review of Mr Gbagbo's detention. On 27 October, the Defence filed its submissions.¹⁸
12. On 31 October 2014, the Prosecution filed a notice of its intention to rely on additional material for the hearing scheduled on 4 November 2014 and annexed to its filing the relevant material ('Prosecution Additional Material').¹⁹
13. On 3 November 2014, the Registry filed in the record of the case [REDACTED]. [REDACTED].²⁰

¹² Order scheduling a hearing pursuant to Rule 118(3) of the Rules of Procedure and Evidence, 7 October 2014, ICC-02/11-01/11-688.

¹³ *Requête urgente aux fins de fixation d'une nouvelle date d'audience portant sur le réexamen des conditions de maintien en détention*, 7 October 2014, ICC-02/11-01/11-689.

¹⁴ Prosecution's Response to « Requête urgente aux fins de fixation d'une nouvelle date d'audience portant sur le réexamen des conditions de maintien en détention », 8 October 2014, ICC-02/11-01/11-691.

¹⁵ Decision on the "Requête urgente aux fins de fixation d'une nouvelle date d'audience portant sur le réexamen des conditions de maintien en détention", 8 October 2014, ICC-02/11-01/11-693.

¹⁶ Prosecution's submissions on the detention review, 20 October 2014, ICC-02/11-01/11-696-Conf (public redacted version at ICC-02/11-01/11-696-Red) ('Prosecution Submissions').

¹⁷ Observations of the Common Legal Representative of victims on the periodic review of Mr Gbagbo's detention, 20 October 2014, ICC-02/11-01/11-695 ('Victims' Submissions').

¹⁸ *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 septième réexamen de la détention*, 27 October 2014, ICC-02/11-01/11-707-Red-Conf ('Defence Submissions').

¹⁹ Notice of the Prosecution's intention to rely on additional material for the pre-trial detention hearing to be held on 4 November 2014, 31 October 2014, ICC-02/11-01/11-714 and annexes.

²⁰ [REDACTED].

14. On 4 November 2014, the Chamber convened the hearing on detention ('Hearing on Detention'), attended by the Prosecution, the LRV, the Defence and the Registry, including an *ex parte* session, Defence and Registry only.²¹

II. Submissions of the parties and participants

A. The Prosecution

15. The Prosecution avers that there has been no change in circumstances since the Sixth Article 60(3) Decision.²² It considers that the grounds pursuant to Article 58(1)(b)(i) and (ii) of the Statute continue to be met and, therefore, the detention of Mr Gbagbo remains necessary.²³

16. The Prosecution acknowledges that it has the duty to inform the Chamber and the Defence of any information in its possession which is relevant to potential changed circumstances that could impact on the factors underlying Article 58(1) of the Statute,²⁴ and has indeed done so in the past.²⁵ However, it submits that there is no requirement to prove anew the factual findings made by a chamber in previous rulings on interim release.²⁶

17. The Prosecution recalls the Pre-Trial Chamber's finding that the confirmation of charges against the accused had, 'if anything, increased the risk of absconding',²⁷ and submits that this factor continues to apply in particular because the confirmation of charges is now final.²⁸

²¹ Transcripts of hearings on 4 November 2014, ICC-02/11-01/11-T-25-Conf-ENG ET and ICC-02/11-01/11-T-26-CONF-EXP-ENG ET.

²² Prosecution Submissions, ICC-02/11-01/11-696-Conf, para. 5. ICC-02/11-01/11-T-25-Conf-ENG ET, page 83, lines 8-9.

²³ Prosecution Submissions, ICC-02/11-01/11-696-Conf, para. 15.

²⁴ ICC-02/11-01/11-T-25-Conf-ENG ET, page 81, line 21 to page 82, line 1.

²⁵ ICC-02/11-01/11-T-25-Conf-ENG ET, page 82, lines 7-16.

²⁶ ICC-02/11-01/11-T-25-Conf-ENG ET, page 81, lines 19-21.

²⁷ Prosecution Submissions, ICC-02/11-01/11-696-Conf, para. 5 referring to Sixth Article 60(3) Decision, ICC-02/11-01/11-668, para. 41.

²⁸ Prosecution Submissions, ICC-02/11-01/11-696-Conf, para. 5.

18. The Prosecution recalls that the Pre-Trial Chamber found in its Sixth Article 60(3) Decision that ‘it cannot ascertain any changed circumstances’ regarding the existence of a network of supporters in relation to Mr Gbagbo.²⁹ The Prosecution refers to additional evidence, attached to its submissions, which it argues attests to the ongoing existence of a network of Mr Gbagbo’s supporters operating from within and outside Côte d’Ivoire.³⁰ In its view, this material indicates, *inter alia*, that former close associates of Mr Gbagbo ‘have been attempting to destabilise Côte d’Ivoire and overthrow its government’.³¹ Furthermore, in response to the Defence allegation that Mr Gbagbo has no network of supporters, the Prosecution submits that the Defence has not brought evidence that would impugn previous factual findings by the Pre-Trial Chamber that such a network exists.³²
19. The Prosecution also argues that ties between Mr Gbagbo and his former party, the ‘*Front Populaire Ivoirien*’ (‘FPI’), continue to exist and argues that the activities of the FPI are relevant to ‘the issue of the extent of Mr Gbagbo’s network of supporters’.³³ It also observes that the FPI is publicly advocating for Mr Gbagbo’s release.³⁴ The Prosecution argues that such considerations are relevant to establish the ongoing existence of Mr Gbagbo’s network.³⁵
20. With regard to the possibility of conditional release, the Prosecution submits that the Chamber should adopt an approach similar to that of the Pre-Trial

²⁹ Prosecution Submissions, ICC-02/11-01/11-696-Conf, para. 6 referring to Sixth Article 60(3) Decision, ICC-02/11-01/11-668, para. 31.

³⁰ Prosecution Submissions, ICC-02/11-01/11-696-Conf, paras 6-7 and Confidential, *ex parte*, only available to the Prosecution, Annex A, ICC-02/11-01/11-696-Conf-Exp-AnxA (confidential redacted version available at Annex B, ICC-02/11-01/11-696-Conf-AnxB); ICC-02/11-01/11-T-25-Conf-ENG ET, pages 82-83. *See*, Annex 2 to Prosecution Additional Evidence, ICC-02/11-01/11-714-Anx2, para. 11.

³¹ Prosecution Submissions, ICC-02/11-01/11-696-Conf, paras 8-9; Annex 1 to Prosecution Additional Evidence, ICC-02/11-01/11-714-Anx1.

³² ICC-02/11-01/11-T-25-CONF-ENG ET, page 83, lines 14-20.

³³ Prosecution Submissions, ICC-02/11-01/11-696-Conf, paras 10-14.

³⁴ Prosecution Submissions, ICC-02/11-01/11-696-Conf, paras 11-14.

³⁵ Prosecution Submissions, ICC-02/11-01/11-696-Conf, para. 14.

Chamber in the Sixth Article 60(3) Decision, and seek the views, if appropriate, of the parties in accordance with Rule 119(3) of the Rules.³⁶

B. The Victims

21. The LRV submits that Mr Gbagbo must continue to be detained because there have been no changed circumstances since the Sixth Article 60(3) Decision.³⁷ It recalls the jurisprudence establishing that the ‘risk of non-appearance at trial increases as the proceedings advance’.³⁸ It argues that the issuance of the Confirmation Decision and concomitant fact that ‘there is sufficient evidence to establish substantial grounds to believe that a person has committed crimes within the jurisdiction of the Court’ militates in favour of Mr Gbagbo’s detention, and not in favour of his release.³⁹ The LRV also submits that, contrary to the Defence’s argument and as stated by the Appeals Chamber, the gravity of the crimes for which a person is prosecuted is ‘an important factor to decide on detention matters’.⁴⁰
22. Furthermore, referring to a number of media articles,⁴¹ the LRV argues that the network of supporters of Mr Gbagbo has further mobilised and lobbied for his release since the Confirmation Decision and recalls that the Appeals Chamber has established that the mere existence of such support network is relevant to determine the necessity of the accused’s continued detention.⁴² The LRV submits further that all victims it met with during its latest missions to Côte d’Ivoire expressed fear about their safety.⁴³ In this regard, the LRV points to ‘a

³⁶ ICC-02/11-01/11-T-25-CONF-ENG ET, page 92, lines 7-19.

