

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

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

Date: **21 August 2012**

THE APPEALS CHAMBER

Before Judge Sanji Mmasenono Monageng, Presiding Judge
 Judge Sang-Hyun Song
 Judge Akua Kuenyehia
 Judge Erkki Kouroula
 Judge Anita Ušacka

**SITUATION IN CÔTE D'IVOIRE
 IN THE CASE OF
 THE PROSECUTOR *v.* LAURENT GBAGBO**

Public document

Defence appeal against Pre-Trial Chamber I's *Decision on the "Corrigendum of the challenge to the jurisdiction of the International Criminal Court on the basis of articles 12(3), 19(2), 21(3), 55 and 59 of the Rome Statute filed by the Defence for President Gbagbo"* (ICC-02/11-01/11-212)

Source: Defence team for President Gbagbo

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

Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor

Counsel for the Defence

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

Ms Natacha Fauveau Ivanovic

Legal Representatives of Victims

Ms Paolina Massida

Ms Sarah Pellet

Mr Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

**Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Counsel Support Section

Deputy Registrar

Mr Didier Daniel Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. IMPUGNED DECISION

1. The Defence hereby appeals against Pre-Trial Chamber I's decision no. ICC-02/11-01/11-212 of 15 August 2012, entitled *Decision on the "Corrigendum of the challenge to the jurisdiction of the International Criminal Court on the basis of articles 12(3), 19(2), 21(3), 55 and 59 of the Rome Statute filed by the Defence for President Gbagbo (ICC-02/11-01/11-129)"*, by which the Chamber rejected the Defence request that it find that the International Criminal Court lacks jurisdiction for the period and events referred to in the warrant of arrest issued for President Gbagbo on 23 November 2011 and in the Document Containing the Charges filed on 16 May 2012 or, in the alternative, to entertain a challenge to jurisdiction in light of the violations of President Gbagbo's rights during his detention in Côte d'Ivoire.¹

II. PROCEDURAL BACKGROUND

2. On 23 November 2011, Pre-Trial Chamber III issued a warrant of arrest for President Gbagbo at the Prosecutor's request.² President Gbagbo was transferred to the Detention Centre of the International Criminal Court on 30 November 2011.

3. On 5 December 2011, President Gbagbo made his first appearance, during which Pre-Trial Chamber III scheduled the confirmation hearing for 18 June 2012.³

4. On 24 May 2012, the Defence filed a challenge to the jurisdiction of the International Criminal Court on the basis of articles 12(3), 19(2), 21(3), 55 and 59 of the Rome Statute.⁴

5. On 5 June 2012, the Defence requested a postponement of the confirmation hearing, which was initially scheduled for 18 June 2012.⁵

6. On 12 June 2012, Pre-Trial Chamber I granted the Defence request⁶ and postponed the confirmation hearing from 18 June to 13 August 2012.⁷

¹ ICC-02/11-01/11-129-tENG.

² ICC-02/11-01/11-1.

³ *The Prosecutor v. Laurent Gbagbo*, Pre-Trial Chamber III, first appearance, 5 December 2011.

⁴ ICC-02/11-01/11-129. A corrigendum was filed on 29 May 2012, ICC-02/11-01/11-129-Corr-tENG. (Hereinafter "Challenge to Jurisdiction").

⁵ ICC-02/11-01/11-140.

⁶ ICC-02/11-01/11-140-Conf.

⁷ ICC-02/11-01/11-152-Conf.

