



Original: English

**No. ICC-02/11-01/15 OA 7
Date: 9 October 2015**

THE APPEALS CHAMBER

Before: Judge Sanji Mmasenono Monageng, Presiding Judge
Judge Kuniko Ozaki
Judge Howard Morrison
Judge Piotr Hofmański
Judge Chang-ho Chung

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

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

Public document

Decision on Mr Laurent Gbagbo's request for leave to reply

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

The Office of the Prosecutor

Ms Fatou Bensouda

Ms Helen Brady

Counsel for Mr Laurent Gbagbo

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

Legal Representative of Victims

Ms Paolina Massidda

Counsel for Mr Charles Blé Goudé

Mr Geert-Jan Alexander Knoops

Mr Claver N'dry

REGISTRY

Registrar

Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I entitled “Decision giving notice pursuant to Regulation 55(2) of the Regulations of the Court” of 19 August 2015 (ICC-02/11-01/15-185),

Having before it the “Demande d’autorisation de répliquer à la «Response to Laurent Gbagbo’s appeal against the ‘Decision giving notice pursuant to Regulation 55(2) of the Regulations of the Court’» (ICC-02/11-01/15-265)” of 7 October 2015 (ICC-02/11-01/15-275),

After deliberation,

Renders unanimously, the following

DECISION

1. The abovementioned request is granted in part.
2. Mr Gbagbo may file a reply to the Prosecutor’s response to the document in support of the appeal, which shall not exceed 10 pages, by 16h00 on Wednesday, 14 October 2015.

REASONS

I. PROCEDURAL HISTORY

1. On 20 August 2015, Trial Chamber I (hereinafter: “Trial Chamber”) notified the parties and participants of the possibility that the legal characterisation of the facts set out in the decision on the confirmation of charges against Mr Laurent Gbagbo (hereinafter: “Mr Gbagbo”) may be subject to change to include liability under article 28 (a) or (b) of the Statute¹ (hereinafter: “Impugned Decision”).

¹ “Decision giving notice pursuant to Regulation 55(2) of the Regulations of the Court”, dated 19 August 2015 and registered on 20 August 2015, ICC-02/11-01/15-185.

2. On 10 September 2015, the Trial Chamber granted, in part, Mr Gbagbo's request for leave to appeal the Impugned Decision² (hereinafter: "Decision Granting Leave to Appeal").

3. On 21 September 2015, Mr Gbagbo filed the "Document in support of the appeal against the 'Decision giving notice pursuant to Regulation 55(2) of the Regulations of the Court' (ICC-02/11-01/15-185)"³ (hereinafter: "Document in Support of the Appeal").

4. On 2 October 2015, the Prosecutor filed the "Response to Laurent Gbagbo's appeal against the 'Decision giving notice pursuant to Regulation 55(2) of the Regulations of the Court'"⁴ (hereinafter: "Prosecutor's Response to the Document in Support of the Appeal").

5. On 7 October 2015, Mr Gbagbo requested leave to reply to the Prosecutor's Response to the Document in Support of the Appeal⁵ (hereinafter: "Request for Leave to Reply").

II. MERITS

6. Mr Gbagbo requests leave to address two matters raised in the Prosecutor's Response to the Document in Support of the Appeal: (i) the Prosecutor's request to dismiss the appeal *in limine* and submission that the appeal will become moot as soon as the opening statements are delivered on 10 November 2015, and (ii) what Mr Gbagbo describes as a systematic misinterpretation of the jurisprudence cited by the Prosecutor in support of her arguments.⁶

7. In relation to the first matter, Mr Gbagbo submits that the Prosecutor misconstrues the way in which the Appeals Chamber must determine issues on

² "Decision on request for leave to appeal the 'Decision giving notice pursuant to Regulation 55(2) of the Regulations of the Court'", ICC-02/11-01/15-212.

³ Dated 21 September 2015 and registered on 7 October 2015, ICC-02/11-01/15-231-tENG (OA 7); original French version dated and registered on 21 September 2015 (ICC-02/11-01/15-231 (OA 7)).

⁴ ICC-02/11-01/15-265 (OA 7). *See also* "Response to Mr Gbagbo's document in support of the appeal against the 'Decision giving notice pursuant to Regulation 55(2) of the Regulations of the Court' (ICC-02/11-02/15-231)", 1 October 2015, ICC-02/11-01/15-261 (OA 7).

⁵ "Demande d'autorisation de répliquer à la «Response to Laurent Gbagbo's appeal against the 'Decision giving notice pursuant to Regulation 55 (2) of the Regulations of the Court'» (ICC-02/11-01/15-265)", 7 October 2015, ICC-02/11-01/15-275 (OA 7).

