

1 International Criminal Court
2 Trial Chamber I
3 Situation: Republic of Côte d'Ivoire
4 In the case of The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé -
5 ICC-02/11-01/15
6 Presiding Judge Cuno Tarfusser, Judge Olga Herrera Carbuccion and
7 Judge Geoffrey Henderson
8 Status Conference - Courtroom 1
9 Thursday, 13 December 2018
10 (The hearing starts in open session at 10.00 a.m.)
11 THE COURT USHER: [10:00:44] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE TARFUSSER: [10:01:09] Good morning. Good morning to
15 everybody.
16 This hearing was convened by the Chamber in relation to the detention of the two
17 defendants. And before starting to go into the merits of the case on the issue we are
18 here for, the Chamber is aware that in the order it is said that we hold this in closed
19 session. But from when we filed it until now, the question raised within the
20 Chamber: Why in closed session? There are no health issues to be discussed. So I
21 would also ask the parties what do they think about holding this hearing in open
22 session as opposed to closed session.
23 Prosecutor.
24 MR MACDONALD: [10:02:39] Thank you, your Honours. Good morning.
25 There may be some little issues that will have to be addressed in closed session. I

1 think we can go in closed sessions for these, because obviously there are some
2 potential modalities that cannot be shared with the public, operational issues. I see
3 that Mr Dubuisson is nodding. But apart from that, I think we can go, remain in
4 public.

5 PRESIDING JUDGE TARFUSSER: [10:03:14] Legal Representatives.

6 MS MASSIDDA: [10:03:15] Good morning, Mr President. We share the same views.
7 It would also be in the interest of our clients to have a public session considering that
8 the order has already elucidated some concerns on the side of our client. So it would
9 be good to go in public. Thank you very much.

10 PRESIDING JUDGE TARFUSSER: [10:03:35] Thank you.

11 The Defence.

12 MR ALTIT: [10:03:40] (Interpretation) Your Honours, regarding the Gbagbo
13 Defence team, we have no objection to part of the proceedings being held in open
14 court, but it's quite obvious that at certain points we will have to discuss a number of
15 sensitive issues and thus we may have to go into closed session.

16 PRESIDING JUDGE TARFUSSER: [10:04:05] Mr Knoops.

17 MR KNOOPS: [10:04:07] Good morning, Mr President, your Honours. We have no
18 objection that the hearing will be held in public session. Thank you.

19 PRESIDING JUDGE TARFUSSER: [10:04:15] Thank you very much.

20 It is obvious that if needed we go in private or closed session, it is always like this, it
21 was always held like this. But this was a question, it was a matter of principle
22 question. Obviously we will at the request of the parties, we will decide to,
23 according to the request, if need be.

24 So this hearing is then held in open session, not in closed session as in the order.

25 And now we can go to the merits.

1 It is explained in the order why the Chamber thinks that this hearing on this matter is
2 needed, and to that effect now I give the floor to the parties, beginning by the Office
3 of the Prosecutor, then the Legal Representatives, the two Defence teams and lastly
4 the Registrar, after having heard all the parties.

5 Mr Prosecutor, the floor is yours.

6 MR MACDONALD: [10:05:32] Thank you, your Honours. No. I was just
7 debating if we should be starting.

8 PRESIDING JUDGE TARFUSSER: [10:05:39] Well, it was a *proprio motu* decision --

9 MR MACDONALD: [10:05:42] I understand.

10 PRESIDING JUDGE TARFUSSER: [10:05:53] -- so we cannot start.

11 MR MACDONALD: [10:05:46] I understand. But, in any event, your Honours,
12 what I mean to say is it's quite fine. I have a number of issues that obviously I will
13 address. And for information purposes, I don't know how long the Chamber had
14 intended this hearing to last, but I should be around 45 minutes just for my
15 intervention, just for you to manage the hearing.

16 PRESIDING JUDGE TARFUSSER: [10:06:25] Yes. I think we thought about a
17 couple of hours, generally speaking.

18 MR MACDONALD: [10:06:32] Again, these submissions by way of introduction are
19 done in a vacuum in the sense that the Prosecution is not aware of any information
20 about certain things gleaned in the course of the last seven years. Therefore, I think
21 our presentation has to be understood in that context.

22 That said, the Prosecution will address the issues on which the majority of the
23 Chamber requested submissions, first the appropriateness of interim release at this
24 stage of the proceedings, and alternatively, we will address the modalities and what
25 we think should be strict conditions the Chamber should impose if it was to grant

1 interim release at this stage of the proceedings.

2 I'll address each accused separately, because obviously different considerations apply,

3 first of all, legally and practically in relation to each.

4 Now, in relation to Mr Gbagbo, the issue before the Chamber is whether or not at this

5 stage a change of circumstances has occurred since the last review which took place

6 eight months ago in April, 2018 to be exact. On that occasion the Chamber found by

7 majority that there were no changed circumstances as regards Mr Gbagbo's health,

8 and as regards the other criteria, that they did not have before them "any information

9 that would justify ordering the release of the accused". And this can be found in

10 paragraph 38. So far as the Prosecution is aware, nothing has changed since then.

11 Now, briefly, in relation to Mr Blé Goudé, release of Mr Blé Goudé from detention is

12 manifestly inappropriate, and I'll describe why in my presentation obviously. He

13 has never requested provisional release, and as I will develop and demonstrate

14 certain things the Chamber may not be aware when it issued this order, we believe

15 that Mr Blé Goudé poses a serious flight risk given that in 2013, when arrested in

16 Ghana, he was in possession of false passports from Côte d'Ivoire, Mali, false identity

17 cards from Mali and Benin. And I'll come back to that and provide the details.

18 So before moving on to the substance, the Prosecution makes the following

19 preliminary submissions as to the timing of this hearing, because I think it is

20 important that we go on record.

21 First, it is our position, and on this we respectfully agree with Her Honour Judge

22 Herrera Carbuca's dissenting opinion, paragraph 4, that a *proprio motu* review of the

23 detention of both accused carries the risk of pre-determining, or at least appearing to

24 pre-determine, the two pending Defence requests for judgments of acquittal. Since

25 nothing has changed at this stage since the last review of Mr Gbagbo's detention and

1 since Mr Blé Goudé's past conduct, again as I will explain, demonstrates that he
2 represents a serious flight risk, it is difficult to see how any decision to release the
3 accused could appear to be anything other than related to the merits of the case
4 against him; that is, a pre-determination of issues that you have yet to decide.
5 If, on the other hand, your Honours were to review the detention of both accused
6 after your determination of the Defence requests for judgments of acquittal, then the
7 situation might be different. The outcome of the Chamber's decision on the two
8 pending Defence requests for judgment of acquittal may be relevant in a review of the
9 continuing detention of the accused. In case of partial acquittal, the decision might
10 have an effect on Article 58(1)(b) factors, in that it might affect the seriousness of the
11 charges against the accused and any related sentence. These are factors relevant to
12 assessing Article 58(1)(b) risks. And I refer to your decisions, your Honour, 278 -- or
13 the decisions 278 in this case, paragraph 54; 992, paragraphs 54, 66 and 67.

14 If you'll allow me just a second.

15 (Counsel confers)

16 MR MACDONALD: [10:13:11] Sorry, your Honours.

17 Equally, a judgment to proceed on all the charges against both accused might have
18 the effect of increasing the risk of their non-appearance at trial. The Prosecution
19 notes at the ICTY, like it or not, they have past experience, the impact of a no case to
20 answer ruling was considered relevant in assessing whether provisional release was
21 justified. Prlić decision of 11 March 2008, paragraphs 19 to 21. We can provide all
22 the case code numbers and information later, your Honour.

23 However, and here again the Prosecution respectfully agrees with the dissenting
24 opinion, the Chamber must first and foremost decide on the two pending Defence
25 requests for judgment of acquittal. We are at a critical juncture of the trial

1 undoubtedly with motions of acquittal that are pending. Why the need for a review
2 of detention now? Neither Mr Gbagbo or Mr Blé Goudé have requested interim or
3 conditional release. And as the president -- the Presiding Judge, sorry, indicated,
4 when the no case to answer hearing was adjourned on 22 November, a decision on
5 the Defence requests will be issued "as soon as possible."

6 The Chamber has received all the written and oral submissions it needs to deliberate
7 and decide on the Defence requests. We respectfully submit that all that is required
8 now is that these requests are given your prompt consideration.

9 Now, these were my preliminary submissions. I now move on to the
10 appropriateness of provisional release for Mr Gbagbo.

11 As indicated just earlier, in the Prosecution's submission, there are no changed
12 circumstances that would justify modifying his detention under Article 60(3) of the
13 Statute since the last review in April, eight months ago.

14 All factors considered, the passage of time since his last review does not make
15 Mr Gbagbo's detention unreasonable.

16 Now, for an evaluation of the length of detention, I refer your Honours to decisions of
17 this Chamber, 992, paragraph 75-79; decision 1038, paragraphs 48-60; and decision
18 1156, paragraph 38.

19 No modifications -- or, no modification is therefore warranted.

20 Beyond the passage of time, the conditions under Article 58(1) continue to be satisfied,
21 again, at this very stage, as he, Mr Gbagbo's continued detention is necessary to
22 ensure his appearance at trial, or to ensure that he does not obstruct or endanger the
23 ongoing court proceedings.

24 Now let me turn to these two. Mr Gbagbo continues to have the motivation to
25 abscond as he's facing serious charges likely to attract a high sentence. The means to

1 do so embodied in his network of supporters that could break the law for him, and
2 the means to obstruct or endanger the proceedings to come via the same network still
3 exists. The serious charges he faces remain the same, again, at this stage of the
4 proceedings. The only difference is that eight months have passed since the last
5 review.

6 The Prosecution reminds the Chamber that, as the Appeals Chamber has clearly
7 stated, detention may be warranted if even without a high probability that the
8 accused would actually abscond or obstruct the proceedings, the mere possibility that
9 he or she might do so suffices. And we refer to the Appeals Chamber decision in
10 this case, decision 846, paragraph 16.

11 I don't need to remind the Chamber that the charges of murder, rape, persecution and
12 other inhumane acts as crimes against humanity are serious and likely to attract a
13 high sentence. The majority of the Chamber has previously found that, given the
14 gravity of the charges against him and the eventual sentence, if convicted, Mr Gbagbo
15 has a clear incentive to abscond to avoid such a scenario.

16 Mr Gbagbo still has a well organised network of supporters who could facilitate his
17 travel to a non-State party, or to any other country which may not comply with the
18 Court's orders or, in other ways, obstruct or endanger the proceedings.

19 You saw that again in October and in November. We again saw that in October
20 when hundreds of people blocked the streets here in The Hague, delaying the actual
21 start of the proceedings because Mr Gbagbo and Mr Blé Goudé could not attend court
22 on time.

23 Let me add that Mr Gbagbo recently reclaimed the presidency of his political party,
24 the FPI, which illustrates the means and the extensive support base he continues to
25 have at his disposal.

1 As noted in the Prosecution's prior submissions on detention, and again I refer to the
2 majority's decision 1038, 1156, the network of Mr Gbagbo's supporters has
3 demonstrated on a number of occasions its intention to disrupt the court proceedings
4 and undermine the trial.

5 There remains a tangible risk that Mr Gbagbo may move out of the reach of the Court.
6 Mr Gbagbo via his supporters has the means to arrange his flight from the Court's
7 jurisdiction, and his supporters have already shown their willingness to undermine
8 the Court's directions. There are numerous examples in this case. The same
9 considerations apply to the obstruction of the ongoing court proceedings.

10 Let me now turn, your Honours, to Mr Blé Goudé.

11 This is the first time that Mr Blé Goudé's detention is being reviewed. And one may
12 say, unsurprisingly, the Defence has never presented such a request. As such, I
13 should highlight that the conditions under Article 58(1)(a) of the Statute are also met,
14 namely, there are reasonable grounds to believe that Mr Blé Goudé has committed
15 crimes within the jurisdiction of the Court.

