

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

THE APPEALS CHAMBER

Before: Judge Chile Eboe-Osuji, Presiding
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 with Public Annex A

Corrected version of "Prosecution Notice of Appeal", 16 September 2019, ICC-02/11-01/15-1270

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, Prosecutor
Mr James Stewart
Ms Helen Brady

Counsel for Mr Laurent Gbagbo

Mr Emmanuel Altit
Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Mr Geert-Jan Alexander Knoops
Mr Claver N'dry

Legal Representatives of Victims

Ms 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

Defence Support Section

Victims and Witnesses Unit

Detention Section

Mr Paddy Craig

Victims Participation and Reparations Section Other

Notice of Appeal

1. The Prosecution gives notice of its appeal against the oral decision of the Majority of Trial Chamber I (“Majority”) issued on 15 January 2019 in the case *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé* – case number ICC-02/11-01/15 (“15 January 2019 Decision”), together with the “[r]easons 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” issued on 16 July 2019 (“16 July 2019 Reasons”).¹ These 16 July 2019 Reasons include the “Opinion of Judge Cuno Tarfusser”,² the “Reasons of Judge Geoffrey Henderson”³ and Judge Herrera Carbuccion’s “Dissenting Opinion”.⁴ The Majority’s analysis of the evidence is contained in the “Reasons of Judge Geoffrey Henderson” (“Majority’s Reasons”).⁵

2. This appeal is directed against the 15 January 2019 Decision and the 16 July 2019 Reasons as a whole and is brought under articles 81(1)(a)(i) and (iii) of the Rome Statute, rule 150 of the Rules of Procedure and Evidence and regulation 57 of the Regulations of the Court.

3. The appeal will demonstrate that the Trial Chamber committed legal and procedural errors which led to the acquittals of Mr Gbagbo and Mr Blé Goudé on all counts.

The grounds of appeal

4. The Prosecution has identified the following two grounds of appeal against the acquittals of Mr Gbagbo and Mr Blé Goudé:

¹ ICC-02/11-01/15-1263.

² ICC-02/11-01/15-1263-AnxA.

³ ICC-02/11-01/15-1263-AnxB-Conf and ICC-02/11-01/15-AnxB-Red.

⁴ ICC-02/11-01/15-1263-AnxC-Conf and ICC-02/11-01/15-AnxC-Red.

⁵ ICC-02/11-01/15-1263, para. 29.

First ground of appeal: The Majority 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 its discretion in doing so

5. *First sub-ground:* The Majority erred in law and/or procedurally by acquitting Mr Gbagbo and Mr Blé Goudé in its 15 January 2019 Decision in violation of the mandatory requirements in article 74(5) of the Statute and thereby not entering a proper decision of acquittal under the Statute. In particular, the Majority acquitted Mr Gbagbo and Mr Blé Goudé without entering a formal decision under article 74; by rendering an oral decision; by failing to provide a full and reasoned statement of the Majority's findings on the evidence and conclusions; by failing to provide a summary of the reasons in open court; by merely indicating that the reasons would be provided "as soon as possible", but without fixing a precise date for providing the reasons; and by violating the requirement that the Trial Chamber shall issue "one decision". This error was not cured by the 16 July 2019 Reasons, nor can interpreting article 74(5) in light of article 21 of the Statute legitimise the Majority's approach or validate Mr Gbagbo's and Mr Blé Goudé's acquittals in this case.

6. *Second sub-ground:* In the alternative, if, *arguendo*, the Chamber had some discretion under article 74(5) of the Statute, it erred in law and/or procedurally by exercising its discretion to acquit Mr Gbagbo and Mr Blé Goudé in its 15 January 2019 Decision without entering a formal decision under article 74; by rendering an oral decision; by failing to provide a full and reasoned statement of the Majority's findings on the evidence and conclusions; by failing to provide a summary of the reasons in open court; by merely indicating that the reasons would be provided "as soon as possible", but without fixing a precise date for providing the reasons; and by failing to issue "one decision". This error was not cured by the 16 July 2019 Reasons, nor can interpreting article 74(5) in light of article 21 of the Statute legitimise the Majority's approach or validate Mr Gbagbo's and Mr Blé Goudé's acquittals in this case.

