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**TRIAL CHAMBER I**

**Before:** Judge Geoffrey Henderson, Presiding Judge  
Judge Olga Herrera Carbuccion  
Judge Cuno Tarfusser

**SITUATION IN CÔTE D'IVOIRE**

**IN THE CASE OF  
*THE PROSECUTOR v. LAURENT GBAGBO***

**Public Document**

**Observations of the Common Legal Representative of victims on the  
periodic review of Mr. Gbagbo's detention**

**Source:** Office of Public Counsel for Victims

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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## I. PROCEDURAL BACKGROUND

1. On 12 June 2014, Pre-Trial Chamber I, by majority, issued a decision confirming the charges against Mr. Gbagbo under article 61(7)(a) of the Rome Statute and committing him for trial (the “Confirmation of Charges Decision”)<sup>1</sup>.

2. On 17 September 2014, the Presidency assigned the case to Trial Chamber I (the “Chamber”).<sup>2</sup>

3. On 11 November 2014, the Chamber issued the Seventh Decision on the review of Mr. Gbagbo’s detention pursuant to article 60(3) of the Rome Statute (the “Seventh Decision on Review of Detention”).<sup>3</sup>

4. On 20 January 2015, the Chamber ordered i) the Defence to submit observations on the existence on any changed circumstances pursuant to article 60(3) of the Rome Statute by 5 February 2015; ii) the Prosecution and the Legal Representative of Victims to submit their observations by 12 February 2015; and iii) the Defence to submit its response, if any, by 19 February 2015.<sup>4</sup>

5. On 5 February 2015, the Defence filed its confidential “*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 huitième réexamen de la détention*”, together

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<sup>1</sup> See the “Decision on the confirmation of charges against Laurent Gbagbo” (Pre-Trial Chamber I), No. ICC-02/11-01/11-656-Red, 12 June 2014, p. 131 (the “Confirmation of Charges Decision”).

<sup>2</sup> See the “Decision re-constituting Trial Chamber I and referring to it the case of *The Prosecutor v. Laurent Gbagbo*” (Presidency), No. ICC-02/11-01/11-682, 17 September 2014.

<sup>3</sup> See the “Seventh decision on the review of Mr Laurent Gbagbo’s detention pursuant to article 60(3) of the Statute” (Trial Chamber I), No. ICC-02/11-01/11-718-Red, 11 November 2014 (the “Seventh Decision on Review of Detention”).

<sup>4</sup> See the “Order requesting the parties and participants’ observations under Article 60(3) of the Statute” (Trial Chamber I, Single Judge), No. ICC-02/11-01/11-750, 20 January 2015.

with a confidential redacted version and a public redacted version thereof (the “Defence’s Observations”).<sup>5</sup>

6. Accordingly, the Principal Counsel of the OPCV, acting as Common Legal Representative of the victims authorised to participate in the case (the “Common Legal Representative”),<sup>6</sup> submits the following observations.

## II. OBSERVATIONS

7. Pursuant to article 60(3) of the Rome Statute, the Chamber shall periodically review its ruling on release or detention of the person and, upon such review, it may modify its ruling *“if it is satisfied that changed circumstances so require”*. In this regard, pursuant to the jurisprudence of the Court, *“[t]he requirement of ‘changed circumstances’ imports either a change in some or all of the facts underlying a previous decision on detention, or a new fact satisfying a Chamber that a modification of its prior ruling is necessary”*.<sup>7</sup>

8. Moreover, the Appeals Chamber has ruled that when reaching a decision under article 60(3) of the Rome Statute, *“[t]he Chamber does not have to enter findings on*

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<sup>5</sup> See the “Public redacted version of *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 huitième réexamen de la détention*”, No. ICC-02/11-01/11-758-Red2, 6 February 2015 (dated 5 February 2015) (the “Defence’s Observations”).

<sup>6</sup> See the “Decision on Victims’ Participation and Victims’ Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-138, 4 June 2012, pp. 25-26; and the “Second decision on victims’ participation at the confirmation of charges hearing and in the related proceedings” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-384, 6 February 2013, pp. 22-23.

<sup>7</sup> See the “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’” (Appeals Chamber), No. ICC-01/05-01/08-631-Red OA2, 2 December 2009, paras. 1 and 60. See also the “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” (Pre-Trial Chamber III), No. ICC-01/05-01/08-743, 1 April 2010, par. 26.

