

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 Carbuccia and
7 Judge Geoffrey Henderson
8 Delivery of Decision - Courtroom 1
9 Wednesday, 16 January 2019
10 (The hearing starts in open session at 3.31 p.m.)
11 THE COURT USHER: [15:31:45] All rise.
12 Please be seated.
13 PRESIDING JUDGE TARFUSSER: [15:32:11] Good afternoon.
14 This is the Chamber's oral decision on the Prosecutor's request under Article 81(3)(c)(i)
15 of the Rome Statute to maintain Mr Gbagbo and Mr Blé Goudé in detention pending
16 appeal.
17 According to said provision, ordering the continued detention of an acquitted person
18 can only occur when there are exceptional circumstances, having regard to at least the
19 following factors:
20 Concrete risk of flight.
21 The seriousness of the offence charged.
22 The probability of success of an appeal.
23 Under Article 21 of the Statute, Article 21 of the Statute prescribes that the Court must
24 interpret and apply its applicable law, and I quote, "consistent with internationally
25 recognised human rights."

26

1 According to these norms, the measure of detention is and must remain exceptional,
2 in particular in light of the right of the accused to be presumed innocent. Today's
3 decision is an application of this presumption and exceptional reasons would be
4 needed to maintain Mr Laurent Gbagbo and Mr Charles Blé Goudé in detention.

5 Having received the Prosecutor's submission - and I refer to filing number 1235 of the
6 record - and heard the parties and participants' submissions, the Chamber, by
7 majority, Judge Herrera Carbuccion dissenting, decides as follows:

8 As regards the seriousness of the charges, although the charges are clearly serious in
9 nature, this in itself is not an extraordinary circumstance that could warrant detaining
10 acquitted persons. Almost everyone who is charged before this Court faces serious
11 charges. There is little point in creating a hierarchy of seriousness of offences under
12 the Statute and each case must be assessed on its own merits.

13 In this case, Mr Gbagbo and Mr Blé Goudé were accused of being responsible for
14 crimes against humanity committed in the aftermath of the 2010 presidential elections.
15 It is worth noting, in this regard, that the majority found that there is insufficient
16 evidence to conclude that crimes against humanity attributable to the accused were
17 committed in Ivory Coast.

18 The parties and participants have not pointed to any other factor that could indicate
19 that the charges in the present case were exceptionally serious, in the sense of, in the
20 meaning of Article 81.

21 Flight risk.

22 As regards the flight risk, the Chamber has no information as to where Mr Gbagbo
23 and Mr Blé Goudé wish to go. The Prosecutor has pointed out that on 4 February
24 2016 the current president of Ivory Coast has publicly stated that he would not send
25 more Ivorians to the ICC, because the country has a functioning judicial system. The

1 Chamber is of the view that this statement should be interpreted with reference to the
2 principle of complementarity. Accordingly, it can only apply to new cases arising
3 from the situation in Ivory Coast. It would be contradictory to state that Ivory Coast
4 has a functioning judiciary and abides by the rule of law and to refuse to comply with
5 a request from the ICC.

6 The Chamber is aware of the situation surrounding the case against Mrs Simone
7 Gbagbo, but as this matter is *sub judice* before another Chamber of this Court, this
8 Chamber will refrain from commenting on it.

9 Flight risk must be evaluated in respect of the individuals concerned. The fact that a
10 State Party may or may not fail to comply with a request for surrender does not
11 necessarily mean that the persons in question will not appear voluntarily or on their
12 own motion if summoned by the Court.

13 It is true...

14 (Trial Chamber confers)

15 PRESIDING JUDGE TARFUSSER: [15:39:37] The Chamber notes that both
16 Mr Gbagbo and Mr Blé Goudé have recognised the Court's jurisdiction and have
17 undertaken to return to the Court if and when their presence is required. Both,
18 today, have given assurances that they would comply with any orders of the Court.
19 There is no information before the Chamber that casts doubts as of the genuineness of
20 these assurances.

