

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/11-01/11
Date: 18 January 2013

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Single Judge

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

Public redacted version

**Decision on the request for the conditional release of Laurent Gbagbo and on
his medical treatment**

Decision to be notified, in accordance with regulation 31 of the Regulations of the Court, to:

The Office of the Prosecutor
Fatou Bensouda

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
Paolina Massidda

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar
Silvana Arbia, Registrar
Didier Preira, Deputy Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

Judge Silvia Fernández de Gurmendi, Single Judge for Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”), responsible for carrying out the functions of the Chamber in relation to the situation in the Republic of Côte d’Ivoire and the cases emanating therefrom,¹ hereby issues this decision on the request for the conditional release of Laurent Gbagbo and on his medical treatment (“Mr Gbagbo”).

I. Procedural history

1. On 13 July 2012, following a request by the Defence,² the Single Judge issued the “Decision on the ‘*Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo*’” (the “Decision on Interim Release”), in which the request for interim release advanced by the Defence was rejected.³ The Defence lodged an appeal against this decision on 23 July 2012.⁴

2. On 26 October 2012, the Appeals Chamber issued the “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*’” (the “Gbagbo Appeals Judgment”), in which it confirmed the Decision on interim release and dismissed the appeal of the Defence⁵ In its judgment, the Appeals Chamber clarified that “the medical condition of the detained person may be a reason for a Pre-Trial Chamber to grant interim release with conditions”, in the sense that “the ill health of a detained person may be a factor in the exercise of its discretion”.⁶

¹ ICC-02/11-01/11-61.

² ICC-02/11-01/11-105-Conf-Red-Corr, p. 39.

³ ICC-02/11-01/11-180-Red, p. 26.

⁴ ICC-02/11-01/11-193-Conf OA.

⁵ Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I of 13 July 2012 entitled “Decision on the ‘*Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo*’”, 26 October 2012, ICC-02/11-01/11-278-Red OA (the “Gbagbo Appeals Judgment”).

⁶ Gbagbo Appeals Judgment, para. 87.

3. On 30 October 2012, a hearing was held in order to receive observations from the Prosecutor, the Office of Public Counsel for victims and the Defence on the issue of continued detention or release of Mr Gbagbo, as prescribed by Rule 118(3) of the Rules of Procedure and Evidence (the “Rules”).⁷

4. On 2 November 2012, the Chamber issued the “Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court”, finding that Mr Gbagbo is fit to take part in the proceedings before this Court.⁸ However, mindful of the post traumatic stress disorder (PTSD) and other physical issues affecting Mr Gbagbo’s health, the Chamber stated that “regardless of the finding that Mr Gbagbo is fit to take part in the proceedings against him, his health requires heightened attention as all three experts concluded at the hearing that Mr Gbagbo needed appropriate treatment”.⁹

5. In light of the above, on 2 November 2012, the Single Judge issued the “Order to the Registry to provide two reports”¹⁰ concerning, on the one hand, the possible avenues to improve Mr Gbagbo’s physical and psychological condition and, on the other hand, the offer made by [REDACTED] to host the suspect in the event he is released with conditions (the “potential host State”).

6. On 12 November 2012, the Single Judge issued the “Decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute” (the “Decision on the Review of Detention”), in which she decided that Mr Gbagbo shall remain in detention.¹¹ In line with the jurisprudence of the Appeals Chamber, she decided however to examine the possibility of granting conditional release for medical reasons. With regard to the

⁷ ICC-02/11-01/11-T-9-ENG ET; ICC-02/11-01/11-T-10-CONF-EXP-ENG ET.

⁸ ICC-02/11-01/11-286-Conf. A public redacted version has been filed simultaneously.

⁹ ICC-02/11-01/11-286-Red, para. 103.

¹⁰ ICC-02/11-01/11-287-Conf-Corr.