*the circumstances already decided upon in the ruling on detention”,<sup>8</sup> and that “[i]t is first for the Pre-Trial Chamber to determine whether changed circumstances exist to warrant the disturbing of a previous ruling on detention, rather than addressing each factor underpinning detention in a de novo manner to determine whether any of these have changed”.<sup>9</sup> Consequently, there is no requirement to give reasoning or engage in a de novo review of detention where no changed circumstances are established.<sup>10</sup>*

9. The Common Legal Representative submits that Mr. Gbagbo must continue to be detained because there have been no changed circumstances in the sense of article 60(3) of the Rome Statute since the last decision of the Chamber in the matter.

10. In particular, the Common Legal Representative considers that the conclusions of the Chamber in its previous decision – and especially on the fact that there has been no change in the circumstances since November 2014 which would justify the Accused’s release – are still valid today.<sup>11</sup>

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<sup>8</sup> See the “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 of Procedure and Evidence’”, (Appeals Chamber), No. ICC-01/05-01/08-1019 OA4, 23 November 2010 (dated 19 November 2010), par. 53; and the “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’” (Appeals Chamber), No. ICC-02/11-01/11-548-Red OA4, 29 October 2013, par. 112.

<sup>9</sup> See the “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’”, *supra* note 8, paras. 1 and 53.

<sup>10</sup> *Idem*, par. 94.

<sup>11</sup> See the Seventh Decision on Review of Detention, *supra* note 3, paras. 43, 60 and 65. See also the “Sixth decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-668, 11 July 2014, para. 42; the “Fifth Decision on Review of Detention” (Pre-Trial Chamber I), No. ICC-02/11-01/11-633, para. 34; the “Fourth Decision on Review of Detention” (Pre-Trial Chamber I), No. ICC-02/11-01/11-558, paras. 43, 46 and 52; the “Third decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute” (Pre-Trial Chamber I), No. ICC-02/11-01/11-454, 11 July 2013, paras. 37, 44 and 50; the “Public redacted version of the Second decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-417-Red, 12 March 2013, paras. 30, 39 and 40-41; and the “Decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-291, 12 November 2012, para. 61.

11. In this regard, the Common Legal Representative wishes to recall the observations she made in her last submissions on review of detention regarding the impact of the issuance of the Confirmation of Charges Decision on the continued detention of Mr. Gbagbo.<sup>12</sup>

12. The Common Legal Representative further contends that Mr Gbagbo's detention continues to be necessary to ensure his appearance at trial and that he does not obstruct or endanger the investigation or the proceedings.

13. In conformity with the jurisprudence of the Court, *"considerations relating to the suspect's past and present political and professional position, international contacts and ties, financial situation and resources, and availability of the necessary network and financial resources are relevant factors to the determination of the existence of a risk of flight"*.<sup>13</sup> Contrary to the Defence's submissions,<sup>14</sup> there is public information indicating that the pro-Gbagbo network is still very active.

14. In this regard, the Common Legal Representative notes the recent statements of Ms. Agnès Monnet, the secretary general of Mr. Gbagbo's political party – the *"Front Populaire Ivoirien"* (the "FPI") – indicating that Mr. Affi N'Guessan, the president of the FPI, has a plan to liberate Mr. Gbagbo.<sup>15</sup>

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<sup>12</sup> See the "Observations of the Common Legal Representative of victims on the periodic review of Mr. Gbagbo's detention", No. ICC-02/11-01/11-695, 20 October 2014, paras. 12-13.

<sup>13</sup> See the "Decision on the 'Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo'" (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-180-Red, 16 July 2012, para. 57. See also the "Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled 'Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo'" (Appeals Chamber), No. ICC-01/04-01/06-824 OA7, 13 February 2007, para. 137; the "Judgment In the Appeal by Mathieu Ngudjolo Chui of 27 March 2008 against the Decision of Pre-Trial Chamber I on the Application of the Appellant for Interim Release" (Appeals Chamber), No. ICC-01/04-01/07-572 OA4, 10 June 2008, para. 22; and the "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'", *supra* note 7, para. 72.

