



Original: **English**

No.: **ICC-02/11-01/12**
Date: **18 December 2014**

THE APPEALS CHAMBER

Before: Judge Sanji Mmasenono Monageng
Judge Sang-Hyun Song
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Anita Ušacka

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR v. SIMONE GBAGBO

Public

**Response to the Republic of Côte d'Ivoire's Requests for Suspensive Effect and
Extension of Time
(ICC-02/11-01/12-48)**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Introduction

1. The notice of appeal filed by the Government of the Republic of Côte d'Ivoire ("GoCIV") on 17 December 2014 contains two ancillary requests,¹ to which the Prosecution hereby responds.
2. The Appeals Chamber should decline to suspend the effect of the Pre-Trial Chamber's decision on the admissibility of the case against Simone Gbagbo,² which requires the surrender of Ms Gbagbo to the jurisdiction of the Court without delay.³ The GoCIV fails to show the existence of circumstances meriting the exercise of the Appeals Chamber's discretionary power to intervene in this matter.
3. The Prosecution does not oppose the GoCIV's request for an extension of time to file the document in support of its appeal against the Decision.

Submissions

The request for suspensive effect should be denied

4. The request for suspensive effect should be denied because the GoCIV fails to make an adequate showing that the implementation of the Decision will have the potentially difficult and irreversible consequences that it claims.⁴ In the circumstances of this case, the surrender of Ms Gbagbo to the jurisdiction of the Court is a procedural step which occasions little prejudice to the GoCIV, or to the course of justice in Côte d'Ivoire, and which may be readily reversed if required.
5. The GoCIV correctly identifies the controlling law governing the exercise of the Appeals Chamber's discretion to grant suspensive effect.⁵ As recently reaffirmed, suspensive effect may be ordered when the implementation of the impugned

¹ ICC-02/11-01/12-48 ("Notice").

² ICC-02/11-01/12-47-Red ("Decision").

³ See Decision, para.80.

⁴ *Contra* Notice, para.17.

⁵ Notice, para.12 (citing ICC-01/04-01/07-3344 OA13, para.6). See also para.11.

decision would create an irreversible situation that could not be corrected, or would lead to a consequence that would be very difficult to correct and may be irreversible, or could potentially defeat the purpose of the appeal.⁶ In exercising its discretion, the Appeals Chamber will consider the specific circumstances of the case and the factors it considers relevant.⁷

6. The GoCIV rightly concedes that the consequences of the Decision are not irreversible, but maintains that they might nonetheless be very difficult to correct, and potentially irreversible, and might potentially defeat the purpose of the appeal.⁸ However, the GoCIV fails to substantiate these claims in any respect.

7. The GoCIV's claim that the surrender of Ms Gbagbo to the jurisdiction of the Court would create "uncertainty" in the conduct of relevant domestic criminal proceedings is largely unexplained.⁹ In particular, the GoCIV fails to show what legal uncertainty actually exists, given the clear legal basis upon which this appeal will be resolved and any ensuing proceedings against Ms Gbagbo before this Court will be conducted. Ms Gbagbo will either face criminal proceedings before this Court or the resumption of criminal proceedings in Côte d'Ivoire. Nor in any event does the GoCIV show any real prejudice resulting from any uncertainty, or explain its view as to why any uncertainty would in fact be difficult to correct. Submissions of this kind are insufficient to merit the exercise of the Appeals Chamber's discretion in favour of the GoCIV's request.

8. Furthermore, the GoCIV does not show any impediment to the prompt resumption of domestic proceedings against Ms Gbagbo in the event that the appeal is successful. Nor is there any realistic basis to apprehend any difficulty in transferring Ms Gbagbo back to the GoCIV's jurisdiction in such circumstances.

⁶ See ICC-01/11-01/11-387 OA4, para.22 (citing ICC-01/04-01/07-3344 OA13, para.6).

⁷ ICC-01/11-01/11-387 OA4, para.22.

⁸ Notice, para.14.

⁹ *Contra* Notice, para.15.

Nothing in the present circumstances suggests that the course of justice will be thwarted by the immediate surrender of Ms Gbagbo in accordance with the Decision.¹⁰ By contrast, consistent with the Statute of this Court, the course of justice favours the prompt surrender of Ms Gbagbo in accord with Côte d'Ivoire's obligations.

The Prosecution does not oppose the request for extension of time

9. In the circumstances of this case, the Prosecution does not oppose the extension of time requested by the GoCIV to file the document in support of its appeal.¹¹

Conclusion

10. For the reasons above, the Appeals Chamber should decline to order suspensive effect of the Decision. The Prosecution does not oppose the GoCIV's requested extension of time, so that the document in support of the GoCIV's appeal is filed on 9 January 2015.



Fatou Bensouda, Prosecutor

Dated this 18th day of December 2014

At The Hague, The Netherlands

¹⁰ *Contra* Notice, para.16.

¹¹ *See* Notice, paras.19-20.