



Original: **French**

No.: **ICC-02/11-01/11**

Date: **3 July 2013**

**PRE-TRIAL CHAMBER I**

**Before:** Judge Silvia Fernández de Gurmendi, President  
Judge Hans-Peter Kaul  
Judge Christine Van den Wyngaert

**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:

**Office of the Prosecutor**

Ms Fatou Bensouda  
Mr Éric MacDonald

**Counsel for the Defence**

Mr Emmanuel Altit  
Ms Agathe Bahi Baroan  
Ms Natacha Fauveau Ivanovic

**Legal Representatives of Victims**

Ms Paolina Massidda  
Ms Sarah Pellet  
Mr Dmytro Suprun

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparations**

**Office of Public Counsel for Victims**

Ms Paolina Massidda

**Office of Public Counsel for the  
Defence**

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

---

**Registrar and Deputy Registrar**

Mr Herman von Hebel and Mr Didier  
Preira

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. BACKGROUND

1. On 23 November 2011, Pre-Trial Chamber III issued a warrant of arrest against Mr Laurent Gbagbo,<sup>1</sup> who was transferred to the Court on 30 November 2011. At Mr Gbagbo's initial appearance on 5 December 2011, the Chamber scheduled the confirmation of charges hearing to begin on 18 June 2012.<sup>2</sup>

2. On 4 June 2012, the Single Judge of Pre-Trial Chamber I ("Single Judge") issued her *Decision on Victims' Participation and Victims' Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings*,<sup>3</sup> authorising 139 victims to participate in the confirmation hearing and related proceedings.<sup>4</sup> Furthermore, the Single Judge appointed counsel from the Office of Public Counsel for Victims ("OPCV") as a common legal representative ("the Legal Representative") for all the victims authorised to participate in the proceedings.<sup>5</sup>

3. On 12 June 2012, the Defence filed the public redacted version of Application ICC-02/11-01/11-140-Conf seeking postponement of the confirmation hearing scheduled on 18 June 2012,<sup>6</sup> citing as grounds for its request the need to exercise the Accused's right to attend the hearing and to have sufficient time and means for the preparation his defence.<sup>7</sup>

---

<sup>1</sup> See the *Warrant of Arrest for Laurent Gbagbo* (Pre-Trial Chamber III), ICC-02/11-01/11-1, 23 November 2011.

<sup>2</sup> See the transcript of the hearing of 5 December 2011, ICC-02/11-01/11-T-1-FRA-ET WT, p. 9, lines 14-16.

<sup>3</sup> See *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), ICC-02/11-01/11-138, 4 June 2012.

<sup>4</sup> *Idem*, p. 25.

<sup>5</sup> *Ibid.*, p. 26.

<sup>6</sup> See "Version publique expurgée de la requête de la Défense en report de l'audience de confirmation des charges prévue le 18 juin 2012 (ICC-02/11-01/11-140-Conf)", ICC-02/11-01/11-140-Red2, 12 June 2012.

<sup>7</sup> *Idem*, para. 37.

4. On 12 June 2012, the Single Judge partially granted the Defence application and decided to postpone the commencement of the confirmation hearing to 13 August 2012.<sup>8</sup>

5. In July 2012, the Defence filed a confidential application in which it claimed that Mr Gbagbo was unfit to participate in the proceedings against him and requested the further postponement of the confirmation hearing.<sup>9</sup>

6. On 3 August 2012, the Single Judge decided to postpone the confirmation hearing until the matter of Mr Gbagbo's fitness to participate in the proceedings against him was resolved.<sup>10</sup>

7. On 2 November 2012, the Single Judge issued a public version of the *Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court*,<sup>11</sup> in which she noted that Mr Gbagbo "is able to meaningfully exercise his fair trial rights" and "is fit to take part in the proceedings against him".<sup>12</sup> Furthermore, the Single Judge announced that the date of the confirmation hearing would be set shortly in a separate decision.<sup>13</sup>

---

<sup>8</sup> See *Decision on the 'Requête de la Défense en report de l'audience de confirmation des charges prévue le 18 juin 2012'* (Pre-Trial Chamber I, Single Judge), ICC-02/11-01/11-152-Red, 12 June 2012, p. 12.

