

1 International Criminal Court

2 Pre-Trial Chamber I - Courtroom 1

3 Situation: Republic of Côte d'Ivoire

4 In the case of The Prosecutor v. Laurent Gbagbo - ICC-02/11-01/11

5 Presiding Judge Silvia Fernández de Gurmendi

6 Hearing pursuant to Rule 118(3) of the Rules of Procedure and Evidence

7 Tuesday, 30 October 2012

8 (The hearing starts in open session at 2.31 p.m.)

9 THE COURT USHER: All rise.

10 The International Criminal Court is now in session.

11 Please be seated.

12 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Good

13 morning to one and all. Good afternoon, rather.

14 Court officer, would you please call on the case which concerns us today.

15 THE COURT OFFICER: (Interpretation) Situation in Côte d'Ivoire, The Prosecutor

16 versus Mr Gbagbo, ICC-02/11-01/11.

17 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you

18 very much.

19 Before we begin the hearing, I would like the parties and the participants to introduce

20 themselves. Let's start, if you will, with the OTP.

21 MR DUTERTRE: (Interpretation) Good afternoon, your Honour. My name is

22 Gilles Dutertre. I have next to me Reinhold Gallmetzer, I also have Krisztina Varga,

23 Maria Berdennikova, Florie Huck, and we also have our case manager with us here

24 today, Sandra Schoeters, and she is seated behind me.

25 Thank you very much.

26 30.10.2012

1 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Microphone not activated).

2 THE INTERPRETER: Microphone, please, for the Presiding Judge.

3 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) The legal
4 representatives of the victims now, please, would they mind introducing themselves?

5 MS MASSIDDA: (Interpretation) Good afternoon, your Honour.

6 The OPCV is represented here today by Ms Sara Pellet, counsel; Mr Enrique Carnero
7 Rojo, who's a legal officer; and myself, Paolina Massidda, principal counsel.

8 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you
9 very much.

10 I'd like now to turn to Defence; Mr Gbagbo's Defence. Would you mind introducing
11 you and your team, Counsel?

12 MR ALTIT: (Interpretation) Good afternoon, your Honour. You're familiar with
13 Natacha Fauveau Ivanovic, from the Paris Bar; Jennifer Naouri, who is the legal
14 assistant; and allow me also to introduce to you Gaëlle Buchet, who is case manager;
15 and I am Emmanuel Altit, who is the chief counsel for Mr Gbagbo.

16 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Microphone not activated).

17 THE INTERPRETER: Microphone, please, for the Bench. Microphone, please.

18 MS BERTRAND: (Interpretation) Madam, your Honour, for the Registry today we
19 have a representative from the Detention Centre; Ms Oseredczuk, who works at
20 Court Services; and myself, Anne Aurore Bertrand, and for my part I work in
21 conjunction with the Registrar. I'm an adviser.

22 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) The
23 Chamber is today represented by myself, Sylvia Fernández de Gurmendi, Single
24 Judge for the Pre-Trial Chamber I, and I am assisted by Messrs Grabovec and Pons.
25 Pursuant to Article 63 of the Statute, the Pre-Trial Chamber periodically revisits its

1 ruling on the release or the continued detention of the suspected individual. The
2 Chamber can therefore change its determination regarding custody or release, or the
3 conditional release of the person in question, if it is satisfied that any changed
4 circumstances justify such a change. Rule 62(2) of the Rules of Procedure and
5 Evidence stipulates that the Pre-Trial Chamber shall revisit its ruling for release, or
6 continued detention, as provided for in paragraph 3 of Article 60, at least every
7 120 days.

8 Today's hearing was convened pursuant to paragraph 2, as well as paragraph 3, of
9 Rule 118 of the Rules of Procedure and Evidence, according to which the Chamber
10 convenes a hearing at least once a year. The Single Judge reminds parties and
11 participants that it is designed to give them the opportunity to submit to the Chamber
12 any observations that they deem relevant to the question of the detention or the
13 release of Mr Gbagbo before the Chamber makes a ruling in this respect.

14 I would remind parties, participants and those in the public gallery that the hearing
15 will first go through an open session. I'll be hearing the observations made by the
16 OTP, no more than 30 minutes, and then I'll be hearing the legal representatives of the
17 victims, no more than 20 minutes for speaking time, and lastly Mr Gbagbo's
18 Defence team for no more than 30 minutes, please.

19 I would also like to remind you that after a 30-minute break our session will continue,
20 but in closed session in sole presence of the OTP and the Defence and the
21 representatives of the Registry in order to talk about documents and information to
22 which the representatives of the victims and the general public have no access. As a
23 consequence, I urge the parties to present most of their submissions during open
24 session and thereby to limit any debate during closed session to solely questions of
25 confidential import.

1 In addition to this, I call upon the court officer to tender all documents that will be
2 used during the hearing into the case file, pursuant to Regulation 29 of the
3 Regulations of the Registry.

4 Lastly, in order to guarantee the expedite nature of the proceedings but also to ensure
5 the proper transcription of this hearing, I call upon the parties and the participants to
6 remain concise, to speak slowly and to mark a break between their -- the end of their
7 statement and the beginning of the statement of future speakers. The Chamber will
8 also abide by these same demands.

9 So we will therefore start with Mr Prosecutor. Over to you, sir.

10 MR DUTERTRE: (Interpretation) Thank you, Madam President.

11 Your Honour, Laurent Gbagbo must remain in detention here in The Hague for the
12 purposes of the case against him for crimes against humanity.

13 No later than last Friday, the Appeals Chamber confirmed your decision of 13 July;
14 that is the decision by which the request for interim release sought by Laurent
15 Gbagbo under Article 60(2) of the Statute was rejected.

16 The Appeals Chamber stated that your decision of 13 July, I quote, "... was devoid of
17 any material error." In so doing, the Appeals Chamber confirmed the findings of
18 your Chamber based on the reasons for the detention as outlined in 58(1)(b) of the
19 Statute and which were challenged by the Defence.

