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**International
Criminal
Court**

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TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Geoffrey Henderson

SITUATION IN CÔTE D'IVOIRE

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

Public Document

Redacted version of "Response to the
'Requête de la Défense visant à ce que soit ordonnée la mise en liberté provisoire
de Laurent Gbagbo' (ICC-02/11-01/15-1130-Conf)", ICC-02/11-01/15-1133-Conf, 22
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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’s request for interim release (the “Request”)² should be rejected and that Mr Gbagbo should remain in detention.

2. The Legal Representative argues that, contrary to the Defence’s submissions and notwithstanding the existing risks under article 58(1)(b) of the Rome Statute confirmed in the latest decision on Mr Gbagbo’s detention, there are no medical reasons justifying Mr Gbagbo’s release.

3. The Defence fails to show how Mr Gbagbo’s state of health is not compatible with the conditions of his detention or how it has worsened since the latest detention review so as to justify his conditional release for medical reasons. Instead, the Defence (i) misrepresents the findings of the two most recent reports on Mr Gbagbo’s health situation and/or contests them on the basis of outdated reports; (ii) challenges the competence of the Medical Officer of the ICC Detention Center (the “Medical Officer”) on the basis of speculative and wholly unsupported arguments; and (iii) in any case, does not provide “*any concrete and adequate proposal*” for the Chamber to rule on Mr Gbagbo’s release with eventual conditions.

4. Accordingly, the Legal Representative submits that Mr Gbagbo’s state of health has not changed since it was last assessed in late September 2017. Therefore, there are no changed circumstances in the sense of article 60(3) of the Rome Statute

¹ See the “Decision on victim participation” (Trial Chamber I), No. ICC-02/11-01/11-800, 6 March 2015; and the “Decision on victims’ participation status” (Trial Chamber I), No. ICC-02/11-01/15-379, 7 January 2016, p. 23.

² See the “Version publique expurgée de la « Requête de la Défense visant à ce que soit ordonnée la mise en liberté provisoire de Laurent Gbagbo » (ICC-02/11-01/15-1130-Conf).”, No. ICC-02/11-01/15-1130-Red, 3 May 2018 (the “Request”).

which could justify a modification of either the current decision to keep Mr Gbagbo in detention or of the conditions of Mr Gbagbo's detention.

II. Background

5. On 27 November 2015, Trial Chamber I (the "Chamber") issued the "Decision on the fitness of Laurent Gbagbo to stand trial", deciding that the Accused was fit to stand trial and to attend trial proceedings.³

6. [REDACTED],⁴ [REDACTED].

7. On 10 March 2017, the Chamber, Judge Tarfusser dissenting,⁵ issued the "Decision on Mr Gbagbo's Detention",⁶ deciding, *inter alia*, that the circumstances justifying the detention of the Accused had not changed to such an extent as to warrant his interim release.

8. On 19 July 2017, the Appeals Chamber issued its judgment on the "Decision on Mr Gbagbo's Detention" (the "Appeals Judgment on Mr Gbagbo's Detention"),⁷ concluding, *inter alia*, that the Chamber failed to consider Mr Gbagbo's age and state of health.⁸ The Appeals Chamber found appropriate to remit the matter to the Chamber for a new review of the ruling on the Accused's detention.⁹

³ See the "Decision on the fitness of Laurent Gbagbo to stand trial" (Trial Chamber I), No. ICC-02/11-01/15-349, 27 November 2015.

⁴ [REDACTED].

⁵ See the "Dissenting opinion of Judge Cuno Tarfusser", No. ICC-02/11-01/15-846-Anx, 10 March 2017.

⁶ See the "Decision on Mr Gbagbo's Detention" (Trial Chamber I), No. ICC-02/11-01/15-846, 10 March 2017.

⁷ See the "Public Redacted Version of Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 10 March 2017 entitled 'Decision on Mr Gbagbo's Detention'" (Appeals Chamber), No. ICC-02/11-01/15-992-Red OA10, 19 July 2017 (the "Appeals Judgment on Mr Gbagbo's Detention").

⁸ *Idem*, paras. 54 and 59.

⁹ *Ibid.*, para. 81.

