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APPEALS CHAMBER

Before: Judge Piotr Hofmański, Presiding Judge
Judge Kuniko Ozaki
Judge Sanji Mmasenono Monageng
Judge Howard Morrison
Judge Chang-ho Chung

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

***IN THE CASE OF THE PROSECUTOR v. LAURENT GBAGBO and CHARLES
BLÉ GOUDÉ***

Public

**Public redacted version of "Prosecution's Response to the less redacted version of
Mr Laurent Gbagbo's Document in Support of Appeal against the Ninth Article
60(3) Decision (ICC-02/11-01/15-161-Conf-Exp-Anx1 OA6)",
29 July 2015, ICC-02/11-01-15-169-Conf-Exp**

Source: Office of the Prosecutor

**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

Ms Helen Brady

Counsel for Mr Laurent Gbagbo

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Mr Geert-Jan Alexander Knoops

Mr Claver N'dry

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

Ms Paolina Massidda

REGISTRY

Registrar

Mr Herman von Hebel

INTRODUCTION

1. Laurent Gbagbo's appeal against the Ninth Decision on article 60(3) should be dismissed.¹ The Appellant's two grounds of appeal do not identify any error that merits the reversal of the Trial Chamber's Decision.² The First Ground of Appeal largely relates to the standard of review of decisions under article 60(3) and also raises mere disagreements with the Trial Chamber's assessment of the evidence. The Appellant had previously raised similar arguments on appeal which had been dismissed by the Appeals Chamber. The Appeals Chamber clarified the distinct review process of decisions under article 60(2) and article 60(3): while in the former the Prosecution needs to demonstrate *ab initio* that the conditions underpinning detention under article 58(1) are met; in the latter, the Prosecution needs to prove that there are no changed circumstances. In both cases, if the burden is met, detention is justified. Moreover, the Trial Chamber correctly dismissed arguments previously raised by the Appellant which had already been rejected by the Pre-Trial, Trial and Appeals Chambers. Further, the Decision is reasoned and the Trial Chamber clearly indicated the basis upon which it founded its ruling.

2. The Second Ground of Appeal is similarly unfounded. The Appellant failed to request conditional release on medical grounds in the latest review of detention. To cure this lacking, the Appellant now argues that the Trial Chamber has been continuously seized with a request since April 2012. This is incorrect: the April 2012 request, as well as other requests for conditional release, were addressed and rejected by the Pre-Trial Chamber. The Defence and Registry's consultations conducted *ex parte* were ordered by the Pre-Trial Chamber to identify a better treatment for the Appellant. The Trial Chamber could not rely on the reports resulting from these consultations to grant

¹ ICC-02/11-01/15-161-Conf-Exp-Anx OA6. Mr Laurent Gbagbo ("the Appellant") filed this less redacted version available to the Prosecution on 24 July 2015 upon the Appeals Chamber's order. A more redacted version was previously notified on 20 July 2015 (ICC-02/11-01/15-147-Conf-Exp-Red OA6). A public redacted version was filed on 23 July 2015: ICC-02/11-01/15-147-Red2 OA6 ("Appeal").

² ICC-02/11-01/15-127-Conf ("Ninth Article 60(3) Decision" or "Decision"). Trial Chamber I issued this decision on 8 July 2015.

conditional release without being seized with a request and concrete proposal from the Appellant and requesting observations from the Prosecution in compliance with rule 119(3).

CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(2) of the Regulations of the Court (“RoC”), this application is filed Confidential *Ex parte* only available to the Prosecutor, Registry and Defence of Mr Laurent Gbagbo because it refers to the Appeal and to trial records which bear this level of confidentiality.

SUBMISSIONS

4. The Appellant fails to show any error in the Trial Chamber’s Decision.³ As developed below, the Appellant’s two grounds of appeal should be dismissed.

A. The Trial Chamber correctly interpreted and applied article 60(3)

5. The Trial Chamber made no error in the interpretation and application of article 60(3): first, it correctly required the Prosecution to demonstrate that there was no change of circumstances; second, it correctly rejected the Appellant’s repeated arguments which had been dismissed in previous decisions and third, the Trial Chamber’s decision was appropriately reasoned.

