

1 International Criminal Court
2 Appeals Chamber - Courtroom 1
3 Situation: Republic of Côte d'Ivoire
4 In the case of The Prosecutor v. Laurent Gbagbo - ICC-02/11-01/11
5 Single Judge Anita Ušacka
6 Appeals Chamber Judgment
7 Wednesday, 12 December 2012
8 (The hearing starts in open session at 3.30 p.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 JUDGE UŠACKA: (Microphone not activated)
13 THE INTERPRETER: Microphone, please.
14 THE COURT OFFICER: Thank you, your Honour. Situation in The Republic of Côte
15 d'Ivoire, in the case of The Prosecutor versus Laurent Gbagbo, ICC-02/11-01/11.
16 JUDGE UŠACKA: Thank you.
17 I am Judge Anita Ušacka and I am the Presiding Judge on this appeal arising from the case
18 of The Prosecutor versus Laurent Gbagbo.
19 May I ask parties to introduce themselves for the record, starting with Defence please.
20 MR ALTIT: (Interpretation) Thank you, your Honour. Your Honour, with me are
21 Maître Baroan from the Abidjan Bar Association, former member of the Constitutional
22 Council; and next to me Jennifer Naouri, our legal assistant; and behind me Gaëlle Buchet,
23 our case manager. I am Emmanuel Altit, President Gbagbo's counsel.
24 JUDGE UŠACKA: Thank you.
25 Office of Prosecutor?

1 MR GUARIGLIA: Good afternoon, your Honour. It's Fabricio Guariglia, senior appeals
2 counsel in the Office of the Prosecutor, and appearing with me today is Ms Dianne Luping,
3 trial lawyer in the Office of the Prosecutor.

4 JUDGE UŠACKA: Thank you.

5 OPCV?

6 MR SUPRUN: Good afternoon, your Honour. The Office of Public Counsel for Victims
7 is represented today by myself, Dmytro Suprun, counsel, as well as by Ms Ludovica
8 Vetruccio, associate legal officer.

9 Thank you.

10 JUDGE UŠACKA: Thank you.

11 And finally representatives of Côte d'Ivoire?

12 MR BENOÎT: (Interpretation) Good afternoon, your Honour. My name is Jean-Paul
13 Benoît, lawyer at the Paris Bar, and I am appearing on behalf of the State of Côte d'Ivoire.
14 Thank you, your Honour.

15 JUDGE UŠACKA: Thank you.

16 Today the Appeals Chamber is delivering its judgment on the appeal by Mr Gbagbo
17 against the decision of Pre-Trial Chamber I entitled "Decision on the 'Corrigendum of the
18 challenge to the jurisdiction of the International Criminal Court on the basis of Articles
19 12(3), (19(2), 21(3), 55 and 59 of the Rome Statute filed by the Defence for President
20 Gbagbo (ICC-02/11-01/11-129).'" The decision was filed on 15 August 2012.

21 In today's summary I will refer to this decision as "the impugned decision."

22 I shall now summarise the Appeals Chamber's judgment. Please note that only the
23 judgment is the authoritative version, which will be filed and notified to the parties and
24 participants shortly. This summary is not authoritative.

25 I will start with procedural background and submissions.

1 On 29 May 2012, Mr Gbagbo filed a challenge to the jurisdiction of the Court with the
2 Pre-Trial Chamber. In this challenge, Mr Gbagbo requested the Pre-Trial Chamber in the
3 first place to find that the Court lacks jurisdiction over the period and events on which the
4 warrant of arrest and the charges against him are based. In the alternative, he asked the
5 Pre-Trial Chamber to stay the proceedings because of alleged violation of his fundamental
6 rights during the period of his detention in Côte d'Ivoire.

7 In the impugned decision, the Pre-Trial Chamber rejected the challenge to the jurisdiction
8 of the Court. It found that the Court has jurisdiction on the basis of a declaration
9 pursuant to Article 12(3) of the Statute lodged by Côte d'Ivoire in the year 2003. The
10 Pre-Trial Chamber also rejected the alternative request to stay proceedings.

