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**International
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TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Geoffrey Henderson

SITUATION IN CÔTE D'IVOIRE

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

Public Document

**Response to the « Demande d'autorisation d'interjeter appel de la décision orale
du 12 février 2016 de la Chambre de première instance » (ICC-02/11-01/15-450)**

Source: Office of Public Counsel for Victims

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I. Introduction

1. The Legal Representative of the victims admitted to participate in the proceedings submits that Mr Gbagbo's request (the "Request") for leave to appeal the oral decision issued by the Chamber on 12 February 2016 (the "Decision")¹ does not satisfy the requirements of article 82(1)(d) of the Rome Statute and must be rejected.

2. The Request actually challenges the ruling issued by the Chamber on 4 November 2015, which is no longer amenable to appeal under article 82(1)(d). Alternatively, the Request does not demonstrate that the alleged issues identified by the Defence arise from the Decision and can be the subject of an interlocutory appeal. The Request merely represents the Defence's misreading of and disagreement with the Decision because (i) the assessment on whether the victims' personal interests are affected was made by the Chamber when deciding on the participation of victims at trial, and (ii) the Decision has a legal basis, is not unreasoned and does not prevent the Defence from eliciting relevant evidence from the witnesses.

3. Moreover, the Request fails to show how the issues allegedly arising from the Decision would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial. In particular, the Request does not articulate how each of said issues specifically meets the requirements of article 82(1)(d) of the Rome Statute, does not explain the contention that the Decision *de facto* recognises the Legal Representative the status of quasi-party, and is based on hypotheses and mere speculations.

¹ See the transcript of the hearing held on 12 February 2016, No. ICC-02/11-01/15-T-22-CONF-ENG ET (open session), p. 30, line 22 to p. 31, line 11 (the "Decision").

II. Background

4. On 4 November 2015, the Chamber explained *“how it wishes the proceedings to be conducted”*,² noting, *inter alia*, that “[t]hese proceedings are against Mr Gbagbo in his personal capacity. In those circumstances, this Chamber does not consider the use of the title ‘President’ appropriate in filings in this case as appears to be the practice. The Chamber therefore invites you to - and invites the Gbagbo Defence team - to refrain from using the title”.³

5. On 12 February 2016, the Presiding Judge of the Chamber issued the Decision granting the request made orally by the Legal Representative on 11 February,⁴ ruling, *inter alia*, that “[w]e should really remain in the courtroom where president or not president has nothing to do. We are all -- the Accused are equal [...] It’s not a matter of being not -- of in-courtesy, but it’s a matter of trying to be balanced and to keep the whole atmosphere a little bit -- one could be interpreted in a false way. So the Chamber urges you to refrain from using the title ‘president’ just from a formal point of view”.⁵

6. On 22 February 2016, the Gbagbo Defence filed the Request,⁶ seeking leave to appeal the Decision on the following four issues:

- i) The Chamber made an error in agreeing to the request made by the Legal Representative without identifying the victims’ personal interests and without following the appropriate proceedings (the “First Issue”);⁷

² See the transcript of the hearing held on 4 November 2015, No. ICC-02/11-01/11-T-25-CONF-ENG CT (open session), p. 4, lines 6-7.

³ *Idem*, p. 6, lines 4-8 (open session).

⁴ See the transcript of the hearing held on 11 February 2016, No. ICC-02/11-01/15-T-21-CONF-ENG ET (open session), p. 44, lines 11-12.

⁵ See the Decision, *supra* note 1, p. 31, lines 5-11.

⁶ See the “Demande d’autorisation d’interjeter appel de la décision orale du 12 février 2016 de la Chambre de première instance”, No. ICC-02/11-01/15-450, 22 February 2016 (the “Request”).

⁷ *Idem*, paras. 16-19.