³⁷ Victims’ Submissions, ICC-02/11-01/11-695, paras 10 and 25.

³⁸ Victims’ Submissions, ICC-02/11-01/11-695, para. 14. *See also*, para. 13.

³⁹ Victims’ Submissions, ICC-02/11-01/11-695, para. 12 referring to Legal Representative of victims, Observations of the Common Legal Representative of victims on the periodic review of Mr. Gbagbo’s detention, 27 June 2014, ICC-02/11-01/11-662, paras 16-18.

⁴⁰ Victims’ Submissions, ICC-02/11-01/11-695, para. 15.

⁴¹ Victims’ Submissions, ICC-02/11-01/11-695, footnote 25.

⁴² Victims’ Submissions, ICC-02/11-01/11-695, paras 16-18 referring to *Gbagbo* OA Judgment, ICC-02/11-01/11-278-Red, para. 59 and *Gbagbo* OA4 Judgment, ICC-02/11-01/11-548-Red, paras 102-103.

⁴³ Victims’ Submissions, ICC-02/11-01/11-695, para. 26.

wave of release of pro-Gbagbo prisoners' which the victims claim has increased the violence in their neighbourhoods.

23. Finally, the LRV submits that the victims insist on the need to maintain Mr Gbagbo in detention because of their fear that a release would lead to disruptions in his judicial proceedings and jeopardise their right to see a trial for the harm they suffered.⁴⁴

C. The Defence

24. The Defence indicates that the conditions under Article 58(1)(b)(i) and (ii) of the Statute are not satisfied and that, consequently, Mr Gbagbo should be released.

25. The Defence recalls the principle that liberty is the norm and deprivation of liberty, the exception.⁴⁵ It contends that it is for the Prosecution to prove that there was no change in circumstances since the previous ruling on interim release and, in this regard, considers that the Prosecution failed to provide additional information in order to prove that its previous allegations justifying detention are still valid to this date.⁴⁶ The Defence further submits that, as the time Mr Gbagbo has spent in pre-trial detention has become prolonged, each decision: i) should give further reasons for the continued detention than the previous one; and ii) should explain why continued detention is mandatory at the time of issuance.⁴⁷

26. The Defence identifies a number of factors indicating a transformation within the political sphere in Côte d'Ivoire which amounts, in its view, to a change in the circumstances to be taken into consideration for the present review of

⁴⁴ Victims' Submissions, ICC-02/11-01/11-695, para. 26.

⁴⁵ Defence Submissions, ICC-02/11-01/11-707-Red-Conf, paras 2-6.

⁴⁶ Defence Submissions, ICC-02/11-01/11-707-Red-Conf, paras 114-119. ICC-02/11-01/11-T-25-Conf-ENG ET, page 73, line 22 to page 74, line 10.

⁴⁷ Defence Submissions, ICC-02/11-01/11-707-Red-Conf, paras 110-111.

Mr Gbagbo's detention.⁴⁸ According to the Defence, there has been a normalisation of the relations between the political actors in Côte d'Ivoire, further improving the security situation in the country, as evidenced by: (i) the role of the FPI in the national political process, including in the eyes of the international community; and (ii) the release of political prisoners and the return of political exiles.⁴⁹ The Defence submits that, in this context, the perception of risk has changed and the release of Mr Gbagbo would be seen as a contributory step towards national reconciliation.⁵⁰ The Defence argues that this change in circumstances should, in itself, lead to a reconsideration of the grounds justifying Mr Gbagbo's detention.

27. The Defence further submits that additional changes in circumstances should lead to a reconsideration of the grounds justifying detention. The Defence refers, with regard to the conditions under Article 58(1)(b)(i) of the Statute, to: (i) Mr Gbagbo's assurances to appear before the Trial Chamber; (ii) the lack of a network of supporters; and (iii) the absence of means at the disposal of Mr Gbagbo.⁵¹ Concerning the conditions under Article 58(1)(b)(ii) of the Statute, the Defence argues that the Chamber should take into consideration that: (i) the confirmation of charges means the end of the investigation period; (ii) Mr Gbagbo has never obstructed or endangered the investigation or the court proceedings; and (iii) Mr Gbagbo has always scrupulously respected the confidentiality of information.⁵² The Defence further recalls that the Appeals Chamber stated that there must be a nexus between the person in detention and the risk of obstruction.⁵³

⁴⁸ Defence Submissions, ICC-02/11-01/11-707-Red-Conf, paras 9, 38-40.

⁴⁹ Defence Submissions, ICC-02/11-01/11-707-Red-Conf, paras 10-29 and annexes 1-19.

⁵⁰ Defence Submissions, ICC-02/11-01/11-707-Red-Conf, paras 9 and 30-39.

⁵¹ Defence Submissions, ICC-02/11-01/11-707-Red-Conf, paras 43-81.

⁵² Defence Submissions, ICC-02/11-01/11-707-Red-Conf, paras 87-98.

⁵³ Defence Submissions, ICC-02/11-01/11-707-Red-Conf, para. 94; ICC-02/11-01/11-T-25-Conf-ENG ET, page 78, lines 13-16.

28. In addition, the Defence submits that the Prosecution's reliance on the reports of the Group of Experts on Côte d'Ivoire ('Group of Experts') to prove the existence of a network is inappropriate, as the individuals drafting such reports had neither the qualifications, nor the experience, to assess the security situation in Côte d'Ivoire. Consequently, the Defence claims that their work is 'superficial' and lacking in 'concrete elements'.⁵⁴ The Defence also suggests that the Prosecution ought to clarify whether it Prosecution provided information which was used in the Group of Experts' report two years ago.
29. The Defence submits further that, with time, the gravity of the crimes allegedly committed and the lengthy prison sentence that may ensue in the event of conviction are not sufficient to justify Mr Gbagbo's detention.⁵⁵
30. Lastly, the Defence submits that the LRV failed to identify the personal interests of victims in relation to the issue at hand.⁵⁶ It considers that the LRV's submissions on interim release are not limited to the victims' views and concerns but are, in substance, presented in support of the Prosecution's submissions. In its view, this results in a violation of the principle of equality of arms.⁵⁷

III. The applicable law

31. The Chamber recalls the following applicable law regarding interim release:

- (a) A person subject to a warrant of arrest may apply for interim release pending trial. If the Pre-Trial Chamber is satisfied that the conditions

⁵⁴ ICC-02/11-01/11-T-25-Conf-ENG ET, page 75, line 8 to page 76, line 15.

⁵⁵ Defence Submissions, ICC-02/11-01/11-707-Red-Conf, paras 106-107.

⁵⁶ Defence Submissions, ICC-02/11-01/11-707-Red-Conf, paras 99-100.

⁵⁷ Defence Submissions, ICC-02/11-01/11-707-Red-Conf, paras 101-103.

set forth in Article 58(1) ('Article 58(1) Conditions') are met, the person shall continue to be detained.⁵⁸

- (b) The Article 58(1) Conditions require the Pre-Trial Chamber to be satisfied that there are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court⁵⁹ and that 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.⁶⁰ The requirements under Article 58(1)(b) of the Statute are in the alternative and, hence, the fulfilment of one of them will suffice for the Pre-Trial Chamber to order continued detention.
- (c) The Pre-Trial Chamber must review its ruling on the release or pre-trial detention of a person at least every 120 days.⁶¹
- (d) This Chamber may exercise any functions of the Pre-Trial Chamber as regards interim release reviews.⁶² This Chamber considers it to be in the interests of justice to continue to review Mr Gbagbo's detention until the commencement of the trial.⁶³

⁵⁸ Article 60(2) of the Statute.

⁵⁹ Article 58(1)(a) of the Statute.

⁶⁰ Article 58(1)(b) of the Statute.

⁶¹ Article 60(3) of the Statute; Rule 118(2) of the Rules.

⁶² Articles 61(11) and 64(6)(a) of the Statute.

⁶³ See Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Transcript of hearing, 8 December 2009, ICC-01/05-01/08-T-18-Red-ENG, page 24 lines 14-17; See also *The Prosecutor v. Bosco Ntaganda*, Trial Chamber VI, Fourth decision on Mr Ntaganda's interim release, 31 October 2014, ICC-01/04-02/06-391, para. 5(c).

