

1 International Criminal Court
2 Appeals Chamber - Courtroom 1
3 Situation: Republic of Côte d'Ivoire
4 In the case of The Prosecutor v. Simone Gbagbo - ICC-02/11-01/12
5 Presiding Judge Piotr Hofmański
6 Appeals Hearing for the Delivery of a Judgment
7 Wednesday, 27 May 2015
8 (The hearing starts in open session at 4.35 p.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE HOFMAŃSKI: Good afternoon.
13 Would the court officer please call the case.
14 THE COURT OFFICER: Good afternoon.
15 Situation in the Republic of Côte d'Ivoire, in the case of The Prosecutor versus Simone
16 Gbagbo, case reference ICC-02/11-01/12, and for the record we are in open session.
17 PRESIDING JUDGE HOFMAŃSKI: My name is Piotr Hofmański and I am the
18 Presiding Judge on this appeal arising from the case of The Prosecutor versus Simone
19 Gbagbo.
20 The other Judges of the Appeals Chamber on this appeal are Judge Sanji Mmasenono
21 Monageng, Judge Howard Morrison, Judge Marc Perrin de Brichambaut and Judge
22 Chang-ho Chung.
23 May I ask the parties to introduce themselves for the record, starting with the Defence
24 counsel of Mrs Simone Gbagbo?
25 MS GERAGHTY: Thank you, President. My name is Sylvia Geraghty. I'm a

1 solicitor of the Supreme Court of Ireland and a solicitor of the Supreme Court of
2 England and Wales. I'm assisted this afternoon by Vedrana Residovic from the
3 OPCD, the case -- she's the case manager on the case, and I represent Madam Gbagbo.

4 PRESIDING JUDGE HOFMAŃSKI: Thank you very much.

5 Office of the Prosecutor?

6 MS BRADY: Good afternoon, your Honour. Helen Brady, Senior Appeals Counsel.
7 I'm appearing on behalf of the Prosecution and with me today is Ms Priya Narayanan,
8 Appeals Counsel.

9 Thank you.

10 PRESIDING JUDGE HOFMAŃSKI: Thank you.

11 And OPCV?

12 MS PELLET: (Interpretation) Thank you, Mr President.

13 The victims who have communicated is represented by OPCV, Ludovica Vetrucchio
14 and myself Sarah Pellet.

15 Thank you.

16 PRESIDING JUDGE HOFMAŃSKI: Thank you very much.

17 I note that Côte d'Ivoire is not represented today.

18 Today the Appeals Chamber is delivering its judgment on Côte d'Ivoire's appeal
19 against the decision of Pre-Trial Chamber I entitled "Decision on Côte d'Ivoire
20 challenge to the admissibility of the case against Simone Gbagbo." That decision was
21 rendered on 11 December 2014.

22 In today's summary, I will refer to this decision as the "Impugned Decision."

23 I shall now summarise the Appeals Chamber judgment and the reasons for it, starting
24 with a brief procedural history.

25 This summary is not part of the written judgment, which is the only authoritative

1 account of the Appeals Chamber's ruling and reasons. The written judgment, which
2 is unanimous, will be made available to the parties at the conclusion of this hearing.

3 On 29 February 2012, Pre-Trial Chamber III issued a warrant of arrest against Simone
4 Gbagbo. On 30 September 2013, Côte d'Ivoire filed an admissibility challenge. It
5 submitted that the domestic proceedings had been instituted against Mrs Simone
6 Gbagbo based on allegations similar to those made in the case before the Court. On
7 11 December 2014, Pre-Trial Chamber I, to which I will refer as the "Pre-Trial
8 Chamber," issued the Impugned Decision. In that decision the Pre-Trial Chamber
9 declared the case against Mrs Simone Gbagbo admissible. On 17 December 2014,
10 Côte d'Ivoire filed its appeal against the Impugned Decision.

11 On 9 March 2015, the Prosecutor filed the "Prosecution's Request to dismiss In Limine
12 and Strike Portions of the Responses of the Government of the Republic of Côte
13 d'Ivoire and the Defence for Simone Gbagbo," requesting that portions of filings of
14 Mrs Simone Gbagbo and Côte d'Ivoire be dismissed in limine and struck from the
15 record on the basis that they introduce information which falls outside the scope of
16 the pre-trial proceedings and is thus irrelevant to the appeal.

