

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-02/11-01/11 OA 4

Date: 27 August 2013

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 application by victims for
participation in the appeal**

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

Legal Representatives of Victims
Ms Paolina Massidda
Ms Sarah Pellet

REGISTRY

Registrar
Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I entitled “Third decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute” dated 11 July 2013 and registered on 12 July 2013 (ICC-02/11-01/11-454),

Having before it the “Application to Participate in the Interlocutory Appeal Filed by the Defence against the ‘Third decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute’ of 12 July 2013” dated 22 July 2013 and registered on 23 July 2013 (ICC-02/11-01/11-460),

Renders the following

DECISION

- (i) The 199 victims authorised to participate in the proceedings by Pre-Trial Chamber I are granted the right to participate for the purpose of presenting their views and concerns with respect to their personal interests in the issues raised on appeal. They may file their observations by 16h00 on Tuesday, 3 September 2013.

- (ii) Mr Gbagbo and the Prosecutor may file their responses to the observations presented by the aforesaid victims by 16h00 on Wednesday, 11 September 2013.

REASONS

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 12 July 2013, Pre-Trial Chamber I (hereinafter: “Pre-Trial Chamber”) rendered its “Third decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute”¹ (hereinafter: “Impugned Decision”), in which it

¹ ICC-02/11-01/11-454, dated 11 July 2013 and registered on 12 July 2013.

decided that Mr Laurent Kouidou Gbagbo (hereinafter: “Mr Gbagbo”) should remain in detention.²

2. On 19 July 2013, Mr Gbagbo filed his appeal against the Impugned Decision³ (hereinafter: “Appeal”), in which he submits that the Impugned Decision should be reversed.⁴

3. On 23 July 2013, the Office of Public Counsel for Victims (hereinafter: “OPCV”) filed the “Application to Participate in the Interlocutory Appeal Filed by the Defence against the ‘Third decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute’ of 12 July 2013”⁵, dated 22 July 2013 and registered on 23 July 2013 (hereinafter: “Victims’ Application”).

4. The Victims’ Application indicates that 199 victims (hereinafter: “Victims”) have been granted the right to participate in the proceedings against Mr Gbagbo before the Pre-Trial Chamber.⁶ The Victims, represented by OPCV, submit that the issue of Mr Gbagbo’s interim release affects their personal interests in that, if Mr Gbagbo is released and subsequently fails to appear for his trial, they will lose the opportunity to present their views and concerns. They submit further that, in that case, they would be unable to claim reparations, should Mr Gbagbo be convicted.⁷ In addition, the Victims aver that, given “the prevalent situation in the Ivory Coast” and the alleged support Mr Gbagbo has both within and outside of the country, their security would be at risk should he be released.⁸ Furthermore, the Victims submit that their participation in the appeal is appropriate, “given the subject-matter of the appeal and the consequences that the outcome of the appeal may have on the personal interests of the victims”.⁹ Finally, the Victims state that their participation is not prejudicial to or inconsistent with the rights of the suspect and a fair and impartial trial because they seek to present their views and concerns regarding their personal

² Impugned Decision, p. 19.

³ “Acte d’appel de la Défense relatif à la « Third decision on the review of Laurent Gbagbo’s detention pursuant to article 60 (3) of the Rome Statute » de la Chambre préliminaire I décidant du maintien en détention du Président Gbagbo”, ICC-02/11-01/11-459-Red (OA 4).

⁴ Appeal, para. 40.

⁵ ICC-02/11-01/11-460 (OA 4).

⁶ Victims’ Application, para. 24.

⁷ Victims’ Application, para. 28.

⁸ Victims’ Application, para. 29, referring to “Observations du Représentant légal commun des victimes relatives au réexamen périodique de la détention de M. Gbagbo”, 3 July 2013, ICC-02/11-01/11-444.