Second ground of appeal: The Majority erred by acquitting Mr Gbagbo and Mr Blé Goudé without properly articulating and consistently applying a clearly defined standard of proof and/or approach to assessing the sufficiency of the evidence

7. Further and/or in the alternative, the Majority erred in law and/or procedurally by acquitting Mr Gbagbo and Mr Blé Goudé without properly articulating and consistently applying a clearly defined standard of proof and/or approach to assessing the sufficiency of the evidence at the no case to answer (“NCTA”) stage. This will be demonstrated not only on the basis of the procedural history in this case,⁶ but also based on a number of examples of erroneous and/or inconsistent factual findings and/or evidentiary assessments at the NCTA stage in the 16 July 2019 Reasons.⁷ These examples are not presented as separate errors of fact in themselves, but demonstrate the Majority’s errors of law and/or procedure raised under this ground. These examples include but are not limited to the Majority’s incorrect and unreasonable assessment of (i) the evidence in relation to the rapes committed in connection with the *Radio Télévision Ivoirienne* (“RTI”) march (16-19 December 2010, 1st Charged Incident) and Yopougon II (12 April 2011, 5th Charged Incident);⁸ (ii) the evidence in relation to the clashes on the *Boulevard Principal* (25 February 2011, Yopougon I, 2nd Charged Incident);⁹ (iii) the evidence in relation to the attribution of the gunfire to the *Forces de Défense et de Sécurité* (“FDS”) convoy for the 3 March 2011 incident (Abobo I, 3rd Charged Incident);¹⁰ (iv) the evidence in relation to the attribution of the shelling to the FDS/*Bataillon d’artillerie sol-air* (“BASA”) for the 17 March 2011 incident (Abobo II, 4th Charged Incident);¹¹ (v) the

⁶ See *inter alia*, ICC-02/11-01/15-1174, para. 10; ICC-02/11-01/15-1182, paras. 11-13; ICC-02/11-01/15-T-232-ENG-ET, 4:15-19; ICC-02/11-01/15-T-234-ENG-ET, 4:11-23; Majority’s Reasons, paras. 1-9, 13, 15, 17 (nature of the decision and the applicable standard, assessment of evidence); Opinion of Judge Cuno Tarfusser, para. 65. These examples are not exhaustive and further examples may be referred to in the Prosecution’s Document in Support of Appeal.

⁷ See Majority’s Reasons, paras. 1-10 (preliminary remarks) and paras. 1-51 (nature of the decision and the applicable standard, assessment of evidence).

⁸ Majority’s Reasons, paras. 1879-1884, 1917-1920 (general conclusions); 1217, 1465-1470, 1496, 1525-1529, 1608-1613 (RTI March); 1848-1862 (Yopougon II).

⁹ Majority’s Reasons, paras. 1636-1674, 1764-1771.

¹⁰ Majority’s Reasons, paras. 1773-1777, 1786-1787.

¹¹ Majority’s Reasons, paras. 1802-1820, 1839, Opinion of Judge Cuno Tarfusser, paras. 29, 35, 85.

evidence in relation to Mr Gbagbo's involvement in the shelling in Abobo;¹² (vi) the evidence in relation to the overall pattern of crimes, incorrectly assessed against an empirical benchmark unsupported by the record;¹³ and (vii) the evidence in relation to the denials of the 3 March 2011 incident relevant to the findings/conclusions on climate of impunity and public expressions of the common plan/policy.¹⁴ These examples are not exhaustive and further examples may be referred to in the Prosecution's Document in Support of Appeal.¹⁵

The errors materially affected the acquittals

8. The errors raised in the first ground materially affected the 15 January 2019 Decision to acquit Mr Gbagbo and Mr Blé Goudé, read together with the 16 July 2019 Reasons.

