

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-02/11-01/12 OA
Date: 20 January 2015**

THE APPEALS CHAMBER

Before: Judge Sanji 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 document

**Decision on Côte d'Ivoire's request for suspensive effect of its appeal against the
"Decision on Côte d'Ivoire's challenge to the admissibility of the case against
Simone Gbagbo" of 11 December 2014**

shs

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
Ms Sylvia Geraghty

States Representatives
Mr Jean-Pierre Mignard
Mr Jean-Paul Benoit

REGISTRY

Registrar
Mr Herman von Hebel

Shs

The Appeals Chamber of the International Criminal Court,

In the appeal of the Republic of Côte d'Ivoire against the decision of Pre-Trial Chamber I entitled "Decision on Côte d'Ivoire's challenge to the admissibility of the case against Simone Gbagbo" of 11 December 2014 (ICC-02/11-01/12-47-Red),

Having before it the "Appel de la République de Côte d'Ivoire sur la décision de la Chambre préliminaire I « relative à l'exception d'irrecevabilité soulevée par la Côte d'Ivoire s'agissant de l'affaire concernant Simone Gbagbo »" of 17 December 2014 (ICC-02/11-01/12-48), in which a request for suspensive effect is made,

Renders unanimously the following

DECISION

The request for suspensive effect is rejected.

REASONS

I. PROCEDURAL HISTORY

A. Proceedings before the Pre-Trial Chamber

1. On 29 February 2012, Pre-Trial Chamber I (hereinafter: "Pre-Trial Chamber") issued a warrant of arrest¹ (hereinafter: "Warrant of Arrest") for Ms Simone Gbagbo (hereinafter: "Ms Gbagbo"), in which it, *inter alia*, directed the Registry to prepare a request for cooperation seeking the arrest and surrender of Ms Gbagbo.

2. On 30 September 2013, the Republic of Côte d'Ivoire (hereinafter: "Côte d'Ivoire") submitted its challenge to the admissibility of the case² (hereinafter:

¹ *Prosecutor v. Simone Gbagbo*, "Warrant of Arrest for Simone Gbagbo", ICC-02/11-01/12-1; *see also* "Decision on the Prosecutor's Application Pursuant to Article 58 for a warrant of arrest against Simone Gbagbo", 2 March 2012, ICC-02/11-01/12-2-Red.

² "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", ICC-02/11-01/12-11-Red.

“Challenge to Admissibility”). In that challenge, it also sought to postpone the execution of the request for surrender of Ms Gbagbo to the Court.³

3. On 15 November 2013, the Pre-Trial Chamber rendered the “Decision on the conduct of the proceedings following Côte d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo”, in which it, *inter alia*, decided that Côte d’Ivoire could postpone the execution of the request for surrender pending determination of the Challenge to Admissibility.⁴

4. On 11 December 2014, the Pre-Trial Chamber rendered the “Decision on Côte d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo”⁵ (hereinafter: “Impugned Decision”), in which it, *inter alia*, 1) rejected the Challenge to Admissibility; and 2) reminded Côte d’Ivoire of its obligation to surrender Ms Gbagbo to the Court without delay.⁶

B. Proceedings before the Appeals Chamber

5. On 17 December 2014, Côte d’Ivoire submitted the “Appel de la République de Côte d’Ivoire sur la décision de la Chambre préliminaire I « relative à l’exception d’irrecevabilité soulevée par la Côte d’Ivoire s’agissant de l’affaire concernant Simone Gbagbo »”⁷ (hereinafter: “Notice of Appeal”), in which it, *inter alia*, requests that its appeal against the Impugned Decision have suspensive effect pursuant to article 82 (3) of the Statute.⁸

6. In its request for suspensive effect, Côte d’Ivoire submits that, as a result of an immediate implementation of the Impugned Decision, the proceedings against Ms Gbagbo concerning the facts on which the Warrant of Arrest is based would continue before the Court and no longer before domestic authorities.⁹ Secondly, Côte d’Ivoire contends that the implementation of the Impugned Decision would necessitate the surrender of Ms Gbagbo to the Court and would result in an adjournment *sine die* of other domestic proceedings against Ms Gbagbo.¹⁰ As a result, Côte d’Ivoire contends

³ Challenge to Admissibility, para. 61.

⁴ ICC-02/11-01/12-15, p. 9.

⁵ ICC-02/11-01/12-47-Red.

⁶ Impugned Decision, p. 38.

⁷ ICC-02/11-01/12-48.

⁸ Notice of Appeal, paras 10-17.

⁹ Notice of Appeal, para. 13.

¹⁰ Notice of Appeal, para. 13.

that the consequences of implementing the Impugned Decision would be very difficult to correct and may be irreversible, and could defeat the purpose of the appeal.¹¹

7. Côte d'Ivoire argues further that if Ms Gbagbo were to be tried before the Court, the domestic proceedings against her would be jeopardised, in that the Ivorian judicial authorities would have to suspend the questioning of Ms Gbagbo.¹² It would also create uncertainty as to the progress and completion of the proceedings against Ms Gbagbo and other persons, and that uncertainty would be very difficult to correct.¹³ Lastly, Côte d'Ivoire contends that the implementation of the Impugned Decision would thwart the pursuit of one of the objectives of Côte d'Ivoire's appeal against that decision, which is to enable the Ivorian judicial authorities to try Ms Gbagbo.¹⁴

8. On 18 December 2014, the Appeals Chamber issued an "Order on the filing of responses to Côte d'Ivoire's requests for suspensive effect and time extension",¹⁵ in which it granted the Prosecutor and Ms Gbagbo until 12h00 on 22 December 2014 to respond to, *inter alia*, the request for suspensive effect made in the Notice of Appeal.

