

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/11-01/12
Date: 17 December 2014

THE APPEALS CHAMBER

Before: Judge Sanji Mmasenono Monageng
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

**APPEAL OF THE REPUBLIC OF CÔTE D'IVOIRE AGAINST PRE-TRIAL
CHAMBER I'S *DECISION ON CÔTE D'IVOIRE'S CHALLENGE TO THE
ADMISSIBILITY OF THE CASE AGAINST SIMONE GBAGBO***

Source: Republic of Côte d'Ivoire

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

Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor

Mr James Stewart, Deputy Prosecutor

Counsel for the Defence

Ms Sylvia Geraghty

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

Ms Paolina Massidda

**Office of Public Counsel for the
Defence**

States' Representatives

Mr Jean-Pierre Mignard

Mr Jean-Paul Benoit

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Deputy Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 11 December 2014, Pre-Trial Chamber I rendered a decision on the application by Côte d'Ivoire challenging admissibility in the case against Simone Gbagbo.¹
2. In its decision, the Pre-Trial Chamber dismissed the application filed by the Republic of Côte d'Ivoire on 30 September 2013 challenging the admissibility of the case of *The Prosecutor v. Simone Gbagbo* (ICC-02/11-01/12).²
3. In this document, the Republic of Côte d'Ivoire will exercise its right under article 82(1)(a) of the Rome Statute to appeal against the decision rendered by Pre-Trial Chamber I on 11 December 2014. It will demonstrate that the conditions for relying on that right are met in this case (section I). It will also move the Appeals Chamber to grant suspensive effect to the procedure at hand (section II) and to grant the Republic of Côte d'Ivoire an extension of time to submit a document in support of its appeal (section III).

I. COMPLIANCE WITH APPLICABLE LAW IN APPEALS PROCEEDINGS

4. Article 82(1)(a) of the Rome Statute reads as follows:

Either party may appeal any of the following decisions in accordance with the Rules of Procedure and Evidence:

- (a) A decision with respect to jurisdiction or admissibility;

5. In cases arising under article 82(1), which do not require prior leave from the Court, rule 154(1) of the Rules of Procedure and Evidence provides as follows:

An appeal may be filed [...] not later than five days from the date upon which the party filing the appeal is notified of the decision.

6. Regulation 64(1) of the Regulations of the Court provides as follows:

An appeal filed under rule 154 shall state:

- (a) The name and number of the case or situation;

¹ ICC-02/11-01/12-47-Conf.

² ICC-02/11-01/12-11-Red, 1 October 2013.

- (b) The title and date of the decision being appealed;
- (c) The specific provision of the Statute pursuant to which the appeal is filed;
- (d) The relief sought.

7. The information required under regulation 64(1)(a) to (c) is provided at paragraphs 1 to 3 *supra*.

8. In accordance with article 83(2) of the Rome Statute, the Republic of Côte d'Ivoire, respectfully prays the Appeals Chamber

To set aside the decision of Pre-Trial Chamber I rendered on 11 December 2014;

To accept the challenge made by the Republic of Côte d'Ivoire and declare the case of *The Prosecutor v. Simone Gbagbo* inadmissible; and

In the alternative, to refer the issue of admissibility to a trial chamber.

9. The Republic of Côte d'Ivoire will set out the grounds of its appeal against the decision of Pre-Trial Chamber I in the document supporting the appeal submitted in accordance with regulation 64(2) of the Regulations of the Court.

II. REQUEST FOR SUSPENSIVE EFFECT OF THE APPEAL

10. According to article 82(3) of the Rome Statute,

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.

11. No indication is provided in either the Rome Statute or the Rules of Procedure and Evidence³ as to the criteria or procedural rules for requesting or ordering suspensive effect.

12. In view of the absence of such criteria or procedural rules in the applicable statutory texts, the Appeals Chamber has established its own case law, holding that the decision on article 82(3) requests is within the "discretion" of

³ Rule 156(5) of the Rules of Procedure and Evidence reads, "When filing the appeal, the party appealing may request that the appeal have suspensive effect [...]".

the Appeals Chamber.⁴ However, it has stipulated the circumstances in which it exercises this discretion 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”.⁵

13. Immediate execution of the decision rendered by Pre-Trial Chamber I on 11 December 2004 to dismiss the admissibility challenge brought by Côte d’Ivoire would have several significant legal and factual consequences. It would mean that the proceedings against Mrs Gbagbo in respect of the events grounding the warrant for her arrest issued by Pre-Trial Chamber III on 29 February 2012⁶ and confirmed on 2 March 2012⁷ would continue before the International Criminal Court in The Hague rather than before the competent judicial authorities in Côte d’Ivoire – in this instance, the Office of Investigations of the Abidjan-Plateau Court of First Instance. It would, if the reasoning of Pre-Trial Chamber I is followed, have the corollary of requiring Mrs Gbagbo to be surrendered to the Court.⁸ Moreover, it would have the – incidental but inevitable – consequence of postponing *sine die* the current proceedings against Mrs Gbagbo in Côte d’Ivoire pertaining to other charges – including, in particular, that of undermining State security.

⁴ See, for example, *The Prosecutor v. Jean-Pierre Bemba Gamba, Decision on the Request of the Prosecutor for Suspensive Effect*, 3 September 2009, ICC-01/05-01/08-499 (OA 2), para. 11, quoting *The Prosecutor v. Thomas Lubanga Dyilo, Decision on the request of Mr. Thomas Lubanga Dyilo for suspensive effect of his appeal against the oral decision of Trial Chamber I of 18 January 2008*, 22 April 2008, ICC-01/04-01/06-1290 (OA 11); *The Prosecutor v. Mathieu Ngudjolo Chui, Decision on the request of the Prosecutor of 19 December 2012 for suspensive effect*, 20 December 2012, ICC-01/04-02/12-12, para. 20.