³ Regarding the standard of review for appeals granting or denying release, see ICC-01/05-01/08-631-RedOA2, para.62; ICC-01/04-01/10-283OA, para.15; ICC-01/05-01/08-1626-RedOA7, para.44; ICC-01/05-01/08-1937-Red2OA09, para.47. The Appeals Chamber has also held that the appraisal of the evidence relevant to continued detention lies, in the first place, with the Pre-trial (or Trial) Chamber. See also ICC-01/05-01/08-1937-Red2OA09, para.48, citing ICC-01/04-01/10-283OA, para.17.

(i) *The Trial Chamber satisfied itself that the conditions under article 58(1)(b) continued to be met*

6. The Trial Chamber correctly interpreted and applied the law on article 60(3). Contrary to the Appellant's submissions, the Trial Chamber satisfied itself that the conditions under article 58(1)(b)(i) and (ii) continued to be met;⁴ and did not reverse the burden of proof.⁵ The Appellant's submissions, which have already been raised and dismissed in previous judgments,⁶ are premised on a misunderstanding of the different standards applicable to decisions under article 60(2) and article 60(3). While review of detention pursuant to article 60(2) entails a decision *de novo* in which the Pre-Trial or Trial Chamber must decide *ab initio* whether the conditions of article 58(1) are met, the Chamber may modify its ruling on detention under article 60(3) if "it is satisfied that changed circumstances so require".⁷ In this case, the Trial Chamber held that there were no changed circumstances.⁸ To reach that determination, the Trial Chamber did not need to address *de novo* each factor underpinning detention.⁹ Thus, considering that the Decision was not an initial ruling on detention and that the Trial Chamber did not find that there was a change of circumstances,¹⁰ the Trial Chamber did not need to conduct a *de novo* review of the conditions underpinning detention – and the Prosecution did not need to establish these conditions *de novo*.¹¹ This approach is fully consistent with the applicable law

⁴ *Contra*, Appeal, paras.25-30.

⁵ *Contra*, Appeal, paras.18-24.

⁶ ICC-02/11-01/11-278-RedOA (*Gbagbo* OA Judgment), paras.13,22-24; ICC-02/11-01/11-548-RedOA4 (*Gbagbo* OA4 Judgment), paras.1,50-53.

⁷ *Gbagbo* OA4 Judgment, para.51 referring to *Gbagbo* OA Judgment, para.23.

⁸ Decision, para.11.

⁹ *Gbagbo* OA4 Judgment, para.53: "It 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 had changed'."

¹⁰ See *Gbagbo* OA4 Judgment, para.40 referring to ICC-01/05-01/08-2151-Red OA10 (*Bemba* OA10 Judgment), para.1: "[w]here no changed circumstances are found to exist, 'the Chamber is not required to further review the ruling on release or detention'. However, 'if 'changed circumstances so require', it is necessary to interpret the 'ruling on detention' as being the initial decision made under article 60(2)". See ICC-01/05-01/08-1019 OA4, para.46 (*Bemba* OA4 Judgment).

¹¹ Decision, para.3.

and, contrary to the Appellant's submissions,¹² permitted the Trial Chamber to satisfy itself that the conditions under article 58(1)(b) continued to be met.

7. The Trial Chamber's correct understanding of the law is evident in its summary of the relevant jurisprudence when it found that:

"it need only consider whether any changed circumstances exist, rather than conducting a *de novo* review of the conditions underpinning detention. Therefore, while the Chamber must, inter alia, 'weigh the [Prosecution's] submissions against the submissions, if any, of the detained person', there is no requirement for the Prosecution to first 're-establish circumstances that have already been established'".¹³

