

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-02/11-01/15 OA 14

Date: 2 September 2020

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

**Decision dismissing *in limine* Mr Laurent Gbagbo's request for a finding of a
denial of justice**

Decision to be notified in accordance with regulation 31 of the Regulations of the Court to:

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor
Ms Helen Brady

Counsel for Mr Laurent Gbagbo
Mr Emmanuel Altit
Ms Agathe Bahi Baroan

The Office of Public Counsel for Victims
Ms Paolina Massidda

Counsel for Mr Charles Blé Goudé
Mr Geert-Jan Alexander Knoops
Mr Claver N'dry

REGISTRY

Registrar
Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

Noting its ‘Judgment on the Prosecutor’s appeal against the oral decision of Trial Chamber I pursuant to article 81(3)(c)(i) of the Statute’ of 1 February 2019, ICC-02/11-01/15-1251-Conf,

Having before it the ‘Requête visant à ce que soit reconnu le déni de justice que constitue le silence opposé par la Chambre d’appel pendant huit mois à Laurent Gbagbo qui avait déposé le 7 octobre 2019 une requête visant à recouvrir l’intégralité de ses droits’ dated 31 July 2020 and registered on 3 August 2020, ICC-02/11-01/15-1369-Conf,

After deliberation,

Renders unanimously the following

DECISION

The ‘Requête visant à ce que soit reconnu le déni de justice que constitue le silence opposé par la Chambre d’appel pendant huit mois à Laurent Gbagbo qui avait déposé le 7 octobre 2019 une requête visant à recouvrir l’intégralité de ses droits’ is dismissed *in limine*.

REASONS

1. Following the acquittal of Mr Laurent Gbagbo and Mr Charles Blé Goudé by Trial Chamber I on 15 January 2020¹ and a request by the Prosecutor to find that there were exceptional circumstances to maintain the detention of Mr Gbagbo and Mr Blé Goudé, and release them subject to conditions, unless no State willing and able to enforce such conditions could be found, the Trial Chamber denied the Prosecutor’s request and ordered their release without conditions.² Following an appeal by the Prosecutor against that decision, the Appeals Chamber rendered, on 1 February 2019, a judgment, in which it amended the decision of the Trial Chamber and imposed a

¹ [Transcript of 15 January 2019](#), ICC-02/11-01/15-T-232- ENG, p. 1, line 15, to p. 5, line 7.

² [Transcript of 16 January 2019](#), ICC-02/11-01/15-T-234- ENG, p. 1, line 14 to p. 6, line 21.

number of conditions on the release of Mr Gbagbo and Mr Blé Goudé³ (the ‘Judgment’).

2. On 7 October 2019, Counsel for Mr Gbagbo requested that the Appeals Chamber reconsider the Judgment and order Mr Gbagbo’s immediate release without conditions (the ‘Reconsideration Request’).⁴ Having received further submissions on the Reconsideration Request,⁵ and a request from a State to participate in the proceedings as *amicus curiae*,⁶ the Appeals Chamber scheduled a hearing,⁷ which took place on 6 February 2020.⁸ Prior, and subsequent, to that hearing, the Appeals Chamber received further submissions and observations on the Reconsideration Request and related matters from the parties, the participants, several States and the Registrar.⁹

³ [Judgment on the Prosecutor’s appeal against the oral decision of Trial Chamber I pursuant to article 81\(3\)\(c\)\(i\) of the Statute](#), 1 February 2019, ICC-02/11-01/15-1251-Conf (public redacted version registered on the same day, ICC-02/11-01/15-1251-Red; a second public redacted version was registered on 21 February 2019, ICC-02/11-01/15-1251-Red2). See, in particular, para. 60.

⁴ [Requête de la Défense afin d’obtenir que la Chambre d’appel restitue à Laurent Gbagbo, acquitté de toutes les charges portées contre lui, l’intégralité de ses droits humains fondamentaux](#), 7 October 2019, ICC-02/11-01/15-1272-Conf (public redacted version registered on 8 October 2019, ICC-02/11-01/15-1272-Red).

