

**Cour
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**International
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Court**



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No.: **ICC-02/11-01/15**

Date: **20 July 2015**

THE APPEALS CHAMBER

Before: Judge Piotr Hofmański, Presiding Judge
Judge Kuniko Ozaki
Judge Sanji Mmasenono Monageng
Judge Howard Morrison
Judge Chang-ho Chung

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO AND
CHARLES BLÉ GOUDÉ***

Public redacted version

Notice of appeal by the Defence against the “Ninth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60(3) of the Statute” (ICC-02/11-01/15-127-Conf) of Trial Chamber I deciding to continue Laurent Gbagbo’s detention

Source: Defence team for Laurent Gbagbo

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

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Preliminary remark: the classification of the notice of appeal

1. This notice is lodged confidentially and *ex parte* available only to the Defence team for Laurent Gbagbo and to the Registry pursuant to regulation 23 *bis*(2). First, it refers to the “Ninth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60(3) of the Statute”,¹ filed confidentially by the Chamber, and to the content of various submissions, documents [REDACTED] filed confidentially and *ex parte* available only to the Defence for Laurent Gbagbo and to the Registry. Second, it concerns Laurent Gbagbo’s state of health, which falls within the scope of his private life, and contains medically privileged information. The Defence will file a redacted confidential version, *ex parte* available only to the Prosecution, the Defence for Laurent Gbagbo and the Registry.

I. Procedural history

2. On 23 November 2011, Pre-Trial Chamber III granted the Prosecutor leave to issue a warrant of arrest for Laurent Gbagbo.² On 30 November 2011, Laurent Gbagbo was transferred to the Court after eight months of preventive detention in Khorogo, northern Côte d’Ivoire, which took place in appalling conditions (among other things, he was not allowed to see daylight), akin to inhuman and degrading treatment and to torture.³ [REDACTED]. The experts appointed at a later date were of the opinion that Laurent Gbagbo’s transfer to the Court had probably enabled him to survive.

3. [REDACTED].

4. On 27 April 2012, the Defence filed an application for Laurent Gbagbo’s interim release.⁴ The application was founded on legal reasons, on the fact that a State had agreed to receive President Gbagbo and had assured the Court that it

¹ ICC-02/11-01/15-127-Conf.

² ICC-02/11-01/11-1.

³ ICC-02/11-01/11-129-Corr-tENG, para. 109 *et seq.*

⁴ ICC-02/11-01/11-105-Conf-tENG.

would comply with any measures that it might order in pursuance of rule 119 of the Rules of Procedure and Evidence, and lastly on the need to treat Laurent Gbagbo [REDACTED] outside a penitential setting of any sort.

5. On 26 June 2012, the Single Judge acquiesced to the Defence's request that Laurent Gbagbo undergo additional medical analyses, appointed three experts [REDACTED].⁵

6. On 13 July 2012, the Single Judge rejected the application for Laurent Gbagbo's interim release,⁶ holding that a person's state of health was not a factor to be taken into account when considering interim release.⁷

7. On 19 July 2012, the experts submitted their report on Laurent Gbagbo's state of health.⁸

8. On 23 July 2012, the Defence for Laurent Gbagbo appealed the decision denying the application for interim release.⁹

9. On 24 and 25 September 2012, a closed hearing was held on Laurent Gbagbo's fitness to stand trial, which was attended by the Accused, the Prosecution, the Registry and the three experts.¹⁰

10. On 19 October 2012, the Single Judge decided to review Laurent Gbagbo's detention for the first time pursuant to article 60(3) and scheduled a hearing on 30 October 2012 to that end.¹¹

11. On 26 October 2012, the Appeals Chamber upheld the Single Judge's decision to continue detention¹² but stated – contrary to the Single Judge's opinion – that there was a need to take into consideration the state of health of the party concerned,

⁵ ICC-02/11-01/11-164-Conf-tENG.

⁶ ICC-02/11-01/11-180-Conf.

