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No.: **ICC-02/11-01/15**  
Date: **16 October 2015**

**TRIAL CHAMBER I**

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

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE**

***IN THE CASE OF***

***THE PROSECUTOR***

***v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ***

**Public**

**Prosecution's submissions on the tenth detention review of Laurent Gbagbo**

**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

Mr Eric Macdonald

**Counsel for Mr Laurent Gbagbo**

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

**Counsel for Mr Charles Blé Goudé**

Mr Geert-Jan Alexander Knoops

Ms Claver N'dry

**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

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

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## Introduction

1. Upon the Chamber's request,<sup>1</sup> the Prosecution hereby files its submissions on the detention of the Accused Laurent Gbagbo ("the Accused"). A review of the latest developments reveals no change since the last decision on the review of the Accused's detention ("Ninth Decision").<sup>2</sup> The circumstances justifying the detention of the Accused continue to be met.

## Procedural Background

2. On 8 July 2015, the Trial Chamber issued its Ninth Decision on the review of the Accused's detention.<sup>3</sup> In deciding that the Accused should remain in detention,<sup>4</sup> the Chamber recalled that it was not required to entertain submissions by the detained person already raised and addressed in previous decisions.<sup>5</sup> It accordingly declined to adjudicate on the Defence arguments on: i) the need to re-assess the conditions of detention in line with human rights principles; ii) the existence of an organised network of people supporting the Accused; iii) the legitimacy of calls for the Accused's release; and iv) the positive consequence of the Accused's release on the national reconciliation process.<sup>6</sup> The Chamber went on to find that the material supporting calls for the Accused's release "clearly illustrate(d) the continued existence of Mr Gbagbo's support network". It was therefore satisfied that there were no changed circumstances in that regard warranting a modification of its prior risk assessment under article 58(1)(b)(i) and (ii) of the Statute.<sup>7</sup>

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<sup>1</sup> ICC-02/11-01/15-T-4-ENG, p. 4, l. 24-25.

<sup>2</sup> ICC-02/11-01/15-127-Conf.

<sup>3</sup> ICC-02/11-01/15-127-Conf.

<sup>4</sup> ICC-02/11-01/15-127-Conf, p. 8.

<sup>5</sup> ICC-02/11-01/15-127-Conf, para. 6.

<sup>6</sup> ICC-02/11-01/15-127-Conf, paras. 5-6.

<sup>7</sup> ICC-02/11-01/15-127-Conf, para. 11.

3. The Accused's appeal against the Chamber's Ninth Decision<sup>8</sup> was rejected by the Appeals Chamber on 8 September 2015 ("Decision of 8 September 2015").<sup>9</sup> The grounds dismissed included the Chamber's alleged failure to review the conditions underpinning detention,<sup>10</sup> and the Chamber's alleged error of fact in determining that a network of pro-Gbagbo supporters continues to pose a risk under article 58(1)(b)(i) and (ii) of the Statute.<sup>11</sup> In relation to the latter issue, the Appeals Chamber found that "the existence of a network of supporters is a relevant factor in determining whether continued detention appears necessary" under article 58(1)(b)(i) and (ii).<sup>12</sup> The Appeals Chamber also found that it is not enough for a detained person "to merely allege changed circumstances based solely on arguments that have already been determined to be of no relevance."<sup>13</sup>

### Submissions

#### *The Prosecution's obligation at this stage*

4. The Prosecution recalls that it has the obligation to "make submissions as to whether there has been any change in the circumstances that previously justified detention and [it] must bring to the attention of the Chamber any other relevant information of which [it] is aware that relates to the question of detention or release."<sup>14</sup>
5. The Prosecution limits the present submissions accordingly.
6. The Prosecution does not address the arguments made by the Gbagbo Defence in their submissions on the Accused's tenth detention review ("Gbagbo Defence

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<sup>8</sup> ICC-02/11-01/15-134-Conf-Exp; ICC-02/11-01/15-147-Conf-Exp.

<sup>9</sup> ICC-02/11-01/15-208.

<sup>10</sup> ICC-02/11-01/15-208, paras. 44-46.

<sup>11</sup> ICC-02/11-01/15-208, paras. 71-77.

<sup>12</sup> ICC-02/11-01/15-208, para. 77.

<sup>13</sup> ICC-02/11-01/15-208, paras. 2, 51-53.

<sup>14</sup> ICC-01/05-01/08-1019, para. 51. *See also* ICC-02/11-01/15-208, para. 36.

Submissions”),<sup>15</sup> save to submit that the Gbagbo Defence Submissions merely disagree with previous detention review decisions,<sup>16</sup> disagree with the requirements of the Statute, as interpreted in the case law,<sup>17</sup> and raise arguments which have been previously dismissed by both this Chamber and the Appeals Chamber in its Decision of 8 September 2015.<sup>18</sup> The Gbagbo Defence Submissions do not indicate any changed circumstances within the meaning of article 60(3) of the Statute.

#### *Update on the network of supporters*

7. The Accused continues to have access to a strong network of supporters, as is evidenced by the calls for his release and promises of liberation from members of the *Front Populaire Ivoirien* (“FPI”) and other parties running in the upcoming Presidential elections in Côte d’Ivoire.
8. The FPI, in particular, continues to advocate for the Accused’s release. It is one of the FPI’s platforms for the elections to “bring back” (*faire revenir*) the Accused from the Court (*de la Haye*), if it is elected.<sup>19</sup> Navigue Konaté, one of the party’s youth leaders whom the Prosecution alleges was a member of Gbagbo’s inner circle,<sup>20</sup> was reported on 4 October 2015 as stating at a public meeting that “(l)a manière la plus rapide, radicale, sincère de faire revenir Gbagbo, c’est de gagner la présidentielle”.<sup>21</sup> On 7 September 2015, FPI hardliners called on “militants, sympathisers and all Ivoirians” (*aux militants, aux sympathisants et à tous les Ivoiriens*) to organise protests should the *Conseil Constitutionnel* validate Alassane

<sup>15</sup> ICC-02/11-01/15-283-Conf.

