

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **1 June 2018**

**TRIAL CHAMBER I**

**Before:** Judge Cuno Tarfusser, Presiding Judge  
Judge Olga Herrera Carbuccion  
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 concerning the Prosecutor's submission of documentary evidence on 28  
April, 31 July, 15 and 22 December 2017, and 23 March and 21 May 2018**

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

**The Office of the Prosecutor**

Fatou Bensouda  
James Stewart  
Eric MacDonald

**Counsel for Mr Laurent Gbagbo**

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Geert-Jan Alexander Knoops  
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**Legal Representatives of Victims**

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**

Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

**Trial Chamber I** (“Chamber”) of the International Criminal Court, in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Articles 64 and 69 of the Rome Statute (“Statute”), Rules 63 and 64 of the Rules of Procedure of Evidence (“Rules”), acting by majority, issues the following decision on the Prosecutor’s applications for introduction of documentary evidence.

### **I. *Procedural history***

1. On 28 January 2016, the Chamber adopted the “Decision on the submission and admission of evidence” (“Decision of 28 January 2016”).<sup>1</sup>
2. On 4 May 2016, the Chamber adopted the amended and supplemented directions on the conduct of proceedings (“Directions on the Conduct of Proceedings”).<sup>2</sup>
3. On 23 January 2017, the Presiding Judge of the Chamber issued the “Order requesting the parties and participants to submit information for the purposes of the conduct of proceedings pursuant to article 64(2) of the Statute and rule 140 of the Rules of Procedure and Evidence”, *inter alia* ordering the Prosecutor to file by 28 February 2017 a consolidated submission of documentary evidence.<sup>3</sup> The Presiding Judge clarified that the consolidated submission was without prejudice to the further submission of documentary evidence if necessary.<sup>4</sup> On 9 February 2017, the Chamber granted the Prosecutor’s request for extension of time limit until 28 April 2017 for the submission of documentary evidence, excluding video evidence, and until 30 June

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<sup>1</sup> ICC-02/11-01/15-405.

<sup>2</sup> ICC-02/11-01/15-498 and annex A.

<sup>3</sup> ICC-02/11-01/15-787, p. 7.

<sup>4</sup> *Ibid.*, para. 11.

2017 for the submission of video evidence.<sup>5</sup> On 7 June 2017, the latter time limit was extended again, to 31 July 2017.<sup>6</sup>

4. On 28 April 2017, the Prosecutor filed the “Prosecution’s application for the introduction of documentary evidence under paragraphs 43-44 of the directions on the conduct of proceedings” (“First Application”).<sup>7</sup>
5. On 9 May 2017, the Chamber granted, on request, an extension of time until 15 September 2017 for responses to the First Application by the Defence teams and the common legal representative of the victims participating in the proceedings.<sup>8</sup>
6. On 31 July 2017, the Prosecutor filed the “Prosecution’s application for the introduction of video evidence under paragraphs 43-44 of the directions on the conduct of the proceedings and notice that it will not call Witness P-0541 to testify” (“Second Application”).<sup>9</sup>
7. On 11 September 2017, the Chamber granted, on request, an extension of time until 15 January 2018 for responses to the Second Application by the Defence teams and the common legal representative of the victims participating in the proceedings.<sup>10</sup>
8. On 15 September 2017, the common legal representative of victims,<sup>11</sup> the Defence of Charles Blé Goudé<sup>12</sup> and the Defence of Laurent Gbagbo<sup>13</sup> filed their respective responses to the First Application.

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<sup>5</sup> ICC-02/11-01/15-T-119-Red-ENG, page 1, line 23, to page 2, line 2; see also ICC-02/11-01/15-798-Conf and -Red.

<sup>6</sup> See “Decision on the Prosecutor’s request for an extension of time for the submission of video evidence”, ICC-02/11-01/15-951.

<sup>7</sup> ICC-02/11-01/15-895 and annexes.

<sup>8</sup> ICC-02/11-01/15-T-154-Red-ENG, page 2, lines 4-14.

<sup>9</sup> ICC-02/11-01/15-998 and annexes.

<sup>10</sup> ICC-02/11-01/15-T-189-ENG, page 1, line 16, to page 3, line 1.

