

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



Original: English

No.: ICC-02/11-01/15  
Date: 17 January 2019

**THE APPEALS CHAMBER**

**Before:** Judge Chile Eboe-Osuji, Presiding Judge  
Judge Howard Morrison  
Judge Piotr Hofmański  
Judge Luz del Carmen Ibáñez Carranza  
Judge Solomy Balungi Bossa

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

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

**Public Redacted**

**Response to the Prosecution's Request for Suspensive Effect of its Appeal under  
article 81(3)(c)(ii) of the Statute**

**Source:** Office of Public Counsel for Victims

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

**The Office of the Prosecutor**

Ms Fatou Bensouda

Mr James Stewart

Ms Helen Brady

**Counsel for Mr Laurent Gbagbo**

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

**Counsel for Mr Blé Goudé**

Mr Geert-Jan Alexander Knoops

Mr Claver N'dry

**Legal Representatives of the Victims**

Ms Paolina Massidda

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

Ms Ludovica Vetrucchio

Mr Alexis Larivière

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

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

Mr Paddy Craig

**Victims Participation and Reparations  
Section**

**Other**

## I. Introduction

1. The Common Legal Representative of the Victims admitted to participate in the proceedings (the “Legal Representative”)<sup>1</sup> submits that the “Prosecution’s Urgent Request for Suspensive Effect” (the “Request”)<sup>2</sup> filed in the context of its Appeal pursuant to article 81(3)(c)(ii) of the Statute should be granted.

2. The Legal Representative concurs with the totality of the arguments put forward by the Prosecution in the Request and submits that granting suspensive effect would avoid causing irreparable prejudice to the Victims, the Prosecution and the overall integrity of the proceedings by defeating not only the purpose of the pending appeal on the immediate release of the two Defendants, but also of the announced appeal under article 81(1)(a) of the Statute against the Decision on acquittal.

3. Further, the requested suspensive effect is necessary to prevent irreversible consequences to the proceedings against the two Defendants, caused by their release. Those irreversible consequences relate in particular to: (i) the risk of flight of both Defendants; and (ii) the risk of interfering with the proceedings, should the Decision on acquittal be reversed. In this regard, it is of paramount importance for the Victims that the presence of the Defendants is ensured should the appeal be successful, enabling the proceedings to eventually continue.

4. The Legal Representative also wishes to convey to the Appeals Chamber the great concern and deception expressed by the Victims she represents at the news of

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<sup>1</sup> See the “Directions on the conduct of the proceedings” (Trial Chamber I), No. ICC-02/11-01/15-205, 3 September 2015, p. 24.

<sup>2</sup> See the “Prosecution’s Appeal pursuant to article 81(3)(c)(ii) of the Statute and urgent request for suspensive effect”, No. ICC-02/11-01/15-1236 OA14, 16 January 2019 (the “Request”).

the acquittal of both Mr Gbagbo and Mr Blé Goudé. They consider that their quest for justice has unfortunately not been heard before this Court.

5. In addition, Victims have expressed fear for their safety and well-being yesterday, immediately after the Chamber's ruling confirming the release of the Defendants. There was also consternation among Victims as their hope to have their rights protected by maintaining the Defendants in detention pending the upcoming appeal was rendered vain by the Impugned Decision.

6. In this regard, the Legal Representative informs the Appeals Chamber that some Victims have reported to her to have been targeted by pro-Gbagbo supporters after the issuance of the Impugned Decision. As reported, pro-Gbagbo supporters were harassing them denying the occurrence of the crimes during the post-electoral crisis by virtue of the Decision on acquittal. Indeed, the fact that the full reasoning of this Decision has not been provided open the door to speculation, further exacerbating the tensions in the communities.

## **II. Confidentiality**

7. This response is filed confidentially because it makes reference to submissions and decisions filed under the same classification. A public redacted version is filed simultaneously.

