



Original: English

No. ICC-02/11-01/15 A

Date: 25 March 2020

THE APPEALS CHAMBER

Before:

**Judge Chile Eboe-Osuji, Presiding
Judge Howard Morrison
Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa**

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

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

Public

**Decision on the Registry's transmission of applications for victim participation
in the proceedings**

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
Ms Helen Brady

Counsel for Laurent Gbagbo
Mr Emmanuel Altit
Ms Agathe Bahi Baroan

Legal Representative of Victims
Ms Paolina Massidda

Counsel for Charles Blé Goudé
Mr Geert-Jan Alexander Knoops
Mr Claver N'dry

REGISTRY

Registrar
Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

In the appeal of the Prosecutor against the decision of Trial Chamber I of 15 January 2019 (ICC-02/11-01/15-T-232-ENG), with reasons issued on 16 July 2019 (ICC-02/11-01/15-1263 and its annexes),

Having before it the Registry's 'Transmission of Applications for Victim Participation in Appeal Proceedings and Related Report' of 8 November 2019 (ICC-02/11-01/15-1284 and its annexes),

Renders, by majority, Judge Luz del Carmen Ibáñez Carranza dissenting, the following

DECISION

- 1) The Appeals Chamber declines to consider the 50 applications for victim participation in the proceedings, as referred to in the Registry's 'Transmission of Applications for Victim Participation in Appeal Proceedings and Related Report' of 8 November 2019, ICC-02/11-01/15-1284, without prejudice to the matter being considered by a trial chamber, within its discretion, in any future proceedings. Should trial proceedings be restarted or resumed, the Registry shall transmit the Additional Applications to the trial chamber.
- 2) Mr Laurent Gbagbo and Mr Charles Blé Goudé shall file public redacted versions of their filings, ICC-02/11-01/15-1285-Conf and ICC-02/11-01/15-1286-Conf, respectively, or request their reclassification as 'public', by 16h00 on 8 April 2020.

I. INTRODUCTION

1. This decision concerns the Registry's transmission of 50 applications it received in 2017, during the trial of Mr Laurent Gbagbo and Mr Charles Blé Goudé, from individuals who wished to participate as victims in the proceedings (the 'Additional Applications').¹ The Registrar stated that the Additional Applications were not transmitted to Trial Chamber I (the 'Trial Chamber') during the trial because they were received after the expiry of the deadline for transmission of applications for participation as victims. The Appeals Chamber now has to decide whether to consider these applications on their merits, at this stage of the proceedings, in the context of the Prosecutor's appeal against the acquittal of Mr Gbagbo and Mr Blé Goudé.²

II. PROCEDURAL BACKGROUND

2. Prior to the commencement of the trial of Mr Gbagbo and Mr Blé Goudé, the Trial Chamber determined, *inter alia*, that it was 'appropriate to set a deadline for submission of applications to the Registry as well as a deadline for the transmission of applications to the Chamber and the parties'.³ It decided that 'all victim applications, in order to be assessed for participation at trial, shall be received by the Registry by no later than 70 days prior to trial' and ordered 'the Registry to transmit copies of the complete and relevant victim applications received, to the Chamber [...] by no later than 60 days prior to trial'.⁴ More than 700 victims were authorised

¹ [Transmission of Applications for Victim Participation in Appeal Proceedings and Related Report](#), 8 November 2019, ICC-02/11-01/15-1284 (the 'Registry's Transmission'). Annex A to the Registry's Transmission includes the legal criteria applied by the Registry in assessing these applications; Annex B includes a table listing the result of the VPRS's assessment. Fifty applications are contained in annexes 1 to 50. The Registry indicates that the VPRS received 51 applications for participation in the proceedings, and that '[o]ut of these, 50 applications have been assessed as by the VPRS as complete and linked to the [c]ase [...], and one application has been assessed as incomplete'. See Registry's Transmission, para. 8. The Registry also indicates that two applications forms identified as duplicates were not included in the present transmission. See Registry's Transmission, footnote 9.

