

1 International Criminal Court
2 Trial Chamber I
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 Cuno Tarfusser, Judge Olga Herrera Carbuccion and
7 Judge Geoffrey Henderson
8 Delivery of Decision - Courtroom 1
9 Tuesday, 15 January 2019
10 (The hearing starts in open session at 11.04 a.m.)
11 THE COURT USHER: [11:04:22] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE TARFUSSER: [11:04:49] Good morning.
15 The Chamber has scheduled this hearing in order to provide the decision on the
16 *Requête de la Défense de Laurent Gbagbo afin qu'un jugement d'acquiescement portant sur*
17 *toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté*
18 *immédiate soit ordonnée*, and on the Blé Goudé Defence no case to answer motion, so as
19 the decision on the request for provisional release following the hearing convened by
20 the Chamber on continued detention of the accused.
21 The majority of Trial Chamber I, Judge Herrera Carbuccion dissenting, notes as
22 follows:
23 First, it is a matter of public record that in the period under scrutiny by the Chamber,
24 i.e., November 2010-April 2011, Ivory Coast was torn by a violent political conflict in
25 the context of the presidential elections in Abidjan and in other parts of the country.

1 On June 23, 2011, the Prosecutor of the International Criminal Court requested
2 authorisation to investigate whether crimes within the jurisdiction of the Court were
3 committed in the context of this conflict and, on 3 October 2011, Pre-Trial Chamber I
4 of the International Criminal Court authorised such investigations.

5 Following requests by the Office of the Prosecutor of 25 October 2011 for Mr Gbagbo,
6 and 12 December 2011 for Mr Blé Goudé, Pre-Trial Chamber I issued warrants of
7 arrest against the accused on 23 November and 21 December 2011 respectively.

8 Mr Laurent Gbagbo was surrendered to the International Criminal Court on 30
9 November 2011, and Mr Charles Blé Goudé on 22 March 2014.

10 The charges against the two accused were confirmed by Pre-Trial Chamber I of the
11 ICC for Laurent Gbagbo on 12 June 2014 and for Charles Blé Goudé on 11 December
12 2014.

13 Following the joinder of the two cases and the period for its preparation, the trial
14 commenced on 26 January 2016 before this Trial Chamber I.

15 The Chamber sat for 231 hearing days, receiving evidence from 82 Prosecution
16 witnesses in court and through video link. Thousands of documents were submitted
17 into evidence, hundreds of submissions, motions, requests by the parties and
18 participants and decisions by the Chamber were filed.

19 Following the conclusion of the presentation of evidence by the Prosecutor, the
20 Chamber was seized of requests for the acquittal and immediate release of both
21 accused.

22 Pending the resolution of these requests, the Chamber convened a hearing to discuss
23 the continued detention of the accused on 13 December 2018. During this hearing,
24 both accused asked to be released with or without conditions.

25 The Chamber, having thoroughly analysed the evidence and taken into account, into

1 consideration all legal and factual arguments submitted both orally and in writing by
2 the parties and participants finds, by majority, that there is no need for the Defence to
3 submit further evidence as the Prosecutor has not satisfied the burden of proof in
4 relation to several core constitutive elements of the crimes as charged. In particular,
5 the majority finds that the Prosecutor:

6 Has failed to demonstrate that there was a "common plan" to keep Mr Gbagbo in
7 power, which included the commission of crimes against civilians.

8 Has failed to demonstrate the existence of the alleged policy to attack the civilian
9 population on the basis of the alleged pattern of violence and other circumstantial
10 evidence cited in support.

11 Has failed to demonstrate that the crimes as alleged in the charges were committed
12 pursuant to or in furtherance of a State or organisational policy to attack the civilian
13 population.

14 Has failed to demonstrate that public speeches by Mr Gbagbo or Mr Blé Goudé
15 constituted ordering, soliciting or inducing the alleged crimes or that either of the
16 accused otherwise knowingly or intentionally contributed to the commission of such
17 crimes.

18 The Chamber will provide its full and detailed reasoned decision as soon as possible.
19 The Chamber recognises that it would have been preferable to issue the full decision
20 at this time. However, Rule 144(2) of the Rules of Procedure and Evidence states
21 that the Chamber must provide copies of its full decision, and I quote, "as soon as
22 possible" after pronouncing its decision in a public hearing, and there is no specific
23 limit, time limit in this regard.

24 The majority is of the view that the need to provide the full reasoning at the same
25 time of the decision is outweighed by the Chamber's obligation to interpret and apply

1 the Rome Statute in a manner consistent with internationally recognised human
2 rights as required by Article 21(3) of the Statute.
3 Indeed, an overly restrictive application of Rule 144(2) would require the Chamber to
4 delay the pronouncement of the decision, pending completion of a full and reasoned
5 written statement of its findings on the evidence and conclusions. But given the
6 volume of evidence and the level of detail of the submissions of the parties and
7 participants, the majority, having already arrived at its decision upon the assessment
8 of the evidence, cannot justify maintaining the accused in detention during the period
9 necessary to fully articulate its reasoning in writing.

