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Summary

Judgment of the Appeals Chamber

in

The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé

Read by

Judge Chile Eboe-Osuji

Presiding

(31 March 2021)

1. The Appeals Chamber is delivering today its judgment in the Prosecutor's appeal against the decision of Trial Chamber I of 15 January 2019, with reasons issued on 16 July 2019, in which the Trial Chamber granted the no case to answer motions of Mr Gbagbo and Mr Blé Goudé and acquitted them of all charges.

2. I shall first summarise the procedural background of this appeal.

Background

3. This case arose out of the 2010-2011 post-electoral violence in Côte d'Ivoire. Under the Prosecutor's theory of the case, the violence following the election occurred against victims perceived as then President-elect Ouattara's supporters on the basis of their Muslim faith, ethnicity, or regional affiliation. It was argued that outgoing President Gbagbo (who lost the election) and his 'Inner Circle', to which Mr Blé Goudé allegedly belonged, controlled the State forces, militias and mercenaries that carried out attacks allegedly aimed at allowing Mr Gbagbo to maintain power.

4. In the circumstances, Mr Gbagbo was charged with crimes against humanity for acts allegedly committed between 16 December 2010 and 12 April 2011. Mr Blé Goudé, the former Minister of Youth during Mr Gbagbo's presidency, was charged with crimes against humanity regarding most of the

same events that underlie the charges against Mr Gbagbo, and one additional incident between 25 and 28 February 2011.

5. On 23 November 2011, Pre-Trial Chamber III issued a warrant of arrest for Mr Gbagbo and, on 30 November 2011, he was surrendered into ICC custody. On 21 December 2011, Pre-Trial Chamber III issued a warrant of arrest for Mr Blé Goudé and he was surrendered into ICC custody on 22 March 2014.

6. On 12 June 2014, Pre-Trial Chamber I, by majority, confirmed the charges against Mr Gbagbo. On 11 December 2014, Pre-Trial Chamber I confirmed the charges against Mr Blé Goudé. [Judge Van den Wyngaert appended a partly dissenting opinion.]

7. On 11 March 2015, the Trial Chamber joined the cases against Mr Gbagbo and Mr Blé Goudé, and their trial commenced on 28 January 2016.

8. On 19 January 2018, the Trial Chamber held the last hearing in the Prosecutor's presentation of evidence against Mr Gbagbo and Mr Blé Goudé.

9. On 9 February 2018, the Trial Chamber issued an 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'. It also directed the Defence teams to indicate 'whether or not they wish[ed] to

make any submission of a no case to answer motion or, in any event, whether they intend[ed] to present any evidence'.

10. On 19 March 2018, the Prosecutor filed her mid-trial brief and, on 23 April 2018, counsel for Mr Gbagbo and Mr Blé Goudé filed their observations, indicating, inter alia, the suitability of no case to answer proceedings and their intention to trigger such proceedings.

11. On 4 June 2018, the Trial Chamber issued a second order on the conduct of the proceedings, ordering counsel for Mr Gbagbo and 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'. The Trial Chamber declared that the presentation of the evidence by the Prosecutor was closed.

12. On 23 July 2018, counsel for Mr Gbagbo and Mr Blé Goudé filed their no case to answer motions, and on 10 September 2018, the Prosecutor and the OPCV filed their responses.

13. The Trial Chamber held hearings on the issue in October and November 2018.

14. On 10 December 2018, the Trial Chamber, by majority, scheduled a hearing on the continued detention of the accused. The hearing took place on 13 December 2018.

15. On 15 January 2019, the Trial Chamber, by majority, rendered a decision in open court, acquitting Mr Gbagbo and Mr Blé Goudé of all charges, and indicated that it would provide its 'full and detailed reasoned decision as soon as possible'.

16. Six months later, on 16 July 2019, the Trial Chamber filed the written reasons for the 15 January 2019 Decision, and appended thereto three opinions: the 'Reasons of Judge Geoffrey Henderson', the 'Opinion of Judge Cuno Tarfusser', and the 'Dissenting Opinion [of] Judge Herrera Carbuccia'.

17. The Trial Chamber decided, by majority, Judge Herrera Carbuccia dissenting, to grant the defence motions for acquittal from all charges against Mr Laurent Gbagbo and Mr Charles Blé Goudé.

