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No.: **ICC-02/11-01/11**

Date: **9 March 2012**

PRE-TRIAL CHAMBER III

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Elizabeth Odio Benito
Judge Adrian Fulford

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF THE PROSECUTOR v. LAURENT GBAGBO

Public

With Confidential Annex A, available to the Defence, Registry, VPRS and OPCV

Prosecution's observations in relation to victims' application process

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Counsel for the Defence

Mr Emmanuel Altit

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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States' Representatives

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Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

Introduction

1. On 6 February 2012 the Single Judge issued the "Decision on issues related to the victims' application process", and ordered 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".¹
2. On 29 February 2012, the Registry filed its "Proposal on a partly collective application form for victims' participation" ("proposal").²
3. On 2 March 2012, the Single Judge invited the Prosecution and Defence to submit their observations on Registry's proposal.³

Submissions

4. The Prosecution welcomes the objective to streamline the Victims' application process while respecting the rights of the parties and future participants. Past experience demonstrates, and indeed the Prosecution agrees with the Single Judge, that the review of Victims' applications can be a resource and time intensive exercise not only for the parties but also the Court as a whole.⁴
5. The Prosecution has no objection to Registry's proposal.⁵ The proposed collective application follows the prescriptions of Article 68(3), Rules 85, 89 and Regulation 86 since the necessary information to determine if the applicant qualifies as a victim and that his or her personal interests are affected by legal or factual issues arising out of the proceedings can be easily identified. Additionally, the information provided in the collective application and the individual declaration of the applicant is sufficiently detailed for the parties to submit their observations where necessary, pursuant to Rule 89(2), regarding the appropriateness of the applicant's participation. Nevertheless, the Prosecution

¹ ICC-02/11-01/11-33.

² ICC-02/11-01/11-45.

³ ICC-02/11-01/11-47.

⁴ ICC-02/11-01/11-33, para. 6

⁵ ICC-02/11-01/11-45-AnxB.

recalls that information provided by applicants is certainly not sufficient when a victim is to be called to testify. Additional personal details and information must be provided in order for the parties to properly question a victim and in order to assist the Chamber in its truth seeking mission.⁶

6. The Prosecution also agrees with Registry's proposed presence and assistance throughout the envisaged process. The fact that Registry would *"introduce a measure of quality control, as it would have the benefit of enabling a check on completeness of applications and supporting documents to be made on the spot"*⁷ would be most beneficial to the parties. Past experience demonstrates many avoidable hours can be spent by a party or a Chamber on verifying that all relevant supporting documents have indeed been correctly submitted by an applicant.⁸
7. The Prosecution suggests that the Registry might also consider the possibility that some victims will consent to the disclosure of their identity, while others may wish to remain anonymous.⁹ Although this does not create any inconvenience to the individual declaration of a victim (which can be easily redacted), it may nevertheless impact on Part C of the collective application, if the particulars of the victimization of some applicants might inadvertently reveal their identities. This should be addressed in a manner that limits to a minimum the possible redactions.
8. The case against Laurent Gbagbo is circumscribed in time and space to four incidents that form the basis of the alleged charges. If the collective application process is adopted, it is submitted that these four incidents should form the basis, at a minimum, of four collective applications (one collective application for each incident). As envisaged by the Registry, if an applicant is the victim of more than one incident, his or her individual declaration should be included in all

⁶ See ICC-01/04-01/07-2393-Red, para. 26 and following and decision ICC-01/04-01/07-2517-tENG, para. 6 amongst others.

⁷ ICC-02/11-01/11-45-AnxA, para. 29.

⁸ See in general ICC-01/04-01/07-1491-Red.

⁹ ICC-02/11-01/11-45-AnxA, para. 21 and following.

related collective applications, and should be given a single reference number.¹⁰

The Prosecution cautions, however, that if the pool of applicants within the four collective applications are given victim status and the four collective groups are then each separately represented by a common legal representative, a victim whose application was submitted in more than one collective application may only be represented by one group's Legal Representative.

9. Finally, the Prosecution deems necessary to inform the Chamber, Defence, Registry, VPRS and OPCD that a collective of lawyers with close ties to the former political regime of Laurent Gbagbo is currently active in Côte d'Ivoire and abroad. In confidential Annex A, the Prosecution provides the names of the known lawyers who belong to this collective. The Prosecution submits that these lawyers' past and present professional activities may be in conflict with the interests of applicants who would claim to have suffered harm as a result of activities of the Gbagbo regime. In light of the availability of other persons to provide assistance and the desirability of avoiding foreseeable difficulties, it may be preferable that these lawyers not be permitted to assist victims either individually or collectively, including as contact persons.¹¹

¹⁰ ICC-02/11-01/11-44-AnxA, para. 22.

¹¹ See among others, ICC-02/11-01/11-44-AnxB, Part B and G.

Conclusion

10. The Prosecution has no objection to Registry's proposed collective application form and process, subject to the considerations set out above.



Luis Moreno-Ocampo, Prosecutor

Dated this 9th day of March 2012

At The Hague, The Netherlands