<sup>16</sup> See ICC-02/11-01/15-283-Conf, section 2, paras. 6-19.

<sup>17</sup> See ICC-02/11-01/15-283-Conf, para. 22 on the “*notion floue*” of “*changement de circonstances*” and para. 23.

<sup>18</sup> See ICC-02/11-01/15-283-Conf, section 3, paras. 20-38,

<sup>19</sup> <http://www.connectionivoirienne.net/113826/cote-divoire-presidentielle-le-parti-de-gbagbo-veut-gagner-lelection-pour-le-faire-revenir> (consulted 14/10/2015).

<sup>20</sup> ICC-02/11-01/15-148-Anx1-Corr, para. 28.

<sup>21</sup> “(t)he quickest, the most drastic, mos honest way to bring Gbagbo back is to win the presidential election”: <http://www.connectionivoirienne.net/113826/cote-divoire-presidentielle-le-parti-de-gbagbo-veut-gagner-lelection-pour-le-faire-revenir> (consulted 14/10/2015).

Ouattara's candidacy to run in the elections.<sup>22</sup> An article published on an Ivoirian news website describes those issuing the call as FPI of "*Gbagbo ou rien*" tendency.<sup>23</sup>

9. Charles Konan Banny, a candidate for the *Coalition Nationale pour le Changement* ("CNC"), has also continued to advocate for the Accused's release. On 8 October 2015, he stated that reconciliation in Côte d'Ivoire is illusory without the Accused, and suggested that he would put an end to his imprisonment.<sup>24</sup> The Prosecution recalls from its previous submissions that Protocol 1 of the CNC Charter calls for the government to release political prisoners, "primarily President Laurent Gbagbo."<sup>25</sup>
10. *Liberté et Démocratie pour la République* ("Lider"), a signatory of the CNC Charter, is also running on a platform of liberating the Accused. On 8 August 2015, Lider's president, Mamadou Koulibaly, stated in a public address:

*"La clé de la prison où se trouve Gbagbo est dans la poche de Ouattara. Sortez massivement, allez voter pour faire partir Ouattara et nous aurons la clé pour libérer Gbagbo."*<sup>26</sup>

11. That these political parties are invoking the prospect of the Accused's liberation as an election platform serves to demonstrate that there continues to exist an active network of supporters of the Accused. Their policy in the current election

<sup>22</sup> <http://www.connectionivoirienne.net/113244/cote-divoire-le-parti-de-gbagbo-annonce-des-manifs-contre-la-validation-de-la-candidature-de-ouattara> (consulted 14/10/2015); <http://koaci.com/cote-divoire-gbagbo-rien-appellent-pour-faire-barrage-ouattara-91173.html> (consulted 14/10/2015).

<sup>23</sup> <http://koaci.com/cote-divoire-gbagbo-rien-appellent-pour-faire-barrage-ouattara-91173.html> (consulted 14/10/2015).

<sup>24</sup> "J'organiserai à cet effet une conférence nationale, à l'issue de laquelle je prendrai des mesures pour la libération des prisonniers politiques et le retour des exilés. Je vais faire revenir au pays Gbagbo et Blé Goudé. Comment peut-on rêver à la réconciliation en ignorant celui que vous considérez ici comme l'homme-lige, c'est à dire Laurent Gbagbo, qui est emprisonné à l'extérieur? Il est illusoire de penser réconciliation en excluant une partie des Ivoiriens. Je vais mettre fin à tout cela." (<http://www.linfodrome.com/faits-et-mefaits/23094-presidentielle-2015-charles-konan-banny-promet-je-vais-faire-revenir-gbagbo-et-ble-goude> (consulted 14/10/2015; see also <http://www.connectionivoirienne.net/113992/cote-divoire-lex-pm-banny-juge-illusoire-de-rever-a-une-reconciliation-en-cote-divoire-sans-gbagbo> (consulted 14/10/2015)).

<sup>25</sup> See ICC-02/11-01/15-90-Conf, para. 16.

<sup>26</sup> "The key to Gbagbo's prison is in Ouattara's pocket. Come out in great numbers, and go vote in order to kick out Ouattara and we will have the key to free Gbagbo." <http://www.linfodrome.com/vie-politique/22242-mamadou-koulibaly-sur-le-cas-gbagbo-la-cle-de-sa-prison-est-dans-la-poche-de-ouattara> (consulted 14/10/2015).

campaign has been to appeal to pro-Gbagbo elements - claiming that voting for them will secure the Accused's freedom. Their policy and some of the strategies pursued now - to return Mr Gbagbo to power - are reminiscent of the strategies pursued during the post-election violence in 2010/11 – to maintain Mr Gbagbo in power by all means.<sup>27</sup> It is their ultimate aim to shield the Accused from his ongoing prosecution at the Court, and to frustrate the existing cooperation established between the Ivorian authorities and the Court. The Prosecution submits that this further evidence reinforces the previous findings of the Chamber to maintain the Accused in detention.

### Conclusion

12. For the foregoing reasons, the Prosecution submits that the requirements of article 58(1)(b)(i) and (ii) of the Rome Statute are met and that the continued detention of the Accused is necessary.




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Fatou Bensouda, Prosecutor

Dated this 16<sup>th</sup> day of October 2015

At The Hague, The Netherlands

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<sup>27</sup> See ICC-02/11-01/15-148-Conf-Anx2, section III.A.1.