

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **2 August 2013**

APPEALS CHAMBER

Before: Judge Akua Kuenyehia
Judge Sang-Hyun Song
Judge Erkki Kourula
Judge Anita Ušacka
Judge Sanji Mmasenono Monageng

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF THE PROSECUTOR v. LAURENT GBAGBO

Public

Prosecution's Request for an Extension of the Page Limit for the Prosecution's Appeal against the "Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute"

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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Introduction

1. The Prosecution requests an extension by twenty pages of the page limit for the Prosecution's appeal against the "Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute" ("Prosecution Appeal").

Background and arguments

2. On 3 June 2013, the Majority of Pre-Trial Chamber I ("Majority") issued the "Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute" ("Decision").¹ The Presiding Judge appended a dissenting opinion.² On 10 June 2013 the Prosecution submitted its application for leave to appeal the Impugned Decision.³ On 31 July 2013, the Majority, the Presiding Judge dissenting,⁴ certified the following issues for appeal:⁵

Whether the Pre-Trial Chamber erred in holding that, when the Prosecutor alleges that an "attack against any civilian population" consists of multiple smaller incidents, none of which alone rises to the level of the minimum requirements of article 7 of the Statute and which allegedly took place at different times and places, a sufficient number of these incidents must be proved to the requisite standard, meaning that each of these incidents must be supported with sufficient evidence before the Chamber can take them into consideration to determine whether those incidents, taken together, indicate that there are substantial grounds to believe that an 'attack' took place.

¹ ICC-02/11-01/11-432.

² ICC-02/11-01/11-432-Anx-Corr.

³ ICC-02/11-01/11-435.

⁴ ICC-02/11-01/11-464-Anx.

⁵ ICC-02/11-01/11-464.

3. Pursuant to Regulation 37(2) the Chamber may extend the page limit of a document in “exceptional circumstances”. The requirement of exceptional circumstances has been found to be met in light of the *nature* of the issues on appeal (and hence the *type of submissions* required),⁶ their *novelty*,⁷ their *number*⁸ and *complexity*⁹ and/or the need to provide sufficient *factual detail*.¹⁰ The Prosecution Appeal features all these indicators of “exceptional circumstances”.
4. As the Prosecution has argued in its application for leave to appeal, this appeal “go[es] to the heart of the scope of the confirmation of charges proceedings and the functions of the Pre-Trial Chamber under the Statute”.¹¹ The issue for which leave to appeal was granted concerns key principles regarding the fact-finding process that are applicable not only at the confirmation of charges stage, but also at trial. This appeal is therefore of critical importance not only for the pre-trial proceedings of this case, but also for the Court as a whole: the judgement of the Appeals Chamber in this appeal may establish principles on fact-finding and evidentiary requirements which will be relevant to all future cases. Bearing in mind the importance of this appeal, it is in the interest of justice to allow the appellant to elaborate on its arguments in sufficient detail.
5. The Prosecution will raise different grounds of appeal, each of which will require adequate substantiation, including addressing complex and novel procedural and legal issues. This will require an in-depth analysis of the applicable legal framework, as well as the relevant jurisprudence of national and international jurisdictions. In addition, for each of the errors, the Prosecution intends to present a comprehensive factual analysis to demonstrate how the errors relate to the instant case and how they materially impact on the impugned Decision. It is

⁶ ICC-01/04-01/07-1546, para.4, ICC-01/04-168 OA3, para.4.

⁷ ICC-01/04-01/06-2205 OA15 OA16, para.21, ICC-01/04-01/06-2965, para.9.

⁸ ICC-01/04-01/10-248, page 3.

⁹ ICC-01/04-01/06-2205 OA15 OA16, para.21, ICC-01/04-168 OA3, para.4, ICC-01/04-01/06-177, para.6, ICC-01/04-01/10-248, page 3.

¹⁰ ICC-01/09-27, para.4, ICC-01/04-615, para.7, ICC-01/04-01/06-1350, para.8.

¹¹ ICC-02/11-01/11-435, para.2.

respectfully submitted that this cannot be done within the ordinary page limit of 20 pages, which effectively reduces an appellant's arguments to 18 pages, once cover and notification sheets are discounted.

Conclusion

6. For the reasons set out above, the Prosecution requests the Appeals Chamber to extend the page limit for the Prosecution Appeal against the Impugned Decision by twenty pages.



Fatou Bensouda, Prosecutor

Dated this 2nd day of August 2013

At The Hague, The Netherlands