<sup>11</sup> ICC-02/11-01/15-1027 and annex.

<sup>12</sup> ICC-02/11-01/15-1028-Conf and annex.

<sup>13</sup> ICC-02/11-01/15-1029-Conf and annexes.

9. On 21 September 2017, the Prosecutor requested leave to reply to the responses filed by the Defence of Laurent Gbagbo and the Defence of Charles Blé Goudé to the First Application.<sup>14</sup> On 20 October 2017, by way of email, the Single Judge of the Chamber granted leave to reply and set 10 November 2017 as the time limit.
10. On 10 November 2017, the Prosecutor filed the “Prosecution’s reply to Gbagbo and Blé Goudé Defence responses, ICC-02/11-01/15-1029-Conf and ICC-02/11-01/15-1028-Conf”.<sup>15</sup>
11. On 15 December 2017, the Prosecutor filed the “Prosecution’s supplemental submission of transcriptions of video evidence under paragraphs 43-44 of the directions on the conduct of the proceedings, 31 July 2017, ICC-02/11-01/15-998” (“Third Application”).<sup>16</sup>
12. On 22 December 2017, the Prosecutor filed the “Prosecution’s application for the introduction of documentary evidence under paragraphs 43-44 of the directions on the conduct of the proceedings” (“Fourth Application”).<sup>17</sup>
13. On 15 January 2018, the common legal representative of the participating victims<sup>18</sup> and the Defence of Charles Blé Goudé<sup>19</sup> filed consolidated responses to the Third and Fourth Applications, and the Defence of Laurent Gbagbo filed a response to the Third Application.<sup>20</sup>
14. On 15 January 2018, the Chamber, on request, by way of email, extended the time limit for responses to the Fourth Application to 9 February 2018.

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<sup>14</sup> ICC-02/11-01/15-1035-Conf.

<sup>15</sup> ICC-02/11-01/15-1063-Conf.

<sup>16</sup> ICC-02/11-01/15-1089 and annexes.

<sup>17</sup> ICC-02/11-01/15-1092 and annexes.

<sup>18</sup> ICC-02/11-01/15-1097.

<sup>19</sup> ICC-02/11-01/15-1099-Conf and annexes.

<sup>20</sup> ICC-02/11-01/15-1098 and annex. A public redacted version is also available, see ICC-02/11-01/15-1098-Red.

15. On 19 January 2018, the Prosecutor filed the “Prosecution’s consolidated application for leave to reply to Gbagbo and Blé Goudé responses ICC-02/11-01/15-1098-Conf and ICC-02/11-01/15-1099-Conf”.<sup>21</sup> The Defence of Charles Blé Goudé responded on 23 January 2018.<sup>22</sup> On 2 February 2018, the Chamber rejected the application.<sup>23</sup>
16. On 6 February 2018, the Prosecutor filed the “Prosecution’s notice of limited amendments and corrections to its application for the introduction of video evidence ICC-02/11-01/15-998”.<sup>24</sup>
17. On 9 February 2018, the Defence of Charles Blé Goudé<sup>25</sup> and the Defence of Laurent Gbagbo<sup>26</sup> responded to the Fourth Application.
18. On 23 March 2018, the Prosecutor filed “Prosecution’s application for the introduction of documentary evidence under paragraphs 43-44 of the directions on the conduct of the proceedings and as identified in the Mid-Trial Brief” (“Fifth Application”).<sup>27</sup>
19. On 28 March 2018, the Chamber, on request, by way of email, extended the time limit for responses to the Fifth Application to 7 May 2018.
20. On 7 May 2018, the Defence of Laurent Gbagbo<sup>28</sup> and the Defence of Charles Blé Goudé<sup>29</sup> responded to the Fifth Application.
21. On 21 May 2018, the Prosecutor, in an email to the Chamber and the parties and participants, made reference to two items of evidence cited, respectively, in the corrected version of the Mid-Trial Brief and in an annex to it, and invited the

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<sup>21</sup> ICC-02/11-01/15-1101-Conf.

<sup>22</sup> ICC-02/11-01/15-1108-Conf.

<sup>23</sup> ICC-02/11-01/15-1119.