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18. Today's judgment by the Appeals Chamber addresses the appeal of the Prosecutor against the acquittals of both Mr Gbagbo and Mr Blé Goudé. In her appeal brief, the Prosecutor raises two grounds of appeal. Under her first ground of appeal, she argues that the Trial Chamber erred by acquitting Mr Gbagbo and Mr Blé Goudé in violation of the mandatory requirements of article 74(5) of the Statute, or alternatively erred in the exercise of their discretion by doing so. In her view, convictions and acquittals must comply with specific legal requirements to be found in article 74(5). She alleges that

the Trial Chamber failed to comply with the requirements. The alleged failure came in the manner of an unreasoned and uninformed oral acquittal on 15 January 2019. According to the Prosecutor, that decision was unlawful and cannot produce the effect of an acquittal, and its deficiencies were not cured by the documents filed on 16 July 2019.

19. In her second ground of appeal, the Prosecutor contends that the Trial Chamber erred in law or procedure or both, by acquitting Mr Gbagbo and Mr Blé Goudé without properly articulating and consistently applying a clearly defined standard of proof and approach to assessing the sufficiency of evidence. In her view, the rules for the no case to answer procedure were not clear to the parties, participants or within the chamber. The Prosecutor further brings six examples, alleging they show that the Trial Chamber was equivocal and sometimes contradictory as to the evidentiary standards and approaches it followed in assessing the sufficiency of the evidence at the no case to answer stage. According to the Prosecutor, the proceedings were effectively ruptured and, through the acquittal decision, the Prosecutor, victims and public were prejudiced.

Procedural and preliminary issues

20. The Appeals Chamber unanimously determines certain procedural and preliminary issues in the first part of the Judgment. This includes the scope of the observations of the Office of Public Counsel for Victims (OPCV) in

these appeal proceedings, which had been the subject of submissions, in particular from counsel for both Mr Gbagbo and Mr Blé Goudé.

21. In that regard, the Appeals Chamber reaffirms its previous jurisprudence and considers that the OPCV can raise arguments that relate to issues that affect the victims' personal interests and, importantly, remain within the ambit of the Prosecutor's grounds of appeal. The Appeals Chamber has taken into consideration the submissions of the OPCV to the extent that they comply with those criteria.

First ground of appeal

Applicability

22. The Prosecutor's first ground of appeal alleges that the Trial Chamber violated the requirements of article 74(5) of the Statute. The first issue that the Appeals Chamber needs to decide is whether article 74(5) applies in this case. Namely, whether it applies to the decision taken further to no case to answer proceedings which resulted in the acquittal of both accused. It may be noted that article 74(5) of the Rome Statute provides as follows with respect to judgments of the Trial Chamber:

> The decision shall be in writing and shall contain a full and reasoned statement of the Trial Chamber's findings on the evidence and conclusions. The Trial Chamber shall issue one decision. When there is no unanimity, the Trial Chamber's decision shall contain the views of the majority and the minority. The decision or a summary thereof shall be delivered in open court.

23. The parties and participants make opposing submissions about this issue. The Prosecutor and the OPCV submit that it does apply. For their part, Counsel for both of the acquitted persons dispute that this provision applies.

24. The Appeals Chamber notes that counsel for Mr Blé Goudé emphasises that there are two consequences of his argument that the Trial Chamber was not bound by the requirements of article 74(5). First, he argues that this appeal is inadmissible and should be summarily dismissed because the Prosecutor cannot bring this appeal pursuant to article 81, as she has done, given that the decision to acquit is not one that falls under article 74. What makes that point remarkable is that article 81(1) provides that an appeal may be brought as *of right* against a decision under article 74 of the Statute—rather than with permission or 'with leave' to use the legal term of art. The Prosecutor has brought this appeal under article 81(1). In the circumstances of the present case, if the 15 January 2019 Decision was not a decision under article 74, any appeal of it would have therefore required the leave of the Trial Chamber under article 82(1)(d) in order for it to be brought before the Appeals Chamber. Yet the Prosecutor did not seek any such leave to appeal in the present case—and it goes without saying that none was granted.

25. Second, counsel for Mr Blé Goudé argues that, as there was no legal requirement for the Trial Chamber to render its decision under article 74, the

requirements of article 74(5) could not have been breached because those requirements were not binding upon it. That interpretation would have resulted in the complete dismissal of the first ground of the Prosecutor's appeal which entirely depends on the application of article 74.

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26. At this juncture in our proceedings today, the Appeals Chamber recalls and reiterates its previous judgment in *Prosecutor v Ntaganda*, rendered on 5 September 2017, in which it held that the Court's legal framework permits the no case to answer procedure. This is fully consistent with established procedures in the administration of international criminal justice. The no case to answer procedure is a necessary adjunct to two of the most fundamental principles of criminal law. One is that the defendant enjoys a presumption of innocence. The other is that the burden of displacing that presumption always rests on the prosecution, to be discharged on a standard of proof beyond reasonable doubt.