¹¹ ICC-02/11-01/11-291, p. 25.

possibility to release Mr Gbagbo with conditions, the Single Judge held that in order to exercise her discretion to consider conditional release, it was necessary to receive the additional information mentioned in the above paragraph.¹² Indeed, before considering the possibility to grant conditional release, it is imperative to identify a State which is able and willing to enforce the conditions that could be imposed by the Chamber under rule 119 of the Rules.¹³

7. On 23 November 2012, the Registry filed the “Conditions proposed by [REDACTED] for the conditional release of Mr. Gbagbo” (the “Report on the potential host State”), containing the additional information requested by the Single Judge in this regard.¹⁴ The Prosecutor submitted her observations on 10 December 2012, contending that the guarantees offered by potential host State are still insufficient to mitigate the risks under article 58(1)(b) of the Rome Statute (the “Statute”) as they were found in the Decision on Interim Release and that any condition that the Chamber could impose under rule 119 of the Rules would equally result insufficient to decrease these risks.¹⁵

8. Also on 23 November 2012, the Registry filed the “Submission of information by the Registry pursuant to the Single Judge’s Order of 2 November 2012”,¹⁶ in which the Medical Officer of the Detention Centre of the Court submitted that the report requested by the Single Judge in her order dated 2 November 2012 could not be submitted “because Mr Laurent Gbagbo

¹² ICC-02/11-01/11-291, para. 66.

¹³ 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 (OA 2) (“*Bemba Appeals Judgment (OA 2)*”), para. 105.

¹⁴ ICC-02/11-01/11-306-Conf.

¹⁵ ICC-02/11-01/11-317-Conf, paras 14-15.

¹⁶ ICC-02/11-01/11-305-Conf with confidential annexes.

objected that the Medical Officer disclose the modalities of the treatment that could be provided to him”.¹⁷

9. On 7 December 2012, the Defence filed the “*Demande aux fins d’organisation d’une Conférence de mise en état portant sur les garanties proposées par l’Etat d’accueil*”,¹⁸ in which the Defence requests the Single Judge to organize a hearing on 21 January 2013 with a view to discussing the proposal made by the potential host State with regard to the conditional release of Mr Gbagbo.¹⁹ The Prosecutor responded on 19 December 2012, arguing that a hearing is not necessary at this stage.²⁰

10. On 14 December 2012, the Registry filed the “Registry’s Report About the Available Avenues To Provide Adequate Treatment To Improve Mr Gbagbo’s Physical and Psychological Health At The Detention Centre or Elsewhere in The Netherlands” (the “Report on Medical Treatment”).²¹

11. On 19 December 2012, the Prosecutor submitted her observations on the Report on Medical Treatment, in which she contends that the necessity to treat the physical and psychological condition of Mr Gbagbo are compatible with his detention and, thus, do not warrant his release with conditions.²²

12. On 21 December 2012, the Defence filed its observations on the Report on Medical Treatment.²³ The Defence contends that the Registry failed to discharge the mandate given by the Single Judge to identify suitable treatment for the psychological and physical pathologies from which Mr Gbagbo suffers.²⁴ The Defence further contends that the Registry refuses to

¹⁷ ICC-02/11-01/11-305-Conf, p. 3, paras 1-6 and annex 1.

¹⁸ ICC-02/11-01/11-315-Conf.

¹⁹ ICC-02/11-01/11-315-Conf, p. 13.

²⁰ ICC-02/11-01/11-334-Conf, pp. 7-8.

²¹ ICC-02/11-01/11-324-Conf.

²² ICC-02/11-01/11-332-Conf, para. 5.

²³ ICC-02/11-01/11-341-Conf and its confidential *ex parte* annexes.

²⁴ ICC-02/11-01/11-341-Conf, para. 18

acknowledge the exceptional character of Mr Gbagbo's medical condition and to take measures accordingly.

13. On 17 January 2013, the Single Judge received the "*Transmission du Greffe d'un rapport médical en date du 11 janvier*" (the "Medical Officer's Update"),²⁵ which contains an update on the treatment that Mr Gbagbo is currently undergoing to address his physical issues.²⁶ In the transmission of the Medical Officer's Update, the Registry points out that such report "*se réfère seulement à des points mentionnés dans le rapport du Dr. Chuc qui a été porté à la connaissance des parties*".²⁷

