



Original: **English**

No.: ICC-02/11-01/11
Date: 20 October 2014

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:

The Office of the Prosecutor

Ms. Fatou Bensouda
Mr. James Stewart
Mr. Eric MacDonald

Counsel for the Defence

Mr. Emmanuel Altit
Ms. Agathe Bahi Baroan
Ms. Natacha Fauveau Ivanovic

Legal Representatives of the Victims

Ms. Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms. Paolina Massidda
Ms. Ludovica Vetrucchio

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. PROCEDURAL BACKGROUND

1. On 4 June 2012, the Single Judge of Pre-Trial Chamber I (the “Single Judge”) issued the “Decision on Victims’ Participation and Victims’ Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings”,¹ whereby she authorised 139 victims to participate at the confirmation of charges hearing and in the related proceedings.² In addition, the Single Judge appointed a counsel from the Office of Public Counsel for Victims (the “OPCV” or the “Office”) as the common legal representative of all the victims admitted to participate in the proceedings (the “Common Legal Representative”).³

2. On 6 February 2013, the Single Judge issued the “Second decision on victims’ participation at the confirmation of charges hearing and in the related proceedings”,⁴ whereby she (i) authorised 60 victims to participate at the confirmation of charges hearing and in the related proceedings, (ii) confirmed the appointment of counsel from the Office as Common Legal Representative of all the victims admitted to participate in the proceedings related to the confirmation of charges, and (iii) reminded the modalities of participation of the Common Legal Representative at the confirmation of charges hearing and in the related proceedings.⁵

3. On 12 June 2014, Pre-Trial Chamber I, by majority, issued a decision (the “Confirmation of Charges Decision”)⁶ confirming the charges against Mr. Gbagbo under article 61(7)(a) of the Rome Statute and committed him for trial.

¹ 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.

² *Idem*, p. 25.

³ *Ibid.*, p. 26.

⁴ See 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.

⁵ *Idem*, pp. 22-23.

⁶ 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”).

4. On 11 July 2014, the Pre-Trial Chamber issued its sixth decision on Mr. Gbagbo's detention pursuant to article 60(3) of the Rome Statute (the "Sixth Decision on Review of Detention").⁷

5. On 17 September 2014, the Presidency assigned the case to Trial Chamber I.⁸

6. On 8 October 2014, the Trial Chamber instructed the Prosecution and the Legal Representative of victims to submit their observations in relation to the periodic review of Mr. Gbagbo's detention by 20 October 2014.⁹

7. Accordingly, the Common Legal Representative submits the following observations.

II. OBSERVATIONS

8. 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

⁷ See the "Sixth decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute" (Pre-Trial Chamber I), No. ICC-02/11-01/11-668, 11 July 2014.

⁸ 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.

⁹ See the "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'" (Trial Chamber I), No. ICC-02/11-01/11-693, 8 October 2014.

*decision on detention, or a new fact satisfying a Chamber that a modification of its prior ruling is necessary”.*¹⁰

9. Moreover, the Appeals Chamber has ruled that when reaching a decision under article 60(3) of the Statute, “[t]he Chamber does not have to enter findings on the circumstances already decided upon in the ruling on detention”,¹¹ 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”.¹² Consequently, there is no requirement to give reasoning or engage in a *de novo* review of detention where no changed circumstances are established.¹³

10. 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 relevant Chamber in the matter.

¹⁰ 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.

¹¹ 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.

¹² 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 11, paras. 1 and 53.

¹³ *Idem*, par. 94.

11. In particular, the Common Legal Representative considers that the conclusions of the Pre-Trial Chamber in its previous decisions – and especially on the fact that there has been no change in the circumstances since July 2014 which would justify the accused’s release – are still valid today.¹⁴

12. 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.¹⁵

13. In fact, said Decision entails the existence of substantial grounds to believe that Mr. Gbagbo committed the crimes charged upon him.¹⁶ In this regard, the Pre-Trial Chamber found in the Sixth Decision on Review of Detention that *“the need to ensure that Mr Gbagbo does not obstruct or endanger not only the investigation but in particular the court proceedings is even heightened in light of the impending trial after the confirmation of the charges against Mr Gbagbo”*.¹⁷

¹⁴ See 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, par. 61 (the “First Decision on Review of Detention”). See also 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, 40 and 41; 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 and 44 (the “Third Decision on Review of Detention”); the “Fourth Decision on Review of Detention” (Pre-Trial Chamber I), No. ICC-02/11-01/11-558, paras. 43 and 46; the “Fifth Decision on Review of Detention” (Pre-trial Chamber I), No. ICC-02/11-01/11-633, par. 34; and the “Sixth decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute”, *supra* note 7, par. 42.

¹⁵ See the “Observations of the Common Legal Representative of victims on the periodic review of Mr. Gbagbo’s detention”, No. ICC-02/11-01/11-662, 27 June 2014, paras. 16-18.