9. On 20 July 2017, the Chamber ordered the parties and participants to file new submissions for the purpose of article 60(3) of the Rome Statute, *“in particular considering the factors addressed by the Appeals Chamber”*.¹⁰

10. On 23 August 2017, the Defence for Mr Gbagbo,¹¹ the Prosecution,¹² and the Legal Representative¹³ filed their submissions.

11. On 25 September 2017, the Chamber, Judge Tarfusser dissenting, issued a new decision on Mr Gbagbo’s detention (the “Eleventh Decision on Detention”),¹⁴ finding, *inter alia*, that the Defence did not provide *“any concrete and adequate proposal”* for the Chamber to rule on the Accused’s conditional release, and deciding that he shall remain in detention.¹⁵

12. On 14 February 2018, the Defence of Mr Gbagbo filed the Request,¹⁶ asking the Chamber (i) to grant Mr Gbagbo interim release for medical reasons under an obligation of treatment outside the ICC detention premises; and (ii) to hold a hearing in order to discuss the conditions to be applied to Mr Gbagbo’s release.

13. On 21 February 2018, the Prosecution filed its Response to the Request.¹⁷

¹⁰ See the “Decision requesting new submissions for purposes of Article 60(3) of the Statute” (Trial Chamber I), No. ICC-02/11-01/15-993, 20 July 2017, para. 3.

¹¹ See the “Soumissions de la défense présentées à la suite de la ‘Decision requesting new submissions for purposes of Article 60(3) of the Statute’ (ICC-02/11-01/15-993) du 20 juillet 2017”, No. ICC-02/11-01/15-1008-Conf, 23 August 2017.

¹² See the “New submissions for the 11th review of the detention of Mr Gbagbo pursuant to article 60(3) of the Statute”, No. ICC-02/11-01/15-1012-Conf, 24 August 2017.

¹³ See the “Public redacted version of ‘New Submissions for the purpose of article 60(3) of the Statute pursuant to Decision ICC-02/11-01/15-993’”, No. ICC-02/11-01/15-1011-Red, 30 January 2018.

¹⁴ See the “Public redacted version of the Decision on Mr Gbagbo’s Detention” (Trial Chamber I), No. ICC-02/11-01/15-1038-Red, 26 September 2017 (the “Eleventh Decision on Detention”).

¹⁵ *Idem*, paras. 72 and 74.

¹⁶ See *supra* note 2.

¹⁷ See the “Public redacted version of ‘Prosecution’s Response to Mr Gbagbo’s request for interim release (ICC-02/11-01/15-1130-Conf)’”, 21 February 2018, ICC-02/11-01/15-1132-Conf”, No. ICC-02/11-01/15-1132-Red, 30 April 2018.

III. Confidentiality

14. Pursuant to regulation 23bis(2) of the Regulations of the Court, this submission is filed confidentially because it makes reference to submissions filed with the same classification. A public redacted version will be filed in due course.

IV. Submissions

15. The Legal Representative recalls her submissions of 23 August 2017,¹⁸ and considers that the previous conclusions of the Chamber on the need for Mr Gbagbo's continuous detention and on the absence of medical reasons justifying his interim release¹⁹ are still valid today.

16. Indeed, the notion of "changed circumstances" within the meaning of article 60(3) of the Rome Statute *"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*

¹⁸ See the "New Submissions for the purpose of article 60(3) of the Statute pursuant to Decision ICC-02/11-01/15-993", *supra* note 13.

¹⁹ See the Eleventh Decision on Detention, *supra* note 14, paras. 32, 42, 46-47, 60, 63-68 and 74; the "Tenth decision on the review of Mr Laurent Gbagbo's detention pursuant to Article 60(3) of the Statute" (Trial Chamber I), No. ICC-02/11-01/15-328, 11 November 2015, paras. 14-15; the "Public redacted version of 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, paras. 11-12; 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, 11 March 2015, 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, 12 March 2014, para. 34; the "Fourth Decision on Review of Detention" (Pre-Trial Chamber I), No. ICC-02/11-01/11-558, 11 November 2013, 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 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.

prior ruling is necessary".²⁰ If *"there are changed circumstances, the Pre-Trial or Trial Chamber will need to consider their impact on the factors that formed the basis for the decision to keep the person in detention"*, otherwise, the *"Chamber is not required to further review the ruling on release or detention"*.²¹