- ii) The Chamber made an error in not providing a valid legal basis for the Decision (the “Second Issue”);⁸
- iii) The Chamber made an error of fact in finding necessary for the Defence not to refer to the Accused as “President Gbagbo” in order to “*calmer le jeu*” (the “Third Issue”);⁹ and
- iv) The Decision will create confusion among the witnesses (the “Fourth Issue”).¹⁰

7. Pursuant to regulation 65(3) of the Regulations of the Court, the Legal Representative submits her response to the Request.

III. Submissions

1. The issues identified by the Defence do not arise from the Decision

8. The Legal Representative submits that none of the Issues identified in the Request arise from the Decision because the latter reiterates, at the request of the Legal Representative, the ruling issued by the Chamber on 4 November 2015. Indeed, the Legal Representative simply requested the Chamber to clarify that the previous ruling applicable to written submissions should also apply to oral submissions and therefore throughout the proceedings as a matter of consistency. Accordingly, the Issues identified in the Request may at most arise from the ruling of 4 November 2015.¹¹

⁸ *Ibid.*, paras. 20-23.

⁹ *Ibid.*, paras. 24-28.

¹⁰ *Ibid.*, paras. 29-30.

¹¹ See, for instance, the “Decision on Defence's requests seeking leave to appeal the ‘Decision on the Legal Representative of Victims' access to certain confidential filings and to the case record’ and

9. In this regard, although the Defence refers to the oral arguments it made *ex parte* at that time in order to show its disagreement with the ruling of 4 November 2015,¹² said ruling must be considered final because the Defence did not request leave to appeal it and the Chamber has not modified it since.¹³

10. Admittedly, on 4 November 2015 the Chamber “invite[d] the Gbagbo Defence team - to refrain from using the title” in its “filings” instead of in its oral submissions.¹⁴ However, the Legal Representative notes that article 82(1)(d) of the Rome Statute does not allow indirect challenges to rulings issued by a Chamber after the deadline established by rule 155(1) of the Rules of Procedure and Evidence has elapsed *vis-à-vis* the concerned ruling.¹⁵ The Defence is therefore prevented from indirectly revisiting the ruling of 4 November 2015 with the Request.

11. Assuming *arguendo* that the Decision can be considered as a different ruling from the one issued by the Chamber on 4 November 2015 and that the Request does not indirectly challenge the latter, the Legal Representative submits that none of the Issues identified in the Request arise from the Decision.

12. The First Issue does not arise from the Decision, but from the Defence’s misrepresentation thereof and of the proceedings leading to it. As such, it cannot constitute an appealable “issue” pursuant to article 82(1)(d) of the Rome Statute.¹⁶

seeking suspensive effect of it.” (Trial Chamber I, Single Judge), No. ICC-02/11-01/11-809, 11 March 2015, para. 22.

¹² See the Request, *supra* note 6, para. 2.

¹³ *Idem*, para. 3.

¹⁴ See *supra* para. 4.

¹⁵ See the “Decision on the Prosecutor’s Position on the Decision of Pre-trial Chamber II to Redact Factual Descriptions of Crimes from the Warrants of Arrest, Motion for Reconsideration, and Motion for Clarification” (Pre-Trial Chamber II), No. ICC-02/04-01/05-60, 28 October 2005, paras. 18 and 20-23. See also the “Decision on the defence request to reconsider the ‘Order on numbering of evidence’ of 12 May 2010” (Trial Chamber I), No. ICC-01/04-01/06-2705, 30 March 2011, para. 12.

¹⁶ See the “Decision on Defence requests for leave to appeal the ‘Order setting the commencement date for trial’” (Trial Chamber I), No. ICC-02/11-01/15-117, 2 July 2015, para. 19. See also the “Decision on request for leave to appeal the ‘Decision on objections concerning access to confidential material on

13. Indeed, contrary to Defence's contentions, the assessment on whether the victims' personal interests are affected by the trial was already made by the Chamber when it authorised the applicants to participate throughout the trial pursuant to article 68(3) of the Rome Statute.¹⁷ Subsequently, the Chamber has indicated that the Legal Representative needs to request leave only when she intends to (i) present evidence,¹⁸ (ii) question witnesses,¹⁹ or (iii) propose victims to present their views and concerns in person.²⁰

14. Accordingly, the Defence's contention that the Legal Representative lacked *locus standi* to make the contested request cannot be an issue arising from the Decision. If any, this issue arises from the decisions referred to in the preceding paragraph, for which leave to appeal is no longer possible.