20 Laurent Gbagbo must remain in detention, because since the decision of 13 July,
21 which was confirmed, his circumstances have not changed. That and that alone is
22 the unique purpose for which we are holding these hearings today. These are the
23 legal parameters, namely to determine whether there are new circumstances, and our
24 submission is that there are none.

25 Allow me to outline a few quick points on this -- in this regard, Madam President.

1 The hearing today is holding (sic), pursuant to Article 60(3) of the Statute, regarding a
2 review of your decision of 13 July. The principles applicable thereto are clear
3 pursuant to the Bemba decision of 1019.

4 The first decision from Bemba is as follows: Article 60(3) of the Statute calls for a
5 periodical re-examination of detention conditions, but it does not -- it does not
6 commit the Chamber to come to an ab initio decision. The Chamber does not have
7 to review the circumstances under which it came to its decision to maintain the
8 person in detention.

9 The second principle from the Bemba judgment, or decision rather, is to the effect that
10 in such circumstances, "... the Chamber shall only determine whether any or other of
11 the circumstances has changed. The Chamber therefore must come to the
12 determination as to whether circumstances have been changed so as to lead to a
13 change in the decision on maintaining detention or not, and if such were to be the
14 case they must have a bearing on the conditions laid out in Article 51(1) of the
15 Statute," end of quote.

16 THE INTERPRETER: Paragraph mentioned.

17 MR DUTERTRE: (Interpretation) From the Bemba trial, there is a third
18 consequence. "The Prosecutor is not bound to again re-establish circumstances that
19 have already been demonstrated, but he must however proceed to show that there
20 have been no changes in those circumstances," end of quote.

21 In your decision of 13 July, your Chamber decided to maintain Gbagbo in detention
22 pursuant to the three reasons under 51(1)(b). The Prosecutor submits that from that
23 date on the circumstances have not changed and, therefore, there is no reason for
24 your decision to be altered.

25 Let me even say that it is in fact the contrary that has taken place. From that time,

1 that is of 13 July, the Prosecution has discovered new evidence to corroborate the
2 material in your decision. I am referring here to the documents that were disclosed
3 to all parties and participants yesterday, and I will be revisiting those points in detail
4 subsequently.

5 Let me conclude my introductory remarks by saying that the Prosecution has taken
6 note of the position of the Appeals Chamber, to the effect that the medical
7 circumstances of a detained person may have an impact on the conditions in
8 Article 51 -- 58(1); for example the possibility to abscond. The Prosecution also notes
9 that the medical conditions of the detained person may be a reason for conditional
10 interim release.

11 The Prosecution therefore wants to state upfront that Laurent Gbagbo's position does
12 not affect the assessment of the risks under Article 58. I will revisit this point during
13 the closed

14 Madam President, with your leave, allow me now to address each of the reasons for
15 detention as outlined in the decision of 13 July to demonstrate that the circumstances
16 have not changed. I would like to specify at this point that all evidence and all
17 observations that have been filed or submitted to the Chamber in relation to the
18 decision of 13 July stand.

19 The first reason for maintaining the person in detention in the decision of 13 July is
20 the need to guarantee that Laurent Gbagbo will appear before the Court. In that
21 connection, Madam President, your decision at paragraph 56 held that the serious
22 nature of the charges against Laurent Gbagbo and the lengthy prison sentence that
23 may ensure in the event of conviction constitute an incentive for him to abscond. At
24 paragraph 57, you stated that Laurent Gbagbo seems to have political motivations
25 and the necessary resources that can make it possible for him to take flight.

1 We therefore submit that nothing has changed in those circumstances from the time
2 of your decision of 13 July 2012. The charges are the same, the sentence is the same
3 and all remains the same. That is why, your Honour, we must note that now, as
4 before, he, Laurent Gbagbo, has the motivation, the political support and the
5 resources that can facilitate absconding. Now, as to a reason for absconding, there is
6 no information after 13 July to point that -- to point to the fact that Laurent Gbagbo
7 has given up a desire to return to power.

8 Two, as for political support, supporters, contacts, international links and what have
9 you that may be mobilised to facilitate his absconding, it must be noted that he
10 continues to have a network of supporters in Côte d'Ivoire and in other countries who
11 are organised as the FPI looking for his liberation, and again no circumstance has
12 changed in that regard from the time of your decision.

13 Let me further add that the document of the FPI which was disclosed -- which was
14 filed yesterday and disclosed to the parties points to this same fact. At page 12 of
15 that document it is stated that, in order to put all the chances of success for
16 reconciliation in Côte d'Ivoire, the need for all political prisoners to be released and
17 the physical presence of President Gbagbo are non-negotiable conditions. This,
18 therefore, is the position of the FPI in this very recent document. The FPI is critical
19 of the transfer of Laurent Gbagbo to the ICC, and I refer to page 10 of that document.

20 Now, as for the AU - the African Union - Madam President, let me say that the AU
21 called on its Member States not to co-operate with the Court in regard to trials
22 involving Heads of State, and on that point again nothing has changed.

23 Now, as to the issue of resources, Madam President, Laurent Gbagbo continues to
24 have access to financial resources that can help him to abscond. In your decision of
25 13 July, the Chamber stated that some of the assets belonging to him or to his wife

1 may not have been frozen. The Prosecution has called for these assets to be frozen.

2 In its judgment last Friday, the Appeals Chamber determined that it was not

3 necessary to show that other assets were not frozen. It suffices that there be an

4 inference of the existence of recently identified assets as assets that have not been

5 referred to, and I'm referring here to paragraph 278 of the decision. This is still valid

6 today.

7 By the way, as for the financial resources that can enable his flight, the Prosecution

8 submits that on 15 October 2012 the expert group on Côte d'Ivoire set up by the

9 Security Council submitted a report which stated the following in two broad points:

10 (1) the committee to organise the Ivorian diaspora, which is a pro-Gbagbo

11 organisation created in May 2011 in Belgium, has an objective to raise funds

12 massively in Europe to the amount of €50 per person in order to fund the fight against

13 the current government. The said committee intends to commit that operation to

14 financial operators and representatives of the former President Gbagbo. I refer to

15 paragraph 73 and 76 of the expert group report. That expert group also adds that it

16 is in possession of credible information and evidence about a bank account in France

17 where funds are being collected in support of President Gbagbo, reference paragraph

18 132 of the report.

