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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 GBAGBO***

Public Document

**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**

Source: Office of Public Counsel for Victims

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

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I. PROCEDURAL BACKGROUND

1. On 23 November 2011, Pre-Trial Chamber III (the “Chamber”) issued an arrest warrant for Mr. Laurent Gbagbo,¹ who was surrendered to the Court on 30 November 2011. During the first appearance of Mr. Gbagbo, on 5 December 2011, the Chamber scheduled the commencement of the confirmation of charges hearing for 18 June 2012.²

2. On 4 June 2012, the Single Judge of Pre-Trial Chamber I (the “Single Judge”) issued a “Decision on Victims’ Participation and Victims’ Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings”³ by which she granted 139 victims the right to participate at the confirmation of charges hearing and in related proceedings.⁴ Furthermore, the Single Judge appointed a counsel from the Office of Public Counsel for Victims (the “OPCV”) as the common legal representative of all the victims admitted to participate in the proceedings (the “Common Legal Representative”).⁵

3. On 12 June 2012, the Single Judge decided to postpone the confirmation of charges hearing to 13 August 2012.⁶

4. On 13 July 2012, the Single Judge issued the “Decision on the ‘*Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo*’” (the “Decision on

¹ See the “Warrant Of Arrest For Laurent Gbagbo” (Pre-Trial Chamber III), No. ICC-02/11-01/11-1, 23 November 2011.

² See the transcripts of the hearing of 5 December 2011, No. ICC-02/11-01/11-T-1-ENG, p. 8.

³ See the “Decision on Victims’ Participation and Victims’ Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-138, 4 June 2012.

⁴ *Idem*, p. 25.

⁵ *Ibid.*, p. 26.

⁶ See the “Decision on the ‘*Requête de la Défense en report de l’audience de confirmation des charges prévue le 18 juin 2012*’” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-152-Red, 12 June 2012.

Interim Release”), in which the request for interim release advanced by the Defence was rejected.⁷

5. On 23 July 2012, the Defence filed an appeal against the Decision on Interim Release.⁸

6. On 3 August 2012, the Single Judge decided that the “*commencement of the confirmation of charges hearing is postponed until the issue of Mr Gbagbo’s fitness to take part in the proceedings against him is resolved*”.⁹

7. On 19 October 2012, the Single Judge issued the “Order scheduling a hearing pursuant to rule 118(3) of the Rules of Procedure and Evidence”,¹⁰ in which she convened a hearing on 30 October 2012 to receive observations from the Prosecutor, the OPCV and the Defence on the issue of continued detention or release of Mr Gbagbo.

8. On 26 October 2012, the Appeals Chamber issued the “Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I of 13 July 2012 entitled ‘Decision on the *Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo*’”,¹¹ dismissing the appeal of the Defence and confirming the Decision on Interim Release.

⁷ See the “Decision on the *Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo*” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-180-Red, 16 July 2012 (the “Decision on Interim Release”).

⁸ See the “Defence appeal against Pre-Trial Chamber I’s decision denying the interim release of President Gbagbo”, No. ICC-02/11-01/11-193-Conf OA, 23 July 2012.

⁹ See the “Decision on issues related to the proceedings under rule 135 of the Rules of Procedure and Evidence and postponing the date of the confirmation of charges hearing” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-201, 3 August 2012 (dated 2 August 2012), p. 8.

¹⁰ See the “Order scheduling a hearing pursuant to rule 118(3) of the Rules of Procedure and Evidence” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-270, 19 October 2012.

¹¹ See the “Public redacted version - Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I of 13 July 2012 entitled ‘Decision on the *Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo*’” (Appeals Chamber), No. ICC-02/11-01/11-278-Red OA, 26 October 2012.

9. On 30 October 2012, a hearing on Mr. Gbagbo's detention was held and the victims were allowed to make observations on the issue at stake.¹²
10. On 2 November 2012, the Chamber issued the "Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court", finding that Mr. Gbagbo is fit to take part in the proceedings before this Court.¹³
11. On 12 November 2012, the Single Judge issued the "Decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute", deciding that Mr. Gbagbo shall remain in detention.¹⁴
12. On 17 December 2012, Pre-Trial Chamber I (the "Chamber") issued the "Decision on the date of the confirmation of charges hearing and proceedings leading thereto" deciding that the confirmation of charges hearing would commence on 19 February 2013.¹⁵
13. On 18 January 2013, the Single Judge issued the "Decision on the request for the conditional release of Laurent Gbagbo and on his medical treatment", rejecting Mr. Gbagbo's request for conditional release.¹⁶
14. On 6 February 2013, the Single Judge issued the "Second decision on victims' participation at the confirmation of charges hearing and in the related proceedings"¹⁷

¹² See the transcript of the hearing of 30 October 2012, No. ICC-02/11-01/11-T-9-ENG ET, pp. 12-19.