⁹ Victims’ Application, para. 30.

interests solely in relation to the issues raised on appeal, and the Defence will be permitted to respond to the same.¹⁰

5. On 25 July 2013, the Appeals Chamber issued an order inviting responses from Mr Gbagbo and the Prosecutor to the Victims' Application by 21 August 2013.¹¹

6. On 14 August 2013, the Prosecutor filed a response¹² to the Victims' Application (hereinafter: "Prosecutor's Response"), stating that she does not oppose the application.¹³ The Prosecutor notes, *inter alia*, that previous Chambers have acknowledged that "the personal interests of victims are affected in similar appeals where the issue of detention of suspects and accused persons was litigated".¹⁴ The Prosecutor submits that the personal interests of the Victims are affected by the present appeal because if Mr Gbagbo is released and subsequently absconds, then the Victims will be denied the opportunity to present their views and concerns at trial, or to make a claim for reparations.¹⁵ The Prosecutor further avers that the release of Mr Gbagbo would have serious implications for the Victims' security.¹⁶ She submits that the Victims should, therefore, be permitted to make submissions "specifically relevant to the issues arising in the appeal and to the extent that their personal interests are affected by the proceedings".¹⁷

7. On 19 August 2013, Mr Gbagbo submitted his Document in Support of the Appeal in relation to the Impugned Decision¹⁸ (hereinafter: "Document in Support of the Appeal"), to which the Prosecutor filed a response¹⁹ on 26 August 2013.

¹⁰ Victims' Application, para. 39.

¹¹ "Order on the filing of responses to the application by victims for participation in the appeal", ICC-02/11-01/11-462 (OA 4).

¹² "Prosecution's Observations on the 'Application to Participate in the Interlocutory Appeal Filed by the Defence against the "Third decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute" of 12 July 2013"', ICC-02/11-01/11-476 (OA 4).

¹³ Prosecutor's Response, paras 1 and 8.

¹⁴ Prosecutor's Response, para. 4.

¹⁵ Prosecutor's Response, para. 5.

¹⁶ Prosecutor's Response, para. 6.

¹⁷ Prosecutor's Response, para. 7.

¹⁸ "Document à l'appui de l'appel de la Défense interjeté à l'encontre de la « Third decision on the review of Laurent Gbagbo's detention pursuant to article 60 (3) of the Rome Statute » de la Chambre préliminaire I, décidant du maintien en détention du Président Gbagbo (ICC-02/11-01/11-454)", dated 19 August 2013 and registered on 22 August 2013, ICC-02/11-01/11-485-Red (OA 4).

¹⁹ "Prosecution's response to the Defence's 'Document à l'appui de l'appel de la Défense interjeté à l'encontre de la « Third decision on the review of Laurent Gbagbo's detention pursuant to article 60 (3)

8. On 21 August 2013, Mr Gbagbo filed a response opposing the Victims' Application²⁰ (hereinafter: "Mr Gbagbo's Response"). Mr Gbagbo argues, *inter alia*, that the Victims' Application fails to demonstrate the specific manner in which each victim possesses a personal interest in the issue before the Appeals Chamber, resorting instead to general arguments that are not supported by evidence.²¹ Mr Gbagbo argues further that the emphasis placed by the OPCV on the role of the Victims in criminal proceedings, as an "integral part of fair and impartial proceedings",²² distorts the notion of adversarial proceedings and thereby limits the rights of the accused.²³ He avers that on past occasions, when authorised to intervene, the OPCV has gone beyond merely expressing the personal interests of the Victims and has always acted in support of the Prosecutor.²⁴ Mr Gbagbo requests that the Victims' Application be rejected; or, in the alternative, that further observations of the Victims be strictly limited to the views and concerns of only those Victims with a personal interest in the present proceedings.²⁵

II. DETERMINATION BY THE APPEALS CHAMBER

9. The Appeals Chamber has consistently held that, with respect to victims' participation in appeals brought under article 82 (1) (b) of the Statute, the following four cumulative criteria enumerated in article 68 (3) of the Statute must be fulfilled: (i) the individuals seeking participation must be victims in the case; (ii) their personal interests must be affected by the issues on appeal; (iii) their participation must be at an appropriate stage of the proceedings; and (iv) the manner of participation should neither cause prejudice to nor be inconsistent with the rights of the accused and a fair and impartial trial.²⁶

of the Rome Statute » de la Chambre préliminaire I, décidant du maintien en détention du Président Gbagbo (ICC- 02/11-01/11-454)”, 26 August 2013, ICC-02/11-01/11-490-Conf (OA 4).

²⁰ “Réponse de la défense à la demande de participation à la procédure d’appel relative à la « Third decision on the review of Laurent Gbagbo’s detention pursuant to article 60 (3) of the Rome Statute » (ICC-02/11-01/11-454) déposée par la Représentante Légale des Victimes le 22 juillet 2013 (ICC-02/11-01/11-460)”, ICC-02/11-01/11-488 (OA 4).

²¹ Mr Gbagbo’s Response, paras 23-44.

