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PRE-TRIAL CHAMBER III

Before: Judge Chang-ho Chung, Presiding Judge
Judge Antoine Kesia-Mbe Mindua
Judge Raul C. Pangalangan

SITUATION IN BURUNDI

Public

Public redacted version of “Request for extension of the page limit for a request for authorisation of an investigation pursuant to article 15”, 24 August 2017, ICC-01/17-2-US-Exp

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Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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(Participation/Reparation)**

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I. Introduction

1. The Prosecution intends to seek authorisation of Pre-Trial Chamber III (“Chamber”) to initiate an investigation in the situation in the Republic of Burundi (“Burundi”) pursuant to article 15(3) of the Rome Statute and rule 50(2) of the Rules of Procedure and Evidence (“Request”). The Prosecution seeks an extension of the page limit for its Request, pursuant to regulation 37(2) of the Regulations of the Court (“Regulations”), by an additional 30 pages.¹

II. Confidentiality

2. The Prosecution intends to submit its Request under seal pursuant to regulation 23*bis* of the Regulations. As will be explained in the Request, this is based on the existence of potential risks to the success and integrity of a future investigation, as well as on considerations concerning the safety and security of witnesses and victims of the alleged crimes, [REDACTED], who may be at heightened risk of interference, intimidation or harm as a result of the filing of this Request. Accordingly, the Prosecution also submits this filing as under seal, pursuant to regulation 23*bis*, and requests that any decision by the Chamber in relation to this filing also be issued under seal.
3. The Court’s legal framework expressly allows for such a procedure. Article 15 is essentially an *ex parte* procedure and the extent to which victims may make representations under article 15(3) is subject to rule 50(1), which expressly relieves the Prosecution of its duty to provide notice to victims when doing so “would pose a danger to the integrity of the investigation or the life or well-being of victims and witnesses”. As will be set out in the Request, both risks apply to the instant situation. The Prosecution will also propose a procedure

¹ According to regulation 38(2)(e) of the Regulations of the Court, a request for authorisation of an investigation pursuant to article 15(3) and rule 50(2) “shall not exceed 60 pages”, unless otherwise ordered by the Chamber.

for public notification of any decision authorising the commencement of investigations.

III. Submissions

4. The complexity of the factual and legal issues contained in the Request² as well as the number of issues that the Request will cover,³ constitute exceptional circumstances that warrant an extension of the page limit. The Request will present the findings of a complex and thorough preliminary examination carried out by the Office of the Prosecutor since April 2016.
5. The extension of the page limit will permit the Prosecution to set forth in sufficient detail the factual and legal issues relevant to its request for authorisation from the Chamber to proceed with an investigation into the situation in Burundi since 26 April 2015.
6. In particular, the Prosecution will demonstrate that there is a reasonable basis to believe that multiple crimes against humanity have been committed in Burundi during the aforementioned timeframe, and provide detailed information as to the alleged criminal conduct of members of the Burundian security forces and the *Imbonerakure*, the youth wing of the ruling party CNDD-FDD (*Conseil National pour la Défense de la Démocratie-Forces de Défense de la Démocratie*). The extension of the page limit will permit the Prosecution to set forth in sufficient detail the structure and operations of these groups.
7. In addition, the Prosecution will present information to demonstrate that the alleged crimes fall within the Court's jurisdiction, and its assessment as to the

² *Prosecutor v. Lubanga*, Decision on the "Prosecutor's Motion for Extensions of the Time and Page Limits", ICC-01/04-01/06-177 OA3, 3 July 2006, para. 6; *Prosecutor v. Lubanga*, Judgment on the appeals against the decision giving notice to the parties and participants that the legal characterisation of the facts may be subject to change, ICC-01/04-01/06-2205 OA15 OA16, 8 December 2009, para. 21; *Prosecutor v. Katanga*, Decision on Urgent Defence Application for Extension of the Page Limit, ICC-01/04-01/07-3334 OA13, 8 January 2013, para. 7.

³ *Prosecutor v. Lubanga*, Decision on the Prosecutor's application for an extension of page limit for his document in support of appeal, ICC-01/04-01/06-2532 OA18, 22 July 2010, para. 6.

admissibility of the potential cases that may arise from an investigation into the situation in Burundi and their gravity. The latter includes an assessment of the inquiries conducted by the Burundian national authorities in respect of a limited number of incidents and alleged perpetrators. Finally, the Prosecution will demonstrate that, based on the available information, there are no substantial reasons to believe that the opening of an investigation into the situation of Burundi would not serve the interests of justice.

IV. Relief sought

8. The Prosecution requests the Chamber to grant an extension of the page limit for the Request by an additional 30 pages (amounting to a total of 90 pages), pursuant to regulation 37(2) of the Regulations.



Fatou Bensouda
Prosecutor

Dated this 10th day of November 2017

At The Hague, The Netherlands