17. The Appeals Chamber has further clarified that it is first for the relevant Chamber *"to determine whether changed circumstances exist to warrant the disturbing of a previous ruling on detention, rather than addressing each factor underpinning detention in a de novo manner to determine whether any of these have changed"*.²²

18. In this regard, the Legal Representative recalls that, following the instructions of the Appeals Chamber,²³ a detailed assessment of Mr Gbagbo's age impairments and state of health was carried out by the Chamber as early as five months ago,²⁴ on the basis of a medical report containing information updated to 4 September 2017 (the "September 2017 Report").²⁵ In particular, the Chamber conducted a two-fold analysis on the Accused's state of health in order to assess both its compatibility with the current conditions of detention and in-house treatment,²⁶ and its potential impact on his ability to abscond or obstruct court proceedings.²⁷

²⁰ See the "Judgment on the appeal of the Prosecutor against Pre-Trial Chamber II's "Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa" (Appeals Chamber), No. ICC-01/05-01/08-631-Red OA2, 8 December 2009, para. 60.

²¹ See the "Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 6 January 2012 entitled 'Decision on the defence's 28 December 2011 'Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba'" (Appeals Chamber), No. ICC-01/05-01/08-2151-Red OA10, 5 March 2012, paras. 1 and 31.

²² 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'" (Appeals Chamber), No. ICC-02/11-01/11-548-Red OA4, 29 October 2013, para. 1.

²³ See the Appeals Judgment on Mr Gbagbo's Detention, *supra* note 7, paras. 53-59 and 81.

²⁴ See the "Decision on Mr Gbagbo's Detention", *supra* note 6, paras. 33-47.

²⁵ See the "Annex I to the Transmission of the Medical Officer's Report on the state of Mr Gbagbo's health pursuant to Trial Chamber I's order of 25 August 2017", No. ICC-02/11-01/15-1018-Conf-AnxI, 26 September 2017 (the "September 2017 Report").

²⁶ See the "Decision on Mr Gbagbo's Detention", *supra* note 6, paras. 35-43.

²⁷ *Idem*, paras. 44-47.

19. As a result of this analysis, the Chamber found, on the one hand, that “*nothing before [it], including the Medical Report, allows [...] to conclude that given his present state of health, Mr Gbagbo would be unable to abscond or obstruct court proceedings*”,²⁸ and, on the other hand, that “*the Detention Centre provides adequate medical treatment and all requirements compatible with human dignity*”.²⁹

20. The Legal Representative submits that said conclusions remain valid today when considering the two updated reports on Mr Gbagbo’s state of health provided by the Medical Officer, respectively dated 24 November 2017 (the “November 2017 Report”)³⁰ and 18 December 2017 (the “December 2017 Report”).³¹

21. The information contained therein, contrary to the Defence’s submissions,³² does not point to any increase in Mr Gbagbo’s vulnerability that would in turn increase the risk of a negative health status outcome.³³ On the contrary, the Medical Officer clearly reiterates [REDACTED],³⁴ and [REDACTED].³⁵ By the same token, “*accelerate aging*” appears to be “*eminent though mild*”.³⁶

22. In the same vein, the Defence plainly misrepresents the findings related to Mr Gbagbo’s daily performance and claims the existence of pathologies which do not

²⁸ *Ibid.*, para. 45.

²⁹ *Ibid.*, para. 38.

³⁰ See the “Rapport [REDACTED] en date du 24 novembre 2017”, No. ICC-02/11-01/15-1130-Conf-Anx1, 14 February 2018 (the “November 2017 Report”).

³¹ See the “Rapport [REDACTED] en date du 18 décembre 2017”, No. ICC-02/11-01/15-1130-Conf-Anx2, 14 February 2018 (the “December 2017 Report”).

³² See the Request, *supra* note 2, para. 2, 4, 8-9 and 73-74.

³³ See the November 2017 Report, *supra* note 30, para. 2.

³⁴ See the November 2017 Report, *supra* note 30, paras. 1 and 6; and the December 2017 Report, *supra* note 31, para. 1. In the same vein, see also the September 2017 Report, *supra* note 25, para. 1.

³⁵ See the November 2017 Report, *supra* note 30, para. 6, and the December 2017 Report, *supra* note 31, para. 1.