27. The *Ntaganda* judgment determined that article 64 was the legal basis for deciding to conduct no case to answer proceedings. However, it did not address which of the Court's provisions apply to a decision that acquits the accused further to such proceedings.

28. For the reasons explained in today's Judgment, the Appeals Chamber finds that judgments of trial chambers for full acquittal of a defendant – following a no case to answer motion – fall entirely within the purview of article 74 of the Statute. This is primarily because that provision is intended to regulate the Trial Chamber's final judgment that puts an end to the trial – either by way of a conviction or by way of an acquittal. It is true that an unsuccessful motion of no case to answer does not, as such, contemplate a conviction of the defendant; and, thus, does not bring a case to a final conclusion. However, the incidence of the motion is different in the event of a full acquittal of the defendant, following a successful no case to answer motion. The case is brought to conclusion, and the plea of double jeopardy – or *ne bis in idem* – fully attaches. For that reason, such judgments of acquittal fall entirely within the ambit of article 74. And they are to be fully regulated accordingly, in the same manner as a judgment resulting from a plenary trial.

29. The Appeals Chamber therefore rejects the submissions of counsel for Mr Gbagbo and for Mr Blé Goudé.

30. The conclusion of the Appeals Chamber as to the applicability of article 74(5) is unanimous, but Judge Ibáñez and Judge Bossa disagree with some of the reasoning used to reach this conclusion for reasons set out in their dissenting opinions.

31. The remainder of this judgment is taken by majority, with Judge Ibáñez and Judge Bossa dissenting for the reasons given in their dissenting opinions filed with today's judgment.

Requirements

32. The Prosecutor alleges several breaches of article 74(5) in this case. She argues that the Trial Chamber did not comply with article 74(5) because (i) the Trial Chamber failed to render a decision in writing, (ii) it failed to provide a full and reasoned statement of its findings on the evidence and conclusions (iii) it failed to deliver its decision or a summary of it in open court, and (vi) it failed to issue 'one decision' (in that the separation of the reasons from the verdict breached the principle of 'one decision', and that the manner of issuance of the reasons consisting of three separate opinions, one by each trial judge, in July 2019, breached the principle of 'one decision').

33. In making her arguments, the Prosecutor views the 15 January 2019 Decision as a stand-alone decision, and argues that it cannot be read together with the reasons filed in July 2019. However, it is clear to the Appeals Chamber that the Trial Chamber did not intend for its verdict delivered on 15 January 2019 to stand alone. It was intended to be complemented by full and detailed written reasons to follow. The Appeals Chamber has assessed whether the Trial Chamber's decision is, on this basis, consistent with article 74(5) of the Statute.

34. The Appeals Chamber rejects the Prosecutor's argument that the Trial Chamber erred by announcing its verdict in January 2019, with reasons to follow. Whilst trial chambers should ideally deliver both verdicts and reasons concurrently, the very fact that a delay is encountered between the issuance of a verdict and its reasons, cannot necessarily invalidate an entire trial process, or indeed breach article 74(5). There may, on the contrary, be clear justification for such separation in the particular circumstances of a case; most obviously when the liberty of an acquitted defendant is at stake. The Trial Chamber in this case, having definitively arrived at its decision to acquit, could not countenance unnecessarily maintaining Mr Gbagbo and Mr Blé Goudé in detention for the time it would have taken to issue its reasons. The Trial Chamber correctly found that the need to pronounce the verdict and thereby release Mr Gbagbo and Mr Blé Goudé outweighed the formal requirements of article 74(5)—in any expectation that the verdict of acquittal and the reasons for that verdict must always be delivered together.

35. As to the Prosecutor's argument that the Trial Chamber erred by failing to issue the 15 January 2019 Decision in writing, the Appeals Chamber finds that all the components of article 74(5) of the Statute must be issued in writing – both the operative part (being the verdict) and the reasons. Although the Judges of the Appeals Chamber comprising the majority diverge on the question of whether or not the verdict delivered on 15 January 2019 met this

requirement, the Appeals Chamber finds that whether or not the decision was in writing is, in the instant case, patently incapable of materially affecting the decision of the Trial Chamber.

36. As to the Prosecutor's argument regarding the inadequacies of the summary given by the Trial Chamber on 15 January 2019, the Appeals Chamber finds that nothing in the Rome Statute strictly commands the content of any summary to be issued at the time of announcement of the verdict; what the Statute requires is that the trial chamber issue a fully reasoned judgment. Whilst the Trial Chamber's summary in this case was certainly brief, it contained the most important parts of the reasoning.