7. On 15 June 2012, Pre-Trial Chamber I issued the *Decision on the conduct of the proceedings following the defence challenge to the jurisdiction of the Court pursuant to article 19 of the Rome Statute* and invited the Prosecutor and the Office of Public Counsel for Victims (“OPCV”) to file their observations by 27 June 2012.⁸

8. On 18 June 2012, lawyers for the Republic of Côte d’Ivoire filed an application for leave to file observations on the challenge to the jurisdiction of the International Criminal Court on the basis of articles 12(3), 19(2), 21(3), 55 and 59 of the Rome Statute filed by the Defence for President Gbagbo.⁹

9. That same day, before any decision had even been issued, they filed their “*Observations de la République de Côte d’Ivoire sur la requête en incompétence de la Cour pénale internationale fondée sur les article 12(3), 19(2), 21(3), 55 et 59 du Statut de Rome présentée par la défense du Président Gbagbo*”.¹⁰

10. Also on 18 June 2012, the OPCV filed a request to access the confidential annexes to the Defence Challenge to Jurisdiction.¹¹ The Defence opposed the request on 21 June 2012.¹²

11. On 25 June 2012, the Defence filed a motion contending that the observations submitted by the lawyers for the Republic of Côte d’Ivoire were inadmissible.¹³

12. On 27 June 2012, the Single Judge rejected the OPCV’s request for access to the confidential documents.¹⁴

13. That same day, 27 June 2012, the Prosecutor filed a response to the Defence Challenge to Jurisdiction.¹⁵

14. Again on the same day, the OPCV also filed observations on the Defence Challenge to Jurisdiction.¹⁶

⁸ ICC-02/11-01/11-153.

⁹ ICC-02/11-01/11-154.

¹⁰ ICC-02/11-01/11-156.

¹¹ ICC-02/11-01/11-155.

¹² ICC-02/11-01/11-160.

¹³ ICC-02/11-01/11-163. See in particular paras. 32-57.

¹⁴ ICC-02/11-01/11-166.

¹⁵ ICC-02/11-01/11-167-Conf.

15. On 6 July 2012, the Defence sought leave from Pre-Trial Chamber I to reply to the observations filed by the Prosecutor and the OPCV.¹⁷ On 10 July, the Prosecutor opposed the Defence application.¹⁸

16. On 2 August 2012, the Single Judge postponed the confirmation hearing until the issue of President Gbagbo's fitness to stand trial had been resolved.¹⁹

17. On 15 August 2012, Pre-Trial Chamber I rejected the Defence request for leave to reply, agreed to take the observations of the Republic of Côte d'Ivoire into consideration and rejected the Defence Challenge to Jurisdiction.²⁰

III. LEGAL BASIS

18. The Defence is appealing pursuant to article 82(1)(a) of the Statute, which provides that either party may appeal a decision with respect to jurisdiction or admissibility.

19. Under rule 154(1) of the Rules of Procedure and Evidence, an appeal may be filed under article 82, paragraph 1(a) not later than five days from the date upon which the party filing the appeal is notified of the decision.

20. Moreover, an appeal lodged under article 82(1)(a) lies as of right and therefore does not require the Pre-Trial Chamber's leave, as is recalled in the heading of rule 154.

21. Regulation 64(1) of the Regulations of the Court provides that an appeal filed under rule 154 must state:

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

22. Regulation 64(2) of the Regulations of the Court provides that the appellant shall file a

¹⁶ ICC-02/11-01/11-165.

¹⁷ ICC-02/11-01/11-174.

¹⁸ ICC-02/11-01/11-175.

¹⁹ ICC-02/11-01/11-201, para. 16.

²⁰ ICC-02/11-01/11-212.

document in support of the appeal setting out the grounds of the appeal within 21 days of notification of the relevant decision.

IV. NATURE OF THE APPEAL

23. The Defence is appealing Pre-Trial Chamber I's decision in its entirety.

V. RELIEF SOUGHT

24. The Defence prays the Appeals Chamber to set aside all the rulings of the Pre-Trial Chamber I decision dismissing the challenge to the jurisdiction of the International Criminal Court filed by President Gbagbo on 29 May 2012.

[signed]

Emmanuel Altit

Lead Counsel for Laurent Gbagbo

Dated this 21 August 2012, at The Hague, The Netherlands.