

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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No.: ICC-02/11-01/11  
Date: 06 February 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 redacted version of

***“Organization of the Participation of Victims”***

**Source:** Registry

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**

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

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

**States' Representatives**

**Amicus Curiae**

## **REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Counsel Support Section**

**Deputy Registrar**

Mr Didier Preira

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Other  
Section**

Ms Fiona McKay

**The Registrar of the International Criminal Court ("Court"),**

**NOTING** articles 15(3) and 68(3) of the Rome Statute, rule 89 of the Rules of Procedure and Evidence ("RPE"), regulations 23, 23*bis*, 24*bis* and 86 of the Regulations of the Court ("ROC"),

**RESPECTFULLY SUBMITS** the following observations to Pre-Trial Chamber III ("Chamber") following an informal request from a Legal Officer of the Chamber conveyed by email of 17 January 2012.<sup>1</sup>

1. Pursuant to Regulation 23*bis* of the ROC, the present observations are classified "Confidential *ex parte* – Registry only –" [REDACTED]  
[REDACTED] The Registry may prepare and submit a public redacted version at a later stage.

## **I – PROCEDURAL HISTORY**

2. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

3. [REDACTED]  
[REDACTED]

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<sup>1</sup> Email of Associate Legal Officer, Pre-Trial Chamber III, sent at 7 p.m. to Legal Officer, Division of Court Services ("DCS"), dated 17 January 2012.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] the use of collective applications would necessitate new forms that are not currently available to the Registry and which would require the prior approval of the Presidency pursuant to regulation 23(2) of the ROC.

4. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

5. In light of the foregoing the Registry hereby submits its observations. They are divided into three parts. First, the Registry provides an overview of the approach adopted in the Kenya situation within the framework of the Article 15 process. Thereafter, it sets out its views on the issue of collective participation of victims in the proceedings before the Court. Lastly, the Registry sets forth its proposed approach for the participation of victims in the situation at stake.

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<sup>2</sup> See *supra* footnote 1.

## II – KENYA ARTICLE 15 PROCESS AND ITS APPLICABILITY TO CÔTE D’IVOIRE

6. [REDACTED]  
[REDACTED] the Registry sets out below a brief overview of the Article 15 process followed in Kenya by the VPRS. It includes a breakdown of the missions and the results of the representation process, challenges faced, the timeframe involved, technical implications and the question of its potential applicability to the situation in Côte d’Ivoire at the Pre-Trial stage.

### *Summary of the approach adopted by the Registry*

7. On 10 December 2009, the VPRS was ordered by Pre-Trial Chamber II (“PTC II”) to: 1) Identify community leaders and other appropriate representatives of the range of victims’ communities; 2) make contact with such community leaders and representatives, whether directly or through intermediaries; 3) provide information to community representatives about the current process, including that they may make representations to PTC II, and how they could do so; 4) ensure that it was made clear to community representatives that the process of making representations to the Court is strictly voluntary; 5) explain to the community representatives that the victims they represent may make either collective or individual representations, or both.<sup>3</sup>
8. In response, the VPRS went on an assessment mission to Kenya in December 2009. The purpose of the mission was to make a preliminary assessment of challenges in order to define an adapted action plan to implement PTC II’s order.
- [REDACTED]

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<sup>3</sup> ICC-01/09-4.

[REDACTED]

9. Against this background, the VPRS devised an action plan for identifying and engaging with community leaders, intermediaries and victims. The action plan sought to ensure that victims could provide representations as quickly and easily as possible, by using a specially designed basic form and without having to provide supporting documentation.
10. The action plan was implemented in three phases: 1) an initial mapping of victims communities in order to identify appropriate persons for VPRS to engage with; 2) a series of small meetings with community representatives and intermediaries, in order to provide information and distribute forms that could be used for making representations; 3) the discrete collection of representations using trustworthy contact persons for receipt by hand.
11. In total, the VPRS received 406 representations from various sources. The great majority of the representations were the result of a targeted process undertaken by the VPRS in Kenya during February 2010, in accordance with PTC II's Order. Through this process the VPRS received 80 collective representations, 322 individual representations, and 1 representation from an organization.

### *Challenges Faced*

12. The overriding concern throughout the process of collecting victim representations was the security of victims, community representatives and those assisting them. Other than security concerns, the most significant challenges during this process were those posed by the short period of time available for implementing the Chamber's Order.<sup>4</sup> [REDACTED]

13. While collective representations proved to be an efficient means of obtaining the views of victim communities within a short space of time, this approach also resulted in additional challenges. [REDACTED]

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<sup>4</sup> From 10 December 2009 (date of the Order, see ICC-01/09-4) to 15 March 2010 (date of the VPRS filing, see ICC-01/09-17-Conf-Exp).