37. As to the timing of issuance of the Reasons for the 15 January 2019 Decision, the Prosecutor argues that the unity of the decision was broken by the lapse of time of six months between rendering the verdict and issuing the reasons or by the fact that the time-frame for the delivery of written reasons was not given — or by both considerations. However, article 74(5) of the Statute does not include a time limit within which a decision issued pursuant to that provision should be provided following a trial.

38. As to the Prosecutor's arguments that the Trial Chamber breached the 'one decision' principle in article 74(5) because the three judges of the Trial Chamber issued their own individual opinions as opposed to a reasoned statement of the majority, the Appeals Chamber rejects this argument on its

facts. Judges Tarfusser and Henderson wrote clearly in concurrence—as the two judges that formed the majority of the Trial Chamber. Further, the reasons issued in July were set out in one document, signed by all three judges and formally satisfied the basic understanding of the requirement to issue one decision.

39. Furthermore, contrary to the Prosecutor's arguments, the Trial Chamber was not prevented by internationally recognised human rights law from taking the approach it did. It ensured that no prejudice was caused to the parties, the victims or indeed to the public by suspending the time-limits for appealing the acquittals until the written reasons had been provided and sufficiently keeping the public abreast of developments in the proceedings.

40. To conclude on **Ground one**, the Appeal Chamber finds that to the extent that any error has been found under this ground of appeal as to whether the verdict issued on 15 January 2019 was filed in writing, this error is patently incapable of materially affecting the decision in this case. The verdict was pronounced in open court, followed by both a written transcript and written press release, and it was later filed in July 2019. It is self-evident that the verdicts of acquittal would have been the same had the Trial Chamber taken the additional step of filing them on 15 January 2019.

Second ground of appeal

41. Under the second ground of appeal, the Prosecutor argues that the Trial Chamber failed to 'properly articulate and consistently apply a clearly defined standard of proof and/or approach to assessing the sufficiency of evidence' at the no case to answer stage – before or during the proceedings or in the 15 January 2019 Decision or the Reasons for the 15 January 2019 Decision. She argues that, in failing to do so, the Trial Chamber erred in law and in procedure.

42. The thrust of the Prosecutor's arguments within this second ground of appeal concern the Trial Chamber's alleged failure to set out a clear and commonly agreed standard of proof or approach to assessing the sufficiency of the evidence, at the no case to answer stage, before it assessed the evidence. In particular, the Prosecutor submits that (i) by failing to direct itself as to the relevant evidentiary standards, the Trial Chamber erred in law; and (ii) by failing to set out its approach as to how it would assess the evidence before doing so, it erred in procedure. As a consequence of the above failures and of such an 'ambiguous and unclear' approach, the Prosecutor argues that the Trial Chamber made 'several inconsistent and incorrect' evidentiary assessments.

43. In particular, the Prosecutor argues that the Trial Chamber's alleged failure to articulate and apply its evidentiary approach is illustrated in the

following three points. First, by the procedural history of this case, 'which demonstrated a flawed process'; next, by Judge Henderson's articulation and application of an 'overly rigid' and 'unsupported' approach to corroboration – which is in itself a further error of law – without notice to the parties; and, finally, by the Trial Chamber's incorrect and inconsistent assessment of several factual matters, as set out in the six examples. According to the Prosecutor, '[e]ach example consists of multiple errors and/or inconsistencies that show that the Majority's approach was deeply flawed'.

44. In light of the Prosecutor's arguments, the Appeals Chamber first addresses in the Judgment the allegation that the Trial Chamber failed to set out and agree upon the applicable standard of proof before assessing the evidence. In this regard, the Appeals Chamber has identified the evidentiary standard against which no case to answer motions should be assessed; it then determined whether the judges of the majority identified an evidentiary standard, whether it was the correct standard, and whether the standard was commonly agreed between the two judges forming the majority. The Appeals Chamber then considers the Prosecutor's argument that the Trial Chamber erred procedurally, primarily by failing to give guidance to the parties and the OPCV as to the applicable evidentiary standard before disposing of the no case to answer motions. Finally, the Appeals Chamber considers the arguments of the Prosecutor concerning corroboration as well as the other

alleged errors in the assessment of evidence, which, according to the Prosecutor, resulted from the failure to define and agree upon the applicable evidentiary standard and approach.

45. The Appeals Chamber has examined the Prosecutor's allegations under this ground of appeal applying the standard of review for legal and procedural errors.