- (e) Under Article 60(3) of the Statute, a chamber may modify its previous ruling on detention, release or conditions of release if ‘it is satisfied that changed circumstances so require’.⁶⁴ The previous ruling on detention refers to the initial decision made under Article 60(2), as well as any potential subsequent modifications made to that decision under Article 60(3) of the Statute.⁶⁵ A chamber is not obliged to undertake a *de novo* review of the conditions underpinning detention.⁶⁶
- (f) Changed circumstances mean 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.⁶⁷ If there are changed circumstances, a 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, a chamber finds that there are no changed circumstances, it is not required to further review the ruling on release or detention.⁶⁸ When addressing changed circumstances, the Prosecution does not have to re-establish the same underlying facts if these facts continue to apply.⁶⁹
- (g) In assessing whether changed circumstances exist, a chamber is not obliged to ‘enter findings on the circumstances already decided upon in the ruling on detention’ and does not have to ‘entertain submissions

⁶⁴ See for example, *Gbagbo* OA Judgment, ICC-02/11-01/11-278-Red, para. 23.

⁶⁵ *The Prosecutor v. Jean-Pierre Bemba Gombo*, 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, OA 4 (*‘Bemba OA 4 Judgment’*), para. 46.

⁶⁶ *Bemba OA 4 Judgment*, ICC-01/05-01/08-1019, para. 56.

⁶⁷ *Bemba OA 4 Judgment*, ICC-01/05-01/08-1019, paras 51-52.

⁶⁸ See, for example, *Gbagbo* OA4 Judgment, ICC-02/11-01/11-548-Red, para. 51; *The Prosecutor v Jean-Pierre Bemba Gombo*, Appeals Chamber, Public redacted version - 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. 31.

⁶⁹ *Bemba OA 4 Judgment*, ICC-01/05-01/08-1019, OA 4, para. 51.

by the detained person that merely repeat arguments that the [c]hamber has already addressed in previous decisions'.⁷⁰

(h) In circumstances where a State has offered to accept a detained person and to enforce conditions, it is incumbent upon the chamber to consider conditional release. On the other hand, where no such proposals for conditional release are presented and none are self-evident, the chamber's discretion to consider conditional release is unfettered.⁷¹

IV. Previous findings on detention

32. In reviewing Mr Gbagbo's detention pursuant to Article 60(3) of the Statute, the Chamber incorporates by reference the factual findings and materials relied upon in the Article 60(2) Decision as modified by subsequent decisions on interim release, the most recent of which was the Sixth Article 60(3) Decision. The Chamber considers it appropriate to summarise these findings given that it is conducting the review of Mr Gbagbo's detention for the first time.

A. Circumstances grounding the previous finding that there are reasonable grounds to believe Mr Gbagbo committed a crime within the jurisdiction of the Court (Article 58(1)(a) of the Statute)

33. In the Article 60(2) Decision, the Pre-Trial Chamber, recalling 'the findings of the Decision on the Article 58 Application', found that the condition of Article 58(1)(a) of the Statute was fulfilled.⁷² This finding was only challenged by the Defence following the adjournment of the hearing on the confirmation

⁷⁰ *Bemba* OA 4 Judgment, ICC-01/05-01/08-1019, para. 53.

⁷¹ See Rule 119 of the Rules; *Gbagbo* OA Judgment, ICC-02/11-01/11-278-Red, para. 79.

⁷² Article 60(2) Decision, ICC-02/11-01/11-180-Conf, para. 53 referring to Decision on the Prosecutor's Application Pursuant to Article 58 for a warrant of arrest against Laurent Koudou Gbagbo, 20 November 2011, ICC-02/11-01/11-9-Conf ('Decision on the Article 58 Application') (public redacted version at ICC-02/11-01/11-9-Red).

of charges under Article 61(7)(c) of the Statute.⁷³ The Pre-Trial Chamber dismissed the Defence argument on this issue, holding that ‘a finding that the available evidence does not meet the evidentiary threshold of [A]rticle 61(7) of the Statute does not imply that there is insufficient evidence for the purpose of [A]rticle 58(1)(a) of the Statute’.⁷⁴

B. Circumstances grounding the previous finding that continued detention of Mr Gbagbo appears necessary to ensure his appearance at trial (Article 58(1)(b)(i) of the Statute)

34. In the Article 60(2) Decision, the Pre-Trial Chamber referred to a number of factors relevant to the risks under Article 58(1)(b)(i) of the Statute justifying the ongoing detention of Mr Gbagbo to ensure his appearance at trial. These included: (i) that Mr Gbagbo’s personal undertaking to the Pre-Trial Chamber to appear before it is insufficient to mitigate the ‘factors in favour of his continued detention’;⁷⁵ (ii) that ‘the gravity of the charges against Mr Gbagbo, and the lengthy prison sentence that may ensue in the event of conviction, constitute an incentive for him to abscond’;⁷⁶ (iii) considerations relating to, *inter alia*, Mr Gbagbo’s past and present political position, including the fact that Mr Gbagbo appeared to have the political motivations, as well as the necessary political contacts, to abscond;⁷⁷ (iv) Mr Gbagbo appeared to have access to funds, whether his own, his wife’s or through his network of supporters, which he could use to abscond;⁷⁸ and (v) the existence of a network of supporters motivated to, *inter alia*, ‘obtain the liberation of Laurent Gbagbo’.⁷⁹ The Pre-Trial Chamber found no changed circumstances in relation

⁷³ Third Article 60(3) Decision, ICC-02/11-01/11-454, para. 22.

⁷⁴ Third Article 60(3) Decision, ICC-02/11-01/11-454, para. 35.

⁷⁵ Article 60(2) Decision, ICC-02/11-01/11-180-Conf, para. 55.

⁷⁶ Article 60(2) Decision, ICC-02/11-01/11-180-Conf, para. 56.

⁷⁷ Article 60(2) Decision, ICC-02/11-01/11-180-Conf, para. 57.

⁷⁸ Article 60(2) Decision, ICC-02/11-01/11-180-Conf, para. 59.

⁷⁹ Article 60(2) Decision, ICC-02/11-01/11-180-Conf, para. 60.

to these findings for the purposes of subsequent assessments under Article 60(3) of the Statute.

35. Most recently, in the Sixth Article 60(3) Decision, the Pre-Trial Chamber found that, despite evidence indicating that the security situation in Côte d'Ivoire was improving, 'this improvement does not constitute a change in the relevant circumstances underpinning the need for the continued detention of Mr Gbagbo so as to ensure his appearance at trial [...]'.⁸⁰ Moreover, Mr Gbagbo's argument that his release would play an important part in the reconciliation process in Côte d'Ivoire was considered irrelevant for the purposes of a review under Article 60(3) of the Statute.⁸¹

36. The Pre-Trial Chamber dismissed the Defence argument that Mr Gbagbo 'does not have the financial means or support which would enable him to abscond', finding that the Defence had not provided any additional material to show changed circumstances.⁸² The Pre-Trial Chamber further rejected the Defence argument that the passage of time itself reduces the risk of absconding, and that the 'consideration of the gravity of the charges does not withstand the passage of time'.⁸³ It held that the Defence did not 'specify which factual finding(s) of the Chamber have, in its submission, become obsolete through the passage of time'.⁸⁴ Finally, the Pre-Trial Chamber rejected the suggestion that the fact that the charges had been confirmed reduces the risk of absconding, finding that, 'as held in other cases before this Court, the confirmation of charges against Mr Gbagbo has, if anything, increased the risk of absconding'.⁸⁵

⁸⁰ Sixth Article 60(3) Decision, ICC-02/11-01/11-668, para. 25.

⁸¹ Sixth Article 60(3) Decision, ICC-02/11-01/11-668, para. 26.

⁸² Sixth Article 60(3) Decision, ICC-02/11-01/11-668, para. 32.

⁸³ Sixth Article 60(3) Decision, ICC-02/11-01/11-668, paras 36-37.

⁸⁴ Sixth Article 60(3) Decision, ICC-02/11-01/11-668, para. 37.

⁸⁵ Sixth Article 60(3) Decision, ICC-02/11-01/11-668, para. 41 (footnotes omitted).