<sup>9</sup> The Legal Representative notes that this application was not notified to her.

<sup>10</sup> See *Decision on issues related to the proceedings under rule 135 of the Rules of Procedure and Evidence and postponing the date of the confirmation of charges hearing* (Pre-Trial Chamber I, Single Judge), ICC-02/11-01/11-201, 3 August 2012 (dated 2 August 2012), para. 22.

<sup>11</sup> See *Public redacted version – Decision on the OPCV's "Request in relation to the 'Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court'"* (Pre-Trial Chamber I, Single Judge), ICC-02/11-01/11-286-Red, 2 November 2012.

<sup>12</sup> *Idem*, para. 101.

<sup>13</sup> *Ibid.*

8. On 12 November 2012, the Single Judge issued a *Decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute*<sup>14</sup> ("First Decision on Release"), in which she ruled that Mr Gbagbo should remain in detention.

9. On 17 December 2012, the Single Judge issued a *Decision on the date of the confirmation of charges hearing and proceedings leading thereto*<sup>15</sup> scheduling the confirmation hearing to begin on 19 February 2013.<sup>16</sup>

10. On 14 January 2013, Pre-Trial Chamber I ("the Pre-Trial Chamber") dismissed the Defence application for leave to appeal the *Decision on the date of the confirmation of charges hearing and proceedings leading thereto*.<sup>17</sup>

11. On 6 February 2013, the Single Judge issued a *Second decision on victims' participation at the confirmation of charges hearing and in the related proceedings*,<sup>18</sup> in which she (i) authorised 60 victims to participate in the confirmation hearing and related proceedings, (ii) confirmed the OPCV's appointment as Legal Representative of all the victims admitted to participate in the confirmation proceedings and (iii) restated the arrangements for the Legal Representative's participation in the confirmation hearing.<sup>19</sup>

---

<sup>14</sup> See *Decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute* (Pre-Trial Chamber I, Single Judge), ICC-02/11-01/11-291, 12 November 2012 ("First Decision on Release").

<sup>15</sup> See *Decision on the date of the confirmation of charges hearing and proceedings leading thereto* (Pre-Trial Chamber I, Single Judge), ICC-02/11-01/11-325, 17 December 2012 (dated 14 December 2012).

<sup>16</sup> *Idem*, p. 14.

<sup>17</sup> See *Decision on the "Demande d'autorisation d'interjeter appel de la décision de la Chambre Préliminaire du 14 décembre 2012 'on the date of the confirmation of charges hearing and proceedings leading thereto' (ICC-02/11-01/11-325)"* (Pre-Trial Chamber I), ICC-02/11-01/11-350, 14 January 2013.

<sup>18</sup> See *Second decision on victims' participation at the confirmation of charges hearing and in the related proceedings* (Pre-Trial Chamber I, Single Judge), ICC-02/11-01/11-384, 6 February 2013.

<sup>19</sup> *Idem*, pp. 22 and 23.

12. On 7 February 2013, the Defence filed an application entitled “*Requête [...] en report de l’audience de confirmation des charges prévue pour le 19 février 2013*”,<sup>20</sup> which was denied by the Chamber on 14 February 2013.<sup>21</sup>

13. The confirmation hearing was held from 19 to 28 February 2013. On 20 February 2013, during the hearing, the Presiding Judge requested the parties and participants to file written observations by 5 March 2013 on the review of the Chamber’s decision to continue Mr Gbagbo’s detention.<sup>22</sup>

14. On 5 March 2013, the Legal Representative,<sup>23</sup> the Prosecutor<sup>24</sup> and the Defence<sup>25</sup> filed said written observations.

15. On 12 March 2013, the Single Judge issued her *Second decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute*, in which she ruled that Mr Gbagbo’s detention should continue (“Second Decision on Release”).<sup>26</sup>

16. On 3 June 2013, a majority of Pre-Trial Chamber issued the *Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute*<sup>27</sup> (“Decision Adjourning the Confirmation Hearing”), adjourning the hearing

---

<sup>20</sup> See “*Requête de la Défense en report de l’audience de confirmation des charges prévue le 19 février 2013*”, ICC-02/11-01/11-390, 7 February 2013 (“Defence Application”).

