

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

*Original:* English

*No.:* ICC-02/11-01/12 OA

*Date:* 22 December 2014.

**THE APPEALS CHAMBER**

**Before:** Judge Sandi Mmasenono Monageng, Presiding Judge  
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 ON BEHALF OF SIMONE GBAGBO TO THE 'APPEL DE LA  
RÉPUBLIQUE DE CÔTE d'IVOIRE SUR LA DÉCISION DE LA CHAMBRE  
PRÉLIMINAIRE « RELATIVE À L'EXCEPTION D'IRRECEVABILITÉ SOULEVÉE  
PAR LA CÔTE d'IVOIRE S'AGISSANT DE L'AFFAIRE CONCERNANT  
SIMONE GBAGBO »**

**Source:** DEFENCE

Document 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 the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(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**

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**Registrar**

Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations**

**Other**

## 1. INTRODUCTION

1. On 11 December 2014, Pre-Trial Chamber 1 rendered its Decision on the Côte d'Ivoire's challenge to the admissibility of the case against Ms. Simone Gbagbo.<sup>1</sup>

2. On 17 December 2014, the Republic of Côte d'Ivoire (hereinafter the Appellant) filed an Appeal pursuant to Article 82, paragraph 1, (a) of the Statute of Rome against the aforesaid Decision.<sup>2</sup>

3. Therein, it included a request for suspensive effect pursuant to Article 82, paragraph 3 of the Statute of Rome and a request for an extension of time in which to file a supporting document.<sup>3</sup>

4. On 18 December 2014, the Appeals Chamber Ordered that, *inter alia*, Ms. Simone Gbagbo may respond to the aforesaid requests of the Appellant.<sup>4</sup>

5. Pursuant to the said Order, this Response is submitted on behalf of Ms. Simone Gbagbo.

## 2. Submissions on Requests for Suspensive Effect and an Extension of Time.

6. The Defence, whilst reserving all its rights, does not oppose the application of the Appellant for the following reasons;

7. The Appellant, having outlined the circumstances in which the Appeals Chamber had, on other occasions, exercised its discretion to grant suspensive effect, submits that the case which it puts forward in support of suspensive effect, falls within certain of those circumstances<sup>5</sup>

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<sup>1</sup> ICC-02/11-01/12-47-Red, dated 11 December 2014.

<sup>2</sup> ICC-02/11-01/12-48, dated 17 December 2014.

<sup>3</sup> *Ibid.*, at page 8 -conclusion.

<sup>4</sup> ICC-02/11-01/12 OA, dated 18 December 2014, at page 3.

namely ii) that, execution of the Decision of Pre-Trial Chamber 1 of 11 December 2014 would have consequences that “would be very difficult to correct and may be irreversible” and iii) “could potentially defeat the purpose of the Appeal.”<sup>6</sup>

8. The Appellant goes on to request leave to submit a document which will, *inter alia*, ground those submissions and requests an extension of time in which to so do.<sup>7</sup>

9. Mindful of the principle of *audi alteram partem*, the Defence submits that, it would be fair and reasonable and in accordance with natural justice that the Appellant would be given the opportunity and time to fully substantiate it’s case.

10. The Prosecution for its part, seeks that the suspensive request should be denied because the reasons in support of the Request were not presented in the Appeal. To buttress its argument, it cites ‘*the GoCIV fails to make adequate showing*’ that the implementation of the Decision will have the potentially difficult and irreversible consequences that it claims<sup>8</sup> and ‘*fails to substantiate these claims in any respect*’...and the 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*’ and

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<sup>5</sup> (i) “would create an irreversible situation that could not be corrected, even if the Appeals Chamber eventually were to find in favour of the appellant”; (ii) would lead to consequences that “ would be very difficult to correct and may be irreversible” or (iii) “could potentially defeat the purpose of the Appeal”, Prosecutor v Germain Katanga, “Decision on the request for suspensive effect of the appeal against Trial Chamber II’s decision on the implementation of regulation 55 of the Regulations of the Court” 16 /1/2013; ICC-01/04-01/07-3344 (OA 13), para 6, referring to previous jurisprudence.

<sup>6</sup> ICC-02/11-01/12, dated 17 December 2014, at page 5, para12 and page 6, para 14.

<sup>7</sup> *Ibid.*, at page 3, para 3; page 4, para 9, page 7, para 18, 19.

<sup>8</sup> ICC-02/11-01/12 Prosecutors’ Response to the Republic of Côte d’Ivoire’s Requests for Suspensive Effect and Extension of Time’ (ICC-02/11-01/12-48), dated 18 December 2014, at pages 3, 4, paras 4, 6, 7, 8.

that ‘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 provide any realistic basis’ to apprehend any difficulty in transferring Ms. Gbagbo back to the ‘CoCIV’s’ jurisdiction in such circumstances.

11. The Defence takes issue with the Prosecution in this matter and respectfully submits that, in it’s Decision, *The Prosecutor v Saif Al-Islam Gaddafi and Abdullah Al-Senussi*,<sup>9</sup> the Appeals Chamber reaffirmed that, it is preferable that the reasons in support of the request should be presented in the Appeal.

### **3. In Conclusion**

For the reasons set out above, the Defence supports the Appellants requests for suspensive effect and for an extension of time to facilitate preparation of the proposed supporting document.

  
Sylvia Geraghty.

Lead Counsel to Mme. Simone GBAGBO

Dated, at Dublin, Ireland, 22 December 2014.

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<sup>9</sup> ICC-01/11-01/11 OA 4; *The Prosecutor v Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, dated 18 July 2013; page 8, para 13.