Evidentiary standard applicable at the no case to answer stage

46. In the event of a motion of no case to answer, the test that guides the trial chamber's decision may be expressed as follows: upon the conclusion of the evidence presented by the prosecution (and on behalf of the victims, as appropriate), the trial chamber shall acquit the defendant or, as the case may be, dismiss one or more of the charges, where the evidence thus far presented is insufficient in law to sustain a conviction on the concerned charge or charges.

47. The foregoing test is fully consistent with the classic test of the no case to answer procedure, as applied in both international and national jurisdictions.

48. A proper appreciation of the applicable test should make it wholly appropriate and correct to articulate the standard of proof at the level of proof beyond reasonable doubt and nothing less.

49. The Appeals Chamber relied on the test as set out by the Appeals Chamber of the ICTY in the *Jelisić* case, as well as the standard of proof indicated in rule 130(3) of the Rules of Procedure and Evidence of the Kosovo Specialist Chamber, noting that this was further supported by important authority from national jurisdictions. The Appeals Chamber considers that it is only when the evidence has satisfied the standard of proof beyond reasonable doubt that it can be said to have been 'sufficient to sustain a conviction', or 'capable of supporting a conviction'. Nothing less would do.

50. In the assessment of the evidence for purposes of a no case to answer motion, the Trial Chamber is not precluded from sensibly weighing credibility and reliability of the evidence thus far presented, in order to satisfy the applicable standard of proof.

51. In those national criminal trials where there is a jury, an agonising debate is often encountered concerning the propriety of judges' assessment of credibility and reliability of evidence in the context of the no case to answer procedure. That concern necessarily arises because of the division of functions between judge and jury, in an arrangement in which assessment of credibility and reliability of evidence is the exclusive prerogative of the jury, while the determination of no case to answer motions is the prerogative of judges. But that concern does not arise in the circumstances of the ICC. There is no similar separation of functions, because there is no jury. Judges have the

prerogative of assessment of credibility and reliability of the evidence at any point in the proceedings when such an assessment falls to be made.

52. Indeed, a correct appreciation of the standard of proof applicable at the stage of a 'no case to answer' motion necessarily entails the assessment of credibility and reliability. This is because no reasonable tribunal of fact 'could properly convict' on the basis of evidence the credibility and reliability of which could not persuade the mind of guilt beyond reasonable doubt.

53. As to how the evidence should be assessed, the prosecution evidence should be considered in 'its best light' or 'taken at its highest'. These expressions do not mean that the prosecution evidence must be taken at face value or be presumed to have satisfied its forensic objective. The expressions only mean that the evidential assessment will focus on the strength of the evidence that the Prosecution has tendered to prove their case.

Alleged failure to set out and agree on the evidentiary standard

54. The Appeals Chamber will now turn to the question of whether the Prosecutor is correct when she alleges that the judges of the majority failed to set out and agree upon the evidentiary standard that they would apply when assessing the no case to answer motions.

55. The Appeals Chamber notes that the Prosecutor argues that the judges in the majority did not set out, agree, and therefore direct themselves to, the

relevant standard before they decided to acquit Mr Gbagbo and Mr Blé Goudé on 15 January 2019. According to the Prosecutor, Judge Henderson's interpretation of the standard was contained only in Judge Henderson's Reasons, filed six months later. The Prosecutor argues that Judge Henderson could not have remedied this error by setting out an evidentiary framework six months later. According to the Prosecutor, Judge Henderson's Reasons contain mere 'afterthoughts', which were developed only after the 15 January 2019 Decision, and did not demonstrate that the Majority judges had that – or indeed any – standard in mind at the crucial time before 15 January 2019 when deciding to acquit.

56. In order to determine whether the two judges of the majority defined the evidentiary standard and agreed on it, the Appeals Chamber has, in a highly technical legal exercise, reviewed and analysed the reasons respectively appended by Judge Henderson and Judge Tarfusser.

57. The Appeals Chamber has read it together with the 15 January 2019 Decision and took into account the relevant procedural history leading to it.

58. In the final analysis, the Appeals Chamber finds that there is no lack of clarity or failure of consensus between the judges in the majority as to how to approach the evidence at this stage of the proceedings. They correctly assumed that the Trial Chamber, at the no case to answer stage, is not

precluded from conducting an in-depth analysis of the evidence, including an assessment of the credibility and reliability of the evidence.