8. Further, the correct application of the law to the facts confirms the Trial Chamber's correct understanding of the relevant law: *first*, the Trial Chamber weighed both the Prosecution's submissions and information provided indicating that there were no changed circumstances,¹⁴ and the Appellant's submissions to the contrary¹⁵ and, *second*, in light of the previous decisions on detention, it analysed whether there had been any changed circumstances with respect to the Appellant's network of supporters which would affect its previous ruling that the Appellant's continued detention under article 58(1)(b)(i) and (ii) was necessary.¹⁶ The Trial Chamber concluded that "there are no changed circumstances regarding Mr Gbagbo's network of supporters which would warrant a modification of its risk assessment under article 58(1)(b)(i) and (ii)" and that "no changed circumstances exist that would render a modification of its prior ruling necessary".¹⁷ Finally, and in the absence of a concrete and self-evident proposal for conditional release,¹⁸ the

¹² Appeal, paras.25-30.

¹³ Decision, para.3 referring to ICC-01/05-01/08-2151OA10, para.1 and *Bemba* OA4 Judgment, paras.51-52. The Appellant refers to this judgment in fns.13,14,18.

¹⁴ Decision, para.4.

¹⁵ Decision, paras.5-6.

¹⁶ Decision, paras.7-10.

¹⁷ Decision, para.11.

¹⁸ Decision, para.12. The Trial Chamber referred to the Appellant's rhetorical question to the Prosecution in a conclusory paragraph of his submissions. See Defence Submissions (ICC-02/11-01/15-83), para.62.

Trial Chamber correctly noted that its discretion not to consider conditional release was unfettered.¹⁹

9. Further, and contrary to the Appellant's submissions, the Trial Chamber's assessment and reliance on the existence of a network of the Appellant's supporters was correct. The Appellant merely raises previously dismissed arguments with respect to the network's structure and the Prosecution's purported conflation of the network with the FPI,²⁰ and submits that the incidents referred to by the Prosecution are obsolete.²¹ These arguments are mere disagreements with the Trial Chamber's conclusions, or with the weight it had accorded to particular factors. As the Appeals Chamber has noted, this is not sufficient to establish an error.²² Moreover, the facts relied upon by the Trial Chamber date from March to May 2015, and are thus not outdated.²³
10. Finally, the Trial Chamber did not alter the burden of proof when it ordered the Appellant to file his observations first.²⁴ This argument was already raised by the Appellant in his Submissions²⁵ and dismissed by the Trial Chamber in the Decision.²⁶ The Appellant shows no error in the Trial Chamber's approach. As noted above,²⁷ the Trial Chamber correctly interpreted and applied the relevant law and jurisprudence, requiring the Prosecution to show that there were no changed circumstances.²⁸ In addition and although the Appellant filed first, he was authorised to respond to the Prosecution's and Legal

¹⁹ Decision, para.12 referring to *Gbagbo* OA Judgment, para.79.

²⁰ Appeal, paras.36-40,44. See below para.11. In particular, see *Gbagbo* OA4 Judgment, para.54.

²¹ Appeal, paras.16-17, 22,41.

²² ICC-01/04-01/10-283OA (*Mbarushimana* OA Judgment), paras.21,31 referred to in *Gbagbo* OA Judgment, para.52.

²³ Decision, fn.31 referring to Prosecution Submissions (ICC-02/11-01/15-90-Red), paras.15-19, which refer to (1) the signature on 15 May 2015 of the Charter of the *Coalition Nationale pour le Changement* ("CNC") by dissidents of the *Parti démocratique de Côte d'Ivoire* ("PDCI"), FPI hardliners, supporters of *Liberté et Démocratie pour la République* ("Lider") and some other opposition parties, who call for the release of political prisoners and primarily the Appellant; (2) the visits to the Appellant at the ICC detention centre of some of the signatories of the CNC Charter in March 2015 – which is acknowledged by the Appellant: Defence Submissions, paras.49-54. See also Prosecution Submissions, para.13, referring to the Appellant's election as president of the party by FPI hardliners at the end of April 2015.

²⁴ *Contra*, Appeal, paras.18-24.

²⁵ Defence Submissions, paras.22-24.

²⁶ Decision, para.3.

²⁷ See above, paras.6-8.

²⁸ Decision, para.3 referring to *Bemba* OA4 Judgment, paras.51-52. See Decision, para.4 where the Trial Chamber addresses the Prosecution's submission that there are no changed circumstances.

