



Original: **English**

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

Date: **16 July 2019**

TRIAL CHAMBER I

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

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ

Public

Reasons for oral decision of 15 January 2019 on the *Requête de la Défense de Laurent Gbagbo afin qu'un jugement d'acquittement portant sur toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté immédiate soit ordonnée*, and on the Blé Goudé Defence no case to answer motion

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Fatou Bensouda
James Stewart
Eric MacDonald

Counsel for Laurent Gbagbo

Emmanuel Altit
Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Geert-Jan Alexander Knoops
Claver N'dry

Legal Representatives of Victims

Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber I of the International Criminal Court, in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Articles 64, 66, 67, 69, and 74 of the Statute of the Court; Rules 134(3), 140, 142, 144 of the Rules of Procedure and Evidence of the Court; Regulation 55 of the Regulation of the Court; and paragraphs 1, 43 and 44 of the Directions on the conduct of the proceedings (“Directions”),¹ hereby issues the reasons for the Majority’s oral decision and Judge Herrera Carbuccion’s dissenting opinion dated 15 January 2019.

PROCEDURAL HISTORY

1. On 18 April 2003, The Republic of Côte d’Ivoire filed a declaration pursuant to article 12(3) of the Rome Statute accepting the Court’s jurisdiction.
2. On 14 December 2010, The Republic of Côte d’Ivoire reaffirmed the declaration pursuant to article 12(3) of the Statute accepting the jurisdiction of the Court.
3. On 23 June 2011, the Prosecutor filed a request to investigate “*proprio motu*” in Côte d’Ivoire.²
4. On 3 October 2011, Pre-Trial Chamber III authorised the commencement of an investigation in Côte d’Ivoire with respect to crimes within the jurisdiction of the Court committed since 28 November 2010.³
5. On 23 November 2011, Pre-Trial Chamber III issued the warrant of arrest for Mr Gbagbo.⁴
6. On 30 November 2011, Mr Gbagbo was surrendered into ICC custody.
7. On 5 December 2011, Mr Gbagbo made his first appearance before Pre-Trial Chamber III.
8. On 21 December 2011, Pre-Trial Chamber III issued an arrest warrant under seal for Mr Blé Goudé.⁵

¹ ICC-02/11-01/15-498-AnxA.

² ICC-02/11-2.

³ ICC-02/11-14.

⁴ ICC-02/11-26.

9. On 22 February 2012 Pre-Trial Chamber III expanded its authorisation for the investigation in Côte d'Ivoire to include crimes within the jurisdiction of the Court allegedly committed between 19 September 2002 and 28 November 2010.⁶
10. Between 19 and 28 February 2013, Pre-Trial Chamber I held confirmation hearings in the case against Mr Gbagbo.
11. On 3 June 2013, Pre-Trial Chamber I, by majority Judge Fernandez de Gurmendi dissenting, adjourned the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Statute and requested the Prosecutor to consider providing further evidence or conducting further investigation with respect to all charges.⁷
12. On 30 September 2013 the arrest warrant for Mr Blé Goudé was unsealed.
13. On 16 December 2013, the Appeals Chamber upheld the Pre-Trial Chamber's decision of 3 June 2013 to adjourn the confirmation hearing.⁸
14. On 22 March 2014 Mr Blé Goudé was surrendered into ICC custody.
15. On 27 March 2014 Mr Blé Goudé made his first appearance before the Court.
16. On 12 June 2014, Pre-Trial Chamber, acting by majority Judge Van den Wyngaert dissenting, confirmed the charges against Mr Gbagbo.⁹
17. Between 29 September and 2 October 2014, Pre-Trial Chamber I held confirmation hearings in the case against Mr Blé Goudé.
18. On 11 December 2014, Pre-Trial Chamber I confirmed the charges against Mr Blé Goudé.¹⁰
19. On 11 March 2015 the cases against Mr Gbagbo and Mr Blé Goudé were joined.¹¹

⁵ ICC-02/11-02/11-1.

⁶ ICC-02/11-36.

⁷ ICC-02/11-01/11-432.

⁸ ICC-02/11-01/11-572.