## **III. Background**

8. On 15 January 2019, the Majority of the Chamber - Judge Herrera Carbuccion dissenting (the "Dissenting Opinion")<sup>3</sup> – orally issued the Decision on the Defence

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<sup>3</sup> See the "Dissenting Opinion to the Chamber's Oral Decision of 15 January 2019", (Judge Herrera Carbuccion), No. ICC-02/11-01/15-1234, 15 January 2019.

motions for acquittal (the “Decision on acquittal”),<sup>4</sup> (i) granting the Defence motions for acquittal from all charges against Mr Gbagbo and Mr Blé Goudé; (ii) indicating that the reasons for said acquittals will be provided as soon as possible; (iii) ordering the immediate release of both Defendants pursuant to article 81(3)(c) of the Rome Statute (the “Statute”); and (iv) suspending the effects of the Decision to permit the Prosecution to file a request under article 81(3)(c)(i) of the Statute.

9. On the same day, the Prosecution filed the “Urgent Prosecution’s request pursuant to article 81(3)(c)(i) of the Statute” (the “Request on continued detention”).<sup>5</sup>

10. On 16 January 2019, the Legal Representative<sup>6</sup> and the Defence<sup>7</sup> responded orally during an *ad hoc* hearing convened following the Prosecution’s Request on continued detention. On the same day, the Majority of the Chamber orally rejected the Prosecution’s Request and ordered the release the Defendants (the “Impugned Decision”).<sup>8</sup>

11. On the same day, the Prosecution filed the “Prosecution’s Appeal pursuant to article 81(3)(c)(ii) of the Statute and urgent request for suspensive effect” indicating its intention to appeal the entirety of the Impugned Decision and requesting suspensive effect (the “Request”).<sup>9</sup>

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<sup>4</sup> See the transcripts of the hearing held on 15 January 2019, No. ICC-02/11-01/15-T-232-ENG ET, page 2, line 25 to page 5, line 7. See also the “Requête de la Défense de Laurent Gbagbo afin qu’un jugement d’acquiescement portant sur toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté immédiate soit ordonnée”, No. ICC-02/11-01/15-1199, 23 July 2018 and the “Blé Goudé Defence No Case to Answer Motion”, No. ICC-02/11-01/15-1198-Conf, 23 July 2018.

<sup>5</sup> See the “Urgent Prosecution’s request pursuant to article 81(3)(c)(i) of the Statute”, No. ICC-02/11-01/15-1235, 15 January 2019 (the “Request on continued detention”).

<sup>6</sup> See the transcripts of the hearing held on 16 January 2019, No. ICC-02/11-01/15-T-233-ENG ET, page 2, line 7 to page 4, line 17.

<sup>7</sup> *Idem*, page 4 line 20 to page 20, line 10.

<sup>8</sup> See the transcripts of the hearing held on 16 January 2019, No. ICC-02/11-01/15-T-233-ENG ET, page 2, line 13 to page 6, line 22 (the “Impugned Decision”).

<sup>9</sup> See the Request, *supra* note 2.

12. On the same day, the Appeals Chamber issued the “Order on the filing of responses to the request of the Prosecutor for suspensive effect” ordering the Victims and the Defence to file their submissions by 17 January 2019 at 12.00.<sup>10</sup>

#### IV. Submissions

13. The Legal Representative submits that the release of the Defendants at this point in time will defeat the purpose of the present appeal as well as of the appeal to be filed by the Prosecution against the Decision on acquittal.<sup>11</sup> In these circumstances, the interest of the Defendants to be released did not outweigh the reasons in favour of granting the request for suspensive effect.<sup>12</sup> Incidentally, the Legal Representative notes that unlike the situation in the *Ngudjolo* case where the acquittal was unanimously pronounced following the presentation of evidence by the Defence, in the present instance the acquittal stems from a ‘no case to answer’ motion and has been rendered at the majority. This circumstance pleads for greater chance of success of an appeal.

14. The Legal Representative recalls that the Appeals Chamber previously granted requests for suspensive effect of decisions concerning the release of an individual.<sup>13</sup> In particular, the Appeals Chamber – confronted with the need of

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<sup>10</sup> See the “Order on the filing of responses to the request of the Prosecutor for suspensive effect” (Appeals Chamber), No. ICC-02/11-01/15-1237 OA14, 17 January 2019.

<sup>11</sup> See the “Decision on the Request of Mr Bemba to Give Suspensive Effect to the Appeal against the ‘Decision on the Admissibility and Abuse of Process Challenges’” (Appeals Chamber), No. ICC-01/05-01/08-817 OA 3, 9 July 2010, para. 11. See also the “Decision on the request of the Prosecutor of 19 December 2012 for suspensive effect” (Appeals Chamber), No. ICC-01/04-02/12-12, 20 December 2019, paras. 19-20.