Representatives' Submissions.²⁹ Moreover, the Appellant is taking out of context the Trial Chamber's reference to the limited nature of the detention review under article 60(3).³⁰ The relevant paragraph of the Decision reveals that the Trial Chamber referred to the *Gbagbo* OA Judgment.³¹ The Appeals Chamber used this same language to distinguish the scope of review required in reaching a decision under article 60(3) from a decision under article 60(2).³²

(ii) *The Trial Chamber correctly dismissed arguments which were a repetition of arguments previously dismissed*

11. Consistent with the Appeals Chamber's jurisprudence,³³ the Trial Chamber correctly dismissed the Appellant's arguments because they had been previously raised and dismissed.³⁴ A review of prior filings and decisions on detention confirms this conclusion. First, and with respect to the need to re-assess the conditions underpinning detention,³⁵ the Appeals Chamber has dismissed the Appellant's arguments twice, in clarifying the relevant standard of decisions under article 60(3).³⁶ Second, and with respect to the Appellant's submission that there is no organised network of people supporting him,³⁷ the Pre-Trial Chamber,³⁸ Trial Chamber³⁹ and Appeals Chamber⁴⁰ have repeatedly dismissed the same arguments and confirmed that there is such an organised

²⁹ See ICC-02/11-01/15-61 and ICC-02/11-01/15-103-Red (Defence Response to Prosecution and LRV Submissions).

³⁰ Appeal, para.23.

³¹ Decision, para.3 and fn.12 referring to *Gbagbo* OA Judgment, para.24.

³² *Gbagbo* OA Judgment, para.24: "Thus, the scope of the review carried out in reaching a decision under article 60(3) is potentially much more limited than that to be carried out in reaching a decision under article 60(2) of the Statute."

³³ *Bemba* OA4 Judgment, para.53.

³⁴ Decision, para.6 referring to *Bemba* OA4 Judgment, para.53. *Contra*, Appeal, paras.31-35.

³⁵ Defence Submissions, paras.14-19; Defence Response, paras.7-17.

³⁶ *Gbagbo* OA Judgment, paras.13,23-24; *Gbagbo* OA4 Judgment, paras.1,51-53.

³⁷ Defence Submissions, paras.27-28, 31-37.

³⁸ Decision of 13 July 2012 (ICC-02/11-01/11-180-Red), paras.60-62.

³⁹ Seventh Article 60(3) Decision (ICC-02/11-01/11-718-Red), paras.54-60, 65; Eighth Article 60(3) Decision (ICC-02/11-01/11-808), paras.30 and 39.

⁴⁰ *Gbagbo* OA Judgment, paras.59 and 63, and *Gbagbo* OA4 Judgment, para.54.

network of supporters justifying the Appellant's detention. Third, the Pre-Trial⁴¹ and the Trial Chamber⁴² have already found that the purported positive impact of the Appellant's release on the national reconciliation process is irrelevant for purposes of determining the need for the Appellant's detention. Finally, the Appellant's recurring allegations of collusion between the Prosecution and the UN group of experts⁴³ have similarly been raised and dismissed by the Appeals Chamber, which has held that "*Mr Gbagbo fails to provide any concrete evidence establishing collusion between the Prosecutor and the Group of Experts and his allegations are speculative at best*".⁴⁴

(iii) *The Trial Chamber's Decision was reasoned*

12. The Trial Chamber adequately reasoned its Decision. Contrary to the Appellant's submissions,⁴⁵ the Trial Chamber considered the arguments and material advanced by both Parties,⁴⁶ indicated which information and facts it relied on in reaching its conclusion,⁴⁷ and which information it disregarded.⁴⁸ The Trial Chamber did not entertain the Appellant's arguments because they had already been raised and dismissed.⁴⁹ Hence, the basis and relevant facts relied on by the Trial Chamber are clear in the Decision. Contrary to the Appellant's suggestion, a concise analysis can also be comprehensive.⁵⁰ Further, and as noted by the Appeals Chamber, a reasoned decision does not

⁴¹ Sixth Article 60(3) Decision (ICC-02/11-01/11-668), para.26; Fifth Article 60(3) Decision (ICC-02/11-01/11-633), para.23.