⁷ *Idem*.

⁸ CC-02/11-01/11-190-Corr.

⁹ ICC-02/11-01/11-193-Conf-tENG.

¹⁰ ICC-02/11-01/11-T-6-CONF-ENG and ICC-02/11-01/11-T-7-CONF-ENG.

¹¹ ICC-02/11-01/11-270.

¹² ICC-02/11-01/11-278-Conf, para. 91.

as “[m]edical reasons can play a role in decisions on interim release”,¹³ and to consider the possibility of a conditional release on that ground.

12. On 2 November 2012, in its “decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court”, the Pre-Trial Chamber noted that:

the experts have referred in their respective reports and at the hearing to the existence of PTSD and hospitalisation syndrome. There does not appear to be disagreement between the three experts in relation to the existence of these medical conditions.¹⁴

It considered that Laurent Gbagbo “**requires heightened** attention as all three experts concluded at the hearing that Mr Gbagbo **needed appropriate treatment**”¹⁵. On the same day, it asked that “the [REDACTED] **avenues** [REDACTED] to improve Mr Gbagbo’s physical and psychological [REDACTED]”¹⁶ be indicated to it. [REDACTED].¹⁷

13. On 12 November 2012, the Single Judge, holding that the conditions of article 58(1)(b) were met,¹⁸ again opposed Laurent Gbagbo’s release.

14. On 7 December 2012, the Defence requested that a status conference be held on the safeguards proposed by the host State,¹⁹ [REDACTED]²⁰ [REDACTED].²¹

15. On 18 January 2013, with a view to finding a solution – [REDACTED] – the Single Judge ordered the Registry to “to liaise with the Defence on an expeditious basis, in order to determine what additional medical treatment is required, if any, to address the physical condition of Mr Gbagbo and to agree on the selection of a specialist for the PTSD, subject to Mr Gbagbo’s consent”.²² She added:

the Single Judge considers that the Registry and the Defence must engage in consultations in order to determine, **on the basis of the reports available**, what additional treatment, if any, needs to be provided to improve the physical condition of

¹³ *Ibid.*, para. 2.

¹⁴ ICC-02/11-01/11-286-Conf, para. 67.

¹⁵ *Ibid.*, para. 103.

¹⁶ ICC-02/11-01/11-287-Conf-Corr, para. 10.

¹⁷ *Idem.*

¹⁸ ICC-02/11-01/11-291.

¹⁹ ICC-02/11-01/11-315-Conf.

²⁰ [REDACTED].

²¹ [REDACTED]; ICC-02/11-01/11-306-Conf.

²² ICC-02/11-01/11-362-Conf, operative part.

Mr Gbagbo and to agree on the selection of a specialist for the PTSD, all this subject to the consent of Mr Gbagbo.²³

16. The hearing on the confirmation of charges took place from 19 to 28 February 2013.²⁴

17. On 12 March 2013, the Single Judge again decided that the conditions of article 58(1)(b) were met; she declared herself “satisfied [...] that there are no changed circumstances since the previous ruling under article 60(3) of the Statute that affect the reasons requiring Mr Gbagbo’s detention”²⁵ and accordingly decided that President Gbagbo should remain in pre-trial detention.²⁶

18. On 3 June 2013, the Pre-Trial Chamber handed down a “Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute”²⁷ in which it noted that the Prosecution had no probative evidence to support its charges²⁸ and decided, “out of fairness”,²⁹ to grant it additional time to prepare a convincing case.

19. On 11 July 2013, the Pre-Trial Chamber again found that the conditions of article 58(1)(b) were met.³⁰ It stated that “the Chamber remains open to considering, and will **itself seek to identify**, potential arrangements for conditional release which would sufficiently mitigate the identified risks”.³¹

20. On 19 July 2013, the Defence lodged a notice of appeal in relation to that decision.³²

21. On 19 August 2013, the Defence filed a document in support of its appeal in which it requested the judges of the Appeals Chamber to note first the lack of

²³ *Ibid.*, para. 36.

