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No.: **ICC-02/11**  
Date: **16 August 2011**

**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**

**Public Redacted Version**

**Prosecution's provision of additional information in relation to its request for  
authorisation of an investigation pursuant to Article 15**

**Source:** Office of the Prosecutor

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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Silvana Arbia

**Defence Support Section**

**Deputy Registrar**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Ms Fiona McKay

**Other**

## Introduction

1. On 23 June 2011, the Prosecution filed its “Request for authorisation of an investigation pursuant to article 15” (“Request”).<sup>1</sup>
2. From 27 until 30 June 2011, the Prosecution conducted a mission to Côte d’Ivoire in order to a) establish a framework for cooperation between the Prosecution and the Government of Côte d’Ivoire; b) initiate a security and operations assessment for possible investigations; and c) further publicize the fact that the Prosecution has requested the Chamber’s authorization to open an investigation into the situation in Côte d’Ivoire.
3. During and after this mission, the Prosecution obtained further information that supports its submission in the Request that “no national investigations or proceedings are pending in Côte d’Ivoire against those bearing the greatest responsibility for the most serious crimes falling within the jurisdiction of the Court allegedly committed in Côte d’Ivoire since 28 November 2010”.<sup>2</sup>
4. In particular, President Ouattara and the Minister of Justice of Côte d’Ivoire informed the Prosecution that the most serious crimes should be addressed by the ICC and reiterated their commitment to do everything required to that end.
5. The Prosecution also obtained further information in relation to national proceedings and proceedings conducted in third states (i.e. France).<sup>3</sup>
6. The Prosecution provides the Chamber with an update concerning any such proceedings. As already submitted in its Request, none of the developments referred to in this document affects the admissibility before the ICC of the potential cases that could arise from its investigation of the situation of Côte d’Ivoire.

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<sup>1</sup> ICC-02/11-3.

<sup>2</sup> Request, para. 52.

<sup>3</sup> Request, paras. 48-53.

7. In addition, the Prosecution provides the Chamber with additional information in support of its submission that “the OTP recorded a minimum of 700 and a maximum of 1048 civilian deaths attributed to pro-Gabgbo forces according to open source reports”.<sup>4</sup>
8. The Prosecution submits that the Chamber should consider this additional information for the purposes of its decision on the Prosecution’s Request.<sup>5</sup> It stresses that this information does not alter the substance of the Request or any of the submissions made by the Prosecution therein and it has no bearing on the notice to victims and their legal representatives pursuant to Rule 50(1) that the Prosecution made on 17 June 2011. As a result, it should not affect the time limit for victims to make representations under Article 15(3) and Rule 50(3) provided for in Regulation 50(1).<sup>6</sup>

### **Additional information concerning admissibility**

9. The Prosecution has obtained further information regarding proceedings being carried out in Cote d’Ivoire by the *Procureur de la République près le Tribunal de Première Instance d’Abidjan* (“Prosecutor of Abidjan”), the *Commissaire du Gouvernement près le Tribunal Militaire d’Abidjan* (“Military Prosecutor”) and the *Procureur Général près la Cour d’Appel de Daloa* (“Daloa Prosecutor”). In addition, it has obtained further information regarding investigations conducted in France. The Prosecution had referred to such proceedings in its Request,<sup>7</sup> and hereby provides the Chamber with relevant updates.

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<sup>4</sup> Request, para. 19.

<sup>5</sup> In the Situation in the Republic of Kenya, Pre-Trial Chamber II requested the Prosecution to provide “clarification and additional information” in relation to its request for authorisation of an investigation pursuant to Article 15 (see ICC-01/09-15). The Appeals Chamber has stated that “if any power is conferred upon a court to make an order or issue a decision, the parties have an implicit right to move the Chamber to exercise it” (see ICC-01/04-168 OA3, para.20).

<sup>6</sup> Pursuant to Regulation 23bis(1), the Prosecution informs the Chamber that it files this document confidentially, as a large part of the information contained therein relating to ongoing national proceedings has been provided to the Prosecution by the Government of Côte d’Ivoire and is not in the public domain.

<sup>7</sup> Request, paras. 48-53.

