

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **16 July 2019**

**THE APPEALS CHAMBER**

**Before:** Judge Chile Eboe-Osuji  
Judge Howard Morrison  
Judge Piotr Hofmański  
Judge Luz del Carmen Ibáñez Carranza  
Judge Solomy Balugi Bosa

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

**IN THE CASE OF**

***THE PROSECUTOR v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ***

**Public**

**Prosecution's urgent request for extension of time limits under rule 150(1) and regulation 58(1)**

**Source: Office of the Prosecutor**

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

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## Introduction

1. On 15 January 2019, the Majority of Trial Chamber I rendered its oral decision to acquit Mr Laurent Gbagbo and Mr Charles Blé Goudé of all charges against them in the present case (the “Acquittals”).<sup>1</sup> The Presiding Judge of the Trial Chamber stated that “the Chamber will provide its full and detailed reasoned decision as soon as possible”.<sup>2</sup> On the same day, the Prosecution, upon a preliminary assessment of the Acquittals, announced its intention to appeal the Acquittals.<sup>3</sup> The Prosecution also appealed the Majority’s separate decision to release Mr Gbagbo and Mr Blé Goudé,<sup>4</sup> which the Appeals Chamber granted in part by imposing specific conditions on their release.<sup>5</sup>
2. Today, the Chamber issued the full and detailed reasons for the Acquittals. These consist of a short document mainly replicating the language of the Acquittals,<sup>6</sup> the Majority’s analysis of the evidence, as contained in the “Reasons of Judge Geoffrey Henderson”,<sup>7</sup> the “Opinion of Judge Tarfusser”<sup>8</sup> and Judge Herrera Carbuccia’s “Dissenting Opinion”.<sup>9</sup> These documents are collectively referred to as the “Decision”.
3. Pursuant to rule 150(2), the Prosecution respectfully requests an extension of the time limit to file a notice of appeal against the Decision under rule 150(1), and pursuant to regulation 35(2), an extension of the time limit to file an appeal brief under regulation 58(1), by 55 calendar days. This term is equivalent to the

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<sup>1</sup> [ICC-02/11-01/15-T-232-ENG-ET](#). Judge Herrera Carbuccia issued a dissenting opinion: [ICC-02/11-01/15-1234](#) (“Dissenting Opinion”).

<sup>2</sup> [Acquittals](#), 3:18.

<sup>3</sup> [ICC-02/11-01/15-1235](#), para. 1.

<sup>4</sup> [ICC-02/11-01/15-1245](#) OA14.

<sup>5</sup> [ICC-02/11-01/15-1254](#) OA14.

<sup>6</sup> ICC-02/11-01/15-1263.

<sup>7</sup> ICC-02/11-01/15-1263-AnxB.

<sup>8</sup> ICC-02/11-01/15-1263-AnxA.

<sup>9</sup> ICC-02/11-01/15-1263-AnxC.

duration of the judicial recess, from 20 July until 11 August, the Court holiday that immediately follows it on 12 August and one additional month.<sup>10</sup>

4. In the circumstances of this case, there is good cause for the Appeals Chamber to grant the Prosecution's request. First, the Decision is highly complex, includes opposing views and consists of a total of 1,366 pages. Reviewing the Decision to consider whether to appeal and on what grounds, and drafting a detailed notice of appeal, will require considerable work and time. Likewise in these circumstances, drafting an appeal brief will be equally onerous and the Prosecution would need more time than what it is usually entitled to under the regulations. Second, the Trial Chamber's unannounced rendering of the Decision only 4 days before the judicial recess has prevented the Prosecution from being able to make alternative plans to address the upcoming workload during the court recess. Third, the Prosecution's request for a relatively short extension of time should not cause any prejudice to Mr Gbagbo and Mr Blé Goudé.
5. The Prosecution respectfully requests the Appeals Chamber to decide on this request on an expedited basis.

### Discussion

6. The Prosecution respectfully submits that in this particular case there is good cause to grant the Prosecution's limited request for an extension of the time limits for filing a notice of appeal under rule 150(1) and an appeal brief under regulation 58(1), for a period of 55 calendar days.
7. Rule 150(1) and regulation 58(1) allow only relatively short periods of time for an appellant to file a notice of appeal (30 days from the notification of the appealed