59. To the extent that there is any doubt whether the Trial Chamber adopted the correct standard of proof, the Appeals Chamber is satisfied that the decision was not materially affected. By adopting the correct approach as to how to assess the sufficiency of the evidence, as required at this stage of the proceedings, and after a detailed analysis of the evidence, the judges in the majority found that the Prosecutor's evidence did not meet any standard that could be considered as applicable in a criminal trial at that stage. Ultimately, Judge Tarfusser and Judge Henderson concurred in their analysis of the sufficiency of the evidence, by concluding that the evidence against the defendants was not simply weak but 'exceptionally weak.' That determination is of great significance when applying any test of sufficiency.

Alleged lack of clarity on the approach on how to assess the evidence at the no case to answer stage

60. As recalled above, the Prosecutor submits that the Trial Chamber erred in procedure by failing to set out a clear approach on how it would assess the evidence at the no case to answer stage before it did so. She submits that this error is illustrated by (i) the procedural history of this case; (ii) Judge Henderson's articulation and application of an 'overly rigid' and 'unsupported' approach to corroboration without notice to the parties; and

(iii) the Trial Chamber's incorrect and inconsistent evidentiary assessments, as set out in the six examples.

61. The Appeals Chamber understands the main allegation of the Prosecutor in this set of arguments to be a general lack of clarity as to the conduct of the no case to answer proceedings; in particular, as to the applicable evidentiary standard, which is demonstrated mainly in the Trial Chamber's alleged failure to provide guidance to the parties and the OPCV during the proceedings leading up to the 15 January 2019 Decision.

Alleged failure to give guidance

62. The Prosecutor alleges that the Trial Chamber resisted opportunities to articulate the applicable standard and other evidentiary principles and standards and that Judge Tarfusser, as Single Judge, declined to provide the clarification when requested to do so.

63. The Appeals Chamber has assessed the various steps of the no case to answer proceedings before the Trial Chamber, including the decision rejecting the Prosecutor's request for clarification as to the applicable standard. The Appeals Chamber notes that the parties and the OPCV were provided with ample opportunity to make written and oral submissions on the applicable standard and the approach to assessing the evidence, as well as the

evidence itself. The Appeals Chamber considers that the parties and the OPCV were therefore not, as alleged by the Prosecutor, prejudiced in the case.

64. The Appeals Chamber further notes that the Prosecutor has not explained what, specifically, she would have done differently if the Trial Chamber had given guidance. Following an invitation from the Trial Chamber to file 'a trial brief illustrating her case and detailing the evidence in support of the charges', the Prosecutor was allowed to present her case in detail, and explain it fully when filing her Mid-Trial Brief. As mentioned above, the parties and the OPCV were provided with opportunities to make submissions on the no case to answer motions, including the applicable evidentiary standard and approaches to the assessment of the evidence. In any event, the Prosecutor was, and is, at all times aware that she is required to prove her case beyond reasonable doubt and with credible evidence during her turn to present her case.

65. In sum, the Appeals Chamber rejects the Prosecutor's argument that the Trial Chamber's failure to give guidance as to the evidentiary standard amounted to a procedural error.

Alleged errors in relation to corroboration

66. With regard to the Prosecutor's allegations of errors in the approach to the assessment of the evidence, and in particular, those concerning the

approach to corroboration, for the reasons explained in the judgment, the Appeals Chamber finds no error in the Trial Chamber's view on corroboration. It also finds that there was no need for the Trial Chamber to provide notice of its understanding on corroboration to the parties and the OPCV.

67. The Appeals Chamber, having found no error in the interpretation of corroboration given by the Trial Chamber, does not consider it necessary to review the Prosecutor's arguments as to how the Trial Chamber applied corroboration when assessing the evidence. As further explained below, the Appeals Chamber does not find it necessary to review the Prosecutor's allegations raised within the six examples. Thus, the Appeals Chamber does not make any finding as to the correctness or not of the Trial Chamber's approach to corroboration in these examples. In any event, as noted below, the Prosecutor has failed to establish any link between any such error and the Trial Chamber's alleged lack of a clear approach to corroboration at the time it rendered its acquittal decision.

Other alleged errors

68. The Prosecutor also submits that the lack of clarity and consensus on their approach to the assessment of evidence led the judges in the majority to make several other mistakes in their evidentiary analysis. According to the

Prosecutor this is reflected in six examples stemming from Judge Henderson's Reasons.

