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No.: **ICC-02/11-01/15**
Date: **16 January 2019**

THE APPEALS CHAMBER

Before: Judge Chile Eboe-Osuji
Judge Howard Morrison
Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balugi Bosa

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ

Public

**Prosecution's Appeal pursuant to article 81(3)(c)(ii) of the Statute
and urgent request for suspensive effect**

Source: Office of the Prosecutor

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Introduction

1. The Prosecution hereby files its appeal pursuant to article 81(3)(c)(ii) of the Rome Statute, rule 154(1) of the Rules of Procedures and Evidence, and regulation 64 of the Regulations of the Court against the Trial Chamber's oral decision of 16 January 2019, rejecting the Prosecution's urgent request pursuant to article 81(3)(c)(i) of the Statute.¹
2. The Prosecution also makes a request for suspensive effect of its appeal under article 81(3)(c)(ii), pursuant to article 82(3) and rule 156(5). The main reason is that implementation of the Trial Chamber's decision to release Laurent Gbagbo and Charles Blé Goudé (the "Accused")² could create an irreversible situation, in the sense that even if the Appeals Chamber were to reverse the Trial Chamber's Decision and order that the Accused be detained (or conditionally released) during the Prosecution's appeal against the Judgement of Acquittal, such provisional measure cannot be implemented. This is because there is a concrete risk that, once released, the Accused will not appear for the continuation of the proceedings in this case including the present appeal. Ordering suspensive effect of the Trial Chamber's decision to release the Accused would result in the Accused being kept in detention pending the outcome of the Prosecution's appeal under article 81(3)(c)(ii).³
3. The Prosecution files its appeal, including its request for suspensive effect, on an urgent basis, as the Trial Chamber rejected the Prosecution's request for the Chamber to stay the Accused's unconditional release until the Appeals Chamber renders its decision under article 81(3)(c)(ii).

¹ ICC-02/11-01/11-T-234-ENG RT ("Decision" or "Appealed Decision").

² The Prosecution notes that, while article 81(3)(c) of the Statute refers to "the accused" ("In case of an acquittal, the accused shall be released immediately, subject to the following"), subparagraph (i) instead refers to "the person" ("Under exceptional circumstances [...] the Trial Chamber, at the request of the Prosecutor, may maintain the detention of the person pending appeal"). For ease of reference, the Prosecution in this submission refers to the "Accused" to mean Laurent Gbagbo and Charles Blé Goudé.

³ ICC-01/04-02/12-12 OA, para. 17.

4. In its document in support of the appeal against the Decision, the Prosecution will clarify that it would not oppose conditional release under rule 119, if the flight risk can be mitigated by imposing a series of conditions in relation to the release of the Accused. These conditions includes that they be released to a State Party to the Rome Statute other than Côte d'Ivoire, as well as conditions to preserve the integrity of the continued proceedings. This would be subject to identifying a State that is willing and able to enforce the necessary conditions. However, this is not a matter for the Appeals Chamber to decide on at this stage. Rather, by attaching suspensive effect to this appeal, the Appeals Chamber would simply freeze the effects of today's Decision, thereby maintaining the existing detention of the Accused until such time as it decides on the Prosecution's appeal against their release.

Procedural Background

5. Mr Gbagbo has been detained by the Court since 30 November 2011.⁴ Mr Blé Goudé since 22 March 2014.⁵ The trial against them began on 28 January 2016.⁶ The last witness called by the Prosecution testified in court on 19 January 2018.⁷ On 14 February 2018, the Defence for Mr Gbagbo filed his latest written request for interim release,⁸ which the Chamber denied by Majority on 20 April 2018.⁹
6. On 19 March 2018, upon invitation by the Chamber in its 9 February 2018 Order on the further Conduct of Proceedings,¹⁰ the Prosecution filed a Mid-Trial Brief.¹¹ The Defence for each Accused filed observations in relation to it and the continuation of trial proceedings on 23 April 2018.¹² Following the Chamber's

⁴ See ICC-02/11-01/11-656-Red, para. 3.

⁵ See ICC-02/11-02/11-186, para. 4.

⁶ ICC-02/11-01/15-T-9-ENG-ET.

⁷ ICC-02/11-01/15-T-220-Red-ENG-CT.

⁸ See ICC-02/11-01/15-1130-Red.

⁹ See ICC-02/11-01/15-1156-Red.

¹⁰ ICC-02/11-01/15-1124.

¹¹ ICC-02/11-01/15-1136.