<sup>21</sup> See *Decision on the “Requête de la Défense en report de l’audience de confirmation des charges prévue le 19 février 2013”* (Pre-Trial Chamber I), ICC-02/11-01/11-403, 14 February 2013.

<sup>22</sup> See transcript of the hearing of 20 February 2013, ICC-02/11-01/11-T-15-CONF-FRA ET, 20 February 2013, p. 2, lines 15-24.

<sup>23</sup> See “*Observations du Représentant légal commun des victimes relatives au réexamen périodique de la détention de M. Gbagbo*”, ICC-02/11-01/11-413, 5 March 2013.

<sup>24</sup> See “*Observations de l’Accusation sur la détention provisoire de Laurent Gbagbo avant le procès*”, ICC-02/11-01/11-414-Red, 11 March 2013.

<sup>25</sup> See ICC-02/11-01/11-415-Conf, 5 March 2013. The Legal Representative has not had access to these observations, of which the Defence has not submitted a public redacted version.

<sup>26</sup> See *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), ICC-02/01-11/417-Red, 12 March 2013 (“Second Decision on Release”).

<sup>27</sup> See *Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute* (Pre-Trial Chamber I), ICC-02/11-01/11-432, 3 June 2013.

and requesting the Prosecutor “to consider providing further evidence or conducting further investigation with respect to all charges”.<sup>28</sup>

17. On 10 June 2013, the Prosecutor sought leave to appeal against the Decision Adjourning the Confirmation Hearing.<sup>29</sup> The Legal Representative responded on 17 June 2013.<sup>30</sup>

18. On 12 June 2013, the Single Judge requested the parties and participants to file by 28 June 2013 observations on the review of the Chamber’s decision to continue Mr Gbagbo’s detention.<sup>31</sup>

19. On 24 June 2013, the Defence filed its “*Réponse [...] à la demande présentée par le Procureur d’autorisation d’interjeter appel de la décision portant ajournement de l’audience de confirmation des charges conformément à l’article 61-7-c-i du Statut (ICC-02/11-01/11-435) et observations de la défense à la « réponse » du Représentant légal des victimes à la demande d’interjeter appel du Procureur (ICC-02/11-01/11-437)*”.<sup>32</sup>

20. On 25 June 2013, the Defence sought leave to appeal the Decision Adjourning the Confirmation Hearing.<sup>33</sup>

---

<sup>28</sup> *Idem*, p. 22.

<sup>29</sup> See “Prosecution’s application for leave to appeal the ‘Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute’”, ICC-02/11-01/11-435, 10 June 2013.

<sup>30</sup> See “Response of the Common Legal Representative to the ‘Prosecution’s application for leave to appeal the “Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute”’, ICC-02/11-01/11-437, 17 June 2013.

<sup>31</sup> See e-mail from the Chamber, “Gbagbo: review of detention pursuant to rule 118(2)” dated 12 June 2013.

<sup>32</sup> See “*Réponse de la défense à la demande présentée par le Procureur d’autorisation d’interjeter appel de la décision portant ajournement de l’audience de confirmation des charges conformément à l’article 61-7-c-i du Statut (ICC-02/11-01/11-435) et observations de la défense à la « réponse » du Représentant légal des victimes à la demande d’interjeter appel du Procureur (ICC-02/11-01/11-437)*”, ICC-02/11-01/11-438, 24 June 2013.

<sup>33</sup> See “*Demande d’autorisation d’interjeter appel de la « décision d’ajournement de l’audience de confirmation des charges conformément à l’article 67-7-c-i du Statut » (ICC-02/11-01/11-432-tFRA) du 3 juin 2013*”, ICC-02/11-01/11-439, 25 June 2013.

21. On 26 June 2013, the Defence sent an e-mail to the Chamber seeking leave to file its observations on the Chamber's detention review on 3 July 2013, arguing that it lacked "[TRANSLATION] materially the time to draft and submit a comprehensive filing regarding the detention review by 28 June 2013".<sup>34</sup> The Prosecution<sup>35</sup> and the Legal Representative<sup>36</sup> opposed this extension of time and, in the alternative, sought from the Chamber the same time limit to file their own observations.