15. In this regard, the Legal Representative notes that the approach followed by the Chamber is shared by other Trial Chambers. In the *Katanga and Ngudjolo Chui* case, Trial Chamber II ruled that "[o]nce the Chamber has established that an individual victim may participate in the proceedings under rule 89 of the Rules, this means that the Chamber has thereby recognised that this individual has a personal interest in the trial proceedings".²¹ In turn, Trial Chamber I in the *Lubanga* case further recognised as a general principle that "[t]he participation by victims should encompass their personal interests in an appropriately broad sense, and [...] whenever necessary they should be entitled

the case record"" (Trial Chamber I, Single Judge), No. ICC-02/11-01/15-132, 10 July 2015, para. 3 and references contained therein.

¹⁷ See the "Decision on victim participation" (Trial Chamber I), No. ICC-02/11-01/11-800, 6 March 2015; and the "Decision on victims' participation status" (Trial Chamber I), No. ICC-02/11-01/15-379, 7 January 2016.

¹⁸ See the "Directions on the conduct of the proceedings" (Trial Chamber I), No. ICC-02/11-01/15-205, 3 September 2015, paras. 12(ii) and 30.

¹⁹ *Idem*, paras. 28 and 37.

²⁰ *Ibid.*, para. 30.

²¹ See the "Decision on the Modalities of Victim Participation at Trial" (Trial Chamber II), No. ICC-01/04-01/07-1788-tENG, 22 January 2010, para. 61.

*to express their views and concerns through statements, examination of witnesses or by filing written submissions”.*²²

16. In these circumstances, the First Issue does not arise from the Decision because the Chamber is not required to pronounce itself on the victims’ personal interests each time that the Legal Representative intervenes on a matter arising during the trial.

17. This approach is further supported by the wording of regulation 86(8) of the Regulations of the Court, which provides that decisions on the participation of victims pursuant to rule of 89(2) of the Rules of Procedure and Evidence shall apply throughout the proceedings in the same case. It is also in line with the recent jurisprudence of the Appeals Chamber according to which “[it] *will not, in the absence of compelling reasons, overturn prior decisions of a relevant Chamber on the status, personal interest and/or participatory rights accorded to victims in that [same] case*”.²³

18. Similarly, the Second Issue does not arise from the Decision, but from the Defence’s misunderstanding thereof. As a consequence, it cannot be considered as an appealable “issue” pursuant to article 82(1)(d) of the Rome Statute.²⁴

19. The Decision does not contain an express reference to its legal basis, but it cannot said to be lacking one. As already indicated by the Presiding Judge,²⁵ the Chamber may give directions for the conduct of the proceedings pursuant to article 64(8)(b) of the Rome Statute. Moreover, the Presiding Judge’s intervention during the

²² See the “Decision on victims’ participation” (Trial Chamber I), No. ICC-01/04-01/06-1119, 18 January 2008, para. 98.

²³ See the “Reasons for the “Decision on the ‘Request for the recognition of the right of victims authorized to participate in the case to automatically participate in any interlocutory appeal arising from the case and, in the alternative, application to participate in the interlocutory appeal against the ninth decision on Mr Gbagbo’s detention (ICC-02/11-01/15-134-Red3)’” (Appeals Chamber), No. ICC-02/11-01/15-172 OA6, 31 July 2015, para. 17.

²⁴ See *supra* note 16.

