



Original: **English**

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

Date: **9 March 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**

**Prosecution's Request to Dismiss *In Limine* and Strike Portions of the Responses  
of the Government of the Republic of Côte d'Ivoire and the Defence for Simone  
Gbagbo**

**Source:** Office of the Prosecutor

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

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Mr Herman von Hebel

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Other  
Section**

### Submissions

1. On 5 March 2015, the Government of the Republic of Côte d'Ivoire ("GoCIV") filed its response to the Legal Representatives of Victims' observations<sup>1</sup> on its appeal challenging the admissibility of the case against Simone Gbagbo before the Court.<sup>2</sup> On the same day, the Defence for Simone Gbagbo ("Defence") filed its response to the LRV Observations.<sup>3</sup>
  
2. The GoCIV Response impermissibly exceeds the scope of its own appeal. It now introduces information of certain alleged steps taken in national proceedings between October 2014 and February 2015.<sup>4</sup> However, this information falls outside the scope of the pre-trial proceedings, hence exceeds this appeal, and should be rejected *in limine*. Likewise, the Defence Response to the LRV Observations, by reference to portions of the Defence Response to the GoCIV Appeal, hints at certain developments in the ongoing national proceedings in December 2014<sup>5</sup>—information once again beyond the remit of the pre-trial proceedings and this appeal. These submissions should also be dismissed *in limine*.
  
3. As the Office of the Prosecutor ("Prosecution") has previously submitted,<sup>6</sup> Pre-Trial Chamber I's Decision on Côte d'Ivoire's challenge to the admissibility of the case against Simone Gbagbo ("Decision")<sup>7</sup> determines the scope of this appeal. Post-Decision developments, as those advanced by the GoCIV and the Defence, are irrelevant to this appeal. The Decision was based on three rounds of extensive submissions from the GoCIV, the latest being from 10 October

<sup>1</sup> ICC-02/11-01/12-63-Conf OA ("LRV Observations").

<sup>2</sup> ICC-02/11-01/12-64-Conf OA ("GoCIV Response").

<sup>3</sup> ICC-02/11-01/12-65 OA ("Defence Response to LRV Observations"). On 6 February 2015, the Defence filed its response to the GoCIV Appeal, ICC-02/11-01/12-62 OA ("Defence Response to GoCIV Appeal").

<sup>4</sup> GoCIV Response, paras.43-48.

<sup>5</sup> See below fn.13. See also Defence Response to LRV Observations, fn.48.

<sup>6</sup> ICC-02/11-01/12-61-Conf OA, para.60.

<sup>7</sup> ICC-02/11-01/12-47-Red; ICC-02/11-01/12-47-Conf.

2014.<sup>8</sup> No later information was or should be considered. As the Appeals Chamber has emphasised, the admissibility of a case must be determined on the basis of the facts that exist before the Pre-Trial Chamber, not the Appeals Chamber. To do otherwise would be to conflate the pre-trial and appeal proceedings, and render “the concept of appeal incoherent.”<sup>9</sup>

4. Further, the inclusion of post-Decision information is prejudicial to the Parties and participants, who have not had the opportunity to respond to it. The GoCIV Response and the Defence Response to the LRV Observations in these aspects also exceed the scope of the LRV Observations; the latter makes no mention of post-Decision developments.<sup>10</sup>
5. The Prosecution also draws the attention of the Parties and participants on this appeal to the Appeals Chamber’s direction “‘to add to the end of their filing a short signed statement’ certifying the total number of words and the document’s compliance with the requirements of regulation 36 of the Regulations of the Court.”<sup>11</sup> This certification is now required for all filings in appeals proceedings.<sup>12</sup>

### **Relief**

6. For the reasons above, the Prosecution requests the Appeals Chamber to dismiss paragraphs 43-48 of the GoCIV Response *in limine* and strike these paragraphs from the record. The Prosecution also requests the Chamber to dismiss the portions of paragraphs 43-56 of the Defence Response to the GoCIV Appeal and portions of paragraphs 43 and 50 of the Defence Response to the

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<sup>8</sup> Decision, paras.3-10.

<sup>9</sup> ICC-01/09-01/11-234 OA, paras.10-12; ICC-01/11-01/11-547-Red OA4, paras.41-43.

<sup>10</sup> See e.g., ICC-02/11-01/12-60 OA, para.2, where the Appeals Chamber directed that the GoCIV, the Defence and the Prosecution may file responses to the victims’ observations.

<sup>11</sup> ICC-01/05-01/08-3243 OA11, para.14; ICC-01/09-01/11-1598 OA 7 OA 8, para. 26; ICC-01/11-01/11-565 OA 6, para.32.

<sup>12</sup> ICC-01/05-01/08-3243 OA11, para.14.

LRV Observations (to the extent that they refer to post-Decision developments)<sup>13</sup> *in limine* and to strike them from the record.



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Fatou Bensouda, Prosecutor

Dated this 9<sup>th</sup> of March 2015

At The Hague, The Netherlands

Word Count: 858<sup>14</sup>

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<sup>13</sup> See e.g., Defence Response to GoCIV Appeal, para.43, submissions in relation to Ms Gbagbo's first appearance on 9 December 2014 and the charges which were *later* publicly proffered against her (emphasis added), and to the extent that subsequent paragraphs include or relate to such post-Decision information. See also Defence Response to LRV Observations, paras.43, 50, referring to the ongoing trial.

<sup>14</sup> It is hereby certified that this document contains the number of words specified and complies in all respects with the requirements of Regulation 36 of the RoC. This statement (53 words), not itself included in the word count, follows the Appeals Chamber's recent direction to "all parties" appearing before it: ICC-01/11-01/11-565 OA6, para.32.