¹³ See the "Public redacted version - Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court" (Pre-Trial Chamber I), No. ICC-02/11-01/11-286-Red, 2 November 2012.

¹⁴ See the "Decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute" (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-291, 12 November 2012.

¹⁵ See the "Decision on the date of the confirmation of charges hearing and proceedings leading thereto" (Pre-Trial Chamber I), No. ICC-02/11-01/11-325, 17 December 2012 (dated 14 December 2012).

¹⁶ See the "Public redacted version of Decision on the request for the conditional release of Laurent Gbagbo and on his medical treatment" (Pre-Trial Chamber, Single Judge), No. ICC-02/11-01/11-362-Red, 18 January 2013.

¹⁷ See the "Corrigendum to the Second decision on victims' participation at the confirmation of charges hearing and in the related proceedings" (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-384-Corr, 8 February 2013.

by which she granted to other 60 victims the right to participate at the confirmation of charges hearing and in related proceedings.¹⁸

15. From 19 until 28 February 2013, the Chamber held the confirmation of charges hearing in the present case.¹⁹

16. On 12 March 2013, the Single Judge issued the “Second decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute”, deciding that Mr. Gbagbo shall remain in detention.²⁰

17. On 3 June 2013, the Chamber issued a “Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute” (the “Decision Adjourning the Confirmation Hearing”),²¹ wherein it decided by majority, with Judge Fernández de Gurmendi dissenting,²² to adjourn the confirmation of charges hearing and to request the Prosecutor to consider providing further evidence or conducting further investigation with respect to all charges.²³

18. On 12 July 2013, the Chamber issued the “Third decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute” (the “Impugned Decision”), deciding that Mr. Gbagbo shall remain in detention.²⁴

¹⁸ *Idem*, p. 22-23.

¹⁹ See the transcripts of the hearings of 19 February 2013, No. ICC-02/11-01/11-T-14-ENG; 20 February 2013, No. ICC-02/11-01/11-T-15-Red-ENG; 21 February 2013, No. ICC-02/11-01/11-T-16-Red-ENG; 22 February 2013, No. ICC-02/11-01/11-T-17-Red-ENG; 25 February 2013, No. ICC-02/11-01/11-T-18-Red-ENG; 26 February 2013, No. ICC-02/11-01/11-T-19-Red-ENG; 27 February 2013, No. ICC-02/11-01/11-T-20-Red-ENG; and 28 February 2013, No. ICC-02/11-01/11-T-21-ENG.

²⁰ See the “Public redacted version of the Second decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-417-Red, 12 March 2013.

²¹ See the “Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute” (Pre-Trial Chamber I), No. ICC-02/11-01/11-432, 3 June 2013 (the “Decision Adjourning the Confirmation Hearing”).

²² See the “Corrigendum - Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute - Dissenting opinion of Judge Silvia Fernández de Gurmendi”, No. ICC-02/11-01/11-432-Anx-Corr, 6 June 2013.

²³ See the Decision Adjourning the Confirmation Hearing, *supra* note 21, p. 22.

²⁴ See the “Third decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute” (Pre-Trial Chamber I), No. ICC-02/11-01/11-454, 12 July 2013 (the “Impugned Decision”).

19. On 18 July 2013, the Appeals Chamber issued a decision,²⁵ by which it decided to appoint Judge Akua Kuenyehia as Presiding Judge to deal with the *“Requête aux fins de prorogation des délais déterminés par la Norme 64(5) du Règlement, de façon à ce qu’ils courent à partir de la rentrée judiciaire, fixée au lundi 12 août 2013”* submitted by the Defence on 16 July 2013 on a confidential and *Ex Parte* – Defence only – basis (the *“Defence’s Request for the extension of the time limit”*).²⁶

20. On the same date, the Appeals Chamber decided that (i) the time limit for the filing of any notice of appeal against the Impugned Decision shall be 22 July 2013 at 16:00, and (ii) the time limit for the filing of the document in support of the appeal against said decision shall be 19 August 2013 at 16:00.²⁷

21. On 19 July 2013, the Defence submitted a public redacted version of the Defence’s Request for the extension of time limit.²⁸ On the same date, the Defence filed its notice of appeal against the Impugned Decision.²⁹

22. Incidentally, the Common Legal Representative observes that the Defence’s Request for the extension of the time limit was not notified to her even in a redacted form before it was ruled upon and, therefore, the victims were simply deprived of any possibility to present observations on a procedural issue which clearly affects their personal interests.