19 Further, and in relation to motivation, support and resources, the Prosecution would

20 like to say regarding this possibility to abscond - and that will be my last point - that

21 the Chamber must not give weight to Laurent Gbagbo's commitment to appear before

22 the Court. He reiterated such a commitment yesterday in writing, but the Chamber

23 must refer to its previous positions and realise that little weight has to be given to this

24 commitment.

25 Now, your Honour, in your decision of 13 July the second reason was the need to

1 determine that Laurent Gbagbo will not be an obstacle to investigations and to the
2 proceedings. The Appeals Chamber, at paragraph 64 of its decision of last week,
3 said the intention to take flight or to obstruct investigations and proceedings all have
4 the same purpose, namely to stop the trial from taking place and therefore to impede
5 the proceedings, so there is a link between the possibility of flight and the possibility
6 of obstructing the proceedings.

7 I will be very brief on this point and I want to mention only three items in support of
8 that argument: (1) The findings of your Chamber that Laurent Gbagbo seems to
9 have a motivation or a reason to be an obstacle to investigations relating to the
10 purportedly committed crimes appears to be true, reference your decision paragraph
11 65; (2) Mr Gbagbo is very fully versed with the Prosecution case against him. As of
12 13 July, or even before 13 July, all the evidence that the Prosecution intends to rely on
13 for the Confirmation of Charges hearings, including the names of all witnesses, was
14 disclosed. Now, on 13 July, the Prosecution further communicated additional
15 evidence.

16 In this context, therefore, my third point will be that as demonstrated earlier
17 Mr Gbagbo still has a network of contacts and access to economic networks and
18 finances that he can use to obstruct investigations and proceedings.

19 In a nutshell, therefore, all the facts and grounds raised in your decision of 13 July
20 remain and nothing in those circumstances has changed since then.

21 Madam President, the third reason for which he must be maintained in detention
22 as -- flows from your decision of 13 July; that is the need to prevent the crimes under
23 your jurisdiction. It is the Prosecution's stand that all your findings are still valid
24 today. Mr Gbagbo still has a network of supporters and financial resources, people
25 with weapons and arms with an intent to commit violent acts in the Côte d'Ivoire

1 with a view to bringing Laurent Gbagbo back to power. He may use this network of
2 supporters to commit further crimes that fall within the jurisdiction of the Court.

3 Let me add that there are some very important points raised in the expert group's
4 report which I already mentioned. Several of those points relate to crimes that fall
5 within the jurisdiction of the Court.

6 First of all, the report points out that senior personalities of the regime of former
7 President Gbagbo have sought refuge in countries neighbouring the Côte d'Ivoire
8 after the post-electoral crisis. These groups are suspected of organising and funding
9 military groups in the Côte d'Ivoire by recruiting mercenaries and purchasing
10 weapons and materials, reference paragraph 28.

11 The report also mentions that on 12 July 2012 a meeting was held in Ghana, bringing
12 together various groups of exiled persons who support President Gbagbo's regime,
13 and they decided to join forces and come up with a common plan with a view to
14 reconquer power in Côte d'Ivoire, reference paragraph 29 of the expert report.

15 According to sources close to the expert group, it is a well-organised group which can
16 plan and conduct operations on a large scale and that with political and military
17 ramifications, paragraph 31.

18 Annex 8 of the report also points to the military character of the structure and
19 identifies its main members, reference paragraph 30 and page 108 of the report.

20 Annex 7 of the report provides a list of attacks committed in Côte d'Ivoire in 2012 that
21 are -- that can be ascribed to the pro-Gbagbo groups. Out of 30 incidents about 20
22 can be ascribed to that group, some of which took place after 13 July, leading to
23 deaths, rapes, wounded persons and so on and so forth, as you can see at paragraphs
24 30 and page 107 of the report.

25 The Defence produced a number of documents this morning to challenge the

1 credibility of this report in order to point out that Laurent Gbagbo's supporters are
2 held in detention, whereas others deny the facts and that there may be incidents that
3 may have been caused by reasons other than those I have raised. However, Madam
4 President, it is clear that Laurent Gbagbo has a host of supporters.
5 Now, this is a matter for the Court to determine. The report is an expert report. It
6 is an interim report and it is not a final report. Let me therefore say that under
7 58(1)(b), I refer to the Appeals Chamber's position that there is a need for the
8 detention to continue because it deals with the possibility and not the certainty of an
9 event occurring in the future, decision 572 in the Ngudjolo case. Therefore, it is
10 possible that all these groups may be involved in these matters. The three reasons
11 for maintaining in detention under 58(1)(b) are therefore valid.
12 Now, could interim release - conditional interim release - be an option for a president?
13 The answer clearly is "No." Mindful of the information and elements provided
14 above, as well as conditions prevalent today and previously, it is true that there is no
15 condition that can attenuate the risks arising under Article 58(1)(b)(i). The
16 circumstances are the same and that risk can only be properly managed by keeping
17 Laurent Gbagbo in detention here in The Hague, and therefore nothing has changed
18 in the circumstances that led to your decision and to the decision of the Appeals
19 Chamber.
20 Last Friday the Appeals Chamber even said that your Chamber, having dismissed the
21 possibility of interim release with conditions, did not therefore go on to look into the
22 possibility of a Host State for President Laurent Gbagbo. It is for these reasons,
23 therefore, that the Prosecution submits that there is no need to seek any new
24 guarantees from any State and that, by the way, we received a document this morning
25 which points to the fact that any such guarantees suggested are similar to those that

1 were suggested before, although they come with a few more details.

2 The Prosecution therefore refers to the submissions as to the insufficiency of these
3 conditions and, whether a few more details are added today, that does not make them
4 sufficient. In any event, if the Chamber were to look into those conditions, it must
5 also apply Regulation 119, paragraph 3, in consultation with the Côte d'Ivoire because
6 Laurent Gbagbo is also being charged in his country and may -- his country may have
7 the right to prosecute him on those grounds.