*Timeframe Involved*

14. The PTC II ordered VPRS to collect representations on 10 December 2009<sup>5</sup> and the VPRS filed its report, including the collected representations, on 15 March 2010.<sup>6</sup> As stated above, the VPRS collected the majority of the representations while on mission in Kenya during the month of February 2010.

*Technical, human and budgetary resources implications*

15. In order to be able to process the representations collected in Kenya, the VPRS database team, in coordination with the Information Communication and Technology Section of the Registry, had to design a completely new and separate section within the current database.<sup>7</sup>

16. Since these activities had not been foreseen in 2009 budget, the Registry was able to access part of the contingency fund in order to get additional funds. These activities thus did not impact directly on its budget.

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<sup>5</sup> See *supra*, footnote 4.

<sup>6</sup> *Id.*

<sup>7</sup> This specially tailored section of the database does not allow for a check for duplicates. It is impossible to extract data or statistics which are outside the scope of the representations and to automatically match the representations with participation or reparations forms, ie to check the consistency of information between a person who submitted representation and a participation/reparations form. Moreover, the information outside the scope of the data entered will be difficult to provide in the future. Finally, this new section of the database cannot be used for any other purposes than the Kenya representations since the information is completely tailored for Kenya (places, dates...).



*Applicability to Côte d'Ivoire at the Pre-Trial Stage*

17. The experience in Kenya indicated that factors such as the level of organization of civil society, the state of communication network, and the security context will be very significant in developing an appropriate approach. The VPRS does not yet have a detailed knowledge of Côte d'Ivoire because it conducted only one mission so far that was cut short for security reasons.
  
18. Most importantly, the process of collecting Article 15(3) representations in Kenya substantially differs from a pre-trial application process in many ways, including:
  - (i) Article 15(3) representations did not require identity documents, which is an important complicating factor in the application process: the lack of availability of identity documents in situation countries already triggered voluminous case law on the admissibility of alternative ways of establishing the applicants' identity.<sup>8</sup> These verifications generate a substantial additional workload for the VPRS which does not exist in the context of the Article 15(3) representations;
  - (ii) the requirement, "to the extent possible", of filling the standard application form for participation designed by the Registry under Regulation 86(1) ROC does not exist for Article 15(3) representations;
  - (iii) Information and documents required under regulation 86(2) of the ROC –
    - (a) identity and address of victims; (b) evidence of the consent of victims to have a person acting on his/her behalf, where applicable; (c) description of the harm suffered; (d) description of the incident; (e) relevant supporting documentation; (f) information as to why the personal interests of victims are affected; (g) information on the stage of the proceedings in which victims wish

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<sup>8</sup> See for instance ICC-02/04-125, par. 2-6.

to participate; and (h) information on legal representation, if any - are not required under Article 15(3); and

(iii) Article 15(3) representations were considered by the PTC II independently from individual applications for participation in the proceedings. Possible discrepancies between information mentioned in Article 15(3) representations and information mentioned in individual applications for participation in the proceedings were thus not addressed by the PTC II, since the two categories of information served different purposes and were received by the Court at different moments in time;

iv) While a public redacted version of the report summarizing the victims' representations collected in Kenya was filed,<sup>9</sup> the representations *per se* were not transmitted to the Parties but only to the PTC II. The representation forms thus did not need to be redacted by the legal staff of the VPRS.

### III – CURRENT REGISTRY PROJECT ON COLLECTIVE APPLICATION PROCESS

19. The Registrar notes 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 States Parties ("ASP") which 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 "in close consultation with the Bureau and relevant stakeholders and to report thereon to the Assembly at its eleventh session".<sup>10</sup>

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<sup>9</sup> ICC-01/09-17-Corr-Red.

<sup>10</sup> Resolution ICC-ASP/10/Res.5.

20. The Registry is also aware of its responsibility under regulation 86(1) of the ROC to develop standard forms for the purpose of victims' participation in the proceedings.
21. In this perspective, the VPRS started to explore alternative options for dealing with victims' participation with the aim of addressing the issues raised by the ASP, including the possibility of a collective application process.
22. At present, the Registry engages with victims from many different countries who approach the application process in a variety of ways. While the individual application process remains the norm in most situations, the Registry has engaged with certain communities where the collective approach (collective communication, collective benefit, collective harm) seems more appropriate than the individualized approach encapsulated in the Court's provisions. Equipping the Registry with a tool that would allow certain identified groups to communicate with the Court in a manner that reflects their own culture would be a positive development in the victim participation process and could even have positive effects on the proceedings themselves, particularly if the applications that are considered by the Court are more comprehensive and apply to a larger number of victims.
23. On the human resources side, the Registry considers that the collective form, if properly thought, may reduce the amount of work involved in the victim application process. In a system where many victims would be tied to one application, the Chamber and the Parties would also have a reduced workload in reviewing applications filed in relation to proceedings, as long as the applications are collective only and not doubled with individual ones, which seems hardly compatible with the Court's current legal framework and case law.