C. Circumstances grounding the previous finding that continued detention of Mr Gbagbo appears necessary to ensure he does not obstruct or endanger the investigation or the court proceedings (Article 58(1)(b)(ii) of the Statute)

37. In the Article 60(2) Decision, the Pre-Trial Chamber referred to the fact that it was previously found in the Decision on the Article 58 Application 'that the arrest of Mr Gbagbo was necessary to ensure that he does not use his political or economic resources to obstruct or endanger the investigation'.⁸⁶ It also found that Mr Gbagbo has 'extensive knowledge of the sources of evidence against him', which, while not necessarily determinative of the issue of the need for continued detention, was held to be 'a factual circumstance that must be taken into account when assessing the level of risk for the investigation and the court proceedings'.⁸⁷ In light of these findings, the Pre-Trial Chamber concluded that the continued detention of Mr Gbagbo appeared necessary under Article 58(1)(b)(ii) of the Statute.

38. No changed circumstances were found in relation to these findings for the purposes of the Pre-Trial Chamber's subsequent assessments under Article 60(3) of the Statute. Most recently, in the Sixth Article 60(3) Decision, the Pre-Trial Chamber found that, despite evidence indicating that the security situation in Côte d'Ivoire was improving, 'this improvement does not constitute a change in the relevant circumstances underpinning the need for the continued detention of Mr Gbagbo so as to ensure [...] that he does not obstruct or endanger the investigation or the court proceedings'.⁸⁸ As noted above, the Pre-Trial Chamber also dismissed Defence arguments regarding the role of Mr Gbagbo in the national reconciliation process,⁸⁹ and his network of

⁸⁶ Article 60(2) Decision, ICC-02/11-01/11-180-Conf, para. 64, referring to Decision on the Article 58 Application, ICC-02/11-01/11-9-Conf, para. 87.

⁸⁷ Article 60(2) Decision, ICC-02/11-01/11-180-Conf, para. 66.

⁸⁸ Sixth Article 60(3) Decision, ICC-02/11-01/11-668, para. 25.

⁸⁹ Sixth Article 60(3) Decision, ICC-02/11-01/11-668, para. 26.

supporters,⁹⁰ finding that they did not constitute changed circumstances for the purposes of the risks underpinning Article 58(1)(b)(ii) of the Statute.

39. The Pre-Trial Chamber also found that ‘the mere fact that the Prosecutor has so far not reported any interference with the investigation, or that Mr Gbagbo has not obstructed the proceedings while in detention, does not bear, in and of itself, on the determination whether the continued detention of Mr Gbagbo appears necessary’.⁹¹

40. Further, the Pre-Trial Chamber dismissed the Defence argument that continued detention was no longer necessary under Article 58(1)(b)(ii) of the Statute because the confirmation of charges signified the end of the investigation.⁹² It found that the risk of such interference is heightened ‘in light of the impending trial after the confirmation of the charges’, and the fact that investigations may be ongoing.⁹³ Finally, the Pre-Trial Chamber rejected the Defence argument that the passage of time itself reduces the risk of obstruction of the investigation, as the Defence did not ‘specify which factual finding(s) of the Chamber have, in its submission, become obsolete through the passage of time’.⁹⁴

D. Circumstances grounding the previous finding that continued detention of Mr Gbagbo appears necessary to prevent him from continuing with the commission of a crime within the jurisdiction of the Court arising out of the same circumstances (Article 58(1)(b)(iii) of the Statute)

41. In the Article 60(2) Decision, the Pre-Trial Chamber found that the continued detention of Mr Gbagbo appeared necessary to prevent him from continuing with the commission of crimes within the jurisdiction of the Court.⁹⁵ However,

⁹⁰ Sixth Article 60(3) Decision, ICC-02/11-01/11-668, paras 30-31.

⁹¹ Sixth Article 60(3) Decision, ICC-02/11-01/11-668, para. 34.

⁹² Sixth Article 60(3) Decision, ICC-02/11-01/11-668, para. 35.

⁹³ Sixth Article 60(3) Decision, ICC-02/11-01/11-668, para. 35.

⁹⁴ Sixth Article 60(3) Decision, ICC-02/11-01/11-668, paras 36-37.

⁹⁵ Article 60(2) Decision, ICC-02/11-01/11-180-Conf, paras 69-70.

in the Fourth Article 60(3) Decision, the Pre-Trial Chamber held that the apparent improvement of the security situation in Côte d'Ivoire, in combination with 'the absence of any information relating to efforts of Mr Gbagbo to continue with the commission of crimes' rendered the 'scenario envisaged under [A]rticle 58(l)(b)(iii) of the Statute...unlikely.'⁹⁶ On this basis, the Pre-Trial Chamber found that Mr Gbagbo's continued detention was not necessary under Article 58(l)(b)(iii) of the Statute. The Chamber will therefore not consider this limb in the current decision.

V. Analysis and conclusions of the Chamber

A. Interim release

42. At the outset, the Chamber notes that, while Mr Gbagbo's detention has previously been reviewed six times under Article 60(3) of the Statute by the Pre-Trial Chamber, this is the first time the matter has come before *this* Chamber. Therefore, the Chamber has approached the review of Mr Gbagbo's detention in a detailed manner, with careful consideration of the material before it, as well as the previous findings of the Pre-Trial Chamber and the Appeals Chamber on Article 58(1) Conditions. Notwithstanding, the Chamber recalls that its statutory function in reviewing Mr Gbagbo's detention under Article 60(3) of the Statute is to ascertain the existence of any changed circumstances in relation to the previous ruling on detention. The Chamber notes in this regard that it had requested the parties and participants' submissions on changed circumstances for the purposes of this review.

⁹⁶ Fourth Article 60(3) Decision, ICC-02/11-01/11-558, para. 51.

1. *Circumstances grounding the previous finding that there are reasonable grounds to believe Mr Gbagbo committed a crime within the jurisdiction of the Court (Article 58(1)(a) of the Statute)*

43. The Chamber considers that no changed circumstances were identified under Article 58(1)(a) of the Statute by the parties and participants. In addition, the Chamber has not itself identified any changed circumstances which would justify modifying the previous ruling that the condition of Article 58(1)(a) of the Statute, particularly given that the charges against Mr Gbagbo have been confirmed at a higher evidentiary standard, namely that there are 'substantial grounds to believe' he committed the crimes for which he is charged.⁹⁷

2. *Circumstances grounding the previous findings that continued detention of Mr Gbagbo appears necessary (i) to ensure his appearance at trial (Article 58(1)(b)(i) of the Statute) and (ii) to ensure he does not obstruct or endanger the investigation or the court proceedings (Article 58(1)(b)(ii) of the Statute)*

44. The Chamber notes that a number of arguments already dismissed by the Pre-Trial Chamber or the Appeals Chamber have been submitted before it. The Chamber recalls that it is not obliged to 'enter findings on the circumstances already decided upon in the ruling on detention' or to 'entertain submissions by the detained person that merely repeat arguments that the Chamber has already addressed in previous decisions'.⁹⁸ Notwithstanding, the Chamber has carefully reviewed the parties and participants' submissions on these issues and has come to its own conclusions in relation to the material underpinning those submissions:

45. *The impact of Mr Gbagbo's assurances to appear before the Trial Chamber on the condition of Article 58(1)(b)(i) of the Statute.* The Chamber notes that the Pre-Trial Chamber previously determined that these assurances were outweighed by

⁹⁷ Confirmation Decision, ICC-02/11-01/11-656-Red and annex.

⁹⁸ *Bemba* OA 4 Judgment, ICC-01/05-01/08-1019, para. 53.

factors in favour of Mr Gbagbo's continued detention.⁹⁹ The Chamber considers that the Defence Submissions on this issue, which note, *inter alia*, Mr Gbagbo's desire to participate in trial proceedings, do not include any additional arguments or material in support.¹⁰⁰ The Chamber is thus not persuaded that any reiteration of such reassurances may constitute a changed circumstance for the purpose of the current review of detention.

46. *The relevance of the gravity of the crimes for which Mr Gbagbo is prosecuted, and the resulting expectation of a lengthy sentence, to Article 58(1) Conditions.* The Chamber notes that the Pre-Trial Chamber previously determined, as affirmed by the Appeals Chamber, that the gravity of the crime charged is a factor relevant to assessing the risk of whether or not a suspect will appear before the Court.¹⁰¹ The Chamber considers that the Defence Submissions merely repeat, almost *verbatim*, the submissions previously made on this issue,¹⁰² without any additional arguments or relevant supporting material, and thus do not support a finding of changed circumstances. The Chamber also notes that, while the gravity of the charges against Mr Gbagbo alone cannot serve to justify long periods of detention on remand, there exist a number of other findings underpinning the risks under Article 58(1)(b)(i) of the Statute, rendering the Defence argument inapposite.