8 In a nutshell, therefore, the Prosecutor submits that Laurent Gbagbo must remain in
9 detention. All the reasons upheld in your decision of 13 July 2012 remain in place.

10 There are no new circumstances that justify a change in that decision. The
11 guarantees that are proposed are not sufficient to guarantee that the possible risk of
12 flight will be properly managed.

13 I will develop this further in the closed session and I thank you, Madam President, for
14 giving me the floor.

15 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you
16 very much.

17 I'll be handing over now to Counsel Massidda. Over to you, madam.

18 MS MASSIDDA: (Interpretation) Thank you very much, your Honour.

19 First of all, your Honour, I wish to subscribe to the arguments expounded by the OTP
20 with regard to the facts; that's the conditions of custody - the conditions that led to
21 Mr Gbagbo's being taken into custody - hasn't changed since he was taken into
22 custody and now.

23 So I'll be confining my remarks to one or two questions; questions that have been
24 submitted directly to us from the victims in Côte d'Ivoire. I'll also be referring to
25 questions that have particular import with regard to their personal vested interests.

1 I would like to thank you, your Honour, first of all for this invitation given to victims
2 to be involved in the issue of the release or sustained custody of Mr Gbagbo. Indeed,
3 this issue undoubtedly concerns their personal interests. The only regret is that this
4 hearing is being held in the absence of the suspect. The involvement of the victims,
5 well, unfortunately will be limited, your Honour, and this for two overriding reasons;
6 the first of which the victims have only a knowledge of a limited amount of material
7 with regard to the proceedings relative to the request for release of the suspect
8 because this procedure is categorised as confidential. Therefore, the only material at
9 their avail are contained in the redacted public version of your Chamber's ruling
10 dated 13 July last and the ruling of the Appeal Chamber dating back to Friday last.
11 Secondly, in the light of this material it seems that the proceedings linked to the
12 release of the suspect is being confused with that linked to his state of health. Here
13 again, and you know full well that the victims unfortunately don't have access to the
14 main material in this procedural part of things and which are still pending before the
15 Pre-Trial Chamber.

16 We would also like to remind you, your Honour, that as the legal representative of
17 victims in this case the team for the OPCV is bound by the Professional Code of
18 Conduct for Counsel and that, notwithstanding the sensitivity of information
19 pertaining to the state of health of Mr Gbagbo, it is desirable and even necessary that
20 the legal representative of victims be properly informed of this issue which lies at the
21 very heart of the entire proceedings linked to the case and without which the victims
22 couldn't see their right to enjoy genuine and effective involvement in the proceedings
23 abided to because they would be de facto deprived of their ability to have their
24 personal interests properly respected, and this is a nagging concern for the victims
25 who constantly come to us. They contact us to ask for explanations about the

1 opaque nature of the Court's proceedings.

2 With regard to the release procedure, or the continuing custody procedure, this
3 opacity is all the more difficult to understand, that 119(c) of the Rules of Procedure
4 and Evidence stipulates that, and I quote, "Before modifying the restrictive conditions
5 for release, the Pre-Trial Chamber shall ask victims who have come forward to the
6 Court with regard to the case in question and in the opinion of the Chamber the
7 release or the conditional release could incur a risk to submit their observations," but
8 all the information with regard to the conditions of a potential release on the territory
9 of a State that are known to date by the victims remain confidential and therefore they
10 cannot be discussed -- they cannot be disputed rather by the victims, whereas of
11 course this question directly involves their personal interest.

12 The victims are therefore wondering about the legitimacy of keeping such
13 information confidential in the light of Rule 119(3) in this respect. I would like to
14 recall to your attention that in the Bemba case, the office as -- in its capacity of legal
15 representative could enjoy access to all documents pertaining to potential
16 modification of detention conditions in similar circumstances as those in the present
17 case when the Defence had asked for the release of the suspect in a host country, but
18 Mr Gbagbo's defence has anticipated in its submission of 25 October last that it
19 expects to submit to the Chamber today information pertaining to guarantees
20 provided by the Host State as well as the modus operandi of any exercise of
21 provisional freedom being granted.

22 On this particular issue, I would like first of all to note that Defence considers that this
23 information should remain confidential, and I quote, "... for obvious reasons,"
24 unquote, and that the commitment of the host country must also, and once again I
25 quote, "... secret for diplomatic and confidential reasons because of official

1 relationships between the Court and the governments in question." For all that, it is
2 incumbent upon not Defence but upon the host country to say whether said
3 information can be disclosed to the legal representative of victims.

4 In any case, Rule 119 is clear and provides for an opportunity for the victims who
5 have come forward to the Court, and even a broader category of victims have been
6 given leave to be involved in the procedure, to make observations on this very
7 question and -- and this for a very simple reason, because even if -- if they're in a host
8 country victims could be exposed to certain risks.

9 Indeed, a number of victims have fled Côte d'Ivoire following the 2011 events, and
10 this in order to feel in greater safety and security and in an attempt to cast into the
11 back of their mind rather painful memories. Most of the victims therefore sought
12 refuge in countries neighbouring Côte d'Ivoire's border on the African continent, or
13 elsewhere.

14 The submission of the Defence read in the light of this makes it -- arises fears for us
15 that a decision for provisional release to a Host State would have an impact on the
16 victims if this Host State were to be a State where the victims have sought refuge.

17 With regard Rule 119(3), since this rule calls upon the competent Chamber to consult
18 victims to which conditional or provisional liberty could make a risk exist, conditions
19 should be laid down before any decision for release is made and this should be made
20 and given -- should be such that the victims should know about this in order to make
21 proper submissions and understand what they're exposed to.

22 In the current choice of the Defence, which wishes to broach disparate questions in
23 the periodical examination of the decision to maintain detention of the suspect,
24 victims find themselves impossible to have their rights fully adhered to as enshrined
25 in the Rome Statute.

1 This said, and to the best of their knowledge, the victims wish to make the following
2 observations. As the OTP said, this hearing is designed to check whether the criteria
3 laid down in Article 58(1) of the Rome Statute are properly satisfied and continue to
4 be satisfied.

