

1 International Criminal Court
2 Appeals Chamber - Courtroom 1
3 Situation: Republic of Côte d'Ivoire
4 In the case of The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé
5 ICC-02/11-01/15
6 Presiding Judge Piotr Hofmański
7 Appeals Chamber Judgment
8 Tuesday, 8 September 2015
9 (The hearing starts in open session at 10.29 a.m.)
10 THE COURT USHER: All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE HOFMAŃSKI: (Microphone not activated)
14 THE COURT OFFICER: Thank you, Mr President.
15 The situation in the Republic of Côte d'Ivoire, in the case of The Prosecutor versus
16 Laurent Gbagbo and Charles Blé Goudé, case reference ICC-02/11-01/15.
17 We are in open session.
18 PRESIDING JUDGE HOFMAŃSKI: (Microphone not activated) ... Presiding Judge
19 in the appeal arising from the case of The Prosecutor versus Mr Laurent Gbagbo.
20 Today, I will be delivering the judgment on this appeal, on behalf of the Appeals
21 Chamber which besides myself, comprises of Judges: Kuniko Ozaki,
22 Sanji Mmasenono Monageng, Howard Morrison and Chang-ho Chung.
23 Before addressing the parties and participants, I wish to note for the record that the
24 Appeals Chamber was informed by way of a document, signed by Mr Gbagbo on
25 3 September 2015, at the Court's Detention Centre, that he waived his right to be

1 present at today's hearing. The Appeals Chamber takes note of Mr Gbagbo's waiver
2 and will proceed to deliver the judgment on his appeal in his absence.

3 Now may I ask the parties to introduce themselves for the record, starting with the
4 Defence, thereafter the Office of the Prosecutor and then the Legal Representative of
5 the Victims.

6 MR ALTIT: (Interpretation) Good morning, your Honour. Allow me to introduce
7 Ms Baroan from the Côte d'Ivoire Bar; former member of the Constitutional Counsel,
8 Ms Naouri; behind me, Professor Jacobs, Ms Le Guennec and Ms Swiderski. I am
9 Emmanuel Altit.

10 PRESIDING JUDGE HOFMAŃSKI: Thank you very much.
11 Please.

12 MS BRADY: Good morning, your Honour. Helen Brady appearing on behalf of the
13 Prosecution, together with Ms Manochitra Prathaban, our legal assistant. Thank
14 you.

15 PRESIDING JUDGE HOFMAŃSKI: Thank you.

16 MS MASSIDDA: Good morning, your Honor. Victims in these proceedings are
17 assisted by the Office of Public Counsel for Victims. Appearing today,
18 Ms Ludovica Vetrucchio, associate legal officer; behind us, Ms Giunia Petrillo, intern;
19 and I am Paolina Massidda, principal counsel.

20 PRESIDING JUDGE HOFMAŃSKI: Thank you very much.

21 Today, the Appeals Chamber is delivering its judgment on Mr Gbagbo's appeal
22 against the decision of the Trial Chamber I, entitled "Ninth decision on the review of
23 Mr Laurent Gbagbo's detention pursuant to Article 60(3) of the Statute." This
24 decision was rendered on 8 July 2015. In today's summary, I will refer to this
25 decision as the Impugned Decision.

1 I shall now summarise the Appeals judgments and the reasons for it. I would like to
2 emphasise that the written judgment and not the summary is the only authoritative
3 account of the Appeals Chamber's ruling and reasons. The written judgment, which
4 is unanimous, will be made available immediately after this hearing.

5 I shall begin with a brief account on the relevant procedural history underlying these
6 proceedings.

7 Following Mr Gbagbo's first appearance before the Pre-Trial Chamber III on
8 5 December 2011, he has been in detention. A decision of the Pre-Trial Chamber
9 dated for the 16 July 2012 rejected his application for interim release which was later
10 confirmed by the Appeals Chamber. Since then Mr Gbagbo's detention has been
11 reviewed several times by both the Pre-Trial Chamber and the Trial Chamber
12 pursuant to Article 60(3) of the Statute with each review confirming the decision to
13 maintain his detention. The Impugned Decision is the ninth decision of the review
14 of his detention. On 14 July 2015, Mr Gbagbo filed his Notice of Appeal against the
15 Impugned Decision. The Document in Support of Appeal was filed on 16 July 2015
16 and the responses thereto by the Prosecutor and the victims followed on 29 July 2015.
17 Before addressing the merits of the appeal, I will briefly refer to the Appeals
18 Chamber's determinations on the various preliminary matters raised by the parties in
19 the course of the proceedings.