⁴² Seventh Article 60(3) Decision, para.51.

⁴³ Defence Submissions, fn.19; Defence Response to Prosecution and LRV Submissions, para.24.

⁴⁴ *Gbagbo* OA4 Judgment, para.82.

⁴⁵ Appeal, paras.45-49.

⁴⁶ Decision, paras.4-5 and 8-9.

⁴⁷ Decision, para.11.

⁴⁸ Decision, para.10.

⁴⁹ Decision, para.6. *Contra*, Appeal, para.46.

⁵⁰ Appeal, para.46.

require “the [respective Chamber to] recit[e] each and every factor that was before [it] to be individually set out.”⁵¹

13. Finally, and like the previous arguments in this ground of appeal, the Appellant had already raised, and the Appeals Chamber had dismissed, similar arguments in at least two occasions.⁵²

B. The Trial Chamber was not seized with a request for conditional release on medical grounds

14. The Appellant’s second ground of appeal should be similarly dismissed. The Trial Chamber has not been permanently seized with a request for conditional release on medical grounds since April 2012.⁵³ The Appellant does not accurately present the relevant facts of the case, nor does the Annex attached to the Appeal⁵⁴ list all relevant decisions.

15. Contrary to the Appellant’s submissions,⁵⁵ the Pre-Trial Chamber and the Trial Chamber have not been – nor have they considered themselves to have been - seized with an ongoing request for conditional release on medical grounds for three years. The Appellant conflates (1) his requests for conditional release which have been rejected by the Pre-Trial Chamber, with (2) the consultations that the Registry and Defence have held for two and a half years on an *ex parte* basis to improve the Appellant’s medical treatment.

⁵¹ ICC-01/04-01/06-773 OA5, para.20 (*Lubanga* OA5 Judgment).

⁵² *Gbagbo* OA Judgment, paras.46-49; *Gbagbo* OA4 Judgment, paras.24,94.

⁵³ *Contra*, Appeal, paras.51,54 and 57.

⁵⁴ ICC-02/11-01/15-147-AnxOA6 (“Annex”).

⁵⁵ Appeal, paras.56-57.

16. With respect to the former, the Pre-Trial Chamber has rejected several requests for conditional release: *first*, the 27 April 2012 request⁵⁶ was addressed and dismissed by the Pre-Trial Chamber on 13 July 2012.⁵⁷ The Appeals Chamber confirmed this decision.⁵⁸ It is of note that the Appellant did not include the 13 July 2012 Decision in the Annex. *Second*, on 18 January 2013 the Pre-Trial Chamber also rejected the Appellant's request for conditional release [REDACTED] on medical grounds,⁵⁹ after receiving reports from the Registry on the guarantees offered [REDACTED]⁶⁰ and on the Appellant's medical treatment,⁶¹ as well as the Prosecution's observations.⁶² The Pre-Trial Chamber reasoned that the necessary medical treatment could be provided in the Netherlands, in light of the Medical Officer's report that the Appellant's medical issues were all dealt with by the medical service at the Court's detention centre, [REDACTED], and all his physical pathologies were treated and under control.⁶³ The Appellant also failed to include this decision in the Annex. *Third*, on 12 March 2013, the Pre-Trial Chamber similarly rejected the Appellant's request for conditional release [REDACTED] in its Second Article

⁵⁶ ICC-02/11-01/11-105-Conf-Red-Corr-tENG. The Pre-Trial Chamber referred to this request as dated 1 May 2012: Decision of 13 July 2012 (ICC-02/11-01/11-180-Red), para.3.

⁵⁷ Decision of 13 July 2012, paras.72-79.

