

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 16 May 2012

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Hans-Peter Kaul
Judge Christine Van den Wyngaert

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF THE PROSECUTOR v. LAURENT GBAGBO

Public

With annexes 1 and 2 public and, annex 3 Confidential *EX PARTE*, only available to the Registry and annex 4 Confidential *EX PARTE*, only available to the Registry and the OPCV

Proposal for the common legal representation 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

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Counsel for the Defence

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Legal Representatives of the Victims

Legal Representatives of the Applicants

Mr. Nicholas Koumjian

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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Victims**

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Amicus Curiae

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**Victims Participation and Reparations
Section**

Ms. Fiona McKay

Other

The Registrar of the International Criminal Court (“the Court”);

NOTING the Oral Decision issued on 5 December 2011, designating Presiding Judge Silvia Fernández de Gurmendi as Single Judge for Pre-Trial Chamber I (the “Chamber”) responsible for carrying out the functions of the Chamber in relation to the situation in the Republic of Côte d’Ivoire and the cases emanating therefrom;¹

NOTING the Chamber’s Oral Decision issued on 5 December 2011, scheduling the commencement of the confirmation of charges hearing in the case *The Prosecutor v. Laurent Gbagbo* (the “Gbagbo case”) on 18 June 2012;²

NOTING the Chamber’s Decision notified on 5 April 2012, instructing the Registry to start consultations on the organisation of common legal representation of victims in the case and to provide recommendations to the Chamber with regard to the legal representation for victims admitted to participate in the confirmation of charges hearing no later than 16 May 2012 (the “Decision of 5 April”);³

NOTING article 68(3) of the Rome Statute, rules 16(l)(b) and 90 of the Rules of Procedure and Evidence (the “Rules”), regulations 23 *bis*, 24 *bis*, 79 and 86(9) of the Regulations of the Court (the “Regulations”); and regulations 112 and 113 of the Regulations of the Registry;

CONSIDERING that following the Chamber’s Decision of 5 April, the Registry consulted applicants as to their wishes with regard to legal representation and to assess whether they could be grouped for the purpose of common legal representation in accordance with Rule 90;

CONSIDERING that the Registry took steps to identify potential common legal representatives of victims in the case;

CONSIDERING that Annex 3 to the present document is classified with the status “confidential *ex parte*, only available to the Registry” in order to preserve the

¹ ICC-02/11-01/11-T-I-ENG, page (“ p.”) 8..

² ICC-02/11-01/11-T-I-ENG, p. 8.

³ ICC-02/11-01/11-86, p. 18.

anonymity of the candidates proposed by the Registry as potential common legal representatives so that the Chamber is in a position to freely decide on the current proposal without prejudicing the candidates' reputations;

CONSIDERING that Annex 4 to the present document is classified with the status “confidential *ex parte*, only available to the Registry and the OPCV” because it is an internal correspondence from the Principal Counsel, Office of Public Counsel for Victims (the “OPCV”) to the Chief, Victims Participation and Reparations Section (the “VPRS”) and the Head, Counsel Support Section (the “CSS”).

TRANSMITS the following proposal on common legal representation.

1 Introduction

1. The present document reports on the steps taken and the arrangements proposed by the Registry for the common legal representation of victims in the *Gbagbo* case, in accordance with the Chamber’s Decision of 5 April⁴ and Rule 90.

2 The Registry’s approach to organising common legal representation

2. The Registry takes note of its mandate in respect of the organisation of legal representation, as set out in Rules 16(1)(b) and 90. The practice of the Registry in this regard was established in recommending the organisation of common legal representation of victims in the two Kenya cases⁵ and the case *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*.⁶ This approach is further explained in Annex 1 of the present report.
3. Following this approach, the recommendation regarding common legal representation presented in this report is the outcome of a transparent and open selection process undertaken with a view to proposing victims’ representation appropriate to the present case.

⁴ ICC-02/11-01/11-86, para. 44.

⁵ Respectively, *The Prosecutor v William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang* ICC-01/09-01/11-243 and *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali* ICC-01/09-02/11-214.

⁶ ICC-02/05-03/09-203 and ICC-02/05-03/09-204-Conf-Exp.

3 The organisation of common legal representation in the present case

4. The Registry notes that in the present case common legal representation is being organised before any victim has been accepted for participation in the proceedings. To date, 81 applications to participate in the proceedings⁷ have been received by the 9 May 2012 deadline set by the Chamber for victims to submit applications for participation at the stage of the confirmation of charges hearing.⁸ The Registry notes that amongst the individual applications received to date by the Registry, a 3 applicants have named a person⁹ as their legal representative in their application forms.
5. The Registry is aware of the need to make sure that recommending the organisation of common legal representation at this early stage of the proceedings takes due account of victims' views on legal representation. It sought to address this issue by holding consultations on the subject of common legal representation with applicants met during the course of its missions in Côte d'Ivoire, and in particular when VPRS staff assisted applicants to complete the individual application forms and/or the collective application forms for participation in proceedings.¹⁰ These consultations have enabled the Registry to establish some understanding of victims' preferences regarding their legal representation.