<sup>24</sup> ICC-02/11-01/15-1123.

<sup>25</sup> ICC-02/11-01/15-1126-Conf and annexes.

<sup>26</sup> ICC-02/11-01/15-1127-Conf and annex.

<sup>27</sup> ICC-02/11-01/15-1138 and annexes.

<sup>28</sup> ICC-02/11-01/15-1161-Conf.

<sup>29</sup> ICC-02/11-01/15-1162-Conf and annexes.

Chamber to consider the items as submitted.<sup>30</sup> On 29 May 2018, the Defence of Laurent Gbagbo, also in an email sent to the Chamber and copied to the parties and participants, stated that the Prosecutor should follow the formal procedure for submission of documentary evidence as set out in the Directions on the Conduct of Proceedings, but that it would not oppose to the submission of the two items. Bearing in mind the nature of the two items of evidence, the Chamber considers that it is of no real value to require further formality and that it is appropriate to recognise them as submitted in the present decision.

## II. *Submissions*

### *a) First Application*

#### i. Prosecutor

22. The First Application concerns a total of 1,012 items of evidence. The bulk of the submitted items (986 items) are documents obtained by the Prosecutor in the course of her investigation, which the Prosecutor presents within 14 categories: (i) documents obtained from the Presidential Residence at Cocody; (ii) documents obtained from the Presidential Palace at Plateau; (iii) documents obtained from various parts of the FDS, including the General Staff, *Gendarmerie Nationale*, *Garde Républicaine*, the Naval Base at Locodjoro, the Ground Forces and the *Direction Militaire*; (iv) documents obtained from the *Police Nationale*; (v) annexes to witness statements; (vi) financial documents; (vii) United Nations documents; (viii) legislation, government decrees and decisions; (ix) European Union documents; (x) media/open source documents; (xi) “OTP-generated documents such as investigator’s reports and notes, other chain of custody-related documents, and accompanying sketches and photographs”; (xii) forensic reports and related

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<sup>30</sup> The items of evidence concerned are CIV-OTP-0092-0408, an agreed map of Treichville, Marcory, Koumassi and Port-Bouët, and CIV-D15-0004-1484, a transcript of a video previously submitted by the Defence of Laurent Gbagbo.

documents; (xiii) photographs; (xiv) transcripts or translations.<sup>31</sup> Individual submissions as to the relevance, probative value and authenticity of the documents are presented in annex A to the Application.<sup>32</sup> The Prosecutor also makes some general arguments as to the relevance, probative value and authenticity of the evidence submitted in the text of the Application itself.<sup>33</sup>

23. In addition, the Prosecutor seeks to submit 3 “investigator reports” and 13 “investigator declarations”, in English and/or French for a total of 26 items of evidence, which are not included in the Prosecutor’s list of evidence.<sup>34</sup> These items are listed and individually described in annex B to the Application.<sup>35</sup> The Prosecutor submits that the submission of these items of evidence is warranted so that the Chamber “have a complete explanation of the chain of custody of documents submitted by the Prosecution”.<sup>36</sup>

ii. Common legal representative of the participating victims

24. The common legal representative of victims provides in her response a general analysis of the documents submitted by the Prosecutor,<sup>37</sup> and requests the Chamber to “grant the Application in its entirety”.<sup>38</sup>

iii. Defence of Charles Blé Goudé

25. The Defence of Charles Blé Goudé submits, in principle, that the “procedure of tendering documents from the bar table” should be an exception rather than the rule.<sup>39</sup>

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<sup>31</sup> Application, para. 11.

<sup>32</sup> ICC-02/11-01/15-895-Conf-AnxA-Corr.

<sup>33</sup> Application, paras 14-41.

<sup>34</sup> *Ibid.*, paras 42-43.

<sup>35</sup> ICC-02/11-01/15-895-Conf-AnxB.

<sup>36</sup> Application, para. 45.

<sup>37</sup> ICC-02/11-01/15-1027, paras 18-33.

<sup>38</sup> *Ibid.*, para. 34.