16 In addition, our submission is that the conditions under Article 58(1)(b) are satisfied.
17 Mr Blé Goudé's detention is necessary to ensure his appearance at trial, and also to
18 ensure that he does not obstruct or endanger the ongoing court proceedings.

19 First, the charges against Mr Blé Goudé again are serious and likely to attract a high
20 sentence. The finding made regarding the seriousness of the charges for Mr Gbagbo
21 equally apply to Mr Blé Goudé, even if the incidents underlying the charges against
22 the two accused are not identical.

23 Second, Mr Blé Goudé poses a serious risk of absconding.

24 Now let me describe what I've alluded to in my introduction or at the beginning of
25 my presentation.

1 After his last rally of 26 -- overnight rally, 26-27 March 2001 at the *Place de la*
2 *République* - Witness P-87 testified about that and P-88, and you have videos of
3 that - Mr Blé Goudé went into hiding until he fled to Ghana.

4 He was arrested in Ghana on 17 March 2013 and, subsequently, extradited to Côte
5 d'Ivoire where he was detained until his transfer to the seat of the Court on
6 22 March 2014.

7 Now, it's also important to recall that Mr Blé Goudé was, since 7 February 2006, the
8 subject of targeted sanctions by the United Nations. Essentially, he was the subject
9 of a travel ban and the freezing of assets for his past conduct and disruptive acts in
10 Côte d'Ivoire.

11 The UN group of experts on Côte d'Ivoire in its 17 April final report, and this is in
12 eCourt, and I will quote it, CIV-OTP-0042-0686, stated that, while on the run,
13 Mr Blé Goudé breached both his travel ban and the restrictions of assets.

14 However, and this is the more troubling but certainly more important fact for this
15 Chamber's consideration, is that while in hiding Mr Blé Goudé obtained a number of
16 false identity documents to facilitate his travel across national borders under assumed
17 identities, and I will ask that these be raised and we'll look at them:

18 First, a false Malian passport under a false name. I refer to CIV-OTP-0042-0686 and
19 it's at page 0953.

20 So with the Court's permission and the Registry's help, if it would be possible to show
21 that document on the screen, your Honours, please.

22 (Counsel confers)

23 MR MACDONALD: [10:26:40] Thank you.

24 Now, you can see -- now, these were seized, by the way, upon Mr Gbagbo's arrest in
25 Ghana -- Mr Blé Goudé, sorry. Mr Blé Goudé.

1 Let me now bring up the false Ivorian passport under a false name again, and this
2 time it's at page 0954 of the same UN group of experts report. There you can see.
3 Let me now turn to the false Malian identity card, again under a false name, and that
4 can be found at page 0955.
5 And last, let me bring you to a false Beninese identity card, again under a false name,
6 at 0956.
7 Now, keeping this last document here, the government of Benin -- and I must say that,
8 on these documents, the Prosecution obtained also copies from the Ivorian authorities
9 which have been disclosed to the Defence, on some of these documents.
10 Now, what happened is that the Benin authorities initiated an investigation into,
11 obviously, this last document. To do so they basically arrested two Beninese officers,
12 which assisted them in their enquiries and, according to the authorities, the *mairie*, or
13 the town hall, if you want, of the city of Porto-Novo created an identity card under
14 the name that you see on the screen, Dossevi Armand, without any photograph or
15 fingerprints.
16 Now later, fraudulently, obviously, the picture of Mr Blé Goudé was added.
17 Now, according to the Beninese authorities it is clear that the authorities of
18 Porto-Novo were complicit in this forgery, and the information from the authorities of
19 Benin can be found at page, of the same report, page 0957. We don't need to bring it
20 up on the screen but it's available at that ERN.
21 Now, in relation -- and, again, it's interesting to note that in relation to the Ivorian
22 passport of Mr Blé Goudé, it was issued by the name that appears on the document
23 one Mrs Blé Bernardine Gisèle, a sub-director at the border and aviation police.
24 Now, this person appears to be the same signing authority who issued a false
25 passport to commander Anselme Séka Yapo, the former aide-de-camp of

1 Madam Simone Gbagbo.

2 Now these false passports, the real one and the false ones, with that information can
3 be found with the evidence as attached to the previous report of the UN group of
4 experts that can be found at CIV-OTP-0021-0125. Now at pages 370 and 371, you see
5 the false passports of Mr Séka Séka. I will not bring these up, but they're available
6 for the Chamber, and they're in eCourt.

7 Third, now, we submit that Mr Blé Goudé, just like Mr Gbagbo, has a well-organised
8 network of supporters, who include Mr Gbagbo's supporters. This network could
9 both facilitate Mr Blé Goudé's travel to a non-State party or to any other country
10 which may not comply with the Court's orders or, in other ways, obstruct or
11 endanger the proceedings within the meaning of Article 58(1)(b)(ii).

12 Finally, we submit that Mr Blé Goudé's continued detention is not unreasonable in
13 light of the circumstances of the case and the fact that Mr Blé Goudé has been
14 detained for a period of less than five years at the behest obviously of the ICC.

15 Now, in the event that the Chamber is indeed minded to order provisionally -- a
16 provisional release, sorry, of both or either accused, I would now like to address the
17 modalities. But again, it is important to note that our primary submission is that
18 detention of both accused should continue.

19 So alternatively, let me now address the modalities and strict conditions the Chamber
20 should impose.

21 Now, we also submit that any interim release should only be granted on the basis of
22 indeed strict conditions. And these conditions should have three objectives. First,
23 conditions that are required to minimise the risk of non-appearance that I've
24 identified previously and that has been identified throughout this case. Second, the
25 protection of the integrity of the ongoing proceedings, again, under Article 58(1)(b)(ii).

1 And third, and this is because of the nature of this case, this is because of the nature,
2 the personalities of both accused, what they represent and the impact their mere
3 release would have on any State to which they would be released is their ability of
4 both accused to draw large crowds of supporters to lobby for their cause and the
5 security impact this may have on any State that would accept the accused, the public
6 order impact this would have on a State. And the Chamber cannot ignore that.
7 However, now before we identify these specific conditions, there is one issue to begin
8 with and it's the most important one probably, or one of the -- I mean, it is the most
9 important one, is the appropriate State to which the accused should be released.
10 Now, let me address this. The principles behind identifying a State, legal principles
11 as adopted by this institution. Before conditionally releasing an accused, the
12 Chamber must first identify a State which is willing to accept the accused, number
13 one, and two, which can enforce the conditions that the Trial Chamber should impose.
14 Now, I'm recalling here the principle as identified in the Appeals Chamber decision in
15 Bemba Main Case. I refer to decision 631, paragraphs 2, 104 and 106.
16 Therefore, before imposing any conditions, under Rule 119(3) and Regulation 51 of
17 the Regulations of the Court, the Chamber must first request observations from
18 relevant States such as the Host State and the State to which the person seeks to be
19 released. The Chamber cannot simply choose a State and stipulate conditions
20 without confirmation from that State that the conditions can be met. Doing so
21 would be contrary to the Appeals Chamber's clear pronouncement again in the
22 Bemba case that I referred to. And I quote:
23 "The Pre-Trial Chamber erred in granting conditional release without specifying the
24 appropriate conditions that make conditional release feasible, identifying the State to
25 which Mr Bemba would be released and whether the State would be able to enforce

1 the conditions imposed by the Court." Paragraph 106 of decision 631 in the Bemba
2 Main Case.

3 So let me now address the issue of which State.

4 First of all, I think it goes without saying, because it is obvious that the accused
5 should only be released to a State Party of the Rome Statute as otherwise they would
6 be outside the reach of the Court. And such a State Party should be within, we

7 submit, the territory of Europe with close proximity to the seat of the Court for the
8 purpose of facilitating the accused's presence in The Hague. And on this point I

9 refer to the majority of this Chamber in decision 1038, paragraph 72, and I will quote:

10 "The Chamber [by majority] recalls that [Mr Gbagbo's] attendance is not only his right,

11 but also his duty. Moreover, Rules 134*bis* and 134*ter* of the Rules allow the

12 exceptional absence of the accused person, but in no way establish a rule. In fact,

13 pursuant to Rule 134*ter* of the Rules, the accused's waiver of his right to attend trial is

14 only one of the five cumulative requirements to apply this provision."

15 Now, let me address the issue or the question of Côte d'Ivoire as a Host State or other

16 State Parties that may be more problematic.

17 Now, even though Côte d'Ivoire is a State Party, we submit that the accused should

18 not be released to that country. The accused must be present and able to attend the

19 proceedings and trial at the seat of the Court. If released to Côte d'Ivoire, there is a

20 significant risk that the accused's further presence at trial could not be compelled.

21 Why is that? There is an outstanding ICC arrest warrant for Mrs Gbagbo and a

22 request for her surrender which has not been executed. This is despite the fact that

23 her case was declared admissible by the Pre-Trial Chamber and the Appeals Chamber

24 both in 2014 and 2015.

25 Notwithstanding these admissibility determinations, Côte d'Ivoire's President

1 Mr Alassane Ouattara stated on 4 February 2016 that he would not send more
2 Ivorians to the ICC. Why? Because there was a functioning judicial system. On
3 28 March 2017 Mrs Gbagbo was acquitted of crimes against humanity and war crimes
4 by the Abidjan Cour d'Assises, judgment that was overturned on 26 July 2018 by the
5 Supreme Court of Côte d'Ivoire, paving therefore the way to new proceedings. But
6 on 6 August President Ouattara signed an amnesty decree granting amnesty to 800
7 detainees, among them Madam Gbagbo.

8 Mrs Gbagbo is now living in Abidjan and to the Prosecution's knowledge without any
9 further restrictions or pending legal proceedings. Recently Pre-Trial Chamber II has
10 asked the Registrar to request relevant information from the Côte d'Ivoire authorities
11 that could impact on the admissibility of the case. And the Prosecution is still
12 awaiting to see that information or is not privy at the very least to any information
13 being provided to the Registry.

14 Now, in addition there are other States Parties' non-compliance with the Court's
15 orders to execute arrest warrants similarly indicate that the accused cannot be granted
16 provisional or conditional release to those countries. The same also applies to States
17 which have publicly expressed a position that Mr Gbagbo should be released. There
18 are a few African leaders that have said so. I will not come back on the issue of
19 Uganda, because it's been addressed before and we mentioned that they are still
20 relevant.

21 Therefore, the State of a release should be a State Party within the territory of Europe
22 with close proximity to the seat of the Court for the purpose of facilitating the
23 accused's continued attendance at trial.

24 Further, and this I think is also important to note, because of the challenges and
25 practicalities involved in identifying a State willing to accept and capable of

1 implementing and monitoring the conditions imposed, it is strongly recommended
2 that the State identified should remain the same throughout the proceedings.

3 Alternatively again if that is what the Chamber was to decide.

4 In other words, the release of the accused to an interim State in the meantime for the
5 next months and the trial continues eventually and then we revisit and change to
6 another State should be avoided.

7 A long-term solution should be adopted from the outset. Why? Because it
8 provides certainty and it avoids possible further litigation in the future.

9 Now let me address conditions aimed at minimising the risk of flight.

10 In order to minimise the risk of flight of Mr Gbagbo and to ensure his continued
11 presence at trial, the Prosecution requests as a minimum that he complies with the
12 following conditions. Now, we submit that Rule 119 also serves as a guide for such
13 conditions.

14 (Counsel confers)

15 MR MACDONALD: [10:45:06] Sorry, there is a debate about certain confidential
16 information, but everything is fine for now. I'm sorry, your Honours.

17 Now, I was saying that Rule 119 also serves as a side for such conditions.

18 And I will ask that you disregard the redaction request that has been sent, please.

19 Now, this I think we need to pause here and reflect on this. In national proceedings,
20 certainly in Canada where I have my experience, and also actually in East Timor that
21 also happened, the issue when you deal with organised crimes or crimes of this
22 serious nature, strict conditions are always, always adopted.

23 This institution is no different and should not be any different. It is time for this
24 institution to have the legal maturity and institutional ability to impose strict
25 conditions when necessary and to apply these conditions as we see in Rule 119.

1 Therefore, there are challenges, but these challenges should not make it that, no, let's
2 not adopt these conditions because it's too difficult to implement them.