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<sup>10</sup> To the extent that 23 days of this period fall within the judicial recess—from 20 July until and including 11 August 2019—the Appeals Chamber also has the power to suspend the time limits for the appeal against the Decision under rule 150(1) and regulation 58(1) during that period pursuant to regulation 19*bis* (2). The Trial Chamber in this case has on occasion previously decided to suspend time limits during the judicial recess (see E-mail to the Parties and Participants on behalf of the Single Judge sent on 12 December 2017 at 13: 24.). Other chambers of the Court have also done so (*See e.g.*: [ICC-01/04-01/06-2033](#), para.4 and [ICC-01/04-01/06-T-203-Red2-ENG-WT](#), p.64. *See also* [ICC-01/05-01/08-T-43-Red2-ENG-WT](#), pp.31-32; [ICC-01/04-01/07-T-173-Red-FRA-WT](#), p.74; [ICC-01/04-01/07-T-286-Red-FRA-WT](#), p.4).

decision) and the appeal brief (90 days from the notification of the appealed decision). Within these short periods of time, the appellant must examine the full reasoning of the decision under appeal and make informed choices on whether to appeal the decision, on what grounds to appeal, how to formulate any errors and the impact that these errors have on the appealed decision and the remedy sought. In addition to reviewing the Trial Chamber's reasoning, this often requires an examination of the complete case file, including underlying evidence and procedural motions and decisions taken during the trial and pre-trial phase. Subsequently, the appellant must draft the notice of appeal and the appeal brief. A recent amendment to the Regulations of the Court makes the appellant's tasks more onerous, as there is now a requirement that any grounds of appeal, alleged errors and their impact on the decision must be specified already in the notice of appeal which is due 30 days after a decision is issued.<sup>11</sup>

8. For the reasons set out below, the Prosecution seeks an extension to enable it to properly comply with the deadlines set out in rule 150(1) and regulation 58(1). In sum, in the unique circumstances of this case the Prosecution is objectively unable to file a notice of appeal within the 30 days following the Decision. Likewise, drafting an appeal brief will be equally onerous and there are objective reasons demonstrating that the Prosecution would not be able to file it within the usual 90 day period following the Decision. According to the Appeals Chamber, objective reasons demonstrating a party's inability to comply with his/her obligations<sup>12</sup> may constitute good cause for an extension of deadlines.

*(i) The Decision is particularly complex*

9. The Decision in this case is particularly complex. Although the Majority's conclusions are included in the 961 pages of the "Reasons of Judge Geoffrey

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<sup>11</sup> Regulation 57, amended on 12 July 2017, entered into force 20 July 2017 (sub-regulation (b) amended, new sub-regulations (d) and (e) added, former sub-regulation (d) renumbered as sub-regulation (f)).

<sup>12</sup> [ICC-01/04-01/07-653](#) OA7, para. 5; [ICC-01/04-01/06-834](#) OA8, para. 7.

Henderson”,<sup>13</sup> Judge Tarfusser issued another 90 pages in his separate opinion.<sup>14</sup> Judge Herrera Carbuccia’s “Dissenting Opinion” of an additional 307 pages<sup>15</sup> extensively analyses all the relevant evidence on the contextual elements for crimes against humanity, on the charged crimes and on the individual criminal responsibility of Mr Gbagbo and Mr Blé Goudé for these crimes. In total, the Decision consists of 1,366 pages.

10. To read and analyse the full Decision, the Prosecution will take approximately one month. The Prosecution will then need additional time to analyse the Decision in the context of the entire case file, to make informed choices on whether to appeal the Decision, on what grounds to appeal, how to formulate any errors and the impact that these errors have on the appealed decision and the remedy sought. Finally, it will need time to draft a notice of appeal and an appeal brief.

11. While under ordinary circumstances the Prosecution would be able to comply with the deadlines set out in rule 150(1) and regulation 58(1), in the unique circumstances of this complex Decision the Prosecution is not in a position to do so.

*(ii) The unannounced Decision rendered only 4 days before the judicial recess has prevented the Prosecution from being able to make alternative plans to address the upcoming workload during the recess*

12. Although on 15 January 2019, the Trial Chamber announced that it would provide its full and detailed reasoned decision “as soon as possible”,<sup>16</sup> the Prosecution had no indication as to when the Decision would be rendered. The Appeals Chamber rejected the Prosecution’s request that the Trial Chamber be

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<sup>13</sup> ICC-02/11-01/15-1263-AnxB.

<sup>14</sup> ICC-02/11-01/15-1263-AnxA.

<sup>15</sup> ICC-02/11-01/15-1263-AnxC.