²⁵ See the *“Decision on the Presiding Judge of the Appeals Chamber in relation to the “Requête aux fins de prorogation des délais déterminés par la Norme 64(5) du Règlement, de façon à ce qu’ils courent à partir de la rentrée judiciaire, fixée au lundi 12 août 2013” and related proceedings”* (Appeals Chamber), No. ICC-02/11-01/11-457 OA4, 18 July 2013.

²⁶ *Idem*, p. 3.

²⁷ See the *“Public redacted version - Decision on the ‘Requête aux fins de prorogation des délais déterminés par la Norme 64(5) du Règlement, de façon à ce qu’ils courent à partir de la rentrée judiciaire, fixée au lundi 12 août’”* (Appeals Chamber), No. ICC-02/11-01/11-458-Red OA 4, 18 July 2013, p. 3 and par. 6.

²⁸ See the *“Public Expurgé Requête aux fins de prorogation des délais déterminés par la Norme 64(5) du Règlement, de façon à ce qu’ils courent à partir de la rentrée judiciaire, fixée au lundi 12 août 2013”*, No. ICC-02/11-01/11-456-Red2 OA 4, 19 July 2013.

²⁹ See the *“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”*, No. ICC-02/11-01/11-459-Red OA 4, 19 July 2013.

II. REQUEST FOR PARTICIPATION IN THE INTERLOCUTORY APPEAL

23. 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.³⁰ However, 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 appellate proceedings.³¹ Consequently, the Common Legal Representative requests the Appeals Chamber to authorise the victims she represents to participate in the Defence's 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

³⁰ See the "Dissenting Opinion of Judge Sang-Hyun Song Regarding the Participation of Victims", No. ICC-01/04-01/06-824 OA 7, 13 February 2007, paras. 2-8; the "Separate opinion of Judge Sang-Hyun Song", No. ICC-01/04-01/06-925 OA 8, 13 June 2007, par. 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 OA 9 OA 10, 16 May 2008, paras. 3-7; the "Separate Opinion of Judge Sang-Hyun Song", No. ICC-01/04-01/06-1452 OA 12, 6 August 2008, par. 1; the "Dissenting Opinion of Judge Sang-Hyun Song", No. ICC-01/05-01/08-623 OA 2, 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 OA 15 OA 16, 8 December 2009, p. 42; the "Separate Opinion of Judge Sang-Hyun Song", No. ICC-01/04-01/06-2555 OA 17, 17 August 2010, p. 12; the "Separate Opinion of Judge Sang-Hyun Song", No. ICC-01/05-01/08-857 OA 4, 18 August 2010, p. 8.

³¹ 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 OA 7, 13 February 2007, par. 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 OA 9 OA 10, 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 OA 2, 20 October 2009, par. 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 OA 17, 17 August 2010, par. 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 OA 4, 18 August 2010, par. 7; and 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 OA 4, 2 April 2012, par. 6.

proceedings by Pre-Trial Chamber I; (ii) their personal interests are affected; (iii) their participation is appropriate; and (iv) the manner of their participation is neither prejudicial to nor inconsistent with the rights of the suspect and a fair and impartial trial.

1. The individuals seeking participation are victims in the case

24. The Common Legal Representative informs the Appeals Chamber that the 199 victims applying for participation in this interlocutory appeal have been granted victim status in the case against Mr. Gbagbo by Pre-Trial Chamber I.³²

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

25. The Appeals Chamber has consistently found in the past that the participation of victims in interlocutory appeals against decisions granting or denying release can be permitted "*if it can be shown that their personal interests are affected by the issues on appeal*",³³ carrying out such analysis on a case-by-case basis.³⁴ Pursuant to this

³² See *supra* notes 3 and 17.

³³ 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 31, par. 45; 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 31, par. 35; 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 31, par. 15; 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 31, par. 15; 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 31, par. 7; and 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 31, par. 6.