9. On 18 December 2014, the Prosecutor submitted her "Response to the Republic of Côte d'Ivoire's Requests for Suspensive Effect and Extension of Time (ICC-02/11-01/12-48)"¹⁶ (hereinafter: "Prosecutor's Response"), in which she, *inter alia*, submits that the Appeals Chamber should not order that the appeal have suspensive effect.¹⁷

10. The Prosecutor submits that Côte d'Ivoire fails to make an adequate showing that the implementation of the Impugned Decision will have potentially difficult and irreversible consequences.¹⁸ The Prosecutor argues that Côte d'Ivoire's claim that the surrender of Ms Gbagbo to the jurisdiction of the Court would create uncertainty in the conduct of domestic proceedings is "largely unexplained".¹⁹ The Prosecutor submits that Côte d'Ivoire does not show any impediment to the prompt resumption

¹¹ Notice of Appeal, para. 14.

¹² Notice of Appeal, para. 15.

¹³ Notice of Appeal, para. 15.

¹⁴ Notice of Appeal, para. 16.

¹⁵ ICC-02/11-01/12-51 (OA).

¹⁶ ICC-02/11-01/12-49 (OA).

¹⁷ Prosecutor's Response, paras 2, 3 and 10.

¹⁸ Prosecutor's Response, para. 4.

¹⁹ Prosecutor's Response, para. 7.

of domestic proceedings against Ms Gbagbo in the event that the appeal against the Impugned Decision were to be successful.²⁰

11. On 22 December 2014, Ms Gbagbo submitted the “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 »’,²¹ in which she submits that she supports the request for suspensive effect made by Côte d’Ivoire.

II. MERITS

12. Article 82 (3) of the Statute provides:

An appeal shall not of itself have suspensive effect unless the Appeals Chamber so orders, upon request, in accordance with the Rules of Procedure and Evidence.

13. When examining a request for suspensive effect, the Appeals Chamber “will consider the specific circumstances of the case and the factors it considers relevant for the exercise of its discretion under these circumstances”.²² The Appeals Chamber has summarised the circumstances in which it has previously exercised its discretion to grant suspensive effect as follows:

In past decisions, the Appeals Chamber, when deciding on requests for suspensive effect, has considered whether the implementation of the decision under appeal (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”.²³ [Footnotes omitted.]

14. The Appeals Chamber notes Côte d’Ivoire’s argument that the domestic proceedings against Ms Gbagbo would be jeopardised if the authorities were to

²⁰ Prosecutor’s Response, para. 8.

²¹ ICC-02/11-01/12-52 (OA).

²² *Prosecutor v. Jean Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean Jacques Magenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, “Decision on the Prosecutor’s urgent request for suspensive effect of the “Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido” of 21 October 2014”, 22 October 2014, ICC-01/05-01/13-718 (OA 9), para. 5, referring to previous jurisprudence.

²³ *Prosecutor v. Jean-Pierre Bemba Gombo*, “Decision on the Request of Mr Bemba to Give Suspensive Effect to the Appeal Against the ‘Decision on the Admissibility and Abuse of Process Challenges’”, 9 July 2010, ICC-01/05-01/08-817 (OA 3), para. 11.

suspend their questioning of her on account of having to surrender her to the Court.²⁴ In this regard the Appeals Chamber observes that apart from referring to a procedure apparently involving the questioning of Ms Gbagbo, Côte d'Ivoire does not explain why the surrender of Ms Gbagbo to the Court would necessarily result in a suspension of the domestic proceedings that would be very difficult to correct. Further, even if it were to be accepted that suspension of the domestic proceedings is the only logical result from Ms Gbagbo being surrendered, Côte d'Ivoire does not explain why a temporary suspension of domestic proceedings could have such serious consequences and why the procedural steps apparently scheduled for the near future could not be postponed or would be seriously prejudiced if they were to be taken at a later time.

15. As regards Côte d'Ivoire's argument that the surrender of Ms Gbagbo would create uncertainty as to the proceedings against her and other persons, and that uncertainty would be very difficult to correct,²⁵ the Appeals Chamber notes that Côte d'Ivoire does not provide any additional information about the significance of such uncertainty or why it would be difficult to correct.

16. For these reasons, the Appeals Chamber is not persuaded that the suspension of the domestic proceedings against Ms Gbagbo, if necessary at all in the circumstances, together with the apparent uncertainty it would cause are consequences that "would be very difficult to correct" or that "may be irreversible".

17. Finally, the Appeals Chamber notes that another argument of Côte d'Ivoire is that the implementation of the Impugned Decision would defeat one of the purposes of the appeal in that Côte d'Ivoire would be thwarted from trying Ms Gbagbo.²⁶ The Appeals Chamber notes however, that the purpose of Côte d'Ivoire's appeal is for the Appeals Chamber to determine ultimately, pursuant to rule 158 (1) of the Rules of Procedure and Evidence, whether the Impugned Decision should be confirmed or reversed. The purpose cannot be to delay the surrender of Ms Gbagbo to the Court to enable Côte d'Ivoire to continue its domestic proceedings. The Appeals Chamber therefore rejects this argument.

²⁴ Notice of Appeal, para. 15.

²⁵ Notice of Appeal, para. 15.

²⁶ Notice of Appeal, para. 16.

18. In the absence of persuasive reasons in support of ordering suspensive effect, the Appeals Chamber rejects the request without prejudice to the Appeals Chamber's eventual decision on the merits of Côte d'Ivoire's appeal against the Impugned Decision.

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



Judge Sang-Hyun Song
On behalf of the Presiding Judge

Dated this 20th day of January 2015

At The Hague, The Netherlands