

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/11
Date: 20 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 OPCV's "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"

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

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 OPCV’s “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”.²

I) Procedural History

1. On 17 January 2012, a meeting was held to assess with the Victims Participation and Reparations Section and other representatives of the Registry the victims’ application process and to explore different options, including the possibility of applying a collective approach to victims’ applications for participation in the present case.
2. On 20 January 2012, the Registry filed a report containing observations on the possible legal, financial and practical implications of such a collective approach.³
3. On 6 February 2012, the Single Judge issued the “Decision on issues related to the victims’ application process” (“Decision of 6 February 2012”), by which she ordered the Registry to submit, by 12 March 2012, a mapping report that would: (i) identify main communities or groups of victims; (ii) identify potential persons that could act on behalf of multiple individual victims, with

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

² ICC-02/11-01/11-40.

³ ICC-02/11-01/11-29-Conf-Exp; see ICC-02/11-01/11-29-Red for the public redacted version of this document submitted on 6 February 2012..

their consent, in accordance with Rule 89(3) of the Rules of Procedure and Evidence (“Rules”); and (iii) encourage potential individual applicants to join with others and to that effect to consent to a single application to be made on their behalf in accordance with Rule 89(3) of the Rules.⁴ Finally, the Single Judge ordered the Registry to propose to the Chamber, by 29 February 2012, an application form that could be used for the purpose of encouraging collective applications in conformity with Rule 89(3) of the Rules.⁵

4. On 14 February 2012, the Office of Public Counsel for Victims (“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” (“Request”) and “in particular on the victims’ collective application approach”.⁶
5. In its Request, the OPCV submits that it is necessary and appropriate to assist the victims because the approach to be adopted with regard to the victims’ application process in the present case constitutes a specific issue.⁷ In particular, it is contended that the issue advanced in the Request is of such nature as to impact the participation of victims in different ways.⁸ The OPCV further argues that this is the appropriate time to appear before the Chamber as “the Single Judge has already fixed the deadlines of 29 February 2012 and 12 March 2012 to implement in part the *collective approach*”.⁹

⁴ Pre-Trial Chamber III, Decision of 6 February, ICC-02/11-01/11-33, para. 10.

⁵ ICC-02/11-01/11-33, p. 7.

⁶ ICC-02/11-01/11-40, para. 4.

⁷ ICC-02/11-01/11-40, para. 10.

⁸ ICC-02/11-01/11-40, para. 10.

⁹ ICC-02/11-01/11-40, para. 11.

I. Analysis and conclusions

6. The Single Judge recalls that, according to Regulation 81(4) of the Regulations of the Court (RoC), the OPCV shall conduct legal research and provide advice to victims and their legal representative(s). In addition, pursuant to subparagraph (4)(b) of the Regulation, 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
7. As indicated by the OPCV in its submissions,¹¹ Trial Chamber I has recognized the opportunity for the OPCV to appear before a Chamber to address specific issues of “general importance and applicability”.¹² Still, notwithstanding their general importance, observations need to refer to “specific issues”, as required by Regulation 81(4)(b) of the RoC. Examples of specific issues pursuant to the said provision are correctly mentioned by the OPCV in its submissions¹³ and may relate, *inter alia*, to the adoption of protective measures in respect of particular witnesses,¹⁴ or on the interpretation of the phrase “victims who appear before the Court” in Article 43(6) of the Rome Statute (“Statute”), in order to identify the responsibility of the Victims and Witnesses Unit with regard to the safety and

¹⁰ Emphasis added.

¹¹ ICC-02/11-01/11-40, para. 9.

¹² Trial Chamber I, “Decision on the role of the Office of Public Counsel for Victims and its request for access to documents”, 6 March 2008, ICC-01/04-01/06-1211.

¹³ ICC-02/11-01/11-40, para. 7, footnote 5.

¹⁴ Trial Chamber II, “Ordonnance relative à la soumission d’écritures sur l’interprétation de la norme 42 du Règlement de la Cour”, 12 June 2009, ICC-01/04-01/07-1205.

well-being of victims during the period of time when their applications to participate as victims in trial are pending.¹⁵

8. In the present case, the OPCV requests to appear before the Chamber to make comments at a time where the Chamber is simply exploring the possibility of adopting an alternative approach in respect of victims' applications, where no system has been adopted and, most importantly, where the Chamber is not yet seized of a single victim's application and no legal representatives have been appointed to express the views and concerns on behalf of victims.

9. In this regard, the Single Judge notes that none of the decisions referred to by the OPCV gives a particular role to this Office "in the abstract" and before a Chamber has even been seized of any victims' applications. Indeed, the decision issued by Trial Chamber II on 12 June 2009 referred to a request presented by the OPCV to appear before the Chamber in order to address specific issues with respect to a particular person (Witness 7).¹⁶ In its decision issued on 27 November 2007, Trial Chamber I allowed the OPCV to present oral observations on "point E of the Order of 14 November on protective measures for victims applicants at the hearing on 4 December 2007".¹⁷ This "Point E" referred to the issue of the responsibility of the Victims and Witnesses Unit towards "victims who have applied to participate in the trial during the period whilst their applications are pending".¹⁸ Moreover, in its decision issued on 6 March 2008, Trial Chamber I clearly emphasized that the

¹⁵ Trial Chamber I, "Order on the Office of Public Counsel for Victims' request filed on 21 November 2007", 27 November 2007, ICC-01/04-01/06-1046.

¹⁶ ICC-01/04-01/07-1205-tENG, para. 2.

¹⁷ ICC-01/04-01/06-1046, para. 2.

¹⁸ Trial Chamber I, "Order scheduling a hearing", 14 November 2007, ICC-01/04-01/06-1027, para. 16.

core function of the OPCV was “to provide support and assistance to the legal representatives of victims and to victims who have applied to participate.”¹⁹

10. The Single Judge is of the view that at this point in time there is simply no “specific issue” within the meaning of Regulation 81(4)(b) of the RoC in respect of which the OPCV could appear before this Chamber. The “issues” on which the OPCV would like to appear are, in fact, general comments on what the Office considers to be the appropriate interpretation of legal provisions in the Statute and the Rules.
11. Furthermore, the Single Judge recalls that Regulation 81(4) of the RoC confines the appearance of the OPCV before the Chamber to situations where it is “appropriate” to do so. This entails, in particular, that the OPCV’s observations should be of assistance for the Chamber to take a decision, if any. In the present circumstances, and in light of the abstract and speculative nature of the issue presented in the Request, the Single Judge is of the view that the OPCV’s appearance would not be appropriate and would be of no assistance to the Chamber at this point in time.
12. Finally, the Single Judge also notes that the OPCV, in substantiating its Request, touches upon issues of “technical, human and budgetary resources of the Registry”²⁰ that are neither under the OPCV’s competence nor under the Chamber’s responsibility.

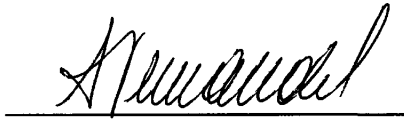
¹⁹ ICC-01/04-01/06-1211, para. 32.

²⁰ ICC-02/11-01/11-40, para. 23.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Request.

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

A handwritten signature in black ink, appearing to read 'S. Fernández de Gurmendi', is written over a horizontal line.

Judge Silvia Fernández de Gurmendi, Single Judge

Dated this Monday, 20 February 2012

At The Hague, The Netherlands