²⁴ ICC-02/11-01/11-T-14-FRA, ICC-02/11-01/11-T-15-CONF-FRA, ICC-02/11-01/11-T-16-CONF-FRA, ICC02/11-01/11-T-17-CONF-FRA, ICC-02/11-01/11-T-18-CONF-FRA, ICC-02/11-01/11-T-19-CONF-FRA, ICC02/11-01/11-T-20-CONF-FRA, ICC-02/11-01/11-T-21-CONF-FRA.

²⁵ ICC-02/11-01/11-417-Conf, para. 41.

²⁶ ICC-02/11-01/11-417-Conf.

²⁷ ICC-02/11-01/11-432.

²⁸ *Ibid.*, paras. 15 and 17.

²⁹ *Ibid.*, para. 37.

³⁰ ICC-02/11-01/11-454, para. 54.

³¹ *Idem.*

³² ICC-02/11-01/11-459-Conf.

substantiation given for the impugned decision and, second, the existence of errors of law and of fact committed by the Pre-Trial Chamber.³³

22. [REDACTED].³⁴

23. [REDACTED].³⁵

24. On 29 October 2013, the Appeals Chamber upheld the third decision by the Pre-Trial Chamber to keep Laurent Gbagbo in detention.³⁶

25. On 11 November 2013, the Pre-Trial Chamber issued a “Fourth decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute” and, considering that the conditions of article 58(1)(b) were met,³⁷ again opposed Laurent Gbagbo's release. With regard to conditional release, the Pre-Trial Chamber held “that conditional release should be considered after the necessary steps have been completed to determine Mr Gbagbo's health-related needs.”³⁸ It noted the

progress made by the Registry in consultation with the Defence aimed at determining the appropriate ways to address the persisting concerns related to Mr Gbagbo's health and considers it appropriate to finalise this exploratory process so that adequate treatment, if any, may be provided without delay as may be recommended by the doctors.³⁹

It added that

once the process is completed, the Chamber will assess the possibility of granting conditional release and seek, if appropriate, the views of the Prosecutor, the Defence, **any relevant State** and the victims that have communicated with the Court in relation to this case, in accordance with rule 119(3) of the Rules.⁴⁰

26. [REDACTED]⁴¹ [REDACTED].

27. [REDACTED]⁴² [REDACTED].

³³ ICC-02/11-01/11-485-Conf.

³⁴ [REDACTED].

³⁵ [REDACTED].

³⁶ ICC-02/11-01/11-548-Conf.

³⁷ ICC-02/11-01/11-558.

³⁸ *Ibid.*, para. 57.

³⁹ *Ibid.*, para. 61.

⁴⁰ *Ibid.*, para. 62.

⁴¹ [REDACTED].

⁴² [REDACTED].

28. [REDACTED]⁴³ [REDACTED].⁴⁴

29. On 12 March 2014, the Pre-Trial Chamber decided, during the fifth review, that Laurent Gbagbo should remain in pre-trial detention.⁴⁵ Concerning conditional release, the Chamber observed [REDACTED] that “the process [for determining Mr Gbagbo's health-related needs] is not yet complete”⁴⁶ and concluded that:

the Chamber is therefore not in a position to assess the possibility of conditional release. **Once the process is completed, the Chamber will assess the possibility of granting conditional release** and seek, if appropriate, the views of the Prosecutor, the Defence, **any relevant State**, and the victims that have communicated with the Court in relation to this case, in accordance with rule 119(3) of the Rules.⁴⁷

[REDACTED].⁴⁸

30. [REDACTED]⁴⁹ [REDACTED].⁵⁰ [REDACTED]⁵¹ [REDACTED].⁵² [REDACTED].⁵³
[REDACTED].⁵⁴ [REDACTED].⁵⁵ [REDACTED].⁵⁶

31. [REDACTED]⁵⁷ [REDACTED].⁵⁸

32. On 12 June 2014, two of the judges of Pre-Trial Chamber I confirmed the charges against Laurent Gbagbo⁵⁹ while, in a dissenting opinion, Judge Van den Wyngaert wrote that “I am not convinced that the evidence in the record suffices to commit Laurent Gbagbo to trial for the charges under article 25(3)(a),(b) and(d).”⁶⁰

⁴³ [REDACTED].