5 In the Lubanga affair, the Appeals Chamber has already clarified, and let me quote,
6 "The decision to maintain an individual in custody or to release him in the meaning of
7 Article 60(2), read in conjunction with Article 58(1) of the Statute, doesn't fall under a
8 discretionary decision. Depending on whether conditions stated in Article 58(1) of
9 the Statute continue or not to be fulfilled, the detained person is maintained in
10 custody or released." Your Honour, allow me to refer to the Lubanga case in its
11 French translation in paragraph 134.

12 In the Bemba case, this is the Appeals Chamber, and this was stated, and let me quote,
13 "When the Appeals Chamber examines the conditions stipulated in Article 58(1) and
14 when these are satisfied, the Pre-Trial Chamber, according to the third sentence in
15 Article 60(3), can modify its ruling if it's satisfied that the -- that the circumstances
16 have changed and provide justification for such change. The change in
17 circumstances mean either some facts or facts granting a previous decision to sustain
18 custody have changed or that a new event has been brought to light that satisfies the
19 Chamber that sufficient grounds were supplied to change its initial ruling." This is
20 the ICC-01/05-01/08-631_Red-FRA, paragraph 60.

21 With regard to the material brought to the knowledge of the victims, and in light of
22 the decision of the Appeals Chamber of 26 October last, victims are convinced that
23 maintaining Mr Gbagbo in custody is necessary to properly ensure that he appears at
24 the confirmation hearing, that he doesn't hinder the investigation or the proceedings
25 of the Court and it doesn't compromise the conduct of proceedings and that it won't

1 be involved in the commission of future crimes which fall under the scope of the
2 warrant of arrest.

3 The victims remind the Chamber that Mr Gbagbo is being prosecuted for four counts
4 of crimes against humanity, murder, rape, other sexual violences, acts of persecution,
5 inhumane acts, that allegedly were perpetrated in the context of post-electoral
6 violence occurring on the territory of the Côte d'Ivoire between 16 December 2010 and
7 12 April 2011.

8 The seriousness of the charges brought against the suspect have already been
9 acknowledged by the Appeals Chamber as a significant factor justifying his
10 remaining in custody, and I would like to cite one or two decisions in this respect:

11 The Lubanga affair, 824, paragraph 136; Mbarushimana, 283, paragraph 21; the
12 Katanga case already cited by the OTP it must be said, and 572, paragraph 21, ruling
13 572, paragraph 21.

14 In this respect I would like to call to your attention that Article 68 of the Rome Statute
15 emphasises the nature of the crime in addition to other material, and let me quote, "...
16 when the nature of the crime is accompanied by violence of sexual character, sexist
17 violence, or violence against children." In the case of import here, a huge number of
18 acts of violence held against -- the suspect is charged with had a sexual, sexist
19 character; all were perpetrated upon minors.

20 With regard to financial resources at Mr Gbagbo's avail, the Appeal Chamber in its
21 ruling of 26 October last has already established the fact that the network that
22 Mr Gbagbo can draw upon is undoubtedly still active and that its very existence is
23 relevant to any determination, and here I'm referring to paragraph 59 of the ruling of
24 26 October last.

25 The victims are also underscoring the fact that Mr Gbagbo - and this is borne out by

1 the OTP statement earlier on - had access to a huge amount of exculpatory and
2 inculpatory material over the previous months and since the initial decision to
3 maintain his custody, and the Appeals Chamber has already established that this
4 constitutes an important factor upon analysing the criteria enshrined by Article
5 58(1)(b)(ii) of the Rome Statute, a criteria also taken up once again by the Appeal
6 Chamber in its 26 October ruling in paragraph 65.

7 In addition, with regard to the second criteria, it is difficult for the victims to take up a
8 position in the absence of information or any testimonies provided previously before
9 the Pre-Trial Chamber, but the existence of this broad network of supporters and the
10 fact that these latter are ardently militating for the suspect to regain power
11 arises -- gives rise to fears of any reprisals upon victims, or the furtherance of crimes
12 for which the arrest warrant was initially established by the Pre-Trial Chamber.

13 In this respect the victims remind the Chamber that, if their identity remains
14 protected, it won't be the case because -- if release is granted, because they'll be easily
15 identifiable in the present case and therefore easily reachable. Therefore, it strikes us
16 that any subornation of the victims or imperilling their safety or their lives is very real
17 and genuine.

18 Lastly, it is worth noting that the detracting opinions of Judges Ušacka and Kourula
19 with regard only to a fault in the reasoning providing grounds for the ruling, but
20 don't concern the conclusions per se handed down by the Appeals Chamber. The
21 victims remain confident, however, that the hearing today will provide unshakeable
22 grounds for sustaining the suspect in custody.

23 The victims therefore believe that Mr Gbagbo's continued detention must remain the
24 case, because in Article 58(1) of the Statute these conditions remain satisfied and no
25 change has occurred since the last ruling was handed down in this respect by the

1 Chamber in February last -- in July last. The victims insist upon the fact that the
2 questions pertaining to the state of health of Mr Gbagbo are subject to numerous and
3 separate procedural incidents and that are sub judice. The victims remind that,
4 despite confidentiality of all information pertaining to the state of health of the
5 suspect, they have no information regarding the medical condition, and since the
6 detractors have used this in the margins of the year 2011 elections to explain his
7 inability to run the country in the case of any victory in the presidential elections, but
8 his condition prevented him from fully exercising presidential obligations through
9 nearly 11 years. The victims therefore require of the Chamber that the conditions
10 have remained unchanged and therefore Mr Gbagbo should remain in custody.

11 Thanks very much for your attention.

12 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you.

13 I will now ask Maître Altit to make his observations on behalf of the Defence.

14 Maître Altit.

15 MR ALTIT: (Interpretation) Thank you, Madam President.

16 Madam President, it is very difficult for Defence to address the issues raised by the
17 victims and the Prosecutor at the same time, because these are two issues and so it is
18 difficult for Defence to tackle two battles at the same time. That is why I will speak
19 to the remarks made by OPCV and, with your leave, maybe revisit those points
20 during the closed session.