26. As to the submission of documents which are not included in the Prosecutor's list of evidence, the Defence of Charles Blé Goudé submits that it should be rejected on that ground alone.<sup>40</sup>
27. The Defence of Charles Blé Goudé then provides, in the text of the response as well as in a 370-page chart filed as annex A,<sup>41</sup> submissions on the relevance, probative value, and the alleged prejudicial nature of the evidence submitted. As a result, the Defence requests the Chamber to "decline to admit into evidence" or "decline the submission" of the evidence submitted by the Prosecutor.

iv. Defence of Laurent Gbagbo

28. The Defence of Laurent Gbagbo devotes a large section of its response to submissions on the law applicable to the submission of documentary evidence, emphasising the principle of orality and pleading for a restrictive approach to submission of documentary evidence other than through a witness at trial.<sup>42</sup>
29. The Defence of Laurent Gbagbo, noting the large volume of the evidence submitted, alleges that the Prosecutor is attempting to "*faire échapper sa preuve à la discussion contradictoire et au test*".<sup>43</sup> The Defence alleges, in relation to the Prosecutor's submission of investigator reports, that the Prosecutor is attempting to subvert the procedure to reduce the capacity of the Defence to test her evidence ("*contourner la procédure pour réduire la capacité de la Défense à tester sa preuve*").<sup>44</sup>
30. Further, the Defence of Laurent Gbagbo objects to the entirety of the evidence submitted by the Prosecutor on the ground that the Prosecutor has failed to comply with paragraph 44 of the Directions on the Conduct of Proceedings by submitting

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<sup>39</sup> ICC-02/11-01/15-1028-Conf, para. 16.

<sup>40</sup> *Ibid.*, para. 19.

<sup>41</sup> *Ibid.*, paras 20-54; ICC-02/11-01/15-1028-Conf-AnxA.

<sup>42</sup> ICC-02/11-01/15-1029-Conf, paras 33-51.

<sup>43</sup> *Ibid.*, para. 54.

<sup>44</sup> *Ibid.*, para. 55.

“practically nothing” (“*pratiquement rien*”) which could establish the authenticity of the evidence and “almost nothing” (“*presque rien*”) on the relevance of the items submitted.<sup>45</sup>

31. The Defence of Laurent Gbagbo also opposes the submission of items which were not previously included in the Prosecutor’s list of evidence.<sup>46</sup>
32. The main part of the response of the Defence of Laurent Gbagbo consists of comprehensive submissions on the relevance and probative value of the evidence submitted by the Prosecutor, which include a 1,024-page annex.<sup>47</sup> Finally, the Defence requests that the submission of evidence by the Prosecutor is rejected, with exception of 34 items marked “*Admission*” in the annex.<sup>48</sup>

v. Prosecutor’s Reply

33. In her reply, the Prosecutor corrects certain errors in the original First Application,<sup>49</sup> provides a clarification,<sup>50</sup> and makes further submissions on certain evidence specifically in reply to the Defence of Charles Blé Goudé’s response to the First Application.<sup>51</sup>

b) *Second and Third Applications*

i. Prosecutor

34. In the Second and Third Applications, the Prosecutor submits: (i) 174 videos of news broadcasts of the *Radiodiffusion-Télévision Ivoirienne* (RTI);<sup>52</sup> (ii) 9 chain of custody

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<sup>45</sup> *Ibid.*, para. 58, see also paras 59-65.

<sup>46</sup> *Ibid.*, para. 134.

<sup>47</sup> *Ibid.*, paras 66-134; ICC-02/11-01/15-1029-Conf-Anx1.

<sup>48</sup> *Ibid.*, para. 134.

<sup>49</sup> ICC-02/11-01/15-1063-Conf, paras 4-8.

<sup>50</sup> *Ibid.*, paras 9-10.

<sup>51</sup> *Ibid.*, para. 11.

<sup>52</sup> The items are listed at ICC-02/11-01/15-998-AnxB1-Corr.

documents and 121 *films conducteurs* related to the collection of RTI videos;<sup>53</sup> (iii) 1203 transcripts and translations of items mentioned under (i) and (ii);<sup>54</sup> (iv) 58 other items of video evidence;<sup>55</sup> (v) 27 items of evidence related to their collection;<sup>56</sup> (vi) 52 transcripts and translations of these videos;<sup>57</sup> and (vii) one additional video and collection document.<sup>58</sup> Specific submissions as to the relevance and probative value of the [video] evidence submitted are made in the text of the Third Application<sup>59</sup> and in particular in the annexes to the applications.