⁹ ICC-02/11-01/11-656.

¹⁰ ICC-02/11-02/11-186.

20. On 28 January 2016 the trial began. The last hearing for the presentation of the evidence of the Prosecutor was held on 19 January 2018.
21. On 9 February 2018, the Chamber issued the “Order on the further conduct of the proceedings”, inviting the Prosecutor to file “a trial brief illustrating her case and detailing the evidence in support of the charges”.¹²
22. On 19 March 2018, the Office of the Prosecutor filed the “Prosecution’s Mid-Trial Brief submitted pursuant to Chamber’s Order on the further conduct of the proceedings”.¹³
23. On 23 April 2018, the Defence of Mr Charles Blé Goudé and the Defence of Mr Laurent Gbagbo filed their observations on the continuation of the trial proceedings, indicating *inter alia* that they intended to bring motions challenging the adequacy of the Prosecutor’s evidence and asking for a full acquittal on all the charges.¹⁴
24. On 4 June 2018, the Chamber issued the “Second Order on the further conduct of the proceedings”,¹⁵ declaring the presentation of evidence of the Prosecutor closed and ordering the Defence for Mr Gbagbo and the Defence for Mr Blé Goudé to file submissions “addressing the issues for which, in their view, the evidence presented by the Prosecutor is not sufficient to sustain a conviction”.
25. On 23 July 2018, the Defence for Mr Charles Blé Goudé filed the “Blé Goudé Defence No Case to Answer Motion” (“Mr Blé Goudé’s Request”)¹⁶ and the Defence for Mr Laurent Gbagbo the “*Requête de la Défense de Laurent Gbagbo*”.

¹¹ ICC-02/11-01/15-1.

¹² “Order on the further conduct of the proceedings” ICC-02/11-01/15-1124.

¹³ ICC-02/11-01/15-1136 and Annexes 1, A, B, C, D and E.

¹⁴ “Defence’s written observations on the continuation of the trial proceedings pursuant to Chamber’s Order on the further conduct of the proceedings (ICC-02/11-01/15-1124)”, ICC-02/11-01/15-1158-Conf (‘Blé Goudé Defence observations’); “Observations de la Défense présentées à la suite de l’ordonnance de la Chambre ‘on the further conduct of the proceedings’ du 9 février 2018 (ICC-02/11-01/15-1124)”, ICC-02/11-01/15-1157-Conf.

¹⁵ ICC-02/11-01/15-1174.

¹⁶ ICC-02/11-01/15-1198-Conf and Annex 1.

afin qu'un jugement d'acquittement portant sur toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté immédiate soit ordonnée" ("Mr Gbagbo's Request"; collectively, the "Defence Requests").¹⁷

26. On 10 September 2018, the Office of the Prosecutor filed the "Prosecution's Response to Defence No Case to Answer Motions" ("Response")¹⁸ and the Office of the Public Counsel for Victims the "Response to Defence Submissions on the specific factual issues for which the evidence presented could be insufficient to reasonably support a conviction" ("OPCV Response").¹⁹ In her Response, the Prosecutor stated that she did not oppose the dismissal of the charges against Mr Blé Goudé related to the third and fourth charged incidents (Abobo I and II).²⁰
27. On 1, 2 and 3 October 2018 the Chamber held public hearings,²¹ during which the Prosecutor presented orally her response to the Defence Requests. On 12, 13, 14, 19, 20 and 21 November 2018 the Chamber heard the Defence for Mr Gbagbo's and the Defence for Mr Blé Goudé's oral responses to the Prosecutor.²²
28. On 15 January 2019, following deliberations, the Trial Chamber, by majority Judge Herrera Carbucciona dissenting,²³ issued the following decision²⁴:

"[.....] The Chamber, having thoroughly analysed the evidence and taken into consideration all legal and factual arguments submitted orally and in writing by the parties and participants, finds, by majority, Judge Herrera Carbucciona dissenting, that there is no need for the defence to submit further evidence as the Prosecutor has not satisfied the burden of proof in relation to several core constitutive elements of the crimes as charged. In particular, the majority finds that the Prosecutor

¹⁷ ICC-02/11-01/15-1199 and 7 annexes.

