

**Cour
Pénale
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**International
Criminal
Court**



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Date: 21 July 2015

THE APPEALS CHAMBER

Before: Judge Piotr Hofmański, Presiding Judge
Judge Kuniko Ozaki
Judge Sanji Mmasenono Monageng
Judge Howard Morrison
Judge Chang-ho Chung

SITUATION IN CÔTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLÉ GOUDÉ***

Public Document

Request for the recognition of the right of victims authorized to participate in the case to automatically participate in any interlocutory appeal arising from the case and, in the alternative, application to participate in the interlocutory appeal against the ninth decision on Mr. Gbagbo's detention (ICC-02/11-01/15-134-Red3)

Source: Office of Public Counsel for Victims

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

The Office of the Prosecutor

Ms. Fatou Bensouda

Mr. James Stewart

Counsel for Mr Laurent Gbagbo

Mr. Emmanuel Altit

Ms. Agathe Bahi Baroan

Counsel for Mr Blé Goudé

Mr. Geert-Jan Alexander Knoops

Mr. Claver N'dry

Legal Representatives of the Victims

Ms. Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms. Paolina Massidda

Mr. Enrique Carnero Rojo

Ms. Ludovica Vetrucchio

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Procedural background

1. On 8 July 2015, Trial Chamber I (the “Chamber”) issued the “Ninth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60(3) of the Statute” (the “Impugned Decision”),¹ deciding that Mr. Laurent Gbagbo shall remain in detention.

2. On 14 July 2015, the Defence of Mr. Gbagbo filed its Appeal against the Impugned Decision.²

3. On 16 July 2015, the Presidency issued a Decision replacing two Judges in the Appeals Chamber.³ On the same date, the Appeals Chamber appointed the Presiding Judge for the Appeal.⁴

4. On 16 July 2015, the Defence of Mr. Gbagbo filed a confidential *ex parte* version of the Document in Support of the Appeal against the Impugned Decision.⁵ A

¹ See the “Ninth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60(3) of the Statute” (Trial Chamber I), No. ICC-02/11-01/15-127-Conf, 8 July 2015 (the “Impugned Decision”).

² See the “Version confidentielle expurgée: Acte d’appel de la Défense relatif à la «ninth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60(3) of the Statute (ICC-02/11-01/15-127-Conf) de la Chambre de première instance I décidant du maintien en détention de Laurent Gbagbo”, No. ICC-02/11-01/15-134-Conf-Exp-Red2 OA, 14 July 2015. A public redacted version was filed on 20 July 2015 (No. ICC-02/11-01/15-134-Red3).

³ See the “Decision replacing two judges in the Appeals Chamber” (Presidency), No. ICC-02/11-01/15-142-Conf-Exp OA, 16 July 2015 (dated 15 July 2015).

⁴ See the “Decision on the Presiding Judge in the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I entitled “Ninth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60(3) of the Statute” (Appeals Chamber), No. ICC-02/11-01/15-143-Conf-Exp OA, 16 July 2015.

⁵ See the “Document à l’appui de l’appel de la «Ninth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60(3) of the Statute » (ICC-02/11-01/15-127-Conf)”, No. ICC-02/11-01/15-147-Conf-Exp, 16 July 2015 (not available to the Common Legal Representative).

confidential redacted version of the Document in Support of the Appeal is not available at the time of writing.

5. The Principal Counsel of the Office of Public Counsel for Victims, acting as common legal representative of the victims admitted to participate in both cases (the “Common Legal Representative”),⁶ submits the following Request.

6. The Common Legal Representative notes that the Defence of Mr. Gbagbo has filed its Appeal and its Document in Support of the Appeal as confidential *ex parte*. However, in accordance with the general principle of publicity of the proceedings enshrined in articles 64(7) and 67(1) of the Rome Statute,⁷ and having verified the public redacted version of the Appeal filed by the Defence, the present Request is filed public because it does not contain any confidential information.

7. The Common Legal Representative submits the present Request in the awareness of the jurisprudence of the Appeals Chamber pursuant to which victims must request authorisation to participate in interlocutory appeals filed under article 82 of the Rome Statute.

⁶ See the “Decision on victim participation” (Trial Chamber I), No. ICC-02/11-01/11-800, 6 March 2015, para. 61. See also the “Decision on Prosecution requests to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* and related matters” (Trial Chamber I), No. ICC-02/11-01/15-1, 11 March 2015, para. 74 and p. 33 (“all decisions and orders made in the Gbagbo and Blé Goudé cases shall continue to apply [...] in the joint case”).