²⁵ See the transcript of the hearing held on 4 February 2016, No. ICC-02/11-01/15-T-14-ENG ET, p. 2, lines 19-21.

oral submissions made by the Legal Representative on 11 February 2016 reveals that the Chamber considered the ruling of 4 November 2015 when issuing the Decision.²⁶

20. It is therefore irrelevant to discuss in the abstract whether the legal texts of the Court expressly provide for the power of the Chamber to direct the parties and participants to address the Accused in a given way.²⁷ Suffice it to say that rulings similar to the Decision have also been adopted by other Trial Chambers.²⁸

21. Regarding the Third Issue, the Defence's submissions do not reveal the existence of an appealable "issue" under article 82(1)(d) of the Rome Statute but a mere disagreement with the Decision. As such, it cannot be an appealable "issue" pursuant to article 82(1)(d) of the Rome Statute.²⁹

22. As noted by the Defence, the wording of the Decision refers to the intention of the Chamber to "calm things down" ("*calmer un peu le jeu*",³⁰ "to keep the whole atmosphere a little bit"³¹). However, this is not the only reason provided for in the Decision. The Chamber also considered the fact that "[t]his is a delicate matter to deal

²⁶ See the transcript of the hearing held on 11 February 2016, No. ICC-02/11-01/15-T-21-CONF-ENG ET (open session), p. 44, lines 17-19 ("I'm quoting in English. PRESIDING JUDGE TARFUSSER: Repeat the date. MS MASSIDDA: Yes. 4 November 2014. And I'm quoting in English").

²⁷ Cf. the Request, *supra* note 6, para. 21.

²⁸ See the "Decision on Defence Request for Conditional Excusal from Continuous Presence at Trial" (Trial Chamber V(b)), No. ICC-01/09-02/11-830, 18 October 2013, para. 57. See also the "Decision on Mr Ruto's Request for Excusal from Continuous Presence at Trial" (Trial Chamber V(a)), No. ICC-01/09-01/11-777, 18 June 2013, para. 28.

²⁹ See the transcript of the hearing held on 10 November 2015, No. ICC-02/11-01/15-T-5-ENG ET, p. 15, lines 18-20; and the transcript of the hearing held on 28 January 2016, No. ICC-02/11-01/15-T-9-ENG ET, p. 38, lines 11-13. See also the "Decision on Defence's requests seeking leave to appeal the 'Decision on the Legal Representative of Victims' access to certain confidential filings and to the case record' and seeking suspensive effect of it.", *supra* note 11, para. 9; and the "Decision on Defence requests for leave to appeal the 'Order setting the commencement date for trial'", *supra* note 16, para. 19.

³⁰ See the transcript of the hearing held on 12 February 2016, No. ICC-02/11-01/15-T-22-FRA RT (open session), p. 36, line 16.

³¹ See the Decision, *supra* note 1, p. 31, lines 9-10.

*with”, that “all -- the Accused are equal” and that “it’s a matter of trying to be balanced” because “one could be interpreted in a false way”.*³²

23. The Legal Representative reads the wording of the Decision quoted above as considering the possible intimidating effect of the use of the term “President” during the questioning of the witnesses, as well as the possibility that some witnesses may become defensive or upset upon hearing this term because of its political connotations given the polarised background of the present proceedings.³³

24. Since a disagreement or conflicting opinion cannot amount to an appealable “issue” under article 82(1)(d) of the Rome Statute,³⁴ the fact that the Defence disagrees with the reasons of the Decision, as such, does not suffice for leave to be granted to file an interlocutory appeal.

25. Lastly, the Fourth Issue is not an appealable “issue” pursuant to article 82(1)(d) of the Rome Statute because, once again, it only arises from the Defence’s misreading of the Decision.³⁵

26. Contrary to the Request,³⁶ the Decision cannot be said to prevent the Defence from eliciting relevant evidence from the witnesses. The Decision does not prevent the Defence from using the term “President” in all instances, but only “*from a formal point of view*”.³⁷ This means that the Defence can still use the term when referring to its substantive meaning, such as when examining witnesses about the role and functions of the Accused during his term as President, his responsibilities as such, the members of his government, etc.