² [Prosecution Notice of Appeal](#), 16 September 2019, ICC-02/11-01/15-1270. A corrigendum was filed the following day ([ICC-02/11-01/15-1270-Corr](#)). See also 'Prosecution Document in Support of Appeal', 15 October 2019, ICC-02/11-01/15-1277-Conf. A public redacted version was registered on 17 October 2019 ([ICC-02/11-01/15-1277-Red](#)).

³ [Decision on victim participation](#), 6 March 2015, ICC-02/11-01/11-800 (the 'Trial Chamber's Decision on Victim Participation'), para. 51.

⁴ [Trial Chamber's Decision on Victim Participation](#), p. 24.

to participate in the trial,⁵ all of whom were represented by Ms Paolina Massidda, principal counsel of the Office of Public Counsel for victims (the ‘OPCV’).⁶

3. The trial of Mr Gbagbo and Mr Blé Goudé commenced on 28 January 2016.⁷

4. On 15 January 2019, Trial Chamber I issued, by majority, Judge Olga Herrera Carbuccion dissenting, an oral decision, acquitting Mr Gbagbo and Mr Blé Goudé of all charges and indicating that the full reasons would be filed as soon as possible.⁸

5. By filing dated 8 November 2019, the Registrar transmitted the Additional Applications, which he states he received between 26 May and 24 November 2017, to the Appeals Chamber.⁹ As noted above, the Registrar states that the Additional Applications ‘were not transmitted for the Trial Chamber’s consideration as they had been received after the expiration of the 60-day deadline prior to the start of trial’.¹⁰ The Registrar assessed and found, out of 51 applications received, that 50 were ‘complete and linked to the [c]ase’.¹¹ The Registrar submits:

Should the Chamber consider the participation of these Applicants appropriate at the appeals stage of the proceedings, the VPRS stands ready, if so ordered by the Chamber, to follow the victim application process as ordered at trial, and to: (1) transmit a confidential unredacted version of the Applications to the Prosecutor; and (2) transmit a confidential redacted version of the Applications to the Defence’.¹² [Footnote omitted.]

6. On 18 November 2019, Mr Gbagbo filed observations on the Registry’s Transmission.¹³ Mr Gbagbo submits that the Appeals Chamber should reject the Registry’s request to consider the Additional Applications since they were filed well

⁵ [Trial Chamber’s Decision on Victim Participation](#), p. 24; [Decision on victims’ participation status](#), 7 January 2016, ICC-02/11-01/15-379, paras 43-66, and p. 23. See also, Third Transmission of Updated Consolidated List of Participating Victims, 7 December 2018, ICC-01/11-01/15-1227.

⁶ [Directions on the conduct of the proceedings](#), 3 September 2015, ICC-02/11-01/15-205, paras 67-69, and p. 24.

⁷ [Transcript of 28 January 2019](#), ICC-02/11-01/15-T-9-ENG, p. 4, line 1.

⁸ [ICC-02/11-01/15-T-232-Eng](#), p. 1, line 15 to p. 5, line 7.

⁹ [Registry’s Transmission](#), footnote 8.

¹⁰ [Registry’s Transmission](#), para. 8.

¹¹ [Registry’s Transmission](#), para. 8.

¹² [Registry’s Transmission](#), para. 11.

¹³ ‘Remarques de la Défense à la suite de la « Transmission of Applications for Victim Participation in Appeal Proceedings and Related Report » (ICC-02/1101/15-1284) et demande de rejet de la requête présentée par la Greffe’, ICC-02/11-01/15-1285-Conf (‘Mr Gbagbo’s Observations’).

after the deadline set by the Trial Chamber.¹⁴ He argues, *inter alia*, that (i) the deadline set by the Trial Chamber is still applicable, (ii) as the Registry had not considered it appropriate to transmit the applications to the Trial Chamber because the deadline had expired, the same considerations should apply at this stage; (iii) the present situation is different from the one in the *Lubanga* case; and (iv) the current appeal is not in relation to a final judgment but to a ‘no case to answer’ decision, which technically is part of trial proceedings; this, it is argued, further confirms that the Trial Chamber’s deadline is still applicable.¹⁵ Alternatively, should the Appeals Chamber decide to consider the Additional Applications, Mr Gbagbo asks that he receive them in unredacted form in order to be able submit observations on each.¹⁶ In any case, Mr Gbagbo requests access to Annexes A and B to the Registry’s Transmission.¹⁷

