



Original: English

**No. ICC-02/11-01/15 A
Date: 2 March 2020**

THE APPEALS CHAMBER

Before: Judge Chile Eboe-Osuji, Presiding
Judge Howard Morrison
Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

**IN THE CASE OF THE PROSECUTOR v. LAURENT GBAGBO AND
CHARLES BLÉ GOUDÉ**

URGENT

Public

**Decision on Mr Laurent Gbagbo's request for an extension of page limit for his
response to the Prosecutor's appeal brief**

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 Laurent Gbagbo

Mr Emmanuel Altit
Ms Agathe Bahi Baroan

Legal Representative of Victims

Ms Paolina Massidda

Counsel for Charles Blé Goudé

Mr Geert-Jan Alexander Knoops
Mr Claver N'dry

REGISTRY

Registrar

Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

In the appeal of the Prosecutor against the decision of Trial Chamber I of 15 January 2019 (ICC-02/11-01/15-T-232-ENG), with reasons issued on 16 July 2019 (ICC-02/11-01/15-1263 and its annexes),

Having before it the ‘Requête de la Défense afin d’obtenir des pages additionnelles pour pouvoir répondre au mémoire d’appel de l’Accusation déposé le 15 octobre 2019 (ICC-02/11-01/15-1277-Conf)’ of 26 February 2020 (ICC-02/11-01/15-1309),

Having before it the ‘Prosecution Response to the Requête de la Défense afin d’obtenir des pages additionnelles pour pouvoir répondre au mémoire d’appel de l’Accusation déposé le 15 octobre 2019’ (ICC-02/11-01/15-1311) of 27 February 2020,

Having before it the ‘CLR V Response to the “Requête de la Défense afin d’obtenir des pages additionnelles pour pouvoir répondre au mémoire d’appel de l’Accusation déposé le 15 octobre 2019” (ICC-02/11-01/15-1312) of 28 February 2020.

Renders pursuant to regulation 37(2) of the Regulations of the Court the following

DECISION

1. The page limit for Mr Gbagbo’s and Mr Blé Goudé’s responses to the appeal brief is extended by 30 pages.
2. The page limit for the victims’ observations is also extended by eight pages.

REASONS

I. PROCEDURAL HISTORY

1. On 15 January 2019, Trial Chamber I (the ‘Trial Chamber’) issued, by majority, Judge Olga Herrera Carbuccion dissenting, an oral decision, acquitting Mr Gbagbo and Mr Blé Goudé of all charges.¹ On 16 July 2019, the Trial Chamber issued its reasons for the acquittal.²

2. On 16 September 2019, the Prosecutor filed her notice of appeal against the acquittal of Mr Gbagbo and Mr Blé Goudé,³ and on 15 October 2019, she filed her appeal brief.⁴

3. On 6 February 2020, the Appeals Chamber extended to 6 March 2020 the time limit for Mr Gbagbo’s and Mr Blé Goudé’s responses to the Prosecutor’s appeal brief.⁵

4. On 26 February 2020, Mr Gbagbo requested that the page limit for his response to the Prosecutor’s appeal brief be extended from 100 to 130 pages⁶ (the ‘Request’). According to Mr Gbagbo, whereas the logic of regulation 63(3) of the Regulations of the Court (the ‘Regulations’) on consolidated appeal briefs is to allow the Prosecutor within her allotted 140 pages to present arguments applicable to all respondents in 100 pages and to raise arguments applicable to each particular respondent in the additional 40 pages she has per acquitted or convicted person, in this case she has used her whole appeal brief to put forward arguments covering both persons.⁷ He submits that he thus has to answer all arguments raised in the 130 pages of the

¹ See Trial Chamber I, [Transcript of hearing, 15 January 2019](#), ICC-02/11-01/15-T-232-Eng, p. 1, line 15, to p. 5, line 7.

² [Reasons for oral decision of 15 January 2019 on the *Requête de la Défense de Laurent Gbagbo afin qu’un jugement d’acquittement portant sur toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté immédiate soit ordonnée*, and on the Blé Goudé Defence no case to answer motion](#), 16 July 2019, ICC-02/11-01/15-1263.

³ See [Prosecution Notice of Appeal](#), 16 September 2019, ICC-02/11-01/15-1270-Corr (A corrigendum was filed the following day).

⁴ See [Public redacted version of ‘Prosecution Document in Support of Appeal’](#), ICC-02/11-01/15-1277-Conf, 15 October 2019, 17 October 2019, ICC-02/11-01/15-1277-Red.

⁵ [Decision on Mr Gbagbo’s request for extension of time to file a response to the Prosecutor’s appeal brief](#), 6 February 2020, ICC-02/11-01/15-1304, p. 3.

⁶ [Requête de la Défense afin d’obtenir des pages additionnelles pour pouvoir répondre au mémoire d’appel de l’Accusation déposé le 15 octobre 2019 \(ICC-02/11-01/15-1277-Conf\)](#), 26 February 2020, ICC-02/11-01/15-1309, p. 7.

⁷ [Request](#), para. 6.