47. *The impact of the confirmation of the charges on Article 58(1) Conditions.* The Chamber notes that the Pre-Trial Chamber previously determined that the confirmation of charges actually increased the risk of absconding and that it also sustained, in light of the impending trial, the risks under Article 58(1)(b)(ii)

⁹⁹ Article 60(2) Decision, ICC-02/11-01/11-180-Conf, para. 55.

¹⁰⁰ See Defence Submissions, ICC-02/11-01/11-707-Red-Conf, paras 47-48. *See generally*, paras 43-50.

¹⁰¹ Article 60(2) Decision, ICC-02/11-01/11-180-Conf, para. 56; *Gbagbo* OA Judgment, ICC-02/11-01/11-278-Red, para. 54.

¹⁰² See *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 sixième réexamen de la détention*, ICC-02/11-01/11-663-Conf-Exp ('Defence Submissions for the sixth review under Article 60(3)'), paras 67-70.

of the Statute.¹⁰³ The Chamber considers that the Defence Submissions merely repeat, almost *verbatim*, the submissions previously made on this issue,¹⁰⁴ without any additional supporting arguments or relevant material, and thus do not support a finding of changed circumstances. The Chamber further considers that the confirmation of charges has indeed increased the risks underpinning both Article 58(1)(b)(i) and (ii) of the Statute, particularly in light of the existence of ‘substantial grounds to believe’ that Mr Gbagbo committed the crimes for which he is charged exist, which is over and above the standard required by Article 58(1)(a) of the Statute.¹⁰⁵

48. *The absence of reported interference with witnesses and Mr Gbagbo’s respect for the confidentiality of information as circumstances relevant under Article 58(1)(b)(ii) of the Statute.* The Chamber notes that the Pre-Trial Chamber already determined that these aspects did not have a bearing on the determination of continued detention.¹⁰⁶ The Chamber considers that the Defence Submissions merely repeat, *verbatim*, the submissions previously made on this issue,¹⁰⁷ without any additional supporting arguments or relevant material, and thus do not support a finding of changed circumstances. The Chamber further recalls that the applicable standard in assessing Article 58(1) Conditions ‘revolves around the possibility, not the inevitability, of a future occurrence’,¹⁰⁸ and therefore

¹⁰³ Sixth Article 60(3) Decision, ICC-02/11-01/11-668, paras 35 and 41.

¹⁰⁴ Defence Submissions for the sixth review under Article 60(3), ICC-02/11-01/11-663-Conf-Exp, paras 51-55.

¹⁰⁵ Confirmation Decision, ICC-02/11-01/11-656-Red and annex.

¹⁰⁶ Sixth Article 60(3) Decision, ICC-02/11-01/11-668, para. 34; Fifth Article 60(3) Decision, ICC-02/11-01/11-633, para. 31.

¹⁰⁷ Defence Submissions for the sixth review under Article 60(3), ICC-02/11-01/11-663-Conf-Exp, para. 66.

¹⁰⁸ *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo*, Appeals Chamber, Judgment in the Appeal of Mathieu Ngudjolo Chui of 27 March 2008 against the Decision of Pre-Trial Chamber I on the Application of the Appellant for Interim Release, ICC-01/04-01/07-572, OA4, 9 June 2008, para. 21. *See also*, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Appeals Chamber, Judgment on the appeal of Mr Aimé Kilolo Musamba against the decision of Pre-Trial Chamber II of 14 March 2014 entitled ‘Decision on the “Demande de mise en liberté provisoire de Maître Aimé Kilolo Musamba’’, 11 July 2014, ICC-01/05-01/13-558, OA 2, para. 107; *The Prosecutor v. Callixte Mbarushimana*, Appeals Chamber, Judgment on the Appeal of Mr. Mbarushimana against the Decision of Pre-Trial Chamber I entitled “Decision on the ‘Defence Request for Interim Release’”, ICC-01/04-01/10-283, OA, 14 July, 2011, para. 60; *Prosecutor v. Jean-Pierre Bemba Gombo*, Appeals Chamber, Judgment on the appeal of Mr. Jean-Pierre Bemba Gombo against the decision of Pre-Trial Chamber III entitled “Decision on application for interim release”, 16 December 2008, ICC-01/05-01/08-323, OA, para. 55.

considers that an absence of any demonstrated interference with witnesses cannot, in and of itself, eliminate the risks found to exist under Article 58(1)(b)(ii) of the Statute.

49. *The demonstration of the existence of means at the disposal of Mr Gbagbo.* The Chamber notes that the Pre-Trial Chamber already determined that the Defence had not presented new information on this issue, and the Appeals Chamber ruled that it was sufficient to establish that it was *possible* that Mr Gbagbo had access to the necessary assets to abscond and that he *may* also possess other assets that have not yet been discovered.¹⁰⁹ The Chamber considers that the Defence Submissions do not contain any further supporting arguments or material,¹¹⁰ and thus do not support a finding of changed circumstances. The Chamber notes there has been previously found to be a risk that Mr Gbagbo has access to resources both through the possible existence of bank accounts belonging to himself or to his wife, as well as to the means of his network of supporters, which he could use to abscond.¹¹¹ The Chamber does not accept that new circumstances have been demonstrated in relation to these factors.

50. *The impact of the passage of time on Article 58(1) Conditions.* The Chamber notes that the Pre-Trial Chamber already determined that, in response to the Defence argument that the passage of time itself erodes the factors supporting pre-trial detention, the Defence had failed to identify which factual findings became obsolete through the passage of time, and that the passage of time itself did not constitute a changed circumstance.¹¹² The Chamber considers that the most recent Defence Submissions merely repeat, almost *verbatim*, the submissions

¹⁰⁹ Article 60(2) Decision, ICC-02/11-01/11-180-Conf, paras 59-60; Sixth Article 60(3) Decision, ICC-02/11-01/11-668, para. 32; Fifth Article 60(3) Decision, ICC-02/11-01/11-633, paras 26-29; *Gbagbo* OA Judgment, ICC-02/11-01/11-278-Red, paras 55-58; *Gbagbo* OA4 Judgment, ICC-02/11-01/11-548-Red, paras 95-96.

¹¹⁰ See Defence Submissions, ICC-02/11-01/11-707-Red-Conf, para. 81.

¹¹¹ Article 60(2) Decision, ICC-02/11-01/11-180-Conf, paras 59-60.

¹¹² Sixth Article 60(3) Decision, ICC-02/11-01/11-668, paras 36-37.

previously made on this issue,¹¹³ and thus do not support a finding of changed circumstances. The Chamber reiterates that the proposition cited by the Defence that the danger of absconding *decreases* over the passage of time is directly contradicted by the jurisprudence of this Court that the confirmation of charges *increases* the risk that an accused person may abscond.¹¹⁴

51. *The consequences of an eventual release of Mr Gbagbo on the national reconciliation process, and the relevance of this to the review of Article 58(1) Conditions.* The Chamber notes that the Pre-Trial Chamber already ruled that considerations of this type were not relevant for the purpose of determining the need for Mr Gbagbo's detention.¹¹⁵ The Chamber considers that the Defence Submissions do not contain any new supporting arguments to demonstrate the relevance of the national reconciliation process to Article 58(1) Conditions.¹¹⁶ The Chamber notes, in this connection, that the material cited by the Defence merely points to the progress of the reconciliation process in Côte d'Ivoire,¹¹⁷ or to the apparent desire of certain people for Mr Gbagbo's release,¹¹⁸ without any connection to the concomitant impact upon the Article 58(1)(b) Conditions justifying his ongoing detention. The Chamber is therefore not persuaded that any changed circumstances exist so as to now render the national reconciliation process a relevant consideration impacting on Mr Gbagbo's detention.

¹¹³ Defence Submissions for the sixth review under Article 60(3), ICC-02/11-01/11-663-Conf-Exp, paras 74-78.

¹¹⁴ See *The Prosecutor v. Thomas Lubanga Dyilo*, Pre-Trial Chamber I, Review of the 'Decision on the Application for the Interim Release of Thomas Lubanga Dyilo', 14 February 2007, ICC-01/04-01/06-826, p. 6; *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo*, Pre-Trial Chamber II, *Deuxième réexamen de la Décision sur les conditions du maintien en détention de Germain Katanga*, 12 December 2008, ICC-01/04-01/07-794, paras 9-10; *The Prosecutor v. Jean-Pierre Bemba Gombo*, 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', 2 December 2009, ICC-01/05-01/08-631-Red, para. 70.