⁷ See the “Order on the filing of public redacted versions of submissions by the parties and participants” (Appeals Chamber), No. ICC-01/04-02/12-143 A, 4 October 2013, para. 8.

8. As a preliminary matter, however, the Common Legal Representative also wishes to draw the attention of the Appeals Chamber to an issue related to the victims' participation in interlocutory appeals. As a consequence, she submits a preliminary request and, in the alternative, an application to participate in the Appeal filed by the Defence.

II. On the right of victims authorised to participate in the case to automatically participate in any interlocutory appeal arising from the case

9. The Common Legal Representative shares the views of Judge Song and Judge Van den Wyngaert that victims who have been authorised to participate in proceedings giving rise to an appeal are participants in said appeal pursuant to regulation 64(4) of the Regulations of the Court.⁸ Both Judges considered that "*there is*

⁸ See the "Dissenting Opinion of Judge Sang-Hyun Song Regarding the Participation of Victims", No. ICC-01/04-01/06-824 OA7, 13 February 2007, paras. 2-8; the "Separate opinion of Judge Sang-Hyun Song", No. ICC-01/04-01/06-925 OA8, 13 June 2007, para. 6; the "Separate and partly dissenting opinion of Judge Sang-Hyun Song and reasons for dissent from the order of the Appeals Chamber of 20 March 2008", No. ICC-01/04-01/06-1335 OA9 OA10, 16 May 2008, paras. 3-7; the "Separate Opinion of Judge Sang-Hyun Song", No. ICC-01/04-01/06-1452 OA12, 6 August 2008, para. 1; the "Dissenting Opinion of Judge Sang-Hyun Song", No. ICC-01/05-01/08-623 OA2, 27 November 2009, paras. 3-4; the "Separate opinion of Judge Sang-Hyun Song and Judge Christine Van den Wyngaert with respect to the 'Decision on the participation of victims in the appeals' issued on 20 October 2009", No. ICC-01/04-01/06-2205 OA15 OA16, 8 December 2009, p. 42; the "Separate Opinion of Judge Sang-Hyun Song", No. ICC-01/04-01/06-2555 OA17, 17 August 2010, p. 12; the "Separate Opinion of Judge Sang-Hyun Song", No. ICC-01/05-01/08-857 OA4, 18 August 2010, p. 8; the "Decision on the Participation of Victims in the Appeal against the 'Decision on Applications for Provisional Release' of Trial Chamber III - Partly Dissenting Opinion of Judge Song", No. ICC-01/05-01/08-1619 OA7, 1 August 2011, para. 2; the "Separate Opinion of Judge Sang-Hyun Song", No. ICC-02/11-01/11-491-Anx OA4, 27 August 2013; and the "Separate Opinion of Judge Sang-Hyun Song", No. ICC-02/11-01/11-492-Anx OA5, 29 August 2013.

*no need for victims to apply for participation, nor for the Appeals Chamber to rule on the applications”.*⁹

10. The Common Legal Representative notes that in accordance with regulation 24(2) of the Regulations of the Court *“victims or their legal representative may file a response to any document when they are permitted to participate in the proceedings in accordance with article 68, paragraph 3, and rule 89, sub-rule 1, subject to any order of the Chamber”*. Regulation 64(4) and (5) of the Regulations of the Court further provides the possibility for any participant in the proceedings to file a response to the document in support of the appeal. The term “participant” used in said provisions refers to all participants, including victims.

11. In this regard, it is worth recalling that Trial Chamber I has endorsed the decision on participation of victims in the proceedings previously issued by Pre-Trial Chamber I in the then separate cases against Mr. Gbagbo and Mr. Blé Goudé, in application of regulation 86(8) of the Regulations of the Court according to which *“[a] decision taken by a Chamber under rule 89 shall apply throughout the proceedings in the same case”*.¹⁰ As a consequence, 467 victims currently participate in the trial stage of the proceedings.

12. Because the relevant criteria under rule 85 of the Rules of Procedure and Evidence have already been assessed by the relevant Chamber at the time of the

⁹ See the Separate opinion of Judge Sang-Hyun Song and Judge Christine Van den Wyngaert with respect to the ‘Decision on the participation of victims in the appeals’ issued on 20 October 2009”, No. ICC-01/04-01/06-2205 OA15 OA16, 8 December 2009, p. 42.