⁴⁴ [REDACTED].

⁴⁵ ICC-02/11-01/11-633.

⁴⁶ *Ibid.*, para. 40.

⁴⁷ *Ibid.*, para. 41.

⁴⁸ [REDACTED].

⁴⁹ [REDACTED].

⁵⁰ [REDACTED].

⁵¹ [REDACTED].

⁵² [REDACTED].

⁵³ [REDACTED].

⁵⁴ [REDACTED].

⁵⁵ [REDACTED].

⁵⁶ [REDACTED].

⁵⁷ [REDACTED].

⁵⁸ [REDACTED].

⁵⁹ ICC-02/11-01/11-656-Conf.

⁶⁰ ICC-02/11-01/11-656-Anx, para. 12.

33. On 11 July 2014, the Single Judge handed down a sixth decision on the review of Laurent Gbagbo's detention in which she stated "that the relevant process for determining Mr Gbagbo's health-related needs is currently being conducted by the Registry in consultation with the Defence"⁶¹ and that "[t]he information currently available suggests that at present the process is not yet complete."⁶² She added that she was not "in a position to assess the possibility of conditional release. Once the process is completed, the Single Judge will assess the possibility of granting conditional release and seek, if appropriate, the views of the Prosecutor, the Defence, any relevant State, and the victims that have communicated with the Court in relation to this case, in accordance with rule 119(3) of the Rules."⁶³ She ordered "the Registry and the Defence to submit, by 25 July 2014, a report on the progress achieved in relation to the matter at issue."⁶⁴

34. [REDACTED].⁶⁵

35. [REDACTED]⁶⁶ [REDACTED].⁶⁷ [REDACTED].⁶⁸ [REDACTED].⁶⁹

36. On 17 September 2015, the Presidency referred the case *The Prosecutor v. Laurent Gbagbo* to Trial Chamber I⁷⁰ and, on 19 September 2015, the Registry transmitted the record of the case, [REDACTED].⁷¹

37. On 4 November 2014, the hearing on the seventh review of Laurent Gbagbo's detention was held, the first to take place before Trial Chamber I. [REDACTED],⁷² [REDACTED].⁷³

38. On 11 November 2014, Trial Chamber I decided that Laurent Gbagbo would remain in detention, in the "Seventh decision on the review of Mr Laurent Gbagbo's

⁶¹ ICC-02/11-01/11-668, para. 47.

⁶² *Idem*.

⁶³ *Ibid.*, para. 48.

⁶⁴ *Ibid.*, para. 49.

⁶⁵ [REDACTED].

⁶⁶ [REDACTED].

⁶⁷ [REDACTED].

⁶⁸ [REDACTED].

⁶⁹ [REDACTED].

⁷⁰ ICC-02/11-01/11-682.

⁷¹ ICC-02/11-01/11-684.

⁷² [REDACTED].

⁷³ [REDACTED].

detention pursuant to Article 60(3) of the Statute”.⁷⁴ The Chamber deemed that it was not “yet in a position to assess the possibility of conditional release. It therefore considers that it is appropriate to postpone the exploration of all possible options for conditional release until: (i) receipt of an Eighth Joint Report; and, following this, (ii) the receipt of the submissions and observations of parties, participants, and any relevant State on any proposals for conditional release, which the Chamber will request once an Eighth Joint Report is filed”.⁷⁵

39. [REDACTED]⁷⁶ [REDACTED],⁷⁷ [REDACTED].⁷⁸ [REDACTED].

