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PRE-TRIAL CHAMBER III

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

SITUATION IN THE REPUBLIC OF COTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO***

Public Document
**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**

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

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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mme Silvana Arbia

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Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

1. The Redress Trust ("REDRESS") seeks leave of Pre-Trial Chamber III of the International Criminal Court to submit observations, concerning the issue of collective victim participation and the proposed partly collective application form which was submitted in that context by the Registrar to the Chamber on 29 February 2012¹ in the Case of *The Prosecutor v. Laurent Gbagbo*.
2. This application for leave is made pursuant to rule 103 of the Rules of Procedure and Evidence.

I. Background

3. On 6 February 2012, Single Judge Sylvia Fernandez de Gurmendi, determined that the system of victim participation for the case should encourage a collective approach to victims' applications and ordered the Registrar to propose a collective application form to the Chamber by 29 February 2012.²
4. On 14 February 2012, the Office of Public Counsel for Victims (OPCV), requested to appear before the Chamber on the issue of collective victim applications.³
5. On 15 February 2012, the Defense requested to submit observations on the proposed approach and collective application form.⁴
6. On 20 February 2012, the Single Judge rejected OPVC's request⁵ as premature. The Single Judge noted that there was no "specific issue" within the meaning of

¹ *The Prosecutor v. Laurent Gbagbo*, Report on the Registry's proposed partly collective application form, 29 February 2012, ICC – 02/11-01/11-45-AnxB

² Decision on issues related to the victims' application process, February 6 2012 ICC-02/11-01/11-33, <http://www.icc-cpi.int/iccdocs/doc/doc1327517.pdf>

³ 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, 14 February 2012, ICC-02/11-01/11-40 , <http://www.icc-cpi.int/iccdocs/doc/doc1331914.pdf>

⁴ Requête de la Défense suite à la « Decision on issues related to the victims' application process » 15 January 2012, ICC-02/11-01/11-33, <http://www.icc-cpi.int/iccdocs/doc/doc1333197.pdf>

⁵ Decision on the "Observations on the 'Directions on the submission of observations pursuant to article 19 (3) of the Rome Statute and rule 59 (3) of the Rules of Procedure and Evidence'", 20 February 2012, ICC-01/09-01/11-390, <http://www.icc-cpi.int/iccdocs/doc/doc1336432.pdf>

Regulation 81(4)(b) of the Rules of the Court in respect of which the OPCV could then appear before the Chamber.

7. On 29 February 2012, the Registry submitted a draft partly collective application form, and a report explaining the proposed partly collective application approach explored by the Registry.⁶

II. The Applicant

REDRESS

8. REDRESS is an international nongovernmental organisation with a mandate to seek justice and reparation for victims of torture and related international crimes, and to encourage accountability of all those who perpetrate, aid or abet these acts. It has considerable expertise in advocating for the rights of victims to gain both access to the courts and redress for their suffering.
9. REDRESS regularly takes up cases on behalf of individual survivors at the national and international level and provides assistance to representatives of survivors. It has extensive experience in interventions before national and international courts and tribunals, including at the international level, the United Nations Committee against Torture and Human Rights Committee, the European Court of Human Rights, the Inter-American Commission on Human Rights, the Special Court for Sierra Leone, and the Extraordinary Chambers in the Courts of Cambodia. It has also intervened, together with the Uganda Victims' Foundation, in proceedings before the International Criminal Court,⁷ on *inter alia*, the

⁶ Proposal on a partly collective application form for victims' participation, February 29 2012, ICC-02/11-01/11-45, <http://www.icc-cpi.int/iccdocs/doc/doc1344294.pdf> ; Report, Annex A, ICC-02/11-01/11-45-AnxA <http://www.icc-cpi.int/iccdocs/doc/doc1344295.pdf> ; Proposed partly collective application form, ICC-02/11-01/11-45-AnxB, <http://www.icc-cpi.int/iccdocs/doc/doc1344297.pdf>

⁷ *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen*, Amicus curiae submitted pursuant to the Pre-Trial Chamber II "Decision on application for leave to submit observations under Rule 103" dated 5 November 2008, 18 November 2009, ICC-02/04-01/05-353, <http://www.icc-cpi.int/iccdocs/doc/doc589330.pdf>

experiences of victims of crimes within the jurisdiction of the Court of seeking justice before Ugandan courts.