24. However, while the collective application form may have potential benefits, it also comes with potential risks and negative impacts that need to be carefully considered to ensure a properly functioning system. The goal of the Registry is to enhance efficiency in the application process while at the same time maintaining or increasing the substantive value of the participation process for the victims involved.

#### *Potential risks*

##### *(i) The legal aspect*

25. Unless provisions governing victims' participation in the proceedings before the Court are amended, certain basic requirements at the individual level must be in place in order for a collective approach to become viable. In this regard, the VPRS notes that some of the relevant provisions governing the Court seem to provide for an *individual* treatment of applications for participation.<sup>11</sup> Subject to further interpretation by Chambers – which the Registry cannot anticipate – an exclusively collective approach, which would give no place for an individual treatment of applications made by each individual victim, seems barely compatible with the Registry's understanding of the requirements of these rules. The Registry's view at this stage is that developing a collective approach therefore would not exempt the Court from considering applications for participation on an – at least partially – individual basis in the same time.

26. Subject to such future development of ICC case law, the Registry's view is that, within the actual legal framework of the Court, a collective approach would need

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<sup>11</sup> Rule 89(1)-(2) of the RPE; regulation 86(2)(a), (b), (c) and (f) of the ROC.

to address and meet the individualised legal requirements (“the mixed approach”).

27. Such a mixed approach also presents several challenges that need to be carefully assessed. Reflecting individual considerations through a collective approach would require a clearly defined methodology in terms of both collection and processing of the information. The experience in Kenya in the context of the Article 15 process, despite its limited purpose, showed that an important presence of the VPRS’ staff members is required in the field to implement such an approach, which would imply significant logistical and budgetary consequences.

28. The mixed approach would also be likely to generate discrepancies between information provided on a collective basis and information provided on an individual basis. These discrepancies would trigger further verifications by the Registry, which are likely to induce further delays and additional costs in the treatment of applications for participation.

*(ii ) Logistical and budgetary aspects*

29. It should be noted at the outset that to date, no Registry field office was established in the territory of Côte d’Ivoire. Because 2012 budget does not currently allow for the recruitment of additional staff members in the field, implementing the collective approach as set out above would require the involvement of the staff currently available to the VPRS. In other words, staff members who are currently processing applications for participation and/or reparations in the other situations and cases before the Court, would have to interrupt their usual tasks to go on mission for the purpose of collecting collective

applications for participation. This would be likely to cause delays that may adversely impact on all proceedings before the Court.

30. A quick assessment of the budgetary implications based on the experience in Kenya shows that a mission in the field of two and a half months involving two teams composed of one field officer, two field assistants and two interpreters would cause an additional cost of about 160 000 euros compared to the cost of the approach the Registry intends to follow in the present case, as presented in the 4<sup>th</sup> section of the present report.<sup>12</sup> The Registry notes that the current budget for 2012 – which covers activities as proposed in Section 4 below – has no capacity to sustain such an additional cost of 160 000 euros. The fact that its activities in Côte d’Ivoire are already covered by the approved 2012 budget means that, unlike in the Kenya situation, it is unlikely that the Registry will be allowed to access the contingency fund to find additional resources for the purpose of victims’ participation.

31. Furthermore, should the collective approach be adopted, the VPRS would need a database that enables the grouping of applications based on common criteria (crime, ethnicity...). The current database was supposed to be a temporary one which has nevertheless been maintained and adapted over the years but which would not suit the requirements for a collective application form. The VPRS is currently building a new database and has finalised the first phase of the project. The second phase is designed to accommodate the processing of collective application forms in terms of legal analysis, grouping of forms and linking of applicants based on pre-defined criteria. This database is intended to be operational early next year.

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<sup>12</sup> This assessment was done in light of the number of victims estimated in the Prosecutor’s Request for the opening of an investigation in Côte d’Ivoire (ICC-02/11-3).

*Conclusion on the collective application process*

32. The Registry considers the collective application process as one of the options that will be looked at. It is in any case a long term project which may imply substantial changes in the system of victim participation before the Court, including changes in the rules governing the Court. It thus seems too early to implement such radical changes in the following months in order to apply them in the case against Laurent Gbagbo for the confirmation hearing. However the Registry is available to take the views of the Chamber and implement any less radical changes that may be sustainable in the short term within available financial resources.