<sup>14</sup> See the Defence's Observations, *supra* note 5, paras. 4-5.

<sup>15</sup> See "En tournée dans la région de LA Mé/ Agnès Monnet à Agou : « Affi a des idées et un plan pour la libération de Gbagbo »", *Notre Voie*, 20 January 2015, available at

15. In fact, Mr. N’Guessan has recently declared that Mr. Gbagbo’s liberation must be organised from outside the Court,<sup>16</sup> and has made reference to the dozens of people who have already joined the public administration after being released from prison or allowed to return to Côte d’Ivoire, and to the dozens of bank accounts that have been already unfrozen by the Ivorian authorities.<sup>17</sup> Contrary to the Defence’s arguments,<sup>18</sup> all this suggests that Mr. Gbagbo would have ample means to evade justice if he were to be released.

16. There is also public evidence of the ongoing existence of a group of persons capable of hindering the court proceedings not only by preventing Mr. Gbagbo’s appearance in court, but also by providing Mr. Gbagbo with the means to obstruct the investigation and the upcoming trial or to do so on his behalf. For instance, the FPI vice-president, Mr. Laurent Akoun, has started mobilising supporters favouring Mr. Gbagbo’s liberation and his candidacy in the upcoming Ivorian elections under the slogan “*Gbagbo ou rien*”, stating that Mr. Gbagbo “*a pris un billet aller-retour*” to The Hague.<sup>19</sup> Against this background, the Common Legal Representative notes that

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[http://www.notrevoie.com/archives/avant\\_juillet\\_2010/a\\_la\\_une.asp?id=60986&issue=4916](http://www.notrevoie.com/archives/avant_juillet_2010/a_la_une.asp?id=60986&issue=4916)

(“L’émissaire du FPI a invité l’ensemble des militants à faire confiance au président Affi et à le soutenir pour l’aider à obtenir la libération de Laurent Gbagbo et l’ensemble des prisonniers politiques injustement détenus depuis les événements du 11 avril 2011. « Faites confiance à Affi. Il a des idées et un plan pour obtenir la libération du président Gbagbo », a-t-elle plaide”).

<sup>16</sup> See “Affi N’Guessan : « L’histoire a déjà plébiscité Gbagbo, personne ne peut tourner sa page »”, *Notre Voie*, 15 January 2015, available at [http://www.notrevoie.com/archives/avant\\_juillet\\_2010/a\\_la\\_une.asp?id=60898&issue=4912](http://www.notrevoie.com/archives/avant_juillet_2010/a_la_une.asp?id=60898&issue=4912) (“[c]’est une absurdité de dire que le Président Gbagbo a besoin d’être Président du FPI pour organiser sa libération. C’est du dehors qu’on organise la libération d’un détenu. Gbagbo ne peut pas organiser lui-même sa propre libération. Ce n’est ni le titre, ni la notoriété qui libèrent; sinon il ne serait pas en détention à l’heure actuelle”). See also “Deux anciens ministres pro-Gbagbo de retour à Abidjan, après trois ans d’exil au Ghana”, @bidj@an.net, 24 November 2014, available at <http://news.abidjan.net/h/516597.html>.

<sup>17</sup> See “Affi N’Guessan : « L’histoire a déjà plébiscité Gbagbo, personne ne peut tourner sa page »”, *supra* note 16 (“Nous avons obtenu la réintégration dans leurs administrations respectives de tous ceux qui sont sortis de prison ou rentrés d’exil. Tout cela fait plus de deux cent personnes à ce jour. Une cinquantaine de comptes a été dégelée. Le processus de levée des sanctions est en marche”).

<sup>18</sup> See the Defence’s Observations, *supra* note 5, paras. 13-18, 24-27 and 50-52.

<sup>19</sup> See “« Nous sommes des Gbagbo ou rien »”, *Notre Voie*, 3 February 2015, available at <http://www.notrevoie.com/develop.asp?id=60050>.

an important number of former pro-Gbagbo combatants have returned from exile to Côte d'Ivoire and are currently without an occupation.<sup>20</sup>

17. In these circumstances, contrary to the Defence's arguments,<sup>21</sup> the Common Legal Representative contends that the upcoming adoption of Protocols on confidential information and contact with witnesses does not suffice on its own to counteract the abovementioned risks that the release of Mr. Gbagbo pursuant to article 60(3) of the Rome Statute may pose for the court proceedings.