22. On 27 June 2013, the Chamber granted the parties and participants leave to file their observations by 3 July 2013.<sup>37</sup>

23. On 28 June 2013, the Defence filed an application entitled "*Requête aux fins d'augmentation du nombre de pages autorisé que comprendront les soumissions déposées par la défense du Président Gbagbo en vertu de l'article 60 (3) de la Règle 118 (2)*".<sup>38</sup> On the same day, the Single Judge partially granted the Defence application, authorising it to file a 30-page document.<sup>39</sup>

24. Accordingly, the Legal Representative submits the following observations.

---

<sup>34</sup> See email from the Defence, "RE: Gbagbo: review of detention pursuant to rule 118(2)" dated 26 June 2013.

<sup>35</sup> See e-mail from Mr Macdonald, "RE: Gbagbo: review of detention pursuant to rule 118(2)" dated 26 June 2013.

<sup>36</sup> See e-mail from Ms Paolina Massidda, "RE: Gbagbo: review of detention pursuant to rule 118(2)" dated 27 June 2013.

<sup>37</sup> See e-mail from the Chamber, "RE: Gbagbo: review of detention pursuant to rule 118(2)" dated 27 June 2013.

<sup>38</sup> See "*Requête aux fins d'augmentation du nombre de pages autorisé que comprendront les soumissions déposées par la défense du Président Gbagbo en vertu de l'article 60 (3) de la Règle 118 (2) (sic)*", ICC-02/11-01/11-441, 28 June 2013.

<sup>39</sup> See e-mail from the Chamber, "RE: Gbagbo: review of detention pursuant to rule 118(2)" dated 28 June 2013.

## II. OBSERVATIONS OF THE LEGAL REPRESENTATIVE

25. Article 60(3) of the Rome Statute empowers the Pre-Trial Chamber to review periodically its ruling on the Accused's release or detention and, upon such review, to modify it "if it is satisfied that changed circumstances so require". At the same time, article 60(2) of the Statute prescribes the continued detention of the person "[i]f the Pre-Trial Chamber is satisfied that the conditions set forth in article 58, paragraph 1, are met". In this regard, the established jurisprudence of the Court holds that: "[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>40</sup>

26. The Legal Representative submits that Mr Gbagbo must remain in detention, as the conditions of article 58(1) of the Rome Statute continue to be met and there has been no change within the meaning of article 60(3) of the Statute since the most recent ruling of the Chamber on the matter. Incidentally, in this connection the Legal Representative queries the recent assertion by the Lead Counsel for the Defence that "[TRANSLATION] [...] the charges have not been confirmed [...] [s]o there is nothing to justify [Mr Gbagbo's] continued detention".<sup>41</sup> In its application for leave to appeal the Decision Adjourning the Confirmation Hearing, the Defence states that "[TRANSLATION] the sole requirement is to apply the provisions of article 61(7) [of the

---

<sup>40</sup> See *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), ICC-01/05-01/08-631-Red OA2, 2 December 2009, paras. 1 and 60. See also *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* (Trial Chamber III), ICC-01/05-01/08-743, 1 April 2010, para. 26.

<sup>41</sup> See *Jeune Afrique*, "Côte d'Ivoire – Me Altit : 'Rien ne justifie la détention de Laurent Gbagbo'" [Côte d'Ivoire – Mr Altit: "Nothing justifies Laurent Gbagbo's detention"], 11 June 2013. This article is available at the following address:

<http://www.jeuneafrique.com/Article/ARTJAWEB20130611074453/>. See also *infra*, para. 34. See also "Requête aux fins d'augmentation du nombre de pages autorisé que comprendront les soumissions déposées par la défense du Président Gbagbo en vertu de l'article 60 (3) de la Règle 118 (2) (sic)", *supra* footnote 38, paras. 6 and 12.