10 The deadline for appealing the present decision will start running at the moment the
11 parties are notified of the full reasons for it.

12 The Prosecutor may seize the Chamber of a request under Article 81(3)(c)(i) as of
13 today.

14 For all these reasons, the Chamber, by majority, hereby:

15 Decides that the Prosecutor has failed to satisfy the burden of proof to the requisite
16 standard as foreseen in Article 66 of the Rome Statute.

17 Grants the Defence motions for acquittal from all charges against Mr Laurent Gbagbo
18 and Mr Charles Blé Goudé.

19 Orders the immediate release of both accused pursuant to Article 81(3) --

20 (Interruption)

21 PRESIDING JUDGE TARFUSSER: No. Come on. Please.

22 Please. Can you -- please, I appeal to the public, please sit down, otherwise I have to
23 evacuate. Please sit down and please behave. Okay.

24 Orders the immediate release of both accused pursuant to Article 81(3)(c) of the
25 Statute, subject to any request by the Prosecutor under subparagraph (i) of this

1 Article.

2 Decides that the deadlines for appealing this decision run from the issuance of the full
3 reasoned decision.

4 Decides that the pending requests for provisional release have hereby become moot.

5 Judge Herrera Carbuccion has issued a dissenting opinion in writing which will be
6 filed this morning.

7 This concludes the Chamber's oral decision.

8 And I revert now to the Office of the Prosecutor to ask if the Office of the Prosecutor
9 wishes to make a request under Article 81(3)(c)(i) of the Statute?

10 MR MACDONALD: [11:17:49] Your Honours, because you are -- well, first of all,
11 thank you for allowing me the floor. We take note of your summary, oral summary
12 provided this morning. Now, the point is the following: In order for us to be able
13 to act responsibly and make meaningful submissions under 81(3)(c)(i), we need to
14 have the full substance of your decision, and we don't have that now. As the
15 Chamber knows, it's under exceptional circumstances, because we were expecting to
16 have a full written decision obviously notified later today following your
17 announcement this morning. And we would have requested and our intention was
18 to request 48 hours in order to make those meaningful and responsible assessments of
19 your decision, which we cannot make at this stage.

20 It was also our intention to argue that under the said decision, while it states that
21 continued detention can be ordered on exceptional circumstances, we were going to
22 argue that obviously if you have the power to detain, you have the power to release
23 under conditions, and that's what we were going to recommend this morning.

24 But right now I cannot make these submissions because we don't have the judgment.

25 Now, what I would recommend at this stage is a short recess of 30 minutes in order

1 for us to regroup, legally to assess our procedural avenues in light of the fact that this
2 decision is not available at this stage. And if you allow me just one second.

3 (Counsel confers)

4 MR MACDONALD: [11:20:10] I think, your Honours, it would be wise, also we
5 understand that there is a dissenting opinion which will be made available later today
6 maybe --

7 PRESIDING JUDGE TARFUSSER: [11:20:24] Let me say, so I cut it short.

8 MR MACDONALD: [11:20:27] Yes.

9 PRESIDING JUDGE TARFUSSER: [11:20:27] I asked if you will make a submission
10 or request under Article 81. And the Chamber was prepared, if you say yes, to
11 postpone until tomorrow, tomorrow morning at 10 o'clock. Let me finish.
12 You could say yes, and tomorrow then withdraw from it. So you have time until
13 tomorrow 10 o'clock to think about it and this could be a solution.

14 MR MACDONALD: [11:20:57] Thank you, your Honour. We accept that we
15 should reconvene tomorrow for 10 o'clock. That's amenable at this stage.

16 PRESIDING JUDGE TARFUSSER: [11:21:09] Yes. Therefore my question is do you
17 want to avail yourself of the possibility to make a request under Article 81?

18 MR MACDONALD: [11:21:17] Yes. We want to avail ourselves of that possibility.

19 PRESIDING JUDGE TARFUSSER: [11:21:21] The second question is are you ready
20 to do it now?

21 MR MACDONALD: [11:21:25] No.

22 PRESIDING JUDGE TARFUSSER: [11:21:26] Good.

23 MR MACDONALD: [11:21:27] In light of the fact that the decision is not available.

24 PRESIDING JUDGE TARFUSSER: [11:21:32] Therefore we adjourn the hearing to
25 tomorrow morning. The order of release is suspended until tomorrow morning,

- 1 until the decision on this.
- 2 Thank you very much. The hearing is adjourned.
- 3 THE COURT USHER: [11:21:41] All rise.
- 4 (The hearing ends in open session at 11.21 a.m.)