¹² ICC-02/11-01/15-1157-Conf; ICC-02/11-01/15-1158-Conf.

Second Order on the further Conduct of Proceedings issued on 4 June 2018,¹³ the Defence for each Accused filed their motions seeking a judgement of acquittal on 23 July 2018.¹⁴ The Prosecution and the LRV responded on 10 September 2018.¹⁵ Hearings on oral submissions in relation to the Defence motions seeking a judgement of acquittal were held on 1 to 3 October and 12 to 22 November 2018.

7. On 10 December 2018, the Chamber by Majority decided to *proprio motu* review the basis for the continued detention of the Accused,¹⁶ and convened a hearing for that purpose. The hearing took place in open session on 13 December 2018 with submissions from the parties, participants and Registry representatives.¹⁷ During that hearing the Defence for both Accused requested that they be released, with or without conditions.¹⁸
8. On 15 January 2019,¹⁹ the Chamber by Majority orally granted the Defence motions for judgement of acquittal (“Acquittals”), indicating that it would provide its full and detailed reasoned decision (“Judgment”) as soon as possible, and deciding that the deadlines for appeal would run from the notification of the full reasoned decision. The Chamber by Majority also ordered the immediate release of both Accused pursuant to article 81(3)(c) of the Statute subject to any request by the Prosecution under article 81(3)(c)(i). It found that the Accused’s pending requests for provisional release had become moot. Finally, it suspended the order to immediately release the Accused until it had decided on any request by the Prosecution pursuant to article 81(3)(c)(i).
9. On 15 January 2019, the Prosecution expressed its intention to appeal the Judgment pursuant to article 81(1)(a) and requested the Trial Chamber to

¹³ ICC-02/11-01/15-1174.

¹⁴ ICC-02/11-01/15-1198; ICC-02/11-01/15-1199.

¹⁵ ICC-02/11-01/15-1207; ICC-02/11-01/15-1206-Conf.

¹⁶ ICC-02/11-01/15-1229, para. 10.

¹⁷ See ICC-02/11-01/15-T-231-CONF-ENG-ET and ICC-02/11-01/15-T-231-CONF-FRA-ET.

¹⁸ ICC-02/11-01/15-T-231-CONF-FRA-ET, pp. 28-47, especially pp. 45-47 (private session) and ICC-02/11-01/15-T-231-CONF-ENG-ET, pp. 47-65, especially pp. 62-63 (private session), 64-65.

¹⁹ ICC-02/11-01/15-T-232-ENG-T-ET.

maintain the detention of the Accused, or to release them subject to conditions, pending the appeal, pursuant to article 81(3)(c)(i).²⁰

10. On 16 January 2019, the Trial Chamber—by majority, Judge Herrera Carbuccion dissenting—issued the “Chamber’s oral decision on the Prosecutor’s request under article 81(3)(c)(i) of the Rome Statute to maintain Mr Gbagbo and Mr Blé Goudé in detention pending appeal”.²¹ In its Decision, the Trial Chamber rejected the Prosecution’s request in its entirety, including the Prosecution’s request for the Chamber to stay the Accused’s unconditional release until the Appeals Chamber renders its decision under article 81(3)(c)(ii).²² This Decision is the subject of the present appeal, which the Prosecution brings pursuant to article 81(3)(c)(ii) of the Statute.

Appeal pursuant to article 81(3)(c)(ii) of the Rome Statute

11. The Office of the Prosecutor (“Prosecution”) hereby appeals the Trial Chamber’s Decision to reject the Prosecution’s request under article 81(3)(c)(i).
12. Pursuant to Regulation 64(1), the Prosecution provides the following information:
- (a) *The name and number of the case or situation:*
13. Prosecutor v. Laurent Gbagbo and Charles Blé Goudé, ICC-02/11-01/15.
- (b) *The title and date of the decision being appealed:*
14. “Chamber’s oral decision on the Prosecutor’s request under article 81(3)(c)(i) of the Rome Statute to maintain Mr Gbagbo and Mr Blé Goudé in detention pending appeal”, dated 16 January 2019.
15. The transcript recording the decision is: ICC-02/11-01/11-T-234-ENG RT. The title of the decision is recorded at p. 1, lns. 14-17.

²⁰ ICC-02/11-01/15-1235 (“Prosecution Request”).

²¹ ICC-02/11-01/11-T-234-ENG RT (“Decision” or “Appealed Decision”).

²² Decision, p. 7.