17 Regarding the Prosecutor's request of 9 March 2015, the Appeals Chamber recalls that
18 "facts which postdate the impugned decision on admissibility fall beyond the possible
19 scope of the proceedings before the Pre-Trial Chamber and therefore beyond the
20 scope of the proceedings on appeal." As some of the portions of Côte d'Ivoire and
21 Mrs Simone Gbagbo's filings refer to facts postdating the Impugned Decision, they
22 indeed fall outside the scope of the pre-trial proceedings and are therefore dismissed
23 in limine. However, the Appeals Chamber does not consider it necessary to strike
24 the relevant portions of the documents from the record. In particular, the Prosecutor
25 does not explain why these portions should be struck, especially in view of the fact

1 that the Appeals Chamber needed to examine the content of these portions in order to
2 rule on the request of 9 March 2015. For these reasons, the Prosecutor's request is
3 granted in part.

4 In its appeal Côte d'Ivoire advances two grounds.

5 Under the first ground of appeal, Côte d'Ivoire submits that the Pre-Trial Chamber
6 "erred in law in its interpretation and application of the admissibility criteria
7 established by Article 17 of the Rome Statute." In essence, three errors are alleged:

8 (i), that the Pre-Trial Chamber erred in applying overly rigorous criteria for the
9 determination of the existence of an investigation or prosecution in Côte d'Ivoire, (ii)
10 that the Pre-Trial Chamber erred in applying the "same person/same conduct" test by
11 undertaking a "purely formal examination" of the proceedings in Côte d'Ivoire, and
12 (iii) that the Pre-Trial Chamber erred in restricting its comparison of the conduct
13 covered by the international proceedings and the conduct covered by the domestic
14 proceedings to the four incidents referred to in the decision of the warrant of arrest
15 against Mrs Simone Gbagbo.

16 With respect to Côte d'Ivoire's argument regarding the applicable legal test, the
17 Appeals Chamber recalls that the presumption in favour of domestic jurisdiction only
18 applies where it has been shown that there are or have been investigations or
19 prosecutions on the national level. As the Pre-Trial Chamber found that no relevant
20 investigations or prosecutions were ongoing at the national level, it was not an error
21 for it not to follow said presumption. Côte d'Ivoire's argument is therefore rejected.
22 Côte d'Ivoire presents also a related argument that the criteria for establishing the
23 existence of investigations or prosecutions at the national level should be similar to
24 those applicable to the determination of a State's unwillingness or inability genuinely
25 to carry out the investigation or prosecution. However, the Appeals Chamber rejects

1 this argument as unsubstantiated. Another related argument of Côte d'Ivoire is that
2 the Pre-Trial Chamber's interpretation of "inaction" is erroneous. The Appeals
3 Chamber dismisses this argument as it fails to identify an error.

4 The second set of arguments under the first ground of appeal relates to the allegedly
5 "purely formal examination" of the proceedings in Côte d'Ivoire by the Pre-Trial
6 Chamber. The Appeals Chamber finds that although Côte d'Ivoire alleged errors of
7 law in this connection, in view of the actual nature of the arguments, it is more
8 appropriate to consider them as alleged errors of facts.

9 The Appeals Chamber notes that, contrary to Côte d'Ivoire's arguments, the Pre-Trial
10 Chamber did not carry out a purely formal examination without reviewing the factual
11 subject matter of the domestic proceedings. The Appeals Chamber notes in
12 particular that the Pre-Trial Chamber considered both the factual description and the
13 legal characterisation of the allegations in order to determine that the conduct covered
14 by the purported domestic proceedings in Côte d'Ivoire was irrelevant to the Court's
15 proceedings. The Appeals Chamber finds that Côte d'Ivoire has not demonstrated
16 an error in the Pre-Trial Chamber's assessment of the conduct underlying the crimes
17 allegedly investigated domestically. Côte d'Ivoire's argument on this point is
18 therefore rejected.

