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

Date: 14 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 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"

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INTRODUCTION

1. The victims participating in the case ("Victims") seek to participate¹ ("Victims' Request") in the Defence appeal against Pre-Trial Chamber I's "Third decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute" issued on 12 July 2013² ("Impugned Decision"). The Prosecution does not oppose the Victims' Request.³

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.⁴ The individuals seeking to participate must demonstrate that (i) they are victims in the case or situation out of which the appeal arises;⁵ (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.⁶
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 85.⁷ In this case, the persons on whose behalf the Victims' Request is submitted have already been recognized as victims.⁸
4. Further, and as the Common Legal Representative indicates, the issue in this appeal, i.e. the question of whether or not the appellant should remain in detention, affects the personal interests of the Victims. Chambers have already

¹ ICC-02/11-01/11-460.

² ICC-02/11-01/11-454.

³ The Prosecution was authorized to respond to the Victims' Request by the Appeals Chamber. See ICC-02/11-01/11-462.

⁴ 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.

⁵ ICC-02/05-01/09-48 OA, para.10; ICC-01/04-01/06-1335 OA9 OA10, para.40.

⁶ ICC-01/05-01/08-1597OA7, para.7; ICC-01/04-01/06-1335OA9 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.

⁷ ICC-01/04-01/06-824 OA7, paras.44, 45; ICC-01/04-503 OA4 OA5 OA6, para.92.

⁸ ICC-02/11-01/11-138, ICC-02/11-01/11-384-Corr.

acknowledged that the personal interests of victims are affected in similar appeals where the issue of detention of suspects and accused persons was litigated.⁹

5. 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.”¹⁰ If Mr. Gbagbo is released and fails to appear for trial, victims will not have an opportunity 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.¹¹
6. Moreover, in the Impugned Decision, Pre-Trial Chamber I made findings regarding the existence of a network of Mr. Gbagbo's supporters in and outside of Côte d'Ivoire¹² and the possibility of him having access to resources that might be employed to assist him to abscond.¹³ The Chamber noted prior findings that there was a risk that Mr. Gbagbo, if released, would use the means that his support network could provide in order to abscond, obstruct the investigation or continue with the commission of crimes within the jurisdiction of the Court¹⁴ and held that no change in the relevant circumstances can be detected with regard to the existence of a network of Mr. Gbagbo's supporters, which would affect the grounds justifying detention under article 58(l)(b)(i) to (iii) of the Statute.¹⁵ Hence, the Prosecution submits that any release of Mr. Gbagbo would have serious implications for the security of participating victims.¹⁶ The Appeals Chamber has held that “[c]lear examples of where the personal interests of victims are affected are when their protection is in issue”.¹⁷

⁹ ICC-01/04-01/06-824 OA7, para. 54, ICC-01/05-01/08-566 OA2, para.17; and ICC-01/04-01/06-2555 OA17, para.18.

¹⁰ ICC-01/04-01/06-925 OA8, Separate Opinion of Judge Pikis, para.16.

¹¹ The Common Legal Representative takes the same position. See ICC-02/11-01/11-460, para.28.

¹² ICC-02/11-01/11-454, paras.38-44.

¹³ ICC-02/11-01/11-454, paras. 45-50.

¹⁴ ICC-02/11-01/11-454, para.38.

¹⁵ ICC-02/11-01/11-454, para.44.

¹⁶ See, in this context Prosecution submissions in ICC-02/11-01/11-445-Red, paras 14-22.

¹⁷ ICC-01/04-01/06-925, para.28.

7. 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.”¹⁸ The Prosecution and the Appellant must have an opportunity to respond.¹⁹ Under these circumstances, the participation of the Victims in this appeal would not be prejudicial to or inconsistent with the rights of the accused persons and a fair and impartial trial.

CONCLUSION

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



Fatou Bensouda, Prosecutor

Dated this 14th day of August 2013

At The Hague, The Netherlands

¹⁸ 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.

¹⁹ 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 91(2) of the Rules of Procedure and of Evidence”, ICC-01/04-01/06-824OA7, para.49. See also ICC-01/05-01/08-1597OA7, para.12. See also Rule 91(2) and Regulation 24(1).