³² *Idem*, p. 31, lines 2, 6 and 9.

³³ Cf. the Request, *supra* note 6, para. 25.

³⁴ See the “Judgement on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal” (Appeals Chamber), No. ICC-01/04-168 OA3, 13 July 2006, para. 9.

³⁵ See *supra* note 16.

³⁶ See the Request, *supra* note 6, para. 29.

³⁷ See the Decision, *supra* note 1, p. 31, line 11.

27. In sum, none of the four Issues identified in the Request arise from the Decision. Moreover, the Legal Representative submits that some aspects of the Request are mere re-submissions of the arguments presented orally to the Chamber and impliedly and/or expressly dismissed by the latter in the Decision. As such, these arguments cannot amount to appealable “issues” arising from the Decision under article 82(1)(d) of the Rome Statute, but may eventually be considered by the Appeals Chamber if leave to appeal is granted.³⁸

28. In particular, the Defence reiterates its oral submissions according to which preventing the Accused from being called “President” is contrary to the Ivorian culture,³⁹ it is inconsistent with the Accused’s presumption of innocence,⁴⁰ and it is equivalent to contesting the legitimacy of the Accused’s election as President.⁴¹

29. As such, these parts of the Request must be disregarded because they are inconsistent with the repeated rulings of the Chamber that interlocutory appeals under article 82(1)(d) are exceptional in nature and do not provide a means to seek in disguise the reconsideration of the Chamber’s determinations.⁴²

³⁸ See the “Decision on Prosecutor’s Application for leave to appeal in part Pre-Trial Chamber II’s Decision on the Prosecutor’s Applications for Warrants of Arrest under article 58” (Pre-Trial Chamber II), No. ICC-02/04-01/05-20, 19 August 2005, para. 22; the “Decision on the joint defence request for leave to appeal the decision on witness preparation” (Trial Chamber V), No. ICC-01/09-01/11-596, 11 February 2013, para. 6; the “Decision on Prosecution’s Application for Leave to Appeal the ‘Decision on Mr Ruto’s Request for Excusal from Continuous Presence at Trial’” (Trial Chamber V(a)), No. ICC-01/09-01/11-817, 18 July 2013, para. 12; and the “Decision on Defence requests for leave to appeal the ‘Order setting the commencement date for trial’”, *supra* note 16, paras. 20 and 22.

³⁹ Cf. the Request, *supra* note 6, paras. 8, 12-13, 21, 25 and 31 with the transcript of the hearing held on 11 February 2016, No. ICC-02/11-01/15-T-21-CONF-ENG ET (open session), p. 45, lines 13-18.

⁴⁰ Cf. the Request, *supra* note 6, para. 13 and 31 with the transcript of the hearing held on 11 February 2016, No. ICC-02/11-01/15-T-21-CONF-ENG ET (open session), p. 46, line 2.

⁴¹ Cf. the Request, *supra* note 6, para. 14 and 34 with the transcript of the hearing held on 11 February 2016, No. ICC-02/11-01/15-T-21-CONF-ENG ET (open session), p. 45, lines 18 to p. 46, line 1.

⁴² See the transcript of the hearing held on 10 November 2015, No. ICC-02/11-01/15-T-5-ENG ET, p. 15, lines 18-19; and the transcript of the hearing held on 28 January 2016, No. ICC-02/11-01/15-T-9-ENG ET, p. 38, lines 11-12.

30. Finally, the Legal Representative notes with concern the Defence's contention that she shares with the Prosecution an alleged intention to challenge the legitimacy of the Accused's election as President of Côte d'Ivoire in 2000.⁴³ In a manner consistent with the criminal nature of these proceedings and with the rulings issued by the Chamber since the very first day of this trial,⁴⁴ she has never intended to do so. The only intention behind the Legal Representative's request not to refer to the Accused as "President" was to preserve the well-being of her clients and to ensure a truthful testimony when witnesses are questioned by the Defence.