3 PRESIDING JUDGE TARFUSSER: [10:46:47] Don't we have legal maturity? I don't
4 understand. I mean this is, yeah, not really very polite what you are saying, okay,
5 this to my perception.

6 MR MACDONALD: [10:47:00] So let me now approach the conditions. Abide by
7 all instructions and orders of the Chamber, including to be present in court when
8 ordered.

9 Provide the address where he resides and his contact information to the Chamber and
10 relevant State authorities and request authorisation from the Chamber for any change
11 of address.

12 I'm right now addressing, and I want to make sure, I refer to Mr Gbagbo.

13 Not travel beyond the territorial limits of the municipality of his residence without
14 the explicit authorisation of the Chamber.

15 Surrender all identity documents, particularly his passport, to the Registry.

16 Be the subject to police monitoring at his place of residence or, alternatively, wear an
17 electronic monitoring device, a GPS of sorts.

18 Report weekly to the law enforcement authorities of the State where he is released.

19 As Rule 119 also demonstrates, to post bond or provide real or personal security or
20 surety, independently that he's indigent or not, in an amount sufficient to ensure his
21 future appearance before the Court, as directed, for which the amount and the
22 schedule and mode of payment shall be determined by the Chamber, in conjunction,
23 obviously, with the Registry and the receiving State, if necessary.

24 We submit that the accused, even though he may be indigent, can gather any amount
25 necessary which, in turn, can be deposited with the Registry, and forfeited – which

1 could be forfeited if any also of the conditions, beyond obviously returning to
2 detention, but forfeited if the conditions are not respected.

3 Now, to minimise the risk of obstruction of the Court proceedings by Mr Gbagbo and
4 his supporters, the Prosecution requests that he complies with the following
5 conditions -- or, that the Chamber impose the following conditions, sorry:

6 Not to contact, either directly or indirectly, any Prosecution witness that has testified
7 in this case.

8 And if you allow me to go into private session very quickly.

9 PRESIDING JUDGE TARFUSSER: [10:49:58] Let's go into private session, please.

10 (Private session at 10.50 a.m.)

11 THE COURT OFFICER: [10:50:12] We are in private session, your Honour.

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Open session at 10.51 a.m.)

21 THE COURT OFFICER: [10:51:13] We are back in open session, your Honour.

22 PRESIDING JUDGE TARFUSSER: [10:51:17] Thank you very much.

23 Mr MacDonald.

24 MR MACDONALD: [10:51:21] Sorry, obviously, contact is with the exception

25 through counsel authorised to represent him before this Court and in accordance with

1 the applicable protocols.

2 For instance, I'll name one of them, protocol number 49, concerning the disclosure of

3 the identity of witnesses of the other party and the handling of confidential

4 information in the course of the proceedings or investigations.

5 Another condition, to not make - and I'll say the conditions and then I'll explain

6 why - to not make any public statements directly or indirectly about the case or to be

7 in contact with the public or speak to the press concerning the case.

8 Why do we request such conditions? I'll give you an example. Beyond the fact that

9 large crowds can be gathered and the impact this may have on a host State. I'll give

10 you an example. Actually, today, a book is being published of conversations

11 between Mr Gbagbo and a person, an author. It's a follow-up book and the title of

12 the book is (Interpretation) Free for Truth and Justice.

13 (Speaks English) And I'll quote in French. And this is about the integrity of the

14 proceedings. It is beyond, we submit, respectfully, and not only a question of

15 freedom of speech:

16 (Interpretation) "My lawyers have been able to completely turn the situation around.

17 My opponents thought that they had won and that they had used the International

18 Criminal Court for their benefit. Henceforth, it is clear that they have everything to

19 lose at a trial because a trial reveals the truth. They are stuck.

20 This is one of the great merits of Emmanuel Altit and his team, given that they

21 immediately understood what the reality on the ground was and managed to

22 convince the judges. They destroyed the Prosecutor's evidence. Now everyone

23 knows that the evidence presented by the Prosecutor in support of his allegations

24 does not stand up to scrutiny.

25 Finally, they showed the bias of the Prosecutor, who flows with the wind blown by

1 the great powers."

2 (Speaks English) Now, like I said, and if you look at Rule 119, the Chamber -- actually,
3 it has been foreseen, and Rule 119 conditions are not exhaustive, you have the
4 authority to prohibit certain professional activities.

5 PRESIDING JUDGE TARFUSSER: [10:54:58] We have the legal maturity to know
6 119, *iura novit curia*.

7 MR MACDONALD: [10:55:08] We respectfully submit that such statements should
8 not be permitted. Why? Because they're made to influence the proceedings or they
9 may have an impact on upcoming witnesses. They're made with a purpose, they're
10 made to influence. Therefore, we have a duty to minimise that risk. So that is our
11 point about the proposed conditions on that matter.

12 Let me now turn to the last question, the last conditions that the Chamber should
13 impose.

14 Given Mr Gbagbo's ability to draw large crowds of supporters to lobby for his cause
15 and engage in public demonstrations, the Prosecution requests that Mr Gbagbo
16 cannot attend or speak at rallies or other public gatherings, as these could be used as a
17 vehicle to attempt to influence the Court proceedings also.

18 But there's more. Any State hosting Mr Gbagbo would therefore have to manage his
19 public movements, along with the public order risk of crowds of his supporters
20 gathering, for instance, at his residence. And that, we cannot ignore it.

21 Be it in The Hague, be it in any other country, your Honour, Mr Gbagbo is a former
22 president.

23 Mr Gbagbo, his influence, his personality, his ideas are being followed by a lot of
24 persons. So therefore that has to be taken into account by the Chamber. It's
25 unavoidable. It puts a strain, potential strain on any State that would accept him.

1 Let me now turn to the situation of Mr Blé Goudé.

2 Now, again, this is the alternative, because given the fact that Mr Blé Goudé has
3 already resorted in the past to false identification papers, including false passports to
4 elude arrest, we submit justifies even more stringent conditions of release in
5 comparison to Mr Gbagbo, in order to minimise any risk of absconding. And the
6 following conditions of release should apply at a minimum.

7 Now, what I would propose here is that I will not repeat the conditions that are
8 common to both. I'll go straight to the ones that are different or minimally different.

9 Now, again, if released, conditions would apply to not travel beyond the limits of the
10 municipality, to have also police monitoring at his residence or, alternatively, wear an
11 electronic monitoring device. So all the conditions are the same.

12 Here we would recommend that Mr Blé Goudé report twice a week to the law
13 enforcement authorities. And we also believe that it would be advisable that a
14 curfew be imposed and reasonable hours of 11 p.m. to 6 a.m., having to remain at his
15 residence during that time.

16 Same conditions should be also to post bond and so on.

17 So, apart from that, the conditions would be the same as to minimise the flight risk.

18 So the difference, twice a week and a curfew.

19 Now let me address the obstruction. Again, the same conditions apply. But I want
20 to indicate why it is also relevant in the case of Mr Blé Goudé. And I'll address the
21 conditions not to make any public statements, directly or indirectly, about the case or
22 to be in contact with the public or speak to the press concerning the case.

23 Now, the Prosecution recalls that during the last hearing in November, by majority,
24 Mr Blé Goudé was not allowed to make an unsworn statement. But, immediately
25 following the hearing, the text of the unsworn statement was posted on social media.

1 Now, how was this possible? Now, obviously -- because Mr Blé Goudé does not
2 have access to Internet from detention or, to our knowledge, he does not.

3 Now, we submit that is an example where Mr Blé Goudé broke, at a minimum, the
4 spirit of the majority's decision and he used social media to circumvent a Chamber's
5 decision or spirit of the decision to get his what we call political message to his
6 supporters.

7 Now, the same condition also should apply, the same other two additional conditions
8 like I've indicated, no contact either directly or indirectly with witnesses in this case
9 and what I've mentioned in closed session in relation to Mr Gbagbo and also the same
10 issue, especially that I think we've seen in this case, Mr Blé Goudé undeniably has an
11 ability to draw large crowds of supporters. You don't want to have a million
12 persons or flash mob, and this is the point, yes, you have to request from authorities a
13 right to demonstrate and so on, but you don't want to have flash mobs appearing at
14 the residence where Mr Blé Goudé would be in a rally, comes out, speaks and so on.
15 Now also I think it is important that the Chamber in its decision recalls Rule 119(4).
16 Obviously that any violation of the conditions set by the Chamber may result in the
17 revocation of interim release.

18 Let me now conclude. The Prosecution continues to oppose the release of both
19 Mr Gbagbo -- well, we continue to oppose the release of Mr Gbagbo before the
20 Chamber's decision on the Defence no case to answer motions because there are no
21 changed circumstances to justify it. And we oppose the release because this is a
22 first-time review of Mr Blé Goudé's detention, we oppose his release because he poses
23 a flight risk, particularly given his previous conduct.

24 However, if the Chamber were to decide to release either or both of the accused on an
25 interim basis, at a minimum the conditions I have just outlined should be imposed

1 upon their release.

2 Now, let me address a separate issue because it's an issue that may become relevant.

3 We don't know obviously until we see the Chamber's decision. But nevertheless,

4 should the Chamber decide to release the accused with or without conditions, the

5 Prosecution requests immediately that it stay the accused's release until the expiry of

6 the deadline for the Prosecution to file an appeal against the decision granting release

7 pursuant to Article 82(1)(b) of the Statute and Rule 154(1) of the rules of procedure

8 and, in the event that the Prosecution decides to appeal the decision, until the

9 Appeals Chamber has ruled on the Prosecutor's request for suspensive effect

10 pursuant to Article 82(3) of the Statute and Rule 156(5) of the Rules.

11 A stay of the accused's release similarly to any suspensive effect granted by the

12 Appeals Chamber would ensure that the decision under appeal would not (a) create

13 an irreversible situation that could not be corrected, even if the Appeals Chamber

14 eventually were to find in favour of the appellant; and (b) lead to consequences that

15 would be very difficult to correct and may be irreversible; and last, potentially defeat

16 the purpose of the appeal. And I refer here to a decision in the case ICC-01/05-01/13,

17 decision 718.

18 The Prosecution emphasizes that the Trial Chamber is not itself requested to authorise

19 suspensive effect which is a power confined to the Appeals Chamber. Instead, the

20 Prosecution only requests the Trial Chamber to take the necessary measures to

21 prevent the Appeals Chamber power being frustrated. Now, the Lubanga

22 Trial Chamber recognised that it had this power, also when ordering the release of an

23 accused. And you can find that Lubanga decision 2536, paragraph 11.

24 Now, we're well aware of the CAR Article 70 decision rendered by Mr President, but

25 we recall that in that case a notice of appeal had been filed and therefore you decided,

1 your Honour, that the question was moot or the Pre-Trial Chamber decided that the
2 question was moot, the suspensive or not to release while we were appealing. So
3 here, in order to avoid that scenario, we would remind or propose that the Chamber
4 wait upon the Prosecution's five-day notice.

5 PRESIDING JUDGE TARFUSSER: [11:06:43] As I told you, *iura novit curia*. We
6 know the law. Just for you to know.

7 MR MACDONALD: [11:06:52] Thank you very much, your Honour. That was my
8 presentation.

9 PRESIDING JUDGE TARFUSSER: [11:06:56] Thank you.
10 Legal Representatives.

11 MS MASSIDDA: [11:07:10] Thank you, your Honour. I think it will take not more
12 than 10, 15 minutes so we can have a break at 11.30.

13 PRESIDING JUDGE TARFUSSER: [11:07:18] We can have a break when we decide
14 to have a break. Thank you.

15 MS MASSIDDA: [11:07:23] Your Honour, I was simply trying to be nice and to
16 inform the Chamber of my plan for these submissions.

17 Mr President, your Honours, the victims I represent in this case have learned with
18 some concern about today's hearing. That main concern relates to the fact that the
19 request by both Defence teams on acquittal is pending and they understand today's
20 hearing is a signal that the accused will be indeed acquitted.

