

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/11-01/12
Date: 20 February 2014

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Single Judge

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF *THE PROSECUTOR* v. *SIMONE GBAGBO***

Public

Decision on Côte d'Ivoire's request to provide additional documents in support of its challenge to the admissibility of the case against Simone Gbagbo

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Counsel for the Defence

Sylvia Geraghty

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Paolina Massidda

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

States Representatives

Jean-Pierre Mignard

Jean-Paul Benoit

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Judge Silvia Fernández de Gurmendi, Single Judge for Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”), responsible for carrying out the functions of the Chamber in relation to the situation in the Republic of Côte d’Ivoire and the cases emanating therefrom,¹ issues the following decision on the “*Demande d’autorisation de la République de Côte d’Ivoire aux fins de déposer des documents complémentaires à l’appui de la requête de la République de Côte d’Ivoire sur la recevabilité de l’Affaire Le Procureur c. Simone Gbagbo, et demande de sursis à exécution en vertu des articles 17, 19 et 95 du Statut de Rome*” (the “Request”), filed on 14 February 2014.²

1. On 1 October 2013, Côte d’Ivoire filed the “*Requête de la République de Côte d’Ivoire sur la recevabilité de l’Affaire Le Procureur c. Simone Gbagbo, et demande de sursis à exécution en vertu des articles 17, 19 et 95 du Statut de Rome*” (the “Admissibility Challenge”), challenging the admissibility of the case against Simone Gbagbo before the Court.³

2. On 15 November 2013, the Chamber issued the “Decision on the conduct of the proceedings following Côte d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo”,⁴ whereby the Chamber, *inter alia*, invited the Prosecutor, the Defence of Simone Gbagbo and Paolina Massidda from the Office of Public Counsel for victims (the “OPCV”) as legal representative of the victims who have already communicated with the Court in relation to the case to submit observations on the Admissibility Challenge, if any, no later

¹ ICC-02/11-01/12-5.

² ICC-02/11-01/12-30.

³ ICC-02/11-01/12-11-Conf. A public redacted version is also available (ICC-02/11-01-12-11-Red).

⁴ ICC-02/11-01/12-15.

than Monday, 13 January 2014.⁵ This time limit was subsequently extended to Monday, 24 February 2014.⁶

3. On 14 February 2014, Côte d'Ivoire filed the Request, seeking authorization to file additional documentation in support of its Admissibility Challenge. In particular, Côte d'Ivoire submits that it *"est désormais en mesure de produire une quinzaine de documents complémentaires, ayant directement trait aux procédures visant Mme Gbagbo devant les juridictions ivoiriennes. Ces documents, qui couvrent la période allant du mois d'avril 2012 au mois de février 2014, sont notamment constitués d'actes d'instruction (mandats de dépôt, transport sur les lieux, constitutions de parties civiles) et the procès-verbaux d'audition de parties civiles et d'interrogatoires de l'inculpée"*.⁷

4. The Prosecutor filed her response to the Request on 17 February 2014,⁸ while the responses from the OPCV⁹ and the Defence¹⁰ were filed on 18 February 2014.

5. The Single Judge notes article 19 of the Rome Statute, and rules 58 and 59 of the Rules of Procedure and Evidence (the "Rules").

6. By virtue of rule 58(2) of the Rules, the Chamber has the discretionary power to decide on the procedure to be followed upon receipt of an admissibility challenge. In doing so, due consideration must be given to the different interests involved and the circumstances of each specific case.

⁵ *Ibid.*, p. 9.

⁶ Pre-Trial Chamber I, "Decision on the 'Defence Request for an Extension of Time'", ICC-02/11-01/12-24; and *id.*, "Decision on the Prosecutor's and the OPCV's requests for extension of time", ICC-02/11-01/12-29.

⁷ Request, para. 5.

⁸ ICC-02/11-01/12-32.

⁹ ICC-02/11-01/12-33.

