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**International
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TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Bertram Schmitt

SITUATION IN CÔTE D'IVOIRE

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

Public Document

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

Source: Office of Public Counsel for Victims

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

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I. Introduction

1. The Common Legal Representative of the victims admitted to participate in the proceedings (the “Legal Representative”)¹ 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 (the “Statute”) since the last decision of the Chamber on the matter.

II. Background

2. On 8 July 2015, Trial Chamber I (the “Chamber”) issued the “Ninth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60(3) of the Statute” (the “Ninth Decision on Detention”),² deciding that the Accused shall remain in detention.

3. On 8 September 2015, the Appeals Chamber issued the “Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 8 July 2015 entitled ‘Ninth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60(3) of the Statute’”, *inter alia*, confirming the Ninth Decision on Detention.³

4. On 25 September 2015, during a status conference, the Single Judge of the Chamber ordered the Defence to submit any observation on Mr Gbagbo’s continued detention by 9 October 2015;⁴ the Prosecution and the Legal Representative to file any

¹ See the “Directions on the conduct of the proceedings” (Trial Chamber I), No. ICC-02/11-01/15-205, 3 September 2015, p. 24.

² See the “Ninth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60(3) of the Statute” (Trial Chamber I), No. ICC-02/11-01/15-127-Red, 8 July 2015 (the “Ninth Decision on Detention”).

³ See the “Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 8 July 2015 entitled ‘Ninth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60(3) of the Statute’” (Appeals Chamber), No. ICC-02/11-01/15-208 OA6, 8 September 2015.

⁴ See transcripts of the Status Conference on 25 September 2015, No. ICC-02/11-01/15-T-4-ENG ET, p. 4, lines 22-23.

observations on the matter by 16 October 2015;⁵ and the Defence to file its response by 23 October 2015.⁶

5. On 9 October 2015, the Defence filed the “*Soumissions de la défense portant sur les conditions d’application des dispositions de l’article 58(1)(b) faites à l’invitation de la Chambre, dans le cadre du dixième réexamen de la détention*” (the “Defence’s Submissions”).⁷

6. In accordance with the instructions of the Single Judge, the Legal Representative respectfully submits the following observations.

III. Submissions

7. The Legal Representative submits that there have been no changed circumstances in the sense of article 60(3) of the Statute since the Ninth Decision on Detention which could justify a different ruling on the detention of the Accused.

8. In particular, the Legal Representative considers that the conclusions of the Chamber in its previous decisions on the matter – and especially on the fact that there has been no change in the circumstances since November 2014 which would justify the Accused’s release – are still valid today.⁸

⁵ *Idem*, p. 4, lines 24-25.

⁶ *Ibid.*, p. 5, line 1.

⁷ See the “*Soumissions de la défense portant sur les conditions d’application des dispositions de l’article 58(1)(b) faites à l’invitation de la Chambre, dans le cadre du dixième réexamen de la détention*”, No. ICC-02/11-01/15-283-Red, 9 October 2015 (the “Defence’s Submissions”).

⁸ See the Ninth Decision on Detention, *supra* note 2, and the “Eighth Decision on Detention, on the review of Mr Laurent Gbagbo’s detention pursuant to article 60(3) of the Statute” (Trial Chamber I), No. ICC-02/11-01/11-808, paras. 24-30, 35 and 39. See also the “Seventh decision on the review of Mr Laurent Gbagbo’s detention pursuant to article 60(3) of the Statute” (Trial Chamber I), No. ICC-02/11-01/11-718-Red, 11 November 2014, paras. 43, 60 and 65; the “Sixth decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-668, 11 July 2014, para. 42; the “Fifth Decision on Review of Detention” (Pre-Trial Chamber I), No. ICC-02/11-01/11-633, para. 34; the “Fourth Decision on Review of Detention” (Pre-Trial Chamber I), No. ICC-02/11-01/11-558, paras. 43, 46 and 52; the “Third decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute” (Pre-Trial Chamber I), No. ICC-02/11-01/11-454, 11 July 2013, paras. 37, 44 and 50; the “Public redacted version of the Second

9. In this regard, the Legal Representative recalls her previous submissions in relation to the need to maintain Mr Gbagbo's detention in order to ensure his appearance at trial and that he does not obstruct or endanger the proceedings.⁹

10. Moreover, the Legal Representative contends that the Defence's Submissions mainly express its criticism towards the Chambers' previous rulings on Mr Gbagbo's detention.¹⁰ As such, said submissions do not present any new facts relevant for the purposes of article 60(3) of the Statute.

