

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 23 July 2015

THE APPEALS CHAMBER

Before:

Judge Piotr Hofma ski, Presiding Judge

Judge Kuniko Ozaki

Judge Sanji Mmasenono Monageng

Judge Howard Morrison

Judge Chang-ho Chung

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

**IN THE CASE OF THE PROSECUTOR v. LAURENT GBAGBO
AND CHARLES BLÉ GOUDÉ**

**Confidential *ex parte* redacted, available to the Prosecutor, Mr Laurent Gbagbo
and the Office of Public Counsel for victims only**

**Decision on the Prosecutor's request for an unredacted or less redacted version
of the document in support of appeal**

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

REGISTRY

Registrar
Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I entitled “Ninth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60(3) of the Statute” of 8 July 2015 (ICC-02/11-01/15-127-Red),

Having before it the “Prosecution’s request for a unredacted or less redacted version of the “Document à l’appui de l’appel de la ‘Ninth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60(3) of the Statute’ (ICC-02/11-01/15-127-Conf) du 8 juillet 2015” (ICC-02/11-01/15-147-Conf-Exp-Red OA)” dated 20 July 2015 and registered on 21 July 2015 (ICC-02/11-01/15-149-Conf-Exp),

Renders the following

DECISION

1. The Prosecutor’s aforementioned request is granted to the extent that a less redacted version of the “Document à l’appui de l’appel de la «Ninth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60(3) of the Statute » (ICC-02/11-01/15-127-Conf) du 8 juillet 2015” is ordered.
2. Mr Gbagbo shall file, by 12h00 on Friday, 24 July 2015, a less redacted version of the “Document à l’appui de l’appel de la «Ninth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60(3) of the Statute » (ICC-02/11-01/15-127-Conf) du 8 juillet 2015” as confidential *ex parte*, available to Mr Gbagbo, the Prosecutor and the Office of Public Counsel for victims, where the following information is redacted:
 - a. Information identifying the State with which consultations have been held, appearing in paragraphs 51, 52, 60, 62 and 65 of the document;
 - b. The medical recommendation [REDACTED] appearing in paragraphs 5, 53 and 66; and

- c. The last sentence of paragraph 53 and the last sentence of paragraph 68.
3. The Prosecutor and the Office of Public Counsel for victims may file their responses to the Document in Support of Appeal by 16h00 on Wednesday, 29 July 2015.

REASONS

1. On 16 July 2015, Mr Laurent Gbagbo (hereinafter: "Mr Gbagbo") filed the "Document à l'appui de l'appel de la «Ninth decision on the review of Mr Laurent Gbagbo's detention pursuant to Article 60(3) of the Statute » (ICC-02/11-01/15-127-Conf) du 8 juillet 2015"¹ (hereinafter: "Document in Support of Appeal").
2. On 21 July 2015, the Prosecutor filed a request for an unredacted or less redacted version of the Document in Support of Appeal² (hereinafter: "Prosecutor's Request").
3. On 22 July 2015, Mr Gbagbo filed a response to the Prosecutor's request³ (hereinafter: "Mr Gbagbo's Response").
4. The Prosecutor submits that the information redacted from the Document in Support of Appeal should be made available to her so that she can make meaningful submissions.⁴ The Prosecutor refers to Trial Chamber I's decision that medical information which has an impact on the proceedings should be made available to her

¹ ICC-02/11-01/15-147-Conf-Exp. A confidential redacted *ex parte* version available also to the Prosecutor was registered on 20 July 2015 (ICC-02/11-01/15-147-Conf-Exp-Red).

² "Prosecution's request for a unredacted or less redacted version of the "Document à l'appui de l'appel de la 'Ninth decision on the review of Mr Laurent Gbagbo's detention pursuant to Article 60(3) of the Statute' (ICC-02/11-01/15-127-Conf) du 8 juillet 2015" (ICC-02/11-01/15-147-Conf-Exp-Red OA)", ICC-02/11-01/15-149-Conf-Exp.

³ "Réponse à la « Prosecution's request for a unredacted or less redacted version of the «Document à l'appui de l'appel de la «ninth decision on the review of Mr Laurent Gbagbo's detention pursuant to Article 60(3) of the Statute» (ICC-02/11-01/15-127-Conf) du 8 juillet 2015 » (ICC-02/11-01/15-147Conf-Exp-Red OA) »", ICC-02/11-01/15-156-Conf-Exp. A confidential redacted *ex parte* version available to the Prosecutor and Mr Gbagbo only was registered on the same day (ICC-02/11-01/15-156-Conf-Exp-Red).