¹¹⁵ Sixth Article 60(3) Decision, ICC-02/11-01/11-668, para. 26; Fifth Article 60(3) Decision, ICC-02/11-01/11-633, para. 23.

¹¹⁶ Defence Submissions, ICC-02/11-01/11-707-Red-Conf, paras 30-40 and 73-80.

¹¹⁷ Defence Submissions, ICC-02/11-01/11-707-Red-Conf, annexes 1, 2, 3, 4, 5, 6, 7, 9, 13, 14, 15 and 16.

¹¹⁸ Defence Submissions, ICC-02/11-01/11-707-Red-Conf, paras 79-80.

52. *Reliance on the Reports of the Group of Experts, including their credentials.* The Chamber notes that the Appeals Chamber previously upheld the Pre-Trial Chamber's reliance on Reports of the Group of Experts.¹¹⁹ The Chamber notes that, in its submissions in relation to the current review of Mr Gbagbo's detention, the Defence disputes the validity of the Prosecution's reliance on the Group of Experts' Report, attacking the Experts' credentials,¹²⁰ and the Report's subsequent reliability.¹²¹ However, it appears that what the Defence is disputing is the Pre-Trial Chamber's previous reliance on the Group of Experts' Report of 2012,¹²² including the notion that the Prosecution itself provided material to the Group of Experts,¹²³ rather attacking the Prosecution's reliance on the most recent Mid-Term Report.¹²⁴ Such submissions, which were already dismissed by the Appeals Chamber, cannot now constitute changed circumstances before this Chamber.

53. Conversely, the Chamber considers that new arguments or material have been raised in relation to the following issues, and will therefore assess below whether or not they give rise to changed circumstances for the purposes of the present review of detention:

i) Whether there are changed circumstances with regard to the existence of a network of supporters

54. The Chamber notes that the Pre-Trial Chamber previously held that the existence of a 'large and well-organised network of political supporters of Mr Gbagbo' posed a risk that he could use the means of his support network in order to 'abscond, obstruct the investigation or continue with the commission of

¹¹⁹ *Gbagbo* OA4 Judgment, ICC-02/11-01/11-548-Red, paras 68-71 and 82-83.

¹²⁰ ICC-02/11-01/11-T-25-CONF-ENG ET, page 75, line 8 to page 76, line 11.

¹²¹ ICC-02/11-01/11-T-25-CONF-ENG ET, page 76, lines 12-15.

¹²² Defence Submissions, ICC-02/11-01/11-707-Red-Conf, para. 52.

¹²³ Defence Submissions, ICC-02/11-01/11-707-Red-Conf, para. 52; ICC-02/11-01/11-T-25-CONF-ENG ET, page 76, lines 16-24.

¹²⁴ Prosecution Additional Material, ICC-02/11-01/11-714-Anx2.

crimes within the jurisdiction of the Court'.¹²⁵ The extent of this network's political and military organisation was found by the Pre-Trial Chamber to increase¹²⁶ and decrease¹²⁷ over the course of the time Mr Gbagbo has been detained. However, the capacity of the network of supporters has never been held to slip below the threshold of risk outlined in the Article 60(2) Decision in order to constitute a changed circumstance.¹²⁸

55. Indeed, in the Sixth Article 60(3) Decision, the Pre-Trial Chamber held that the further material provided by the Defence concerning the 'important role and status of the FPI in the political life of Côte d'Ivoire and the reconciliation process' was not new information which demonstrated the FPI no longer supports Mr Gbagbo 'or that a larger support network of which the FPI is but one constituent does not exist'.¹²⁹ Therefore, no changed circumstances were found to exist in relation to the network of supporters for the purposes of Article 58(1) Conditions.

56. The Chamber notes that, in its submissions in relation to the current review of Mr Gbagbo's detention, the Defence continues to argue that the Prosecution has failed to prove the existence of a network of pro-Gbagbo supporters.¹³⁰ The Defence cites to recent material which does not refer to the persisting existence of such a network.¹³¹ The Defence also cites to numerous media articles attesting to, *inter alia*, the credible role of the FPI in the national reconciliation process, including in relation to its involvement in the discussions leading to the

¹²⁵ Article 60(2) Decision, ICC-02/11-01/11-180-Conf, paras 59-62.

¹²⁶ See First Article 60(3) Decision, ICC-02/11-01/11-291, para. 59.

¹²⁷ See Third Article 60(3) Decision, ICC-02/11-01/11-454, para. 41.

¹²⁸ See for example Third Article 60(3) Decision, ICC-02/11-01/11-454, para. 41; Fifth Article 60(3) Decision, ICC-02/11-01/11-633, para. 25; Sixth Article 60(3) Decision, ICC-02/11-01/11-668, para. 30.

¹²⁹ Sixth Article 60(3) Decision, ICC-02/11-01/11-668, para. 31.

¹³⁰ ICC-02/11-01/11-T-25-CONF-ENG ET, page 78, lines 10-12. See also Defence Submissions, ICC-02/11-01/11-707-Red-Conf, para. 52.

¹³¹ Defence Submissions, ICC-02/11-01/11-707-Red-Conf, para. 53 referring to *Rapport du Secrétaire général sur les activités du Bureau des Nations Unies pour l'Afrique de l'Ouest*, 26 juin 2014, S/2014/442: http://www.un.org/fr/documents/view_doc.asp?symbol=S/2014/442.

appointment of members to the board of the Independent Electoral Commission (*'Bureau de la Commission électorale indépendante'*) and as perceived by international actors.¹³² It argues that the Prosecution has sought to conflate the existence an alleged network of pro-Gbagbo supporters with those who are FPI supporters, the latter of which cannot validly be said to constitute part of a network relevant to the assessment of Article 58(1) Conditions¹³³ and who are not criminal in nature.¹³⁴

57. Indeed, the Defence argues that, if all FPI supporters are to be considered as such, then 'there will always be an alleged network and it will continue to be impossible to release President Gbagbo'.¹³⁵ The Defence argues further that there has been no mention of incidents attributed in any way to members of a pro-Gbagbo criminal network by any non-government organisations or by the media, and that the Prosecution has failed to adduce any new material to prove the current existence of such a network.¹³⁶

58. The Chamber notes that the Defence erroneously argues that the network of pro-Gbagbo supporters has never been proven to exist. The Pre-Trial Chamber has consistently referred to the existence of such a network, including broader elements 'of which the FPI is but one constituent'.¹³⁷ The Chamber notes that its role in reviewing Mr Gbagbo's detention is limited to an assessment of changed circumstances. In light of this standard, and concurring with the previous findings of the Pre-Trial Chamber that 'the status of the FPI in the political reconciliation process had no direct bearing on the more general question of

¹³² Defence Submissions, ICC-02/11-01/11-707-Red-Conf, annexes 1, 2, 3, 4, 5, 6, 7, 9, 13, 14, 15 and 16.

¹³³ Defence Submissions, ICC-02/11-01/11-707-Red-Conf, para. 57. *See also*, ICC-02/11-01/11-T-25-CONF-ENG ET, page 76, line 25 to page 78, line 2.

¹³⁴ Defence Submissions, ICC-02/11-01/11-707-Red-Conf, paras 58-60 and 77.

¹³⁵ ICC-02/11-01/11-T-25-CONF-ENG ET, page 78, lines 1-2. *See also*, Defence Submissions, ICC-02/11-01/11-707-Red-Conf, para. 61.

¹³⁶ Defence Submissions, ICC-02/11-01/11-707-Red-Conf, paras 55-56.

¹³⁷ Sixth Article 60(3) Decision, ICC-02/11-01/11-668, para. 31.

whether a network of supporters existed',¹³⁸ the Chamber does not consider that the material presented by the Defence in relation to the current detention review supports any change of circumstances in this regard. Such material relates primarily to the reconciliation process and its consequences, including: i) the releasing of political prisoners and the return from exile of refugees;¹³⁹ and ii) the discussions between the Government of Côte d'Ivoire and the FPI with regard to the composition of the Board of the Independent Electoral Commission¹⁴⁰ and related interactions between representatives of the FPI and international actors.¹⁴¹

59. Nor does the Chamber consider an absence of reference in United Nations ('UN') or other reports to pro-Gbagbo supporters engaging in criminal activity¹⁴² to constitute a changed circumstance, particularly in light of other UN reports that do attest to the continued existence of criminal activity linked to pro-Gbagbo radical groups.¹⁴³

60. The Chamber recalls that, in the absence of any material or arguments that may warrant revision of the previous ruling on detention, it is not required to further review the ruling on release or detention.¹⁴⁴ Accordingly, after having conducted an assessment of the underlying material and in the absence of any further information on circumstances already established in relation to

¹³⁸ Sixth Article 60(3) Decision, ICC-02/11-01/11-668, para. 31.