21 Now, as for what has been made by way of remarks concerning victims, let me say
22 once again that their representative seeks to obtain what is indeed confidential
23 documents which are governed by a certain -- a number of rules of confidentiality.
24 The levels of confidentiality are not set by the Defence. It is the author of the
25 document who determines the level of confidentiality, and that is only normal.

1 However, let me note that if the victims were to be right then their place would be
2 that of a civil party in these proceedings, a party as such in the proceedings, but that
3 is not the case because if that were to be the case then it would lead to a significant
4 imbalance in the proceedings and an attendant unfairness in the trial.

5 That having been said, there were a lot of victims, many victims, during these tragic
6 events on all sides. Today people are in exile in all neighbouring countries, people
7 from all backgrounds, from all religious backgrounds, and holding different opinions.
8 I therefore believe that we cannot only look at this issue from one angle.

9 Like President Gbagbo and other persons in Côte d'Ivoire have done, we must
10 acknowledge and recognise the suffering of the victims. We must also understand
11 what happens in the trial on the rights of an individual, because that is what we are
12 talking about here and that is the crux of criminal proceedings.

13 Now, with your leave, your Honour, let me say a word about the observations of the
14 Prosecution on the combined review or consideration of Articles 60 and 58.

15 The Prosecutor has outlined a number of charges put forth by the Government of
16 Côte d'Ivoire, as well as some of which were raised by experts in the report that the
17 Prosecutor has just referred to. Speaking to that report, your Honour, what did the
18 Prosecutor do? The Prosecutor quoted from that report, not extensively, but he
19 quoted from the report only. However, his allegations are not substantiated and
20 there is no evidence in support thereof, and furthermore let me say that those claims
21 are even in the eyes of other experts false.

22 Incidents at the borders of Côte d'Ivoire, that is not magic. These are things that
23 happened in times of war, people who have been driven out, who are in conflict with
24 others.

25 Now, if you look at Le Monde diplomatique of last September, you will read

1 materials to that effect. Amnesty International has pointed out clearly that there was
2 settling of scores between various groups fighting to have control over various
3 neighbourhoods and what have you.

4 There is an alleged pro-Gbagbo network in place, and that has been denounced by the
5 Côte d'Ivoire authorities. The question is where is the evidence? Evidence, for
6 example, that a former minister was arrested in Ghana, Côte d'Ivoire, pro-Gbagbo
7 minister was arrested in Ghana, that minister had to be released because the
8 Ghanaian government did not have any evidence to point to any crime in those
9 circumstances. So the Prosecutor's allegations are unsubstantiated, and that is the
10 crux of the matter relating to this report that the Prosecutor has quoted.

11 Now, as for the situation in Ghana, Madam President, independent experts have
12 further upheld allegations or charges by the Côte d'Ivoire government that meetings
13 took place, whereas those who participated in those meetings - who are alleged to
14 have participated in those meetings - said it was not true and proved that they could
15 not have been at that meeting.

16 There is reference which amounts to speculation that there is a Malian connection.
17 There is nothing of substantive evidence in that regard.

18 Finally, reference was made to resources and funds allegedly earmarked for President
19 Gbagbo and his supporters. Nothing of the sort happens. It is actually said that
20 there was an embezzlement of funds in a certain company, but again what the
21 situation is is that that company is being managed by others.

22 Now, if we read this report carefully and pull out the rhetoric, we must understand
23 that the experts have also put forward a number of items to explain the situation in
24 the country. Armed groups, rebel groups, insecurity in the north by warlords,
25 former allies of Alassane Ouattara and what have you, all of these are mentioned in

1 this report which I must say do have some -- does contain some concrete material,
2 arms trafficking, diamond smuggling, racketeering and what have you, all those
3 transactions that are taking place in the north of the country. Madam President, the
4 spokesperson of the UN said that these remarks by the experts are only binding on
5 the experts themselves.

6 Now, how is Mr Gbagbo involved in these things if, for example, a meeting were to
7 take place in a far away country? He cannot be held responsible for what people in
8 exile do. He cannot be held responsible eternally for the things that are going wrong
9 in Côte d'Ivoire.

10 In addition to these unfounded allegations, let us look at the concrete situation of a
11 man who has been locked up for 18 years. Let us check and determine whether
12 detention, which should apply only in exceptional circumstances, should be upheld
13 today.

14 Now, Madam President, if we take Article 58(1)(b), we must check and determine
15 whether there is material available today that can convince you that it is no longer
16 necessary to maintain him in detention; that is information that was not available to
17 this Court on 13 July 2012.

18 I'm going to speed up, because we are in open session or public session, but I hope to
19 revisit these points later on.

20 The first question that was raised was whether President Gbagbo's detention is
21 necessary today in order to ensure that he appears in court.

22 We do have new information. The Court, or the Prosecutor, states that on 17 April
23 President Gbagbo committed himself to appear before the Court and that he has
24 reiterated that commitment yesterday. That, Madam President, is a clear
25 determination and commitment that has been repeated and confirmed by the experts

1 on the part of Mr Gbagbo, and I can revisit that point, your Honour, when we are in
2 closed session.

3 It is in that context that we must assess the commitment and reiterated commitment
4 of President Gbagbo. The experts have confirmed what President Gbagbo has stated
5 over and over: He never undertook to flee. Even when there was shelling and
6 bombing, he always said that he was prepared to face it all, including a recognition of
7 the legitimacy of the Court.

8 After 18 months of detention in Holland, he continues to hold that very same position.
9 Seasoned experts tell us today that Laurent Gbagbo's commitment is deep-seated and
10 is not only a matter of words. These are his deep convictions, and he wants to
11 appear before the Court and his commitment to that is unquestionable.

12 Therefore, when the Prosecutor argues that President Gbagbo may flee, such
13 arguments are at variance with information that we have today. And, by the way,
14 why would he want to abscond? The reason the Prosecutor offers is that he wants to
15 get back to power. How is he going to get back to power? By the way, where
16 would he go if he were to abscond?

17 Let's think about it a little bit. If President Gbagbo were to abscond and take flight,
18 where would he go? Where would he go to and how would he do it? Let us look
19 at things directly. Let us look at reality.