⁶ Request for Leave to Reply, paras 4-7, 8-14.

appeal.⁷ He argues that the question of whether the defence suffered prejudice as a result of the Impugned Decision was addressed in the Decision Granting Leave to Appeal and should not be revisited by the Appeals Chamber in its consideration of the appeal.⁸ He states that the latter is required to determine whether the Trial Chamber committed errors of law or fact and whether these errors materially affected the Impugned Decision.⁹

8. In addition, Mr Gbagbo indicates that the Prosecutor's suggestion that the appeal will become moot upon the delivery of the opening statements shows a misunderstanding of his arguments on appeal.¹⁰ He submits that there has been no fundamental change since the issuance of the decision on the confirmation of charges in the sense that there is no new information or evidence before the Trial Chamber that would justify a legal recharacterisation of the facts.¹¹ Mr Gbagbo contends that this will continue to be the case until such time as the Prosecutor has presented consistent evidence that would justify such recharacterisation.¹²

9. To conclude his submissions on the first point, Mr Gbagbo argues that the Prosecutor has in effect presented a covert appeal against the Decision Granting Leave to Appeal.¹³ He submits that this circumvention of the relevant procedure aimed at preventing a proper adversarial debate on appeal should be denounced by the Appeals Chamber.¹⁴

10. In relation to the second matter, Mr Gbagbo highlights three examples that, in his submission, demonstrate that the Prosecutor has misrepresented the Court's jurisprudence: (i) the Prosecutor suggests that there is consistent jurisprudence supporting the Trial Chamber's interpretation of regulation 55 of the Regulations of the Court and the notion of 'trial' and omits to mention jurisprudence that adopted a

⁷ Request for Leave to Reply, para. 5.

⁸ Request for Leave to Reply, para. 5.

⁹ Request for Leave to Reply, para. 5.

¹⁰ Request for Leave to Reply, para. 6.

¹¹ Request for Leave to Reply, para. 6.

¹² Request for Leave to Reply, para. 6.

¹³ Request for Leave to Reply, para. 7.

¹⁴ Request for Leave to Reply, para. 7.

different interpretation;¹⁵ (ii) the Prosecutor relies on Appeals Chamber jurisprudence to the effect that notice under regulation 55 of the Regulations of the Court must be given “as early as possible” without explaining how this statement, made in the context of a tardy notification during deliberations, supports her argument that such notification could be given before the start of the trial;¹⁶ (iii) the Prosecutor relies on part of a recent decision issued by Trial Chamber VII in the case of *The Prosecutor v Jean-Pierre Bemba Gombo et al.*, which she argues supports the interpretation adopted by the Trial Chamber in the Impugned Decision, but omits to mention that Trial Chamber VII, in identical circumstances to those in the present case, found that there was no justification for modifying the legal characterisation of the charges confirmed in the confirmation of charges decision at that time.¹⁷

11. With respect to the first matter, the Appeals Chamber notes the submissions of the Prosecutor on the irrelevance of the issues certified for leave to appeal by the Trial Chamber, which in her view, obviates the need for appellate intervention and calls for the dismissal, *in limine* of the appeal.¹⁸ The Appeals Chamber considers these submissions to warrant a reply by Mr Gbagbo as they raise issues that could not have been foreseen by Mr Gbagbo. In these circumstances, the Appeals Chamber is persuaded by Mr Gbagbo’s arguments and grants his request to reply to these specific arguments.

12. With respect to the second matter, the Appeals Chamber is however, not persuaded by Mr Gbagbo’s arguments and rejects his request to reply to the Prosecutor’s alleged misrepresentation of the Court’s jurisprudence. The Appeals Chamber considers that on the basis of the submissions already before it, further submissions on this point would be unnecessary.

13. The Request for Leave to Reply is therefore granted in part. Mr Gbagbo shall file his reply to the Response to the Document in Support of the Appeal by 16h00 on

¹⁵ Request for Leave to Reply, para. 9 referring to the Trial Chamber’s consideration of jurisprudence contradicting its interpretation in paragraph 12 of the Impugned Decision and a decision issued by Trial Chamber III in *The Prosecutor v. Jean-Pierre Bemba Gombo* (ICC-01/05-01/08-802, para. 210).

¹⁶ Request for Leave to Reply, para. 10, referring to ICC-02/11-01/15-265, para. 10.

¹⁷ Request for Leave to Reply, para. 11, referring to ICC-01/05-01/13-1250, para. 10 referring to “Decision on Prosecution Application to Provide Notice pursuant to Regulation 55”, 15 September 2015, ICC-01/05-01/13-1250.

¹⁸ Response to the Document in Support of the Appeal, paras 3-6.

Wednesday, 14 October 2015. Mr Gbagbo's reply shall be limited to responding to the Prosecutor's specific arguments on why the appeal should be dismissed *in limine*. Furthermore, the Appeals Chamber deems it appropriate in the circumstances, to limit Mr Gbagbo's reply to no more than 10 pages.

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



Judge Sanji Mmasenono Monageng
Presiding Judge

Dated this 9th day of October 2015

At The Hague, The Netherlands