2. The issues identified by the Defence do not significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial

31. Since it is clear that none of the Issues identified by the Defence arise from the Decision, the Request must be dismissed on this basis alone. Assuming *arguendo* that any of said issues arises from the Decision, the Legal Representative opposes the Defence's contention that they significantly affect the fairness and expeditiousness of the proceedings or the outcome of the trial for the following four reasons.

32. Firstly, contrary to the requirements of article 82(1)(d) of the Rome Statute,⁴⁵ the Defence does not articulate how each of the alleged Issues specifically affects the fairness and expeditiousness of the proceedings or the outcome of the trial.

33. The Defence merely states that the Decision interferes with the relation between the Accused and his Counsel, reduces the Counsel's leeway during

⁴³ See the Request, *supra* note 6, paras. 14-15 and 34.

⁴⁴ See the transcript of the hearing held on 28 January 2016, No. ICC-02/11-01/15-T-9-ENG ET, p. 3, lines 14-21 and p. 35, lines 8-11.

⁴⁵ See the "Decision on the 'Prosecution's Application for Leave to Appeal Oral Rulings on Clarifying Inconsistencies in Prior Statements and Partial Hostility'" (Trial Chamber II), No. ICC-01/04-01/07-1958, 11 March 2010, para. 20. See also the "Decision on 'Defence Request for Leave to Appeal the 'Decision on issues related to the conclusion of the defence's presentation of oral evidence at trial and on the 'Defence Request for an Order for Cooperation'''" (Trial Chamber III), No. ICC-01/05-01/08-2925-Red, 20 December 2013, para. 34.

questioning, risks confusing witnesses, and appears to call into question the history of Côte d'Ivoire.⁴⁶ This submission, sparse and without any supporting arguments, does not explain how each of the alleged Issues affects the fairness of the proceedings or the outcome of the trial. Therefore, it cannot suffice for granting leave to appeal the Decision.

34. Secondly, the Request fails to address the alleged impact of each Issue on the expeditiousness of the proceedings. Article 82(1)(d) of the Rome Statute requires verifying that each of the issues affects both the fair and the expeditious conduct of the proceedings.⁴⁷

35. The Defence only refers to the potential impact of the Fourth Issue on the expeditiousness of the proceedings, without elaborating on it.⁴⁸ The failure to address this aspect in detail regarding all the issues can only lead to the outright dismissal of the Request.

36. Thirdly, the Defence fails to provide an explanation of its contention that the Decision *de facto* recognises the Legal Representative the status of quasi-party, “[l]a *constituant ainsi en troisième partie aux côtés de l'Accusation et de la Défense et prenant le risque de l'apparition d'un second Procureur*”.⁴⁹

37. This contention by the Defence is not new and has already been ruled upon by the Chamber more than once.⁵⁰ Moreover, the Request does not explain this

⁴⁶ See the Request, *supra* note 6, paras. 33-34.

⁴⁷ See the “Decision on Prosecutor’s Application for leave to appeal in part Pre-Trial Chamber II’s Decision on the Prosecutor’s Applications for Warrants of Arrest under article 58”, *supra* note 38, para. 21; and the “Decision on the Prosecutor’s Application for Leave to Appeal the ‘Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo’” (Pre-Trial Chamber II), No. ICC-01/05-01/08-532, 18 September 2009, para. 16.

⁴⁸ See the Request, *supra* note 6, para. 30.

⁴⁹ *Idem*, para. 35.

