

**Cour
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**International
Criminal
Court**



Original: English

No.: ICC-02/11-01/15

Date: 8 March 2017

THE APPEALS CHAMBER

Before: Judge Piotr Hofmański, Presiding Judge
Judge Kuniko Ozaki
Judge Sanji Mmasenono Monageng
Judge Howard Morrison
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

Confidential

**Request to retroactively extend the time limit for the Legal Representative's
"Response to Mr Gbagbo's Request for Leave to Reply to the Legal
Representative's 'Response to Mr Gbagbo's document in support of the appeal
against the oral decision of 29 November 2016'" (ICC-02/11-01/15-840-Conf)**

Source: Office of Public Counsel for Victims

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

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I. Introduction

1. The Common Legal Representative of the victims admitted to participate in the proceedings (the “Legal Representative”)¹ requests the Appeals Chamber to retroactively extend the time limit for her response (the “Response”)² to Mr Gbagbo’s Request for Leave to Reply (the “Request for Leave to Reply”)³ to the Legal Representative’s “Response to Mr Gbagbo’s document in support of the appeal against the oral decision of 29 November 2016”.⁴

2. The Legal Representative submits that retroactively extending the time limit for the Response is justified by the importance of the matters addressed in the Appeal for the victims authorised to participate in this case, and the potential repercussions that the ruling may have on the trial proceedings. Moreover, an extension of time after the lapse of the time limit in this instance will not derail the proceedings from their intended course.

II. Procedural Background

3. On 29 November 2016, the Trial Chamber orally rejected Mr Gbagbo’s Defence request to lift the redactions to the identity and organisation of the intermediary who

¹ See the “Directions on the conduct of the proceedings” (Trial Chamber I), No. ICC-02/11-01/15-205, 3 September 2015, p. 24.

² See the “Response to Mr Gbagbo’s Request for Leave to Reply to the Legal Representative’s ‘Response to Mr Gbagbo’s document in support of the appeal against the oral decision of 29 November 2016 (ICC-02/11-01/15-827-Conf)’”, No. ICC-02/11-01/15-840-Conf OA9, 7 March 2017 (the “Response”).

³ See the “Demande d’autorisation de répliquer à la ‘Response to Mr Gbagbo’s document in support of the appeal against the oral decision of 29 November 2016’ déposée par la Représentante légale des victimes le 24 février 2017”, No. ICC-02/11-01/15-830-Conf, 2 March 2017 (the “Request for Leave to Reply”).

⁴ See the “Response to Mr Gbagbo’s document in support of the appeal against the oral decision of 29 November 2016”, No. ICC-02/11-01/15-827-Conf, 24 February 2017.

assisted Witness P-0350 to complete her application form (the “29 November Decision”).⁵

4. On 5 December 2016, Mr Gbagbo’s Defence sought leave to appeal the 29 November Decision.⁶ The Legal Representative opposed the request.⁷

5. On 2 February 2017, the Trial Chamber granted leave to appeal the 29 November Decision.⁸

6. On 13 February 2017, Mr Gbagbo’s Defence filed the “*Document à l’appui de l’appel interjeté à l’encontre de la décision de la Chambre, rendue oralement le 29 Novembre 2016, refusant à la Défense la levée d’une expurgation apposée par l’Accusation au point 24 de la demande de participation de P-0350*” (the “Appeal”).⁹

7. On 24 February 2017, the Legal Representative filed her response to the Appeal.¹⁰

8. On 2 March 2017, Mr Gbagbo’s Defence filed the Request for Leave to Reply.¹¹

⁵ See the transcript of the hearing held on 29 November 2016, No. ICC-02/11-01/15-T-107-CONF-ENG ET (closed session), p. 1, line 14 to p. 2, line 16

⁶ See the “Demande d’autorisation d’interjeter appel de la décision de la Chambre rendue oralement le 29 Novembre 2016 refusant à la Défense la levée d’une expurgation apposée par l’Accusation au point 24 de la demande de participation de P-0350”, No. ICC-02/11-01/15-768-Conf, 5 December 2016.

