

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-02/11-01/15**

Date: **13 May 2016**

**TRIAL CHAMBER I**

**Before:** Judge Cuno Tarfusser, Presiding Judge  
Judge Olga Herrera Carbuca  
Judge Geoffrey Henderson

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE  
IN THE CASE OF  
*THE PROSECUTOR v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ***

**Public**

**Decision on 'Defence's Motion to Preclude and Exclude the prospected Evidence of Witnesses P-369, or, in the alternative, to restrict the Scope of Witness P-0369's intended Evidence'**

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

**The Office of the Prosecutor**

Ms Fatou Bensouda  
Mr James Stewart  
Mr Eric MacDonald

**Counsel for Laurent Gbagbo**

Mr Emmanuel Altit  
Ms Agathe Bahi Baroan

**Counsel for Mr Charles Blé Goudé**

Mr Geert-Jan Alexander Knoops  
Mr Claver N'dry

**Legal Representatives of Victims**

Ms Paolina Massidda

**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**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

**Trial Chamber I** ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to articles 64 and 69(4) of the Rome Statute of the International Criminal Court ('the Statute'), hereby issues the following decision and order:

## **I. PROCEDURAL BACKGROUND**

1. On 10 May 2016, the Defence for Blé Goudé ('Blé Goudé Defence') requested the Chamber to exclude the anticipated testimony of Witness P-0369, or, in the alternative, to restrict the scope of the witness's intended evidence ('Blé Goudé Defence Request').<sup>1</sup>
2. On 12 May 2016, the Chamber heard oral submissions made by the parties and the Legal Representative of the Victims.<sup>2</sup>
3. The Blé Goudé Defence Request was re-classified as public at the hearing on 12 May 2016.<sup>3</sup>

## **II. ANALYSIS**

4. The Chamber has taken note of the Blé Goudé Defence Request. It has also considered the oral submissions made by the parties and participants on this point during the hearing of 12 May 2016.
5. The Chamber is of the view that the objections by both Defence teams have not raised any argument that would justify the wholesale exclusion of P-369's testimony. Without prejudice to the Chamber's ultimate assessment of the weight of P-369's evidence, it does not appear in dispute that P-369 was present in Ivory Coast on several occasions and that he personally observed

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<sup>1</sup> Blé Goudé Defence, 'Defence's Motion to Preclude and Exclude the prospected Evidence of Witnesses P-369, or, in the alternative, to restrict the Scope of Witness P-0369's intended Evidence', 10 May 2016, ICC-02/11-01/15-509.

<sup>2</sup> Transcript of hearing on 12 May 2016, ICC-02/11-01/15-T-38, pp 1-28.

<sup>3</sup> Transcript of hearing on 12 May 2016, ICC-02/11-01/15-T-38, p. 20: 3-5.

facts that may be relevant to the Prosecutor's case. Under these circumstances, it seems premature to exclude P-369's testimony in its entirety.

6. Nevertheless, the Defence have raised legitimate concerns about the scope of the evidence P-369 is eligible to give. In this regard, the Chamber reiterates its instructions from the new directions on the conduct of the proceedings issued on 4 May 2016.<sup>4</sup> In particular, in paragraph 23 of said directions, the Chamber directed the parties to refrain from asking witnesses to speculate or to provide opinion evidence.<sup>5</sup> The Blé Goudé Defence is therefore right in noting that Witness P-369 should not be asked to pronounce on the conclusions he drew from his research in Ivory Coast. Only the Chamber has the authority to draw inferences in the context of these proceedings and only on the basis of evidence that has been submitted and discussed before it. Statements of witnesses made to a Human Rights Watch investigator are not before the Chamber in this sense.
7. Furthermore, Witness P-369 should not be asked to give his personal views as to the trustworthiness of any individuals he spoke to as part of his inquiry. Indeed, it is the Chamber's responsibility to form its own opinion about the trustworthiness of any relevant evidence and it cannot simply rely on the impressions of NGO representatives or other third persons in this regard. This restriction applies with even greater force when the identity of the sources of the Witness is not disclosed to the parties and the Chamber.

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<sup>4</sup> Decision adopting amended and supplemented directions on the conduct of the proceedings, 4 May 2016, ICC-02/11-01/15-498.

<sup>5</sup> Annex A to Decision adopting amended and supplemented directions on the conduct of the proceedings, 4 May 2016, ICC-02/11-01/15-498-AnxA.

8. Finally, since the Chamber has decided that Witness P-369 is not permitted to keep his sources anonymous;<sup>6</sup> it will not allow the Prosecutor to question Witness P-369 on facts which he learned from anonymous sources, regardless of whether the Witness had a single or multiple sources for a particular fact. The reason for this is clear: when the sources remain anonymous, the Chamber has no independent means to ascertain the trustworthiness of those sources or to determine whether different sources genuinely corroborate each other.

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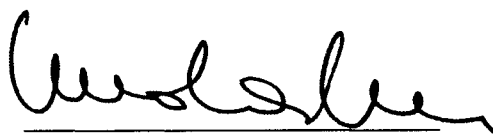
<sup>6</sup> Decision on the Prosecutor's Application to protect the confidentiality of the sources of P-0369, 21 March 2016, ICC-02/11-01/15-466-Conf.

**FOR THE FOREGOING REASONS, THE CHAMBER, HEREBY**

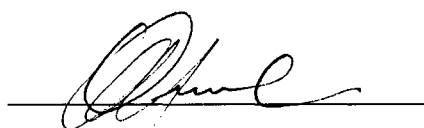
**ORDERS** the Prosecutor to limit her questioning of Witness P-369 to the following two issues.

- (i). The Prosecutor is allowed to question Witness P-369 only on facts which he personally observed.
- (ii). For the sole purpose of determining the reliability of the Human Rights Watch Report 'They Killed Them Like It Was Nothing', Witness P-369 may be questioned on the methodology used in compiling said report. The Prosecutor will not be allowed to question Witness P-369 on any of the factual findings contained in the report.

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



**Judge Cuno Tarfusser, Presiding Judge**



**Judge Olga Herrera Carbuccion**



**Judge Geoffrey Henderson**

Dated 13 May 2016

At The Hague, The Netherlands