¹⁰ See the “Decision on victim participation”, *supra* note 6, para. 41. See also *idem*, para. 43.

filing by the victims of their applications for participation, the Common Legal Representative submits that victims authorised to participate in the case do not have to re-justify their request since no new circumstances have arisen.

13. Therefore, the Common Legal Representative argues that the plain text of regulation 64(4) of the Regulations of the Court provides victims with the right to automatically file a response to any document in support of an appeal filed by the parties in the proceedings, without seeking prior authorisation of the Appeals Chamber to participate in the interlocutory appeal.

14. The Common Legal Representative further contends that the previous practice of the Appeals Chamber in this regard may and should be reverted. As stated in article 21(2) of the Rome Statute, the Appeals Chamber, like any other Chamber of the Court, is not bound by its prior interpretation of the law.¹¹ The Appeals Chamber may therefore revisit its past interpretation of regulations 64(4) and (5) and 86(8) of the Regulations of the Court. In doing so, the Appeals Chamber should consider not only that the wording of said provisions supports the recognition of an automatic right for victims to participate in interlocutory appeals arising in a particular case if

¹¹ See the “Decision on the OPCD’s request for leave to appeal the 3 July 2008 decision on applications for participation” (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-535, 4 September 2008, para. 20; the “Decision on the ‘Prosecution’s Application for leave to Appeal the ‘Decision Setting the Regime for Evidence Disclosure and Other Related Matters’ (ICC-01/09-01/11-44)’” (Pre-Trial Chamber II, Single Judge), 2 May 2011, para. 25; and the “Decision on the ‘Prosecution’s Application for leave to Appeal the ‘Decision Setting the Regime for Evidence Disclosure and Other Related Matters’ (ICC-01/09-02/11-48)’” (Pre-Trial Chamber II, Single Judge), 2 May 2011, para. 23. See also PELLET (A.), “Applicable law”, in CASSESE (A.) *et al.* (eds.), *The Rome Statute of the International Criminal Court: A Commentary*, Vol. I, Oxford University Press, Oxford, 2002, p. 1066; DEGUZMAN (M.M.), “Article 21: Applicable law”, in TRIFFTERER (O.) (ed.), *Commentary on the Rome Statute of the International Criminal Court: Observers’ Notes, Article by Article*, 2nd edition, Verlag C.H. Beck, Hart Publishing and Nomos, Munich, 2008, p. 711, para. 20; and CALLEJON (C.), “Article 21: Droit applicable”, in FERNANDEZ (J.) and PACREAU (X.) (dirs.), *Statut de Rome de la Cour pénale internationale: Commentaire article par article*, Pedone, Paris, 2012, p. 766.

they are already authorised to participate in said case, but also that this interpretation of the relevant provisions also favours the expeditiousness of the proceedings.¹²

15. Indeed, as pointed out by Judge Song, the current approach of the Appeals Chamber “*leads to delays in the appellate process that are difficult to reconcile with the principle of expeditious proceedings*”.¹³ In fact, pursuant to the current practice victims have to file a request for authorisation to participate in the interlocutory appeal, the parties are then authorised to respond and ultimately the Appeals Chamber rules on the request for participation.¹⁴ This practice is particularly cumbersome for appeals which require an expedite resolution, such as the ones dealing with detention matters.

16. Consequently, the Common Legal Representative respectfully requests the Appeals Chamber to rule that victims authorised to participate in the case have an automatic right to intervene in any interlocutory appeal arising from said case.

17. Considering that the deadline to file a response to the Document in Support of the Appeal will expire on 27 July 2015, the Common Legal Representative

¹² See *mutatis mutandis* the “Decision on the defence request to reconsider the ‘Order on numbering of evidence’ of 12 May 2010” (Trial Chamber I), No. ICC-01/04-01/06-2705, 30 March 2011, para. 13 (“*The starting point for considering an application of this kind [reconsideration] is the duty on the part of a Trial Chamber to ensure the trial is fair and expeditious, pursuant to Article 64(2) of the Statute*”).