9. The requirements under article 74(5) are not mere formalities. They are key features of justice ensuring that the ultimate conclusion of a Trial Chamber is based on a solid legal, procedural and factual foundation, so that the Parties, the victims and the public at large can have full trust in the outcome of the trial and the judgment of acquittal or conviction. Judgments that fail to comply with these requirements lack legitimacy.

10. As will be elaborated in the Document in Support of Appeal, the 15 January 2019 Decision, read together with the 16 July 2019 Reasons, was legally and procedurally defective such that it cannot have the legal effect of dismissing all charges against Mr Gbagbo and Mr Blé Goudé. The Majority's decision to acquit must be considered null and void, and Mr Gbagbo's and Mr Blé Goudé's acquittals set aside.

¹² Majority's Reasons, paras. 1355-1359, 1832-1839.

¹³ Majority's Reasons, paras 1888-1896.

¹⁴ Majority's Reasons, paras. 258-263, 271-275, 1019, 1029.

¹⁵ Reference will also be made to the relevant parts of Judge Herrera Carbuccia's Dissenting Opinion.

11. Further or in the alternative, the errors raised under the first ground materially affected the 15 January 2019 Decision, read together with the 16 July 2019 Reasons, because the 15 January 2019 Decision was not fully informed. As will be elaborated in the Document in Support of Appeal, at the time when the Majority rendered its oral decision to acquit Mr Gbagbo and Mr Blé Goudé on 15 January 2019, and despite its assertion to the contrary,¹⁶ it appears that the Majority had not yet completed its written articulation *nor* completed the necessary process of making all its findings on the evidence and reaching all its conclusions, as required under article 74(5), and hence having completed its fully informed reasoning. In plain terms, the errors materially affected the 15 January 2019 Decision because a partially informed decision to acquit is substantially different from a fully informed acquittal.

12. Further or in the alternative, the errors raised in the second ground also materially affected the Majority's decision to acquit Mr Gbagbo and Mr Blé Goudé, whether considered individually or cumulatively with the errors set out in the first ground. As will be elaborated in the Document in Support of Appeal, first, the judges forming the Majority, when acquitting Mr Gbagbo and Mr Blé Goudé, had not yet reached a conclusion as to what relevant standard and approach they would apply to assess the Defence's NCTA motions. This on its own invalidates the decision to acquit in the 15 January 2019 Decision, which was not cured by the 16 July 2019 Reasons. Second, as a result of the absence of a clearly defined and consistently applied standard and approach to the NCTA motions, the Majority reached erroneous and/or inconsistent factual conclusions on multiple factual findings, including but not limited to those referred to in paragraph 7 above. Third, because the Prosecution was not put on proper notice of the standard and approach to be applied, in this respect it lacked a fair hearing. Accordingly, the Majority's 15 January 2019 Decision to acquit Mr Gbagbo and Mr Blé Goudé, read together with

¹⁶ ICC-02/11-01/15-T-232-ENG-ET, 4:7-8: "having already arrived at its decision upon the assessment of the evidence".

the 16 July 2019 Reasons, was legally and/or procedurally defective such that it cannot have the effect of dismissing all charges against them.

The relief sought

13. The Prosecution respectfully requests the Appeals Chamber to reverse the 15 January 2019 Decision through which the Majority acquitted Mr Gbagbo and Mr Blé Goudé, pursuant to article 83(2) and enter a declaration of mistrial.¹⁷ Further details regarding the relief sought will be provided in the Prosecution's Document in Support of Appeal.



Fatou Bensouda, Prosecutor

Dated this 17th day of September 2019

At The Hague, The Netherlands

¹⁷ ICC-01/09-01/11-2027-Red-Corr, para. 192.