(c) Whether the appeal is directed against the whole decision or part thereof:

16. The Appeal is directed against the whole decision.

(d) The specific provision of the Statute pursuant to which the appeal is filed:

17. The Prosecution files this appeal pursuant to article 81(3)(c)(ii) of the Rome Statute, rule 154(1) of the Rules of Procedure and Evidence and regulation 64 of the Regulations of the Court.

(e) The relief sought:

18. The Prosecution requests the Appeals Chamber to reverse and amend the Decision, and to order that the detention of Laurent Gbagbo and Charles Blè Goudè be maintained pending its decision on the appeal which it will file under article 81(1)(a).

Urgent Request for Suspensive Effect

19. The Prosecution makes an urgent request for suspensive effect of its appeal under article 81(3)(c)(ii), pursuant to article 82(3) and rule 156(5). The Appeals Chamber has previously held that in the context of an appeal under article 81(3)(c)(ii), ordering suspensive effect would result in the acquitted persons being kept in detention pending the outcome of the Prosecution's appeal.²³

20. To grant suspensive effect is a discretionary decision and depends upon the individual circumstances of the case.²⁴ In past decisions, the Appeals Chamber, when deciding on requests for suspensive effect, has considered whether the implementation of the decision under appeal (i) "would create an irreversible situation that could not be corrected, even if the Appeals Chamber eventually were to find in favour of the appellant", (ii) would lead to consequences that

²³ ICC-01/04-02/12-12 OA, para. 17.

²⁴ ICC-01/05-01/08-499 OA2, para. 11; ICC-01/05-01/13-718 OA9, para. 7.

“would be very difficult to correct and may be irreversible”; or (iii) “could potentially defeat the purpose of the appeal”.²⁵

21. The Appeals Chamber has held in the context for a request of suspensive effect of an appeal under article 81(3)(c)(ii), the Chamber must bear in mind the “exceptional nature of the continued detention of the acquitted person pending appeal.”²⁶ This means that “particularly strong reasons [for continued detention] must exist, which clearly outweigh [the Accused’s] statutory right to be released immediately following [their] acquittal”.²⁷
22. The main reason underlying the present request for suspensive effect is that there is a concrete risk that the Accused will not appear for the continuation of the proceedings (including this appeal). This would create an irreversible situation that could not be corrected, even if the Appeals Chamber eventually were to find in favour of the Prosecution (by ordering their continued detention or conditional release) and would potentially defeat the purpose of the Prosecution’s appeal under article 81(3)(c)(ii).
23. The Prosecution will develop its arguments as to the reasons requiring continued detention on appeal or, alternatively, release under clear guarantees and strict conditions in its document in support of appeal. For the purposes of the application for suspensive effect, it suffices for the Prosecution to establish that if today’s Decision is not suspended, and the Accused are unconditionally released, there is a concrete risk that they will not appear for the continuation of the proceedings, including this appeal. This arises from, inter alia, (i) the risk of a lack of cooperation of some States to which the Accused could move to; and (ii) the availability to the Accused of sufficient means and supporters to help them avoid the Court’s jurisdiction.

²⁵ ICC-01/04-02-12-12 OA, para. 18; ICC-01/05-01/08-817 OA3, para. 11; ICC-01/05-01/13-718 OA9, para. 6.

²⁶ ICC-01/04-02-12-12 OA, para. 23.

²⁷ ICC-01/04-02-12-12 OA, para. 23.

24. If released, the Accused would be free to travel to States not party to the Rome Statute, which would place the Accused outside the reach of the Court as those States have no duty to co-operate under the Rome Statute.
25. Even if the Accused were to be released to and remain in Côte d’Ivoire—a State Party—there is a concrete risk that the Accused’s further presence in proceedings at the Court could not be compelled. There is an outstanding ICC arrest warrant for Ms Simone Gbagbo and a request for her arrest and surrender which Côte d’Ivoire has yet to execute.²⁸ This is despite her case being declared admissible by Pre-Trial Chamber I and the Appeals Chamber in December 2014 and May 2015, respectively.²⁹ Further, Côte d’Ivoire’s President Alassane Ouattara has stated since 4 February 2016, that he would not send more Ivoirians to the ICC (“*je n’enverrai plus d’Ivoiriens à la CPI*”).³⁰ On 28 March 2017, Ms Simone Gbagbo was acquitted of crimes against humanity and war crimes by the Abidjan *Cour d’Assises*, which judgement was overturned on 26 July 2018 by the *Cour Suprême*, paving the way for new proceedings. President Ouattara signed an amnesty decree on 6 August 2018 granting amnesty to 800 detainees, among them Ms Simone Gbagbo.³¹ Ms Gbagbo is now living in Abidjan and, to the Prosecution’s knowledge, without any further restrictions or pending legal proceedings. Pre-Trial Chamber II has recently asked the Registrar to request relevant information from the Côte d’Ivoire authorities that could impact on the admissibility of the case.³²
26. The Accused have recourse to sufficient means and supporters to help them avoid further proceedings at the Court. Although they have been acquitted by the Trial