³⁴ See 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 31, par. 15 ; and the "Decision on the Participation of Victims in the Appeal against the 'Decision on the review of the detention of Mr Jean-

approach, Chambers have already acknowledged that the personal interests of victims are affected by the issue of detention of suspects and accused persons.

26. Indeed, the Appeals Chamber, ruling on an application by victims to participate in the appeal lodged by Mr. Thomas Lubanga Dyilo against a decision by Pre-Trial Chamber I dismissing his application for interim release, expressly acknowledged that *“the personal interests of the victims were affected by the circumstances of the current case, having regard to the nature of the appeal itself.”*³⁵

27. For similar reasons, Pre-Trial Chamber I and Trial Chamber II, when reviewing periodically their decisions to keep Mr. Germain Katanga and Mr. Mathieu Ngudjolo Chui in detention, always invited the victims to submit their observations on the maintenance of the detention in question.³⁶

Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence’ of Trial Chamber III”, *supra* note 31, par. 9.

³⁵ 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 31, par. 54. See also 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 31, par. 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 31, par. 18.

³⁶ 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.

28. In the present case, the issue of Mr. Gbagbo's interim release affects the personal interests of the victims because proceedings are on-going and one of the underlying issues on appeal is whether Mr. Gbagbo will stand trial. If Mr. Gbagbo is released and subsequently fails to appear for his eventual trial, victims will not have an opportunity to present their views and concerns in the course of that trial and will be unable to present a claim for reparations against him, should he be convicted.³⁷

29. Moreover, as already indicated by the Common Legal Representative in her submissions filed before the Pre-Trial Chamber, the personal interests of victims are affected because their security will be at stake if Mr. Gbagbo is released considering the prevalent situation in Ivory Coast and the support the suspect still has inside and outside the country.³⁸

3. Victims' participation is appropriate

30. The Common Legal Representative submits that the participation of victims in the appeal at hand 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.³⁹ In particular, the views of the victims must be heard in this appeal

³⁷ 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 31, par. 10.

³⁸ See the "Observations du Représentant légal commun des victimes relatives au réexamen périodique de la détention de M. Gbagbo", No. ICC-02/11-01/11-444, 3 July 2013, par. 40.

³⁹ 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 31, par. 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 31, par. 17; 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 31, par. 18; and 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 31, par. 11. See also 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 31, par. 11.

because their interests are considerably affected by the eventual outcome of the proceedings related to the detention of the suspect, as explained above.⁴⁰

31. Furthermore, the Common Legal Representative is of the view 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.⁴¹

32. 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.⁴²

33. 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.⁴³ Consequently, victims' participation will allow their views and concerns to be taken into consideration in a thorough and objective manner on appeal.

34. Finally, the Common Legal Representative submits that the appropriate character of the victims' participation in this interlocutory appeal is guaranteed by

⁴⁰ See *supra* paras. 25-29.

⁴¹ *Idem*.

⁴² 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.

⁴³ See *supra* paras. 25-29.

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 suspect and a fair and impartial trial

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

36. 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:

*“[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”.*⁴⁴

37. 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.⁴⁵

38. The Common Legal Representative further points out that the role of the victims must not be confused with that of the Prosecution.⁴⁶ The purpose of victims’

⁴⁴ 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, par. 26.

⁴⁵ See United Nations General Assembly Resolution 40/34 of 29 November 1985 available at: <http://www.un.org/documents/ga/res/40/a40r034.htm>, principles 4 to 7.

⁴⁶ 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

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.

39. 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 issue 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.⁴⁷

40. The 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.⁴⁸

Dyilo", *supra* note 31, par. 55. 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, 2008, pp. 1296 and 1297, par. 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*".

⁴⁷ See *supra* par. 34. 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 31, par. 11.

⁴⁸ 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*, Nomos, 1999, pp. 876-877: "*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 the personal interests of the 199 victims authorised to participate in the proceedings by Pre-Trial Chamber I are affected by this interlocutory appeal, that the presentation of their views and concerns is appropriate at this stage, and that their participation is neither prejudicial to nor inconsistent with the rights of the Defence and a fair and impartial trial; and
- **to GRANT** leave to the victims to file a response to the document(s) to be submitted in support of the appeal, 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.



Paolina Massidda
Principal Counsel

Dated this 22nd day of July 2013
At The Hague, The Netherlands