

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-02/11  
Date: 17 October 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**

**Decision on Prosecution's request for reclassification of Annexes 1 to 1089 of  
the Registry's Report on Victims' Representations**

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

**Counsel for the Defence**

**he Office of the Prosecutor**

Mr Luis Moreno-Ocampo

Ms Fatou Bensouda

**Legal Representatives of Victims      Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
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, Registrar

**Detention Section**

**Victims and Witnesses Unit**

Ms Maria Luisa Martinod-Jacome

**Others**

**Victims Participation and  
Reparations Section**

Ms Fiona McKay

**Pre-Trial Chamber III** (“Chamber”) of the International Criminal Court (“Court” or “ICC”) issues the following Decision on the Prosecution’s request for reclassification of Annexes 1 to 1089 of the Registry’s Report on Victims’ Representations.

## **I. Background and Submissions**

1. On 17 June 2011, in compliance with Rule 50 of the Rules of Procedure and Evidence (“Rules”), the Prosecutor provided notice to the victims or their legal representatives of his intention to request authorisation from the Chamber to initiate an investigation in the Republic of Côte d’Ivoire, and he informed them that pursuant to Regulation 50(1) of the Regulations of the Court (“Regulations”) they had 30 days to make any representations to the Chamber.
2. On 23 June 2011, the Prosecutor filed a “Request for authorization of investigation pursuant to Article 15” in which he requested authorisation from the Chamber to proceed with an investigation into the Situation in the Republic of Côte d’Ivoire in relation to the post-election violence (*viz.* since 28 November 2010).<sup>1</sup>
3. On 6 July 2011, the Chamber issued an order to the Victims Participation and Reparations Section (“VPRS”) concerning the victims’ representations pursuant to Article 15(3) of the Rome Statute (“Statute”), requesting (i) that all the victims’ representations received by the Court in relation to this Request were provided forthwith to the VPRS, and (ii) that the VPRS should provide a single, consolidated

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<sup>1</sup> Situation in the Republic of Côte d’Ivoire, Request for authorisation of an investigation pursuant to article 15, Pre-Trial Chamber III, 23 June 2011, ICC-02/11-3, paragraph 40.

report on the collective and individual representations, to be submitted to the Chamber by 1 August 2011 with the original representations annexed thereto.<sup>2</sup>

4. On 28 July 2011, the Chamber granted a request from the VPRS to extend the time limit to file the report to 29 August 2011.<sup>3</sup>
5. On 28 August 2011 the Registry filed a consolidated report on the victims' representations ("Victims Report"), along with 1089 annexes containing representations relating to the situation in the Côte d'Ivoire.<sup>4</sup> The Registry filed the original representations annexed to the Victims Report (Annexes 1 to 1089) confidentially, *ex parte* and available only to the Registry, indicating that "they contain information which would identify victims and other persons who have communicated with the Court and who may thereby be put at risk".<sup>5</sup>
6. On 3 October 2011, the Chamber issued its Decision on the Prosecutor's request and authorised the commencement of an investigation in Côte d'Ivoire.<sup>6</sup>
7. On 4 October 2011, the Office of the Prosecutor ("prosecution") filed a request for reclassification of Annexes 1 to 1089 of the Victims Report in which it requested the Chamber to order that Annexes 1 to 1089 to the Victims Report are reclassified as *ex parte*, Registry and Prosecution only, or, in the alternative, to direct the Registry to review the content of Annexes 1 to 1089 to the Victims Report in order to identify

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<sup>2</sup> Order to Victims Participation and Reparations Section Concerning Victims' Representations Pursuant to Article 15(3) of the Statute, 6 July 2011, ICC-02/11-6, page 6.

<sup>3</sup> Decision on the VPRS request for an extension of time to report on victims' representations pursuant to Regulation 35 of the Regulations of the Court, 28 July 2011, ICC-02/11-9, paragraph 6.

<sup>4</sup> Report on Victims' Representations, 29 August 2011 (notified on 30 August 2011), ICC-02/11-11-Conf with 1089 confidential *ex parte* annexes; public redacted version filed 29 August 2011 (notified on 30 August 2011), ICC-02/11-11-Red with public redacted annexes A – E.

<sup>5</sup> ICC-02/11-11-Red, page 4.

<sup>6</sup> Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire, 3 October 2011, ICC-02/11-14, paragraph 212.

and redact any information that cannot be disclosed to the prosecution, and to provide the prosecution with the redacted versions.<sup>7</sup>

8. On the same day, the Chamber instructed the Registry to file any observations on the prosecution's request by 4 p.m. on 10 October 2011.<sup>8</sup>
9. On 10 October 2011, the Registry filed its observations on the prosecution request.<sup>9</sup> The Registry submits that, in principle, victims' representations made pursuant to Article 15 of the Statute should not be provided to any party or participant and they are intended for the exclusive use of the Chamber.<sup>10</sup> However, in this specific instance, the Registry does not oppose the transmission of the annexes to the prosecution.<sup>11</sup> The Registry notes that providing the prosecution with redacted versions of the annexes will constitute a significant burden on the resources of the VPRS and will take about three to four months.<sup>12</sup>

## II. Applicable Law

10. In accordance with Article 21(1) of the Statute, the Chamber has considered Articles 54(1)(a) and 68(1) of the Statute and Regulations 23*bis* (3) and 24*bis* (2) of the Regulations.