II. Submissions of the parties

14. With regard to the possibility of granting conditional release to Mr Gbagbo pursuant to rule 119 of the Rules, the Prosecutor submitted that "there is no condition that can attenuate the risks arising under article 58(1)(b)(i) [which] can only be properly managed by keeping [...] [Mr] Gbagbo in detention here in The Hague [...]".²⁸ The Prosecutor further submitted that, if released, Mr Gbagbo's physical and mental conditions do not prevent him from fleeing, from obstructing the investigation or the proceedings or from furthering the commission of crimes within the Court's jurisdiction.²⁹ The Prosecutor contends that the health condition of Mr Gbagbo is compatible with his detention and that it does not warrant his release with conditions.³⁰ Moreover, the Prosecutor opines that some of the conditions

²⁵ ICC-02/11-01/11-356-Conf and ICC-02/11-01/11-356-Conf-Anx1.

²⁶ ICC-02/11-01/11-356-Conf-Anx1.

²⁷ ICC-02/11-01/11-356-Conf, p. 3.

²⁸ ICC-02/11-01/11-T-9-ENG ET, p. 11, lines 14-17.

²⁹ ICC-02/11-01/11-T-10-CONF-EXP-ENG ET, p. 2, line 23 to p. 3, lines 2-4.

³⁰ ICC-02/11-01/11-332-Conf, para. 5.

proposed and assurances given by the potential host State are unrealistic and impractical.³¹

15. The Defence submitted that, as an alternative to interim release, conditional release should be ordered pursuant to rule 119 of the Rules, in light of Mr Gbagbo's state of health.³² In this regard, the Defence submits that treating Mr Gbagbo in a detention environment or even adopting a mixed regime whereby he is treated outside the Detention Centre and returns to his cell afterwards will not achieve any result but, to the contrary, could worsen Mr Gbagbo's health.³³

16. Moreover, the Defence submitted a letter, in which the potential host State "re-confirm[s] [...] that [...] [it] is willing to provide the necessary guarantees to satisfy conditions restricting liberty that might be imposed by the [...] Court [...] by virtue of rule 119 of the Rules [...]".³⁴ The Defence argues that the conditions offered by that State, "seem to be reasonable and valid, in general terms".³⁵

17. The Defence also requests that a hearing be held with a view to discussing issues that may still be open after the meetings that took place between representatives of the potential host State and the Registry, following the request by the Single Judge to obtain further information about the offer made the State.³⁶

18. In response to the Defence request to hold a hearing, the Prosecutor submits that such hearing is unnecessary insofar as the parties and the State have had ample opportunity to address all issues that the Defence proposes to

³¹ ICC-02/11-01/11-T-10-CONF-EXP-ENG ET, p. 16, lines 6-14.

³² ICC-02/11-01/11-T-10-CONF-EXP-ENG ET, p. 12, line 10 to p. 14, line 5.

³³ ICC-02/11-01/11-341-Conf, paras 38-39.

³⁴ ICC-02/11-01/11-285-Conf-Anx10, p. 2.

³⁵ ICC-02/11-01/11-T-10-CONF-EXP-ENG ET, p. 12, line 14.

³⁶ ICC-02/11-01/11-315-Conf, para. 38.

discuss in the course of the hearing.³⁷ In addition, the Prosecutor contends that the Single Judge is in possession of sufficient information to take an informed decision on the conditional release of Mr Gbagbo.³⁸

III. The applicable law

19. The Single Judge notes articles 58(1), 60(2) and (3) of the Statute and rules 118 and 119 of the Rules.

20. 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.

21. Article 60(2) of the Statute provides as follows:

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 set forth in article 58, paragraph 1, are met, the person shall continue to be detained. If it is not so satisfied, the Pre-Trial Chamber shall release the person, with or without, conditions.

22. 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".

³⁷ ICC-02/11-01/11-334-Conf, para. 18.

³⁸ ICC-02/11-01/11-334-Conf, para. 18.

