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

Date: 21 August 2013

APPEALS CHAMBER

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

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF THE PROSECUTOR v. LAURENT GBAGBO

Public

Prosecution's Observations on the "Application to Participate in the Interlocutory Appeal Filed by the Prosecution against the "Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute" of 3 June 2013"

Source: Office of the Prosecutor

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

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INTRODUCTION

1. The victims participating in the case ("Victims") seek to participate ¹ ("Victims' Request") in the Prosecution appeal² against Pre-Trial Chamber I's "Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute" of 3 June 2013 ³ ("Impugned Decision"). The Prosecution does not oppose the Victims' Request.⁴

SUBMISSIONS

2. Article 68(3) mandates a determination by the Appeals Chamber that the participation of victims is appropriate in the interlocutory appeal under consideration.⁵ The individuals seeking to participate must demonstrate that (i) they are victims in the case or situation out of which the appeal arises;⁶ (ii) they have a personal interest that is affected by the issues on appeal; (iii) their participation is appropriate and (iv) the manner of participation is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.⁷
3. Once victims have been admitted to participate in the situation or case, they do not need to demonstrate again to the Appeals Chamber that they meet the definition of "victim" under Rule 85.⁸ In the instant case, the persons on whose behalf the Victims' Request is submitted have already been recognized as victims.⁹

¹ ICC-02/11-01/11-475.

² ICC-02/11-01/11-474.

³ ICC-02/11-01/11-432.

⁴ The Prosecution was authorized to respond to the Victims' Request by the Appeals Chamber. See ICC-02/11-01/11-482 OA5.

⁵ ICC-01/04-01/06-824 OA7, para.40; ICC-01/04-503 OA4 OA5 OA6, para.36; ICC-01/05-01/08-566 OA2, para.14.

⁶ ICC-02/05-01/09-48 OA, para.10; ICC-01/04-01/06-1335 OA9 OA10, para.40.

⁷ ICC-01/05-01/08-1597 OA7, para.7; ICC-01/04-01/06-1335 OA9 OA10, paras.35, 36; ICC-01/04-503 OA4 OA5 OA6, paras.35,90; ICC-01/04-01/06-1453 OA13, para.7; ICC-01/04-01/06-1452 OA12, para.7; ICC-02/04-164 OA, para.7; ICC-02/04-01/05-324 OA2, para.8; ICC-01/05-01/08-566 OA2, para.8. See also ICC-01/04-01/06-824 OA7, paras.2, 44, 46; ICC-01/04-01/06-925 OA8, para.23.

⁸ ICC-01/04-01/06-824 OA7, paras.44, 45; ICC-01/04-503 OA4 OA5 OA6, para.92.

⁹ ICC-02/11-01/11-138, ICC-02/11-01/11-384-Corr.

4. This appeal concerns the question as to what facts must be established to the requisite standard of proof and how these facts are to be distinguished from evidence that is adduced to support the relevant facts. In addition, it also concerns the proper interpretation and application of the “substantial grounds to believe” test under Article 61(7) to the relevant facts of the case.¹⁰ As recognized by the Appeals Chamber, “[v]ictims have an interest that the loss or injury they have suffered, a matter of individual concern, should surface in the proceedings and be brought to light.”¹¹ If the Chamber applies the same evidentiary threshold and, as a result, certain charges are not confirmed or Mr. Gbagbo does not stand trial, victims will not have an opportunity fully to present their views and concerns at trial and will be unable to make a claim for reparations. Thus, the Victims’ personal interests are directly affected.¹² The Appeal Chamber has already acknowledged that the personal interests of victims are affected where a Chamber stays the proceedings or decides not to confirm the charges.¹³ The Prosecution agrees with the Common Legal Representative that *“although the impugned decision does not result in the immediate termination of the prosecution nor directly precludes the victims from seeking compensation, the issue on appeal seriously impact the victims’ personal interests”*.¹⁴
5. In light of the above, the Prosecution submits that it is appropriate for the Victims to be allowed to present their views in this appeal. The Victims should 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.”¹⁵ The Prosecution and the Appellant must have an opportunity to respond.¹⁶ Under these circumstances, the participation of the Victims in this

¹⁰ ICC-02/11-01/11-474, para. 1.

¹¹ ICC-01/04-01/06-925 OA8, Separate Opinion of Judge Pikis, para.16.

¹² The Common Legal Representative takes the same position. See ICC-02/11-01/11-475, paras. 14 to 16.

¹³ ICC-01/04-01/06-1453 OA13, par. 9; ICC-01/04-01/06-2556 OA18, para. 9; and ICC-01/04-01/10-509, para. 10.

¹⁴ ICC-02/11-01/11-475 para. 15 and citations therein.

¹⁵ ICC-01/04-503 OA4 OA5 OA6, para.101; ICC-01/04-01/06-1335 OA9 OA10, para.50; ICC-01/05-01/08-1597 OA7, para.12. See also ICC-01/04-01/06-824 OA7, para.55.

¹⁶ The Appeals Chamber has previously recognised that if victims are permitted to participate, “the Prosecutor and the Defence shall be allowed to reply to any filing of the victims, in accordance with the provisions of rule

appeal would not be prejudicial to or inconsistent with the rights of the accused person and a fair and impartial trial.

CONCLUSION

6. For the reasons set out above, the Prosecution does not object to the participation of the victims in this appeal.
7. The Prosecution requests that the Appeals Chamber (a) order that any victims participating in this appeal file their views and concerns in writing within a defined period; and (b) allows the Prosecution and Defence to respond to those views and concerns with a deadline prescribed by the Chamber.



Fatou Bensouda, Prosecutor

Dated this 21st day of August 2013

At The Hague, The Netherlands

91(2) of the Rules of Procedure and of Evidence”, ICC-01/04-01/06-824 OA7, para.49. See also ICC-01/05-01/08-1597 OA7, para.12. See also Rule 91(2) and Regulation 24(1).