20 First, it is recalled that following Mr Gbagbo's filing of a Notice of Appeal, the
21 Prosecutor responded thereto, requesting, inter alia, that the Appeals Chamber
22 dismiss, in limine, any ground of appeal that may relate to Mr Gbagbo's medical
23 condition. In this regard, the Appeals Chamber determines that at the time that the
24 request was made Mr Gbagbo had not as yet filed his document in support of the
25 appeal and the request was therefore premature. In addition, in responding to the

1 Document in Support of the Appeal, the Prosecutor appeared to abandon his initial
2 request and instead requested the Appeals Chamber to dismiss the entire appeal on
3 the merits.

4 In these circumstances, the Appeals Chamber considers the Prosecutor's request for
5 dismissal, in limine, of any grounds of appeal relating to Mr Gbagbo's medical
6 condition to be moot and accordingly dismiss it.

7 Second, the Appeals Chamber notes that following the Prosecutor's response to the
8 Notice of Appeal and shortly before the Document in Support of the Appeal was due,
9 Mr Gbagbo filed a request for leave to reply to the Prosecutor's request for a dismissal,
10 in limine, of any grounds of appeal relating to his medical conditions and for an
11 extension of time to file his Document in Support of the Appeal.

12 Before the Appeals Chamber could rule on the requests, Mr Gbagbo filed his
13 Document in Support of the Appeal within the time limit stipulated in Regulation
14 64(5) of the Regulations of the Court. Under these circumstances, and having
15 dismissed as moot the Prosecutor's request to, in limine, certain grounds of appeal,
16 the Appeals Chamber determines that Mr Gbagbo's requests are moot and
17 accordingly dismisses them.

18 Third, on 27 July 2015, Mr Gbagbo requested the Appeals Chamber to inform him of
19 the time limit for his response to the victims' response to the Document in Support of
20 Appeal. Subsequent to Mr Gbagbo's request, the Appeals Chamber rendered its
21 decision on victims' participation in the appeal, noting that the victims are permitted
22 to file an automatic response to the Document in Support of the Appeal.

23 In addition, the Appeals Chamber noted that pursuant to Regulation 24(4) of the
24 Regulations of the Court, an automatic response by the parties, to the victims'
25 response to the Document in Support of the Appeal, was not possible except with the

1 leave of the Appeals Chamber. Therefore, the Appeals Chamber determines that
2 Mr Gbagbo's request is moot and accordingly dismisses it.

3 Fourth, on 7 August 2015, Mr Gbagbo asserted that he had an automatic right to
4 respond to the victims' response to Document in Support of the Appeal and requested
5 the Appeals Chamber to recognize such right. In the alternative, he requested leave
6 to reply to same.

7 On 9 August 2015, the Appeals Chamber rejected Mr Gbagbo's request and deferred
8 the rendering of its reasons for its decision.

9 In relation to the first request, the Appeals Chamber recalled its findings on the right
10 of the victims to respond to the Document in Support of the Appeal and the need for
11 leave to be granted by the Appeals Chamber before a party could respond to the
12 victims' response to the Document in Support of the Appeal.

13 In relation to the second request, and for reasons more fully explained in the written
14 judgment, the Appeals Chamber found that in relation to certain issues to which
15 Mr Gbagbo wished to reply, these issues were in fact not addressed by the victims in
16 their response to the Document in Support of the Appeal. Therefore, any
17 observation of these issues by Mr Gbagbo would not constitute a reply.

18 With respect to the remaining issues that Mr Gbagbo wished to reply to, the Appeals
19 Chamber found that his submissions amounted to mere disagreement with the
20 arguments raised by the victims.

21 Furthermore, Mr Gbagbo failed to explain how his further submissions on these
22 issues could assist in the determination of the matter under appeal. Accordingly,
23 Mr Gbagbo's request was rejected.