¹³ See the “Decision on Victim Participation in the appeal of the Office of Public Counsel for the Defence against Pre-Trial Chamber I’s Decision of 3 December 2007 and in the appeals of the Prosecutor and the Office of Public Counsel for the Defence against Pre-Trial Chamber I’s Decision of 6 December 2007, Partly dissenting opinion of Judge Sang-Hyun Song and reasons for dissent from the decision and orders of the Appeals Chamber of 29 February 2008” (Appeals Chamber), No. ICC-02/05-138 OA OA2 OA3, 18 June 2008, para. 5.

¹⁴ See e.g. the “Decision on the application by victims for participation in the appeal” (Appeals Chamber), No. ICC-02/11-01/11-491 OA4, 27 August 2013, paras. 3-8.

respectfully requests the Appeals Chamber to rule on this preliminary matter expeditiously. Should the Chamber agree to the interpretation provided in the preceding paragraphs, the Common Legal Representative requests the Appeals Chamber to set a deadline for her response to the Document in Support of the Appeal taking into account the regulatory number of days provided for in Regulation 64(5) of the Regulations of the Court.

III. In the alternative, application to participate in the interlocutory appeal filed by Mr. Gbagbo

18. As indicated above, the Common Legal Representative is also aware of the Appeals Chamber's jurisprudence pursuant to which victims are not granted an automatic right to participate in interlocutory appeals.¹⁵ Consequently, and in the

¹⁵ See *inter alia* the "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'" (Appeals Chamber), No. ICC-01/04-01/06-824 OA7, 13 February 2007, para. 40; the "Decision, *in limine*, on Victim Participation in the appeals of the Prosecutor and the Defence against the Trial Chamber I's Decision entitled 'Decision on Victims' Participation'" (Appeals Chamber), No. ICC-01/04-01/06-1335 OA9 OA10, 16 May 2008, paras. 12-13; the "Reasons for the 'Decision on the Participation of Victims in the Appeal Against the 'Decision on the Interim Release of Jean-Pierre 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'" (Appeals Chamber), No. ICC-01/05-01/08-566 OA2, 20 October 2009, para. 14; the "Decision on the Participation of Victims in the Appeal against Trial Chamber I's Oral Decision of 15 July 2010 to Release Thomas Lubanga Dyilo" (Appeals chamber), No. ICC-01/04-01/06-2555 OA17, 17 August 2010, para. 16; the "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" (Appeals Chamber), No. ICC-01/05-01/08-857 OA4, 18 August 2010, para. 7; the "Decision on the Participation of Victims in the Appeal against the 'Decision on Applications for Provisional Release' of Trial Chamber III" (Appeals Chamber), No. ICC-01/05-01/08-1597 OA7, 14 July 2011, para. 7; the "Decision on the 'Requête tendant à obtenir autorisation de participer à la procédure d'appel contre la 'Décision relative à la confirmation des charges' (ICC-01/04-01/10-465-Conf-tFRA)" (Appeals Chamber), No. ICC-01/04-01/10-509 OA4, 2 April 2012, para. 6; the "Decision on the application by victims for participation in the appeal", *supra* note 14, para. 9; and the "Decision on the participation of victims in the Prosecutor's appeal against the 'Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute'" (Appeals Chamber), No. ICC-02/11-01/11-492 OA5, 29 August 2013, para. 8.

alternative, the Common Legal Representative requests the Appeals Chamber to authorise the victims she represents to participate in the Appeal against the Impugned Decision pursuant to article 68(3) of the Rome Statute since (i) they have been previously authorised to participate in the proceedings; (ii) their personal interests are affected by the issues on appeal; (iii) their participation in the appeal is appropriate; and (iv) the manner of their participation is neither prejudicial to nor inconsistent with the rights of the accused and a fair and impartial trial.

1. The individuals seeking participation are victims in the case

19. The Common Legal Representative informs the Appeals Chamber that the 467 victims applying for participation in this interlocutory appeal have been granted victim status in the case against Mr. Gbagbo and Mr. Blé Goudé by Trial Chamber I.¹⁶

2. The victims' personal interests are affected by the issues on appeal

20. The Chambers have constantly acknowledged that the personal interests of victims are affected by the issue of detention of suspects and accused persons.

21. Indeed, the Appeals Chamber has previously held that where the underlying issue on appeal is whether the accused should be granted interim release, the issue affects a victim's personal interests "*having regard to the nature of the appeal itself.*"¹⁷

¹⁶ See the "Decision on victim participation", *supra* note 6.

