

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-02/11-01/11 OA 3

Date: 23 November 2012

THE APPEALS CHAMBER

Before:

Judge Akua Kuenyehia, Presiding Judge

Judge Sang-Hyun Song

Judge Sanji Mmasenono Monageng

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 “Requests in relation to the ‘Decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) 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 the Defence
Mr Emmanuel Altit
Ms Agathe Bahi Baroan

The Office of Public Counsel for Victims
Ms Paolina Massidda
Ms Sarah Pellet

REGISTRY

Registrar
Ms Silvana Arbia

The Appeals Chamber of the International Criminal Court,

Having before it the “Requests in relation to the ‘Decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute’” dated 20 November 2012 and registered on 21 November 2012 (ICC-02/11-01/11-302),

Renders unanimously the following

DECISION

The filing entitled “Requests in relation to the ‘Decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute’” is rejected.

REASONS

I. PROCEDURAL HISTORY

1. On 13 July 2012, Pre-Trial Chamber I (hereinafter: “Pre-Trial Chamber”) issued the “Decision on the ‘Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo’” (hereinafter: “First Decision on Interim Release”) rejecting Mr Laurent Koudou Gbagbo’s (hereinafter: “Mr Gbagbo”) request for interim release.¹
2. On 23 July 2012, Mr Gbagbo lodged an appeal against the First Decision on Interim Release,² which was subsequently rejected by the Appeals Chamber.³
3. On 30 October 2012, the Pre-Trial Chamber convened a hearing pursuant to rule 118(3) of the Rules of Procedure and Evidence at which oral observations were heard in relation to the continued detention or release of Mr Gbagbo from the Prosecutor, Mr Gbagbo and the Office of Public Counsel for victims (hereinafter: “OPCV”).⁴

¹ ICC-02/11-01/11-180-Red.

² “Defence appeal against Pre-Trial Chamber I’s decision denying the interim release of President Gbagbo”, ICC-02/11-01/11-193-Conf-tENG (OA). A public redacted version of this document was filed on 1 November 2012, ICC-02/11-01/11-193-Red.

³ See “Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I of 13 July 2012 entitled ‘Decision on the ‘Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo’””, 26 October 2012, ICC-02/11-01/11-278-Red (OA).

⁴ ICC-02/11-01/11-T-9-ENG; ICC-02/11-01/11-T-10-CONF-EXP-ENG.



4. On 12 November 2012, the Pre-Trial Chamber issued the “Decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute”⁵ (hereinafter: “Second Decision on Interim Release”), which maintained the detention of Mr Gbagbo.

5. On 20 November 2012, the OPCV filed the “Requests in relation to the ‘Decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute’”⁶ (hereinafter: “OPCV Requests”). The OPCV notes that it does not have access to the confidential filings in the case against Mr Gbagbo and that if a confidential appeal should have been filed against the Second Decision on Interim Release, the OPCV would be unaware of it.⁷ In order to communicate the views of the victims it represents, the OPCV therefore requests the Appeals Chamber, should a confidential appeal have been filed against the Second Decision on Interim Release, (i) to grant it access to all documents relating to such an appeal;⁸ and (ii) to allow it to participate in the appeal on behalf of the victims the OPCV represents.⁹

II. MERITS

6. The Appeals Chamber notes that in accordance with a decision of the Pre-Trial Chamber, the OPCV, acting as the common legal representative of victims in the case against Mr Gbagbo, has been granted access only to the public record of the case.¹⁰ Thus, should any proceedings in the case be confidential, the victims would be unaware of, and unable to participate in, the same.

7. The Appeals Chamber is mindful of the interest that the victims may have in proceedings concerning the detention or release of Mr Gbagbo, including proceedings on appeal. However, the Appeals Chamber is not seized of any appeal against the Second Decision on Interim Release. As such, the OPCV Requests are unnecessary and must be rejected.

⁵ ICC-02/11-01/11-291.

⁶ ICC-02/11-01/11-302 (OA 3). This filing was dated 20 November 2012 but registered on 21 November 2012.

⁷ OPCV Requests, paras 9-14.

⁸ OPCV Requests, para. 14.


⁹ OPCV Requests, paras 15-27.

¹⁰ “Decision on Victims’ Participation and Victims’ Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings”, 4 June 2012, ICC-02/11-01/11-138, p. 27.



8. Nevertheless, and in order to avoid similar requests by the victims in the future, the Appeals Chamber would expect the parties, if they file confidential submissions, to also file public redacted versions of those submissions, to the extent possible.

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



Judge Akua Kuenyehia
Presiding Judge

Dated this 23rd day of November 2012

At The Hague, The Netherlands