(i) Proceedings by the Abidjan Prosecutor

10. During its meeting and discussions with the relevant authorities, including the Abidjan Prosecutor and the Minister of Justice of Côte d'Ivoire, the Prosecution was informed that since 29 April 2011, the Abidjan Prosecutor has been conducting a three-tiered investigation into the post-election violence, namely investigations for: a) economic crimes; b) crimes against state security; and c) blood crimes.
11. With respect to economic crimes, 78 persons were interviewed and since 15 June, the preliminary investigation is considered completed. A judicial inquiry (*information judiciaire*) was opened on 16 June and assigned to a judge of the 6<sup>th</sup> cabinet. Several individuals close to Gbagbo have been indicted for economic crimes. This includes one person, referred to in Annex 1B of the Request, who could be among those who bear the greatest responsibility for the most serious crimes falling within the jurisdiction of the Court allegedly committed in Côte d'Ivoire since 28 November 2010.<sup>8</sup> It was explained to the Prosecution that the investigations for economic crimes focus on conduct that is clearly different from the crimes under the jurisdiction of the ICC.
12. With respect to crimes against state security, 82 persons were interviewed and the preliminary investigation was completed on 21 June 2011. A judicial inquiry was opened on 22 June 2011 and assigned to a judge from the 3<sup>rd</sup> cabinet. More than 20 persons have been indicted and placed under arrest; against other persons preliminary investigations are still pending. The Prosecution has inquired about the names of these persons and concluded that none of them are among those persons listed in Annex 1B of the Request.
13. With respect to blood crimes, the Abidjan Prosecutor focuses his investigation on the provisions of the penal code relating to a) genocide, b) crimes against the civilian population, and c) murders, killings, and voluntary injuries. Some 108

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<sup>8</sup> See Request, Anx.1B. [REDACTED].

persons were interviewed, but the preliminary investigation is still on-going. The Abidjan Prosecutor relies on a team of 10 gendarmes and 10 policemen. The Prosecution inquired about the targets of the investigations conducted by the Abidjan Prosecutor for blood crimes and its scope. The Abidjan Prosecutor confirmed that his investigation is not focusing on those who appear to bear the greatest responsibility for the most serious crimes falling within the jurisdiction of the Court allegedly committed in Côte d'Ivoire since 28 November 2010. Further, any prosecutions to be conducted by the Abidjan Prosecutor, even those against higher level perpetrators, do not appear now to relate to conduct constituting crimes within the jurisdiction of the ICC or which would form the focus of an investigation by the Prosecution. This applies in particular to the pending investigation against one person who was referred to by the Prosecution in Annex 1B of its Request.<sup>9</sup> [REDACTED]. It was made clear to the Prosecution that this investigation is limited to this specific incident and does not extend to any crimes committed in the context of an armed conflict or as part of a widespread or systematic attack against a civilian population.

(ii) Proceedings by the Military Prosecutor

14. The Prosecution met with the Military Prosecutor (*Commissaire du Gouvernement près le Tribunal Militaire d'Abidjan*), who informed the Prosecution about the functioning of the Military Tribunal, its jurisdiction, and ongoing investigations and proceedings. The Prosecution learned that the Military Prosecutor has the authority to investigate crimes committed by members of the police, the gendarmerie and the armed forces. He reports to the Defense Minister, whose approval must be obtained to proceed with prosecutions. Alternatively, and only for prosecuting members of the police, the Military Prosecutor may get the approval from the Minister of Interior.

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<sup>9</sup> Request, Anx.1B. [REDACTED].

15. The Prosecution was further informed that the Military Prosecutor has pursued six lines of inquiry which have resulted in six recommendations for prosecutions (*ordre de poursuite*). As the Prosecution stated in its Request,<sup>10</sup> the preliminary investigations by the Military Prosecutor relate to 52 members of the security forces (FDS) from the *Centre de Commandement des Opérations de Sécurité* (CECOS), the *Garde républicaine*, the *Brigade Anti-Emeute* (BAE), the *Brigade du Maintien de l'Ordre* (BMO), and special gendarmerie units. The Prosecution was informed that out of these 52 persons, authorization to proceed with indictments was granted for 46 persons. It further inquired about the names of these persons and concluded that none of them falls within the category of those who may bear the greatest responsibility for the most serious crimes falling within the jurisdiction of the Court allegedly committed in Côte d'Ivoire since 28 November 2010, as indicated in Annex 1B of the Request.
16. The Prosecution was further informed that the Military Prosecutor is currently not investigating alleged crimes committed by pro-Ouattara forces. He indicated that the military status of some FRCI members is not clear, and therefore he may not be competent to investigate them.