11 On 21 August 2012, Mr Gbagbo appealed the impugned decision in its entirety. He
12 raises ten grounds of appeal.

13 First and second grounds of appeal:

14 Mr Gbagbo's first and second grounds of appeal both relate to Côte d'Ivoire's role in the
15 proceedings before the Pre-Trial Chamber. The background thereto is the following:

16 In the course of the proceedings, Côte d'Ivoire filed a request for leave to submit
17 observations. Three days later, and in the absence of a decision of the Pre-Trial Chamber
18 on this request, Côte d'Ivoire filed its observations. Mr Gbagbo objected to the request
19 for leave to submit observations. Several weeks later, in the impugned decision, the
20 Pre-Trial Chamber granted Côte d'Ivoire's request for leave to submit observations,
21 thereby accepting its observations. The Pre-Trial Chamber considered that, and I quote,
22 "In the present circumstances and in the light of the nature of the arguments raised ... the
23 submissions of Côte d'Ivoire are of manifest relevance for the determination of the issue
24 sub judice."

25 On this first ground of appeal, Mr Gbagbo submits that the Pre-Trial Chamber should not

1 have taken into account Côte d'Ivoire's observations and should not have heard Côte
2 d'Ivoire, as it's not a State Party participating in the instant proceedings within the
3 meaning of Regulation 24(3) of the Regulations of the Court.

4 Under his second ground of appeal, Mr Gbagbo submits that the Pre-Trial Chamber
5 should have rendered a separate decision determining Côte d'Ivoire's request for leave to
6 file observations. This would have allowed him to respond to such observations, or to
7 request leave to appeal such a separate decision.

8 The Prosecutor, the victims' represented by OPCV, as well as Côte d'Ivoire, requested -- to
9 request the Appeals Chamber to dismiss both grounds of appeal.

10 The Prosecutor and OPCV argue that the Pre-Trial Chamber had discretion to allow Côte
11 d'Ivoire to file submissions. The Prosecutor thereby relies on Rule 58(2) of the Rules of
12 Procedure and Evidence. Côte d'Ivoire, on the other hand, submit that it is de jure a
13 party to the proceeding and has a right to respond according to Regulation 24 of the
14 Regulations of the Court.

15 They all argue that there is no legal provision that obliges the Pre-Trial Chamber to make
16 a separate decision on request for leave to file observations. The OPCV submits that in
17 any case such an error could not have materially affected the impugned decision.

18 The Appeals Chamber notes that both errors are procedural errors. As the role of Côte
19 d'Ivoire in the proceeding before the Pre-Trial Chamber it finds that Regulation 24 of the
20 Regulations of the Court does not confer participatory rights to States as such. Article 93
21 of the Statute, and Rule 59 of the Rules of Procedure and Evidence, are equally not
22 applicable to Côte d'Ivoire. However, Rule 58(2) of the Rules of Procedure and Evidence
23 gives broad discretion to the Pre-Trial Chamber to regulate proceedings based on the
24 challenge to the jurisdiction of the Court as in the case in hand. The Appeal Chamber,
25 however, notes that such discretion is not unlimited and refers in this context to Rule 103

1 of the Rules of Procedure and Evidence that regulates submissions by "amicus curiae and
2 other forms of submissions."

3 The Appeal Chamber finds that the Pre-Trial Chamber, acting pursuant to Rule 58(2) and
4 103 of the Rules of Procedure and Evidence, has the right to allow Côte d'Ivoire to file
5 observations. Therefore, the first ground of appeal is rejected. However, the Pre-Trial
6 Chamber erred by not issuing a separate decision on the request for leave to file
7 submissions, and by not allowing Mr Gbagbo and the Prosecutor to respond to the
8 substantive observations of Côte d'Ivoire, as provided for Rule 103 of the Rules of
9 Procedure and Evidence.

10 The Appeals Chamber finds, however, that it has not been demonstrated that this error
11 materially affected the impugned decision. Mr Gbagbo did not explain how, without
12 this error, the Pre-Trial Chamber's decision on the jurisdictional challenge would have
13 been substantially different, for instance, by referring to arguments that he would have
14 made in response to Côte d'Ivoire's submissions, and that could lead to a different
15 decision.

16 For these reasons, the Appeals Chamber dismisses the first and second grounds of appeal.
17 Third to fifth grounds of appeal.