19 I shall now turn to the third set of arguments presented under the first ground of
20 appeal which concerns the alleged restriction by the Pre-Trial Chamber of its
21 comparison of the conduct covered by the international proceedings and the conduct
22 covered by the domestic proceedings to the four incidents referred to in the decision
23 of the warrant of arrest against Mrs Simone Gbagbo. The Appeals Chamber has also
24 decided to examine these arguments as alleged errors of facts, even though Côte
25 d'Ivoire refers to them as error of law. The Appeals Chamber notes that the

1 arguments of Côte d'Ivoire on this point are limited to a general statement that the
2 Pre-Trial Chamber failed to consider the previously-mentioned four incidents in the
3 circumstances of the case and in the context of the crimes. Côte d'Ivoire does not
4 explain which circumstances or context the Pre-Trial Chamber ought to have
5 considered and how such considerations would have affected the Pre-Trial Chamber's
6 conclusions. Accordingly, Côte d'Ivoire's argument on this point is rejected.
7 For the following reasons, Côte d'Ivoire's first ground of appeal is rejected.
8 I shall now turn to the second ground of appeal.
9 Under the second ground of appeal, Côte d'Ivoire presents two sets of arguments.
10 First, it contends that the Pre-Trial Chamber "erred in fact and in law in its assessment
11 of the investigation and proceedings in respect of Mrs Gbagbo" in Côte d'Ivoire. It
12 asserts that "the investigative measures are sufficiently clarified both in law and in
13 fact to establish that the domestic proceedings concern the same conduct as that
14 alleged in proceedings before the Court," and that the Pre-Trial Chamber erred in
15 failing to reach that conclusion. Second, Côte d'Ivoire argues that the Pre-Trial
16 Chamber erred in fact by failing to consider the various investigative measures
17 undertaken by its domestic authorities.
18 Regarding to the first set of arguments presented under the second ground of appeal,
19 the Appeals Chamber notes that in order to determine the subject matter of the
20 investigative activities on which Côte d'Ivoire has based its challenge to the
21 admissibility of the case before the Court, the Pre-Trial Chamber considers all of the
22 documents to which Côte d'Ivoire refers in its appeal. Relying on those documents,
23 the Pre-Trial Chamber concluded that the facts underpinning the charges against
24 Mrs Simone Gbagbo and the underlying criminal acts that the national authorities
25 have purportedly investigated since 2012 remain unclear and undefined.

1 Furthermore, the Pre-Trial Chamber noted that it was unable to establish which of the
2 crimes mentioned in earlier documents were still under investigation, and some of
3 them did not appear in the documents that were issued later. In this regard, the
4 Appeals Chamber notes that Côte d'Ivoire does not point to any information that
5 could have enabled the Pre-Trial Chamber to determine with clarity which crimes
6 were actually being investigated. For these reasons, the Appeals Chamber considers
7 that Côte d'Ivoire has failed to demonstrate that it was unreasonable for the Pre-Trial
8 Chamber to conclude that, on the basis of the available documentation, the factual
9 parameters of the case or cases being investigated domestically were unclear.

10 Accordingly, Côte d'Ivoire's argument on this point is rejected.

11 As regards to the Pre-Trial Chamber's assessment of the nature of the economic
12 crimes and crimes against the State, allegedly investigated by domestic authorities,
13 the Appeals Chamber notes that in view of the description of the alleged acts
14 provided in the material submitted by Côte d'Ivoire, it was not unreasonable for the
15 Pre-Trial Chamber to find this conduct to be of a different nature to Mrs Simone
16 Gbagbo's alleged conduct in relation to the crimes against humanity of murder, rape
17 and other forms of sexual violence, persecution and other inhumane acts, on the basis
18 of which the warrant of arrest was issued against her by the Court. In addition, Côte
19 d'Ivoire argues that the Pre-Trial Chamber erred by adopting an "excessively rigid
20 distinction" between the crimes allegedly investigated domestically and those before
21 the Court. However, Côte d'Ivoire does not explain why such distinction was
22 erroneous. The Appeals Chamber therefore rejects the arguments on this point.

23 With respect to the second set of arguments presented under the second ground of
24 appeal of Côte d'Ivoire, namely the alleged failure by the Pre-Trial Chamber to
25 consider the various investigative measures undertaken by Côte d'Ivoire's domestic

1 authorities, the Appeals Chamber finds that it was not unreasonable for the Pre-Trial
2 Chamber to conclude that the investigative steps, in view of their number of
3 frequency, were "sparse and disparate." Côte d'Ivoire's arguments on this point are
4 thus rejected.

5 The second ground of appeal is therefore rejected.

6 In these circumstances, the Appeals Chamber deems it appropriate to confirm the
7 Impugned Decision. I wish to emphasise that the Appeals Chamber's review was
8 limited to the issue of the correctness of the Impugned Decision, which determined
9 the admissibility of the case as of the date of its issuance.

10 This concludes my summary of the judgment. I thank the interpreters and court
11 reporters.

12 The session is now closed.

13 THE COURT USHER: All rise.

14 (The hearing ends in open session at 4.56 p.m.)