¹³⁹ Defence Submissions, ICC-02/11-01/11-707-Red-Conf, annexes 8, 10, 12, 17, 18 and 19.

¹⁴⁰ See, for example, Defence Submissions, ICC-02/11-01/11-707-Red-Conf, annexes 1, 5, 6, 7, 9, 13, 15 and 16.

¹⁴¹ Defence Submissions, ICC-02/11-01/11-707-Red-Conf, annexes 2, 3, 4, 5, 6 and 14.

¹⁴² Defence Submissions, ICC-02/11-01/11-707-Red-Conf, paras 55-56.

¹⁴³ The Chamber notes that, in the most recent report of the Group of Experts, it was found that 'activities of pro-Gbagbo radical wings, Ivorian militias and Liberian mercenaries are closely linked to internal political dynamics in Cote d'Ivoire', and indeed, that cross-border attacks in the region have been attributed to the pro-Gbagbo radical wing (Annex 2 of Prosecution Additional Material, ICC-02/11-01/11-714-Anx2, paras 11 and 16. See also, annex 29).

¹⁴⁴ See, for example, *Gbagbo* OA4 Judgment, ICC-02/11-01/11-548-Red, para. 51; *The Prosecutor v. Jean-Pierre Bemba Gombo*, Appeals Chamber, Public redacted version - 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. 31.

Mr Gbagbo's network of supporters, the Chamber considers that the condition of Article 58(1)(b)(i) of the Statute continue to be met.

ii) Whether there are changed circumstances in relation to the conditions underpinning Article 58(1)(b)(ii)

61. The Chamber notes the Pre-Trial Chamber based its justification for Mr Gbagbo's detention under Article 58(1)(b)(ii) of the Statute on the fact that Mr Gbagbo has 'extensive knowledge of the sources of evidence against him',¹⁴⁵ and that his detention appears necessary to ensure that he does not use his political or economic resources to obstruct or endanger the investigation.¹⁴⁶ Indeed, the sustained organisation and motivation of his network of supporters, and its ability to provide Mr Gbagbo with the means to obstruct the investigation or continue with the commission of crimes within the jurisdiction of the Court, appears to have been a central consideration in finding that the risk under this limb continues to exist.¹⁴⁷

62. The Chamber considers that, accordingly, the ongoing existence of Mr Gbagbo's network of supporters is critical to finding that the condition under Article 58(1)(b)(ii) of the Statute is met. As found in the previous section, the Chamber considers there to be no changed circumstances in this regard.

63. The Chamber notes that in its findings in the Sixth Article 60(3) Decision on the risks under Article 58(1)(b)(ii) of the Statute, the Pre-Trial Chamber further held that a lack of proven interference in the current judicial proceedings, or those underway in Côte d'Ivoire, does not 'bear upon the determination of whether the continued detention of Mr Gbagbo appears necessary'.¹⁴⁸ It also rejected the

¹⁴⁵ Article 60(2) Decision, ICC-02/11-01/11-180-Conf, para. 66.

¹⁴⁶ Article 60(2) Decision, ICC-02/11-01/11-180-Conf, para. 64.

¹⁴⁷ See, for example, First Article 60(3) Decision, ICC-02/11-01/11-291, paras 58-59; Second 60(3) Decision, ICC-02/11-01/11-417-Conf, paras 35-37; Third 60(3) Decision, ICC-02/11-01/11-454, paras 38-44; Fourth 60(3) Decision, ICC-02/11-01/11-558, para. 52; Fifth 60(3) Decision, ICC-02/11-01/11-633, paras 25-26; Sixth 60(3) Decision, ICC-02/11-01/11-668, paras 30-31.

¹⁴⁸ Sixth Article 60(3) Decision, ICC-02/11-01/11-668, paras 34-35.

argument of the Defence that continued detention was no longer necessary under Article 58(1)(b)(ii) of the Statute because the confirmation of charges signified the end of the investigation, instead finding that this provision ‘explicitly refers to the necessity of detention to ensure that the person does not obstruct or endanger not only the investigation but also “the court proceedings”’.¹⁴⁹

64. The Chamber recalls that the applicable standard in relation to Article 58(1)(b) of the Statute is that the detention of the suspect ‘must “appear” to be necessary. The question revolves around the possibility, not the inevitability, of a future occurrence’.¹⁵⁰ Having assessed the conditions underpinning Article 58(1)(b)(ii) in light of the new material before it, the Chamber finds that there exists a possibility that Mr Gbagbo may obstruct or endanger not only the investigation, which may continue into the trial phase, but also ‘the court proceedings’, which are ongoing. The Chamber finds that this is a risk that may be heightened when witnesses begin to testify during the trial itself and notes its obligations under Article 68(1) of the Statute in this regard.

65. The Chamber observes further that the Defence’s arguments in relation to Article 58(1)(b)(ii) of the Statute have already been ruled upon and dismissed by the Pre-Trial Chamber.¹⁵¹ Accordingly, in light of the Chamber’s findings

¹⁴⁹ Sixth Article 60(3) Decision, ICC-02/11-01/11-668, para. 35.

¹⁵⁰ *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo*, Appeals Chamber, Judgment in the Appeal of Mathieu Ngudjolo Chui of 27 March 2008 against the Decision of Pre-Trial Chamber I on the Application of the Appellant for Interim Release, ICC-01/04-01/07-572, OA4, 9 June 2008, para. 21. *See also*, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Appeals Chamber, Judgment on the appeal of Mr Aimé Kilolo Musamba against the decision of Pre-Trial Chamber II of 14 March 2014 entitled ‘Decision on the “Demande de mise en liberté provisoire de Maître Aimé Kilolo Musamba’’, 11 July 2014, ICC-01/05-01/13-558, OA 2, para. 107; *The Prosecutor v. Callixte Mbarushimana*, Appeals Chamber, Judgment on the Appeal of Mr. Mbarushimana against the Decision of Pre-Trial Chamber I entitled “Decision on the ‘Defence Request for Interim Release’”, ICC-01/04-01/10-283, OA, 14 July, 2011, para. 60; *The Prosecutor v. Jean-Pierre Bemba Gombo*, Appeals Chamber, Judgment on the appeal of Mr. Jean-Pierre Bemba Gombo against the decision of Pre-Trial Chamber III entitled “Decision on application for interim release”, 16 December 2008, ICC-01/05-01/08-323, OA, para. 55.

¹⁵¹ These arguments include that (i) the confirmation of charges means the end of the investigation period; (ii) Mr Gbagbo has never obstructed or endangered the investigation or the court proceedings; (iii) Mr Gbagbo

above confirming the ongoing existence of a network of Mr Gbagbo's supporters, the Chamber can discern no changed circumstances in relation to the conditions underpinning Article 58(1)(b)(ii) of the Statute, which continue to be met.

iii) Whether it is appropriate to consider the views and concerns of the victims in the course of a review under Article 60(3) and whether, in the present case, the LRV acted within the legal scope authorising their participation

66. The Chamber notes the Defence's argument that the LRV: i) went beyond the authorised legal scope of victims' participation; and ii) failed to justify how the victims' interests were affected by the present interim release decision. In the view of the Defence, the submissions of the LRV merely concur with the Prosecution's submissions whereby the LRV acts as a 'second prosecutor', resulting in prejudice to the accused and a violation of the equality of arms.¹⁵²

67. The Chamber recalls that it is *this* Chamber who instructed the LRV to file submissions for the purpose of the present review under Article 60(3) of the Statute and who notified it of the scheduling of a hearing on detention.¹⁵³

68. The Chamber further notes that it has been previously considered at this Court that victims' personal interests are affected by decisions on detention. The

has always scrupulously respected the confidentiality of information; and (v) no interference with witnesses was ever reported.

¹⁵² The Chamber notes that the Defence has already argued, before the Appeals Chamber, that victims' submissions were outside the authorised legal scope of their participation as they did not reflect their personal interests and merely reiterated the Prosecution's arguments (*Gbagbo* OA4 Judgment, ICC-02/11-01/11-548-Red, para. 35).