35. The Prosecutor clarifies that the submission “includes certain videos already submitted on the record, where a fuller analysis of the video is necessary”, in particular where “only one excerpt of a multi-excerpt video has been shown to a witness during the proceedings and thereby submitted”.<sup>60</sup>
36. The Prosecutor explains that for the RTI video evidence submitted, it has identified “the individual excerpts upon which the Prosecution relies within a news broadcast”.<sup>61</sup> The Prosecutor reasons that “[an] ‘excerpt’ is to be understood as an individual news item” and that “[e]ach broadcast contains multiple stand-alone excerpts, not all of which are relevant nor therefore sought to be admitted”.<sup>62</sup>
37. As 16 of the items submitted in the Third Application are not included in the list of evidence submitted by the Prosecutor on 30 June 2015, the Prosecutor “seeks an extension of time under articles 64(2) and 64(3)(c) of the Statute, rule 84 of the Rules

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<sup>53</sup> The items are listed at ICC-02/11-01/15-998-AnxB5-Corr.

<sup>54</sup> The items are listed at ICC-02/11-01/15-1089-AnxB.6.

<sup>55</sup> The items are listed at ICC-02/11-01/15-998-AnxC1.

<sup>56</sup> The items are listed at ICC-02/11-01/15-998-AnxC2.

<sup>57</sup> The items are listed at ICC-02/11-01/15-1089-AnxC.3.

<sup>58</sup> The items are listed at ICC-02/11-01/15-998-Conf-AnxD-Corr.

<sup>59</sup> Third Application, paras 22-36.

<sup>60</sup> Second Application, para. 16.

<sup>61</sup> *Ibid.*, para. 21.

<sup>62</sup> *Id.*

and regulation 35 of the Regulations, to re-disclose [these items] as incriminating material and to add them to [the list of evidence]”.<sup>63</sup>

38. Fourteen items in respect of which an extension of time is sought are RTI news broadcasts. The Prosecutor submits that “[a]ddition to the [list of evidence] and submission of these news broadcasts would present the Chamber with the greatest possible number of RTI broadcasts aired at 20h00 during the relevant period of the charges, allowing it to consider all such broadcasts in the Prosecution’s possession”.<sup>64</sup>
- The Prosecutor further argues:

Access to the fullest collection possible is important for two reasons. Firstly, it will allow the Chamber to assess, on the basis of all relevant evidence, the Prosecution’s ultimate submission that the RTI was used as a tool of the Accused Gbagbo and his supporters, including the Accused Blé Goudé, in the implementation of the common plan. Secondly, it provides an effective chronology and evolution of events during the post-electoral crisis, reliably chronicling the dates, locations and actors involved in the events, and corroborating other related evidence.<sup>65</sup>

39. The Prosecutor also states that the items in question were disclosed to the Defence of Laurent Gbagbo between 18 December 2014 and 19 June 2015, and to the Defence of Charles Blé Goudé between 19 February 2015 and 19 June 2015, either under rule 77 of the Rules or as potentially exonerating evidence.<sup>66</sup>
40. The remaining items of evidence for which extension of time is sought are a video, and a related document. The Prosecutor submits that the item contains duplicate footage of an item previously submitted, and has higher sound and image quality.<sup>67</sup>
- In the submission of the Prosecutor, “[i]t is in the interests of justice to have the best

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<sup>63</sup> *Ibid.*, para. 38.

<sup>64</sup> *Ibid.*, para. 40.

<sup>65</sup> *Id.* (footnote omitted).

<sup>66</sup> *Ibid.*, para. 42.