¹⁸ ICC-02/11-01/15-1207 and Annex 1 and Annexes A and B.

¹⁹ ICC-02/11-01/15-1206-Conf.

²⁰ ICC-02/11-01/15-1207, para. 25.

²¹ ICC-02/11-01/15-T-221-Conf; ICC-02/11-01/15-T-222-Conf, ICC-02/11-01/15-T-223-Conf.

²² ICC-02/11-01/15-T-224-Conf, ICC-02/11-01/15-T-225-Conf, ICC-02/11-01/15-T-226-Conf, ICC-02/11-01/15-T-227-Conf, ICC-02/11-01/15-T-228-Conf, ICC-02/11-01/15-T-229-Conf.

²³ Dissenting Opinion to the Chamber's Oral Decision of 15 January 2019, ICC-02/11-01/15-1234.

²⁴ Transcript of 15 January 2019, ICC-02/11-01/15-T-232-ENG ET WT.

- (i) *Has failed to demonstrate that there was a “common plan” to keep Mr Gbagbo in power, which included the commission of crimes against civilians;*
- (ii) *Has failed to demonstrate the existence of the alleged policy to attack a civilian population on the basis of the alleged patterns of violence and other circumstantial evidence cited in support;*
- (iii) *Has failed to demonstrate that the crimes as alleged in the charges were committed pursuant to or in furtherance of a State or organisational policy to attack the civilian population;*
- (iv) *Has failed to demonstrate that public speeches by Mr Gbagbo or Mr Blé Goudé constituted ordering, soliciting or inducing the alleged crimes or that either of the accused otherwise knowingly or intentionally contributed to the commission of such crimes.*

The Chamber will provide its fully reasoned decision as soon as possible.

The Chamber recognises that it would have been preferable to issue the full decision at this time. However, although rule 144(2) of the Rules of Procedure and Evidence states that the Chamber must provide copies of its full decision “as soon as possible” after pronouncing its decision in a public hearing, there is no specific time limit in this regard.

The Majority is of the view that the need to provide a full and reasoned opinion at the same time of the decision is outweighed by the Chamber’s obligation to interpret and apply the Rome Statute in a manner consistent with internationally recognised human rights as required by article 21(3) of the Statute. Indeed, an overly restrictive application of rule 144(2) would require the Chamber to delay the pronouncement of the decision, pending completion of a full and reasoned written statement of its findings on the evidence and conclusions. Given the volume of evidence and the level of detail of the submissions of the parties and participants, the Majority, having already arrived at its decision upon the assessment of the evidence, cannot justify maintaining the accused in detention during the period necessary to fully articulate its reasons in writing.

The deadline for appealing the present decision will start running at the moment the parties are notified of the full reasons for it;

The Prosecutor may seize the Chamber of a request under article 81(3)(c)(i) as of today.

FOR THESE REASONS, the Chamber, by majority, Judge Herrera Carbuccia dissenting, hereby

- ***DECIDES*** that the Prosecutor has failed to satisfy the burden of proof to the requisite standard as foreseen in article 66 of the Rome Statute;
- ***GRANTS*** the defence motions for acquittal from all charges against Mr Laurent Gbagbo and Mr Charles Blé Goudé;
- ***ORDERS*** the immediate release of both accused pursuant to article 81(3)(c) of the Statute, subject to any request by the Prosecutor under subparagraph (i) of this article;
- ***DECIDES*** that the deadlines for appealing this decision run from the issuance of the full reasoned decision.
- ***DECIDES*** that the pending requests for provisional release have hereby become moot.”

29. The reasons for the oral decision are attached hereto. The majority’s analysis of the evidence is contained in Judge Henderson’s reasons (Annex B). Judge Tarfusser’s opinion can be found in Annex A. Judge Herrera Carbuccia’s dissenting opinion can be found in Annex C.



Judge Cuno Tarfusser
(Presiding)



Judge Olga Herrera Carbuccia



Judge Geoffrey Henderson

Dated 16 July 2019

At The Hague, The Netherlands