<sup>12</sup> See the “Reasons for the decision on the request of the Prosecutor for suspensive effect of his appeal against the ‘Decision on the release of Thomas Lubanga Dyilo’” (Appeals Chamber), No. ICC-01/04-01/06-1444 OA12, 22 July 2008, para. 10.

<sup>13</sup> See the “Decision on the Request of the Prosecutor for Suspensive Effect” (Appeals Chamber), No. ICC-01/05-01/08-499 OA, 23 September 2009; see also the “Decision on the Prosecutor’s request to give suspensive effect to the appeal against Trial Chamber I’s oral decision to release Mr Thomas Lubanga Dyilo”, No. ICC- 01/04-01/06-2536 OA 17, 23 July 2010.

balancing the competing interests of ensuring that the purpose of the appeal is not potentially defeated by the immediate implementation of the impugned decision, and the interest of the defendant to be released immediately – took into consideration the seriousness of the charges alleged against the concerned individuals.<sup>14</sup>

15. In the case at hand, the gravity of the offences allegedly committed by Mr Gbagbo and Mr Blé Goudé, coupled with the possible lengthy prison sentence, do militate against their release and in favour of granting suspensive effect pending determination of the Prosecution's Appeal. The Legal Representative submits that the case against the two Defendants is of exceptional gravity, not only because of the manner and the impact of the crimes on the victims but also crucially because of the institutional office that the Defendants were holding at the time of the events – Mr Gbagbo and Mr Blé Goudé being respectively Head of State and Minister of the Republic of Côte d'Ivoire.

16. Indeed, while all cases before this Court concern serious crimes and there is no hierarchy among those in the Statute, this does not prevent certain conducts from being more serious than others – on the basis, *inter alia*, of the nature, the scale and the role of the alleged perpetrators.

17. Furthermore, as previously noted by the Appeals Chamber in the *Bemba* case when ruling on a similar request during a possible stay of proceedings,<sup>15</sup> the denial of suspensive effect on an appeal against a decision granting release can have the double consequence of potentially defeating the purpose of any subsequent Prosecution's appeal against a decision on acquittal.

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<sup>14</sup> See the "Decision on the Prosecutor's urgent request for suspensive effect of the 'Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido' of 21 October 2014" (Appeals Chamber), No. ICC-01/05-01/13-718 OA9, para. 7.

<sup>15</sup> See the "Decision on the Prosecutor's request to give suspensive effect to the appeal against Trial Chamber I's oral decision to release Mr Thomas Lubanga Dyilo" (Appeals Chamber), No. ICC-01/04-01/06-2536, 23 July 2010, paras. 11-13.

18. Moreover, the requested suspensive effect is necessary to prevent irreversible consequences to the proceedings against the two Defendants, that would be caused by their release.<sup>16</sup> In this regard, it has been previously recognised by the Trial Chamber that *“in light of all the information received, and the record of this case that if Mr Gbagbo is released, with or without conditions, in the Netherlands or in any other State, there is a positive risk of flight and interference with the case”*.<sup>17</sup>

19. As was determined by the Trial Chamber on multiple occasions,<sup>18</sup> ultimately less than nine months ago,<sup>19</sup> and as was demonstrated by the Prosecution during the hearing held on 13 December 2018,<sup>20</sup> Mr Gbagbo and Mr Blé Goudé pose concrete flight risks. Indeed, the existence of a network of supporters and the availability of financial means could facilitate their absconding from the Court’s jurisdiction. The

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<sup>16</sup> See *supra* note 11.

<sup>17</sup> See the “Decision on Mr Gbagbo’s Detention” (Trial Chamber I), No. ICC-02/11-01/15-1038-Red, 26 September 2017, para. 63.

