

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/11
Date: 6 February 2012

PRE-TRIAL CHAMBER III

Before: Judge Silvia Fernández de Gurmendi, Single Judge

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO***

Public document

Decision on issues related to the victims' application process

Decision to be notified, in accordance with regulation 31 of the Regulations of the Court, to:

The Office of the Prosecutor
Mr Luis Moreno-Ocampo
Ms Fatou Bensouda

Counsel for the Defence
Mr Emmanuel Altit

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar
Ms Silvana Arbia

Detention Section

Victims and Witnesses Unit

Others

**Victims Participation and
Reparations Section**
Ms Fiona McKay

Judge Silvia Fernández de Gurmendi, Single Judge for Pre-Trial Chamber III of the International Criminal Court (“Chamber” and “Court” respectively), responsible for carrying out the functions of the Chamber in relation to the case of *The Prosecutor v. Laurent Gbagbo* (“Case”)¹ hereby renders this decision on issues related to the victims’ application process.

I) Procedural History

1. On 17 January 2012, the Single Judge convened a meeting to assess with the Victims Participation and Reparations Section (“VPRS”) and other representatives of the Registry the victims’ application process and to explore different options, including, in particular, the possibility of applying a collective approach to victims’ applications for participation in the Case.

2. Following this meeting, the Registry filed a report on 20 January 2012 containing observations on the possible legal, financial and practical implications of a collective approach.² *Inter alia*, the Registry explains that the collective application process is a long term project,³ and that “the question of whether there could be a more collective approach to victims’ participation, in light of the continued backlog the Court has had in processing applications from victims seeking to participate, was discussed by the Assembly of State Parties (“ASP”).⁴ The Registry further recalls that the ASP had adopted at its ninth session on 21 December 2011 a resolution underlining the “need to consider reviewing the victim participation system with a view to ensuring its sustainability, effectiveness and efficiency” and requesting the Court to conduct such a review

¹ Oral Decision of the Chamber, 5 December 2011, ICC-02/11-01/11-T-1-ENG, page 8.

² ICC-02/11-01/11-29-Conf-Exp; ICC-02/11-01/11-29-Red (public redacted version).

³ ICC-02/11-01/11-29-Red, para. 32.

⁴ ICC-02/11-01/11-29-Red, para. 19.

“in close consultation with the Bureau and relevant stakeholders and to report thereon to the Assembly at its eleventh session”.⁵

3. In light of the above, the Registry proposes a particular approach to victims’ participation in the present Case, to be implemented in three main phases:

- (i) the production of an initial mapping report identifying the main communities of victims affected by the alleged crimes, their representatives and civil society organisations, as well as security considerations;
- (ii) the subsequent collection and processing of victims’ applications for participation, for which the Registry requests that a “reasonable final deadline” is set; and
- (iii) the organisation of the common legal representation of the victims, suggesting that the Chamber “initiates this process at the earliest opportunity.”⁶

II) Analysis

4. The Single Judge notes Articles 43(1), 61, 67(1)(c) and 68(3) of the Rome Statute (“Statute”), Rules 89 and 90 of the Rules of Procedure and Evidence (“Rules”), Regulation 86 of the Regulations of the Court and Regulations 104, 105, 112 and 113 of the Regulations of the Registry.

5. The Single Judge recalls, in particular, her duty to ensure that proceedings are conducted in a fair and expeditious manner as provided for in Article 67(1)(c)

⁵ ICC-02/11-01/11-29-Red, para. 19.

⁶ ICC-02/11-01/11-29-Red, paras 33-39.

of the Statute as well as her obligation to guarantee the rights of victims to express their views and concerns in a meaningful manner which is not inconsistent with or prejudicial to the rights of the Defence, in accordance with Article 68(3) of the Statute.

6. The Single Judge considers that such duties make it necessary, *inter alia*, to enhance the efficiency and the substantive value of victims' participation by envisaging a system that takes into account the particular circumstances of the Case. In light of these circumstances, the recent experience of the Chamber in the situation at hand,⁷ as well as the existing backlog in processing victims' applications in other cases, the Single Judge is of the view that it is imperative to put in place a system that is adequate to deal with numerous applicants.

7. To that effect, the Single Judge considers that the system for the Case should encourage a collective approach to victims' applications. Such a system, tailored to the specific needs of the Case, would be without prejudice to continuing the long-term consideration of a collective system that could eventually be applied by the Court as a whole and could, in fact, serve as a valuable experience which may be beneficial to such a long-term project.

8. The Single Judge considers that under the existing legal framework collective victims' applications cannot be imposed but individual victims may be encouraged to join with others so that a single application is made by a person acting on their behalf, with their consent, in accordance with Rule 89(3) of the Rules.

⁷ The Chamber has already received for the limited purposes of Article 15 proceedings as many as 1047 communications purporting to be victims' representations, of which 679 appeared to meet the requirements of Rule 85 of the Rules. See ICC-02/11-11-Conf, paras 7-8.

9. In this respect, the Single Judge welcomes the Registry's proposal to produce "an initial mapping report, which would identify the main communities of victims affected by the crimes likely to be the subject of the Court proceedings, their representatives and civil society organizations".⁸ She takes note of the fact that this proposal can be implemented immediately for the purposes of the upcoming confirmation of charges hearing scheduled for June 2012 and that it is reported to fall within the scope of the 2012 budget allocated to the VPRS.⁹

10. The Single Judge considers that such a mapping exercise could indeed serve as the foundation for a more collective approach to victims' application that would be compatible with the existing legal framework. To this effect, such a mapping should, *inter alia*, be used to:

- (i) identify main communities or groups of victims;
- (ii) identify potential persons that could act on behalf of multiple individual victims, with their consent, in accordance with Rule 89(3) of the Rules;
- (iii) encourage potential individual applicants to join with others and to that effect consent to a single application to be made on their behalf in accordance with Rule 89(3) of the Rules.

11. Furthermore, the Single Judge considers the mapping process should also provide an opportunity to initiate the organisation of legal representation. To that effect it should be used to assess whether the applicants could be further grouped for the purposes of common legal representation in accordance with Rule 90 of the Rules and to start identifying potential common legal representatives to be appointed in due course.

⁸ ICC-02/11-01/11-29-Red, para. 34.


⁹ ICC-02/11-01/11-29-Red, para. 33.

FOR THESE REASONS THE SINGLE JUDGE HEREBY

ORDERS the Registry to start the mapping process in Cote d'Ivoire for the purposes indicated in paragraphs 10 and 11 above on an urgent basis and to submit a report to the Chamber by 12 March 2012;

ORDERS the Registry to propose to the Chamber an application form that could be used for the purpose of encouraging collective applications in accordance with Rule 89(3) of the Rules by 29 February 2012.

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



Judge Silvia Fernández de Gurmendi

Single Judge

Dated this Monday, 6 February 2012

At The Hague, The Netherlands