⁷ See the “Response to the ‘Demande d’autorisation d’interjeter appel de la décision de la Chambre rendue oralement le 29 Novembre 2016 refusant à la Défense la levée d’une expurgation apposée par l’Accusation au point 24 de la demande de participation de P-0350 (ICC-02/11-01/15-768-Conf)’”, No. ICC-02/11-01/15-774-Conf, 9 December 2016.

⁸ See the “Decision on the request for leave to appeal the oral decision of 29 November 2016” (Trial Chamber I), No. ICC-02/11-01/15-790-Conf, 2 February 2017.

⁹ See the “Document à l’appui de l’appel interjeté à l’encontre de la décision de la Chambre, rendue oralement le 29 Novembre 2016, refusant à la Défense la levée d’une expurgation apposée par l’Accusation au point 24 de la demande de participation de P-0350”, No. ICC-02/11-01/15-809-Conf OA9, 13 February 2017 (the “Appeal”).

¹⁰ See the “Response to Mr Gbagbo’s document in support of the appeal against the oral decision of 29 November 2016”, No. ICC-02/11-01/15-827-Conf OA9, 24 February 2017.

¹¹ See the Request for Leave to Reply, *supra* note 3.

9. On 7 March 2017, the Legal Representative filed her response to the Request for Leave to Reply.¹²

III. Confidentiality

10. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this response is filed confidentially because it makes reference to submissions filed under the same classification. A public redacted version will be filed in due course.

IV. Submissions

11. The Legal Representative acknowledges that, pursuant to regulation 34(c) of the Regulations of the Court, the time limit for filing a response to the Request for Leave to Reply elapsed on 6 March 2017. The Response was filed on 7 March 2017 at 11h46.

12. The filing of the Response after the lapse of the applicable time limit was due to an internal oversight. The Legal Representative deeply regrets and sincerely apologizes for this unfortunate outcome.

13. In these circumstances, the Legal Representative requests a retroactive extension of the time limit, so that the Response may be considered by the Appeals Chamber.

14. The Legal Representative notes that, when deciding on granting or denying requests for retroactive extensions of time, the practice of Chambers took into account factors such as: (i) the interests of justice;¹³ (ii) the length of time that has

¹² See the Response, *supra* note 2.

¹³ See, *mutatis mutandis*, the “Decision on Prosecution request to add P-548 and P-66 to its witness list” (Trial Chamber V(b)), No. ICC-01/09-02/11-832, 23 October 2013, para. 11. See also the “Public Redacted Version of ‘Defence Response to ‘Prosecution’s Request for an extension of time to disclose

elapsed since the deadline¹⁴ and the potential prejudice which it may be caused to the other party;¹⁵ and (iii) the need to conduct the trial fairly and expeditiously.¹⁶

15. In the present circumstances, the Legal Representative submits that the admission of the Response is justified by the importance of the matters addressed in the Appeal for the victims authorised to participate in this case, and the potential repercussions that the ruling may have on the trial proceedings.¹⁷ In this sense, all arguments submitted in this regard by the participating victims merit to be considered by the Appeals Chamber before a judgement is rendered.

16. As indicated by the Legal Representative in her response to the Appeal, an eventual order “[l]ifting redactions to the identity of the victims’ intermediaries would affect the activities of the Legal Representative in the field, because the disclosure of said

Witness P-0114’s second statement and Witness P-0360’s second statement and annexes’ (ICC-02/11-01/15-312-Conf)”, 4 November 2015, ICC-02/11-01/15-332-Conf” (Trial Chamber I), No. ICC-02/11-01/15-332-Red, 14 December 2015, para. 17 and the “Decision on Defence requests for leave to appeal the ‘Decision on the Prosecution requests for variation of the time limit for disclosure of certain documents’” (Trial Chamber I), No. ICC-02/11-01/15-228, 28 September 2015, para. 30.

¹⁴ See the “Decision on Prosecution application under Rule 68(2)(b) and Regulation 35 for admission of prior recorded testimony of Witness P-0551” (Trial Chamber VI), No. ICC-01/04-02/06-1733, 19 January 2017, para. 8.