⁵ [CLRV Consolidated Response to Defence’s Request No. ICC-02/11-01/15-1272-Conf, No. ICC-02/11-01/15-1273 and No. ICC-02/11-01/15-1275-Conf](#), 16 October 2019, ICC-02/11-01/15-1278-Conf (public redacted version registered on 28 October 2019, ICC-02/11-01/15-1278-Red); [Response to «Requête de la Défense afin d’obtenir que la Chambre d’appel restitue à Laurent Gbagbo, acquitté de toutes les charges portées contre lui, l’intégralité de ses droits humains fondamentaux», 7 October 2019, ICC-02/11-01/15-1272](#), 17 October 2019, ICC-02/11-01/15-1280-Conf (public redacted version registered on 18 October 2019, ICC-02/11-01/15-1280-Red).

⁶ [Demande d’autorisation aux fins de présenter des observations écrites de la République de Côte d’Ivoire sur la “Requête de la Défense afin d’obtenir que la Chambre d’appel restitue à Laurent Gbagbo, acquitté de toutes les charges portées contre lui, l’intégralité de ses droits humains fondamentaux”, 7 octobre 2019, ICC-02/11-01/15-1272](#)’ of 25 October 2019, ICC-02/11-01/15-1282.

⁷ [Order scheduling a hearing before the Appeals Chamber and permitting participation in judicial proceedings pursuant to rule 103 of the Rules of Procedure and Evidence](#), 20 December 2019 (corrected version registered on 30 January 2020, ICC-02/11-01/15-1296-Corr).

⁸ Transcript of hearing, 6 February 2020, ICC-02/11-01/15-T-237-Red-ENG.

⁹ See [Observations de la République de Côte d’Ivoire sur la “Requête de la Défense afin d’obtenir que la Chambre d’appel restitue à Laurent Gbagbo, acquitté de toutes les charges portées contre lui, l’intégralité de ses droits humains fondamentaux”, 7 octobre 2019, ICC-02/11-01/15-1272](#)”, 21 January 2020, ICC-02/11-01/15-1298; Blé Goudé’s Defence Second Request to modify the conditions of his release, 31 January 2020, ICC-02/11-01/15-1302-Conf-Exp (Defence and Registrar only); Registry’s Observations on the “Blé Goudé Defence Second Request to modify the conditions of his release” (ICC-02/11-01/15-1302-Conf-Exp), 5 February 2020, ICC-02/11-01/15-1305-Conf-Exp (Defence and Registrar only); Prosecution Response to Charles Blé Goudé’s Request to Modify Conditions of his Release, 7 February 2020, ICC-02/11-01/15-1308-Conf; CLRV Consolidated Response to the First and Second Request by the Defence of Mr Blé Goudé to modify the conditions of his release (ICC-02/11-01/15-1293-Conf-Red and ICC-02/11-01/15-1302-Conf-Red), 7 February 2020, ICC-02/11-01/15-1307-Conf; Transmission of the Observations of the Kingdom of Belgium, 11 March 2019, ICC-02/11-

3. On 28 May 2020, the Appeals Chamber issued its decision on the Reconsideration Request, dismissing the request to reconsider but reviewing and amending the conditions of release¹⁰ (the ‘Decision on the Reconsideration Request’). On the same day, two minutes before the Decision on the Reconsideration Request was notified, a request by Counsel for Mr Gbagbo before the Presidency was notified to its intended recipients (which did not include the Appeals Chamber), arguing that the Appeals Chamber’s failure to issue a decision or respond to its related request of 2 April 2020 constituted a denial of justice¹¹ (‘Request before the Presidency’). The Request before the Presidency was rejected on 18 June 2020¹² (‘Presidency Decision’).

