

**SITUATION IN CÔTE D'IVOIRE
IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO***

PUBLIC DOCUMENT

ANNEX 2

Constitutional Council Decision No. 002/CC/SG of 17 December 2003 on the
conformity of the Rome Statute with the Ivorian Constitution

Bossegnadou Bossé Zou – **REPUBLIC OF COTE D’IVOIRE**
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DECISION CC No. 002/CC/SG
 OF 17 DECEMBER 2003
 CONFORMITY OF THE ROME STATUTE
 OF THE INTERNATIONAL CRIMINAL
 COURT WITH THE CONSTITUTION

**ON BEHALF OF THE PEOPLE OF CÔTE D’IVOIRE,
 THE CONSTITUTIONAL COUNCIL,**

NOTING articles 95, 84, 122, 123, 68, 93, 109, 110, and 117 of the Constitution;

NOTING Organic Law No. 2001-303 of 5 June 2001 to determine the organisation and functioning of the Constitutional Council;

NOTING the Rome Statute of the International Criminal Court adopted on 17 July 1997 and signed by Côte D’Ivoire on 30 November 1998;

NOTING the 11 June 2003 letter from the President of the Republic seeking an opinion on the conformity of the Rome Statute of the International Criminal Court with the Constitution; registered under no. 002/CC/SG of 26 November 2003 in the General Secretariat of the Constitutional Council;

HAVING HEARD the report of the reporting judge;

Articles that may undermine national sovereignty

CONSIDERING that it is evident from article 17(2) of the Statute that the International Criminal Court is complementary to national

criminal jurisdictions, that the Court can seize itself of cases already pending before these jurisdictions if it is of the view that the States concerned are unwilling or unable to prosecute;

CONSIDERING that the inability to prosecute may stem from legal impossibility and that such is the case for time-limits for initiating prosecutions and amnesty;

CONSIDERING that in light of articles 54(2) and 99(4) of the Rome Statute, the Prosecutor of the Court may, in certain circumstances, conduct investigations on the territory of a State, entertain accusations and visit locations within this State without the knowledge of its authorities;

CONSIDERING that the possibility of involving the Court in the above-mentioned cases and the powers vested in the Prosecutor may prevent States from giving effect to their legislation and bar them from taking any initiative or intervening in criminal proceedings on their territory and that this necessarily limits the exercise of national sovereignty;

Express articles of the Constitution

CONSIDERING that article 27 of the Rome Statute states that the Statute shall apply equally to all persons without any distinction based on official capacity;

That articles 68, 93, 109, 110 and 117 of the Ivorian Constitution provide either immunity from prosecution, legal privileges or special procedures in connection with the position of the person concerned;

That by indicating that the Statute shall apply to all persons without any distinction based on official capacity, article 27 of the Statute is contrary to the above-mentioned articles of the Ivorian Constitution;

DECIDES THE FOLLOWING

ARTICLE 1. The Rome Statute of the International Criminal Court is inconsistent with the Constitution of 1 August 2000;

ARTICLE 2. This decision shall be transmitted to the President of the Republic for implementation and publication in the Official Gazette of the Republic of Côte D'Ivoire;

SO DECIDED by the Constitutional Council during its 17 December 2003 session;

Signatories:

Secretary General

President

Kouba

G. Yapo Yanon

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