¹⁵ See, *mutatis mutandis*, the “Decision on Prosecution request to add P-548 and P-66 to its witness list” (Trial Chamber V(b)), *supra* note 13, para. 11. See also the “Judgment on the appeal of Mr. Germain Katanga against the decision of Pre-Trial Chamber I entitled ‘Decision on the Defence Request Concerning Languages’” (Appeals Chamber), No. ICC-01/04-01/07-522, 27 May 2008, para. 12.

¹⁶ See, *mutatis mutandis*, the “Decision on Prosecution request to add P-548 and P-66 to its witness list” (Trial Chamber V(b)), *supra* note 13, para. 11. See also the “Public Redacted Version of ‘Defence Response to ‘Prosecution’s Request for an extension of time to disclose Witness P-0114’s second statement and Witness P-0360’s second statement and annexes’ (ICC-02/11-01/15-312-Conf)”, 4 November 2015, ICC-02/11-01/15-332-Conf” (Trial Chamber I), *supra* note 13, para. 17 and the “Decision on Defence requests for leave to appeal the ‘Decision on the Prosecution requests for variation of the time limit for disclosure of certain documents’” (Trial Chamber I), *supra* note 13, para. 30.

¹⁷ See, *mutatis mutandis*, the “Decision on Prosecution application under Rule 68(2)(b) and Regulation 35 for admission of prior recorded testimony of Witness P-0551” (Trial Chamber VI), *supra* note 14, paras. 7-8; the “Decision on Prosecution Request to add 12 Items to its List of Evidence” (Trial Chamber VII), No. ICC-01/05-01/13-1191, 27 August 2015, para. 10; and the “Decision on Prosecution request to add P-548 and P-66 to its witness list” (Trial Chamber V(b)), *supra* note 13, para. 11. See also, *mutatis mutandis*, the “Public Redacted Version of ‘Defence Response to ‘Prosecution’s Request for an extension of time to disclose Witness P-0114’s second statement and Witness P-0360’s second statement and annexes’ (ICC-02/11-01/15-312-Conf)”, 4 November 2015, ICC-02/11-01/15”, *supra* note 16, paras. 17-18.

information is very likely to lead either to the intermediaries' ceasing to cooperate, or substantially limiting their interaction with her and, in turn, to the victims disengaging from the proceedings".¹⁸

17. Lastly, the Legal Representative submits that admitting the Response as validly filed will not derail the proceedings from their intended course.¹⁹ The Response was filed shortly after the lapse of the time limit, namely with less than 24 hours of delay.²⁰ As such, the lapse of the time is so brief that it will not prevent the appeal proceedings from being conducted and concluded within a reasonable time.

V. Conclusion

18. For the foregoing reasons, the Legal Representative respectfully requests the Appeals Chamber to retroactively extend the time limit for the Response.

¹⁸ See the "Response to Mr Gbagbo's document in support of the appeal against the oral decision of 29 November 2016", *supra* note 10, para. 29 (emphasis added).

¹⁹ See the "Reasons for the 'Decision on the 'Application for Extension of Time Limits Pursuant to Regulation 35 of the Regulations of the Court to Allow the Defence to Submit its Observations on the Prosecutor's Appeal regarding the Decision on Evidentiary Scope of the Confirmation Hearing and Preventative Relocation'" (Appeals Chamber), No. ICC-01/04-01/07-653 OA7, 27 June 2008, para. 6; and the "Decision on the request for an extension of the time limit" (Appeals Chamber), No. ICC-01/05-01/08-827 OA3, 15 July 2010, para. 10.

²⁰ See, *mutatis mutandis*, the "Decision on Prosecution application under Rule 68(2)(b) and Regulation 35 for admission of prior recorded testimony of Witness P-0551", *supra* note 14, para. 8; and the "Decision on Prosecution request to add P-548 and P-66 to its witness list", *supra* note 17, para. 11.

It is hereby certified that this document contains a total of 1,980 words and complies in all respects with the requirements of regulation 36 of the Regulations of the Court.²¹



Paolina Massidda

Principal Counsel

Dated this 8th day of March 2017

At The Hague, The Netherlands

²¹ This statement (30 words), not itself included in the word count, follows the Appeals Chamber's direction. See No. ICC-01/11-01/11-565 OA6, 24 July 2014, para. 32.