7. On 20 November 2019, Mr Blé Goudé filed his observations.¹⁸ Mr Blé Goudé submits that the Additional Applications, having been received after the Trial Chamber’s deadline, ‘should not be considered by the Chamber as doing so would directly contravene Trial Chamber I’s ruling’.¹⁹ He argues that ‘[t]here are no particular circumstances at this stage of the no case to answer proceedings justifying the Chamber to depart from the yet applicable Trial Chamber’s decision’.²⁰

III. MERITS

8. Under article 68(3) of the Statute, ‘[w]here the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial’. Rule 89(1) of the Rules of Procedure and Evidence provides, in relevant part, that ‘[i]n order to present their views and

¹⁴ Mr Gbagbo’s Observations, paras 10-17.

¹⁵ Mr Gbagbo’s Observations, paras 12-16.

¹⁶ Mr Gbagbo’s Observations, paras 18-27.

¹⁷ Mr Gbagbo’s Observations, paras 28-32.

¹⁸ ‘Blé Goudé Defence Observations on the Registry’s “Transmission of Applications for Victim Participation in Appeal Proceedings and Related Report” (ICC-02/11-01/15-1284)’, ICC-02/11-01/15-1286-Conf (‘Mr Blé Goudé’s Observations’).

¹⁹ Mr Blé Goudé’s Observations, para. 5.

²⁰ Mr Blé Goudé’s Observations, para. 5.

concerns, victims shall make written application to the Registrar, who shall transmit the application to the relevant Chamber’.

9. The Appeals Chamber considers that, for the following reasons, the Additional Applications should not be considered on their merits at this stage of the proceedings.

10. In the present case, as recalled above, the Trial Chamber, having regard to article 64(2) of the Statute, and pursuant to article 68(3) of the Statute, found it appropriate to set a deadline for the submission to the Registry of applications by victims to participate in the proceedings, and a deadline for transmission of those applications to the Chamber and the parties; these deadlines were, respectively, 70 and 60 days prior to the commencement of the trial.²¹ The Additional Applications were received by the Registry after the expiration of both deadlines and, for this reason, the Registry states that it did not transmit them to the Trial Chamber. As a result, these applicants did not participate as victims at any stage of the trial proceedings.

11. The Appeals Chamber considers that, in principle, only victims who participated in the trial proceedings may participate in the ensuing appeal proceedings. This is because of the character of the appeal proceedings, which follow on from, and are a continuation of, the trial proceedings. The role of the appeals proceedings is to review decisions issued by pre-trial or trial chambers taken, generally, after considering submissions by all relevant parties and participants authorised to participate at the stage of the proceedings when the decision was issued.

12. While noting that, in the *Lubanga* case, the Appeals Chamber ultimately decided to assess a number of applications transmitted by the Registry during the appeal proceedings,²² this was done under the ‘specific circumstances’ of that

²¹ [Trial Chamber’s Decision on Victim Participation](#), para. 51, pp. 3, 24.

²² [Decision on 32 applications to participate in the proceedings](#), 27 August 2013, ICC-01/04-01/06-3045-Red2 (hereinafter: ‘*Lubanga* Decision on 32 victims applications’), para. 13. The Appeals Chamber further stated that, ‘[u]nder these specific circumstances, [...] it would be in the interests of the proper administration of justice to conduct an assessment of the applications for participation during the appeal phase of the present proceedings’.

case,²³ and the Appeals Chamber did not elaborate further on the participatory rights, at the appeal phase, of victims who did not participate at trial.

