

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-02/11-01/11 OA 5

Date: 9 October 2013

THE APPEALS CHAMBER

Before:

**Judge Sanji Mmasenono Monageng, Presiding Judge
Judge Sang-Hyun Song
Judge Akua Kuenyehia
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 “Request by the Common Legal Representative for leave to present observations on submission under rule 103 of the Rules of Procedure and Evidence to be filed by Mr Darryl Robinson, Ms Margaret deGuzman, Mr Charles Jalloh and Mr Robert Cryer”

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 the Prosecutor 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 (ICC-02/11-01/11-432),

Having before it the “Request by the Common Legal Representative for leave to present observations on submission under rule 103 of the Rules of Procedure and Evidence to be filed by Mr Darryl Robinson, Ms Margaret deGuzman, Mr Charles Jalloh and Mr Robert Cryer” filed on 3 October 2013 (ICC-02/11-01/11-521),

Renders unanimously the following

DECISION

The above-mentioned request is rejected.

REASONS

I. PROCEDURAL HISTORY

1. On 3 June 2013, Pre-Trial Chamber I (hereinafter: “Pre-Trial Chamber”), by majority, Judge Fernández de Gurmendi dissenting, decided to adjourn the confirmation of charges hearing and request the Prosecutor to consider providing further evidence or conducting further investigations in relation to all charges.¹

2. On 31 July 2013, the Pre-Trial Chamber, by majority, Judge Fernández de Gurmendi dissenting, granted in part the “Prosecution’s application for leave to appeal the ‘Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute’”.²

¹ “Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute”, ICC-02/11-01/11-432; “Corrigendum to Dissenting opinion of Judge Silvia Fernández de Gurmendi”, 6 June 2013, ICC-02/11-01/11-432-Anx-Corr.

² “Decision on the Prosecutor’s and Defence’s requests for leave to appeal the decision adjourning the hearing on the confirmation of charges”, ICC-02/11-01/11-464; “Dissenting opinion of Judge Silvia Fernández de Gurmendi”, ICC-02/11-01/11-464-Anx.

3. On 12 August 2013, the Prosecutor, having been granted an extension of the page limit,³ filed the document in support of the appeal (hereinafter: "Prosecutor's Appeal").⁴

4. On 29 August 2013, the Appeals Chamber granted the application of 199 victims (hereinafter: "Victims") to present "their views and concerns with respect to their personal interests in the issue raised on appeal pursuant to article 68 (3) of the Statute".⁵

5. On 5 September 2013, Mr Darryl Robinson, Ms Margaret deGuzman, Mr Charles Jalloh and Mr Robert Cryer filed the "Request for Leave to Submit *Amicus Curiae* Observations pursuant to Rule 103 of the Rules of Procedure and Evidence".⁶

6. On 27 September 2013, the Victims filed the "Observations of the Common Legal Representative on the 'Prosecution's appeal against the 'Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute'".⁷

7. On 1 October 2013, the Appeals Chamber authorised the filing of consolidated *amicus curiae* observations (hereinafter: "*Amicus Curiae* Observations") on two issues raised in the Prosecutor's Appeal by 10 October 2013.⁸ Pursuant to rule 103 (2) of the Rules of Procedure and Evidence it also granted Mr Gbagbo and the Prosecutor leave to respond to the *Amicus Curiae* Observations by 18 October 2013.⁹

³ "Decision on the 'Prosecution's Request for an Extension of the Page Limit for the Prosecution's Appeal against the 'Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute'", 7 August 2013, ICC-02/11-01/11-471 (OA 5).

⁴ "Prosecution's appeal against the 'Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute'", 12 August 2013, ICC-02/11-01/11-474 (OA 5).

⁵ "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'", ICC-02/11-01/11-492 (OA 5), para. 1.

⁶ ICC-02/11-01/11-499-Anx1 (OA 5).

⁷ "Observations of the Common Legal Representative on the 'Prosecution's appeal against the 'Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute'", ICC-02/11-01/11-513 (OA 5).

⁸ "Decision on the 'Request for Leave to Submit *Amicus Curiae* Observations pursuant to Rule 103 of the Rules of Procedure and Evidence'", ICC-02/11-01/11-516 (OA 5), para. 10.

⁹ ICC-02/11-01/11-516 (OA 5), para. 12.

8. On 3 October 2013, the Victims filed the “Request by the Common Legal Representative for leave to present observations on submission under rule 103 of the Rules of Procedure to be filed by Mr Darryl Robinson, Ms Margaret deGuzman, Mr Charles Jalloh and Mr Robert Cryer” (hereinafter: “Victims’ Request”).¹⁰

9. The Victims submit that, given that the Appeals Chamber has granted them the right to participate in the proceedings in relation to the Prosecutor’s Appeal, they should be allowed to present “their views on any submission filed within said proceedings, including *amicus curiae* observations.”¹¹ The Victims underline that, while rule 103 of the Rules of Procedure and Evidence does not “explicitly provide the possibility for victims to respond to *amicus curiae* observations”, it does not however exclude the said possibility and should “furthermore be interpreted in conjunction with article 68(3) of the Rome Statute”.¹² The Victims’ Request emphasises that the jurisprudence of the Court does not exclude the possibility for victims to respond to *amicus curiae* submissions in relation to admissibility challenges and that the “said jurisprudence should apply *mutatis mutandis* to the victims admitted to participate in the current appeal proceedings”.¹³ Finally, the Victims state that granting their request to file observations on the *Amicus Curiae* Observations would accord with their rights set out in the Rome Statute and would not be prejudicial to the rights of Mr Gbagbo.¹⁴

II. MERITS

10. Rule 103 of the Rules of Procedure and Evidence, regulating “*Amicus curiae* and other forms of submission”, stipulates:

1. At any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate.

2. The Prosecutor and the defence shall have the opportunity to respond to the observations submitted under sub-rule 1.

¹⁰ ICC-02/11-01/11-521 (OA 5).

¹¹ Victims’ Request, para. 10.

¹² Victims’ Request, para. 11.

¹³ Victims’ Request, paras 12-15.

¹⁴ Victims’ Request, para. 16.

3. A written observation submitted under sub-rule 1 shall be filed with the Registrar, who shall provide copies to the Prosecutor and the defence. The Chamber shall determine what time limits shall apply to the filing of such observations.

11. The Appeals Chamber observes that rule 103 (2) of the Rules of Procedure and Evidence specifically provides for the Prosecutor and the defence to have the opportunity to respond to observations submitted pursuant to rule 103 (1). The Appeals Chamber finds however that it is within its discretion to request observations or to grant permission to participants in the proceedings to submit observations in relation to any observations filed pursuant to rule 103 (1) of the Rules of Procedure and Evidence.¹⁵

12. In the present case, the Appeals Chamber observes that the Victims do not indicate what value their observations would add to the submissions before the Appeals Chamber, nor do they state the reasons that would make their participation appropriate under the circumstances. Therefore, the Appeals Chamber does not find it appropriate for the Victims to make submissions on the *Amicus Curiae* Observations. Accordingly, the Victims' Request is rejected.

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



Judge Sanji Mmasenono Monageng
Presiding Judge

Dated this 9th day of October 2013

At The Hague, The Netherlands

¹⁵ See Appeals Chamber, *Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, "Decision on the OPCV's request to file observations on the observations of Ms Mishana Hosseinioun", 23 August 2013, ICC-01/11-01/11-415 (OA 4), para. 9.