24 I shall now turn to the merits of the appeal. And under the first ground of appeal,
25 Mr Gbagbo raises various legal errors in the Trial Chamber's review of its prior ruling

1 on his detention. In addition, Mr Gbagbo raises a factual error in relation to the Trial
2 Chamber's finding that his support network continues to pose a risk under
3 Article 58(1)(b)(i) and (ii) of the Statute thus warranting his continued detention.

4 With respect to the first alleged legal error, Mr Gbagbo contends that the Trial
5 Chamber reversed the burden of proof when it required him to make his submissions
6 first during the review proceedings. In his view, the onus is on the Prosecutor in
7 review proceedings to establish "that what was true yesterday is still true today."

8 The Prosecutor argued that there was no reversal of the burden of proof and that even
9 though Mr Gbagbo filed first, he was authorised to respond to the Prosecutor's and
10 victims' submissions.

11 The Appeals Chamber considers that in proceedings under Article 60(3) of the Statute
12 the onus is on the Prosecutor to demonstrate that there has been no change in the
13 circumstances justifying detention. On this basis, the Appeals Chamber finds that
14 the Trial Chamber did not reverse the burden of proof when it ordered Mr Gbagbo to
15 file observations on his continued detention and release before the Prosecutor and the
16 victims. This is because, regardless of the order in which submissions were received,
17 the Prosecutor was still required by the Trial Chamber to show that circumstances
18 had not changed to warrant any modification in the ruling on detention.

19 Moreover, the Appeals Chamber notes that in the Impugned Decision, the Trial
20 Chamber correctly acknowledged and observed its duty to "weigh the Prosecutor's
21 submissions against the submissions, if any, of the detained person" when conducting
22 the review of Mr Gbagbo's detention. The Trial Chamber further permitted
23 Mr Gbagbo to have the last word by availing him of the opportunity to respond to the
24 submissions of the Prosecutor and the victims, an opportunity of which, the Appeals
25 Chamber notes, Mr Gbagbo took full advantage.

1 In the circumstances, the Appeals Chamber is not persuaded by Mr Gbagbo's
2 argument that the Trial Chamber reversed the burden of proof by ordering him to file
3 his observations first. The argument is therefore rejected.

4 Under his second alleged legal error, Mr Gbagbo argues that the Trial Chamber erred
5 when it considered that it did not have to review the conditions underpinning
6 detention. In Mr Gbagbo's view, the issue does not revolve around whether the
7 review is de novo or not, but rather around the Trial Chamber's "duty to satisfy itself
8 that a person is not kept in detention for no reason."

9 In this respect, the Appeals Chamber notes that the arguments of both the Prosecutor
10 and the victims focused on establishing that a review for the purposes of Article 60(3)
11 of the Statute need to be de novo in nature.

12 The Appeals Chamber recalls that it has previously determined that in conducting a
13 periodic review of detention under Article 60(3) of the Statute, a Chamber "does not
14 have to enter findings on the circumstances already decided upon in the ruling on
15 detention. It must, however, look at those circumstances ... and determine whether
16 they still exist" in light of changed circumstances, if any. Thus, the circumstances
17 justifying detention may change over time.

18 In the case at hand, the Appeals Chamber observes that contrary to Mr Gbagbo's
19 contention, the Trial Chamber did in fact comply with its obligation to review the
20 circumstances underpinning Mr Gbagbo's detention. In particular, the Trial
21 Chamber noted that "the issue of Mr Gbagbo's network of supporters has been
22 considered as a relevant circumstance underpinning the need for his continued
23 detention under Article 58(1)(b)(i) and (ii) of the Statute" and found it appropriate to
24 assess whether any changed circumstances with respect to the network would affect
25 its previous ruling on detention. In light of this, the Appeals Chamber considers

1 Mr Gbagbo's argument to be misleading and rejects it.

2 Under his third alleged legal error, Mr Gbagbo argues that the Trial Chamber refused
3 to examine his arguments on the basis of their appearance and not on their substance
4 thereby precluding him from challenging at each review the current existence of
5 conditions justifying his detention. In this regard, the Prosecutor submits that
6 "consistent with the Appeals Chamber's jurisprudence, the Trial Chamber correctly
7 dismissed Mr Gbagbo's arguments because they had been previously raised and
8 dismissed."