3.1 Identification of victim groups

6. Rule 90 is intended to promote efficiency in the proceedings. In accordance with Rule 90(4) and the practice of the Registry regarding the number and composition of victim groups,¹¹ the Registry has sought to identify whether victims appear to have, among themselves, any conflicting or substantially "distinct interests" such

⁷ Among which 6 are collective applications and 75 are individual applications.

⁸ ICC-02/11-01/11-86, para. 37.

⁹ a/20001/12, a/20002/12 and a/20147/12. The legal representative named by one of these victims is on the list of counsel maintained by the Registry but did not answer the Call for Counsel, and the legal representatives named by the other two victims are not on the list of counsel.

¹⁰ The Registry draws to the Chamber's attention the fact that the organisation of common legal representation in the current case takes place in the context where a partly collective application form for victims' participation has been made available for applicants as an alternative to the individual application form. Please refer to ICC-02/11-01/11-45 and ICC-02/11-01/11-86.

¹¹ See Annex 1, para. 9.

as would justify their separate representation, or whether there exists any other factor that would also provide a basis for arranging the representation of victims through two or more groupings.¹²

7. At this stage the Registry is not aware of any reason why all participating victims could not be represented by a single legal team. Should any conflict or significant divergence of interest be reported, either immediately or during the course of proceedings, the Registry could propose the arrangement of legal representation for a separate victim group or groups.

3.2 Identification of common legal representatives

8. Given its view that all victim participants in the present case could be represented by a single legal team, the Registry has endeavoured to recommend a common legal representative.

3.2.1 Criteria applied

9. The Registry has sought to establish an open, transparent and objective approach to selecting candidates to recommend as common legal representative.
10. In the present case, in addition to the minimum requirements set out in Rule 22 and Regulation 67, a set of standard and basic criteria established by the Registry based on the Court's jurisprudence and the Registry's experience to date, the Registry has taken into account the views and preferences of victims collected by the VPRS in the course of its meetings conducted in the field in April and May 2012. The main selection criteria proposed by the victims were the following:
 - a. Victims expressed their wish to be represented by someone who shows honesty, sincerity and empathy, who is attentive to their needs and who can understand their personal situation;

¹² The Registry considers it inevitable that a variety of interests will exist among victims who participate in the proceedings. Thus it has sought to identify whether any of these variances of interest are so substantial as to justify separate representation. In doing so it has taken into account factors such as the nature and extent of the difference between interests, the number of victims in each potential group, and the existence of other basis for separating the representation of participating victims.

- b. For most of the victims a priority was to be represented by a highly committed and skilled lawyer, with appropriate experience;
- c. It was considered important by the victims that the lawyer be able to understand the historical and political context of the country and the complexity of the case;
- d. Victims considered essential that their legal representative takes the time to listen to them and to inform them on a continuous basis.

3.2.2 Selection process

11. On 13 April 2012, an announcement was distributed through the Registry's list of counsel and published on the Court's website inviting lawyers to express their interest in representing victims in the case (the "Call for Counsel").¹³ The Call for Counsel was sent to all counsel on the Registry's list of counsel and published on the Court's website inviting persons wishing to represent victims in the present case to express their interest. In the field, the same document was circulated through the National Bar Association of Côte d'Ivoire and amongst individual lawyers and intermediaries. Counsel were informed of the criteria that would be applied in the selection process and were asked to provide, by 26 April 2012, a *curriculum vitae* and a declaration indicating their qualification against the criteria. By the deadline set, the Registry received 64 responses.
12. After an initial review of these 64 responses, 15 counsel were shortlisted against the selection criteria, and were requested to provide within 72 hours and by 7 May 2012 written answers to two follow-up questions concerning their proposed approach should they be appointed. A further assessment taking into account these responses was then made against the identified selection criteria.
13. Lastly, 6 counsel were invited to undertake a telephone interview. These were conducted on 10 May 2012 using standardised questions and carried out by a panel comprised of 3 Registry staff: the Deputy Registrar and

¹³ See Annex 2.

representatives of, respectively, the CSS and the VPRS, as well as one external panel member from the Special Tribunal for Lebanon.