11. Indeed, the Defence neither refers to a changed circumstance that would warrant a change in Mr Gbagbo's detention regime, nor presents any evidence that could lead to the conclusion that a relevant circumstance has changed. On the contrary, the Defence simply restates its disagreement with the previous decisions on detention by putting forward arguments – only related to errors allegedly committed by the Chamber – already entertained and dismissed by both the Trial and the Appeals Chambers.

12. For instance, the Defence refers again to the absence of a network of supporters loyal to Mr Gbagbo, the inaction of FPI "hardliners" and the unavailability of means for Mr Gbagbo.¹¹ All these arguments have already been

decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute" (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-417-Red, 12 March 2013, paras. 30, 39 and 40-41; and the "Decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute" (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-291, 12 November 2012, para. 61.

⁹ See the "Observations of the Common Legal Representative of victims on the periodic review of Mr Gbagbo's detention", No. ICC-02/11-01/11-764, 11 February 2015 (the "Seventh Review Observations"), para. 12. See also the "Observations of the Common Legal Representative of victims on the periodic review of Mr. Gbagbo's detention", No. ICC-02/11-01/11-695, 20 October 2014, paras. 12-13.

¹⁰ See the Defence's Submissions, *supra* note 7, paras. 6, 10-27, 29, 33 and 37.

¹¹ *Idem*, paras. 11-19.

dismissed by the Chambers in the past,¹² and cannot support a different ruling on detention under article 60(3).¹³

13. The Legal Representative submits that all these arguments must be dismissed since the Appeals Chamber has already clarified that “[i]n conducting a periodic review of detention a Chamber is not required to ‘entertain submissions by the detained person that merely repeat arguments that the Chamber has already addressed in previous decisions’”.¹⁴

14. Moreover, the Legal Representative recalls that the Defence’s argument that a lack of motivation in previous rulings was confirmed by the Appeals Chamber¹⁵ has already been dismissed by the latter, which clarified that this contention stemmed from a misrepresentation of its findings.¹⁶ Indeed, in none of the decisions mentioned by the Defence did the Appeals Chamber conclude that the Chamber failed to

¹² See the Ninth Decision on Detention, *supra* note 2, para. 11. See also the “Public redacted version - 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, paras. 59, 74-75 and 77.

¹³ See the “Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 8 July 2015 entitled ‘Ninth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60(3) of the Statute’”, *supra* note 3, paras. 3 and 51. See also 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’” (Appeals Chamber), No. ICC-01/05-01/08-1019 OA4, 19 November 2010, para. 53.

¹⁴ See the “Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 8 July 2015 entitled ‘Ninth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60(3) of the Statute’”, *supra* note 3, para. 51. 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’” (Appeals Chamber), No. ICC-02/11-01/11-548-Red OA4, 29 October 2013, para. 112; and 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’”, *supra* note 13, para. 53.

¹⁵ See the Defence’s Submissions, *supra* note 7, para. 8.

¹⁶ 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 14, para. 23.

comply with its obligation to provide a reasoned decision on the need for Mr Gbagbo's continued detention.¹⁷

15. By the same token, the Defence's argument on the alleged reversal of the burden of proof has already been addressed and dismissed by both the Trial and the Appeals Chambers.¹⁸

16. The Defence also misstates the legal standard relevant to periodic reviews of detention under article 60(3) of the Statute, relying instead on rulings issued under article 60(2) of the Statute.¹⁹ In particular, whereas the *onus* in article 60(3) proceedings is on the Prosecutor to demonstrate that there has been no change in the circumstances justifying detention,²⁰ the scope of the review carried out to reach a decision in said proceedings is much more limited than the *de novo* review to be carried out in reaching a decision under article 60(2) of the Statute.²¹

17. Against this background, the Appeals Chamber already found in this case that “[t]he existence of a political party that supports the detained person is a factor that is relevant to the determination of whether the continued detention appears necessary under article 58(1)(b)(i) of the Statute, because such support could indeed facilitate absconding”.²²

¹⁷ *Idem*. See also the “Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 8 July 2015 entitled ‘Ninth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60(3) of the Statute’”, *supra* note 3, para. 61.

¹⁸ Cf. the Defence’s Submissions, *supra* note 7, paras. 21-26, with the “Ninth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60(3) of the Statute”, *supra* note 2, para. 3, and the “Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 8 July 2015 entitled ‘Ninth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60(3) of the Statute’”, *supra* note 3, para. 36 (“[T]here can be no doubt that in proceedings under article 60(3) of the Statute the *onus* is on the Prosecutor to demonstrate that there has been no change in the circumstances justifying detention”).