9 The Appeals Chamber has previously stated that in conducting a periodic review of
10 detention a Chamber is not required to "entertain submissions by the detained person
11 that merely repeat arguments that the Chamber has already addressed in previous
12 decisions." A periodic review of detention necessarily involves an assessment of
13 whether the conditions under Article 58(1) of the Statute continue to be met at that
14 time.

15 In light of this, it cannot be said that Mr Gbagbo was precluded from challenging the
16 current existence of conditions justifying his detention. The Appeals Chamber notes,
17 however, that in challenging the conditions justifying detention, it is not enough to
18 merely allege changed circumstances based solely on the arguments that have already
19 been determined to be of no relevance.

20 In the case at hand, the Trial Chamber dismissed Mr Gbagbo's various arguments on
21 the basis that they had been previously rejected as irrelevant to its assessment of his
22 continued detention. The Appeals Chamber finds no error in this determination.
23 By repeatedly raising these same arguments without more, Mr Gbagbo demonstrates
24 mere disagreement with the Trial Chamber's finding that his arguments are irrelevant.
25 Hence, the Appeals Chamber finds that Mr Gbagbo does not establish an error and

1 his arguments are therefore rejected.

2 Under his fourth alleged legal error, Mr Gbagbo argues that the Trial Chamber failed
3 to provide sufficient reasons in the Impugned Decision that would enable him to
4 identify the facts on which the Trial Chamber relied to reach its conclusion that his
5 continued detention was warranted on the basis that a pro-Gbagbo support network
6 continues to exist.

7 The Appeals Chamber considers that the Impugned Decision identifies with sufficient
8 clarity the fact that the "calls for the release of Mr Gbagbo" demonstrated "the
9 continued existence of Mr Gbagbo's support network", which in turn necessitated his
10 continued detention. Thus, the Appeals Chamber finds no merit in Mr Gbagbo's
11 argument that the Trial Chamber failed to identify the facts on which it relied to reach
12 its conclusion.

13 The Appeals Chamber considers that the Trial Chamber did not set out in much detail
14 how it analysed the evidence presented by the Prosecutor and how it reached its
15 factual conclusion that Mr Gbagbo's support network continued to exist.

16 Nevertheless, the Appeals Chamber considers that it is still discernible how the Trial
17 Chamber reached its conclusion. This is because, in stating its conclusion, the Trial
18 Chamber reasoned that the "further material provided by the Prosecutor, particularly
19 that supporting calls for the release of Mr Gbagbo, clearly illustrates the continued
20 existence of Mr Gbagbo's support network." This reasoning, when read together
21 with the Trial Chamber's references in the footnotes, to the relevant paragraphs of the
22 submissions of the Prosecutor and those of Mr Gbagbo, reveals the basis underlying
23 the conclusion reached. Mr Gbagbo's argument in this regard is therefore rejected.

24 In sum, the Appeals Chamber is not persuaded by Mr Gbagbo's arguments that the
25 Trial Chamber failed to meet its obligation to provide a reasoned decision.

1 Under the alleged factual error, Mr Gbagbo argues that the Trial Chamber failed to
2 direct the Prosecutor to provide details of what the "pro-Gbagbo network" means and
3 how it operates. He argues further that the fact that the FPI leaders and activists
4 claim to be Mr Gbagbo's followers does not suffice to criminalise the FPI.

5 The Appeals Chamber understands Mr Gbagbo to allege an error of fact on the part of
6 the Trial Chamber in determining that a network of pro-Gbagbo supporters continues
7 to pose a risk under Article 58(1)(b)(i) and (ii) of the Statute. The Appeals Chamber
8 notes that the Trial Chamber found that the network of Mr Gbagbo's supporters
9 continued to exist and no changed circumstances warranted a modification of the
10 assessments of the conditions under Article 58(1)(b)(i) and (ii) of the Statute on the
11 basis of the evidence submitted by the Prosecutor.

