

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/11
Date: 14 February 2013

PRE-TRIAL CHAMBER I

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 “Urgent Request to Leave to Submit Amicus Curiae
observations pursuant to Rule 103 of the Rules of Procedure and Evidence”**

Decision to be notified, in accordance with regulation 31 of the Regulations of the Court, to:

The Office of the Prosecutor

Fatou Bensouda

Counsel for the Defence

Emmanuel Altit

Agathe Bahi Baroan

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Paolina Massidda

Sarah Pellet

Dmytro Suprun

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

States Representatives

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar

Silvana Arbia

Didier Preira

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

T. Zwart

G. G. J. Knoop

Judge Silvia Fernández de Gurmendi, Single Judge for Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”), 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 hereby issues the decision on the “Urgent Request to Leave to Submit Amicus Curiae observations pursuant to Rule 103 of the Rules of Procedure and Evidence” (the “Request”).²

1. On 18 January 2013, the Single Judge received the Request, in which Professor T. Zwart and Professor G. G. J. Knoops, as part of a project dealing with the relations between the Court and the African Union (the “applicants”), seek leave to submit observations pursuant to rule 103 of the Rules of Procedure and Evidence (the “Rules”) within a time limit to be set by the Single Judge.³ The Applicants submit that, should they be granted authorisation to participate as *amicus curiae*, they would submit observations on the following issues: (i) “the scope of the discretionary power of the Prosecutor, especially from the perspective of the ‘Political Question doctrine’” or (ii) “the justiciability test”.⁴

2. In particular, the Applicants intend to elaborate on the question “whether the Prosecutor should terminate proceedings against President Gbagbo on the basis of the Political Question Doctrine or, alternatively, a justiciability test (drawing on the Political Question Doctrine)” and on related issues.⁵ The Applicants opted to request leave to submit observations under

¹ ICC-02/11-01/11-61.

² ICC-02/11-01/11-367.

³ *Id.*, paras 3, 22.

⁴ *Id.*, para. 11.

⁵ *Id.*, para. 14, 20.

rule 103 of the Rules in the present case “since the charges have yet to be confirmed”.⁶

3. The Single Judge recalls Rule 103(1) of the Rules, according to which “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”.

4. The Single Judge considers that granting to a State, an organization or an individual standing before the Chamber as *amicus curiae* pursuant to rule 103 of the Rules is essentially a discretionary decision, which is subject to the consideration as to whether the proposed observations are of assistance in the determination of any issues pending before the Chamber.

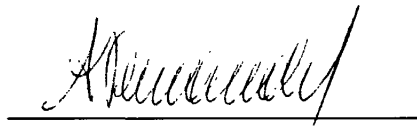
5. The Single Judge takes note of the arguments of the Applicants and of the reasons why they opted to file the Request before the confirmation of charges hearing is held. However, the Single Judge is not persuaded that the proposed observations are necessary, at this stage of the proceedings, for the proper determination of any issue pending before the Chamber in the present case. Therefore, the request to submit observations under rule 103 of the Rules is rejected.

⁶ *Id.*, para. 6.

FOR THESE REASONS, THE SINGLE JUDGE

REJECTS the Applicants' request to submit observations under rule 103 of the Rules.

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

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

Judge Silvia Fernández de Gurmendi

Single Judge

Dated this 14 February 2013

At The Hague, The Netherlands