³⁶ See the November 2017 Report, *supra* note 30, para. 3. Similarly, see also the September 2017 Report, *supra* note 25, para. 3.

subsist at the moment, nor are likely to be developed by Mr Gbagbo in the near future.³⁷

23. In this regard, the November 2017 Report indicates that [REDACTED].³⁸ Contrary to the Defence's arguments [REDACTED],³⁹ [REDACTED].⁴⁰

24. Furthermore, the Defence's challenge to the content of the November 2017 Report - in so far as it does not address the treatment of Mr Gbagbo's cardiovascular condition and his alleged clinical post-traumatic stress disorder (the "PTSD") and/or hospitalisation syndrome -⁴¹ is wholly unfounded.

25. Firstly, the Defence's alarmism [REDACTED] is unjustified. As previously indicated by the Medical Officer in the September 2017 Report, [REDACTED].⁴²

26. Secondly, the Defence deliberately disregards the previous findings of the Chamber on the specific conditions of PTSD and hospitalisation syndrome. Indeed, following a thorough medical examination of the Accused by three independent experts,⁴³ the submission in the record of the case of the experts' reports,⁴⁴ and the questioning and submissions by the parties and participants on 10, 12 and 19

³⁷ See the Request, *supra* note 2, paras. 12-23.

³⁸ See the November 2017 Report, *supra* note 30, paras. 4 and 8. Similarly, see also the September 2017 Report, *supra* note 25, para. 3(ii).

³⁹ See the Request, *supra* note 2, para. 20.

⁴⁰ See the November 2017 Report, *supra* note 30, para. 8.

⁴¹ See the Request, *supra* note 2, paras. 13 and 16-20.

⁴² See the September 2017 Report, *supra* note 25, para. 3(a)(iii).

⁴³ See the "Order to conduct an examination of Mr Gbagbo under Rule 135 of the Rules" (Trial Chamber I), No. ICC-02/11-01/15-253, 27 January 2016. The Chamber appointed Dr Pierre Lamothe, Mr Alain Dumez and Dr Bertrand Ludes for the purpose of conducting Mr Gbagbo's medical examination.

⁴⁴ See the "Public redacted version of 'Transmission by the Registry pursuant to ICC-02/11-01/15-253-Conf of Appointed Experts' reports', ICC-02/11-01/15-325-Conf dated 29 October 2015", No. ICC-02/11-01/15-325-Red, 3 February 2016.

November 2015,⁴⁵ the Chamber concluded that Mr Gbagbo no longer suffers from PTSD or hospitalisation syndrome.⁴⁶

27. [REDACTED],⁴⁷ [REDACTED].⁴⁸ [REDACTED].⁴⁹

28. It follows logically that there is no need for treatment if a given pathology is not present any longer or [REDACTED]⁵⁰ that is not affecting the individual's cognitive capacity. In this view, the Defence's attempt to link Mr Gbagbo's fatigue and non-compliance behaviour to a PTSD or to a hospitalisation syndrome⁵¹ is inapposite, or at its best, purely speculative.

29. [REDACTED],⁵² [REDACTED]⁵³ [REDACTED]⁵⁴ [REDACTED].

30. Lastly, [REDACTED] Mr Gbagbo is considered to be a "*fragile person*",⁵⁵ [REDACTED]⁵⁶ [REDACTED].⁵⁷ [REDACTED].⁵⁸

31. [REDACTED].⁵⁹ While doing so, the Defence fails nonetheless to mention that already on 18 January 2013, the Single Judge concluded, after examining the entirety of Mr Gbagbo's medical record and reports, that "*the necessary treatment to improve the*

⁴⁵ See the transcripts of the hearing held on 10 November 2015, No. ICC-02/11-01/15-T-5-ENG ET; 12 November 2015, No. ICC-02/11-01/15-T-6-CONF-ENG ET (closed session); and 19 November 2015, No. ICC-02/11-01/15-T-7-CONF-ENG ET (closed session).

⁴⁶ See the "Decision on the fitness of Laurent Gbagbo to stand trial", *supra* note 3, para. 42.

⁴⁷ [REDACTED].

⁴⁸ [REDACTED].

⁴⁹ [REDACTED].

⁵⁰ [REDACTED].

⁵¹ [REDACTED].

⁵² [REDACTED].

⁵³ [REDACTED].

⁵⁴ [REDACTED].

⁵⁵ See the November 2017 Report, *supra* note 30, para. 2.

