

The Appeals Chamber of the ICC will deliver the Appeals judgment on the admissibility of the Simone Gbagbo case on 27 May 2015

Today May 20, 2015 the Appeals Chamber of the International Criminal Court (ICC) announces that it will deliver its judgment on the admissibility in the Gbagbo Simone Case on Wednesday, May 27, 2015.

Mrs. Gbagbo is charged with four counts of crimes against humanity (murder, rape and/or other sexual violence, persecution, and other inhumane acts) allegedly committed during the post-electoral violence in Côte d'Ivoire between 16 December 2010 and 12 April 2011. She is not in the Court's custody.

Côte d'Ivoire On 30 September 2013 challenged the admissibility of the case against Mrs. Simone Gbagbo. It is interesting to note that the Prosecution have argued in this Application that it has jurisdiction over this case. She said:

The prosecution submits that the instant case is admissible. Although there are domestic criminal proceedings against Mrs. Gbagbo in Cote d'Ivoire, they do not relate to the crimes alleged in the present Application, given that they solely concern "economic" crimes. The Prosecutor also submits that "based on the scale, nature and manner of the commission of crimes" that are the subject of this Application and the "impact that these crimes had and continue to have on victims", the case is of sufficient gravity to justify intervention by the Court¹

On 11 December 2014, Pre-Trial Chamber I rejected the Republic of Côte d'Ivoire's challenge to this case and reminded her of its obligation to surrender Simone Gbagbo to the Court without delay. The Chamber stated that:

A challenge to the admissibility of a case before the ICC is granted if the case is being genuinely investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution. For a case to be declared inadmissible, the national investigation and/or prosecution must cover the same individual and substantially the same conduct as alleged in the proceedings before the Court.

¹ ICC-02/11-01/12-11-Red 01-10-2013, para. 36.

After a thorough assessment of the documentation made available to the Chamber, in accordance with article 17(1)(a) of the Rome Statute, the Chamber concluded that Côte d'Ivoire's domestic authorities were not taking tangible, concrete and progressive steps aimed at ascertaining whether Simone Gbagbo is criminally responsible for the same conduct that is alleged in the case before the Court.

Accordingly, Pre-Trial Chamber I rejected the admissibility challenge. Having found the case against Simone Gbagbo admissible before the ICC, the Chamber reminded Côte d'Ivoire of its obligation to surrender Simone.²

On 17 December 2014, the Republic of Côte d'Ivoire appealed the Pre-Trial Chamber I's decision. Republic of Côte d'Ivoire according to Article 83(2) of the Rome Statute prays the Appeals Chamber:

- To set aside the decision of Pre-Trial Chamber I rendered on 11 December 2014;
- To accept the challenge made by the Republic of Côte d'Ivoire and declare the case of *The Prosecutor v. Simone Gbagbo* inadmissible; and
- In the alternative, to refer the issue of admissibility to a trial chamber.

The Republic of Côte d'Ivoire therefore requested the suspension of the Appeal. According to Article 82(3) of the Rome Statute that provides that:

Appeal shall not of itself have suspensive effect unless the Appeals Chamber so orders, upon request, in accordance with the Rules of Procedure and Evidence

There is no indication provided in either the Rome Statute or Rules of Procedure and Evidence (RPE) as to the criteria or procedural rules for requesting or ordering suspensive effect; in the absence of such criteria or procedural rules in the applicable texts, the Appeals Chamber has established its own case law alluding that the decision on Article 82(3) demand is within the “discretion” of the Appeals Chamber. However, the Chamber has stipulated the circumstances in which it exercises this discretion as follows:

In past decisions, the Appeals Chamber, when deciding on requests for suspensive effect, has considered whether the implementation of the decision under appeal (i) “would create an irreversible situation that could

² http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr1075.aspx, [Access 20 May 2015].

not be corrected, even if the Appeals Chamber eventually were to find in favour of the appellant”, (ii) would lead to consequences that “would be very difficult to correct and may be irreversible” or (iii) “could potentially defeat the purpose of the appeal”³

The immediate execution of the decision rendered by Pre-Trial Chamber I on 11 December 2004 to dismiss the admissibility challenge brought by the Republic of Côte d'Ivoire has legal and factual significance. It would mean that the proceedings against Mrs Gbagbo in respect of the events grounding the warrant for her arrest issued by Pre-Trial Chamber III on 29 February 2012 and confirmed on 2 March 2012 would continue before the international criminal court in The Hague rather than before the competent judicial authorities in Côte d'Ivoire – in this instance, the office of Investigations of the Abidjan- Plateau Court of First Instance. It would, if the reasoning of the Pre-Trial Chamber I is followed, require that Mrs. Gbagbo be surrendered to the Court.⁴

A local court in Côte d'Ivoire sentenced Mrs Gbagbo for 20 years imprisonment as indicated in our earlier report and on 27 May 2015 the Appeals Chambers of the ICC will deliver the Appeals Judgment on the admissibility of the case against *The Prosecutor v. Simone Gbagbo* which will be discussed in our next report.

³ ICC-02/11-01/12-48-tENG, 27-01-2015, para 8 – 12.

⁴ ICC-02/11-01/12-48-tENG, 27-01-2015, para 13.