<sup>16</sup> [Acquittals](#), 3:18.

ordered to render the reasons for its decision as expeditiously as possible and preferably within 30 days.<sup>17</sup>

13. When the Trial Chamber eventually rendered the Decision today six months after the Acquittals, it did so without any prior notice to the Parties and Participants. While the Prosecution always attempts to make itself available to changing court schedule, in the particular circumstances of this case this is unfortunately not feasible. The absence of prior notice in this case has prevented the Prosecution from making alternative plans to deal with the present situation.
14. The Court's judicial recess is scheduled for the period from 20 July until 11 August 2019. As has been noted by Chambers, the judicial recess is to ensure that the Chamber, Parties and Participants are able to rest.<sup>18</sup> Because many Prosecution staff members are working long hours and under pressure, it is important for them to regenerate by spending time with their families in their home countries. Accordingly, Prosecution staff members have planned their annual leave for the period of the judicial recess and the subsequent Court holiday on 12 August 2019 and have already made the necessary arrangements. This particularly affects staff members with children of school age, whose holidays coincide with the judicial recess.
15. Because during the judicial recess the Prosecution has only a reduced staff, it is objectively unable to comply with the deadlines set out in rule 150(1) and regulation 58(1). The Appeals Chamber has previously held that the Court's judicial recess and Court holidays may make it appropriate to extend prescribed time limits.<sup>19</sup>
16. In addition, the reduced Prosecution staff are already working on other appellate work during the recess. This includes reviewing the recently issued judgment in the *Ntaganda* case and deciding on whether to appeal any aspects of that

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<sup>17</sup> [ICC-02/11-01/15-1251-Red2](#) OA14, paras. 5, 65.

<sup>18</sup> [ICC-01/05-01/08-T-43-Red2-ENG-WT](#), pp.31-32. *See also* [ICC-01/04-01/07-T-224-ENG-CT](#), p.56.

<sup>19</sup> [ICC-01/04-01/07-115](#) OA, para. 6; [ICC-01/04-01/07-121](#) OA2, paras. 2, 5.

judgement.<sup>20</sup> Although Mr Ntaganda was convicted of all counts, the judgment must still be comprehensively reviewed, and the factual and legal basis of his convictions analysed, for any potentially appealable legal and factual errors. Any notice of appeal in that case would currently be due on 8 August 2019 and any appeal brief would currently be due on 7 October 2019. In any event, regardless of whether or not the Prosecution appeals any aspect of the Ntaganda judgment, its appeals lawyers must fully acquaint themselves with the judgment because Mr Ntaganda is likely to appeal his convictions. In addition, the Prosecution is a Party in pending appeals proceedings in the *Bemba et. al* case and in the *Afghanistan* situation and undertaking work in relation to both matters.

17. According to the Appeals Chamber, objective reasons demonstrating a party's exceptional workload with respect to appellate proceedings<sup>21</sup> may constitute good cause for an extension of deadlines.

*(iii) Brevity of the requested extension and lack of prejudice*

18. The Prosecution is requesting only a limited extension of the deadlines to file a notice of appeal and an appeal brief, by 55 days. This period corresponds to the judicial recess from 20 July until 11 August 2019, the subsequent Court holiday on 12 August and one additional month. The Appeals Chamber has previously held that the relative brevity of a party's request for an extension of time is a factor militating in favour of granting that party's request.<sup>22</sup>

19. Given the brevity of the extension of time which the Prosecution seeks, it is unlikely to have an impact on the overall expeditious conduct of the appeals proceedings. Even if the requested extension of time would lead to a slight delay in the rendering of the appeals judgment, Mr Gbagbo and Mr Blé Goudé are not

<sup>20</sup> [ICC-01/04-02/06-2359](#).

<sup>21</sup> [ICC-01/04-02/12-84](#) A, para. 9; [ICC-01/04-01/06-190](#) OA3, para. 4; [ICC-02/11-01/11-189](#), para. 4; [ICC-02/11-01/11-458-Red](#) OA4, para. 6.

<sup>22</sup> [ICC-01/04-01/06-562](#) OA3, para. 5; [ICC-01/04-01/06-190](#) OA3, paras. 2, 4-5; [ICC-01/04-01/07-653](#) OA7, para. 5; [ICC-01/04-01/10-497](#) OA4, para. 6.



prejudiced. Contrary to Mr Ntaganda, they have been acquitted of all charges and are not in detention, albeit that their release is subject to conditions.<sup>23</sup>

### Relief Sought

20. For the reasons set out above, pursuant to rule 150(2), the Prosecution respectfully requests an extension of the time limit to file a notice of appeal under rule 150(1) and pursuant to regulation 35(2), an extension of time to file an appeal brief under regulation 58(1) by 55 calendar days, which is equivalent to the duration of the judicial recess, the following Court holiday on 12 August and one additional month. If this request is granted, the Prosecution would file any notice of appeal on 10 October 2019 and any appeal brief on 9 December 2019.
21. The Prosecution respectfully requests the Appeals Chamber to decide this application on an expedited basis.



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Fatou Bensouda, Prosecutor

Dated this 16<sup>th</sup> day of July 2019,  
At The Hague, The Netherlands

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<sup>23</sup> [ICC-02/11-01/15-1251-Red2](#) OA14, para. 60.