Prosecutor's appeal brief and that, in light of the principle of equality of arms, it appears fair for him to have the same 130 pages to respond.⁸

5. Mr Gbagbo further submits that, contrary to regulation 63(3) of the Regulations, the Prosecutor often uses footnotes in her appeal to include explanations and extracts of jurisprudence without which her argument would not be comprehensible.⁹ He argues that the appeal brief would probably be longer than the 140 pages allowed if the substantive arguments made in the footnotes were included in the body of her appeal brief.¹⁰

6. Mr Gbagbo further argues that the appeal brief raises complex and new issues, such as the legal framework for 'no case to answer' motions as well as the standard of proof applicable in such procedures.¹¹ He submits that the Prosecutor uses a third of her appeal brief (43 pages) to raise factual issues, and that he will need to answer all of this.¹² Mr Gbagbo submits that the Prosecutor's request for a declaration of mistrial is a remedy that has never been applied by the Appeals Chamber, and that he will need to address this in detail.¹³ Furthermore, he submits that the French version of the appeal brief is 157 pages and, considering that this increase is normal when English is translated into French, it should be taken into account for the page limits of his response in French.¹⁴

7. On 27 February 2020, the Prosecutor responded that the Request fails to demonstrate any exceptional circumstances warranting an extension and that, if granted, she requests a commensurate extension in the page limit of any reply for which she may request leave¹⁵ (the 'Prosecutor's Response'). In response to Mr Gbagbo's argument that the additional 40 pages in consolidated appeal briefs are intended for the Prosecutor to make individualised arguments per respondent, the Prosecutor contends that regulation 63(3) of the Regulations does not prescribe any

⁸ [Request](#), para. 6.

⁹ [Request](#), para. 7.

¹⁰ [Request](#), para. 7.

¹¹ [Request](#), para. 8.

¹² [Request](#), para. 9.

¹³ [Request](#), para. 10.

¹⁴ [Request](#), para. 12.

¹⁵ [Prosecution Response to the Requête de la Défense afin d'obtenir des pages additionnelles pour pouvoir répondre au mémoire d'appel de l'Accusation déposé le 15 octobre 2019](#), 27 February 2020, ICC-02/11-01/15-1311, paras 2, 8, 9.

content or structure of consolidated appeal briefs.¹⁶ She further contends that the footnotes in her appeal brief do not contain substantive arguments but quotes or summaries of the authorities or evidence to which they refer.¹⁷ As for Mr Gbagbo's submissions that the appeal brief challenges factual findings and raises novel issues, the Prosecutor contends that this is the case for most appeals in this Court and that those are not *per se* reasons to justify a page extension of Mr Gbagbo's response.¹⁸ Similarly, the Prosecutor argues that the language of the response (French) is not an exceptional circumstance warranting a page extension as all parties may file in either working language subject to the same page limits.¹⁹ The Prosecutor further submits that Mr Gbagbo will have a further opportunity to make written submissions if granted leave to supplement his response following receipt of the revised translation of the appeal brief.²⁰

8. On 28 February 2020, the Office of Public Counsel for victims (the 'OPCV') filed a response to the Request²¹ (the 'OPCV's Response'). The OPCV submits that it concurs with the Prosecutor's Response.²² In this regard, the OPCV contends that Mr Gbagbo's interpretation of regulation 63(3) of the Regulations is incorrect and that, rather than exceptional, the challenges to certain factual findings and the novelty of the questions raised on appeal are clearly foreseeable.²³ The OPCV requests that, in the event that the Request is granted, the page limit for OPCV's submissions be equally extended to 90 pages.²⁴

¹⁶ [Prosecutor's Response](#), para. 3.

¹⁷ [Prosecutor's Response](#), para. 4.

¹⁸ [Prosecutor's Response](#), para. 5.

¹⁹ [Prosecutor's Response](#), para. 6.

²⁰ [Prosecutor's Response](#), para. 7.

²¹ [CLRv Response to the 'Requête de la Défense afin d'obtenir des pages additionnelles pour pouvoir répondre au mémoire d'appel de l'Accusation déposé le 15 octobre 2019'](#), 28 February 2020, ICC-02/11-01/15-1312.

²² [OPCV's Response](#), para. 4.

²³ [OPCV's Response](#), paras 5, 6.

²⁴ [OPCV's Response](#), p. 4.

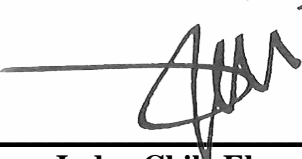
II. MERITS

9. Pursuant to regulation 37(2) of the Regulations, a Chamber may grant an extension of the page limit ‘in exceptional circumstances’.

10. The Appeals Chamber considers that, in the specific circumstances of the case, where Mr Gbagbo has to respond to the entirety of the appeal brief of 130 pages, and noting the novelty and complexity of the issues raised on appeal, there are ‘exceptional circumstances’ within the meaning of regulation 37(2) of the Regulations. The Appeals Chamber therefore grants the Request. Consequently, the page limits for Mr Blé Goudé’s response is also extended by 30 pages. As for the victims, their observations are extended by eight pages.

11. As for the Prosecutor’s request to grant her a ‘commensurate extension in the number of pages for any consolidated reply that [she] may be permitted to file, pursuant to any request for leave to do so, should there be one’,²⁵ the Appeals Chamber notes the necessarily conditional nature of such request. The Appeals Chamber will address any request for leave to reply and any extension to the page limits therefor when and if it is affirmatively seised with one.

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



Judge Chile Eboe-Osuji
Presiding

Dated this 2nd March 2020

At The Hague, The Netherlands

²⁵ [Prosecutor’s Response](#), para. 9.