40. On 11 March 2015, the Chamber issued the eighth decision on the review of Mr Laurent Gbagbo's detention, recalling “that it is not yet in a position to assess the possibility of conditional release and informs the parties and participants that a decision on this topic is deferred to a later date.”⁷⁹

41. [REDACTED].⁸⁰ [REDACTED].⁸¹ [REDACTED]⁸² [REDACTED].⁸³

42. On 6 May 2015, the Chamber scheduled for 16 June 2015 an *ex parte* hearing (involving the Registry, the Defence for Laurent Gbagbo and the Prosecution only) “in relation to Mr Gbagbo's current health condition and on possible practical modalities to be put in place to facilitate Mr Gbagbo’s attendance at trial.”⁸⁴

43. On 8 May 2015, the Single Judge instructed the Defence to file on 28 May 2015 “observations on Mr Gbagbo’s continued detention or release (with or without conditions), including the existence of any changed circumstances pursuant to Article 60(3) of the Statute”, the Prosecution and the Legal Representative of Victims to submit their observations in response on 11 June 2015 and, if necessary,

⁷⁴ ICC-02/11-01/11-718-Conf.

⁷⁵ *Ibid.*, para. 75.

⁷⁶ [REDACTED].

⁷⁷ [REDACTED].

⁷⁸ [REDACTED].

⁷⁹ ICC-02/11-01/11-808, para. 40.

⁸⁰ [REDACTED].

⁸¹ [REDACTED].

⁸² [REDACTED].

⁸³ [REDACTED].

⁸⁴ ICC-02/11-01/15-57, para. 4.

the Defence “to file its response” on 25 June 2015.⁸⁵ The Single Judge recalled that “the Ninth Joint Report will be considered in this context”.⁸⁶

44. On 28 May 2015, the Defence filed its submissions relating to the ninth review of the detention, in which firstly it emphasised the need to respect legal principles such as the presumption of innocence, the right to liberty and the burden of proof. Secondly, the Defence observed that so far “[TRANSLATION] the Prosecution has based its demands for the continuing detention solely on allegations which are nothing but a restatement of its initial allegations put forward in its application for a warrant of arrest dated 25 October 2011.”⁸⁷ Furthermore, the Defence showed that the supposed pro-Gbagbo network on the existence of which the Prosecution based its arguments did not exist.⁸⁸ The Defence invited “[TRANSLATION] the Chamber [to require that the Prosecution] demonstrate moreover that no safeguard, for example, house arrest, would be sufficient, in view of the flight risk presented by the network, should its existence be established.”⁸⁹ Lastly, it concluded that “[TRANSLATION] [t]he old allegations on which the Prosecution based its submissions no longer hold up. They can hence no longer justify Laurent Gbagbo’s continuing detention. The criteria set out by article 58(1)(b) are **no longer** fulfilled. In the light of this fact, the question posed to the Prosecution is simple: what are the imperative reasons at present that dictate Laurent Gbagbo’s continuing detention which cannot be addressed by another means, for example, house arrest?”⁹⁰

45. [REDACTED].⁹¹ [REDACTED].⁹²

46. [REDACTED].⁹³

⁸⁵ ICC-02/11-01/15-61, operative part.

⁸⁶ *Ibid.*, para. 4.

⁸⁷ ICC-02/11-01/15-83, heading 2.

⁸⁸ *Ibid.*, para. 45-60.

⁸⁹ *Ibid.*, para. 39.

⁹⁰ *Ibid.*, para. 62.

⁹¹ [REDACTED].

⁹² [REDACTED].

⁹³ [REDACTED].

47. On 11 June 2015, the Prosecution⁹⁴ and the Legal Representative of the Victims⁹⁵ filed their submissions with regard to the ninth review of Laurent Gbagbo's detention in which they opposed his release.