12 The Appeals Chamber considers that information about the recent activities of the
13 alleged network of supporters and the calls for Mr Gbagbo's release expressed by
14 various actors, established on the basis of the additional evidence submitted by the
15 Prosecutor, including a report of the United Nations Groups of Experts on
16 Côte d'Ivoire, dated 13 April 2015, continue relevant factors in determining whether a
17 network of pro-Gbagbo supporters continues to exist. The Appeals Chamber finds
18 that it was not unreasonable for the Trial Chamber to conclude, on the basis of the
19 available evidence, that such a network continued to exist.

20 Furthermore, the Appeals Chamber finds that the existence of a network of
21 supporters is a relevant factor in determining whether continued detention appears
22 necessary. Accordingly, the Appeals Chamber considers that it was not
23 unreasonable for the Trial Chamber to find that a risk continued to exist that the
24 network of the pro-Gbagbo supporters may help Mr Gbagbo to abscond, or obstruct,
25 or endanger the Court's proceedings.

1 On the basis of the foregoing considerations, the Appeals Chamber rejects
2 Mr Gbagbo's arguments regarding the continued existence of a network of supporters
3 posing a risk under Article 58(1)(b)(i) and (ii) of the Statute.
4 Having rejected the totality of Mr Gbagbo's arguments, the Appeals Chamber
5 accordingly rejects the first ground of appeal.
6 Under the second ground of appeal, Mr Gbagbo avers that the Trial Chamber erred in
7 law by failing to consider itself seized of a request for conditional release and that this
8 effectively ended the entire process of allowing Mr Gbagbo to at last receive
9 appropriate treatment and care.
10 Before addressing the merits of this argument, the Appeals Chamber notes that
11 Mr Gbagbo failed to fully comply with its decision directing him to file a lesser
12 redacted version of the Document in Support of Appeal.
13 As a result of this noncompliance with the Appeals Chamber's directions, the
14 Prosecutor and the victims were unable to address important arguments supporting
15 the second ground of Mr Gbagbo's appeal. The Appeals Chamber notes that if
16 participants in appellate proceedings are unable to respond to certain arguments of
17 the appellant, those arguments are precluded from the scrutiny of the participants
18 which, in turn, may affect the Appeals Chamber's determination of the issues on
19 appeal.
20 The Appeals Chamber, therefore, declines to consider arguments relying on
21 information which Mr Gbagbo withheld from the Prosecutor and the victims in
22 contravention to the decision concerning redactions in the Document in Support of
23 the Appeal. The Appeals Chamber will only consider the remaining arguments.
24 As regard the merits of the second ground of appeal, the Appeals Chamber notes that
25 in its previous decisions regarding the periodic review of the ruling on detention, the

1 Trial Chamber indicated that it was in no position to rule on conditional release.

2 The Trial Chamber stated that before ruling on that matter, it had to receive a joint
3 report of the Registry and Mr Gbagbo on their consultations regarding conditional
4 release and then had to receive submissions of the parties and participants.

5 In his order seeking observations for purposes of the ninth review under Article 60(3)
6 of the Statute, the Single Judge acknowledged the receipt of such a report and invited
7 the parties and participants to make observations on, among other matters, the
8 possibility of the release of Mr Gbagbo with conditions. However, in his
9 submissions, Mr Gbagbo did not discuss the possibility of conditional release.

10 The Appeals Chamber finds that as Mr Gbagbo failed to raise the issue of conditional
11 release in his submission made in the context of review under Article 60(3) of the
12 Statute, neither the Prosecutor, nor the victims, were in a position to discuss it in their
13 submissions.

14 In the circumstances, and having regard to the procedure set out in Rule 119(3) of the
15 Rules of Procedure and Evidence, the Appeals Chamber considers that Mr Gbagbo
16 has not demonstrated an error in the Trial Chamber's conclusion that it was not seized
17 with a request for conditional release and its indication that Mr Gbagbo might seek
18 conditional release at any time. The second ground of Mr Gbagbo's appeal is
19 therefore rejected.

20 In these circumstances, having rejected both grounds of appeal, the Appeals Chamber
21 deems it appropriate to confirm the Impugned Decision.

22 This concludes my summary of the judgment.

23 I thank the interpreters, the court officer and the participants.

24 And the session is now closed.

25 THE COURT USHER: All rise.

- 1 (The hearing ends in open session at 11.04 a.m.)