23. With regard to conditional release, the Appeals Chamber has stated that:

[T]he examination of conditions of release is discretionary and that conditional release is possible in two situations: (1) where a Chamber, although satisfied that the conditions under article 58 (1) (b) are not met, nevertheless considers it appropriate to release the person subject to conditions; and (2) where risks enumerated in article 58 (1) (b) exist, but the Chamber considers that these can be mitigated by the imposition of certain conditions of release.³⁹

24. Furthermore, as already indicated, in its recent Judgment in the present case, the Appeals Chamber clarified that “the medical condition of the detained person may be a reason for a Pre-Trial Chamber to grant interim release with conditions”, in the sense that “the ill health of a detained person may be a factor in the exercise of its discretion”.⁴⁰

IV. Analysis and conclusions of the Single Judge

25. At the outset, the Single Judge clarifies that the purpose of the present decision is not reviewing the necessity of Mr Gbagbo’s detention pursuant to article 60(3) of the Statute. Such review was conducted in the Decision on the Review of Detention issued on 12 November 2012 and that ruling will be subject to further review at least within the 120 days time-limit provided for in rule 118(2) of the Rules in conjunction with article 60(3) of the Statute. The present ruling focuses, instead, on the request made by the Defence to grant conditional release to Mr. Gbagbo based on his health condition, as discussed in paragraphs 62 to 66 of the Decision on the Review of Detention.

26. The Single Judge recalls that in the Decision on Interim Release, she took note of the offer made by potential host State but decided that the risks

³⁹ 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’”, 19 August 2011, ICC-01/05-01/08-1626-Red (OA 7) (“*Bemba Appeals Judgment (OA 7)*”), para. 55.

⁴⁰ *Gbagbo Appeals Judgment*, para. 87.

under article 58(1)(b) of the Statute could not be mitigated by any measure other than detention.⁴¹ In that circumstance, the Single Judge had stated that

[I]n light of the factual circumstances described above and which led to her conclusion that continued detention is warranted, there is no condition short of detention which would be sufficient to mitigate these risks. In particular, the Single Judge is attentive to the fact, also noted by the Prosecutor, that the mere possibility for Mr Gbagbo to communicate effectively with members of his network would enable him to abscond, interfere with the investigation or court proceedings, or commit crimes within the jurisdiction of the Court. The Single Judge is of the view that the existing risks can only effectively be managed in detention at the seat of the Court.⁴²

27. This finding was subsequently confirmed by the Appeals Chamber.⁴³

28. In her Decision on the Review of Detention, the Single Judge found that the risks enumerated in article 58(1)(b) of the Statute still exist and that they have been increased. Indeed, on the basis of the new information submitted by the Prosecutor, the Single Judge found that the existence of a “network of Mr Gbagbo's supporters, based in countries neighbouring Côte d'Ivoire, in particular in Ghana, has strengthened its level of military and political organization in the last months.”⁴⁴ Thus, the Single Judge concluded that “the development of such network has increased the risks under article 58(1)(b) of the Statute”.⁴⁵

29. Accordingly, the Single Judge confirmed that it was necessary to keep Mr Gbagbo in detention by stating that:

[T]here are no changed circumstances since the Decision on Interim Release that affect Mr Gbagbo's detention. The grounds justifying detention pursuant to article 58(1)(b)(i) to (iii) of the Statute still exist and the continued detention of Mr Gbagbo appears necessary.⁴⁶

⁴¹ ICC-02/11-01/11-180-Red, para. 74 and p. 27.

⁴² *Ibid.*, para. 74.

⁴³ *Gbagbo Appeals Judgment*, para. 80.

⁴⁴ *Ibid.*, para. 59.

⁴⁵ *Ibid.*, para. 59.

⁴⁶ ICC-02/11-01/11-291, para. 61.

30. In her decision on the Review of Detention, the Single Judge concluded that the medical condition of Mr Gbagbo did not have a bearing on the risks under article 58(l)(b) of the Statute.⁴⁷ However, in line with the jurisprudence of the Appeals Chamber, the Single Judge decided to examine further the possibility to grant conditional release to Mr Gbagbo on medical grounds, following the request of the Defence to that effect.⁴⁸

31. To this purpose, as recalled above, the Single Judge requested the Registry to provide the Report on the potential host State and the Report on Medical Treatment.⁴⁹

32. In the Report on the potential host State, the Single Judge notes that the authorities of that State provided clarification on [REDACTED].⁵⁰