Rome Statute] word for word”, explaining that recourse to article 61(7)(c)(i) of the Rome Statute would violate the Defence’s rights, and that the only available options were therefore to confirm or decline to confirm the charges. The Legal Representative gave a detailed response to this application for leave to appeal in accordance with its regulation 24(2) right.<sup>42</sup> In this respect, it adverts to its 1 July 2013 response.<sup>43</sup>

27. In the First Decision on Release, the Single Judge found, in particular, that “there are no changed circumstances since the Decision on Interim Release that affect Mr Gbagbo’s detention. The grounds justifying detention pursuant to article 58(l)(b)(i) to (iii) of the Statute still exist and the continued detention of Mr Gbagbo appears necessary”.<sup>44</sup> Likewise, in the Second Decision on Release, the

---

<sup>42</sup> See “Réponse de la défense à la demande présentée par le Procureur d’autorisation d’interjeter appel de la décision portant ajournement de l’audience de confirmation des charges conformément à l’article 61-7-c-i du Statut (ICC-02/11-01/11-435) et observations de la défense à la « réponse » du Représentant légal des victimes à la demande d’interjeter appel du Procureur (ICC-02/11-01/11-437)”, *supra* footnote 33, paras. 14-43, in which the Defence seeks to challenge application of this regulation. This is sadly a recurrent theme in the Defence’s reasoning. See also, *inter alia*, “Réponse de la Défense du Président Gbagbo aux demandes du Représentant Légal des victimes relatives au calendrier de l’audience de confirmation des charges”, ICC-02/11-01/11-151, 12 June 2012; “Réponse de la Défense à la « Request for leave to submit observations and Request to access the Expert Reports » déposée le 7 août 2012 par le représentant légal commun des victimes (ICC-02/11-01/11-203)”, ICC-02/11-01/11-209, 13 August 2012; “Demande d’autorisation d’interjeter appel de la décision de la Juge unique portant sur la question de la participation des victimes à la procédure relative à l’état de santé du Président Gbagbo et à son aptitude à être jugé (ICC-02/11-01/11-211)”, ICC-02/11-01/11-222, 21 August 2012; “Requête de la Défense aux fins de rejet des « Views and concerns of victims in relation to the “Order scheduling a hearing in relation to Mr. Gbagbo’s fitness to take part in the proceedings against him” and on the Defence’s request for postponement » (ICC-02/11-01/11-245; ICC-02/11-01/11-246)”, ICC-02/11-01/11-248, 18 September 2012; “Response of President Gbagbo’s Defence to the Observations of the Republic of Côte d’Ivoire (ICC-02/11-01/11-258 OA 2) and of the Office of Public Counsel for Victims (ICC-02/11-01/11-259 OA 2)”, ICC-02/11-01/11-271-tENG, 19 October 2012; “Réponse de la défense à la requête de l’OPCV « to receive information and access documents for the effective participation of victims at the confirmation of charges hearing » (ICC-02/11-01/11-388)”, ICC-02/11-01/11-395, 12 February 2013; and “Version publique expurgée des soumissions écrites de la défense portant sur un certain nombre de questions discutées lors de l’audience de confirmation des charges”, ICC-02/11-01/11-429-Red, 3 April 2013.

<sup>43</sup> See “Réponse du Représentant légal commun des victimes à la « Demande d’autorisation d’interjeter appel de la « Décision d’ajournement de l’audience de confirmation des charges conformément à l’article 67-7-c-i du Statut » (ICC-02/11-01/11-432-tFRA) du 3 juin 2013 » déposée par la Défense le 25 juin 2013”, ICC-02/11-01/11-442, 1 July 2013.

<sup>44</sup> See First Decision on Release, *supra* footnote 14, para. 61.

Single Judge found that none of the information presented by the Defence indicated that there were any changed circumstances since November 2012.<sup>45</sup>

28. This finding remains valid, especially since the only change which has occurred since the last decision on the Accused's continued detention is the confirmation of charges hearing, at which the Prosecution presented evidence to demonstrate that there are substantial grounds to believe that Mr Gbagbo committed the crimes with which he is charged. Furthermore, additional evidence has been disclosed to the Defence substantiating the Suspect's criminal liability.<sup>46</sup> In this respect, various Chambers of the Court have found that the risk of a detained person's abscondment is heightened by the progress of the proceedings.<sup>47</sup> Given the charges against Mr Gbagbo, the incriminating material disclosed by the Prosecution, and the fact that the Court's jurisdiction is being exercised over the most serious crimes of concern to the international community as a whole, the alleged facts are indeed extremely serious, such that Mr Gbagbo's interim release can in no circumstances be justified. In this respect, the Legal Representative recalls that the Appeals Chamber found that the seriousness of the crimes for which the accused is being prosecuted is a significant factor in continuing his or her detention.<sup>48</sup>

---

<sup>45</sup> See Second Decision on Release, *supra* footnote 26, paras. 30, 39, 40 and 41.