21 In this sense the Legal Representative concurs with the view expressed by Judge
22 Herrera Carbuccia in her dissenting opinion according to which the Chamber should
23 concentrate its time on adjudicating the Defence request for acquittal and that this
24 hearing risks, in the words of Judge Carbuccia, to pre-determine or at least appearing
25 to pre-determine issues related to the pending request.

1 Moreover, the last ruling of the Chamber on the interim release was issued on 20
2 April 2018, less than nine months ago and well within the one-year term limit
3 provided by Rule 118(3) of the Rules as recalled, by the way, by the majority in its
4 order convening this hearing at paragraph 9.

5 In this regard I wish also to stress that the Chamber has a duty vis-à-vis all parties
6 and participants in the proceeding to ensure expeditious trial and avoid
7 unsubstantiated litigation as again ruled by this Chamber in the last decision on
8 interim release on 20 April 2018. And my reference is to decision 1156 in its redacted
9 version at paragraph 32.

10 Allow also me, Mr President, to underline that regretfully, the short notice at which
11 the hearing has been convened has not allowed for proper consultation with my
12 clients. It is particularly regrettable in my view because Rule 119(3) of the Rules of
13 Procedure and Evidence provides explicitly that the Chamber shall seek the views of
14 the victims incidentally not only on the participating victims, but of the victims who
15 had communicated with the Court in the case, and this has to be done before
16 amending any condition restricting the liberty of the accused.

17 In the circumstances, I can only recall that the possibility that Mr Gbagbo be granted
18 release even with conditions has constantly been reason of serious concern for the
19 participating victims who fear for any immediate repercussions of the political
20 situation in Ivory Coast and threats to their daily life also taking into account the
21 upcoming general elections of 2020. This is even true today since the Chamber
22 intends to discuss the continued detention of both accused.

23 With two days given to prepare for this important discussion were not enough for the
24 Legal Representative to consult fully with her clients, collect the views and concerns
25 of the hundreds of victims she represents on the continued detention of the two

1 accused and particularly on the conditions under Rule 119(1) potentially applicable
2 should the conditional release be granted.

3 In any case, it is my position that it is not appropriate to discuss at this juncture of the
4 proceedings about the possible release of the accused. I further consider it
5 inappropriate and prejudicial to the interests of my clients to provide observation on
6 modalities of interim release, identification of States who could eventually welcome
7 the accused and conditions eventually to be applied, as requested in the order by the
8 majority.

9 This is indeed a pure theoretical discussion and one which should eventually be
10 undertaken if and when concrete proposals are put forward by the Defence.

11 It cannot be requested to the victims to undertake in the vacuum submissions on the
12 matters identified by the majority of the Judges. This approach is in my humble
13 submission not in line with the wording of Rule 119 of the Rules of Procedure and
14 Evidence, which in my view requires the knowledge of the conviction to be
15 eventually imposed before expressing any view of the victims concerned. This
16 seems to me indeed a preliminary condition for victims to express their views
17 *in concreto*.

18 Why I agree in principle with the type and modality of conditions put forward by the
19 Office of the Prosecutor, I wish to reserve the rights of my clients to eventually
20 intervene again and to consult them properly if any concrete proposal for conditional
21 release is put forward, including about the State in which the accused should be
22 released.

23 In any case, and in relation to the conditions, I would like to recall decision of the
24 Chamber of 26 September 2017, the 11th decision of detention, decision number 1038
25 in its redacted version, paragraph 72 and 73, dealing with some of the factors already

1 identified by the Chamber which should be taken into account in relation to an
2 eventual conditional release.

3 And in particular, to condition A and B of said decision, the first one being conditions
4 that would guarantee the accused's regular presence at trial in a manner that would
5 not affect the fairness expeditious conduct of the proceedings; and B, conditions that
6 would guarantee the accused not interference with the ongoing proceedings, which in
7 my submission would include any measures granting the safety and well-being of the
8 victims. And I refer in particular to Rule 119(1)(b) and (c).

9 Finally, I also agree with the Prosecution's submissions in relation to the applicability
10 of Article 58 of the Statute and maintain that the detention remains necessary under
11 Articles 58(1)(b)(ii) and 60(2) of the Statute.

12 In our submission, the situation has not changed since the decision of 20 April 2018,
13 and, in relation to Mr Gbagbo, it does not appear that there is any change in his health
14 condition since no submission or update of the medical report have been submitted
15 since April 2018.

16 In my view, the fact that the Chamber has heard submissions and has to rule on the
17 Defence teams' request for acquittal does not qualify as a factor which should or
18 could justify a release with or without conditions.

19 Until a decision of the Chamber is taken on this issue, I reiterate that there is no
20 reason to proceed with the discussions on continued detention.

21 I thank you for your attention.

22 PRESIDING JUDGE TARFUSSER: [11:17:15] Thank you very much.

23 I revert now to the Defence - Mr Gbagbo.

24 I think we should go until 12, then have the lunch break and then come back if
25 need be.

1 Maître Altit.

2 MR ALTIT: [11:17:30] (Interpretation) Thank you, your Honours.

3 Your Honours, before I begin, I would like to say that I will endeavour to finish by
4 noon. I'm not entirely sure of that. I may go somewhat later than that. I will do
5 all I can so that I can say as much as possible in the least amount of time.

6 PRESIDING JUDGE TARFUSSER: [11:17:56] Just go ahead. In the afternoon we
7 will have a session for one and a half/two hours maximum. But then I would like to
8 finish in the afternoon the discussion on this matter. Thank you.

9 MR ALTIT: [11:18:24] (Interpretation) Mr President, your Honours.

10 You have organised these proceedings as part of a review of detention under the
11 provisions of Article 60(3) and under Rules 118 and 119 of the Rules of Procedure and
12 Evidence. So this hearing is part of a discussion, so to speak, a discussion that began
13 subsequent to our application for interim release, in particular, the discussion that
14 began when we filed our application for provisional release on 27 April 2012. And
15 that was filing 105, if memory serves.

16 And I think, if we remind ourselves of this framework, we will be in a position to
17 make a number of discussions on the basis of information that we have already
18 received from State authorities. And I will speak about the State in question
19 somewhat later on in the proceedings.

20 Now, first of all, let us look at this problem. What is our position?

21 First of all, the Defence notes that the Prosecution has requested for detention to be
22 extended without providing any true information that would justify the need for such
23 detention at this juncture. In other words, the Prosecution has not demonstrated to
24 the Chamber that continued detention is crucial today to avoid any particular risk.
25 The Prosecution merely makes a number of general remarks.

1 Yet, under no circumstances can the Prosecution stand idly by and say that nothing
2 has changed. And why do I say that? Because it is the Prosecution's task to prove
3 that the detention of Mr Gbagbo is necessary to prove that the risks that are
4 mentioned in Article 58(1) of the Statute do exist. And what does that mean, truly
5 exist? It means that they exist in practical true terms.

6 Our reading, this is our reading of Article 58, and it is the only reading of this
7 provision that is compatible, compatible with the essential principles of law. These
8 principles set out that, owing to the existence to the presumption of innocence,
9 freedom is the rule and detention is the exception. Because detention is a serious
10 and considerable infringement upon an individual's rights, it must be absolutely
11 justified by way of a current and verified risk. And it is the party that is calling for
12 an individual to be detained, it is their task to prove that there is a current verified
13 risk. This means that one cannot rely upon conjecture, assumptions, hypotheses or
14 general statements. And why is that? Because this would utterly demolish the
15 principle that freedom is the rule and detention is the exception.

16 And even when an Appeals Chamber states, and I quote: "The issue deals with the
17 possibility, and not the certitude, that an event may occur in the future," end of quote.
18 And this was in the Katanga case, filing 572, dated 1 April 2009.

19 Obviously, this does not mean that it's sufficient for the Prosecution to claim that
20 there is a risk without proving anything for the judges to agree. That does not mean,
21 and this is quite clear, it doesn't mean that all the Prosecution needs to do is evoke a
22 hypothetical scenario and then automatically the scenario is considered to be a
23 possibility by the judges, something that could actually happen. On the contrary, it
24 is still necessary to demonstrate -- to make a demonstration and base oneself on
25 concrete items of information. The Prosecution must demonstrate that there is a risk

1 and it must be shown materially. To reason in any other fashion would be opening
2 the door to unlimited provisional detention, detention for life that would be based on
3 the mere existence of a theoretical fear, a general fear expressed regularly by the
4 Prosecution.

5 The right to come and go, the right to freedom is an enduring right that everyone
6 enjoys unless a person has been found guilty; and this is not the case here.

7 Laurent Gbagbo is presumed to be innocent. Thus, his detention can only be an
8 exceptional measure and, even furthermore, this detention must be considered in
9 light of other factors such as the duration of detention, his age, his physical condition,
10 and many other factors.

11 Thus, in our opinion, Mr President, your Honours, you must require the Prosecution
12 to prove that it's necessary to continue Mr Gbagbo's detention and, Mr President,
13 your Honours, you have complete freedom and complete latitude to do so, to verify
14 what the Prosecution argues and to review or oversee, even, what has been argued.
15 In other words, from our standpoint you must not only verify what the Prosecution
16 has demonstrated, or not, that the conditions of Article 58(1) have been met, but also,
17 but also you must verify whether the fundamental principles of law do not require
18 release.

19 We are speaking to an essential right, a person's right to freedom. This lies at the
20 very heart of your function as judges, namely, your function of protecting these rights.
21 Thus, when making a decision regarding interim detention, you must follow the
22 framework that has been set within the Statute so as to avoid any unjustified breach
23 of the person's fundamental rights. Any other approach would run counter to the
24 principles of justice and the respect of human rights, principles that underpin the
25 existence of international criminal justice.

1 That is why, Mr President, your Honours, the Prosecution absolutely must provide
2 information justifying continued detention. As of now, current information, they
3 mustn't merely make reference to information provided six months, a year, one year
4 ago or five years ago. The Chamber must come to a decision today on the basis of
5 today's reality. That is how the decision must be taken.

6 By the same token, the Chamber itself cannot merely refer to its earlier decisions. In
7 our view, the Chamber must verify the existence of a true risk at the time of the
8 decision. This is what the Appeals Chamber reminded us of in the current case, and
9 I quote --

10 THE INTERPRETER: Unofficial translation.

11 MR ALTIT: [11:30:10] (Interpretation) "What is crucial is that a Chamber must be
12 satisfied at the time of its assessment, at the time of its assessment that there are
13 reasons justifying detention. In this regard, a Chamber cannot merely refer to
14 conclusions found in previous decisions without being satisfied that the evidence or
15 the information that underpin these conclusions still support the conclusions arrived
16 at at the time of the assessment or evaluation." And I quote the reference, ICC,
17 paragraph 39 from decision 992.

18 It is not possible to not request that the Prosecution demonstrate the existence of risk
19 at this juncture, because this would fundamentally be placing the burden of proof
20 upon the shoulders of the Defence. In other words, this would be asking the
21 Defence to prove the absence of the existence of risk, that no risk exists. And all I
22 have to do is say this and I think you will realise that this is impossible from a logical
23 point of view, it is not possible to prove the existence of a lack or absence of risk, the
24 existence of something that does not exist.

25 Mr President, your Honours, one last point in this regard on this first development.

1 How can a decision regarding interim release have any bearing upon the final
2 decision dismissing the charges, the decision regarding the application for dismissal
3 of charges, the application filed by the Defence? What is the link here?

4 I think this is about respecting Mr Laurent Gbagbo's right to freedom while the
5 Chamber is in the process of coming to a decision on the applications made by the
6 Defence.

7 If we look to 58(1) -- I believe I need to resume this particular paragraph and the
8 interpreters will be able to follow, to better follow. Allow me to resume.

9 The assessment of the existence of conditions of 58(1) from a logical point of view
10 cannot be deemed to be, and I will begin the parenthesis here, predetermination, and
11 I'll now end my digression regarding the substance of the case, because a Chamber
12 can never come to a decision regarding release before the final decision of a case.