13. As regards regulation 86(3) of the Regulations of the Court,²⁴ the Appeals Chamber notes that this is primarily a procedural rule; it does not grant or extend any right to participation in the proceedings. Article 68(3) of the Statute is the governing provision with regard to victim participation in the proceedings. Under this provision, and as recalled above, the Chamber shall permit victims, where their personal interests are affected, to have their views and concerns ‘presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial’.

14. The Appeals Chamber considers that, in the case at hand, it would not be appropriate to assess the Additional Applications, at this stage of the proceedings, with a view to potentially allowing victims, who did not participate at trial, to participate in the current appeal proceedings. The Additional Applications were submitted to the Registry during the trial phase, after the expiry of the deadline set by the Trial Chamber. Due to the timing of their submission, the applications were neither transmitted to, nor considered by, the Trial Chamber. Thus, as mentioned above, the applicants did not participate at trial; nor did they participate in the particular proceedings leading to the issuance of the Trial Chamber’s decision,

²³ As noted by the Appeals Chamber, the additional applications ‘were either submitted or completed with supplementary information during the trial phase of proceedings, yet, through no fault of the applicants, were never transmitted to the Trial Chamber’. [Lubanga Decision on 32 victims applications](#), para. 13. Given that the Trial Chamber was at the deliberations stage, it declined to consider the applications, but indicated that the applications should be provided if there were to be sentencing and reparations stages. After the deliberations and the decision on conviction of Mr Lubanga, the Registrar did not submit the applications to the Trial Chamber. In its decision on the applications, the Appeals Chamber noted that ‘for reasons unknown to the Appeals Chamber, the Registrar did not re-submit the applications for the purposes of the sentencing proceedings, nor did the Trial Chamber rule on them’ and that ‘[i]f the Trial Chamber had dealt with these applications, those applicants who would have been granted a right to participate in the trial proceedings would also have been granted the right to participate in the appeals proceedings from the start’. It therefore considered that ‘by no fault of the applicants, the applications were not transmitted to the relevant Chamber’ and that, ‘in this specific case, it is in the interests of the proper administration of justice that the Appeals Chamber considers the applications in the present proceedings’. See [Lubanga, Decision on the request of the Registrar relating to the transmission on of application for participation in the appeal proceedings and on related issues](#), paras 1-2, 4-5).

²⁴ Regulation 86(3) of the Regulations of the Court provides that ‘[v]ictims applying for participation in the trial and/or appeal proceedings shall, to the extent possible, make their application to the Registrar before the start of the stage of the proceedings in which they want to participate’.

which the Appeals Chamber is called to review in these appeal proceedings. The Appeals Chamber further notes that no reasons were provided as to why the applicants could not submit their applications within the set deadline, nor as to why these applications should be considered at this stage. Also, noting that the applications were submitted between May and November 2017, in the course of trial proceedings, there is no updated information as to their intention to participate in the current appeals proceedings. Further, it is recalled that the schedule related to the filing of submissions in the present appeal has been under way since July 2019.²⁵

15. For the reasons above, the Appeals Chamber considers that it would not be appropriate to assess the Additional Applications at this stage of the proceedings. The Appeals Chamber therefore declines to consider the Additional Applications without prejudice to the matter being considered by a trial chamber, within its discretion, in any future proceedings. Should trial proceedings be restarted or resumed, the Registry shall transmit the Additional Applications to the trial chamber.

16. Finally, the Appeals Chamber notes that both Mr Gbagbo and Mr Blé Goudé filed their respective observations as ‘confidential’. The Appeals Chamber therefore directs Mr Gbagbo and Mr Blé Goudé to file public redacted versions of their respective observations or request their reclassification as ‘public’, by 16h00 on 8 April 2020.

Judge Ibáñez Carranza appends a dissenting opinion to this decision.

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



Judge Chile Eboe-Osuji
Presiding

Dated this 25th day of March 2020

At The Hague, The Netherlands

²⁵ [Decision on the Prosecutor’s request for time extension for the notice of appeal and the appeal brief](#), ICC-02/11-01/15-1268. *See also* [Decision on victim participation](#), 26 November 2019, ICC-02/11-01/15-1290, paras 8-9, and p. 3.