33. In the Report on Medical Treatment, the Registry informs of some practical improvements in light of Mr Gbagbo's physical conditions.⁵¹ In relation to the PTSD, the Registry submits that its treatment is possible in several facilities in the Netherlands but that it would in principle occur "in the Detention Centre with an external psychiatrist visiting the patient as required".⁵² As for the requirement that treatment of PTSD be provided to Mr Gbagbo in French, the Registry presents two options, namely the use of an interpreter or language assistant or the use of a language telephone, which allows the patient and the doctor "to interact by using from one room a conference call telephone with an interpreter at the other end".⁵³ The Registry points out that "[t]he Detention Centre Medical Officer has however

⁴⁷ ICC-02/11-01/11-291, paras 51-53.

⁴⁸ *Gbagbo Appeals Judgment*, para. 87.

⁴⁹ ICC-02/11-01/11-306-Conf and ICC-02/11-01/11-324-Conf, respectively.

⁵⁰ [REDACTED].

⁵¹ *Ibid*, para. 3.

⁵² ICC-02/11-01/11-324-Conf, para. 2.

⁵³ ICC-02/11-01/11-324-Conf, para. E.

identified a specialised Psychologist in psycho trauma/PTSD who is part of a network of French speaking therapists in the region”.⁵⁴

34. The Single Judge finally notes the Medical Officer’s Update, which contains an update on the treatment that Mr Gbagbo is currently undergoing at the Detention Centre of the Court or in hospital to improve his physical condition.⁵⁵ The Single Judge underlines that the information contained in the Medical Officer’s Update is based on the medical findings made by Dr Chuc during the medical expertise ordered by the Chamber to determine the fitness of the suspect to take part in proceedings before the Court.⁵⁶

35. The Single Judge observes that according to the information submitted therein “[a]ll medical issues are dealt with by the medical service at the [...] Court’s Detention Centre or [REDACTED] since Mr Gbagbo’s admission at the ICC-Detention Centre”⁵⁷ and all physical pathologies from which Mr Gbagbo suffers are treated and under control.⁵⁸ The Medical Officer provides assurances that he will promptly inform the Registry of any deterioration of Mr Gbagbo’s health condition.⁵⁹

36. In light of the submissions of the Registry, the Single Judge is satisfied that the necessary treatment to improve the physical and psychological condition of Mr Gbagbo may be provided in the Netherlands, either at the Detention centre of the Court or elsewhere in the country, as may be appropriate. In this regard, the Single Judge considers that the Registry and the Defence must engage in consultations in order to determine, on the basis of the reports available, what additional treatment, if any, needs to be provided to improve the physical condition of Mr Gbagbo and to agree on the

⁵⁴ *Ibid.*

⁵⁵ ICC-02/11-01/11-356-Conf-Anx1.

⁵⁶ *Ibid.*, paras 1-2.

⁵⁷ *Ibid.*, para. 2.

⁵⁸ *Ibid.*, para. 2.a to e.

⁵⁹ *Ibid.*, para. 3.

selection of a specialist for the PTSD, all this subject to the consent of Mr Gbagbo.

37. On the basis of the foregoing, the Single Judge considers that there are no medical reasons that would justify the conditional release of Mr. Gbagbo, despite the existing risks under article 58(1)(b) of the Statute as confirmed in the Decision on the Review of Detention.

38. Accordingly, the Single Judge considers it is unnecessary to entertain any further the offer made by the potential host State, including by holding a hearing as requested by the Defence. This is, however, without prejudice to the possibility of considering this or another offer in the future, should the circumstances change.

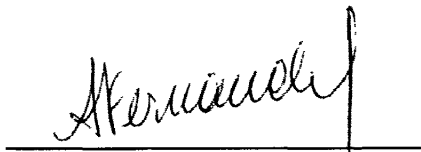
FOR THESE REASONS, THE SINGLE JUDGE

REJECTS the request for conditional release;

REJECTS the request to hold a hearing;

ORDERS 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 on the selection of a specialist for the PTSD, subject to Mr Gbagbo's consent;

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



Judge Silvia Fernández de Gurmendi
Single Judge

Dated this 18 January 2013

At The Hague, The Netherlands