¹⁶ See the “Confirmation of Charges Decision”, *supra* note 6, par. 266.

¹⁷ See the “Sixth decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute”, *supra* note 7, par. 35.

14. Indeed, different Chambers of the Court have previously considered that the risk of non-appearance at trial increases as the proceedings advance,¹⁸ in particular after a finding that there is sufficient evidence to establish substantial grounds to believe that a person has committed crimes within the jurisdiction of the Court.¹⁹

15. Moreover, considering the charges confirmed against Mr. Gbagbo, the additional evidence disclosed by the Prosecution, and the fact that the Court has jurisdiction over the most serious crimes of concern to the international community as a whole, the Common Legal Representatives submits that the allegations at hand are of extreme gravity. Consequently, Mr. Gbagbo's release would not be justified in the current circumstances. In particular, the Common Legal Representative recalls that the Appeals Chamber has established that the gravity of the crimes for which a person is prosecuted is an important factor to decide on detention matters.²⁰

¹⁸ See *inter alia* the "Third Review of the Decision on the Conditions of Detention of Germain Katanga" (Trial Chamber II), No. ICC-01/04-01/07-1043-tENG, 6 April 2009, par. 13; and the "Decision on the review of detention of Mr Jean-Pierre Bemba Gombo pursuant to the Appeals Judgment of 19 November 2010" (Trial Chamber III), No. ICC-01/05-01/08-1088, 17 December 2010, par. 40. See also 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 10, par. 70; and the "Decision on the 'Defence Request for Interim Release'" (Pre-Trial Chamber I), No. ICC-01/04-01/10-163, 19 May 2011, par. 42.

¹⁹ See the "Review of the 'Decision on the Application for the Interim Release of Thomas Lubanga Dyilo'" (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/06-826, 14 February 2007, p. 6; the "Second Review of the 'Decision on the Application for Interim Release of Thomas Lubanga Dyilo'" (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/06-924, 11 June 2007, pp. 5-6; the "Second Review of the Decision on the Conditions of Detention of Germain Katanga" (Trial Chamber II), No. ICC-01/04-01/07-794-tENG, 17 December 2008, paras. 9-10; 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 10, par. 70.

²⁰ See *inter alia* the "Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled 'D cision sur la demande de mise en libert  provisoire de Thomas Lubanga Dyilo'" (Appeals Chamber), No. ICC-01/04-01/06-824 OA7, 13 February 2007, par. 136; 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 (dated 9 June 2008), par. 21; 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*

16. The Pre-Trial Chamber has also determined, in conformity with the jurisprudence of the Court,²¹ that “*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*”.²² This statement is still valid today. In this regard, the Common Legal Representative notes the recent statements of the national secretary of the JFPI – the youth wing of the FPI party – Mr Koua Justin, who called the pro-Gbagbo supporters to enhance the fight that will bring to the freedom of Laurent Gbagbo²³; as well as the declarations of Mr. Alcide Djédjé, national secretary of the FPI.²⁴

17. Indeed, the network of supporters of Mr. Gbagbo, and in particular the well-known organisation “*Solidarité pour Laurent Gbagbo*”, has increased its activity of

note 10, par. 70; and the “Judgment on the appeal of Mr Callixte Mbarushimana against the decision of Pre-Trial Chamber I of 19 May 2011 entitled ‘Decision on the ‘Defence Request for Interim Release’” (Appeals Chamber), No. ICC-01/04-01/10-283 OA, 14 July 2011, par. 21.

²¹ See 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’”, *supra* note 20, par. 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”, *supra* note 20, par. 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 10, par. 72.

²² 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 (dated 13 July 2012), par. 57.

²³ See “FPI – Koua Justin : ‘La récréation est terminée... je suis venu me porter garant pour vous conduire au combat’”, *Infoabidjan*, 4 August 2014. Available at <http://www.infodabidjan.net/fpi-koua-justin-la-recreation-est-termineeje-suis-venu-me-porter-garant-pour-vous-conduire-au-combat/>.

²⁴ See “Alcide Djédjé, SN FPI chargé des relations diplomatiques et de la coopération internationale: ‘Pour libérer Gbagbo, il faut aller à la conquête du pouvoir’”, *Ivoirbusiness*, 7 October 2014. Available at <http://ivoirebusiness.net/?q=articles/alcide-dj%C3%A9dj%C3%A9-sn-fpi-charg%C3%A9-des-relations-diplomatiques-et-de-la-coop%C3%A9ration-internationale>. See also “Alcide Djédjé ‘Pour libérer Gbagbo, il faut aller à la conquête du pouvoir’”, *Afrika53*, 10 October 2014. Available at http://www.afrika53.com/Alcide-Djedje-Pour-liberer-Gbagbo-il-faut-aller-a-la-conquete-du-pouvoir_a19735.html.