20 Point number 2: He does not have the resources for that. On 4 June 2012, the
21 Prosecutor said that he had obtained documents on two bank accounts jointly owned
22 by the president and his wife. Let me note that the information produced by the
23 Prosecutor is dated 2007 and so we do not know whether the amounts provided are
24 still correct.

25 Now, €16,000 for one account and then some €89,000 or €81,000 in another account,

1 totalling some €100,000, is that enough money for a revolution? The Prosecutor even
2 then told us that those accounts were about to be frozen. Maybe they are already
3 frozen today.

4 Now, a short while ago the Prosecutor told us about an account that was opened by a
5 group which he appears not to know the identity of, not more than I do, and that such
6 an account was intended to be used to support Laurent Gbagbo. Those are the
7 Prosecutor's words.

8 Who owns that account? What is the amount of money in that account? These are
9 all allegations, and the Court cannot rely on these allegations when dealing with the
10 life of an individual - of a human being - and looking at matters of detention.

11 As time has gone on there is less and less possibility of President Gbagbo having
12 access to any accounts that are alleged to be open somewhere, so today because the
13 Prosecutor cannot provide objective evidence then there is an absence of evidence to
14 be presumed.

15 We also talked about an account held by a somewhat unknown group in Paris; issues
16 relating to a company known as PETROCI led by Alassane Ouattara. President
17 Gbagbo has no money and, by the way, because of ill-health he is not able to abscond.
18 He cannot abscond. And I cannot go further, your Honour, because we are in open
19 session and I believe that we all know what I am talking about.

20 Let me therefore simply recall what is at stake regarding his health, and we must bear
21 this in mind. You see, the decision that you will make has an impact on the possible
22 consequences of the decision on his health. It is not just a matter of saying, "He will
23 be released," or, "He will remain in detention." That is not -- it is not that simple.

24 We must think through it, and maybe the Prosecutor should have done that so that
25 we can think through the consequences together of maintaining him in detention.

1 I'm not going to say further because we are in open session, but I will revisit that in
2 closed session. I think, therefore, that it is our joint responsibility to think this
3 through together.

4 That is the position of the Appeals Chamber. The medical condition of a detained
5 person may have an impact on the risks covered by Article 51(1)(b), so we all must
6 think about the medical consequences of detention and also proceed to assess,
7 mindful of the position of the Appeals Chamber, whether the risk being put forward
8 does truly exist. Therefore, the Chamber and parties must henceforth in this review
9 of the situation take into consideration new material that is available to us.

10 Those two considerations, lack of financial resources and state of health, paint a new
11 picture today. The purpose of detention is to ensure that the suspect appears in
12 court at all times during the proceedings.

13 Now, Madam President, let me say that today things are much clearer to us when it
14 comes to how interim release can be dealt with in the case of Mr Gbagbo, and I think
15 that this is a fundamental issue which we can deal with in closed session. We did
16 receive some substantial and substantive material which has been disclosed to the
17 Prosecutor, and I believe that that material would provide the Chamber with all the
18 guarantees that it may wish to put in place.

19 As to the issue of obstructing investigations and proceedings, let me say that
20 obstructing investigations and proceedings is something that we need to look into,
21 mindful of the guarantees that we have received and disclosed to the parties. Such
22 guarantees are likely to preclude any obstruction.

23 So, Madam President, there have been significant developments and these need to be
24 taken into consideration, given that detention is such a serious measure that should
25 only be applied when no other measures can be applied. In the case at hand, the

1 same goals can be achieved by conditional release under specific conditions which we
2 will address.

3 Now, let me say a thing about what the Prosecutor said relating to some kind of
4 network for which there has been no evidence. This is not a matter for the FPI. The
5 FPI is a legal party that is in ongoing negotiations with the Government of
6 Côte d'Ivoire towards reconciliation. Why then would the FPI be perceived to be a
7 danger?

8 I take note of what the Prosecutor said a short while ago as the main thrust of his
9 argument. I hope that I got this right. Certainly President Gbagbo has many
10 supporters, that is the Prosecutor's submission, but of course he has supporters. He
11 is a politician. He is a political figure.

12 Now, the Prosecutor then has to prove to the Court that there are among those
13 supporters people with evil intentions who are on President Gbagbo's side. The
14 Prosecutor has not demonstrated that. He simply states that there is a network in
15 place, a vague concept of a group of unidentified individuals, and that this is the
16 source of the danger. For those of us who practice law, that is not an argument that
17 should stand.

18 Now, even if such a network were in place, the Prosecutor would still need to prove
19 that President Gbagbo is linked to that group. In the Bemba case it was decided that
20 there has to be a link between the group and the risk of obstruction, namely the
21 person who is in detention, and such is not the case in this situation.

22 The Prosecutor has not proven anything. He has failed to demonstrate his points,
23 and Judge Kourula was of that opinion in his judgment. An argument in itself is not
24 sufficient to determine that Mr Gbagbo will obstruct investigations or proceedings of
25 the Court.

1 Let me say that, at the initial appearance, President Gbagbo said he wants this case to
2 take place. He wants to be able to state his case. He said that, "If I am being
3 accused, it is because there is evidence for which to accuse me and I'm going to
4 counter it." So President Gbagbo, right from the beginning, has had a clear position.
5 Now, can this Prosecutor mention one single action by Mr Gbagbo that would
6 obstruct investigations, obstruct proceedings, or delay the trial? I will also refer to
7 some of the points that you're aware of in this connection during our closed session.
8 Again, we are talking here about new circumstances, changed circumstances. The
9 Prosecutor has not changed -- has not proven anything.
10 In the last ten months, President Gbagbo has been consistent, and we have evidence
11 today to the point that he does not want to obstruct investigations.
12 Now, on a third point, Madam President, on the continuation of the crimes. What is
13 the risk of maintaining in detention under 58(1) if there is a risk that the person in
14 detention may undertake criminal acts?
15 Now, if you were to hold somebody in prison because you think that they will cause
16 others to commit crimes, then you are holding that person as a hostage. The
17 Prosecutor does not talk about the terrible conditions in which military persons were
18 held in detention with President Ouattara being fully aware thereof.
19 Now, as to whether these crimes may be committed, the position of the Appeals
20 Chamber is that the circumstances have to be similar to those for which Mr Gbagbo is
21 being prosecuted before this Court.
22 This is the reasoning of the Prosecutor: He claims that President Gbagbo wants to
23 take back power. He claims that President Gbagbo wants to do so by force. Now,
24 if President Ouattara were to have popular support, then there would be fighting.
25 That is the third allegation; and fourth that this fighting would lead to mass crimes.