⁴ Prosecutor's Request, para. 3.

and that proceedings regarding future requests for conditional release on health grounds should be conducted *inter partes*.⁵

5. In response to the Prosecutor's Request, Mr Gbagbo submits that the redacted information is covered by medical privilege and concerns the right to private life, and that the Prosecutor has not provided relevant reasons for obtaining that information.⁶ Mr Gbagbo contends that, while he does not object to the Prosecutor's participation in the discussion on conditional release, such participation would be warranted when the process aimed at ensuring his proper treatment is completed.⁷ Mr Gbagbo submits that the Prosecutor does not need access to medical reports or the information redacted from the Document in Support of Appeal to make submissions on the issue of whether Trial Chamber I erred in not considering itself seized of a request for conditional release.⁸

6. The Appeals Chamber notes that contrary to Mr Gbagbo's submissions the information redacted from the Document in Support of Appeal contains hardly any detail on the state of his health nor does it disclose the content of relevant medical reports. Similarly, there is little detail of the process aimed at ensuring his proper treatment. Furthermore, references to the fact that conditional release to a State is or was at some point contemplated are redacted from the Document in Support of Appeal. However, the Appeals Chamber notes that this information is not only available to the Prosecutor, but is in fact public.⁹

7. Without prejudice to (i) Pre-Trial Chamber I's and Trial Chamber I's decisions regarding the level of confidentiality accorded to information concerning the state of health of Mr Gbagbo, and (ii) the level of confidentiality of documents regarding the process aimed at ensuring his proper medical treatment, the Appeals Chamber accepts

⁵ Prosecutor's Request, para. 3 referring to Status Conference of 16 June 2015, ICC-02/11-01/15-T-2-Conf-Exp-ENG, p. 5, lines 2-18; p. 8, lines 1-14.

⁶ Mr Gbagbo's Response, para. 17.

⁷ Mr Gbagbo's Response, para. 40.

⁸ Mr Gbagbo's Response, para. 45.

⁹ See, for instance, Pre-Trial Chamber I, "Fourth decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute", 11 November 2013, ICC-02/11-01/11-558, para. 57: "In this regard, the Chamber shares the view expressed by the Defence that conditional release, either to the State which recently offered to host Mr Gbagbo in the event of an interim release or to another State, should be considered after the necessary steps have been completed to determine Mr Gbagbo's health-related needs".

that details of Mr Gbagbo's health and/or the content of medical reports, as well as details of the process concerning his treatment, may be withheld from the Prosecutor, given the scope of the present appeal. However, the Appeals Chamber is not persuaded that there is justification for redactions applied to other information.

8. For these reasons, the Appeals Chamber directs Mr Gbagbo to file a less redacted version of the Document in Support of the Appeal, where the following information is redacted:

- a. Information identifying the State with which consultations have been held, appearing in paragraphs 51, 52, 60, 62 and 65 of the Document in Support of Appeal;
- b. The medical recommendation [REDACTED], appearing in paragraphs 5, 53 and 66; and
- c. The last sentence of paragraph 53 and the last sentence of paragraph 68.

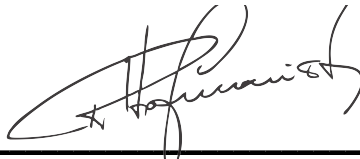
9. Mr Gbagbo is therefore directed to file a less redacted version of the Document in Support of Appeal, in accordance with the above instructions, by 12h00 on Friday, 24 July 2015.

10. In addition, the Appeals Chamber sees no justification to withhold the information contained in the Document in Support of Appeal, as redacted pursuant to the present decision, from the Office of Public Counsel for victims. Accordingly, in the interests of permitting a more meaningful participation of victims in these proceedings, the Appeals Chamber directs Mr Gbagbo, pursuant to regulation 23*bis* of the Regulations of the Court, to file the above-mentioned less redacted version of the Document in Support of Appeal as confidential *ex parte* available to the Prosecutor and the Office of Public Counsel for victims.

11. Finally, the Appeals Chamber notes that until the implementation of the present decision the Prosecutor and the Office of Public Counsel for victims have had no access to a less redacted version of the Document in Support of Appeal. The Appeals

Chamber therefore considers it appropriate to extend the time limit for responses to the Document in Support of Appeal until 16h00 on Wednesday, 29 July 2015.

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



Judge Piotr Hofma ski
Presiding Judge

Dated this 23rd day of July 2015

At The Hague, The Netherlands