14. At the end of the process, it appeared to the Panel that the candidates demonstrated different levels of experience in the practice of international criminal law and procedure, as well as different levels of knowledge and familiarity with the case and its context. The Panel further noted that some of the counsel possessed skills and experience which would complement each other if combined.
15. Because the Registry is mindful of providing victims with legal representation that combines expertise and experience in international criminal litigation, an understanding of the case and the victims' situation in the field, as well as a capacity to continuously inform and receive instructions and guidelines from his/her clients, it considers that the victims would benefit from the establishment of a team comprising both a counsel and an additional team member who would be based in the field.
16. A document identifying the counsel recommended by the panel is attached as Annex 3 to the present document. The Registry is at the Chamber's disposal, if the Chamber wishes to receive more detailed information or any additional documentation relating to this selection process.

3.2.3 Appropriate team structure

17. The Registry considers that the Chamber may be assisted in its Decision on common legal representation by information regarding the scope and nature of the support which will be available to the appointed counsel. This factor has been borne in mind by the Registry in considering the proposed counsel's suitability for the position.
18. In the present case the common legal representatives are likely to be relying on the Court's legal aid scheme pursuant to Rule 90(5). The Registry therefore also

takes into consideration the resources available for determining the composition of the legal team.

19. The Registry has taken into account the principles set down by several Pre-Trial and Trial Chambers,¹⁴ according to which the victims' legal team structure must, to the extent possible and within the limits available under legal aid, allow the common legal representatives to keep their clients informed and respond to their inquiries (in a language understood by them), receive instructions and guidelines from their clients, maintain files regarding their clients, obtain qualified legal support as necessary, and store and process confidential material. The Registry has also taken into account the factors set out in regulation 113(2) of the Regulations of the Registry, as well as the assistance that will be provided to the team by the OPCV pursuant to Regulation 81(4).
20. Furthermore, the Registry believes that for the period leading up to the confirmation of charges hearing, the legal team will have an extremely short amount of time to access and review the jurisprudence and documentation relevant to the case while at the same time contact, inform and collect information from its clients.
21. For the reasons mentioned above, the Registry considers that for the purpose of common legal representation of the victims at the stage of the confirmation of charges hearing, the team could comprise the following:
 - (1) A principal counsel;
 - (2) A team member based in the field;¹⁵
 - (3) A case manager.
22. The cost of this composition would be of a maximum of €24,879 per month, plus the costs of activities carried out in the field.

¹⁴ ICC-01/04-01/07-1328, para. 17; ICC-01/05-01/08-1005, para. 25-26 ; ICC-01/09-01/11-249, para. 78.

¹⁵ The exact position of this person would be decided upon by the counsel, and the counsel would have the flexibility to use the resources available to appoint more team members in the field within the allocated budget should he so decide. Further, Regulation 83(3) allows for additional resources to be allocated, if justified.

23. Furthermore, the Registry bears in mind the possibility that in the future additional victims may be accepted to participate in the case.¹⁶ It thus believes that the structure of the team could be reconsidered at the later stage in case where any relevant factors justify doing so.
24. The Registry notes that the scope of legal assistance paid by the Court will be subject to the applicable rules and regulations.

4 Further considerations

4.1 Expression of availability of the OPCV

25. In parallel to the selection process undertaken by the Registry to find a common legal representative described in the present report, on 25 April 2012 the Principal Counsel of the OPCV sent to the Chief of VPRS and the Head of CSS a document (annex 4) expressing the availability of the OPCV to be appointed as Common Legal Representative of the victims in the *Gbagbo* case for the purposes of the pre-trial proceedings, in light of the publication on the website of the Court of the Call for Counsel (the "correspondence of 25 April 2012"). In the same document, the Principal Counsel listed the qualifications of the OPCV and its members against the criteria enunciated in the Call for Counsel.

4.2 Monitoring and review of common legal representation

26. The Registry notes that there will be a need to keep the representation of victims under review throughout the proceedings, in particular on questions regarding victim grouping and the composition of the legal team supported by the legal aid scheme, or following any request from the Chamber to revisit the common legal representation.

¹⁶ Please refer to the Prosecutor's Request for the opening of an investigation in Côte d'Ivoire (ICC-02/11-3).

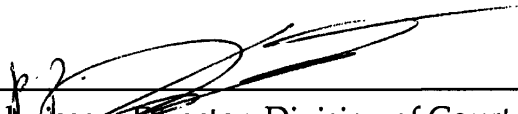
List of Annexes:

Annex 1 – Legal framework and Registry’s approach on common legal representation

Annex 2 – Registry’s Call for Counsel

Annex 3 – Recommendation of the Panel regarding common legal representation

Annex 4 – OPCV correspondence of 25 April 2012, and subsequent email correspondence between the Principal Counsel, OPCV with Chief, VPRS.



Marc Dubuisson, Director, Division of Court Services
per delegation of the Registrar

Dated this 16 May 2012

At The Hague, The Netherlands