mobilisation and lobbying for his release since the Confirmation of Charges Decision.²⁵

18. Mr. Gbagbo's support network, as defined by the Pre-Trial Chamber in its decisions on review of detention,²⁶ seems also to have gained motivation after the decision committing Mr. Gbagbo to trial.²⁷ In this regard, the Appeals Chamber has already established that the support network on which Mr. Gbagbo can rely is undoubtedly active and that its mere existence is relevant to determine whether the accused's continued detention appears necessary.²⁸

19. The Pre-Trial Chamber equally found that *"it appears that the network of Mr. Gbagbo's supporters, based in countries neighbouring Côte d'Ivoire, in particular in Ghana, has strengthened its level of military and political organization in the last months"* and concluded that *"the development of such network has increased the risks under article 58(1)(b) of the Statute"*.²⁹ In this respect, the Single Judge explained that *"the issue is not whether Mr. Gbagbo can be held accountable for the activities of the support network but*

²⁵ See, *inter alia*, "Cote d'Ivoire: Président exécutif de "Solidarité pour Laurent Gbagbo" Maurice LOHOURIGNON – 'Gbagbo reviendra parmi nous, c'est certain'", *Notre Voie*, 9 September 2014. Available at <http://fr.allafrica.com/stories/201409121040.html>. See also "Président du Comité exécutif pour le Mouvement solidarité pour Laurent Gbagbo : Lettre ouverte à Son Excellence Ban Ki-Moon, Secrétaire Général des Nations Unies", September 2014. Available at <http://sentiersdafrique.com/node/175>; and "Abel Naki, le pro-Gbagbo de la "diaspora", de retour à Abidjan !", *Imatin*, 16 September 2014. Available at http://www.imatin.net/article/politique/abel-naki-le-pro-gbagbo-de-la-quot-diaspora-quot-de-retour-a-abidjan_22597_1410885877.html.

²⁶ See the "Fifth Decision on Review of Detention", *supra* note 14, paras. 25-26.

²⁷ See "Audience de Laurent Gbagbo / Le verdict attendu aujourd'hui à 16h", *Afriquinfos*, 12 June 2014. Available at <http://www.afriquinfos.com/articles/2014/6/12/audience-laurent-gbagbo-verdict-attendu-aujourd'hui-255368.asp>. See also "Décision de la CPI contre le président Gbagbo - Le mouvement 'Solidarité pour Laurent Gbagbo' dénonce un complot", *Notre Voie*, 17 June 2014; and "Pour la libération du président Laurent Gbagbo - Les patriotes ivoiriens en exil lancent un appel au peuple", *Notre Voie*, 22 June 2014.

²⁸ See 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'" (Appeals Chamber), No. ICC-02/11-01/11-278-Red OA, 26 October 2012, par. 59. See also 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 11, paras. 102-103.

²⁹ See the "First Decision on Review of Detention", *supra* note 14, par. 59.

whether there exists a risk that the latter could provide Mr. Gbagbo, in the event of release, with assistance in absconding, interfering with the investigation of Court's proceedings, or in the commission of further crimes, within the meaning of article 58(1)(b) of the Statute", always taking into account that "among the alleged members of the network, there are family members of Mr. Gbagbo as well as several close political associates".³⁰

20. These observations have been reiterated in whole or in part by the Pre-Trial Chamber in its last three decisions on the review of the accused's detention and are still relevant today.³¹

21. The Common Legal Representative also notes that before the issuance of the Confirmation of Charges Decision, additional incriminating evidence was disclosed to Mr. Gbagbo. This disclosure *de facto* increases Mr. Gbagbo's knowledge of the victims and witnesses involved in these proceedings.³² In this regard, it must be recalled that "[t]he Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses".³³

22. In this regard, the Common Legal Representative again recalls the observations she made in her previous submissions on review of detention relating to the criteria established by international human rights tribunals in order to determine the reasonable character of the provisional detention of an accused

³⁰ *Idem*, par. 58.

³¹ See the "Fourth Decision on Review of Detention", *supra* note 14, par. 46; the Fifth Decision on Review of Detention, *supra* note 14, paras. 25-26; and the "Sixth Decision on review of Detention", *supra* note 7, par. 30.

³² See, in this sense, the "Decision on the 'Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo'", *supra* note 22, paras. 65 and 66.