¹⁹ See the Defence’s Submissions, *supra* note 7, para. 22 and footnotes 1, 2 and 25.

²⁰ See *supra* note 18.

²¹ See the “Public redacted version - 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’”, *supra* note 12, paras. 23-24.

²² *Idem*, para. 59.

18. Furthermore, in addition to her past submissions, the Legal Representative contends that three factors support Mr Gbagbo's continued detention. Firstly, the imminent start of the trial on 10 November 2015²³ is a new factor which requires maintaining Mr Gbagbo in detention. In this regard, the Appeals Chamber already clarified that the very confirmation of the charges constitutes a "changed circumstance" pursuant to article 60(3) of the Statute that increases the likelihood that an accused might abscond, and which justifies keeping him in detention.²⁴ The Chamber relied on this reasoning in the seventh review of Mr Gbagbo's detention.²⁵

19. Secondly, the Appeals Chamber in its recent judgement has validated the Chamber's decision to keep Mr Gbagbo in detention, finding that the conditions under article 58(1) of the Statute continue to be met in July 2015²⁶ and that "the continued existence of Mr Gbagbo's support network" necessitates maintaining his detention.²⁷

20. Lastly, the Legal Representative maintains that the Defence's arguments on health issues remain unsubstantiated and they should not be considered by the Chamber in the absence of a contradictory debate. Indeed, on the one hand, Mr Gbagbo has held consultations with the Registry and a joint report – to which the Legal Representative has no access – on the possibility for the conditional release of

²³ See the "Order setting the commencement date for trial" (Trial Chamber I), No. ICC-02/11-01/15-58, 7 May 2015, para. 16; and the "Decision on Defence requests for leave to appeal the 'Order setting the commencement date for trial'" (Trial Chamber I), No. ICC-02/11-01/15-117, 2 July 2015, para. 26.

²⁴ 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" (Appeals Chamber), No. ICC-01/05-01/08-631-Red OA2, 2 December 2009, para. 70. See also the "Review of the "Decision on the Application for the Interim Release of Thomas Lubanga Dyilo" (Pre-Trial Chamber I), No. ICC-01/04-01/06-826, 14 February 2007, p. 6; and 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, 12 December 2008, paras. 9-10.

²⁵ See the "Seventh decision on the review of Mr Laurent Gbagbo's detention pursuant to article 60(3) of the Statute", *supra* note 8, para. 50.

²⁶ See the "Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 8 July 2015 entitled 'Ninth decision on the review of Mr Laurent Gbagbo's detention pursuant to Article 60(3) of the Statute'" *supra* note 3, para. 53.

²⁷ *Idem*, paras. 60-61 and 74.

Mr Gbagbo for medical reasons has been prepared. However, as recently found by the Appeals Chamber, the Defence of Mr Gbagbo has still not made a request for interim release on the basis of the joint report,²⁸ contrary to the Defence's suggestion in its Submissions.²⁹

21. On the other hand, as regards the lack of contradictory debate, the Appeals Chamber has recently found that the Defence of Mr Gbagbo has impermissibly withheld from the Prosecution and the Legal Representative information relevant to a potential request for provisional release, on which the victims are entitled to provide their views pursuant to rule 119(3) of the Rules of Procedure and Evidence.³⁰ As a result, the Appeals Chamber declined to consider arguments relying on information which Mr Gbagbo withheld from the Prosecution and the Legal Representative.³¹

22. In these circumstances, the Legal Representative submits that arguments on Mr Gbagbo's medical conditions having an impact on his continued detention should not be considered if the joint report is not litigated before the Chamber and if the victims are not provided with an opportunity to present their views and concerns on it.

²⁸ *Ibid.*, para. 92.

²⁹ See the Defence Observations, *supra* note 7, para. 38.

³⁰ See the "Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 8 July 2015 entitled 'Ninth decision on the review of Mr Laurent Gbagbo's detention pursuant to Article 60(3) of the Statute'" *supra* note 3, paras. 84-88.

³¹ *Idem*, para. 88.

IV. Conclusion

23. For the foregoing reasons, the Legal Representative respectfully requests the Chamber to rule that Mr Gbagbo must remain in detention.

A handwritten signature in black ink, which appears to read 'Paolina Massidda', is written over a horizontal line.

**Paolina Massidda
Principal Counsel**

Dated this 16th day of October 2015

At The Hague, The Netherlands