



Original: **English**

No.: ICC-02/11-01/15  
Date: 27 February 2020

**THE APPEALS CHAMBER**

**Before:** Judge Chile Eboe-Osuji, Presiding  
Judge Howard Morrison  
Judge Piotr Hofmański  
Judge Luz del Carmen Ibáñez Carranza  
Judge Solomy Balungi Bossa

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE**

**IN THE CASE OF**

***THE PROSECUTOR v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ***

**Public**

**Prosecution Response to the Requête de la Défense afin d'obtenir des pages  
additionnelles pour pouvoir répondre au mémoire d'appel de l'Accusation déposé  
le 15 october 2019**

**Source: Office of the Prosecutor**

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

**The Office of the Prosecutor**

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**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for Victims**

**The Office of Public Counsel for the  
Defence**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Peter Lewis

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section Other**

1. On 26 February 2020, the Defence for Laurent Gbagbo filed a request seeking a page extension to 130 pages for Mr Gbagbo's response to the Prosecution's appeal brief ("Request").<sup>1</sup> The Prosecution files this response to the Request in accordance with the Appeals Chamber's order of 26 February 2020.<sup>2</sup>
2. None of the reasons offered by the Defence demonstrate exceptional circumstances warranting a page extension for the Defence response brief, amounting to almost an additional one-third of his existing page entitlement of 100 pages.<sup>3</sup>
3. In particular, the Defence's primary premise for the Request—namely that the Prosecution must advance individualised arguments in respect of each accused so as to fully benefit from its entitlement under Regulation 63(3) of the Regulations of the Court—is incorrect.<sup>4</sup> Regulation 63(3) makes no such stipulation as to the content or structure of consolidated appeal briefs, or even the nature of the appeal. The Defence's interpretation of the provision would contradict its plain text and make its operation both unpredictable and unworkable.
4. Further, contrary to the Defence's submission, the footnotes in the Prosecution's appeal brief comply with Regulation 36(3) and do not contain substantive argument.<sup>5</sup> Rather, and in keeping with the Prosecution's usual citation practice, most, if not all, footnotes cite to authorities or to evidence and contain quotes or summaries of the relevant cited extracts, purely for ease of reading.<sup>6</sup> These quotes and summaries do not amount to substantive arguments, which are themselves made in the body of the appeal brief.

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<sup>1</sup> ICC-02/11-01/15-1309 ("Request"), p. 7.

<sup>2</sup> ICC-02/11-01/15-1310, p. 3 (ordering the Prosecution to file any response to the Request by 4pm on 28 February 2020).

<sup>3</sup> See Regulation 37(2), Regulations of the Court. See also ICC-01/18-11 ("*Palestine* Page Limit Decision"), para. 9, ICC-01/09-02/11-590 ("*Muthaura and Kenyatta* Page Limit Decision"), para. 4.

<sup>4</sup> Request, para. 6.

<sup>5</sup> Request, para. 7.

<sup>6</sup> *Contra* Request, para. 7 (referring to footnotes 354 and 364 of the Appeal Brief, which refer, in turn, to extracts from transcripts or decisions, and referring also to footnote 83 of the Appeal Brief, which cannot, in isolation, sustain the Defence argument).

5. Moreover, that the appeal challenges certain factual findings of the Trial Chamber, or raises novel questions before this Court,<sup>7</sup> are characteristics that would be common to most appeals filed in this Court, and are not *per se* reasons justifying a page extension for a response brief in this instance.

6. Nor is it an exceptional circumstance that the response will be drafted in French, which the Defence asserts necessarily entails a greater proliferation of words than drafting in English.<sup>8</sup> Parties may file in either of the working languages of this Court,<sup>9</sup> and in all cases are fairly constrained by the same page limits.

7. In any event, the Prosecution notes that Mr Gbagbo will have a further opportunity to make written submissions on the appeal if the Appeals Chamber grants any request by Mr Gbagbo to supplement his response following receipt of the revised French translation of the appeal brief.<sup>10</sup>

8. Notwithstanding its views as to the merits of the Request, the Prosecution leaves the matter to the discretion of the Appeals Chamber. If the Chamber is minded to grant the Request in full or in part, the Prosecution respectfully requests that the Chamber grant it a commensurate extension of pages (*i.e.* additional to the 70 pages provided in Regulation 63(3) for consolidated replies) for any reply that it may be permitted to file pursuant to any request for leave to reply, should it seek leave.

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<sup>7</sup> Request, paras. 8-10.

<sup>8</sup> Request, para. 12.

<sup>9</sup> Regulation 39(1), Regulations of the Court.

<sup>10</sup> ICC-02/11-01/15-1289 (“*Gbagbo* Time Extension Decision”), para. 25.

### Conclusion

9. Mr Gbagbo's request for an additional 30 pages for his response brief fails to demonstrate the exceptional circumstances required by regulation 37(2). In the event the Chamber exercises its discretion and grants the Request, the Prosecution respectfully requests that the Chamber grant it a commensurate extension in the number of pages for any consolidated reply that the Prosecution may be permitted to file, pursuant to any request for leave to do so, should there be one.



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Fatou Bensouda, Prosecutor

Dated this 27<sup>th</sup> day of February 2020

At The Hague, The Netherlands