10. REDRESS has been working actively on the issue of victims' rights in international justice in order to help ensure that the rights of victims under international law are reflected in the procedures and practices of international justice mechanisms. REDRESS along with others, played a role in ensuring that key provisions for victims were incorporated into the Rome Statute which established the International Criminal Court.
11. REDRESS also assists NGOs who work with victims of conflict to enable victims to engage with international justice mechanisms and has provided input to ICC officials on the implementation of the ICC's victims' mandate.
12. REDRESS works closely with civil society groups in many of the countries under scrutiny by the Court. Our collaboration with these groups is intended to facilitate and enable the perspectives from the field to be taken on board by the ICC in The Hague, and to encourage the effective participation of victims in proceedings.
13. REDRESS also facilitates the Victims' Rights Working Group (VRWG), a network of over 400 national and international civil society groups and experts created in 1997 under the auspices of the Coalition for the International Criminal Court (CICC). The VRWG works to ensure that victims' rights are effectively protected and respected, and that their needs and concerns are met throughout the ICC's judicial process.
14. REDRESS has published several reports, and papers on victims' rights since the International Criminal Court was established. Our work with the VRWG has also

resulted in numerous papers and reports including on the specific issue of victims' participation before the ICC.⁸

15. REDRESS was also closely involved in the consultations organised by the Registry in June 2009, which led to the adoption of the new "combined" victim application form for participation and reparation.

16. As a result of this work, REDRESS has knowledge of the practical aspects and challenges involved in assisting victims to understand and engage with the application process before the ICC.

III. The Application for Locus

17. Rule 103(1) of the Rules of Procedure and Evidence ("the Rules") of the International Criminal Court ("ICC" or "the Court") provides that:

"At any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate."

18. Pursuant to rule 103 of the Rules, spontaneous applications can be submitted either by States, organizations or individuals interested to participate in the proceedings before the Court.

19. In deciding whether to grant leave to an applicant to submit observations as *amicus curiae*, according to rule 103 of the Rules, the Appeals Chamber has underlined that, when acting within the sphere of rule 103 of the Rules, the respective Chamber should take into consideration whether the proposed

⁸ See list of relevant publications in Annex.

submission of observations may assist it "in the proper determination of the case".⁹

20. Other international courts and tribunals permit third party interventions, such as, the International Criminal Tribunal for the former Yugoslavia ("ICTY"),¹⁰ the International Criminal Tribunal for Rwanda ("ICTR")¹¹ and the Special Court for Sierra Leone ("SCSL"),¹² on similar bases as Rule 103(1). The ICTR and the SCSL in particular have received submissions from third parties where it was considered that there was a real reason to believe that those submissions would assist the court to reach the right decision.¹³ As indicated by the Appeals Chamber of the Special Court of Sierra Leone in its decision granting REDRESS and others the opportunity to file an amicus curiae brief and to present oral submissions:

*"The issue is whether it is desirable to receive such assistance, and 'desirable' does not mean 'essential' (which would be over-restrictive) nor does it have an over-permissive meaning such as 'convenient' or 'interesting'. The discretion will be exercised in favour of an application where there is a real reason to believe that written submissions, or such submissions supplemented by oral argument, will help the Court to reach the right decision on the issue before it."*¹⁴

⁹ See, Decision on "Motion for Leave to File Proposed Amicus Curiae Submission of the International Criminal Bar Pursuant to Rule 103 of the Rules of Procedure and Evidence" ICC-01/04-01/06 OA 11 of 22 April 2008.

¹⁰ Rule 74 of the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia

¹¹ Rule 74 of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda

¹² Rule 74 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone

¹³ See for example *Prosecutor v Jean-Paul Akayesu* Case No. ICTR-96-4-T "Order Granting Leave for Amicus Curiae to Appear" 12 February 1998; *Prosecutor v Laurent Semanza* Case No. ICTR-97-20-T "Decision on the Kingdom of Belgium's Application to File and Amicus Curiae Brief and on the Defence Application to Strike Out the Observations of the Kingdom of Belgium Concerning the Preliminary Response of the Defence" 9 February 2000; *Prosecutor v Kallon* Case No. SCSL-2003-07 "Decision on Application by the Redress Trust, Lawyers Committee for Human Rights and the International Commission of Jurists for Leave to File Amicus Curiae brief and to Present Oral Submissions" 1 November 2003.

¹⁴ SCSL-2003-07 of 1 November 2003, *ibid.*, at para 5.

21. It is submitted that the issue of collective victim application is currently a live issue before the Chamber, and that REDRESS is well placed to provide background information which may assist the Court in the proper determination of the issue of victim collective participation in the case.

IV. Specific Issues the Applicant Seeks to Address, and the Nature of the Observations the Applicant Proposes to Submit

22. The Applicant seeks to make observations on:

- 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.

23. The Applicant wishes to underscore that in its proposed observations, it does not purport to speak on behalf of specific victims, victim-applicants or potential applicants who seek to participate in proceedings.

Conclusion

For the reasons set forth above, the Applicant respectfully requests that it be granted leave to submit written observations on these matters pursuant to Rule 103 of the Rules of Procedure and Evidence, within a time period determined by the Court. Should the Chamber desire that additional briefing or oral arguments be submitted on these issues, the Applicant would be happy to play whatever role is requested.

For The Applicant



Carla Ferstman
Director

Dated this 2 March 2012

In London, United Kingdom