



Original: English

**No. ICC-02/11-01/15 OA13
Date: 5 October 2017**

THE APPEALS CHAMBER

Before: Judge Piotr Hofmański, 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**

Public document

Decision on Mr Laurent Gbagbo's Notice 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 the Defence
Mr Emmanuel Altit
Ms Agathe Bahi Baroan

Legal Representatives of Victims
Ms Paolina Massidda

Counsel for Charles Blé Goudé
Mr Geert-Jan Alexander Knoops
Mr Claver N'dry

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 “Decision on Mr Gbagbo’s Detention” of 26 September 2017 (ICC-02/11-01/15-1038-Conf),

Having before it the “Defence Notice of Appeal against Trial Chamber I’s ‘Decision on Mr Gbagbo’s detention’ (ICC-02/11-01/15-1038) to continue Laurent Gbagbo’s detention” dated 2 October 2017 and registered on 4 October 2017 (ICC-02/11-01/15-1042-Conf-tENG) and the “Document à l’appui de l’appel de la « Decision on Mr Gbagbo’s Detention » (ICC-02/11-01/15-1038-Conf) du 26 septembre 2017” dated 4 October and registered on 5 October 2017 (ICC-02/11-01/15-1045-Conf),

Pursuant to regulation 29 and 64 (6) of the Regulations of the Court,

Renders, by majority, Judge Morrison dissenting, the following

DECISION

The “Defence Notice of Appeal against Trial Chamber I’s ‘Decision on Mr Gbagbo’s detention’ (ICC-02/11-01/15-1038) to continue Laurent Gbagbo’s detention” is dismissed *in limine*.

REASONS

I. PROCEDURAL HISTORY

1. On 26 September 2017, Trial Chamber I rendered its “Decision on Mr Gbagbo’s Detention”¹ (“Impugned Decision”).
2. On 2 October 2017, Mr Laurent Gbagbo (“Mr Gbagbo”) filed the “Defence Notice of Appeal against Trial Chamber I’s ‘Decision on Mr Gbagbo’s detention’

¹ ICC-02/11-01/15-1038-Conf dated 25 September 2017 and registered on 26 September 2017. A public redacted version ICC-02/11-01/15-1038-Red was also registered on 26 September 2017.

(ICC-02/11-01/15-1038) to continue Laurent Gbagbo's detention"² ("Notice of Appeal").

3. On 4 October Mr Gbagbo filed a document entitled "Document à l'appui de l'appel de la « Decision on Mr Gbagbo's Detention » (ICC-02/11-01/15-1038-Conf) du 26 septembre 2017".³

II. NON-COMPLIANCE WITH REGULATION 64 OF THE REGULATIONS OF THE COURT, AS AMENDED

4. Regulation 64 (5) of the Regulations of the Court ("Appeals under rule 154"), as amended on 12 July 2017, which entered into force on 20 July 2017, provides:

For appeals filed under article 82, paragraph 1 (b) and rule 154, the notice of appeal shall state:

- a) The name and number of the case or situation;
- b) The title and date of the decision being appealed;
- c) Whether the appeal is directed against the whole decision or part thereof;
- d) The specific provision of the Statute pursuant to which the appeal is filed;
- e) The grounds of appeal, cumulatively or in the alternative, specifying the alleged errors and how they affect the appealed decision;
- f) The relief sought.

5. The Appeals Chamber notes that, while Mr Gbagbo's Notice of Appeal contains some limited information as to the general subject-matter of the appeal, it does not comply with sub-regulation (e) of regulation 64 (5) of the Regulations of the Court because it fails to set out the grounds of appeal, "cumulatively or in the alternative, specifying the alleged errors and how they affect the appealed decision". The Appeals Chamber notes that, at paragraphs 74-75 of the Notice of Appeal, Mr Gbagbo refers to paragraphs of regulation 64 of the Regulations of the Court as it read prior to its amendment in July this year. Thus, it appears that Counsel for Mr Gbagbo relied on an outdated version of the Regulations of the Court, which is no longer in force.

² ICC-02/11-01/15-1042-Conf-tENG dated 2 October and registered on 4 October 2017; original French version, dated 2 October 2017 (ICC-02/11-01/15-1042-Conf).

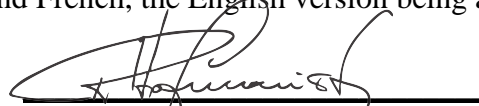
³ ICC-02/11-01/15-1045-Conf.

6. Regulation 29 of the Regulations of the Court provides that “[i]n the event of non-compliance by a participant with the provisions of any regulation [...] the Chamber may issue any order that is deemed necessary in the interests of justice”. In the case at hand, the Appeals Chamber considers that the degree of non-compliance with the Regulations of the Court displayed by Mr Gbagbo and his Counsel is unacceptable. As mentioned above, the amended regulations have been in effect for almost three months and, in the view of the Appeals Chamber, the appellant has failed to demonstrate the required diligence that is expected of participants before the Court. The Appeals Chamber considers that a central purpose of the amendment of the regulations was to expedite appeals proceedings in respect of appeals against decision on interim release. Notably, the Appeals Chamber is expected to give directions on the conduct of the proceedings within two days of the filing of the notice of appeal (see regulation 64 (6) of the Regulations of the Court). To allow the Appeals Chamber to give these directions, and, in particular, determine whether to proceed by way of a hearing or by way of written submissions only, it is essential that the appellant provide in the notice of appeal the information required under regulation 64 (5) (e) of the Regulations of the Court, as amended.

7. In the circumstances, the Appeals Chamber cannot condone Mr Gbagbo’s non-compliance with regulation 64 of the Regulations of the Court. In light of the strict timelines prescribed by regulation 64 of the Regulations of the Court for the efficient conduct of proceedings on interim release, the Appeals Chamber considers that to allow Mr Gbagbo to re-file his Notice of Appeal at this stage of the proceedings would unduly infringe on these timelines. The Notice of Appeal is therefore dismissed *in limine*.

Judge Howard Morrison appends a dissenting opinion to this decision.

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



Judge Piotr Hofmański
Presiding Judge

Dated this 5th day of October 2017

At The Hague, The Netherlands