<sup>67</sup> *Ibid.*, para. 43.

quality audio version available of this video depicting part of the charged incident of 25 February 2011”.<sup>68</sup>

41. In the Third Application, the Prosecutor submits a series of transcripts of video evidence submitted in the Second Application.<sup>69</sup> In a further filing of 6 February 2018, the Prosecutor brings four amendments and corrections to the Second Application.<sup>70</sup>

ii. Common legal representative of the participating victims

42. In her response, the common legal representative of the victims participating in the proceedings provides an analysis of the evidence submitted by the Prosecutor, and ultimately supports its submission.<sup>71</sup>

iii. Defence of Laurent Gbagbo

43. The Defence of Laurent Gbagbo makes detailed submissions on the relevance and probative value of the evidence submitted by the Prosecutor in the Second Application<sup>72</sup> and requests that the Chamber “reject” the submission of the evidence by the Prosecutor, with the exception of 30 items listed in annex 1 to its response.<sup>73</sup>

44. The Defence specifically opposes to the submission of evidence not included on the Prosecutor’s list of evidence, with the argument that such submission is in contravention of the Chamber’s previous ruling.<sup>74</sup> Nonetheless, the Defence “exceptionally” agrees to the submission of the higher quality version of a video previously submitted.<sup>75</sup>

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<sup>68</sup> *Ibid.*, para. 44.

<sup>69</sup> ICC-02/11-01/15-1089 and annexes.

<sup>70</sup> ICC-02/11-01/15-1123, paras 3-4.

<sup>71</sup> ICC-02/11-01/15-1097.

<sup>72</sup> ICC-02/11-01/15-1098-Conf, paras 28-72.

<sup>73</sup> *Ibid.*, p. 22.

<sup>74</sup> *Ibid.*, paras 73-81.

<sup>75</sup> *Ibid.*, paras 82-87.

iv. Defence of Charles Blé Goudé

45. The Defence of Charles Blé Goudé also objects to the Prosecutor's request to submit evidence which has not previously been included in the list of evidence as contrary to a previous ruling of the Chamber.<sup>76</sup>
46. The Defence further makes detailed submissions on the relevance, probative value, and the alleged prejudicial nature of the evidence submitted by the Prosecutor in the Second and Third Applications, in the response and its annexes.<sup>77</sup>

c) *Fourth Application*

i. Prosecutor

47. By way of the Fourth Application, the Prosecutor submits: (i) 40 documents, including "documents from the Presidential Palace (*Plateau*), the National Police (*Direction Générale de la Police Nationale*), the FDS General Staff, the United Nations, the European Union, media, morgue registers, and transcripts and translations";<sup>78</sup> (ii) 14 documents related to the testimony of Witness P-410;<sup>79</sup> (iii) 13 documents related to the testimony of Witness P-564;<sup>80</sup> and (iv) 5 other items of evidence consisting of investigator's reports and accompanying declarations.<sup>81</sup> Specific submissions as to the relevance and probative value of the evidence submitted are made in the annexes to the Fourth Application.

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<sup>76</sup> ICC-02/11-01/15-1099-Conf, paras 7-13.

<sup>77</sup> *Ibid.*, paras 14-46, annexes 1-5.

<sup>78</sup> The items are listed at ICC-02/11-01/15-1092-Conf-AnxA.

<sup>79</sup> The items are listed at ICC-02/11-01/15-1092-Conf-AnxB.

<sup>80</sup> The items are listed at ICC-02/11-01/15-1092-Conf-AnxC.

<sup>81</sup> The items are listed at ICC-02/11-01/15-1092-Conf-AnxD.

ii. Defence of Charles Blé Goudé

48. The response of the Defence of Charles Blé Goudé contains submissions on the relevance, probative value, and the alleged prejudicial nature of the evidence submitted by the Prosecutor.<sup>82</sup>

iii. Defence of Laurent Gbagbo

49. The Defence of Laurent Gbagbo, in its response, makes general arguments on the procedure applicable to the submission of documentary evidence,<sup>83</sup> and makes submissions on the relevance and probative value of the evidence submitted by way of the Fourth Application.<sup>84</sup>

d) *Fifth Application*

i. Prosecutor

50. By way of Fifth Application, the Prosecutor submits 26 items cited in her “Mid-Trial Brief”, filed on 19 March 2018.<sup>85</sup> According to the Prosecutor, these items include: (i) four transcripts of video evidence previously submitted; (ii) the minutes of a meeting; (iii) a *fil conducteur* relating to an RTI broadcast; (iii) two decrees in relation to the requisition of the armed forces prior to the 2010-2011 crisis; (iv) INTERFU filed for individual deceased persons; and (v) forensic reports of the *Institut de Médecine Légale*.<sup>86</sup> Specific submissions on the relevance and probative value of the individual items of evidence submitted under Fifth Application are presented in the annexes to the application.