22. For similar reasons, Pre-Trial Chamber I and Trial Chamber II, when reviewing periodically their decisions to keep Mr. Katanga and Mr. Ngudjolo Chui in detention, always invited the victims to submit their observations on the maintenance of the detention.¹⁸

23. While the Common Legal Representative cannot at present evaluate in full the extent of the Defence's appeal because she has not been notified of the Document in Support of the Appeal, she is able to identify the issues at stake since she has been notified of the confidential *ex parte* redacted version of the Appeal. In this regard, she notes that in the present case, the issue of the continuous detention of Mr. Gbagbo affects the personal interests of the victims because proceedings are on-going and one of the underlying issues on appeal is whether Mr. Gbagbo's health condition

¹⁷ See the "Decision on the application by victims for participation in the appeal", *supra* note 14, para. 12, referring to the "Reasons for the 'Decision on the Participation of Victims in the Appeal Against the 'Decision on the Interim Release of Jean-Pierre 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'", *supra* note 15, para. 17. See also the "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'", *supra* note 15, para. 54; and the "Decision on the Participation of Victims in the Appeal against Trial Chamber I's Oral Decision of 15 July 2010 to Release Thomas Lubanga Dyilo", *supra* note 15, para. 18.

¹⁸ See *e.g.* the "Decision concerning observations on the review of the pre-trial detention of Germain Katanga" (Pre-Trial Chamber I), No. ICC-01/04-01/07-668, 9 July 2008; the "Decision Inviting Observations from the Participants concerning the Detention of Germain Katanga (Rule 118(2))" (Trial Chamber II), No. ICC-01/04-01/07-748, 13 November 2008; the "Decision Inviting Observations from the Participants Concerning the Detention of Germain Katanga (Rule 118(2) of the Rules of Procedure and Evidence)" (Trial Chamber II), No. ICC-01/04-01/07-942, 5 March 2009; and the "Decision Inviting Observations from the Participants concerning the Detention of Germain Katanga (Rule 118(2))" (Trial Chamber II), No. ICC-01/04-01/07-1252, 29 June 2009. See also the "Decision concerning observations on the review of the pre-trial detention of Mathieu Ngudjolo Chui" (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/07-602, 17 June 2008; the "Decision Inviting Observations from the Participants concerning the Detention of Mathieu Ngudjolo Chui (Rule 118(2))" (Trial Chamber II), No. ICC-01/04-01/07-732, 30 October 2008; the "Decision Inviting Observations from the Participants concerning the Detention of Mathieu Ngudjolo Chui (Rule 118(2))" (Trial Chamber II), No. ICC-01/04-01/07-904, 18 February 2009; and the "Décision aux fins de recueillir les observations des participants sur la détention de Mathieu Ngudjolo (Règle 118-2)" (Trial Chamber II), No. ICC-01/04-01/07-1192, 5 June 2009.

merits his conditional release. If Mr. Gbagbo is released and subsequently fails to appear during the trial, victims will not have an opportunity to present their views and concerns in the course of said trial and will be unable to present a claim for reparations against him, should he be convicted.¹⁹

24. Moreover, as already indicated by the Common Legal Representative in her submissions filed before the Trial Chamber,²⁰ the personal interests of victims are affected because their security will be at stake if Mr. Gbagbo is released, considering the support the Accused still has inside and outside Côte d'Ivoire.

3. Victims' participation is appropriate

25. The Common Legal Representative submits that the participation of victims in the appeal at hand is appropriate given the subject-matter of the appeal,²¹ and the potential consequences that the outcome of the appeal may have on the personal interests of the victims.²² In particular, the views of the victims must be heard in this

¹⁹ For a similar reasoning, see the "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", *supra* note 15, para. 10; and the "Decision on the application by victims for participation in the appeal", *supra* note 14, para. 11.

²⁰ See the "Observations of the Common Legal Representative of Victims on the periodic review of Mr. Gbagbo's detention", No. ICC-02/11-01/15-89, 11 June 2015, para. 7.

²¹ See the "Decision, *in limine*, on Victim Participation in the appeals of the Prosecutor and the Defence against the Trial Chamber I's Decision entitled 'Decision on Victims' Participation'", *supra* note 15, para. 47; the "Reasons for the 'Decision on the Participation of Victims in the Appeal Against the 'Decision on the Interim Release of Jean-Pierre 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'", *supra* note 15, para. 17; and the "Decision on the Participation of Victims in the Appeal against Trial Chamber I's Oral Decision of 15 July 2010 to Release Thomas Lubanga Dyilo", *supra* note 15, para. 18.