⁵⁸ *Gbagbo* OA Judgment, paras.76-80 and 86-90. The Appellant misapprehends the Pre-Trial Chamber's decision. Although the Appeals Chamber found that the Pre-Trial Chamber stopped short of acknowledging the potential impact of medical reasons on the risks under article 58(1)(b), there was no error because the finding that "*interim or conditional release cannot be ordered on the basis of the alleged health conditions of Mr Gbagbo*" was not a categorical finding as to the law but a direct response to the Appellant's submissions in the context of the case, where the Appellant had asked for interim release and triggered the rule 135 procedure. Thus, the Appellant's health and his fitness to stand trial were under consideration in the context of proceedings under rule 135. *Contra*, Appeal, para.55.

⁵⁹ Decision of 18 January 2013 (ICC-02/11-01/11-362-Red), paras.37-38. [REDACTED]. ICC-02/11-01/11-287-Conf-Corr. See also First Article 60(3) Decision (ICC-02/11-01/11-291), paras.62-66, whereby the Pre-Trial Chamber suspended its decision on conditional release until these reports were provided. See the Appellant's request for conditional release in the first hearing on detention pursuant to rule 118(3) on 30 October 2012: ICC-02/11-01/11-T-9-ENG, p.28, ln.8 to p.29, ln.7 and ICC-02/11-01/11-T-10-CONF-EXP-ENG, p.11, ln.24 to p.14, ln.5; p.16, ln.19 to p.17, ln.18.

⁶⁰ ICC-02/11-01/11-306-Conf.

⁶¹ ICC-02/11-01/11-324-Conf and ICC-02/11-01/11-356-Conf with Conf-Anx1.

⁶² ICC-02/11-01/11-317-Conf; ICC-02/11-01/11-332-Conf.

⁶³ Decision of 18 January 2013 (ICC-02/11-01/11-362-Red), paras.35-37.

60(3) Decision, because there were no conditions short of detention that could mitigate the risks under article 58(1)(b)(i)-(iii).⁶⁴

17. In parallel to the proceedings and the article 60(3) decisions, and since early 2013, the Registry and the Appellant were instructed to hold consultations to further improve the Appellant's medical treatment. In its Decision of 18 January 2013, the Pre-Trial Chamber, after rejecting the Appellant's request for conditional release, stated:

“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 selection of a specialist for the PTSD, all this subject to the consent of Mr Gbagbo.*”⁶⁵

18. This process has lasted two and a half years and has been conducted *ex parte* Registry and Defence only. The Prosecution has had no access to the nine reports resulting from these consultations. [REDACTED],⁶⁶ [REDACTED].⁶⁷ Hence, the Pre-Trial Chamber's and Trial Chamber's references to the need to await for the Registry and Defence reports resulting from these consultations to decide on conditional release, should be understood in this context.⁶⁸ However - and this is the crux of the Appellant's error - this process did not relieve the Appellant from presenting the Trial Chamber with a clearly articulated and concrete proposal for conditional release based on medical grounds, - if and insofar as he wished to request such relief - once the reports were finalised. In the Seventh Decision (the first decision from the Trial

⁶⁴ Second Article 60(3) Decision (ICC-02/11-01/11-417-Red), paras.44-45. See Defence request ICC-02/11-01/11-415-Conf.

⁶⁵ Decision of 18 January 2013, para.36.

⁶⁶ ICC-02/11-01/15-T-2-CONF-EXP-ENG ET, p.8, lns.15-20.

⁶⁷ Fourth Article 60(3) Decision (ICC-02/11-01/11-558), para.57 referring to an *ex parte* hearing Defence and Registry only. See also Seventh Article 60(3) Decision (ICC-02/11-01/11-718-Conf), para.74 also referring to an *ex parte* hearing Defence and Registry only.

⁶⁸ Fourth Article 60(3) Decision, paras.57-62; Fifth Article 60(3) Decision (ICC-02/11-01/11-633), paras.40-42; Sixth Article 60(3) Decision (ICC-02/11-01/11-668), paras.46-49; Seventh Article 60(3) Decision, paras.71-76; Eighth Article 60(3) Decision (ICC-02/11-01/11-808), para.40; Order ICC-02/11-01/15-61, paras.2-4.