4. Counsel for Mr Gbagbo subsequently filed a further request¹³ (‘Request for a Finding of Denial of Justice’), registered on 3 August 2020, asking that the Appeals

01/15-1316-Conf-Exp (registered on 12 March 2020; Registry only), with two confidential and *ex parte* annexes, ICC-02/11-01/15-1316-Conf-Exp-AnxI and ICC-02/11-01/15-1316-Conf-Exp (reclassified as confidential on 15 April 2020, ICC-02/11-01/15-1316-Conf and a public redacted version of Annex I registered on 4 August 2020, [ICC-02/11-01/15-1316-AnxI-Red](#));

; [Requête afin que la Chambre d’appel se prononce au plus vite sur la demande de la Défense visant à ce que Laurent Gbagbo, acquitté, recouvre « l’intégralité de ses droits humains fondamentaux », déposée le 7 octobre 2019 \(ICC-02/11-01/15-1272\)](#), 2 April 2020, ICC-02/11-01/15-1322-Conf (public redacted version registered the same day, ICC-02/11-01/15-1322-Red); Observations formulées par la Défense à la suite du dépôt par les Autorités Belges d’observations « concernant la modification éventuelle des conditions de libération de M. Laurent Gbagbo » (ICC-02/11-01/15-1316-Conf-AnxII), notifiées le 15 avril 2020, 28 April 2020, ICC-02/11-01/15-1336-Conf (public redacted version registered on 14 August 2020, [ICC-02/11-01/15-1336-Red](#));

¹⁰ [‘Decision on counsel for Mr Gbagbo’s request for reconsideration of the ‘Judgment on the Prosecutor’s appeal against the oral decision of Trial Chamber I pursuant to article 81\(3\)\(c\)\(i\) of the Statute’ and on the review of the conditions on the release of Mr Gbagbo and Mr Blé Goudé’](#), 28 May 2020, ICC-02/11-01/15-1355-Conf (public redacted version registered the same day, ICC-02/11-01/15-1355-Red).

¹¹ [‘Demande de clarification de la Défense concernant la marche à suivre pour engager une procédure en déni de justice du fait du silence opposé pendant huit mois à la requête de Laurent Gbagbo datée du 7 octobre 2019 visant à ce qu’il recouvre l’intégralité de ses droits’](#), 28 May 2020, ICC-02/11-01/15-1354-Red. The Decision on the Reconsideration Request was notified at 18h16; the Request before the Presidency was notified at 18h14.

¹² [‘Decision on the ‘Demande de clarification de la Défense concernant la marche à suivre pour engager une procédure en déni de justice du fait du silence opposé pendant huit mois à la requête de Laurent Gbagbo datée du 7 octobre 2019 visant à ce qu’il recouvre l’intégralité de ses droits’ dated 28 May 2020 \(ICC-02/11-01/15-1354-Red\)’](#), 18 June 2020, ICC-02/11-01/15-1360.

¹³ ‘Requête visant à ce que soit reconnu le déni de justice que constitue le silence opposé par la Chambre d’appel pendant huit mois à Laurent Gbagbo qui avait déposé le 7 octobre 2019 une requête visant à recouvrer l’intégralité de ses droits’, dated 31 July 2020 and registered on 3 August 2020, ICC-02/11-01/15-1369-Conf.

Chamber find that he had been denied justice because of eight months of silence between the filing of the Reconsideration Request and the Decision on the Reconsideration Request.¹⁴

5. At the outset, the Appeals Chamber notes that Counsel for Mr Gbagbo considers that, in the circumstances, it would be justified for the judges of the Appeals Chamber who decided upon the Reconsideration Request not to hear the Request for a Finding of Denial of Justice, considering that there could be a conflict of interest.¹⁵ The Appeals Chamber notes in this regard that, as the Request for a Finding of Denial of Justice is not properly before the Chamber and must be dismissed *in limine* for the reasons explained in the paragraphs that follow, there is no need to consider the question of a potential recusal of the judges of the Appeals Chamber any further.