(iii) Proceedings by the Daloa Prosecutor

17. The Prosecution met with the Daloa Prosecutor who is overseeing and directing any investigations into alleged crimes committed in the West of Côte d'Ivoire in relation to the post-election violence after since 28 November 2010. The Daloa Prosecutor informed the Prosecution that by 4 July 2011, investigations into crimes committed in the post-election violence had been ongoing for one month and 140 persons were interviewed for crimes committed in Duékoué alone. In addition investigations were planned in Guiglo, Blolékin and Toulepleu.

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<sup>10</sup> Request, para. 50.

18. The investigations conducted under the authority of the Daloa Prosecutor are focusing on economic crimes, crimes against state security and blood crimes. However, the Daloa Prosecutor stated that he does not intend to prosecute or request warrants of arrests before receiving further instructions on the overall prosecutorial strategy from the Ministry of Justice. It is the understanding of the Daloa Prosecutor that the persons most responsible for the most serious crimes will be prosecuted before the ICC. He further noted that at this stage the domestic authorities do not have the capacity to arrest individuals and to detain them in a safe manner.

(iv) Proceedings in France

19. In its Request, the Prosecution submitted that it will continue to assess the existence of national proceedings in third states, in particular in France.<sup>11</sup> In this context, the Prosecution informs the Chamber that a French investigating judge is currently conducting investigations into two cases which the Abidjan Prosecutor is also focusing on, [REDACTED]. The Prosecution will request the French Government to confirm these investigations in response to the notification pursuant to Article 18. The Prosecution notes that the investigations conducted by the French judicial authorities are limited to these two distinct incidents [REDACTED]; therefore, they do not relate to the most serious crimes under the jurisdiction of the ICC.

**Additional information concerning the number of civilian death attributed to pro-Gbagbo forces**

20. In its Request, the Prosecution submitted that it had “recorded a minimum of 700 and a maximum of 1048 civilian deaths attributed to pro-Gabgbo forces

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<sup>11</sup> Request, para. 53.

according to open source reports".<sup>12</sup> The Prosecution wishes to provide further information to support the above submission.

21. By mid-March 2011, the UN had documented over 400 civilian deaths. According to HRW, the vast majority has been attributed to Laurent Gbagbo's forces in circumstances not connected with the armed conflict and with no apparent provocation.<sup>13</sup> Among other incidents, pro-Gbagbo forces allegedly killed an additional 100 civilians in Duékoué by mid-March;<sup>14</sup> between 37 and 39 in Bedi-Gouzan on 22 March<sup>15</sup> and another 100 in Bloléquin on 28 March.<sup>16</sup> A series of mass graves containing some 68 bodies was discovered on 12 April in Yopougon, Abidjan, apparently the victims of a pro-Gbagbo militia.<sup>17</sup> Retreating pro-Gbagbo militia and mercenaries also killed between 120 and 220 civilians along the coast on 5 and 6 May.<sup>18</sup>

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<sup>12</sup> Request, para.19.

<sup>13</sup> HRW, Côte d'Ivoire : Crimes against Humanity by GBAGBO forces, 15 March 2011: CIV-OTP- 0002-0173. Attached as Anx. 1A to this filing; UNOCI, Compte-rendu du point de presse du 17 Mars 2011, CIV-OTP-0002-1039 at page 1039. Attached as Anx. 1B to this filing.

<sup>14</sup> United Nations News Service, UN human rights team finds over 100 bodies over past day in Côte d'Ivoire: CIV-OTP-0002-1025.

<sup>15</sup> HRW, Cote d'Ivoire: West African Immigrants Massacred, 31 March 2011: CIV-OTP-0002-0182.

<sup>16</sup> HRW, Cote d'Ivoire: West African Immigrants Massacred, 31 March 2011: CIV-OTP-0002-0182; HRW, Cote d'Ivoire: Ouattara forces kill, rape civilians during offensive, 9 April 2011: CIV-OTP-0002-0186.

<sup>17</sup> UN News Centre, UN human rights staff discover mass graves in Ivorian city, 9 May 2011: CIV-OTP-0002-1006.

<sup>18</sup> Xinhua, Over 100 people killed in southwest Cote d'Ivoire, 10 May 2011: CIV-OTP-0002-0404; La dépêche/AFP, Cote d'Ivoire: 120 civils tués par les miliciens et mercenaires pro-Gbagbo, 5 May 2011: CIV-OTP-0002-0407; AFP, I. Coast militia killed 220 in southwest government, 15 May 2011, CIV-OTP-0002-1046 at pages 1046-1047. Attached as Anx. 2 to this filing.



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Luis Moreno-Ocampo, Prosecutor

Dated this 16<sup>th</sup> day of August 2011

At The Hague, The Netherlands