<sup>18</sup> See the “Tenth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60(3) of the Statute” (Trial Chamber I), No. ICC-02/11-01/15-328, 11 November 2015; the “Ninth Decision on Detention, on the review of Mr Laurent Gbagbo’s detention pursuant to article 60(3) of the Statute” (Trial Chamber I), No. ICC-02/11-01/15-127-Conf, 8 July 2015; and the “Eighth Decision on Detention, on the review of Mr Laurent Gbagbo’s detention pursuant to article 60(3) of the Statute” (Trial Chamber I), No. ICC-02/11-01/11-808, 11 March 2015, paras. 24-30, 35 and 39. See also the “Seventh decision on the review of Mr Laurent Gbagbo’s detention pursuant to article 60(3) of the Statute” (Trial Chamber I), No. ICC-02/11-01/11-718-Red, 11 November 2014, paras. 43, 60 and 65; the “Sixth decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-668, 11 July 2014, para. 42; the “Fifth Decision on Review of Detention” (Pre-Trial Chamber I), No. ICC-02/11-01/11-633, 12 March 2014, para. 34; the “Fourth Decision on Review of Detention” (Pre-Trial Chamber I), No. ICC-02/11-01/11-558, 11 November 2013, paras. 43, 46 and 52; the “Third decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute” (Pre-Trial Chamber I), No. ICC-02/11-01/11-454, 11 July 2013, paras. 37, 44 and 50; the “Public redacted version of the Second decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-417-Red, 12 March 2013, paras. 30, 39 and 40-41; and the “Decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-291, 12 November 2012, para. 61.

<sup>19</sup> See the “Decision on Mr Gbagbo’s Request for Interim Release” (Trial Chamber I), No. ICC-02/11-01/15-1156-Red, 20 April 2018, para. 39.

<sup>20</sup> See the transcripts of the hearing held on 13 December 2018, No. ICC-02/11-01/15-T-231-CONF-ENG ET, e.g. pages 9-10, in relation to Mr Blé Goudé identification documents under false name.



issuance of a decision on their acquittal, pending two appeals, does not and cannot mitigate these findings.

20. In these circumstances, should the appeal against the Decision on acquittal succeed, there exists a real danger that they may not appear at trial or when summoned by this Court, frustrating the entire purpose of the proceedings against them.

21. Moreover, the Chamber further had noted that the fact that Mr Gbagbo “*knows the identity of witnesses and victims is a genuine risk*”.<sup>21</sup> [REDACTED].<sup>22</sup> Accordingly, there is a real risk that if Mr Gbagbo and Mr Blé Goudé are released, supporters may indeed threaten witnesses and victims who already testified and which identities are not known to the public. By the same token, shall the Decision on acquittal be reversed on appeal, there exists a real risk that the same supporters may also attempt to discontinue the proceedings by exerting pressure and coercive actions on witnesses and victims.<sup>23</sup>

22. In this regard, the Legal Representative also submits that the Defence argument that interference with the proceedings is no longer possible during the case of the Defence<sup>24</sup> is frivolous.

23. For these reasons, granting suspensive effect to the Prosecution’s Appeal will safeguard the Appeals Chamber ability to effectively implement any subsequent decision it might deem necessary on the detention or the conditional release of the two Defendants, were the Appeals Chamber to reverse the Impugned Decision.

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<sup>21</sup> See the “Decision on Mr Gbagbo’s Detention” (Trial Chamber I), No. ICC-02/11-01/15-1038-Red, 26 September 2017, para. 64.

<sup>22</sup> *Idem*.

<sup>23</sup> *Ibidem*.

<sup>24</sup> See the transcripts of the hearing held on 13 December 2018, No. ICC-02/11-01/15-T-231-CONF-ENG ET, page 32, lines 18-23.

24. Finally, the Legal Representative wishes to underline – as another factor to be considered – that the perspective of release of the Defendants has always been a matter of serious concern for the Victims. Following the acquittal, Victims seriously fear exacerbation of the already volatile situation in Côte d'Ivoire. Tensions are still latent in certain areas of Abidjan and the Defendants' release may rekindle said tensions. In the circumstances, some of the participating Victims have already fled their place of residence due to the uncertainty of the situation.

## **V. Conclusion**

25. For the foregoing reasons, the Legal Representative respectfully requests the Appeals Chamber to grant the Prosecution's Request for Suspensive Effect of its Appeal under article 81(3)(c)(ii) of the Statute.



**Paolina Massidda**  
**Principal Counsel**

Dated this 17<sup>th</sup> day of January 2019

At The Hague, The Netherlands