18. On the contrary, the Common Legal Representative submits that the scenario depicted in the preceding paragraphs suffices to indicate that Mr. Gbagbo's detention remains necessary under article 58(1)(b) of the Rome Statute to ensure his appearance at trial and to prevent any obstruction to the court proceedings. In this regard, it must be noted that the applicable standard under this provision is that the detention of Mr. Gbagbo must "appear" to be necessary. The question therefore revolves around the possibility, not the inevitability, of a future occurrence.<sup>22</sup>

19. Furthermore, the victims with whom the Common Legal Representative regularly meets during her missions in Côte d'Ivoire insist on the need to maintain Mr. Gbagbo in detention. While indicating that the security situation in Abidjan is slowly improving, victims continue to express fears about their safety. In particular, the victims fear that an eventual release of Mr. Gbagbo will result in a disruption of the judicial proceedings and that said release will seriously jeopardise the effective exercise of their right to see a trial for the harms they suffered from almost four years ago.

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<sup>20</sup> See "Marc Bertrand Gnatoa (ex-combattant): « L'ADDR ne travaille pas »", *Notre Voie*, 3 February 2015, available at <http://www.notrevoie.com/develop.asp?id=60136> ("[i]l a estimé que l'Autorité du désarmement, démobilisation et réinsertion (ADDR) qui vient d'annoncer que sa mission va bientôt prendre fin et qu'il ne resterait plus que 30.000 personnes à prendre en compte, a complètement ignoré les ex-combattants pro-Gbagbo").

<sup>21</sup> See the Defence's Observations, *supra* note 5, paras. 70-74.

<sup>22</sup> See the Seventh Decision on Review of Detention, *supra* note 3, para. 64.

20. Finally, the Common Legal Representative notes that she has only been notified of the confidential redacted version of the Defence's Observations, which contains redactions in relation to the name of the host State for Mr. Gbagbo's eventual interim release and on the conditions of said release.<sup>23</sup> In this regard, the Common Legal Representatives informs the Chamber that she is already aware of the name of the host State<sup>24</sup> – unless the Defence has in the meantime contacted another country in this regard. Therefore, she also requests the Chamber to reclassify the Defence's Observations as confidential and to be notified accordingly.

21. The Common Legal Representative hereby reserves the right of the victims under rule 119(3) of the Rules of Procedure and Evidence to express their views on Mr. Gbagbo's request for interim release upon receiving said information.<sup>25</sup>

22. However, the Common Legal Representative already wishes to underline that victims are aware of the ongoing discussions on a possible release of Mr. Gbagbo on health grounds. In this regard, victims have expressed their concerns on the fact that Mr. Gbagbo could benefit from medical treatment while the majority of them – equally in need of said treatment – cannot afford it and do not receive any assistance for the harm they suffered.

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<sup>23</sup> See the "Redacted version of *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 huitième réexamen de la détention*", No. ICC-02/11-01/11-758-Conf-Red, 6 February 2015 (dated 5 February 2015), paras. 1 and 75-79.

<sup>24</sup> See the transcript of the status conference held on 4 November 2014, No. ICC-02/11-01/11-T-25-CONF-ENG ET, p. 91, lines 6-12 (private session); and the "Seventh decision on the review of Mr Laurent Gbagbo's detention pursuant to article 60(3) of the Statute" (Trial Chamber I), No. ICC-02/11-01/11-718-Conf, 11 November 2014, paras. 13 and 74.

<sup>25</sup> See the Seventh Decision on Review of Detention, *supra* note 3, para. 74; and the "Decision on the Legal Representative of Victims' access to certain confidential filings and to the case record" (Trial Chamber I, Single Judge), No. ICC-02/11-01/11-749, 19 January 2015, para. 15.

**FOR THE FOREGOING REASONS**, the Common Legal Representative respectfully requests the Trial Chamber to rule that Mr. Gbagbo must remain in detention.

A handwritten signature in black ink, reading "Paolina Massidda". The signature is written in a cursive style with a horizontal line underneath the name.

**Paolina Massidda**  
**Principal Counsel**

Dated this 11<sup>h</sup> day of February 2015

At The Hague, The Netherlands