<sup>46</sup> See *Decision on the date of the confirmation of charges hearing and proceedings leading thereto*, *supra* footnote 15, p. 14.

<sup>47</sup> See, *inter alia*, *Decision on the review of detention of Mr Jean-Pierre Bemba Gombo pursuant to the Appeals Judgment of 19 November 2010*, ICC-01/05-01/08-1088, 17 December 2010, para. 40. See also *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"*, ICC-01/05-01/08-631-Red OA2, 2 December 2009, para. 70, and *Decision on the "Defence Request for Interim Release"* (Pre-Trial Chamber I), ICC-01/04-01/10-163, 19 May 2011, para. 42.

<sup>48</sup> See, *inter alia*, *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), ICC-01/04-01/06-824, 13 February 2007, para. 136; *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'"*, ICC-01/04-01/10-283, 14 July 2011, para. 21; *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

29. Moreover, the Single Judge further found, in accordance with previous decisions of the Court,<sup>49</sup> 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”.<sup>50</sup> This statement remains valid. The different manifestations of support for Mr Gbagbo in the Netherlands and abroad, including in Côte d’Ivoire, demonstrate the size and extent of the international network of supporters able to assist the Suspect and, if need be, prepared to do so. In this respect, the Legal Representative notes that these manifestations of support have not diminished, quite the opposite, following the confirmation of charges hearing. Furthermore, the Appeals Chamber has already found that the network on which Mr Gbagbo can rely is indisputably active and that its mere existence is relevant in the instant case,<sup>51</sup> and that this network appears to have gained in strength and energy since the Decision Adjourning the Confirmation Hearing was issued.

30. Furthermore, the Single Judge has already 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

---

Chamber), ICC-01/05-01/08-631-Red, para. 70; and *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), ICC-01/04-01/07-572, 9 June 2008, para. 21.

<sup>49</sup> See *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), ICC-01/04-01/06-824 OA7, 13 February 2007, para. 137; *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), ICC-01/05-01/08-631-Red OA2, 2 December 2009, para. 72; and *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), ICC-01/04-01/07-572 OA4, 9 June 2008, para. 22.

<sup>50</sup> See *Decision on the “Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo”* (Pre-Trial Chamber I, Single Judge), ICC-02/11-01/11-180-Red, 16 July 2012 (dated 13 July 2012), para. 57.

<sup>51</sup> 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’”* (Appeals Chamber), ICC-02/11-01/11-278-Red OA, 26 October 2012, para. 59.

organization in the last months” and found that “the development of such network has increased the risks under article 58(l)(b) of the Statute”.<sup>52</sup> The Single Judge stated in this respect that “the issue is not whether Mr. Gbagbo can be held accountable for the activities of the support network but 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(l)(b) of the Statute”, noting that “among the alleged members of the network, there are family members of Mr. Gbagbo as well as several close political associates”.<sup>53</sup>

31. These findings remain valid and are corroborated by the recent report of the United Nations Security Council Group of Experts on Côte d’Ivoire, which states,

Destabilizing groups, whether Liberian mercenaries closely linked to Ivorian pro-Gbagbo militiamen or supporters of Mr. Gbagbo still operating from Ghana with significant networks (operational, ideological and ethnic) inside Ivorian security forces, remain a security threat. As noted in the Group’s previous reports, when properly financially supported, these groups can have a debilitating effect on a country such as Côte d’Ivoire that is still dealing with the effects of a decade of political and military crisis. These groups have the capacity to conduct military operations with weapons and related materiel obtained in violation of the sanctions regime and to recruit combatants, inside and outside Côte d’Ivoire.<sup>54</sup>

32. Furthermore, in respect of the financial resources available to Mr Gbagbo, in her First Decision on Release, the Single Judge found,

In relation to bank accounts which may have not been frozen, despite the Prosecutor’s request to freeze the bank accounts belonging to Mr. Gbagbo and his wife, there is no information that these accounts have effectively been frozen and the Defence submissions in this respect are speculative. Moreover, the Single Judge considers relevant the new information provided by the Prosecutor, which goes to establish the existence and activities of a network of Mr Gbagbo’s supporters who appear to be raising funds in Europe in his support. The relevant issue to be considered is not whether there are financial resources which belong to the suspect or to his close family circle, but whether he could have access to such resources, regardless of their ownership. Similarly, contrary to the argument of the Defence,

<sup>52</sup> See the First Decision on Release, *supra* footnote 14, para. 59.