69. In the six examples the Prosecutor argues that the Trial Chamber (i) erred in how it approached the question of corroboration of evidence; (ii) failed to consider the evidence in its totality; (iii) adopted an unreasonable and unrealistic view regarding the assessment of witness testimony; (iv) unfairly subjected evidence of crimes of sexual violence to a heightened level of scrutiny, and (v) speculated on numbers and estimates outside the case record when seeking to set an empirical benchmark to assess patterns of criminality. According to the Prosecutor, the six examples are one factor, among others, illustrating the Trial Chamber's 'flawed and unclear approach' to assessing the sufficiency of evidence. She submits that the Trial Chamber's 'unclear approach led to its inconsistent and incorrect findings', and that those findings simultaneously demonstrate both the errors and also their consequences, that is, the impact of those errors.

70. The Appeals Chamber is not persuaded by the arguments of the Prosecutor.

71. To begin with, the Appeals Chamber finds, when looking at the relevant procedural history, that there is neither lack of clarity nor disagreement between the judges of the majority as to the standard and approach to assess the sufficiency of evidence.

72. In addition, and in any event, the Prosecutor's submissions as to the link between the factual examples and her main submission under this ground are unclear.

73. Finally, with regard to the Prosecutor's submission that the errors that she alleges in respect of the six examples could be assessed as factual errors, the Appeals Chamber recalls that it would have been necessary for the Prosecutor to advance arguments showing that no reasonable trial chamber would have come to such a factual finding. The Prosecutor has chosen to base her appeal on allegations of legal and procedural errors, rather than bringing the alleged errors within the examples as factual errors.

74. At any rate, the Prosecutor failed to bring convincing arguments about how the errors alleged within the six examples materially affected the decision. The examples include alleged errors and inconsistencies concerning a certain number of factual matters, not all related to incidents that are relevant for both the accused persons, or directly to their individual conduct.

75. The Appeals Chamber finds, by majority, Judge Ibáñez and Judge Bossa dissenting, that the Prosecutor failed to demonstrate that the Trial Chamber erred in law or in procedure and rejects the Prosecutor's second ground of appeal.

Was the Trial Chamber Decision fully informed?

76. As part of her appeal, the Prosecutor argues that, when the Trial Chamber issued the 15 January 2019 Decision, 'despite its assertion to the contrary, it apparently had not yet completed the necessary process of making its findings on the evidence and reaching all its conclusions, *nor* completed the written articulation of its findings and conclusions'.

77. The Prosecutor alleges the following four issues to illustrate that the Trial Chamber's 15 January 2019 Decision was not fully informed: (1) the fact that it was not accompanied by summary reasons or a precise timeline for issuing the reasons; (2) the fact that the Trial Chamber had not completed its assessment of the evidence or reached all conclusions; (3) the fact that there were substantive inconsistencies between the Trial Chamber's 15 January 2019 Decision and Judge Henderson's Reasons; and (4) the fact that there were inconsistencies in assessing the sufficiency of evidence at the no case to answer stage within Judge Henderson's Reasons.

78. The Appeals Chamber, by majority, Judge Ibáñez and Judge Bossa dissenting, finds that the Prosecutor has not substantiated her arguments in support of the allegation that the decision of acquittal that the Trial Chamber rendered in January 2019 was not fully informed.

79. The Prosecutor's allegations come close to alleging lack of propriety on the part of the two judges comprising the Trial Chamber majority. The Appeals Chamber is careful to note that during the hearing of this appeal, counsel for the Prosecution expressly disavowed such an interpretation of her position. It remains the case, however, that the Prosecution is alleging by their submissions that the two judges forming the majority entered a verdict of acquittal prematurely, without fully informing themselves of the evidential considerations that must guide their decision. The allegation is essentially that these judges had entered verdicts of acquittal, before proper deliberations, or considering the evidence presented. If this were the case, it would be a grave error, which would affect the integrity and impartiality of the judges.

80. In this regard, judges at the ICC, as elsewhere, must be presumed to act with integrity and impartiality. The Appeals Chamber would expect evidence of a very clear nature to support such a serious allegation.

81. Now, more to the substance of the allegation. As part of her appeal, the Prosecutor makes certain arguments. She first argues that the fact that the 15 January 2019 Decision was not accompanied by summary reasons or a precise timeline for issuing the written reasons show that the Majority's necessary reasoning process had not been completed by the time of the 15 January 2019 Decision. Simply put, the Appeals Chamber considers that these allegations amount to pure speculation. As I already explained, in the present case, a

summary of the decision was issued and the fact that it was short does not mean that the Trial Chamber had not completed its work. Similarly, the fact that a precise time frame for the issuance of the written reasons was not given does not substantiate the serious allegation that the Trial Chamber acquitted both defendants without having been fully informed when doing so.

82. The Prosecutor's second argument is that the Trial Chamber was not fully informed when it acquitted in January 2019, because it had neither completed its assessment of the evidence nor reached all of its conclusions. She raises several arguments in support of this contention.