⁵⁶ See the Annex II to the "Registry's Transmission of Mr Gbagbo's Medical Report", No. ICC-02/11-01/15-657-Conf-AnxII, 31 August 2016, para. 1.

⁵⁷ [REDACTED].

⁵⁸ See the "Decision on Mr Gbagbo's Detention", *supra* note 6, para. 37.

⁵⁹ [REDACTED].

physical and psychological condition of Mr Gbagbo may be provided in the Netherlands”,⁶⁰ and that “there are no medical reasons that would justify the conditional release of Mr Gbagbo”.⁶¹

32. Since Mr Gbagbo no longer suffers from the PTSD and the hospitalisation syndrome and, in any case, these syndromes no longer affect his cognitive faculties,⁶² it appears even less necessary for the Chamber to entertain the Request. The reports on Mr Gbagbo’s health conditions referred to by the Defence were already examined in the context of the decision rendered in 2013,⁶³ and are irrelevant to any determination by the Chamber of whether there are medical reasons justifying at present the interim release of the Accused. By the same token, the findings related to the persistence of a PTSD and of a hospitalisation syndrome, contained in the medical reports presented to the Chamber in 2014,⁶⁴ cannot be relied upon because they were reversed one year later by a new medical examination carried by independent experts in the context of the decision on Mr Gbagbo’s fitness to stand trial.⁶⁵

33. Accordingly, the Legal Representative submits that the Defence’s blatant attempt to cast doubts on the Medical Officer’s competence in order to undermine the reliability of the September, November and December 2017 Reports⁶⁶ is based on pure speculation and wholly unsupported arguments.

34. Lastly, the Legal Representative notes that, even assuming, *arguendo*, that release on medical grounds could be found to be appropriate, the Defence failed to

⁶⁰ See the “Decision on the request for the conditional release of Laurent Gbagbo and on his medical treatment” (Pre-Trial Chamber I), No. ICC-02/11-01/11-362-Red, 18 January 2013, para. 36.

⁶¹ *Idem*, para. 37.

⁶² See *supra*, paras. 24-29.

⁶³ See “Decision on the request for the conditional release of Laurent Gbagbo and on his medical treatment”, *supra* note 60.

⁶⁴ [REDACTED].

⁶⁵ See the “Decision on the fitness of Laurent Gbagbo to stand trial”, *supra* note 3, para. 42. See also *supra*, paras. 24-29.

⁶⁶ See the Request, *supra* note 2, paras. 13-24, 63-67, 73-74 and 77-79.

provide the Chamber with concrete and solid proposals that would guarantee Mr Gbagbo's attendance at trial if released. Indeed, in contravention of the Chamber's precise instructions contained in the Eleventh Decision on Detention,⁶⁷ the Defence limits itself to request holding a hearing to discuss the conditions eventually to be applied for Mr Gbagbo to be released. In so doing, the Defence fails to provide "*any concrete and adequate proposal*" which could allow the Chamber to "*make a ruling on conditional release that would guarantee the expeditious and fair conduct of proceedings*".⁶⁸

35. Finally, the Legal Representative submits that the serious concerns expressed by the victims participating in this case about the possibility that Mr Gbagbo be granted release even with conditions, is a factor which should be also taken into account by the Chamber when evaluating the Request. Considering the sensitivity surrounding this trial, as recognised by Judge Tarfusser in his dissenting opinion,⁶⁹ there is indeed a real risk that an eventual interim release of Mr Gbagbo's be exploited for political purposes. In this regard, the victims expressed the view that this may in turn affect their confidence in the proper administration of justice by the Court.

⁶⁷ See the Eleventh Decision on Detention, *supra* note 14, para. 73.

⁶⁸ *Idem*, paras. 72-73.

⁶⁹ See the "Dissenting opinion of Judge Cuno Tarfusser", *supra* note 5, para. 22.

V. Conclusion

36. The Legal Representative respectfully submits that, notwithstanding the existing risks under article 58(1)(b) of the Rome Statute confirmed in the latest decision on detention, there are no medical reasons justifying Mr Gbagbo's interim release and that he should remain in detention.

A handwritten signature in black ink, reading "Paolina Massidda", with a horizontal line underneath the name.

Paolina Massidda
Principal Counsel

Dated this 19th day of June 2018

At The Hague, The Netherlands