13 That's quite obvious.

14 I shall now turn to my second point. Together we must observe that no element
15 justifies the detention, I think we must observe that the Prosecution has not been able
16 to demonstrate the existence of any of the conditions that are set out in Article 58(1)
17 that could justify continued detention of Mr Gbagbo. First of all, regarding 58(1)(a),
18 (1)(a), it is recognised by all international courts and tribunals that detention can only
19 be justified if there is a reasonable suspicion, a reasonable suspicion that the person
20 has committed the crimes with which he has been charged. This is a reminder from
21 the ECHR, and I quote, "The persistence of plausible reasons to suspect the person
22 who has been arrested of having committed an infraction is an essential condition to
23 the legality of continued detention of the person in question." This was Mammadov
24 versus Azerbaijan, the judgment of 22 May 2014, paragraph 90.

25 This is also the point that you raised, Mr President, on 20 April 2018, and this is to be

1 found in an annex to filing 1158, paragraph 8, and I will provide a personal
2 translation with your leave, and I quote:

3 "The reasonableness of the suspicion leading to the initial arrest and the ensuing
4 detention must be the subject of an ongoing assessment that must be considered for
5 the purposes of each request for release." End of quote.

6 Now, yet in this regard the Chamber will easily see after reading the submissions for
7 dismissal of all charges, a filing that was provided by the Defence on 23 July 2018, and
8 after hearing the oral submissions of the Defence on 12, 13 and 14 of November last,
9 that the Prosecution's file does not suffice to have a reasonable suspicion that could
10 justify detention.

11 Secondly, concerning the conditions that are to be found in Article 58(1)(b), your
12 Honours, we put this question to you, namely, if, as the Prosecution has said in the
13 past, is there a risk? And if so, what is this? The only risk that could be considered
14 would be evading justice.

15 One remark in this regard. The Prosecution says that it might be possible that the
16 proceedings will be interfered with. Which proceedings, which proceedings are they
17 speaking of?

18 The Prosecution says that nothing has changed since the last ruling, but that is not so,
19 that is, the Prosecution's case is closed. So what? Interference with what, with the
20 Defence's case?

21 Well, the Prosecution seems to have forgotten that their case is over. They have
22 made their case, and that was with the witness. And you see, there is no
23 demonstration, there has been no demonstration.

24 THE INTERPRETER: [11:41:31] Interpreter correction: Counsel has made reference
25 to ACC witnesses.

1 MR ALTIT: [11:41:42] (Interpretation) I look to the interpreters to determine if
2 everything is fine.

3 THE INTERPRETER: [11:41:48] There was a reference to ACC witnesses.

4 MR ALTIT: [11:42:05] (Interpretation) What is the Prosecution's argument? The
5 only argument that is apparently there is some kind of network, a network, and
6 apparently this network is willing to see to it that Laurent Gbagbo escapes justice.

7 And if you say that there was a network, a network, this means there is a structure, a
8 network means a structure. No structure, no network.

9 Therefore, to demonstrate that there is this so-called network, the Prosecution should
10 have demonstrated the existence of a structure. And to demonstrate the existence of
11 a structure, the Prosecution should have shown that there was a hierarchy, that there
12 were groups, that there were places where they met. There were means of
13 communication, that there was funding and, above all, some kind of goal shared by
14 the entire network and criminal goal or aim, isn't that so?

15 Now, over all these years have they ever answered such questions? Never. And if
16 there is no demonstration that a structure exists, there is no demonstration that there
17 is a network.

18 So to bypass this particular problem, the Prosecution - and the Prosecution is unable
19 to demonstrate the existence of a network - instead they have tried to rely upon the
20 behaviour of people who have expressed their admiration for Laurent Gbagbo, and
21 this is public knowledge.

22 Today, after a series of withdrawals, so to speak, from this concept of a network, the
23 Prosecution now takes the following position. Apparently there is proof of the
24 existence of a network just because many people are calling for the release of
25 Laurent Gbagbo. And I refer the Chamber to a number of examples that have

1 already been mentioned here, for example, the petition that was signed by 25 million
2 people, the calls from members of civil society within Côte d'Ivoire, calls from
3 officials within the international community.

4 But how can the expression of an opinion by citizens prove that there is a network
5 and that this network has criminal intent? What is the nexus? The Prosecution has
6 never provided any explanations. The Prosecution has never provided any hint of
7 proof that those who are calling for the freedom of the release of Mr Laurent Gbagbo
8 have some intent that could be deemed to be criminal and that they would want him
9 to evade justice. So no evidence in this regard and no evidence from the Prosecution
10 that would allow for the demonstration of a network, a proper network properly
11 formed or constituted network.

12 Another example of the Prosecution's will to liken any support, any political support
13 for Laurent Gbagbo to criminal intent: In 2012, the Prosecution based themselves
14 claiming that there was a network supporting Laurent Gbagbo. The Prosecution
15 based themselves on an article from the New York Times that spoke of support for the
16 accused person, support expressed by a number of American senators.

17 So if we understand correctly, these senators came together and were trying to find
18 some way to help Laurent Gbagbo evade justice. What did they have in mind? No
19 such demonstration has been made. That's the very least we can say.

20 Mr President, your Honours, in actual fact, the people who admire Laurent Gbagbo
21 and admire him for his work to foster democracy, these people are many in number
22 to be found in France, in America, in Côte d'Ivoire. But this has nothing to do with
23 the existence of some kind of network.

24 If you listen carefully to the Prosecution earlier, well, at least what I heard from the
25 Prosecution, they seem to be arguing that Mr Gbagbo should be kept in detention

1 because he is popular. Well, if that is the case, if he continues to be so popular, he
2 will never be released. But that is not the law.

3 So do you see the problem here? Because the Prosecution has not demonstrated, has
4 not provided any items of information, the Prosecution has to start playing with
5 reality, with ideas, with concepts. And they seem to be confused. They seem to be
6 likening political supporters to a network, but that is not true.

7 Now, this leads me to another point, page 9, I believe I noted this properly, page 9,
8 line 23 I believe of the French version. The network, page 9, line 23. The
9 Prosecution has shown several times their intent -- correction, the network has
10 determined, has shown several times their intent to disrupt the proceedings. But
11 how? By whom? These are mere words. Where is the proof? Where is the
12 demonstration? We are talking about a person's life.

13 Page 10, once again today's transcript, I'm quoting from the French version:
14 "His supporters" - i.e., Mr Gbagbo's supporters - "have already shown that they were
15 entirely ready to laminate the orientations given by the Court."

16 When, whom, how? That just is not on, it's just not possible.

17 Just one side remark if you don't mind. The fact that a crowd of supporters of
18 Laurent Gbagbo, and these are people who come together to express their support for
19 a politician who has transformed their country, who has restored democracy, this
20 crowd of supporters, according to the Prosecution, have caused a delay, a delay in a
21 hearing. And this seems to be held against the accused.

22 Well, perhaps I'm mistaken. To the best of my knowledge, that delay had nothing to
23 do with that. It was a problem with logistics if I remember correctly. I won't
24 belabour the point, but I think this says a lot.

25 Maintaining Laurent Gbagbo in detention because he is popular obviously was not

1 the letter nor the spirit of the Statute.

2 I will prove to you, Mr President, your Honours, that there is no network, no network
3 with some sort of criminal intent, contrary to what the Prosecution have claimed.

4 I think you'll recall that in an attempt to avoid the demonstration of the existence of a
5 network, the Prosecution has spoken of individuals, beginning by likening this
6 network to the FPI and this can be seen in remarks. But, you see, the FPI is a legal,
7 duly recognised political party, a part of the political landscape and this party has
8 dealings with the international community.

9 Of course, its leaders and supporters are indeed supporters of Laurent Gbagbo. Is
10 that sufficient reason to criminalize the FPI? Obviously not.

11 The Prosecutor therefore fell back to a new line of Defence and opted for a third
12 approach, and I would like to give you the thrust of the Prosecution's reasoning.

13 They argue that it is some people within the FPI who belong to a network with illegal
14 intent, such as, taking power by force and ensuring that President Gbagbo can escape.

15 Now, they have referred to these people as the hardliners, the FPI hardliners. But
16 that term has never been defined. There has been no cross-checking to determine
17 whether such a group existed and whether such a group would have shared the same
18 objectives. But that was the ultimate argument of the Prosecution to ensure that they
19 convince you to maintain Mr Gbagbo in detention.

20 They relied on the assumption that there were some hardliners who were ready and
21 willing to act illegally, meaning, therefore, that these were people who were fighting
22 against the institutions of their very country.

23 Mr President, your Honours, now, what are we to observe today? First of all, this
24 point of view has only been held by the Prosecutor. He is the only one, and no one
25 else who refers to them as hardliners. Within Ivory Coast, these are respected

1 politicians working within legal parties and you would know that here and as
2 elsewhere, the Prosecutor has opted to take a political stance.

3 Secondly, if these people, Mr President, these people, if they actually were the leaders
4 of a network with illegal objectives, then one would expect Mr Alassane Ouattara's
5 representatives and officials of other parties to denounce them.

6 But what do we observe today? On 3 November 2018, during the funeral of
7 Aboudramane Sangaré, which the Prosecutor -- whom, rather, the Prosecutor referred
8 to several times as a hardliner, at his funeral, representatives of all political parties
9 were present, all political parties. Still in regard to Sangaré, Guillaume Soro, the
10 former rebel leader said as following, and I quote:

11 "I want to salute the memory of a passionate fighter for democracy and individual
12 freedoms whose commitment alongside Mr Gbagbo Laurent for the introduction of
13 multiparty politics in Côte d'Ivoire is one of the enduring achievements of our
14 country. Côte d'Ivoire has lost one of its distinguished sons. I, therefore, extend
15 my sincere condolences to his natural family and to his political family, namely the
16 FPI." End of quote.

17 This happened a few days ago. And this was in relation to the so-called hardliners,
18 the so-called people with illegal intent, the so-called marginals.

19 Now, Mr President, your Honours, the Prosecution has failed to demonstrate
20 anything in this connection, and I want to refer again to the funeral of Mr Sangaré
21 where Minister Maurice Bandaman, spokesperson for the RHDP delegation, that is,
22 Alassane Ouattara's party, he delivered a message on behalf of Alassane Ouattara and
23 said as follows, I quote:

24 "Côte d'Ivoire has lost one of its illustrious sons. President Aboudramane Sangaré is
25 a great citizen, a man of conviction, a great academic whose political career is

1 well-known and respected."

2 And then he went on to say:

3 "The head of state, Alassane Ouattara, has sent us to you to mourn with you, to
4 mourn his brother, Aboudramane Sangaré, and to join you fully in your suffering at
5 this time of death within your family, death within the FPI and death for Côte
6 d'Ivoire." End of quote.

7 These are the words of Alassane Ouattara himself. So my question to you is the
8 following, and with your leave, I will stop after that question: Why does the
9 Prosecution not hear that? Why does the Prosecution create an alternate reality in
10 relation to maintaining Laurent Gbagbo in power?

11 I'll stop, I'll stop here, with your leave, Mr President.

12 PRESIDING JUDGE TARFUSSER: [12:00:43] You stop, you are finished or you stop
13 here for the break?

14 MR ALTIT: [12:00:49] (Interpretation) I will stop here for the break, and I think I will
15 not need much more time after the break, maybe 20 minutes or so.

16 PRESIDING JUDGE TARFUSSER: [12:01:09] Okay. So we have now the lunch
17 break, and we come back at 1.30 for a session, which should not last more altogether
18 than two hours maximum.

19 Thank you very much.

20 The hearing is adjourned.

21 THE COURT USHER: [12:01:26] All rise.

22 (Recess taken at 12.01 p.m.)

23 (Upon resuming in open session at 1.29 p.m.)

24 THE COURT USHER: [13:29:55] All rise.

25 Please be seated.

1 PRESIDING JUDGE TARFUSSER: [13:30:15] Good afternoon.

2 Maître Altit, the floor is yours.

3 MR ALTIT: [13:30:32] (Interpretation) Thank you very much, your Honour.

4 Mr President, your Honours, we are dealing with a particular issue here, and this is
5 an issue that is quite surprising; it is quite surprising that this has not been addressed
6 by the Prosecution. The Prosecution merely looks somewhere, elsewhere, and
7 immediately the whole idea of an illegal network seems to vanish into thin air.