18 Mr Gbagbo alleges under the third, fourth and fifth grounds of appeal that the Pre-Trial
19 Chamber erred in finding that it had jurisdiction over crimes Mr Gbagbo is alleged to
20 have committed. All three grounds of appeal relate to interpretation of Article 12(3) of
21 Statute, as well to the interpretation of the declaration and letters of Côte d'Ivoire relevant
22 to Article 12(3) of the Statute.

23 On 18 April 2003, following the conclusion of so-called Linas-Marcoussis Agreement, the
24 Minister of Foreign Affairs of Côte d'Ivoire submitted to the Registrar of the Court a
25 declaration accepting, pursuant to Article 12(3) of the Statute, the - and I quote - "...

1 jurisdiction of the Court for the purposes of identifying, investigating and trying the
2 perpetrators and accomplices of acts committed on Ivorian territory since events of 19
3 September 2002," end of quote. I will refer to this declaration as the "Declaration 2003."
4 Presidential elections were held in Côte d'Ivoire in the year 2010. The final round of
5 elections took place on 28 November 2010. In the proceedings before the Court
6 Mr Gbagbo is alleged to have committed crimes falling under Article 5 of the Statute after
7 that date, that is after 28 November 2010. Following the final round of the elections,
8 Mr Ouattara was declared President of Côte d'Ivoire by the Independent Electoral
9 Commission and Mr Gbagbo took the oath of office as president subsequent to a decision
10 of the Constitutional Council of Côte d'Ivoire.
11 Five months later, on 4 May 2011, the Constitutional Council of Côte d'Ivoire proclaimed
12 Mr Ouattara President of Republic of Côte d'Ivoire. In the meantime, that is on 14
13 December 2010 and on 3 May 2011, Mr Ouattara sent letters to the Court confirming Côte
14 d'Ivoire's acceptance of jurisdiction. The Pre-Trial Chamber found that Côte d'Ivoire,
15 which is not a State Party to the Statute, accepted, pursuant to Article 12(3) of the Statute,
16 the jurisdiction of the Court by lodging the 2003 declaration.
17 The Pre-Trial Chamber found that a declaration pursuant to Article 12(3) of the Statute
18 relates to a "situation." It held that the 2003 declaration does not in terms limit the
19 temporal scope of acceptance of jurisdiction and that the events which are the basis of
20 Mr Gbagbo's charges still belong to the same situation that took place in Côte d'Ivoire in
21 2002 and 2003.
22 Further, it held that there is no need to address the two letters of 2010 and 2011. They are
23 solely "... further evidence that Côte d'Ivoire has accepted the exercise of jurisdiction of the
24 Court in relation to the situation as set out above."
25 Mr Gbagbo argues by his third ground of appeal that the Pre-Trial Chamber wrongly

1 linked the scope of declaration under Article 12(3) of the Statute to a "situation," but
2 should have limited the scope of the declaration to events that took place before a
3 declaration is lodged. In any case, he argues by his fourth ground of appeal that the 2003
4 declaration should have been read in the context of the Linas-Marcoussis Agreement.
5 This means, in his submission, that the 2003 declaration could not accept jurisdiction with
6 respect to future crimes, but was intended only to cover crimes that were committed
7 before the Linas-Marcoussis Agreement was concluded.

8 As his fifth ground of appeal, Mr Gbagbo argues that the Pre-Trial Chamber should not
9 have given way to the letters of 2010 and 2011.

10 The Prosecutor and OPCV fully supports the Pre-Trial Chamber's findings and oppose Mr
11 Gbagbo's arguments. The OPCV argues that the error alleged by the fifth ground of
12 appeal does not materially affect the impugned decision.

13 In addressing the three grounds of appeal, the Appeals Chamber recalls the wording of
14 Article 12(3) of the Statute read in context with Rule 44 of the Rules of Procedure and
15 Evidence. It considers that the term "crime in question" may be understood as referring
16 to specific events in the course of which crimes were committed, as argued by Mr Gbagbo.
17 However, the Appeals Chamber finds that such interpretation does not find support by

18 Rule 44(2) of the Rules of Procedure and Evidence, as this provision refers to the
19 categories of crimes in Article 5 of the Statute and not to the specific events in the past.