48. On 16 June 2015, the *ex parte* status conference took place (attended only by the Registry, the Defence for Laurent Gbagbo and the Prosecution) during which among other topics Laurent Gbagbo's medical situation and the practical arrangements for him to participate in his trial were discussed.⁹⁶ [REDACTED].

49. On 25 June 2015, the Defence filed a response to the submissions by the Prosecution and the Legal Representative of Victims on the review of the detention,⁹⁷ in which it observed in particular that the Prosecution had not provided any new arguments justifying the continuing detention.

50. On 8 July 2015, Trial Chamber I rendered a "Ninth decision on the review of Mr Laurent Gbagbo's detention pursuant to Article 60(3) of the Statute",⁹⁸ in which it decided to keep Laurent Gbagbo in detention. Concerning conditional release, the Chamber considered that "in the absence of a concrete proposal for conditional release, the Chamber recalls that its discretion to consider conditional release is unfettered. Accordingly, the Chamber shall not consider the issue further at this stage".⁹⁹

II. The impugned decision

51. The Defence hereby appeals Decision ICC-02/11-01/15-127-Conf handed down by Trial Chamber I on 8 July 2015 and entitled "Ninth decision on the review of Mr Laurent Gbagbo's detention pursuant to Article 60(3) of the Statute"¹⁰⁰ deciding to continue Laurent Gbagbo's detention.

⁹⁴ ICC-02/11-01/15-90-Conf.

⁹⁵ ICC-02/11-01/15-89.

⁹⁶ [REDACTED]

⁹⁷ ICC-02/11-01/15-103-Conf.

⁹⁸ ICC-02/11-01/15-127-Conf.

⁹⁹ *Ibid.*, para. 12.

¹⁰⁰ ICC-02/11-01/15-127-Conf.

III. Disqualification

52. Article 41 of the Statute provides that:

A judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground. A judge shall be disqualified from a case in accordance with this paragraph **if, *inter alia*, that judge has previously been involved in any capacity in that case before the Court [...]**¹⁰¹

53. President Fernández De Gurmendi was Presiding Judge of the Pre-Trial Chamber hearing the *Gbagbo* and *Blé Goudé* cases and even took the role of Single Judge. She may not, pursuant to article 41, hear this application.

54. Judge Van Den Wyngaert was a member of the Pre-Trial Chamber hearing the *Gbagbo* and *Blé Goudé* cases. She too may not, pursuant to article 41, hear this application.

IV. Legal basis

55. The Defence appeals under article 82(1)(b) of the Statute, which provides that either party may appeal a decision granting or denying release of the person being investigated or prosecuted.

56. Rule 154(1) of the Rules of Procedure and Evidence provides that, in the case specified in article 82(1)(b), an appeal may be filed not later than five days from the date upon which the party filing the appeal is notified of the decision; in the instant case, the deadline for filing this notice of appeal is 14 July 2015.

57. Regulation 64(1) of the Regulations of the Court specifies that any appeal filed under rule 154 must state:

- a) The name and number of the case or situation;
- b) The title and date of the decision being appealed;

¹⁰¹ Article 41(2)(a).

- c) The specific provision of the Statute pursuant to which the appeal is filed;
and
- d) The relief sought.

58. Regulation 64(5) of the Regulations of the Court provides that a document in support of the appeal setting out the grounds for the appeal must be filed by the appellant within seven days of notification of the relevant decision. In the instant case, the deadline for the Defence to file this document is 16 July 2015.

V. Relief sought

59. The Defence requests the Appeals Chamber to set aside the decision of Trial Chamber I not to grant Laurent Gbagbo's release in its entirety on the grounds of its lack of legal basis, and accordingly to request the Trial Chamber (1) to rule anew on the existence of the conditions specified in article 58(1)(b) with reference to the applicable legal rules and (2)[REDACTED].

[signed]

Emmanuel Altit

Lead Counsel for Laurent Gbagbo

Dated this 14 July 2015, at The Hague, The Netherlands