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<sup>7</sup> Prosecution's request for reclassification of Annexes 1 to 1089 of the Registry's "Report on Victims' Representations", 4 October 2011, ICC-02/11-16, paragraphs 19 and 20.

<sup>8</sup> Email from Legal Officer, Pre-Trial Chamber III, to Legal Coordinator, VPRS, of 5 October 2011.

<sup>9</sup> Registry's Observations to the "Prosecution's Request for Reclassification of Annexes 1 to 1089 of the Registry's Report on Victims' Representations" dated 4 October 2011, ICC-02/11-17.

<sup>10</sup> ICC-02/11-17, paragraphs 1 and 9.

<sup>11</sup> ICC-02/11-17, paragraphs 2 and 14.

<sup>12</sup> ICC-02/11-17, paragraph 14.

### III. Analysis and Conclusions

11. The Chamber notes that the victims' representations in question formed part of the material it considered before authorising the commencement of an investigation in Côte d'Ivoire".<sup>13</sup> The Chamber further notes that pursuant to Article 54(1)(a) of the Statute, the Prosecutor shall, "[i]n order to establish the truth, extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute". Moreover, based on Article 68(1) of the Statute, the prosecution has a duty to protect victims and witnesses.
12. The Registry submits that most of the information submitted by the victims "might be considered to be material to the Prosecution and seem[s] to have been submitted with the intention of being considered as such."<sup>14</sup> Furthermore, in many of the representations the victims indicate that they agree to the information they provided being "used in support of the Court in order to punish the perpetrators of the alleged crimes",<sup>15</sup> and some of the other representations were specifically addressed to the Prosecutor, drawing his attention to the alleged events and asking for justice to be done.<sup>16</sup>
13. Finally, the Chamber notes that the Registry originally justified the *ex parte*, "Registrar only" filing on the basis of security concerns.<sup>17</sup> Regulation 24bis (2) of the Regulations stipulates that the Registrar may file documents *ex parte* if knowledge by the participants of the content of the documents would defeat their purpose. However, based on the matters set out above and on an examination of the material, there is no indication that the purpose of the annexes would be defeated if

<sup>13</sup> Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire, 3 October 2011, ICC-02/11-14, paragraph 20.

<sup>14</sup> ICC-02/11-17, paragraph 10.

<sup>15</sup> ICC-02/11-17, paragraph 11.

<sup>16</sup> ICC-02/11-17, paragraph 11.

<sup>17</sup> ICC-02/11-11-Red, page 4.

the Prosecutor became aware of their contents. As set out in the preceding paragraph, the Registry has noted that in any event most of the information appears to have been submitted in order to assist the prosecution,<sup>18</sup> and many of the representations set out the consent of the victims to the use of their information in the course of court proceedings, and other representations were specifically addressed to the Prosecutor in order for justice to be done.<sup>19</sup>

14. Accordingly, given there is no indication that the purpose of Annexes 1 to 1089 to the Victims Report filed by the Registry would be defeated if the Prosecutor became aware of their contents, they are to be re-classified, unless the VPRS indicates that there is a justification for redactions to specific submissions that were not intended to be used by the Prosecutor for investigative purposes. This does not affect those submissions that are either addressed to the Prosecutor or include the victims' agreement for the information to be used in the course of court proceedings, or otherwise contain an indication that the information may be made available to the Prosecution.

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<sup>18</sup> ICC-02/11-17, paragraph 11.

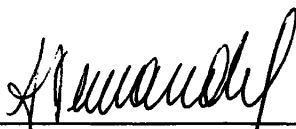
<sup>19</sup> ICC-02/11-17, paragraph 12.

**FOR THESE REASONS THE CHAMBER HEREBY**

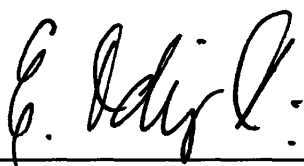
**GRANTS** the Prosecution's request; and

**ORDERS** the Registry to reclassify Annexes 1 to 1089 to the Victims Report as *ex parte*, "Registry and Prosecution only" pursuant to Regulation 23bis (3) of the Regulations by 4 p.m. on 24 October 2011. If the Registry considers that there is need for specific redactions in the annexes on the basis described in paragraph 14, it shall revert to the Chamber by 4 p.m. on 19 October 2011 if it is unable to meet the aforesaid deadline.

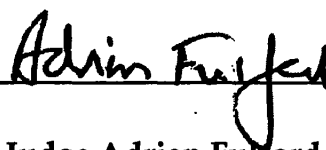
Done in both English and French, the English version being authoritative.



Judge Silvia Fernández de Gurmendi



Judge Elizabeth Odio Benito



Judge Adrian Fulford

Dated this 17 October 2011

At The Hague, The Netherlands