8 And thus Marcel Gossio, and I think you will recall that the Prosecution said that he
9 was a supposed hardliner, quite recently, an honour, that is to say, officially military
10 funeral and I quote:

11 "The state of Côte d'Ivoire, through her armed forces, wishes to render military
12 honours to one of her worthy servants." End of quote.

13 And thus, your Honours, it is only in the Prosecution's mind that we find something
14 or someone or some people referred to as hardliners, and hardliners made out to be
15 potential criminals. In other words, no criminal intent, no structure. Thus, there is
16 no network.

17 And the presence of a number of people suspected by the Prosecution of acting in an
18 illegal manner, and this notion or idea of a network, that was the only thing that
19 allowed the Prosecution to claim that there was a network. Thus, what are we to do?
20 Well, we have demonstrated that this network did not exist. We have demonstrated
21 this thanks to new items of information, new elements. So there is something new to
22 be considered as part of this collective exercise, reflection that we have embarked
23 upon.

24 Mr President, your Honours, one last point, and this is just common sense. The
25 Prosecution's suggestion that there could be a flight risk, not only is this suggestion

1 based on nothing, but also, well, this just doesn't make any sense. In what kind of
2 world, in what kind of world would a 73-year-old man known throughout the entire
3 world, known throughout the entire world, a man suffering from various health
4 problems, why would such a person have the slightest interest in going underground,
5 disappearing? This makes no sense.

6 I think we should also point out that Laurent Gbagbo has stated, and restated many
7 times, that he has no intention to flee or to evade justice. Laurent Gbagbo is here to
8 ensure that the truth is said here in this courtroom. This volition, this will of
9 Laurent Gbagbo has been expressed on an ongoing basis. He has never waived and
10 his voice must be heard.

11 Mr President, your Honours, I shall now turn to another series of arguments, and I
12 am going to speak to the factors that would favour interim release. We wish to
13 remind the Chamber of these factors, these factors that would argue in favour of
14 Mr Gbagbo's being released.

15 First of all, I think we must consider the duration of time that Mr Gbagbo has spent in
16 detention. This Court has constantly reminded us by way of its earlier rulings that
17 duration must be considered when judges review the need for someone to remain in
18 detention. And this point was made by the Appeals Chamber in this particular case,
19 filing 992, 19 July 2017 - I will not return to this particular matter - paragraph 79.

20 Mr President, your Honours, Mr Gbagbo has been held in detention in Scheveningen
21 for seven years now, seven years. And this detention followed another period of
22 detention, horrific detention. The conditions of his detention are indescribable. I'm
23 speaking of when he was being held in Korhogo. And here we find ourselves here
24 in open court. I will not repeat exactly what one of the experts found, an expert sent
25 to attend to Mr Gbagbo.

1 Today the Chamber should verify, because we think that is indeed the duty of the
2 Chamber, the Chamber should verify and decide whether or not the duration of the
3 detention has become unreasonable.

4 In the view of the Defence, the passage of time is in of itself an element that must be
5 considered, something that leads us to a new situation, because we are not talking
6 about being held for a year, we are talking about being held for seven years. And
7 this is particularly the case when the person in question is elderly and fragile.

8 I will repeat one particular point. To the mind of the Defence, the passage of time is
9 in of itself a new element and is an element that leads to a new situation, because,
10 clearly, being held for seven years is not the same as being held in detention for
11 one year.

12 The duration of the interim detention, particularly when we're talking about a rather
13 long period of time, must be assessed in light of the age of the person and the fragile
14 condition of the person in question.

15 Secondly, one must consider Laurent Gbagbo's age. Today he is a man of 73 and
16 thus, by definition, he is a fragile person and, thus, prone to many high levels of risk
17 in a prison setting. It is not to you I appeal, I'm not going to remind you that the
18 effects of imprisonment are much more severe when we are talking about elderly
19 people. In other words, the lack of exercise, the lack of social interaction, these
20 things are inherent to detention, and this, these problems make the person weaker.
21 And logically, this impacts the ageing process.

22 In other words, once again, an elderly person who is being held in detention
23 ages faster.

24 This incarceration which steps up the ageing process is -- because we are talking
25 about an elderly person here, this is a form of punishment that is incompatible with

1 the presumption of innocence.

2 Allow me to put it in different terms. The duration of detention must be assessed in
3 accordance with age. The time spent in detention is relative when one considers a
4 person's life expectancy. The older the person is, the longer the time spent in
5 detention. It is longer.

6 An additional month in detention for an elderly person is equal to several months.

7 An additional month spent in detention in the case of an elderly person is equivalent
8 to several months in detention for a young person.

9 Thirdly, the health problems that Mr Laurent Gbagbo suffers from also require him to
10 be released.

11 And with your leave, I will elaborate on this particular point but in closed session.

12 PRESIDING JUDGE TARFUSSER: [13:43:22] Let's go in closed session briefly.

13 Thank you.

14 (Private session at 1.43 p.m.)

15 THE COURT OFFICER: [13:43:44] We are in private session, your Honour. Thank
16 you.

17 (Redacted)

18 (Redacted)

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9 (Open session at 1.46 p.m.)
10 THE COURT OFFICER: [13:46:52] We are in open session, your Honour.
11 PRESIDING JUDGE TARFUSSER: [13:47:01] Thank you.
12 Maître Altit.
13 MR ALTIT: [13:47:03] (Interpretation) Thank you.
14 Your Honours, I would now like to speak to one final point to -- well, a number of
15 practical points that the Defence would like to suggest with a view to allowing
16 Laurent Gbagbo's interim release. In these brief remarks I will revisit a number of
17 proposals from the Prosecution that would allow us for constructive discussion.
18 Now, I was just looking at what I wanted to say to you, and I believe it might be
19 better to begin in closed session on this particular point, and if possible, we could go
20 back into open session. But I'm afraid I will have to most likely deal with a number
21 of sensitive issues, and I think it might be safer to begin in closed session.
22 PRESIDING JUDGE TARFUSSER: [13:48:35] Let's go back into closed session,
23 please -- into private session.
24 (Private session at 1.48 p.m.)
25 THE COURT OFFICER: [13:48:44] We are in private session, your Honours.

Status Conference

(Private Session)

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- 21 (Open session at 2.02 p.m.)
- 22 THE COURT OFFICER: [14:02:22] We're in open session, your Honour.
- 23 PRESIDING JUDGE TARFUSSER: [14:02:25] Thank you very much.
- 24 Mr Knoops, the floor is yours.
- 25 MR KNOOPS: [14:02:42] Mr President, your Honours, we will address four

1 elements in the next 45 minutes.

2 First question, we address why Mr Blé Goudé did not present a request for interim
3 release until so far, briefly.

4 Second, the requirements under the law.

5 Third, factors favouring interim release in this stage.

6 And fourth, the potential transfer to a State and the conditions.

7 The last two paragraphs will be addressed by Ms Carrin, on my right side, and I will
8 come back for the final conclusions afterwards.

9 First element: Why did Mr Charles Blé Goudé until so far not present a request for
10 interim release?

11 Mr President, it's indeed the first time that our Defence team addresses the Chamber
12 on the potential chances for interim release for Mr Blé Goudé.

13 Two reasons appear why the Defence of Mr Blé Goudé didn't request the Chamber
14 during the proceedings for interim release:

15 First, Mr Charles Blé Goudé was, when arriving here in The Hague, fully determined
16 to commit himself to the trial proceedings and to participate with all his energy and
17 concentration to prove his innocence, and any potential argument, allegation on the
18 part of the Prosecution for disrupting trial proceedings was therefore to be evaded,
19 especially during the presentation of the Prosecution case against him. By therefore
20 refraining from requesting interim release, Charles Blé Goudé showed full
21 commitment to participate before this Chamber in the proceedings and to challenge
22 the charges brought against him by the Prosecution.

23 The situation where, Mr President, an accused finds himself against these very drastic
24 charges, pleads not guilty, is constantly present and involved and is even accepting
25 pre-trial detention, which is of course a drastic restriction of his personal freedom

1 rights, this demonstrates, as we submit, an ultimate form of commitment to the
2 Chamber, respect for the Court, that can be shown by an accused in order to show his
3 innocence.

4 This fact that Mr Blé Goudé pleads not guilty to the charges and has presented a
5 motivated Defence against the charges brought against him by the Prosecution, can
6 also not be held against him in the assessment for request of interim release, as also
7 set forth by the Appeals Chamber on the 19 July 2017, paragraphs 2 and 68 in the
8 appeal of Mr Gbagbo against the detention, conditions in detention, of the Trial
9 Chamber order of 10 March 2017.

10 Secondly, reasons for interim release now appear, in light of the totally different stage
11 of these proceedings. The Prosecution case is closed for almost one year. The
12 potential risk that Mr Blé Goudé could have any influence on the presentation of the
13 Prosecution case or could interfere with investigations is, in our submission,
14 non-existent.

15 So now, therefore, we can raise the arguments for his potential interim release.

16 These two introductory remarks demonstrate, in our submission, that Charles
17 Blé Goudé is eligible for interim release.

18 I will now arrive at the second part, the fulfilment of the requirements for interim
19 release under the law.

20 First of all, Mr President, we submit that it is questionable whether the criterion of
21 Article 58(a), reasonable grounds to believe that the person has committed a crime
22 within the jurisdiction of the Court is fulfilled, in light of the content of the Prosecution
23 case as presented at trial.

24 In your decision of 10 March 2017, also repeated on 25 September 2017, the Chamber,
25 by majority, considered the gravity of the charges against the accused and the

1 potential sentence, if convicted, as relevant for interim release.

2 We submit first, your Honours, that in the consideration of this argument of the

3 Defence of Blé Goudé, the Chamber should be mindful of the content of the

4 proceedings against Charles Blé Goudé, namely, also the level and the intensity with

5 which the charges are challenged by the Defence.

6 In specific, the Chamber is aware of the fact that the Prosecution no longer objects to

7 withdraw its allegations against Charles Blé Goudé for the so-called Abobo incidents,

8 namely, the incidents of 3 and 17 March 2011.

9 Second, speaking about this fulfilment of this requirement, the Appeals Chamber in

10 the Bemba case of 2 December 2009 has already held that the weight to be attached to

11 this factor of gravity in that case was underestimated by the Pre-Trial Chamber. But

12 in our case there is a potential significant difference between the amount of charges

13 that led to the Pre-Trial Chamber's decision to issue an arrest warrant and to confirm

14 the charges, on the one hand, and the amount of charges which might be left after the

15 finishing of the Prosecution case.

16 In other words, Charles Blé Goudé, seen from the perspective of the Prosecution case,

17 is currently potentially only charged relating to three out of the five incidents, which,

18 in our submission, constitutes a different change, and a significant change, in the

19 circumstances of this case.

20 We conclude, therefore, that the suggested reduction of the Prosecution case by the

21 Prosecution itself against Mr Blé Goudé should function in favour of interim release.

22 My second part in this regard relates to the three criteria of Article 58(1)(b).

23 First, the ensuring of appearance at the trial.

24 First, Mr President, if the Court would grant interim release to one of the States with

25 which the ICC has already entered into an interim release agreement, this in itself

1 might ensure an appearance at trial. The legal systems of those States with which
2 such agreements exist can ensure that Mr Blé Goudé will appear at trial.

3 Second, as held by the European Court of Human Rights in the case of Becciev versus
4 Moldova, 4 January 2006, paragraph 28, it's important that the flight risk diminishes,
5 as said by the European Court, as the detention conditions, because the balance of the
6 sentence that the person might expect to have to serve will be reduced.

7 In this regard - and Ms Carrin will deal with this in a few minutes - Mr Blé Goudé has
8 already been detained for five years, exclusive 14 months at the DST in Côte d'Ivoire,
9 therefore, including that time period, longer than five years.

10 His knowledge of the Prosecution case, which is, in accordance with the Appeals
11 Chamber in the Bemba II case a potential relevant factor, will favour in his advantage
12 and will decrease his flight risk, knowing the strength of the Prosecution case and
13 knowing that there is a chance that he can be acquitted.