¹⁵³ Order scheduling a hearing pursuant to Rule 118(3) of the Rules of Procedure and Evidence, 7 October 2014, ICC-02/11-01/11-688; Decision on the "Requête urgente aux fins de fixation d'une nouvelle date d'audience portant sur le réexamen des conditions de maintien en détention", 8 October 2014, ICC-02/11-01/11-693. With respect to the participation of the LRV in the previous reviews by the Pre-Trial Chamber pursuant to Article 60(3) of the Statute, the Chamber notes that it made submissions in each instance, upon invitation from the Chamber (Observations of the Common Legal Representative of victims on the periodic review of Mr. Gbagbo's detention, 27 June 2014, ICC-02/11-01/11-662; Observations du Représentant legal commun des victimes relatives au réexamen périodique de la détention de M. Gbagbo, 26 February 2014, ICC-02/11-01/11-622; Transcript of hearing on 9 October 2013, ICC-02/11-01/11-T-22-Red-ENG WT, page 20, line 17 to page 25, line 3; Observations of the common legal representative of victims on the periodic review of Mr Gbagbo's detention, 3 July 2013, ICC-02/11-01/11-444-tENG; Observations du Représentant legal commun des victimes relatives au réexamen périodique de la détention de M. Gbagbo, 5 March 2013, ICC-02/11-01/11-413; ICC-02/11-01/11-T-9-ENG ET, page 12, line 17 to page 19, line 11).

Appeals Chamber has typically allowed victims to participate in appeals of interim release 'given the subject matter and the desirability for the views of victims in appeals of this nature to be heard'.¹⁵⁴ The Chamber considers that, in the case at hand, the requirements set out in Article 68(3) of the Statute are met. Victims' personal interests are affected by the present decision and the Chamber does not consider that their participation, through the presentation of written and oral submissions, causes prejudice to the rights of the accused or any way compromises the fairness or impartiality of the trial.

B. Conditional release

69. The Chamber recalls that, as stated by the Appeals Chamber, a review of a previous ruling on detention may result in the person's continued detention, release, or conditional release. In circumstances where a State has offered to accept a detained person and to enforce conditions, it is incumbent upon the chamber to consider conditional release.¹⁵⁵ Conditional release may be ordered:

(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.¹⁵⁶

¹⁵⁴ *The Prosecutor v. Jean-Pierre Bemba Gombo*, Appeals Chamber, Reasons for the "Decision on the Participation of Victims in the Appeal against the 'Decision on 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, 20 October 2009, ICC-01/05-01/08-566, para. 17; Appeals Chamber, Decision on the application by victims for participation in the appeal, 27 August 2013, ICC-02/11-01/11-491, OA 4, para. 12.

¹⁵⁵ Rule 119 of the Rules. *See also*, *Gbagbo* OA Judgment, ICC-02/11-01/11-278-Red, para. 79.

¹⁵⁶ *The Prosecutor v. Jean Pierre Bemba Gombo*, 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, OA7, para. 55.

70. 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.¹⁵⁷

71. In the case at hand and as detailed above, the Chamber considers that the risks under Article 58(1)(b)(i) and (ii) of the Statute continue to exist. Nevertheless, consistently with the approach of the Pre-Trial Chamber, this Chamber is aware of its ongoing obligation to have regard to the possibility of conditionally releasing Mr Gbagbo, if the risks under Article 58(1)(b) can be sufficiently mitigated. Furthermore, the Chamber recalls that, in assessing whether or not to grant conditional release, and notwithstanding the existence of continued risks under Article 58(1)(b) of the Statute, it may decide to take into consideration the medical condition of Mr Gbagbo.¹⁵⁸

72. In this regard, the Chamber notes that the Pre-Trial Chamber had oversight of a detailed process for determining Mr Gbagbo's health-related needs, which included the filing of joint reports by the Defence and the Registry to identify progress in identifying appropriate institutions where the recommended treatment could be provided.¹⁵⁹ As of the time that the Sixth Article 60(3) Decision was issued, the relevant process for determining Mr Gbagbo's health-related needs was not yet completed, and the Chamber indicated that it was:

not in a position to assess the possibility of conditional release. Once the process is completed, the [Pre-Trial Chamber] will assess the

¹⁵⁷ *Gbagbo* OA Judgment, ICC-02/11-01/11-278-Red, para. 87.

¹⁵⁸ *Gbagbo* OA Judgment, ICC-02/11-01/11-278-Red, para. 87.

¹⁵⁹ *See, for example*, Sixth Article 60(3) Decision, ICC-02/11-01/11-668, paras 46-48.

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.

73. This Chamber has been provided with the latest information on this process in the course of the *ex parte* session held during the Hearing on Detention on 4 November 2014.¹⁶⁰ The Chamber notes that, according to this update, the Eighth Joint Report is yet to be finalised, and the most recent report in this regard is still that of 12 September 2014.¹⁶¹

74. The Chamber further notes [REDACTED].¹⁶² However, given that (i) the proposal of conditional release for medical reasons is currently being finalised by the Defence and Registry; (ii) [REDACTED];¹⁶³ and (iii) the parties and participants have yet to have the opportunity to make submissions in relation to these two issues, the Chamber cannot yet rule on the issue of conditional release in a manner that would be consistent with its obligations under Rule 119(3) of the Rules.

75. Accordingly, the Chamber is not yet in a position to assess the possibility of conditional release. It therefore considers that it is appropriate to postpone the exploration of all possible options for conditional release until: (i) receipt of an Eighth Joint Report; and, following this, ii) the receipt of the submissions and observations of parties, participants, and any relevant State on any proposals for conditional release, which the Chamber will request once an Eighth Joint Report is filed.

¹⁶⁰ ICC-02/11-01/11-T-26-CONF-EXP-ENG ET.

¹⁶¹ *Septième rapport commun du Greffe et de la Défense sur les avancées concernant la mise en œuvre de mesures propres à assurer l'amélioration de l'état de santé de M. Laurent Gbagbo, déposé conformément aux décisions de la Chambre ICC-02/11-01/11-633 du 12 mars 2014 et ICC-02/11-01/11-668 du 11 juillet 2014, 12 September 2014, ICC-02/11-01/11-681-Conf-Exp-Anx4.1, ICC-02/11-01/11-681-Conf-Exp-Anx4.2 and ICC-02/11-01/11-681-Conf-Exp-Anx4.2.*

¹⁶² [REDACTED].

¹⁶³ ICC-02/11-01/11-T-26-CONF-EXP-ENG, page 4, line 22 to page 5, line 7.

76. For this purpose, the Chamber considers it appropriate to:

- a. order the filing, by the Registry and the Defence, of an Eighth Joint Report on the progress of efforts to address the issues concerning Mr Gbagbo's health and proposing, if appropriate, specific conditions to be imposed, by 24 November 2014; and
- b. order the filing, by the Defence, of redacted versions of all reports filed jointly with the Registry and all annexes thereof, including the Eighth Joint Report, by 24 November 2014.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DECIDES that Mr Laurent Gbagbo shall remain in detention;

ORDERS the Registry and the Defence to submit an Eighth Joint Report on the progress of efforts to address the issues concerning Mr Gbagbo's health by 24 November 2014;

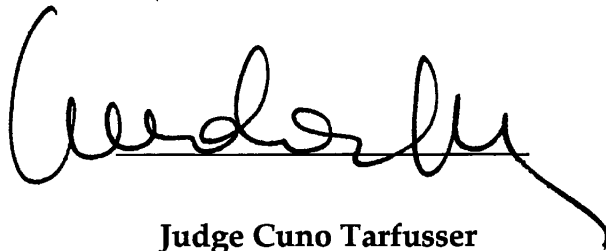
ORDERS the Defence to file redacted versions of the filings as referred in paragraph 76(b), by 24 November 2014; and

DECIDES to defer its decision on the conditional release of Mr Gbagbo.

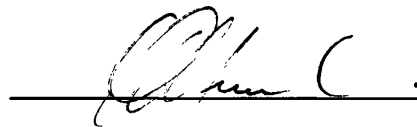
Done in both English and French, the English version being authoritative.



Judge Geoffrey Henderson, Presiding Judge



Judge Cuno Tarfusser



Judge Olga Herrera Carbuca

Dated 11 November 2014

At The Hague, The Netherlands