¹⁰ ICC-02/11-01/12-34.

7. The Single Judge finds it regrettable that Côte d'Ivoire requested to be authorized to file additional documentation in support of its Admissibility Challenge only a few days before the expiration of the time limit for the parties and participants to provide their observations on the Admissibility Challenge. This is all the more so considering that at least some of the documents which Côte d'Ivoire intends to file in the record of the case have been in its possession since before the lodging of the Admissibility Challenge. Nevertheless, the Single Judge is of the view that the apparent tardiness of the Request does not *per se* justify its rejection, as this additional material may still be necessary for the proper disposal of the Admissibility Challenge.

8. The Single Judge recalls that, as repeatedly stated by the Chamber, "a decision on the admissibility of the case must be based on the circumstances prevailing at the time of its issuance",¹¹ in particular considering that, as observed by the Appeals Chamber, "the Statute assumes that the factual situation on the basis of which the admissibility of a case is established is not necessarily static, but ambulatory".¹²

9. The Single Judge notes Côte d'Ivoire's submission that the documentation it intends to provide to the Chamber and the other parties is directly related to the domestic proceedings against Simone Gbagbo.¹³ She also notes that the request is made before the other parties have had the opportunity to submit their observations on the Admissibility Challenge. The Single Judge considers that the provision of additional material at this moment may assist the parties in their analysis, and thus result in more complete submissions to the

¹¹ Pre-Trial Chamber I, "Decision on the OPCD requests in relation to the hearing on the admissibility of the case", ICC- 01/11-01/11-212, para. 9. See also *id.*, "Decision requesting further submissions on issues related to the admissibility of the case against Saif Al-Islam Gaddafi", ICC-01/11-01/11-239, para. 14.

¹² Appeals Chamber, "Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case", ICC-01/04-01/07-1497, para. 56.

¹³ Request, para. 5.

Chamber, provided that they are accorded sufficient additional time to review this additional material.

10. The Single Judge notes that the parties and participants indeed requested that, should Côte d'Ivoire be authorized to file additional documents in support of the Admissibility Challenge, the time limits for their observations – currently set at 24 February 2014 – be extended. In particular, the Prosecutor requested two weeks from the date the additional documents are provided,¹⁴ the Defence at least six weeks,¹⁵ and the OPCV just “*un délai supplémentaire*”.¹⁶

11. The Single Judge considers that the extension by six weeks of time limit requested by the Defence “to allow sufficient time for Counsel to take instructions on the proposed new documentation, warranting travel to meet with Mme. Gbagbo in Odienné, Côte d'Ivoire”¹⁷ is justified in the present circumstances. The Single Judge is of the view that it is appropriate to set the same time limit also for the Prosecutor and the OPCV.

12. Finally, in order to minimize the impact of the present decision on the expeditiousness of the instant admissibility proceedings, and considering that, given its Request, Côte d'Ivoire should be in a position to submit its additional documents without delay, the Single Judge sets the time limit for Côte d'Ivoire's submission of this additional documentation at Wednesday, 26 February 2014. The new time limit for the other parties' observations on the Admissibility Challenge shall be calculated from the notification of this additional documentation.

¹⁴ ICC-02/11-01/12-35, para. 4.

¹⁵ ICC-02/11-01/12-34, para. 6(ii).

¹⁶ ICC-02/11-01/12-33, para.

¹⁷ ICC-02/11-01/12-34, para. 6(ii).

FOR THESE REASONS, THE SINGLE JUDGE

AUTHORIZES Côte d'Ivoire to submit additional documentation relevant to its Admissibility Challenge, by Wednesday, 26 February 2014; and

EXTENDS the time limit for the submissions by the Prosecutor, the Defence and the OPCV of their observations on the Admissibility Challenge until six weeks upon notification of Côte d'Ivoire's additional documentation.

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



Judge Silvia Fernández de Gurmendi
Single Judge

Dated this 20 February 2014

At The Hague, The Netherlands