⁵⁰ See the Defence’s oral motion at the commencement of the trial on the role of the Legal Representative of Victims and the decision thereon, in the transcript of the hearing held on 28 January 2016, No. ICC-02/11-01/15-T-9-ENG ET, p. 21, lines 10-14 and p. 34, lines 6-15.

contention. As such, a submission of this type cannot be deemed to meet the requirements of article 82(1)(d) of the Rome Statute.⁵¹

38. Lastly, the Request is based on hypotheses and mere speculations, such as the contention that the Judges' position not to allow referring to the Accused as "President Gbagbo" "[p]eut être comprise comme un biais à l'encontre de Laurent Gbagbo".⁵² The Defence once again merely refers to hypothetical considerations,⁵³ which as such cannot be the subject of an interlocutory appeal under article 82(1)(d) of the Rome Statute.⁵⁴

3. The Appeals Chamber's immediate resolution of the issues identified by the Defence will not materially advance the proceedings

39. The Defence contends that an immediate resolution by the Appeals Chamber would materially advance the proceedings because no adequate remedy could be provided if the alleged Issues were to be decided in an appeal against the eventual judgement.⁵⁵

40. In this regard, since the Issues identified by the Defence do not affect the fair and expeditious conduct of the proceedings or the outcome of the trial, it is

⁵¹ See the "Decision on Defence requests for leave to appeal the 'Order setting the commencement date for trial'", *supra* note 16, para. 23.

⁵² See the Request, *supra* note 6, para. 32.

⁵³ *Idem*, para. 29.

⁵⁴ See the "Decision on the Prosecutor's and Defence requests for leave to appeal the decision adjourning the hearing on the confirmation of charges" (Pre-Trial Chamber I), No. ICC-02/11-01/11-464, 31 July 2013, para. 8; the "Decision on 'Defence Request for Leave to Appeal the 'Decision on issues related to the conclusion of the defence's presentation of oral evidence at trial and on the 'Defence Request for an Order for Cooperation''", *supra* note 45, para. 26 and the references contained therein; and the "Decision on 'Defence Request for Leave to Appeal the 'Decision on Defence Request for Relief for Abuse of Process'" (Trial Chamber III), No. ICC-01/05-01/08-3273, 24 July 2015, para. 6 and the references contained therein.

⁵⁵ See the Request, *supra* note 6, para. 36.

unnecessary to consider whether an immediate resolution by the Appeals Chamber may materially advance the proceedings.⁵⁶

41. Nonetheless, the Legal Representative wishes to underline that the arguments put forward by the Defence on the need for the immediate intervention of the Appeals Chamber do not show how a decision “[o]nly in the final appeal at the conclusion of the proceedings [on whether the Defence may address the Accused as “President Gbagbo”] would mean to risk that large parts of the entire proceedings may be invalidated”.⁵⁷

42. As indicated above, the Decision prevents the Defence from using the title “president” “just from a formal point of view”.⁵⁸ Accordingly, the Defence can make use of this title when questioning witnesses about conduct carried out by Mr Gbagbo in his former capacity as President of Côte d’Ivoire.⁵⁹ Therefore, contrary to the Defence’s contention,⁶⁰ the evidence provided by the witnesses will not be different by virtue of the Decision.

⁵⁶ See the “Decision on Defence requests for leave to appeal the ‘Order setting the commencement date for trial’”, *supra* note 16, para. 26.

⁵⁷ See the transcript of the hearing held on 5 February 2016, No. ICC-02/11-01/15-T-15-CONF-ENG ET (open session), p. 5, line 25 to p. 6, line 1.

⁵⁸ See the Decision, *supra* note 1, p. 31, line 11.

⁵⁹ See, for instance, the Request, *supra* note 6, para. 26, referring to the use of the expression “*Président Gbagbo*” by witness P-0442 in the transcript of the hearing held on 11 February 2016, No. ICC-02/11-01/15-T-21-CONF-FRA RT (open session), p. 64, line 17.

⁶⁰ *Idem*, para. 29.

IV. Conclusion

43. For the foregoing reasons, the Legal Representative respectfully requests the Chamber to reject the Request.

A handwritten signature in black ink, reading "Paolina Massidda". The signature is written in a cursive style with a horizontal line underneath the name.

Paolina Massidda
Principal Counsel

Dated this 25th day of February of 2016

At The Hague, The Netherlands