

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-02/11-01/11 OA 5
Date: 7 August 2013**

THE APPEALS CHAMBER

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

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF THE PROSECUTOR v. LAURENT KOUDOU GBAGBO

Public document

Decision

on the “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’”



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

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor
Mr Fabricio Guariglia

Counsel for Mr Laurent Koudou Gbagbo
Emmanuel Altit
Ms Agathe Bahi Baroan

REGISTRY

Registrar
Mr Herman von Hebel



The Appeals Chamber of the International Criminal Court,

Having before it the “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’” of 2 August 2013 (ICC-02/11-01/11-467),

Renders unanimously the following

DECISION

The page limits for the Prosecutor’s document in support of the appeal under regulation 65 (4) of the Regulations of the Court and Mr Gbagbo’s response under regulation 65 (5) of the Regulations of the Court are extended by 20 pages.

REASONS

1. On 3 June 2013, Pre-Trial Chamber I (hereinafter: “Pre-Trial Chamber”), acting by majority, Judge Fernández de Gurmendi dissenting,¹ issued the “Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute”.²
2. On 31 July 2013, the Pre-Trial Chamber, acting by majority, Judge Fernández de Gurmendi dissenting, granted in part the “Prosecution’s application for leave to appeal the ‘Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute’” in relation to the following issue:

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.³

¹ “Corrigendum to Dissenting opinion of Judge Silvia Fernandez de Gurmendi”, 6 June 2013, ICC-02/11-01/11-432-Anx-Corr.

² ICC-02/11-01/11-432.

³ “Decision on the Prosecutor’s and Defence requests for leave to appeal the decision adjourning the hearing on the confirmation of charges”, ICC-02/11-01/11-464, para. 36.

3. On 2 August 2013, the Prosecutor filed the “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’”⁴ (hereinafter: “Request”). She refers to the requirement of exceptional circumstances having been met in other cases in light of the nature of the issues on appeal and therefore the type of submissions needed, their novelty, number and complexity and the need to provide sufficient factual details, submitting that the current appeal features all of these indicators.⁵ Citing the critical importance of the appeal, not only for the pre-trial proceedings of the present case, but also for the Court as a whole, the Prosecutor submits that it is “in the interest of justice to allow the appellant to elaborate on its arguments in sufficient detail”.⁶ She states that she “will raise different grounds of appeal, each of which will require adequate substantiation, including addressing complex and novel procedural and legal issues” and that “[t]his will require an in-depth analysis of the applicable legal framework, as well as the relevant jurisprudence of national and international jurisdictions”.⁷ She also submits that she will, for each of the errors, “present a comprehensive factual analysis to demonstrate how the errors relate to the instant case and how they materially impact on the impugned Decision.”⁸ She argues that 20 pages are insufficient to do this.⁹

4. On 5 August 2013, the Appeals Chamber set 6 August 2013 as the deadline for the filing of a response to the Request by Mr Laurent Koudou Gbagbo (hereinafter: “Mr Gbagbo”).¹⁰

5. On 6 August 2013, Mr Gbagbo submitted that he has no objection to the Prosecutor’s request for an extension of the page limit for the document in support of the appeal.¹¹ He also underlines that, given the importance of the issue under appeal to the rights of the defence and the fairness of the trial, it is essential that he is allowed to respond in a clear, precise, full and reasoned manner to the Prosecutor’s document in support of the appeal and, therefore, he

⁴ ICC-02/11-01/11-467.

⁵ Request, para. 3.

⁶ Request, para. 4.

⁷ Request, para. 5.

⁸ Request, para. 5.

⁹ Request, para. 5.

¹⁰ “Order on the filing of a response to the ‘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’”, ICC-02/11-01/11-469.

¹¹ “Réponse de la Défense à la ‘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’”, ICC-02/11-01/11-470 (hereinafter: “Response”), paras 10-13.

reserves his right to request an extension of the page limit under regulation 37 (2) of the Regulations of the Court, depending on the content of the arguments of the Prosecutor set out in the document in support of the appeal.¹²

6. Regulation 37 of the Regulations of the Court provides:

1. A document filed with the Registry shall not exceed 20 pages, unless otherwise provided in the Statute, Rules, these Regulations or ordered by the Chamber.
2. The Chamber may, at the request of a participant, extend the page limit in exceptional circumstances.

7. The Appeals Chamber considers that, in the specific circumstances of the case and in light of the nature and complexity of the issue for which leave to appeal has been granted, there are “exceptional circumstances” within the meaning of regulation 37 (2) of the Regulations of the Court, that justify an extension of the page limit for the document in support of the appeal and that the number of extra pages sought (20) is reasonable. The Request is therefore granted. The Appeals Chamber also considers it appropriate, at this stage, to extend the page limit for Mr Gbagbo’s response to the document in support of the appeal by 20 pages.

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



Judge Sanji Mmasenono Monageng
Presiding Judge

Dated this 7th day of August 2013

At The Hague, The Netherlands

¹² Response, paras 14-16.