²⁸ Pre-Trial Chamber III, “Warrant of Arrest for Simone Gbagbo”, 29 February 2012, ICC-02/11-01/12-1. *See also* the Registry’s request to Côte d’Ivoire to arrest and surrender Ms Simone Gbagbo, 19 March 2012, ICC-02/11-01/12-6.

²⁹ *See* ICC-02/11-01/12-84, para. 2, and references therein.

³⁰ <https://www.europe1.fr/international/alassane-ouattara-je-nenverrai-plus-divoiriens-a-la-cpi-2663075> (last accessed 15 January 2019); https://www.youtube.com/watch?v=ryVMd1_wDDo (last accessed 15 January 2019).

³¹ <https://www.jeunefrique.com/612201/societe/cote-divoire-alassane-ouattara-amnistie-simone-gbagbo/> (last accessed 15 January 2019).

³² ICC-02/11-01/12-84, para. 6.

Chamber, the Prosecution has stated her intention to appeal the Acquittals. There is a concrete risk that the Accused could use their release to evade further proceedings at the Court including the present appeal. Mr Gbagbo still has a well-organised network of supporters who could facilitate his travel to a country in which his presence before the Court could not be compelled. In its 25 September 2017 decision, the Trial Chamber by Majority found that “there is sufficient information to show not only the network’s existence, but also the possibility that members of the network of supporters of Mr Gbagbo could break the law for him”,³³ and that “there is persuasive information to suggest that if released, Mr Gbagbo and his network of supporters could possibly make all efforts to bring him back to Côte d’Ivoire and thereafter avoid justice.”³⁴ The Majority noted that these were “demonstrable and clear risks”.³⁵ It concluded that:

Mr Gbagbo as former President of Côte d’Ivoire, as someone who still has influence and authority within his political party, and in fact is considered by his supporters as a genuine candidate for the presidential elections of 2020, is most likely to have sufficient means and supporters to help him abscond justice, not only by physically hiding from justice, but also by taking political and legal actions in other jurisdictions that could impede the continuation of trial.³⁶

27. The Chamber by Majority concluded that these findings remained valid as of 20 April 2018, the date of its previous decision on Mr Gbagbo’s interim release, as it did not have before it any information that would justify ordering the release of the Accused.³⁷ Mr Gbagbo recently reclaimed the presidency of his political party—the FPI—which illustrates the means and the extensive support base he continues to have at his disposal.³⁸ The Appeals Chamber has confirmed that the

³³ ICC-02/11-01/15-1038-Red, para. 22.

³⁴ ICC-02/11-01/15-1038-Red, para. 32.

³⁵ ICC-02/11-01/15-1038-Red, para. 63.

³⁶ ICC-02/11-01/15-1038-Red, para. 65.

³⁷ ICC-02/11-01/15-1156-Red, para. 38.

³⁸ With the death of Abou Dramane Sangaré, Laurent Gbagbo has reportedly reassumed the formal leadership of the FPI: “Côte d’Ivoire: Laurent Gbagbo reprend les rênes du FPI”. (dated 19 November 2018) <https://www.jeuneafrique.com/mag/665402/politique/cote-divoire-laurent-ou-simone-gbagbo-qui-est-le-patron-du-fpi/> (last accessed 15 January 2019).

existence of a political party supporting an accused is a factor relevant to determining the necessity of continued detention to ensure the person's appearance at trial, "because such support could indeed facilitate absconding".³⁹ The Appeals Chamber has also confirmed that the possibility that members of a network of supporters could break the law for the accused is a relevant consideration to determine the risk of avoidance of proceedings.⁴⁰