83. The Appeals Chamber acknowledges that the Presiding Judge of the Trial Chamber said certain things on 16 January 2019 that were not wholly clear from the perspective of the duty to assess relevance, probative value and prejudice. Notably, the Presiding Judge stated that all evidence that had been submitted would be considered. He also noted that the majority *had* conducted a more in-depth review of the evidence in this case. In addition, the fact that the Trial Chamber did not make formal admissibility assessments does not, in any event, inevitably mean that the judges were any less familiar with the evidence presented to them during the course of the trial. They stated that they had considered the evidence and their ultimate conclusion was that there was insufficient evidence on which to proceed. Therefore, it is not possible to conclude, from Judge Tarfusser's statement on 16 January 2019,

that the 15 January 2019 Decision was not fully informed because, as the Prosecution argues, he had not properly assessed the evidence.

84. The Appeals Chamber rejects the Prosecutor's argument, for the reasons explained in the judgment. The inference which the Prosecutor urges the Appeals Chamber to draw is quite simply too strained and speculative. Judges who have been conducting trials, in some cases trials lasting years must be presumed to have developed their view of the case, based on the appropriate legal principles, as the evidence unfolds. The Appeals Chamber cannot accept the Prosecutor's premise that trial judges are expected to begin evaluating the case only once the entire case has concluded. Therefore, the Prosecutor has failed to demonstrate any error in this regard.

85. Accordingly, the Prosecutor has failed to provide any evidence that would rebut the presumption of integrity and impartiality afforded to the judges of the Trial Chamber. The Appeals Chamber finds that the reasoning set out in the written reasons issued in July 2019 was the basis for acquitting the two accused in January 2019. Therefore, the Prosecutor's argument that the 15 January 2019 Decision was not fully informed is rejected by a majority of the Appeals Chamber, Judge Ibáñez and Judge Bossa dissenting.

Appropriate Relief

86. In the present case, the Appeals Chamber, by majority, has found no error that could have materially affected the decision of the Trial Chamber in relation to either of the Prosecutor's two grounds of appeal. It therefore rejects the Prosecutor's appeal and confirms the decision of the Trial Chamber.

87. Furthermore, the Appeals Chamber recalls that in its decision on Mr Gbagbo's request for reconsideration of his conditions of release, it reviewed and revised the conditions on the release of Mr Gbagbo and Mr Blé Goudé, revoking some conditions and maintaining others. The Appeals Chamber hereby revokes all remaining conditions on the release of Mr Gbagbo and Mr Blé Goudé, as a result of this judgment.

88. The Registrar is hereby directed, pursuant to rule 185(1) of the Rules, to make such arrangements as considered appropriate, as soon as possible, for the safe transfer of Mr Gbagbo and Mr Blé Goudé to a State, or States, contemplated in that rule, taking into account the views of the two acquitted persons.

89. As previously stated, the Appeals Chamber's judgment is taken by majority with Judge Ibáñez and Judge Bossa dissenting for the reasons fully expressed in their respective dissenting opinions filed today.

90. Judge Ibáñez is of the view that the no case to answer procedure has no place in the Court's applicable law. As to the first ground of appeal, she is of the view that article 74(2) and (5) contain important guarantees of justice, which the Trial Chamber breached. As to the second ground, she is of the view that the majority of the Trial Chamber applied an incorrect standard of proof and made other significant errors in its appraisal of the evidence. It also failed to inform the parties and participants of the applicable standard of proof. In her view, all these were significant errors of law and procedure.

91. Judge Bossa agrees with the majority of the Appeals Chamber that the no case to answer procedure may be applied in trials before the ICC. If a trial chamber decides to acquit an accused at this stage, the decision has to comply with article 74. She is of the view that the majority of the Trial Chamber failed to fully comply with this provision. Importantly, in relation to the Prosecutor's second ground of appeal, Judge Bossa considers that the majority of the Trial Chamber failed to agree on the applicability of the no case to answer procedure, how and whether to assess all the evidence at this stage, and what the applicable standard of proof was.

92. Judge Ibáñez and Judge Bossa therefore would have granted the Prosecutor's appeal and ordered a new trial.

93. I have appended a separate concurring opinion on grounds one and two of the appeal. Judge Morrison appends a separate concurring opinion on

ground one of the appeal. Judge Hofmański appends a separate concurring opinion on ground one of the appeal. Judge Ibáñez Carranza appends a dissenting opinion on grounds one and two of the appeal. Judge Bossa appends to this judgment a dissenting opinion on grounds one and two of the appeal.