20 Furthermore, the Appeals Chamber also finds that the acceptance of jurisdiction is not
21 limited to a given "situation" in terms of Article 13 of the Statute, as found by Pre-Trial
22 Chamber. It recalls in this context the relationship between Articles 12 and 13 of the
23 Statute. It finds that whether a "situation" exists is relevant when Court considers
24 whether it may exercise its jurisdiction pursuant to Article 13 of the Statute.

25 On the other hand, Article 12 regulates the preconditions to the exercise of jurisdiction.

1 The acceptance of jurisdiction upon ratification of Statute is general and is not limited to
2 specific situations. Likewise, if a State accepts jurisdiction of the Court under Article 12(3)
3 of the Statute, the acceptance is general and the question of whether the situation exists
4 becomes relevant once the Court considers whether it may exercise its jurisdiction.

5 The Appeals Chamber finds that this interpretation is supported by a purpose of the
6 Statute and concludes that a State may accept jurisdiction of the Court generally.

7 Therefore, Mr Gbagbo cannot succeed in the result with third ground of appeal.

8 The Appeals Chamber cannot find a temporal limitation in the 2003 declaration, as argued
9 by Mr Gbagbo. To the contrary, the last paragraph of the 2003 declaration suggests that
10 Côte d'Ivoire explicitly accepted jurisdiction of the Court with respect to crimes
11 committed after the 2003 declaration.

12 In any case, however, the Appeals Chamber finds that the 2003 declaration should not be
13 read restrictively as its text does not create doubts as to interpretation. Therefore, the
14 fourth ground of appeal is rejected.

15 The fifth grounds of appeal relates to the letters of 2010/2011. The Appeals Chamber
16 finds that the Pre-Trial Chamber's statement made in relation to the letters were akin to
17 obiter dicta. Therefore, any alleged error in respect of the Pre-Trial Chamber's treatment
18 of these letters could not, in any event, materially affect the impugned decision. The
19 Appeals Chamber therefore rejects the fifth ground of appeal.

20 Sixth to tenth grounds of appeal:

21 On these remaining grounds of appeal, Mr Gbagbo submits that the Pre-Trial Chamber
22 erred in how it addressed his arguments that his fundamental rights have been violated to
23 the extent that the Court should not exercise its jurisdiction and should permanently stay
24 the proceedings against him. He thereby primarily alleges violation of his rights from
25 the time of his arrest by the domestic authorities, on 11 April 2011, to his transfer to the

1 Court, on 29 November 2011.

2 Without a need to further address the arguments of Mr Gbagbo and the parties, the
3 Appeals Chamber finds that these five grounds of appeal do not refer to a decision with
4 respect to jurisdiction in terms of Article 82(1)(a) of the Statute.

5 The Appeals Chamber already decided in 2006 in Lubanga OA 4 Judgment that a request
6 for stay of proceedings which is based on Article 21(3) of the Statute is not jurisdictional in
7 nature, since a party needs the leave of a Chamber pursuant to Article 82(1)(d) of the
8 Statute in order to appeal a decision that rules on a request for stay of proceedings.

9 Therefore, the Appeals Chamber notes that the Pre-Trial Chamber issued in fact two
10 decisions in the impugned decision; that is one decision on jurisdiction and one decision
11 on a stay of proceedings. The latter decision, however, cannot be appealed by means of
12 Article 82(1)(a) of the Statute.

13 In the present case, therefore, the Appeals Chamber unanimously confirms the part of the
14 impugned decision that rejects the challenge to jurisdiction of the Court raised by
15 Mr Gbagbo pursuant to Article 19(2) of the Statute as the Appeals Chamber found either
16 no error or no error that materially affected the impugned decisions. Consequently, the
17 appeal is dismissed in this respect.

18 Further, the Appeals Chamber finds unanimously that the appeal against the part of the
19 impugned decision that rejects Mr Gbagbo's stay of proceedings must be dismissed in
20 limine.

21 This concludes my summary of the judgment. It remains for me only to thank
22 interpreters and court reporters, thank you.

23 The session is now closed.

24 THE COURT USHER: All rise.

25 (The hearing ends in open session at 3.54 p.m.)