21 The Chamber is mindful of the Prosecutor's argument that Mr Blé Goudé went into
22 hiding and was in possession of false identity documents when he was arrested by
23 the Ghanaian authorities in March 2013. However, the majority is of the view that
24 these allegations date back more than five years and that a lot has changed since then.
25 It would be unreasonable, in our view, to rely on these elements to justify the

1 continued detention of a person who has just been acquitted.
2 The chances of success of an appeal.
3 This is an acquittal before the Defence has even presented any evidence. To the
4 extent that this is exceptional, it is so in the sense that it shows, in the view of the
5 majority, how exceptionally weak the Prosecutor's evidence is.
6 The fact that this decision was not rendered unanimously does not, in and of itself,
7 make the acquittal exceptional. More importantly, the fact that one judge would
8 have preferred to continue with the trial and hear from the Defence does not imply
9 that there is a high probability that the Appeals Chamber would overturn the
10 acquittal.
11 It should be noted, in this regard, that the dissenting judge is mistaken in stating that
12 the majority has acquitted Mr Gbagbo and Mr Blé Goudé by applying the beyond a
13 reasonable doubt standard. The majority limited itself to assessing the evidence
14 submitted and whether the Prosecutor has met the onus of proof to the extent
15 necessary for warranting the Defence to respond. Adopting this standard, it is not
16 appropriate for these proceedings to continue.
17 The majority also strongly reject the suggestion in paragraph 47 of Judge Herrera's
18 dissenting opinion that the majority had a duty to consider the relevance, probative
19 value and potential prejudice of each item of evidence for the purpose of this decision.
20 This only arises in the context of admissibility rulings when giving the Chamber's
21 decision pursuant to Article 74. This is not now relevant given the Chamber's
22 direction to the parties and participants that for the purpose of this procedure, all
23 evidence submitted is to be considered.
24 The majority understands that Judge Herrera Carbuccia conducted a superficial *prima*
25 *facie* review of the submitted evidence and that she is of the view that such a

1 superficial review leaves open the possibility that the reasonable Trial Chamber might
2 enter a conviction. Even so, it does not follow that a finding of sufficiency at this
3 stage will necessary actually result in a conviction.

4 It is worth pointing out that even the standard adopted by Judge Herrera Carbuccia
5 leaves open the possibility to go beyond a mere superficial assessment. This may
6 take place in exceptional cases such as the present one where the credibility and
7 reliability of the evidence is seriously questioned and where the Prosecutor contends
8 that guilt is based in whole or in part on questionable inferences to be drawn. In
9 these cases it is not appropriate for the trial to continue on the tenuous basis of such
10 superficial assessment.

11 In any event, we do not see how conducting a more thorough analysis of the evidence
12 increases the likelihood that the acquittal of Mr Gbagbo and Mr Blé Goudé will be
13 overturned on appeal.

14 It is, of course, possible that the Appeals Chamber will agree with the dissenting
15 Judge in respect of the applicable standard for motions for acquittal at this stage of the
16 proceedings. However, this is entirely speculative and unexceptional and, therefore,
17 cannot serve as a reason to maintain the accused in detention.

18 I come now to talk about other indicators of exceptional circumstances.

19 The Chamber has been unable to identify any other factors that could otherwise
20 indicate the existence of exceptional circumstances. More specifically, the Chamber,
21 by majority, is unpersuaded that either the rendering of the decision with detailed
22 reasons to follow or the novelty of the majority's approach before this Court is per se
23 an exceptional circumstance.

24 The Chamber is sympathetic with the victims' concerns. At the same time this does
25 not influence the Chamber's decision, which is limited by the standards contained in

1 the Rome Statute.

2 As to the request for stay of the present decision, requested by the Office of the
3 Prosecutor, the Chamber, by majority, considers that the Appeals Chamber is vested
4 with the responsibility to address requests concerning stay pending the potential
5 appeal to the present decision. The Chamber, by majority, also considers that the
6 time required to make the necessary logistical, organisational and diplomatic
7 arrangements should provide the Prosecutor with ample time to make the relevant
8 request before the Appeals Chamber.

9 For all these reasons, the Chamber, by majority, Judge Herrera dissenting, rejects the
10 Prosecutor's request to maintain Mr Gbagbo and Mr Blé Goudé in detention and
11 directs the Registry to obtain the necessary assurances from Mr Gbagbo and
12 Mr Blé Goudé and their respective Lead Counsel in ensuring the return of Mr Gbagbo
13 and/or Mr Blé Goudé, if and when their presence at the seat of the Court is requested,
14 as we said this morning.

15 Judge Herrera Carbuccion considers that in light of the particular circumstances of the
16 detention without a full and reasoned statement the accused should remain in
17 detention pending appeal pursuant to Article 81(3)(c)(i) of the Rome Statute.

18 I conclude by saying that victims or witnesses of this trial should not be interfered
19 with by the accused, because Article 70 is always applying.

20 This concludes the trial as far as this Chamber is concerned, concludes, first of all, the
21 oral, this oral decision. Thank you.

22 The hearing is adjourned.

23 THE COURT USHER: [15:50:25] All rise.

24 (The hearing ends in open session at 3.50 p.m.)