³³ See article 68(1) of the Rome Statute.

person.³⁴ According to this jurisprudence, judicial authorities must consider *inter alia* the conduct of the proceedings³⁵ and the behaviour of the person concerned.³⁶

23. Moreover, pursuant to international human rights jurisprudence,³⁷ the following grounds may be considered to be “relevant” and “sufficient” to justify the continuation of the detention: (i) the existence and persistence of serious indications of guilt;³⁸ (ii) the risk of pressure being brought to bear on witnesses and that of collusion between co-accused;³⁹ (iii) the danger of absconding;⁴⁰ (iv) the danger of reoffending;⁴¹ and (v) the demands of the investigation.⁴²

24. The Common Legal Representative submits that all or part of these grounds form the basis of the six decisions on review of detention issued, to date, by the relevant Chamber. Said grounds confirm the legitimate and reasonable character of Mr. Gbagbo’s detention not only from the point of view of the legal texts of the Court, but also from the point of view of universally recognized principles of human rights law.

³⁴ See the “Observations du Représentant légal commun des victimes relatives au réexamen périodique de la détention de M. Gbagbo”, No. ICC-02/11-01/11-444, 3 July 2013, paras. 35-36.

³⁵ See ECHR, *Barfuss v. Czech Republic*, application no. 35848/97, 31 July 2000, par. 72; *Toth v. Austria*, application no. 11894/85, 12 December 1991, par. 76.

³⁶ See ECHR, *W. v. Switzerland*, application no. 14379/88, 26 January 1993, par. 42; *Herczegfalvy v. Austria*, application no. 10533/83, 24 September 1992, par. 72.

³⁷ See ECHR, *Prencipe v. Monaco*, application no. 43376/06, 16 July 2009, par. 74; *Tum v. Turkey*, application no. 11855/04, 17 June 2008, par. 41; *Lelievre v. Belgium*, application no. 11287/03, 8 November 2007, par. 92.

³⁸ See ECHR, *Tum v. Turkey*, application no. 11855/04, 17 June 2008, par. 41; *Mansur v. Turkey*, application no. 16026/90, 8 June 1995, par. 56; *Tomasi v. France*, application no. 12850/87, 27 August 1992, par. 89.

³⁹ See ECHR, *Contrada v. Italy*, application no. 27143/95, 24 August 1998, par. 61; *Tomasi v. France*, application no. 12850/87, 27 August 1992, paras. 92-95.

⁴⁰ See ECHR, *Cetin Agdas v. Turkey*, application no. 77331/01, 19 September 2006, paras. 27-28; *Mansur v. Turkey*, application no. 16026/90, 8 June 1995, par. 55; *Tomasi v. France*, application no. 12850/87, 27 August 1992, par. 98; *Letellier v. France*, application no. 12369/86, 26 June 1991, par. 43.

⁴¹ See ECHR, *Paradysz v. France*, application no. 17020/05, 29 October 2009, par. 70; *Muller v. France*, application no. 21802/93, 17 March 1997, par. 44; *Clooth v. Belgium*, application no. 12718/87, 12 December 1991, par. 40.

⁴² See ECHR, *Lelievre v. Belgium*, application no. 11287/03, 8 November 2007, par. 92; *Bouchet v. France*, application no. 33591/96, 20 March 2001, par. 41.

25. Having regard to the elements described *supra*, the Common Legal Representative submits that Mr. Gbagbo's detention must be maintained because no changed circumstance has arisen since the last decision issued by the Pre-Trial Chamber on this matter.

26. The victims with whom the Common Legal Representative has met during her latest missions to Côte d'Ivoire insist on the need to maintain Mr. Gbagbo in detention. All said victims have expressed fears about their safety. In fact, they have indicated that during the last months "*a wave of releases of pro-Gbagbo prisoners*" – as they describe it – has been on-going, and that this "*wave*" has contributed to an increase of the violence in the neighbourhoods where they live and to a worsening of their security situation.⁴³ 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.

27. Finally, the Common Legal Representative 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 harms they suffered.

⁴³ News on the provisional release of Gbagbo supporters have been broadly reflected in the Ivorian media during the last months. See for example the following links: "Rencontre FPI-Gouvernement : Rendez-vous du donner et du recevoir", available at <http://infopresse.net/rencontre-fpi-gouvernement-rendez-vous-du-donner-et-du-recevoir/>; "Côte d'Ivoire : liberté provisoire pour 50 prisonniers de la crise post-électorale", available at <http://www.jeuneafrique.com/Article/DEPAFP20140601112432/laurent-gbagbo-electorale-crise-post-alassane-ouattaraejustice-ivoirienne-cote-d-ivoire-cote-d-ivoire-liberte-provisoire-pour-50-prisonniers-de-la-crise-post-electorale.html>; and "'150 détenus pro-Gbagbo seront libérés dans les heures qui suivent', annonce Affi N'guessan", available at http://www.rti.ci/infos_Politique_7119_%AB150-detenus-pro-gbagbo-seront-liberes-dans-les-heures-qui-suivent%BB-annonce-affi-neguessan.html.

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", with a horizontal line underneath.

**Paolina Massidda
Principal Counsel**

Dated this 20th day of October 2014

At The Hague, The Netherlands