

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 15 July 2015

**APPEALS CHAMBER**

**Before:** Judge Sanji Mmasenono Monageng, Presiding Judge  
Judge Silvia Fernández de Gurmendi  
Judge Christine Van den Wyngaert  
Judge Howard Morrison  
Judge Piotr Hofmański

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

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

**Confidential *EX PARTE* – only available to the Registry, Prosecution, Defence of  
Mr Laurent Gbagbo and Legal Representatives**

**Confidential *EX PARTE* redacted version of "Prosecution's Response to Laurent  
Gbagbo's Defence notice of appeal (ICC-02/11-01/15-134-Conf-Exp-Red) and  
request for extension of pages of the document in support of appeal (ICC-02/11-  
01/15-136-Conf-Exp-Red-Corr)", 15 July 2015, ICC-02/11-01/15-139-Conf-Exp OA**

**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**

Ms Fatou Bensouda

Mr James Stewart

Ms Helen Brady

**Counsel for Laurent Gbagbo**

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

**Legal Representatives of Victims**

Ms Paolina Massidda

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

## Submissions

1. On 15 July 2015, the Defence for Mr Laurent Gbagbo filed a notice of appeal against the Ninth Decision on Mr Gbagbo's Detention Review,<sup>1</sup> and a request for an extension of pages for its Document in Support of Appeal to a total of 45 pages.<sup>2</sup> Both requests were filed as Confidential *Ex parte* because, among other reasons, they refer to the Accused's medical condition which, according to the Defence, is covered by medical privilege.
2. The Prosecution requests the Appeals Chamber to dismiss *in limine* any ground relating to the Accused's medical condition in the Document in Support of Appeal, and to reject the request for extension of pages. Should the Appeals Chamber decide to consider the grounds related to medical condition, the Prosecution requests that the Document in Support of Appeal be filed un-redacted and available to the Prosecution [REDACTED].

### *Notice of Appeal*

3. The Notice of Appeal is filed as Confidential *Ex parte* because it refers to the Ninth Decision on Mr Gbagbo's Detention Review - which is confidential - to documents filed as confidential *ex parte*, Defence and Registry only and to the Accused's medical condition which, according to the Defence, is covered by medical privilege.<sup>3</sup> The Notice, which basically rehearses the procedural background of the case, contains several redacted extracts and redacts one of the two claims for relief

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<sup>1</sup> ICC-02/11-01/15-134-Conf-Exp-Red2 ("Notice of Appeal"). The Ninth Decision on Mr Gbagbo's Detention Review was rendered on 8 July 2015: ICC-02/11-01/15-127-Conf. A public redacted version has been filed: ICC-02/11-01/15-127-Red.

<sup>2</sup> ICC-02/11-01/15-136-Conf-Exp-Red-Corr ("Request for Extension of Pages").

<sup>3</sup> Notice of Appeal, para.1.

sought before the Trial Chamber, should the Appeals Chamber overturn the Decision.<sup>4</sup>

4. The Defence raised the health of the Accused for the first time in the Notice of Appeal and the Request for Extension of Pages. The Trial Chamber was not seized of this issue. Therefore, the references to the Accused's medical condition in the context of this appeal and the *ex parte* classification of the related submissions are inappropriate. First and with respect to the references to the Accused's medical condition, the Defence argues that Trial Chamber I was seized with a request for provisional release on health grounds.<sup>5</sup> This is not correct. The Defence made no reference to the Accused's health situation in its submissions and accordingly, the Trial Chamber did not address any argument regarding this factor when it issued the Decision. As noted by the Trial Chamber, the Defence's submissions referred to: "(i) the conditions underpinning detention must be re-assessed to maintain consistency with human rights principles; (ii) there is currently no organised network of people supporting Mr Gbagbo; (iii) the calls for Mr Gbagbo's release are legitimate; and (iv) Mr Gbagbo's release will have positive consequences on the national reconciliation process."<sup>6</sup> The Trial Chamber concluded that there was no change of circumstances which would warrant a modification of its risk assessment under article 58(1)(b)(i) and (ii) and decided that the Accused should therefore remain in detention.<sup>7</sup>

5. In addition, during a recent status conference regarding trial management issues, [REDACTED].<sup>8</sup> [REDACTED].<sup>9</sup> [REDACTED].

6. Hence and notwithstanding the standard of review in appeals on review of detention,<sup>10</sup> it is improper to raise entirely new issues for the first time on an appeal

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<sup>4</sup> Notice of Appeal, para.59.