⁵ Case of *The 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 January 2013, ICC-01/04-01/07-3344 (OA 13).

⁶ See ICC-02/11-01/12-1.

⁷ See ICC-02/11-01/12-2.

⁸ ICC-02/11-01/12-47-Conf, para. 80.

14. The Republic of Côte d'Ivoire is not claiming that the consequences outlined above constitute "an irreversible situation", in the very restrictive sense applied by the Appeals Chamber. However, it is of the view that execution of the decision of 11 December 2014 would have consequences which would be very difficult to correct and might be irreversible, and that it could defeat the purpose of the appeal.

15. In respect of the first point above, were Mrs Gbagbo to be tried by the International Criminal Court, there would clearly be a very serious risk of a halt in proceedings against her in Côte d'Ivoire, whether they are for the conduct in respect of which she has been charged in The Hague or for the other charges pending against her. The Ivorian judicial authorities would be unable to continue investigating or complete their prosecution of Mrs Gbagbo in her absence. On the one hand, Mrs Gbagbo would appear, as a key associate of the former President of the Republic of Côte d'Ivoire, to have played a crucial part in the crimes committed in the period after the presidential election held in late 2010. On the other hand, referral of the case to The Hague would have the inevitable practical effect of suspending the court proceedings against Mrs Gbagbo in Côte d'Ivoire, although they have accelerated in recent months⁹ and are essential for the determination of the truth. In other words, execution of the decision rendered by Pre-Trial Chamber I would engender considerable uncertainty as to the continuation, smooth conduct and completion of the proceedings against not only Mrs Gbagbo but also others suspected of involvement in the crimes of which she stands charged. This uncertainty would, of course, be very difficult to correct.

16. Furthermore, the purpose of the Republic of Côte d'Ivoire in appealing against the decision rendered by Pre-Trial Chamber I on 11 December 2014 is, as

⁹ See, for example, the additional document provided by Côte d'Ivoire on 10 October 2014 (ICC-02/11-01/12-45-Conf).

noted above,¹⁰ to have the Appeals Chamber set the decision aside and declare the case of *The Prosecutor v. Simone Gbagbo* inadmissible. If the initial decision is not given suspensive effect, Côte d'Ivoire's right, under the complementarity principle, to have Mrs Gbagbo tried before Ivorian courts will plainly be rendered meaningless. The appeal seeks to enable trial of Mrs Gbagbo in Abidjan upon completion of the proceedings against her currently under way. Failure to give suspensive effect to the decision rendered on 11 December 2014 would be antithetical to the purpose of Côte d'Ivoire's appeal.

17. For all of these reasons, the Republic of Côte d'Ivoire respectfully moves the Appeals Chamber to grant the request, made in accordance with article 82(3) of the Statute, for suspensive effect in respect of the decision of 11 December 2014.

III.REQUEST FOR AN EXTENSION OF TIME FOR THE SUBMISSION OF A DOCUMENT IN SUPPORT OF THE APPEAL

18. According to regulation 64(2) of the Regulations of the Court,

[...] the appellant shall file a document in support of the appeal, with reference to the appeal, within 21 days of notification of the relevant decision. The document in support of the appeal shall set out the grounds of appeal and shall contain the legal and/or factual reasons in support of each ground of appeal. Each reason shall be set out in separate paragraphs. Reference shall be made to the relevant part of the record or any other document or source of information as regards any factual issue. Each legal reason shall be set out together with reference to any relevant article, rule, regulation or other applicable law, and any authority cited in support thereof.

19. The 21-day time limit within which a document in support of the appeal must be filed with the Appeals Chamber poses significant challenges in the instant case. The Republic of Côte d'Ivoire strongly believes that the appeal should be heard as expeditiously as possible, pursuant to rule 156(4) of the Rules of

¹⁰ See *supra*, para. 8.

Procedure and Evidence. However, preparation of this vital document and the requisite interactions between counsel for Côte d'Ivoire and the Ivorian authorities will be severely hindered by the traditional end-of-year holiday period, which falls within these 21 days. What is more, according to the Ivorian judicial calendar, Mrs Gbagbo is currently scheduled to appear before the competent court on the charges relating to undermining State security beginning on 26 December 2014. Preparation of the document in support of Côte d'Ivoire's appeal will be hampered in practice by the attention that the administrative and judicial authorities will have to pay to these parallel proceedings.

20. Therefore, the Republic of Côte d'Ivoire respectfully moves the Appeals Chamber to set 9 January 2015 as the deadline for submission of a document in support of the appeal.

In conclusion, the Republic of Côte d'Ivoire prays the Appeals Chamber kindly to:

- Take note of its appeal against the decision rendered by Pre-Trial Chamber I on 11 December 2014, in accordance with article 82(1)(a) of the Statute;
- Grant the request, made in accordance with article 82(3) of the Statute, for suspensive effect in respect of the decision of 11 December 2014; and
- Set 9 January 2015 as the deadline for submission of a document in support of the appeal.

[signed]

[signed]

Jean-Pierre Mignard

Jean-Paul Benoit

Counsel for the Republic of Côte d'Ivoire

Dated this 17 December 2014

At Paris