²² See the "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

appeal because their interests are considerably affected by the eventual outcome of the proceedings related to the detention of the Accused, as explained above.²³

26. Furthermore, the Common Legal Representative reiterates that victims granted leave to participate in proceedings having given rise to a decision which has been appealed must be entitled *a fortiori* to participate in the interlocutory appeal in question, all the more so where, as in the present case, the interlocutory appeal involves issues which, as explained above, directly affect their interests.²⁴

27. Moreover, victims' participation in the interlocutory appeal filed by the Defence is appropriate, since it accords with the requirements regarding the right for victims to be heard as set out in article 68(3) of the Rome Statute. In fact, an analysis of the articles and rules governing victims' participation in the proceedings before the Court clearly shows that said participation is not restricted to specific stages of the proceedings and is therefore possible at all procedural stages, including interlocutory appeals.²⁵

and Evidence' of Trial Chamber III", *supra* note 15, para. 11; the "Decision on the 'Requête tendant à obtenir autorisation de participer à la procédure d'appel contre la 'Décision relative à la confirmation des charges' (ICC-01/04-01/10-465-Conf-tFRA)""", *supra* note 15, para. 11; and the "Decision on the application by victims for participation in the appeal", *supra* note 14, para. 13.

²³ See *supra* paras. 20-24.

²⁴ *Idem* and *supra* paras. 9-13.

²⁵ See also the Proposal by France, UN doc. PCNICC/1999/DP.2, 1 February 1999, p. 7; the Proposal by Costa Rica concerning the Rules of Procedure and Evidence, UN doc. PCNICC/1999/WGRPE/DP.3, 24 February 1999, p. 1; and the Proposal by Colombia, UN doc. PCNICC/1999/WGRPE/DP.37, 10 August 1999, pp. 2-3. For a review of the preparatory works, see BITTI (G.) and FRIMAN (H.), "Participation of Victims in the Proceedings", in LEE (R.S.) (ed.), *The International Criminal Court: Element of Crimes and Rules of Procedure and Evidence*, Transnational Publishers, New York, 2001, pp. 456-474.

28. Victims' participation in this interlocutory appeal also responds to the need to maintain the fairness of the proceedings. As indicated above, the victims' personal interests are undeniably affected by the outcome of this appeal.²⁶ Consequently, victims' participation will allow their views and concerns to be taken into consideration in a thorough and objective manner on appeal.

29. Finally, the Common Legal Representative submits that the appropriate character of the victims' participation in this interlocutory appeal is guaranteed by the limits set by the legal framework of the Court. In this regard, regulation 24(1) of the Regulations of the Court provides the Prosecution and the Defence with the possibility to respond to *"any document filed by any participant in the case in accordance with the Statute, the Rules, these Regulations and any order of the Chamber"*.

4. Victims' participation is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial

30. The Common Legal Representative is of the view that protecting the rights of the accused is a fundamental principle without which the integrity of criminal proceedings could not be safeguarded and justice would not be done.

31. Moreover, the Common Legal Representative notes that victims' participation in the proceedings before the Court is not, in itself, liable to affect the rights of the Defence. As Judge Blattmann pointed out:

²⁶ See *supra* paras. 20-24.

“[B]oth the rights of victims and that of the accused are amply protected under the Statute. Further, many major legal systems are able to incorporate victims’ participation into their proceedings while ensuring the rights of the accused to both a fair and expeditious proceeding”.²⁷

32. In this regard, the Common Legal Representative also notes that the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the General Assembly of the United Nations on 29 November 1985 lays down the principle of access to justice for victims and the right to fair treatment.²⁸

33. The Common Legal Representative further points out that the role of the victims must not be confused with that of the Prosecution.²⁹ The purpose of victims’ participation in the interlocutory appeal in question is thus simply to ensure that the rights afforded to them under the Rome Statute are effectively implemented, and hence has no impact on the rights of the Defence.

²⁷ See the Separate and Dissenting Opinion of Judge René Blattmann appended to the “Decision on victims’ participation” (Trial Chamber I), No. ICC-01/04-01/06-1119, 18 January 2008, para. 26.

²⁸ See United Nations General Assembly Resolution 40/34 of 29 November 1985, principles 4 to 7, available at <http://www.un.org/documents/ga/res/40/a40r034.htm>.