6. As to the reasons for the dismissal *in limine* of the Request for a Finding of Denial of Justice, the Appeals Chamber notes, first, that Counsel for Mr Gbagbo does not point to any legal basis or procedural avenue in the Statute or Rules of Procedure and Evidence on the basis of which he would be entitled to seek a finding by the Appeals Chamber concerning a potential denial of justice in these circumstances. His reliance on the Presidency Decision¹⁶ is misplaced. To the extent that it rejected his argument that it would have been impractical to seise the Appeals Chamber because of a potential conflict of interest in dealing with a matter, the Presidency simply pointed out that there are procedures in place concerning the recusal or disqualification of judges under the Statute; the Presidency did not find that Counsel for Mr Gbagbo was entitled to seek a finding concerning a denial of justice from the Appeals Chamber.¹⁷

7. That being said, even if the Appeals Chamber were to find that there is a legal basis for the Request for a Finding of Denial of Justice on the basis of international human rights law, a matter that does not need to be determined definitively in the

¹⁴ Request for a Finding of Denial of Justice, p. 17. The Prosecutor filed a response on 7 August 2020, ‘Prosecution response to Mr Gbagbo’s “Requête visant à ce que soit reconnu le déni de justice que constitue le silence opposé par la Chambre d’appel pendant huit mois à Laurent Gbagbo qui avait déposé le 7 octobre 2019 une requête visant à recouvrir l’intégralité de ses droits”, ICC-02/11-01/15-1375-Conf.

¹⁵ Request for a Finding of Denial of Justice, paras 36, 34.

¹⁶ Request for a Finding of Denial of Justice, paras 32, 33.

¹⁷ [Presidency Decision](#), paras 15 and 16.

issue at hand, its dismissal *in limine* would be warranted in the circumstances of this case. As noted above, on 28 May 2020, Counsel for Mr Gbagbo filed the Request before the Presidency, complaining that the Appeals Chamber had not yet issued a decision on the Reconsideration Request and seeking an indication from the Presidency as to where he could obtain relief.¹⁸ On the same day that the Request before the Presidency was filed, the Appeals Chamber filed the Decision on the Reconsideration Request – the Decision on the Reconsideration Request literally crossed paths with the Request before the Presidency in the Registry, and the two documents were notified within two minutes of each other. Therefore, the Request before the Presidency became pointless from a practical perspective immediately after it was notified. Nevertheless, Counsel for Mr Gbagbo did not withdraw it. The Presidency decided not to dismiss the Request before the Presidency as moot ‘as a legal question may theoretically persist as to whether a denial of justice occurred’, proceeding to determine whether it had jurisdiction to hear the matter – which it determined it did not.¹⁹ Counsel for Mr Gbagbo now seeks to pursue the matter further with the Request for a Finding of Denial of Justice. The heavy workload of the Appeals Chamber, however, does not permit indulgence on points of no practical relevance. The fact that Mr Gbagbo remains in the same location despite the Decision on the Reconsideration Request having been issued several months ago underscores the pointlessness of the matter.

8. In any event, the Appeals Chamber notes that the procedural history of the matter,²⁰ even to the extent recounted in the Request for a Finding of Denial of Justice, which entailed extreme delicacy in decision making in highly complex and unusual circumstances, demonstrates that it would be difficult to maintain that there were eight months of silence as concerns the Reconsideration Request. These circumstances therefore indicate that the timing of the Decision on the Reconsideration Request was necessary.

¹⁸ [Request before the Presidency](#), p. 15.

¹⁹ [Presidency Decision](#), para. 14 and p. 7.

²⁰ See para. 2 and footnotes 5-9.

Done in both English and French, the English version being authoritative.



Judge Chile Eboe-Osuji
Presiding

Dated this 2 September 2020

At The Hague, The Netherlands