

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 13 March 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 the OPCV's "Second Request to appear before the Chamber pursuant to Regulation 81(4)(b) of the Regulations of the Court 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**
Ms Paolina Massidda

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

States' Representatives

Amicus Curiae
Redress Trust

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*,¹ hereby renders this decision on the “Second Request to appear before the Chamber pursuant to Regulation 81(4)(b) of the Regulations of the Court on issues related to the victims’ application process” (“Request”) submitted by the Office of Public Counsel for Victims (“OPCV”).²

1. On 6 February 2012, the Single Judge issued the “Decision on issues related to the victims’ application process”, wherein she, *inter alia*, 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 [of Procedure and Evidence] by 29 February 2012”.³

2. On 14 February 2012, the OPCV submitted its “Request to appear before the Chamber pursuant to Regulation 81(4)(b) of the Regulations of the Court on the specific issue of victims’ application process”.⁴

3. On 20 February 2012, the Single Judge rejected the request to appear advanced by OPCV due to the inexistence, at that time, of a specific issue within the meaning of Regulation 81(4)(b) of the Regulations of the Court

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

² ICC-02/11-01/11-51.

³ ICC-02/11-01/11-33, p. 7.

⁴ ICC-02/11-01/11-40, para. 4.

("Regulations") and, as such, the OPCV's appearance would not have been at that point in time appropriate and of assistance to the Chamber.⁵

4. On 29 February 2012, the Registry filed its "Proposal on a partly collective application form for victims' participation" ("Registry Proposal").⁶

5. On 2 March 2012, the Single Judge invited the Prosecutor and the Defence to present, by 9 March 2012, their observations on the Registry Proposal,⁷ which were duly received by the deadline established.⁸

6. On 8 March 2012, the Single Judge issued the "Decision on the 'Application by Redress Trust for Leave to Submit Observations to Pre-Trial Chamber III of the International Criminal Court Pursuant to Rule 103 of the Rules of Procedure and Evidence'", in which she granted Redress Trust leave to submit, by 16 March 2012, observations on:⁹

- (i) "The practice and procedures of relevant regional and international courts and/or administrative bodies as well as any relevant domestic practice which considers approaches to the collective participation of victims of mass crimes. In particular, the Applicant would propose to draw to the Chamber's attention any relevant practice on application processes or other procedures used to collate and process in a collective way, expressions of interest from victims to participate in legal or administrative proceedings.
- (ii) The challenges faced by victims of mass crimes in various jurisdictions in applying to participate in court proceedings. In this respect, the applicant seeks to draw general conclusions from its work in a variety of countries and will not seek to address the concerns of any particular groups of victims."

⁵ Pre-Trial Chamber III, "Decision on OPCV 'Request to appear before the Chamber pursuant to Regulation 81(4)(b) of the Regulations of the Court on the specific issue of victims' application process'", ICC-02/11-01/11-43, paras 10 and 11.

⁶ ICC-02/11-01/11-45 and Annexes A and B.

⁷ Pre-Trial Chamber II, "Decision inviting observations from the parties in relation to the victims' application process", ICC-02/11-01/11-47, p. 5.

⁸ See ICC-02/11-01/11-52 and ICC-02/11-01/11-54, respectively.

⁹ ICC-02/11-01/11-50, para.4.

7. On 9 March 2012, the OPCV filed its Request, wherein it seeks leave to appear before the Chamber “on the issue of the victims’ application process by way of submitting written observations on the Proposal of the Registry within a deadline established by the Chamber”.¹⁰

8. In particular, the OPCV recalls its previous request under Regulation 81(4)(b) of the Regulations.¹¹ In addition, should leave be granted, the OPCV proposes to address two issues. First, it would argue that participation of victims in proceedings before the Court should be personal (“First Issue”).¹² In so doing, the OPCV already advances its interpretation that the “founding instruments of the Court never contemplated such a collective approach nor did they intend a system where one victim would represent other multiple victims”.¹³ In the view of the OPCV, this illustrates that “the intention of the drafters [...] was to set up a system of individual treatment of victims’ applications, without exception”.¹⁴ Second, the OPCV proposes observations on the practical problems that the Registry Proposal would entail and on the fact that it would not facilitate the expeditiousness of the proceedings (“Second Issue”).¹⁵

9. The Single Judge notes Regulations 28, 33, 34 and 81(4)(b) of the Regulations.

10. The Single Judge observes that according to Regulation 81(4)(b) of the Regulations, the OPCV “shall provide support and assistance to the legal representative of victims and to victims, including, where appropriate [...] appearing before the Chamber in respect of specific issues”.

¹⁰ ICC-02/11-01/11-51, p. 10.

¹¹ ICC-02/11-01/11-51, para. 16.

¹² ICC-02/11-01/11-51, paras 19-21

¹³ ICC-02/11-01/11-51, para. 20.

¹⁴ ICC-02/11-01/11-51, para. 20.

¹⁵ ICC-02/11-01/11-51, para. 26.

11. The Single Judge reiterates that “general comments on what the Office considers to be the appropriate interpretation of the legal provisions in the Statute and the Rules”¹⁶ do not constitute specific issues and, accordingly, would not be of assistance for the Chamber in taking a decision on the matter. Thus, the Single Judge considers that receiving observations on the First Issue proposed by OPCV would not be of any assistance for the bench.

12. To the contrary, the Single Judge believes that obtaining observations on the Second Issue advanced in the Request, which relates to the practical problems that the Registry Proposal would entail, could be of assistance for the Chamber in taking its decision on the matter before it.

13. In light of the abovementioned, the Single Judge considers it appropriate to grant the OPCV leave to submit written observations only on the practical implications of the Registry Proposal as outlined in the Second Issue proposed by the OPCV.

14. In order to ensure that any decision by the Chamber in relation to the victims’ application process is taken without undue delay, the Single Judge deems it appropriate to set 19 March 2012 as the time limit for OPCV to submit its written observations. In addition, the Single Judge considers it appropriate to set 23 March 2012 as the time limit for the parties’ observations thereon, if any.

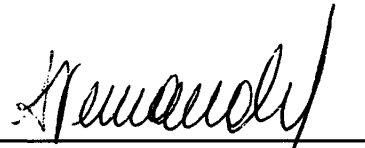
¹⁶ ICC-01/11-01/11-43, para.10.

FOR THESE REASONS THE SINGLE JUDGE HEREBY

GRANTS the OPCV leave to submit written observations on the practical implications of the Registry Proposal as outlined in the Second Issue of the Request by 19 March 2012;

ORDERS the Prosecutor and the Defence to file their observations thereon, if any, by 23 March 2012.

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



Judge Silvia Fernández de Gurmendi

Single Judge

Dated this 13 March 2012

At The Hague, The Netherlands