<sup>53</sup> *Idem*, para. 58.

<sup>54</sup> See *Final report of the Group of Experts on Côte d’Ivoire pursuant to paragraph 16 of Security Council resolution 2045 (2012)*, Doc. S/2013/228, 17 April 2013, para. 19. This report is available on the United Nations website at the following address:

[http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2013/228&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/228&Lang=E).

what is at stake is not Mr. Gbagbo's accountability for activities carried out by his supporters but the availability of assistance that supporters could provide for the purpose of Mr. Gbagbo's flight.<sup>55</sup>

33. What is more, the Group of Experts on Côte d'Ivoire reports the discovery of new accounts belonging to Mr Gbagbo at the *Société Générale de Banques en Côte d'Ivoire*, noting one showing significant movements of capital which "suggest that funds continue to be moved into Côte d'Ivoire, the asset freeze notwithstanding".<sup>56</sup>

34. Further, in light of the Decision Adjourning the Confirmation Hearing, the Legal Representative recalls that, contrary to what the Defence appears to say in a public interview given to *Jeune Afrique*<sup>57</sup> and in its "*Requête aux fins d'augmentation du nombre de pages [...]*",<sup>58</sup> this decision does not dismiss the charges but is merely an adjournment. Consequently, following completion of the schedule set by the Pre-Trial Chamber, the charges could be confirmed and Mr Gbagbo could be committed for trial before a trial chamber. What is more, in respect of the said schedule, since the Prosecution has to continue its investigations and disclose a considerable quantity of documents to the Defence, such disclosure will, *de facto*, increase Mr Gbagbo's knowledge of witnesses and victims.<sup>59</sup> The Legal Representative recalls in this respect that the Court must "take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses."<sup>60</sup> In this regard, article 57(3)(c) of the Rome Statute establishes that a pre-trial chamber may "[w]here necessary, provide for the protection and privacy of victims and witnesses". At any event, the Legal Representative recalls that for now,

---

<sup>55</sup> *Idem*, para. 48.

<sup>56</sup> See *Final report of the Group of Experts on Côte d'Ivoire pursuant to paragraph 16 of Security Council resolution 2045 (2012)*, *op. cit. supra* footnote 54, paras. 300-305.

<sup>57</sup> See *Jeune Afrique*, "Côte d'Ivoire – Me Altit: 'Rien ne justifie la détention de Laurent Gbagbo'", 11 June 2013. This article is available at the following address: <http://www.jeuneafrique.com/Article/ARTJAWEB20130611074453/>.

<sup>58</sup> See "*Requête aux fins d'augmentation du nombre de pages autorisé que comprendront les soumissions déposées par la défense du Président Gbagbo en vertu de l'article 60 (3) de la Règle 118 (2) (sic)*", *supra* footnote 38, paras. 6 and 12.

<sup>59</sup> See, in this respect, *Decision on the "Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo"*, *supra* footnote 50, paras. 65 and 66.

<sup>60</sup> See article 68(1) of the Rome Statute.

pending a decision by the Pre-Trial Chamber, there are still reasonable grounds to believe that Mr Gbagbo bears individual criminal liability as a co-perpetrator of the crimes charged in the warrant for his arrest.<sup>61</sup>

35. Under international human rights jurisprudence, judicial authorities, when determining the reasonableness of pre-trial detention of suspects or accused, should consider, *inter alia*, the conduct of the proceedings<sup>62</sup> and the conduct of the accused.<sup>63</sup>