Chamber reviewing the Appellant's detention), the Trial Chamber clearly set out the applicable legal framework and noted that, prior to any decision on conditional release on medical grounds, Parties and participants should provide observations on the reports and on [REDACTED] offer to receive the Appellant, in compliance with rule 119(3):

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

75. Accordingly, the Chamber is not yet in a position to assess the possibility of conditional release. It therefore considers that it is appropriate to postpone the exploration of all possible options for conditional release until: (i) receipt of an Eighth Joint Report; and, following this, ii) *the receipt of the submissions and observations of parties, participants, and any relevant State on any proposals for conditional release*, which the Chamber will request once an Eighth Joint Report is filed.⁶⁹

19. On 8 May 2015, the Trial Chamber ordered the Parties and participants to submit observations under article 60(3) within its periodic review of detention.⁷⁰ In his observations, the Appellant however chose to remain silent and did not request or present the Trial Chamber with a concrete proposal for conditional release on medical, or any other grounds.⁷¹

⁶⁹ Seventh Article 60(3) Decision (ICC-02/11-01/11-718-Conf), paras.74-75. Emphasis added. The Appellant only refers to paragraph 75 in the Annex.

⁷⁰ ICC-02/11-01/15-61: "ORDERS the Defence to submit any observations on *Mr Gbagbo's continued detention or release (with or without conditions)*, including the existence of any changed circumstances pursuant to Article 60(3) of the Statute, on 28 May 2015". Emphasis added.

⁷¹ See Defence Submissions and Defence Response.

20. On 16 June 2015, during a status conference on trial management matters held before rendering the Decision, [REDACTED]:

[REDACTED].⁷²

21. [REDACTED].⁷³ The Trial Chamber clarified on several occasions that it needed to be seized with a concrete request for conditional release on medical grounds, and the Prosecution had to be provided with the relevant information in order to submit observations.

22. [REDACTED]⁷⁴ [REDACTED],⁷⁵ [REDACTED]:

[REDACTED].⁷⁶

23. In sum and as the Trial Chamber noted, considering that the Appellant's detention is still justified under article 58(1)(b)(i)-(ii), and in the absence of a concrete and self-evident proposal,⁷⁷ the Trial Chamber's discretion to consider conditional release is unfettered.⁷⁸ There is no defect in the Trial Chamber's approach.

24. Finally, the Appellant argues that the Trial Chamber has foreclosed any possibility of release [REDACTED].⁷⁹ This is not correct. [REDACTED]⁸⁰ [REDACTED].⁸¹ The fact that the Appellant disagrees with the procedure – in particular, with the disclosure of the relevant material supporting his request to the Prosecution – does not render the Trial Chamber's decision in error.

⁷² ICC-02/11-01/15-T-2-CONF-EXP-ENG, p.7, lns.8-24. Emphasis added. See also p.32, ln.22 to p.33, ln.7: [REDACTED]

⁷³ ICC-02/11-01/15-156-Conf-Exp-Red OA6, para.42.

⁷⁴ ICC-02/11-01/15-97-Conf-Exp-Red, paras.39-40.

⁷⁵ ICC-02/11-01/15-145-Conf-Exp, paras.21-22.

⁷⁶ ICC-02/11-01/15-145-Conf-Exp, para.21.

⁷⁷ [REDACTED].

⁷⁸ Decision, para.12 referring to *Gbagbo* OA Judgment, para.79.

⁷⁹ Appeal, paras.52-53, 63, 66.

⁸⁰ ICC-02/11-01/15-97-Conf-Exp-Red, paras.53-54.

⁸¹ ICC-02/11-01/15-145-Conf-Exp, para.22.

RELIEF SOUGHT

25. The Prosecution requests that the Appeals Chamber dismiss the Appellant's Appeal.



Fatou Bensouda, Prosecutor

Dated this 29th day of July 2015
At The Hague, The Netherlands

Word Count: 4,799⁸²

⁸² It is certified that this document contains the number of words specified and complies in all respects with the requirements of regulation 36 of the RoC. This statement (51 words), not itself included in the word count, follows the Appeals Chamber's direction to "all parties" appearing before it: ICC-01/11-01/11-565 OA6, para.32.