1 These are all allegations. These are all allegations which have a shortcoming to the
2 extent that maintaining somebody in power is not a crime that falls within the
3 purview of this Court. If there is an insurrection, it is rules applying to insurrections
4 that would apply. Therefore, if Mr Gbagbo were to be the only responsible person,
5 the only guilty person, then the proceedings would be against one group and not
6 against the other, and for this reason the Prosecutor's arguments are not valid.

7 Times have changed. President Gbagbo no longer has the power of a president.

8 Now, last point, Madam President, is conditional release. If the Chamber is of the
9 view that 58(1)(b) conditions have been met, it must however look at the issue of
10 conditional release because the health of the detained person must now be taken into
11 account, pursuant to the position of the Appeals Chamber, whereby such health
12 conditions may lead the Pre-Trial Chamber to order conditional release in such
13 circumstances. For that reason, the Pre-Trial Chamber therefore must consider the
14 possibility of conditional release.

15 The state of health of the president must be taken into account for conditional release
16 in the case of President Gbagbo. The Appeals Chamber recalls that the decision of
17 the Pre-Trial Chamber to reject conditional release may have been on the basis of
18 existing circumstances at the time.

19 Today the Pre-Trial Chamber has the medical records and can therefore come to an
20 informed decision. The position of the Appeals Chamber is the following:

21 Regarding the impugned decision of 13 July 2012, the health capacity of Mr Gbagbo
22 was not settled at the time. Therefore, the decision of the Pre-Trial Chamber at the
23 time based on medical reasons was premature.

24 Today such a decision will no longer be premature, because today we have all the
25 material, the evidence, that was not available at the time of the first decision; namely

1 the ruling of the Appeals Chamber, the opinions of experts and the evidence or the
2 information that was disclosed this morning. For these reasons, the Defence submits
3 that conditional release should and must be granted.

4 President Gbagbo has been in detention for 18 months, including seven months
5 during which his rights were breached and violated and he was mistreated. We
6 have demonstrated that the conditions of 58(1)(b) have not been met and fulfilled, and
7 for that reason President Gbagbo should be granted conditional release.

8 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you
9 very much.

10 We've reached the end of our open session, unless parties would like to add a further
11 point? You'd like to add a further point, Counsel?

12 MR DUTERTRE: (Interpretation) Very swiftly, I'd just like to respond to one or
13 two points that were voiced and in this respect I'll remain very concise.

14 Now, the Prosecution only needs to show that there's been no change in the
15 circumstances, and I believe that the Defence is labouring under confusion.

16 Defence is saying that we can't say that there are changes in circumstances, but the
17 onus of that is not upon the Prosecution.

18 With regard to the Defence itself, it was up to the Defence to prove that circumstances
19 had changed to provide justification for release, but it didn't do that. It has mainly
20 reiterated information that has already submitted to your purview in July and it
21 alluded to new circumstances that it will talk about in closed session, but we don't
22 know the nature of those changed circumstances.

23 A further comment, again very briefly. Part of the remarks that Defence put into the
24 Prosecution's mouth, on page 31 in the transcript, are erroneous.

25 A swift point with regard to the expert group's report at the United Nations. The

1 Defence developed its reasoning between pro-Gbagbo and Mali links in order to
2 challenge allegations or remarks made by the Prosecution, but we were never -- we
3 never went down that avenue. We never talked about potential links with Mali, so
4 all that of course is a red herring.

5 Lastly, with regard to the medical experts or Mr Gbagbo's desire to appear before the
6 Court, of course this is all very self-serving and this is beside the point. It's not the
7 work incumbent upon the expertise of the medical team, so I don't really see the
8 relevance of that in relation to the first grounds for maintaining custody; namely the
9 desire to avoid any flight. I do apologise, your Honour, but it's the Defence that
10 needs to -- it is upon the Defence the burden to talk about changing circumstances.
11 We did this, but it was not -- the onus wasn't on us in that respect.

12 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you
13 very much.

14 Would you like to add a further point, very quickly?

15 MR ALTIT: (Interpretation) Thank you very much, your Honour, just a quick
16 response to what the Prosecutor has just said.

17 We talked about new material, new circumstances, that's true. Now, when we speak
18 of proof that the Prosecution needs to supply, it's proof to bolster his remarks. He
19 himself refers to material drawn from the report in this respect. Prosecution
20 disclosed the entirety of the report, so it's illogical to say that we should look at the
21 report in its entirety and that mention should be made of our feeling with regard to
22 the content of that report. The Prosecution provided this material presented as facts,
23 but these aren't facts. These are allegations. I mean, we need to be able to respond
24 to allegations.

25 The role of the Defence is to demonstrate there has been a change of circumstances,

1 new material, events that can change the view of things for the Chamber and the
2 parties. We've endeavoured to present that earlier on and we'll have an opportunity
3 to revisit that in a finer detail, but when talk is made of allegations stemming from the
4 Prosecution it is what you would expect. This is debate, after all. It is worth just
5 saying that it is by no means evidence. They are just simply allegations.

6 Thank you very much, your Honour.

7 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you
8 very much.

9 If parties and participants have nothing further to add, then the open session is now
10 ended.

11 I would like to thank the legal representative of victims for their involvement in the
12 proceedings. I would also like to thank the members of the public gallery for having
13 followed this hearing.

14 Now, after a brief coffee break of 30 minutes, the audience will resume; in other
15 words, will be resuming at half-past-four. After the coffee break, therefore, we will
16 be resuming in closed session in the presence of OTP, Defence and representatives of
17 Registry. The audience is here ended.

18 (The hearing ends in open session at 3.56 p.m.)