36. Still under international human rights jurisprudence, the following grounds may be considered “relevant” and “sufficient” to justify the continued detention of the person concerned:<sup>64</sup> (i) the existence and persistence of serious indications of guilt;<sup>65</sup> (ii) the existence of a risk of pressure being brought to bear on the witnesses and of collusion between the co-accused;<sup>66</sup> (iii) danger of the applicant’s absconding;<sup>67</sup> (iv) the existence of a risk of reoffending;<sup>68</sup> and (v) the requirements of the investigation.<sup>69</sup>

---

<sup>61</sup> See *Warrant of Arrest for Laurent Gbagbo*, *supra* footnote 1. See also “*Soumission de l’Accusation du Document amendé de notification des charges, de l’Inventaire amendé des éléments de preuve à charge et des Tableaux amendés des éléments constitutifs des crimes*”, ICC-02/11-01/11-357-Conf-Anx1, 17 January 2013.

<sup>62</sup> See ECtHR, *Barfuss v. The Czech Republic*, Application No. 35848/97, 31 July 2000, para. 72; *Toth v. Austria*, Application No. 11894/85, 12 December 1991, para. 76.

<sup>63</sup> See ECtHR, *W. v. Switzerland*, Application No. 14379/88, 26 January 1993, para. 42; *Herczegfalvy v. Austria*, Application No. 10533/83, 24 September 1992, para. 72.

<sup>64</sup> See ECtHR, *Prencipe v. Monaco*, Application No. 43376/06, 16 July 2009, para. 74; *Tum v. Turkey*, Application No. 11855/04, 17 June 2008, para. 41; *Lelièvre v. Belgium*, Application No. 11287/03, 8 November 2007, para. 92.

<sup>65</sup> See ECtHR, *Tum v. Turkey*, Application No. 11855/04, 17 June 2008, para. 41; *Mansur v. Turkey*, Application No. 16026/90, 8 June 1995, para. 56; *Tomasi v. France*, Application No. 12850/87, 27 August 1992, para. 89.

<sup>66</sup> See ECtHR, *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.

<sup>67</sup> See ECtHR, *Cetin Agdas v. Turkey*, Application No. 77331/01, 19 September 2006, paras. 27-28; *Mansur v. Turkey*, Application No. 16026/90, 8 June 1995, para. 55; *Tomasi v. France*, Application No. 12850/87, 27 August 1992, para. 98; *Letellier v. France*, Application No. 12369/86, 26 June 1991, para. 43.

<sup>68</sup> See ECtHR, *Paradysz v. France*, Application No. 17020/05, 29 October 2009, para. 70; *Muller v. France*, Application No. 21802/93, 17 March 1997, para. 44; *Clooth v. Belgium*, Application No. 12718/87, 12 December 1991, para. 40.

<sup>69</sup> See ECtHR, *Lelièvre v. Belgium*, Application No. 11287/03, 8 November 2007, para. 92; *Bouchet v. France*, Application No. 33591/96, 20 March 2001, para. 41.

37. The Legal Representative submits that all of the said grounds found the First and Second Decisions on Release and confirm the lawfulness and reasonableness of Mr Gbagbo's detention in respect not only of the Court's legal framework but also of universally recognised human rights principles.

38. Furthermore, article 68 of the Rome Statute places particular emphasis on the nature of the crime: "[...] where the crime involves sexual gender or violence against children". In the instant case, many of the acts of violence of which the Accused is charged are sexual in nature, or are gender-based, and some were committed against minors.<sup>70</sup>

39. In light of the foregoing arguments, the Legal Representative submits that the Accused must remain in detention, as the conditions set forth in article 58(1) of the Rome Statute continue to be met and no change of circumstances has occurred since the most recent ruling of the Chamber on the matter.

40. Lastly, the victims whom OPCV met during its recent mission were insistent that Mr Gbagbo must remain in detention. They all highlighted fears they have for their safety. Indeed, the announcement that the decision on the confirmation of charges had been postponed was followed by renewed violence in the neighbourhoods where they live.

---

<sup>70</sup> See "*Document amendé de notification des charges*", ICC-02/11-01/11-357-Anx1-Red, 28 January 2013.

**For these reasons, the Legal Representative respectfully requests the Pre-Trial Chamber:**

To rule that Mr Gbagbo must remain in detention.

[signed]

---

**Paolina Massidda  
Principal Counsel**

Dated this 3 July 2013

At The Hague, The Netherlands