28. Mr Blé Goudé, like Mr Gbagbo, has a well-organised network of supporters – who include Mr Gbagbo's supporters. The existence of this network and Mr Blé Goudé's flight risk is further demonstrated by his past conduct. Mr Blé Goudé was, from 7 February 2006 until 28 April 2016, the subject of targeted sanctions by the United Nations Security Council.⁴¹ Essentially, he was the subject of a travel ban and the freezing of his assets. After his last rally of 26-27 March 2011 at the *Place de la République* in Abidjan, Mr Blé Goudé eventually fled to Ghana.⁴² The UN Group of Experts on Côte d'Ivoire, in its 15 March 2013 Report (CIV-OTP-0042-0686), stated that Mr Blé Goudé had breached both his travel ban and the restriction of his assets.⁴³ He was arrested in Ghana on 17 January 2013.⁴⁴ He had in his possession false passports from Mali and Côte d'Ivoire,⁴⁵ and false identity cards also from Mali and from Benin,⁴⁶ all under false names.⁴⁷ The Government of Benin initiated investigations into the case and reported to the UN Group of Experts that two local Beninese officers had been arrested in order to assist enquiries. According to the Beninese authorities, the *Mairie* or Town Hall of

³⁹ ICC-02/11-01/11-278-Red, para. 59 (referring to a detained person).

⁴⁰ ICC-02/11-01/15-992-Red, para. 43 (referring to a detained person).

⁴¹ See SC/8631, 7 February 2006 (Security Council Committee established pursuant to resolution 1572 (2004) approved on 7 February 2006 that Mr Blé Goudé be subject to the measures imposed by paras. 9 and 11 of S/RES/1572 (2004) and renewed by para. 1 of S/RES/1643 (2005)) and S/RES/2283 (2016), 28 April 2016, para. 1.

⁴² P-0435, ICC-02/11-01/15-T-90-Red2-FRA-CT, pp. 57-58. See also ICC-02/11-01/15-1136-Conf-Anx1-Corr3, para. 598.

⁴³ UN Group of Experts Report S/2013/228, 15 March 2013, CIV-OTP-0042-0686 at 0732, para. 286.

⁴⁴ UN Group of Experts Report S/2013/228, 15 March 2013, CIV-OTP-0042-0686 at 0732, para. 286.

⁴⁵ UN Group of Experts Report S/2013/228, 15 March 2013, CIV-OTP-0042-0686 at 0953 and 0954, respectively.

⁴⁶ UN Group of Experts Report S/2013/228, 15 March 2013, CIV-OTP-0042-0686 at 0955 and 0956, respectively.

⁴⁷ See UN Group of Experts Report S/2013/228, 15 March 2013, CIV-OTP-0042-0686 at 0958.

Porto-Novo created an identity card under the name of Dossevi, Armand without any photograph or fingerprints. Later, fraudulently, the picture of Mr Blé Goudé was added. According to the Beninese authorities, it is clear that the authorities of Porto-Novo were complicit in the forgery.⁴⁸ As regards the Ivorian passport of Mr Blé Goudé, it was issued by a Ms Blé Bernardine Gisèle, a sub-director at the border and aviation police, who appears to be the same signing authority who issued the false passport of Commander Anselme Séka Yapo, the former *aide de camp* of Ms Simone Gbagbo.⁴⁹

29. The Prosecution submits that these facts constitute particularly strong reasons justifying why the Appeals Chamber should grant suspensive effect of the appeal under article 81(3)(c)(ii). The Prosecution will develop these arguments and offer additional ones establishing the “exceptional circumstances” test enshrined in article 81(3)(c)(i) in its document in support of the appeal.

Relief Sought

30. Accordingly, the Prosecution respectfully requests that the Appeals Chamber:

- i. Accept this Notice of Appeal against the “Chamber’s oral decision on the Prosecutor’s request under article 81(3)(c)(i) of the Rome Statute to maintain Mr Gbagbo and Mr Blé Goudé in detention pending appeal”, dated 16 January 2019, pursuant to Article 81(3)(c)(ii) of the Statute, Rule 154(1) of the Rules and Regulation 64(1) of the RoC; and
- ii. Grant suspensive effect to such an appeal, pursuant to Article 82(3) of the Statute and Rule 156(5) of the Rules, on an expedited basis and order that

⁴⁸ See UN Group of Experts Report S/2013/228, 15 March 2013, CIV-OTP-0042-0686 at 0957 for the report of the Beninese authorities.

⁴⁹ See UN Group of Experts Report S/2013/228, 15 March 2013, CIV-OTP-0042-0686 at 0733, para. 290; see also UN Group of Experts Report S/2012/196, 16 March 2012, CIV-OTP-0021-0125 at 0370 and 0371 for the forged passport of Mr Seka Seka.

the detention of the Accused be maintained pending the decision on the Prosecution's appeal under article 81(3)(c)(ii).



Fatou Bensouda, Prosecutor

Dated this 16th day of January 2019

At The Hague, The Netherlands