<sup>5</sup> Request for Extension of Pages, para.17.

<sup>6</sup> Ninth Decision on Mr Gbagbo's Detention Review, para.5 referring to Mr Gbagbo's submissions: ICC-02/11-01/15-83 and ICC-02/11-01/15-103-Red.

<sup>7</sup> Ninth Decision, para.11 and p.8.

<sup>8</sup> [REDACTED].

<sup>9</sup> [REDACTED].

<sup>10</sup> Regarding the standard of review for appeals granting or denying release, the Appeals Chamber has previously held that it "will not review the findings of the Pre-Trial Chamber de novo, instead it will intervene in the findings of the Pre-Trial Chamber only where clear errors of law, fact or procedure are shown to exist and vitiate the Impugned Decision." See ICC-01/05-01/08-631-Red OA2, para. 62. "[A]ppraisal of the evidence relevant to continued detention lies, in the first place, with the Pre-trial Chamber." See ICC-01/04-01/07-572 OA6, para.25.

and to place evidence before the Appeals Chamber which has not been placed before the Trial Chamber.

7. Second, and in the context of the above-mentioned status conference, [REDACTED].<sup>11</sup> [REDACTED].<sup>12</sup> [REDACTED],<sup>13</sup> [REDACTED]. Therefore, any reference to documents regarding the Accused's medical condition in an appeal against a decision of the Trial Chamber should be made available to the Prosecution [REDACTED].

8. Based on the above, the Prosecution requests the dismissal *in limine* of any grounds of appeal relating to the Accused's medical condition. Should the Appeals Chamber decide to consider those grounds, the Prosecution requests that the Document in Support of Appeal including any supporting information is made available to the Prosecution without redaction, [REDACTED], so that the Prosecution is in a position to respond to the Defence arguments.

### *Request for Extension of Pages*

9. The Defence request's for extension of pages should also be rejected. There are no exceptional circumstances that merit the extension: first, the mere fact that this appeal refers to the Accused's review of detention does not automatically justify the extension;<sup>14</sup> second and contrary to the Defence's submissions, there is no "new context".<sup>15</sup> The Trial Chamber indicated that there was no change of circumstances.<sup>16</sup> Third, the Ninth Decision did not delve into the Accused's medical condition because

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"Therefore, in determining whether a Pre-Trial or Trial Chamber has misappreciated facts in a decision on interim release, the Appeals Chamber will 'defer or accord a margin of appreciation both to the inferences [that the Pre-Trial or Trial Chamber] drew from the available evidence and to the weight it accorded to the different factors militating for or against detention' and 'will interfere only in the case of a clear error, namely where it cannot discern how the Chamber's conclusion could have reasonably been reached from the evidence before it'." See ICC-01/05-01/08-1937-Red2 OA09, para.48.

<sup>11</sup> [REDACTED].

<sup>12</sup> [REDACTED].

<sup>13</sup> [REDACTED].

<sup>14</sup> *Contra* Request for Extension of Pages, paras.8, 13-15.

<sup>15</sup> *Contra* Request for Extension of Pages, paras.10,18.

<sup>16</sup> Ninth Decision, para.11 and p.8.

this argument was never raised by the Defence.<sup>17</sup> Improperly raising new arguments on appeal cannot justify an extension of pages. Finally, the Defence fails to explain why this appeal is more complex than other appeal proceedings on similar decisions.<sup>18</sup>

### Confidentiality

10. Pursuant to regulation 23bis(2) of the Regulations of the Court, this response is classified as “Confidential, *ex parte* – only available to the Registry, Prosecution, Defence of Mr Laurent Gbagbo and Legal Representatives” consistent with the classification of the two Defence filings that it responds to.

### Conclusion

11. For the above reasons, the Prosecution requests the Appeals Chamber:

- To dismiss *in limine* all grounds raised in the Document in Support of Appeal related to the Accused's medical condition; and
- To reject the request for extension of pages.



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Fatou Bensouda, Prosecutor

Dated this 15<sup>th</sup> day of July 2015

Word Count:1,509<sup>19</sup>

At The Hague, The Netherlands

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<sup>17</sup> *Contra* Request for Extension of Pages, para.17.

<sup>18</sup> *Contra* Request for Extension of Pages, paras.20-26.

<sup>19</sup> It is certified that this document contains the number of words specified and complies in all respects with the requirements of regulation 36 of the RoC. This statement (51 words), not itself included in the word count, follows the Appeals Chamber's direction to “all parties” appearing before it: ICC-01/11-01/11-565 OA6, para.32.