14 So this factor, which was to the detriment of the accused in the Bemba II case, can
15 function here as a factor in favour of diminishing that potential flight risk.

16 Third, having heard the Prosecution case, and the closure of the evidence presented
17 by the Prosecution, makes this flight risk no longer reasonable. We also refer to the
18 jurisprudence of the Yugoslav tribunal in this regard in the Delalić case.

19 The situation might be such that the evidence presented against Mr Blé Goudé is not
20 sufficient to sustain a conviction.

21 In the Bemba II appeals case of 12 June 2018, the Chamber had considered that there
22 might be a flight risk for Mr Bemba, based on the fact that Mr Bemba knew by that
23 time that he was convicted.

24 In our situation, this is totally different. It would be totally illogical for

25 Mr Blé Goudé to attempt to abscond at this stage of the proceedings where a decision

1 about his potential acquittal is about to be made. And certainly when, at the least,

2 the quantity of the charges might be reduced as suggested by the Prosecution.

3 This same argument also applies with respect to the risk of obstruction of the Court's

4 proceedings.

5 Fourth, assuming *arguendo* that Charles Blé Goudé would intend to abscond from

6 the proceedings, he would not have the necessary means to do so especially in light of

7 the following six factors:

8 First, he has no financial means or resources as being an indigent person.

9 Second, the inexistence of an alleged network, as will be illustrated in a few seconds

10 by our Defence team.

11 Third, the existence of family, especially children, with whom he needs to develop

12 relationships after being detained for five years.

13 Fourth, Charles Blé Goudé, as a well-known individual, making him easily

14 identifiable by the public and that would render impossible any attempt to lead an

15 at-large existence.

16 Fifth, whatever angle the Chamber might choose under Article 58(1)(b), nothing

17 allows to reasonably believe that Charles Blé Goudé would abscond from the

18 proceedings.

19 Sixth, Mr Blé Goudé has presented a defence of innocence. He has therefore no

20 incentive of becoming a fugitive. To the contrary, his commitment to this trial

21 proceedings only militates against him becoming a fugitive. Therefore, it is safe to

22 conclude, your Honours, that there is no concrete flight risk.

23 Any flight risk which the Chamber might still consider can be properly addressed by

24 the list of conditions Charles Blé Goudé is willing to abide by and which we will

25 address by our team very briefly.

1 Last point, speaking about the security for Mr Blé Goudé to attend the trial and any
2 flight risk, the issue of the passports, which the Prosecution raises, three questions:
3 Why did Mr Blé Goudé flee Côte d'Ivoire? Second, did he abscond justice? And
4 third, what is the proof of the origin or the source of those passports?

5 The first question: Why did Mr Blé Goudé leave Côte d'Ivoire in March 2011? As
6 the Chamber might know and there is evidence before this Court to this extent, lots of
7 people left at that time Côte d'Ivoire afraid for the new regime. Mr Blé Goudé had to
8 flee for his life. He had death threats and people tried to murder him. There is
9 evidence before this Court such as P-362, we heard this witness on 13 November 2017,
10 transcript 207, where people expressed their willingness to kill Charles Blé Goudé.
11 Therefore, it's not illogic that he therefore left Côte d'Ivoire.

12 Second, as evidenced by the fact that people were willing to break the law to infringe
13 his rights is there the arrest of the Ghanaian authorities who were willing to kidnap
14 Mr Blé Goudé and without due process at an extradition trial brought him to Côte
15 d'Ivoire without having the opportunity to consult a lawyer and during the night.
16 We know from the jurisprudence of the Yugoslav tribunal in the Dokmanović case,
17 for instance, that this is a violation of his rights. So if people were willing to break
18 the law to infringe his rights, Mr Blé Goudé has had ample reasons to not stay in
19 Côte d'Ivoire.

20 Second question: Did he abscond justice at all? Mr President, Mr Blé Goudé left
21 Côte d'Ivoire in March 2011. Only on 21 December 2011 an arrest warrant under seal
22 was issued against Mr Blé Goudé a month later. At the time he left Côte d'Ivoire,
23 there was no arrest warrant pending against him.
24 Mr Blé Goudé was never confronted with an arrest warrant, not even when he stayed
25 for 14 months under house conditions at the behest of the DST in Côte d'Ivoire.

1 Therefore, the Prosecution is wrong by saying that Mr Blé Goudé attempted to evade
2 justice and an arrest.

3 So this was the answer to the second question. He therefore did not abscond justice
4 and that's simply verifiable by the facts.

5 Last question: The passports, did he use them? Were these passports part of his
6 life?

7 Mr President, the Prosecution didn't present evidence at this trial about origin, the
8 source of those passports. There was no proof that these passports were actually
9 used. There were no stamps produced by the Prosecution to show that
10 Mr Blé Goudé actually used those passports by travelling around. There is even not
11 a forensic evidence that he even produced those passports.

12 Therefore the mere fact that Mr Blé Goudé was in possession of several passports is
13 an irrelevant argument in the terms of a potential flight risk.

14 Now, Mr President, I turn to the second limb of Article 58(1)(b), obstruction or
15 endangering the proceedings.

16 Ever since Mr Blé Goudé has been in detention, there is no evidence produced,
17 concrete evidence that he has made any attempt to obstruct justice or the
18 investigations. On the contrary, he cooperated with the Court on every occasion he
19 could and has conducted himself in accordance with the integrity of the proceedings
20 as well as in detention. He has demonstrated throughout the proceedings before this
21 Chamber that he is indeed committed to exonerate himself by following the
22 procedures established by the Chamber.

23 He has also cooperated with the United Nations delegation in February 2016 when
24 the UN commission on the security of Côte d'Ivoire, that was the mission led by
25 Mr Elbio Rosselli and there is an official letter, it's a matter of public record, by the

1 United Nations, a letter of 17 March 2016 with reference number S/216/254, you find
2 in this letter on page 42, paragraph 178, the confirmation that this UN delegation
3 visited Mr Blé Goudé in detention and he gives his full cooperation to the UN
4 delegation, after which, as the Court knows, the sanctions were lifted against
5 Côte d'Ivoire.

6 So therefore the Prosecution reference to the situation the UN established in 2013 is,
7 with all due respect, outdated. In 2016 there was a totally new situation and you can
8 find, Mr President, your Honours, in the Security Council Resolution 2283 of 28 April
9 2016 the result of also the cooperation of Mr Blé Goudé with the UN delegation.

10 Therefore, it's clear that Mr Blé Goudé has all incentive to cooperate and to continue
11 to cooperate with the Court and other international organisations.

12 Second, when it comes to the request today, one cannot overlook the fact that the
13 situation has drastically changed when it concerns the second limb of Article 58(1)(b).
14 Since the decision of the Court of 10 March 2017 in the case of Mr Gbagbo, there is no
15 concrete incident related to the disclosure of witness identities or simply to the
16 speculation of these identities.

17 We referred the Chamber to an important ruling of the European Court of Human
18 Rights in the Smirnova versus Russia case of 24 October 2003 where the European
19 Court stipulated that the principle that the risks must be duly substantiated cannot be
20 done in the abstract, in the general or based on stereotypes. This principle was
21 recently endorsed and confirmed in the case of Merabishvili versus Georgia, 28
22 November 2017, paragraph 222, where you find the exact portion of this ruling of
23 the court.

24 And of course, this was already said in 1991 in the Letellier versus France case of the
25 European Court that the public order should actually be threatened in order to use

1 the public order as an argument to have somebody detained and prolonged in
2 detention.

3 Third, the presentation of the witnesses by the Prosecution has been closed. Defence
4 has made its position clear that the Prosecution case is in our submission not
5 sustainable for a conviction.

6 Moreover, since the Prosecution has finished presentation of its evidence, the
7 continuation of the trial, if the trial would continue, would only involve the case of
8 the Defence. It's highly unlikely that Mr Blé Goudé would interfere with the
9 presentation of his own defence case.

10 Fourth, in case the Prosecution would suggest that Mr Blé Goudé would form part of
11 the so-called network or could have access to a so-called network, groups or
12 individuals that would support him, we submit that this argument has no merit when
13 it concerns the proceedings today.

14 First, there is no proof that Mr Blé Goudé is part of an alleged network in the sense as
15 the Prosecution suggests or would be active within such a network. Such an alleged
16 network as such is not decisive. Rather, its intention to break the law is relevant for
17 the Court.

18 This was already said, secondly, in the decision of the Chamber of 10 March 2017,
19 where the Chamber provided in paragraph 15 and 16 a definition of the network as
20 being relevant or not relevant for the assessment of interim release. And the
21 Chamber did set forth that the possibility of breaking the law for somebody's sake is a
22 relevant factor, but of course, there has to be proof for this.

23 When you look, Mr President, at the definition of the Chamber as set forth in these
24 paragraphs 15-16 of your decision 10 March 2017, it appears, that's our submission,
25 that the existence of supporters or fans for Mr Blé Goudé cannot suffice to

1 characterize a network. The mere fact that people admire and support Charles Blé
2 Goudé cannot suffice to attribute to these people a will to assist him, Blé Goudé, by all
3 means, including breaking the law, let alone that one can deduce from such a
4 phenomenon a potential to obstruct the course of justice.

5 Also, Mr President, your Honours, the fact that people attended the public gallery for
6 the major hearings in this case is not decisive for the assessment of such a network,
7 nor is it when people request him, Blé Goudé, to be received in the detention unit.

8 Although it's not necessary to prove criminal intent, as the Court established in the
9 mentioned decision of those groups or individuals under scrutiny, the existence of a
10 network lies indeed in the will of those groups or individuals to assist the accused
11 with breaking the law.

12 That is what transpires, in our submission, from your decision of 10 March 2017.

13 And this is simply not the case with the supporters of Mr Blé Goudé.

14 Third, the Chamber might observe that the Prosecution did not submit any concrete
15 evidence going beyond mere speculations that these groups or individuals are willing
16 to undertake such actions to avoid Charles Blé Goudé's appearance at the trial or to
17 obstruct or endanger the investigation or the Court proceedings.

18 In the mentioned Smirnova versus Russia case, the European Court of Human Rights
19 in 2003 already held that the danger of obstruction cannot be relied upon in *abstracto*
20 but has to be supported by factual evidence. Also repeated in the Becciev versus
21 Moldova case of 4 January 2006, paragraph 59.

22 Fourth, the Chamber in its decisions of 10 March and 25 September 2017 has
23 underlined situations where individuals through social media have made statements
24 to circumvent court orders meant to protect witnesses.

25 One can notice, Mr President, that the circumstances since then have in our

1 submission drastically changed. To our knowledge, since those rulings of the Court
2 in 2017, there has not been a concrete incident reported to disclosure of witness
3 identities beyond going to simple speculations. And apart from the fact that the
4 Prosecution has finished and, therefore, no protected witnesses on the part of the
5 Prosecution will appear before the Court.

6 Lastly, in the fifth place, in one of the most recent cases on the definition of public
7 order, the case of Geisterfer versus the Netherlands, ruling of the European Court of
8 Human Rights of 9 December 2014, the judges of the European Court held that to
9 impose provisional release is warranted once detention ceases to be reasonable. The
10 Chamber in that case held that, in consequence, the presumption is in favour of
11 release.

12 And furthermore, the Court in this Geisterfer versus the Netherlands ruling,
13 European Court held that only if there are specific indications of a genuine
14 requirement of public interest, those indications may, notwithstanding the
15 presumption of innocence, outweigh the rule of respect for individual liberty.

16 If we transpose this ruling, this paragraph 38 of this decision, transpose this ruling on
17 the case of Mr Blé Goudé, we submit there is no specific indication that provisional
18 release will disturb the public order.

19 The last criterion, the last limb of Article 58(1)(b), prevention of continuation of the
20 same or other crimes under the Rome Statute.

21 First of all, Mr President, in case of interim release, Mr Blé Goudé would most likely
22 reside in a state with which the ICC would have an interim release agreement and,
23 therefore, be physically unable to carry out the acts that the Prosecution has alleged
24 against him.