²⁹ See the “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’”, *supra* note 15, para. 55. Cf. the “Decision on the admissibility of the appeals against Trial Chamber I’s ‘Decision establishing the principles and procedures to be applied to reparations’ and directions on the further conduct of proceedings” (Appeals Chamber), No. ICC-01/04-01/06-2953 A A2 A3 OA21, 14 December 2012, para. 67. See also in this sense DONAT-CATTIN (D.), “Article 68”, in TRIFFTERER (O.) (ed.), *Commentary on the Rome Statute of the International Criminal Court*, 2nd edition, Verlag C.H. Beck, Hart Publishing and Nomos, Munich, 2008, pp. 1296 and 1297, para. 39 (“victims (or her/his representative) are ‘guardians’ of the fairness of the proceedings with respect to their personal interests, and not ‘agents’ in search of retribution. The possibility of intervention in the most crucial stages of the proceedings may represent an important step in the ‘rehabilitation’ of the victims”).

34. Moreover, victims' participation in the present interlocutory appeal cannot be prejudicial to or inconsistent with the rights of the Defence because the victims request authorisation to present their views and concerns regarding their personal interests solely to the issues raised on appeal. Moreover, rule 91(2) of the Rules of Procedure and Evidence and regulation 24(1) of the Regulations of the Court allow the Defence to respond to any document submitted by the victims as a result of such participation.³⁰

35. The Common Legal Representative further submits that victims' participation constitutes an integral part of the concept of fair and impartial proceedings, since it is expressly provided for in the texts of the Court. It follows that the balance of the proceedings before the Court cannot be affected by the participation of victims. On the contrary, taking victims' interests into consideration is one of the factors that help to balance the proceedings, particularly when it is the violation of the fundamental rights of the victims themselves that is involved. Thus, participation by the victims in this interlocutory appeal cannot prejudice the interests of the Defence.³¹

³⁰ See *supra* para. 29. See also the "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", *supra* note 15, para. 11.

³¹ See DONAT-CATTIN (D.), "Article 68", in TRIFFTERER (O.) (ed.), *Commentary on the Rome Statute of the International Criminal Court, Observers' Notes, Article by Article*, 2nd edition, Verlag C.H. Beck, Hart Publishing and Nomos, Munich, 2008, pp. 1283-1284 ("The victims' genuine wish is that the truth be established and the case solved. [...] The second [concept of due process for defendant] is fair trial, which is comprehensive of, but not limited to, the respect for all the rights of the suspect/accused; it means equitable justice for defendants, victims and international society as such, the foundation of all procedural norms of the Statute").

FOR THE FOREGOING REASONS, the Common Legal Representative respectfully requests the Appeals Chamber:

- to rule that victims authorised to participate in the case have an automatic right to intervene in any interlocutory appeal arising from said case, and therefore to set a deadline to file a response to the Document in Support of the Appeal taking into account the regulatory number of days provided for in regulation 64(5) of the Regulations of the Court;
- **in the alternative**, to rule that the personal interests of the victims authorised to participate in the case are affected by the issues raised by this interlocutory appeal, that the presentation of their views and concerns is appropriate at this stage of the proceedings, and that their participation is neither prejudicial to nor inconsistent with the rights of the Accused and a fair and impartial trial; and
- to grant her leave to file a response to the Document in Support of the Appeal on behalf of the victims she represents, within a time limit to be set by the Appeals Chamber, and, more generally, to authorise the Common Legal Representative to submit written observations on any issue affecting the interests of the victims raised by the Prosecution or the Defence during the appellate proceedings, in accordance with the procedure laid down by the Appeals Chamber.

It is hereby certified that this document contains a total of 5,326 words and complies in all respects with the requirements of Regulation 36 of the Regulations of the Court.³²



Paolina Massidda

Principal Counsel

Dated this 21st day of July of 2015

At The Hague, The Netherlands

³² This statement (30 words), not itself included in the word count, follows the Appeals Chamber's direction. See the "Judgment on the appeal of Mr Abdullah Al-Senussi against the decision of Pre-Trial Chamber I of 11 October 2013 entitled 'Decision on the admissibility of the case against Abdullah Al-Senussi'" (Appeals Chamber), No. ICC-01/11-01/11-565 OA6, 24 July 2014, para. 32.