#### **IV – PROPOSED APPROACH ON VICTIMS PARTICIPATION**

33. The Registry is thus respectfully proposing the Chamber to consider adopting the following approach that can be implemented immediately for the upcoming confirmation of charges hearing scheduled in June 2012. The Registry notes that this approach falls within the scope of the 2012 budget allocated to the VPRS.

34. In order to prepare and organize the victim's application process in the situation in Côte d'Ivoire and in particular in view of the confirmation of charges hearing for the case against Laurent Gbagbo scheduled to take place on 18 June 2012, the Registry has developed a threefold approach to ensure predictability and expeditiousness of the potential participation of victims. This approach would have to be implemented through the following three main phases: 1) The production of 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, as well as

security considerations; 2) The collection and processing of victims' applications for participation and/or reparations; 3) The organization of the common legal representation of victims.

*Mapping of victim communities, their representatives and civil society groups*

35. Following the opening of a new case by the Court, the mandate of the Registry requires it to identify the victim population with whom it will work in order to efficiently define the way in which it will engage with it. The purpose of the mapping report is therefore to meet this information need by providing the Registry with relevant information on the nature and key features of the victims communities in the situation country, identifying potential intermediaries and service providers who could work with the victim population and by recommending ways in which the Registry can ensure that victims become fully and safely engaged in the proceedings. Previous experiences, such as in Kenya, demonstrated that this information is crucial for the effective implementation of the Registry's mandate at the early stage of a situation but also during the whole duration of the judicial proceedings. Establishing such a comprehensive report on the abovementioned issues requires specific expertise, skills and qualifications. Therefore the Registry has to carefully identify counterparts familiar with the nature and dynamics of both the situation country and the victim communities, and who are neutral, trustworthy and able to undertake research and analysis of high quality.

36. The Registry believes that producing a mapping report as described above in the specific context of the Côte d'Ivoire situation is essential given the complexity of the conflict that led to the case at stake before the Court. That is why the Registry



has sought to identify a consultant meeting the necessary requirements in order to undertake this exercise.<sup>13</sup>

*Collection and processing of victims' applications for participation in the confirmation of charges hearings*

37. In preparation of the confirmation of charges hearing but also with the view to streamline the process of victims' participation in the case against Laurent Gbagbo, the Registry plans to establish mechanisms to enable it to rapidly identify, contact and assist relevant victims. The development of a secure core network of intermediaries through which future activities can be undertaken in the field is part of such mechanisms. Subsequently, the Registry will provide selected intermediaries with good practice guidelines for security and confidentiality and put in place measures necessary for future communication and for the distribution, collection, and receipt of victims applications as well as trainings on completion of applications for participation and/or reparations.

38. Given the steps required to be taken by the Registry to achieve the above-mentioned objectives, the time needed to implement those steps and the existence of competing demands on the limited resources of the VPRS, the Registry would like to propose to set in advance the substantive timeframe for the participation of victims in the confirmation of charges hearing. Accordingly, the Registry advocates that a reasonable final deadline is set for the submission to the Registry of victims' applications for participation at the confirmation of charges hearing. This would enable the Registry to organize the use of resources available to the VPRS in an efficient and timely fashion in order to process and assess all the

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<sup>13</sup> The Registry has already undertaken steps to identify, select and hire a consultant to conduct the mapping mission and contractual issues are currently being discussed in light of the budget available to the VPRS.

applications received against the requirements of rule 85 of the RPE. The Registry believes that such a deadline would prevent receiving in weeks prior to the commencement of the confirmation of charges hearing large numbers of applications for participation, which would subsequently have to be processed and assessed and which may place an undue burden on the parties or could result in the exclusion of some of the applicants. The VPRS may also not have the capacity to process them.

#### *Common legal representation*

39. The Registry takes note of its mandate in respect of the organization of legal representation, as set out in rule 16(l)(b) and rule 90 of the RPE. The Registry would like to propose the new approach that was used in the Kenya situation and the Banda and Jerbo case for selecting common legal representatives.<sup>14</sup> It also suggests that common legal representation for participating victims be organized at the initial stage of a case in order to ensure efficient but meaningful participation of victims during the whole proceedings. Therefore, in the present case, in order to ensure that common legal representation for participating victims can be properly organized, in particular because of the short period of time available before the confirmation of charges hearing, the Registry suggests that the Chamber initiates this process at the earliest opportunity through the issuance of a request pursuant to rule 90(2) and rule 90(3) of the RPE.

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<sup>14</sup> ICC-01/09-01/11-243; ICC-02/05-03/09-187.

40. In light of the above, the Registry respectfully recommends considering the approach outlined above in paragraphs 33 to 39 and continues to reflect on alternative options for dealing with victims' participation that may be more efficient for the future.



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Silvana Arbia,  
Registrar

Dated this 06 February 2012

At The Hague, The Netherlands