25 Secondly, these alleged crimes occurred during a post-electoral crisis after

1 presidential elections in 2010-2011, eight years ago. The political, military and
2 contextual situation in those days, as established also by the Defence during its no
3 case to answer hearings, was quite unique and unforeseeable and, therefore, is
4 unlikely to reoccur.

5 Third, as regards Mr Blé Goudé's arrest being necessary to prevent him from
6 continuing alleged crimes, this is a factor which is from the outset quite problematic,
7 as it presupposes that Charles Blé Goudé would be responsible for the crimes charged.
8 It therefore conflicts with the presumption of innocence, as the Appeals Chamber
9 already noted in the appeals proceedings of Mr Gbagbo.

10 In the context of the no case to answer proceedings authorised by the Chamber, we
11 have already substantiated at length why, in our submission, the Prosecution failed to
12 prove the requisite threshold that Charles Blé Goudé was responsible for the crimes.

13 Therefore, the risk factor under the third limb of Article 58(1)(b) is, by nature, of
14 course highly hypothetical, is even more so hypothetical in the context of this case
15 and at the specific stage of the proceedings, the no case to answer proceedings.

16 In conclusion, Mr President, it is our submission that the requirements of Article
17 58(1)(b) are no longer met and, therefore, Mr Blé Goudé is eligible for interim release.

18 Lastly, before I give the floor to Ms Carrin, I would ask the Chamber to take note of
19 the judgment of the European Court of Human Rights in the Ilijkov versus Bulgaria
20 case, 26 July 2001, which stipulates that the burden of proof of demonstrating, when it
21 comes down to reasons for continued detention rests upon the Prosecution shifting
22 the burden of proof to the detained person in such matters is tantamount to
23 overturning the rule of Article 5 of the convention the judges of the European Court
24 held in this situation.

25 The ruling of Ilijkov versus Bulgaria was recently also confirmed by the mentioned

1 case Merabishvili versus Georgia, a ruling of 28 November 2017, paragraph 234,
2 where you find this division of the burden of proof when it concerns the conditions of
3 interim release.

4 This was the second part of our presentation. The third and fourth part will be dealt
5 with by Ms Carrin.

6 PRESIDING JUDGE TARFUSSER: [14:34:08] Thank you, Mr Knoops.
7 Ms Carrin.

8 MS CARRIN: [14:34:13] Good afternoon, your Honours.

9 The Defence will now address several factors which contribute to interim release, and
10 these factors are based on the Court's jurisprudence.

11 First, one factor that pleads in the Defence favour is that Mr Blé Goudé has shown
12 good behaviour in detention and has not tried to interfere with the proceeding before
13 this Court in any way.

14 To this extent, the Appeals Chamber in Bemba on 2 December 2009, at paragraph 80,
15 held that, and I quote:

16 "The behaviour of detainees awaiting trial is indeed a relevant factor when
17 considering applications for interim release." End quote.

18 And the Chamber added that it must be assessed on a case-by-case basis.

19 Second, as further recalled by the Appeals Chamber in its Bemba II decision on
20 12 June 2018 at paragraph 16, and I quote:

21 "A Chamber may determine that a detained person has been in detention for an
22 unreasonable period," and I emphasise, "even in the absence of inexcusable delay by
23 the Prosecution. The duration of time in detention pending trial is a factor that
24 needs to be considered along with the risks that are being reviewed, in order to
25 determine whether, all factors being considered, the continued detention stops being

1 reasonable and the individual accordingly needs to be released." End of quote.

2 Your Honours, in the instant case, the arrest warrant under seal was issued against
3 Mr Blé Goudé on 21 December 2011, therefore, two years and three months before his
4 transfer to the seat of the Court.

5 Mr Blé Goudé was arrested by the local authorities in Ghana on 18 January 2013 and
6 directly brought to Côte d'Ivoire where he was detained under harsh conditions by
7 the DST, the *Direction de la surveillance du territoire*, until the 22 March 2014.

8 In other words, Mr Blé Goudé was kept under these harsh detention conditions for
9 14 months, in spite of the fact that the ICC arrest warrant was already issued two
10 years prior to this detention of 14 months.

11 It is our submission that the Chamber should take this factor into account, that
12 Mr Blé Goudé, as of January 2019, will be in total in pre-trial detention for the
13 amounts of six years, including his time spent prior to being transferred to the seat of
14 the ICC.

15 This factor that has been mentioned by the Appeals Chamber -- sorry, in the Appeals
16 Chamber ruling in the Bemba case can also be derived from the previously mentioned
17 Geisterfer case of the European Court of Human Rights, specifically at paragraph 38,
18 which simply requires provisional release once detention ceases to be reasonable.

19 Third, and finally for this point, we submit that the alleged risk of Mr Blé Goudé not
20 appearing for the remaining part of his trial is outweighed by considerations
21 regarding the unreasonable time spent in detention by him so far, during which only
22 the Prosecution's case has been heard, without any date having yet been set for the
23 presentation of evidence by the Defence, and with the possibility that the trial might
24 continue for several months and maybe several years.

25 I now turn to our last point, the last point of our submissions, the identification of

1 States where Mr Blé Goudé would wish to be released on an interim basis and where
2 such a release would be feasible.

3 While the Defence has welcomed the opportunity to discuss the potential release of
4 Mr Blé Goudé, we wish to stress that we have had very limited time and facilities to
5 explore fully with Mr Blé Goudé the States in which interim release would be feasible.
6 However, in the three days that we have had to prepare for this hearing, we have
7 come to the following observations and, to proceed with these observations, I will
8 need to go to private session.

9 PRESIDING JUDGE TARFUSSER: [14:39:44] Yes. Let's go to private session,
10 please.

11 (Private session at 2.39 p.m.)

12 THE COURT OFFICER: [14:39:54] We are in private session, your Honour.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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25 (Redacted)

1 (Redacted)

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6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Open session at 2.41 p.m.)

10 THE COURT OFFICER: [14:41:58] We are in open session, Mr President.

11 PRESIDING JUDGE TARFUSSER: [14:42:00] Thank you very much.

12 Ms Carrin.

13 MS CARRIN: [14:42:02] This terminates our submissions on this point. Thank you,
14 your Honours.

15 PRESIDING JUDGE TARFUSSER: [14:42:08] Thank you very much.

16 MR KNOOPS: [14:42:10] Mr President, I just have a few closing remarks, just briefly,
17 a few minutes.

18 Mr President, our conclusion is that we submit that based on the case law of the ICC,
19 and also the requirements for provisional detention as set forth for by the European
20 Court, Mr Blé Goudé, based on this analysis, is indeed eligible for interim release.

21 Secondly, we submit that the principles which were earlier set by the Yugoslav
22 tribunal dealing with serious crimes might be of guidance to the Chamber. It is
23 maybe of interest to know that the ICTY has brought its Rules of Procedure and
24 Evidence in line with this presumption of liberty of the European Court of Human
25 Rights jurisprudence by deleting the former requirement it had before in the RPE,

1 Article 65(b), that exceptional circumstance must be shown for release.

2 That requirement was deleted in 2009 in the ICC proceedings -- ICTY proceedings,
3 and therefore the assessment of interim release at the ICTY is being brought in line
4 with the case law of the European Court of Human Rights.

5 That's why we submitted several judgments to the Chamber, of the European Court
6 of Human Rights, for the Chamber to take into account.

7 I would like to conclude with three observations on the conditions.

8 First of all, Mr Blé Goudé, if the Chamber finds him eligible for interim release, will
9 fulfil every condition the Court might deem appropriate, no question about this.

10 As mentioned before, he has respected the proceedings before this Chamber and he
11 will always do it.

12 But still we would like to emphasise, Mr President, your Honours, that those
13 conditions should not be so burdensome that interim release would be a *de facto*
14 continuation of detention.

15 Also in the jurisprudence of the European Court, this line of reasoning is to be
16 detected. Those conditions cannot be disproportionate.

17 For instance, imposing a bond on an indigent accused or requiring him to pay for his
18 own security while being indigent might be seen as defeating the purpose of interim
19 release. That's the only argument we would like to raise for the Court's assessment.

20 Secondly, when it concerns making public statements, the Court is perhaps mindful
21 of the ruling of the European Court in Maurice versus France, the 23 April 2015 ruling
22 of the European Court on the scope of Article 10, freedom of speech in the context of
23 criminal proceedings. In that case it concerned expressions of a lawyer pending a
24 criminal case.

25 If the Court would impose in terms of interim release any prohibition on public

1 statements, we submit they should of course be necessary, Mr Blé Goudé has no
2 problem with the condition that he will not make any public statements about the
3 case. But that should in our submission be the only condition which, in line with the
4 European Court of Human Rights jurisprudence, could be imposed on him. But
5 again here he leaves it in the hands of the Court to set forth the conditions in this
6 regard.

7 Lastly, the text of the so-called unsworn statement which was publicised and which
8 was attributed to Mr Blé Goudé, the Prosecution concludes that with this manoeuvre
9 circumvented the Court's decision.

10 First of all, we have to observe that the Prosecution cannot indicate to the Chamber,
11 this was actually the statement Mr Blé Goudé was intending to make before Court.

12 The statement wasn't given, so the Prosecution cannot say this was the statement
13 Mr Blé Goudé was willing and able to address to the Court.

14 Secondly, it's still the freedom of the accused person to say why he is innocent and
15 why he thinks he should be acquitted.

16 So we suggest that no conclusions, no adverse conclusions can be deduced from the
17 arguments the Prosecution submitted to the Chamber about this so-called unsworn
18 statement.

19 In conclusion, Mr Blé Goudé is willing to accept all the conditions the Court might set,
20 including giving public statements about the case itself.

21 Thank you very much.

22 PRESIDING JUDGE TARFUSSER: [14:47:15] Thank you, Mr Knoops.

23 Last I will give the floor to the office of the Registry in order for it to give us, to give to
24 the Chamber all the information the Chamber could, would need to make an
25 informed decision also from an operational point of view whatever decision the

1 Chamber will take.

2 Mr Dubuisson.

3 MR DUBUISSON: [14:47:48] (Interpretation) Thank you, your Honour.

4 Regarding interim release, indeed, the Chamber, and we were reminded of this, we
5 do need to gather observation from the Host State and the State in question. That is
6 under Regulation 51 of the Court.

7 The Registry, after gathering some information from the Defence teams, has already
8 taken the liberty during today's proceedings to begin preliminary consultations with a
9 view to examining existing possibilities.

10 Of course, without any prejudice to any decision taken by the Chamber or without
11 prejudice to the final official decisions of these States, I'm speaking of the State that
12 was mentioned in closed session by the parties, I would say that in terms of the Host
13 State, we have always enjoyed support, cooperation, maximum cooperation from the
14 Host State. Indeed, the Host State has always helped us provide assistance, for
15 example, taking people to the airport or to the border. And in the past we did see a
16 stay was accepted with the Registry assuming responsibility before the person left for
17 the State in question, insofar as that State was known and had been designated by the
18 Chamber.

19 As for the request to ask the Host State for interim release on Dutch territory, up until
20 now, well of course it will be up to the Host State to make known its decision. The
21 answer has always been in the negative so far.

22 As for the States at hand indeed, we were able to see in the past that there was
23 cooperation, full and effective cooperation. We are lucky, you see, because both the
24 Host State and the other State cooperate a great deal and in a very positive manner
25 with the Court.

1 Now the conditions and the guarantees that were mentioned. At first glance, they
2 do not appear to be a hindrance to release. And I refer to the conditions and
3 guarantees that were mentioned today here in the courtroom. The only thing, and I
4 do stress this point is that the States in question are requesting a formal procedure
5 and a specific request from the Chamber. Thank you.

6 PRESIDING JUDGE TARFUSSER: [14:51:04] Thank you very much, Mr Dubuisson.
7 I think now that we have, the Chamber has all the information in order to take a
8 decision, the decision I hope also will be a swift decision, the hearing is adjourned for
9 this tentatively to tomorrow 10.30.

10 Thank you very much. The hearing is adjourned.
11 (The hearing ends in open session at 2.51 p.m.)