²² Mr Gbagbo’s Response, para. 47, referring to Victims’ Application, para. 40.

²³ Mr Gbagbo’s Response, paras 45-57.

²⁴ Mr Gbagbo’s Response, paras 58-61 and 62-66.

²⁵ Mr Gbagbo’s Response, pp. 19-20.

²⁶ See, for example, *Prosecutor v. Jean-Pierre Bemba Gombo*, “Decision on the Participation of Victims in the Appeal against the ‘Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence’ of Trial Chamber III”, 18 August 2010, ICC-01/05-01/08-857 (OA 4), para. 7; “Reasons for the ‘Decision on the Participation of

10. In respect of the Victims' Application, all four criteria for victim participation are fulfilled. As to the first criterion, the Appeals Chamber notes that the Victims' Application refers to the relevant decisions granting victim status to each of the Victims represented in the application for participation.²⁷

11. Second, regarding the Victims' personal interests, the Appeals Chamber recalls that "any determination [...] of whether the personal interests of victims are affected in relation to a particular appeal will require careful consideration on a case-by-case basis".²⁸ Furthermore, the Appeals Chamber has emphasised that "[i]n seeking to demonstrate that their personal interests are affected, victims should generally ensure, *inter alia*, that express reference is made to the specific facts behind their individual applications, and the precise manner in which those facts are said to fall within the issue under consideration on appeal".²⁹ The Appeals Chamber considers that the Victims have fulfilled these criteria in the present appeal by reference to potential security concerns that may arise in relation to participating victims in the event that Mr Gbagbo is released,³⁰ coupled with the submission that, if Mr Gbagbo is released and subsequently fails to appear for his trial, they will lose their opportunity to present their views.³¹

12. More broadly, the Appeals Chamber has previously held that where the underlying issue on appeal was whether the accused should be granted interim

Victims in the Appeal against the "Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa", 20 October 2009, ICC-01/05-01/08-566 (OA 2), para.15; *Prosecutor v. Thomas Lubanga Dyilo*, "Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled 'Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo'", 13 February 2007, ICC-01/04-01/06-824 (OA 7), paras 44-45.

²⁷ See Victims' Application, para. 24, referring to Pre-Trial Chamber I, "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 and Pre-Trial Chamber I, "Corrigendum to the Second decision on victims' participation at the confirmation of charges hearing and in the related proceedings", dated 6 February 2013 and registered on 8 February 2013, ICC-02/11-01/11-384-Corr.

²⁸ *Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, "Decision of the Appeals Chamber on the Joint Application of Victims a/0001/06 to a/0003/06 and a/0105/06 concerning the 'Directions and Decision of the Appeals Chamber' of 2 February 2007", 13 June 2007, ICC-01/04-01/06-925 (OA 8), para. 28.

²⁹ *Prosecutor v. Joseph Kony and others*, "Decision on the participation of victims in the appeal", 27 October 2008, ICC-02/04-01/05-324 (OA 2), para. 13; *Situation in Uganda*, "Decision on participation of victims in the Appeal", 27 October 2008, ICC-02/04-164 (OA), para. 11; ICC-01/05-01/08-566 (OA 2), para. 15.

³⁰ Victims' Application, para. 29.

³¹ Victims' Application, para. 28.

release, the issue affects a victim's personal interests.³² Since the present appeal concerns the ongoing detention of Mr Gbagbo, the Appeals Chamber considers the Victims' personal interests are affected.

13. Third, the Appeals Chamber considers that the present appeal is at a stage of the proceedings in which the participation of the Victims is appropriate, in particular, in light of the potential consequences of the present appeal outlined above.

14. As to the manner of participation, the Appeals Chamber considers that the Victims in the present appeal will be limited to the written presentation of their views and concerns with respect to their personal interests relating to the issues raised in this appeal. Mr Gbagbo and the Prosecutor will be permitted to reply to the Victims' views and concerns, in accordance with rule 91 (2) of the Rules of Procedure and Evidence. In the view of the Appeals Chamber, this manner of participation does not cause prejudice to, nor is it inconsistent with, the rights of the accused and a fair and impartial trial. The fourth criterion for victim participation under article 68 (3) of the Statute is therefore satisfied.

Judge Sang-Hyun Song appends a separate opinion in relation to this decision.

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



Judge Akua Kuenyehia
Presiding Judge

Dated this 27th day of August 2013

At The Hague, The Netherlands

³² ICC-01/05-01/08-566 (OA 2), para. 17.