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<sup>82</sup> ICC-02/11-01/15-1126-Conf and annexes 1 and 2.

<sup>83</sup> ICC-02/11-01/15-1127-Conf.

<sup>84</sup> *Ibid.*, paras 40-79 and annex.

<sup>85</sup> Fifth Application, para 1. See ICC-02/11-01/15-1136-Conf-Anx1 and ICC-02/11-01/15-1136-Conf-AnxE.1.

<sup>86</sup> *Ibid.*, para. 7.

ii. Defence of Laurent Gbagbo

51. In its response, the Defence of Laurent Gbagbo again complains about what it deems excessive submission of documentary evidence by the Prosecutor by way of the procedure under paragraph 43 of the Directions on the Conduct of Proceedings.<sup>87</sup>
52. In addition, the Defence of Laurent Gbagbo makes submissions on the relevance and probative value of the evidence submitted by way of the Fifth Application.<sup>88</sup>

iii. Defence of Charles Blé Goudé

53. The response of the Defence of Charles Blé Goudé, apart from a brief reiteration of its argument in principle as concerns the submission of documentary evidence,<sup>89</sup> makes submissions on the relevance, probative value, and the alleged prejudicial nature of the items submitted in the Fifth Application.<sup>90</sup>

### III. *Analysis*

*a) Requests for extension of time*

54. The Chamber notes that certain documentary evidence submitted by the Prosecutor in the submissions under consideration has not previously been included in the Prosecutor's list of evidence of 30 June 2015,<sup>91</sup> and is as such accompanied by requests for extension of time.<sup>92</sup> This is the case with: (i) certain investigator reports

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<sup>87</sup> ICC-02/11-01/15-1161-Conf, paras 18-22.

<sup>88</sup> *Ibid.*, paras 23-58.

<sup>89</sup> ICC-02/11-01/15-1162-Conf, paras 8-14.

<sup>90</sup> *Ibid.*, paras

<sup>91</sup> See ICC-02/11-01/15-114-Conf-AnxC.

<sup>92</sup> See also "Decision on request for leave to appeal the 'Fourth decision on matters related to disclosure and amendments to the List of Evidence' and other issues related to the presentation of evidence by the Office of the Prosecutor", 13 May 2016, ICC-02/11-01/15-524.



and declarations;<sup>93</sup> (ii) 14 videos of RTI broadcasts;<sup>94</sup> and (iii) one additional video item and a related item.<sup>95</sup>

55. In respect of the investigator reports and declarations, the Chamber considers, in light of their purpose, which is to contextualise other evidence included in the list of evidence, that it is in the interest of the determination of truth to allow the submission of this evidence.
56. In respect of the additional videos of RTI broadcasts, the Chamber does not consider the Prosecutor's argument to be sufficient reason to allow submission of evidence not on the list of evidence. In particular, the Chamber is not persuaded that there is significant added value in allowing the late submission of evidence as proposed by the Prosecutor. Any arguments in relation to RTI broadcasts can also be made with the videos of broadcasts otherwise submitted and, in the circumstances, no extension of time is warranted.
57. Finally in this regard, the Chamber accepts the submission of the higher quality version of a video already submitted, and the related document, considering that this is, in essence, evidence already before the Chamber.

*b) Evidence submitted by the Prosecutor*

58. The Chamber decided in the Decision of 28 January 2016 that, as a matter of principle, it would postpone making any ruling on the relevance or admissibility of evidence submitted by the parties until the end of the trial. As previously stated by the Chamber,<sup>96</sup> evidence must not be evaluated in isolation, but as a whole, in the system of evidence presented in a case. Unless a preliminary evaluation of the

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<sup>93</sup> See above, para. 23.

<sup>94</sup> See above, paras 38-39.

<sup>95</sup> See above, para. 40.

<sup>96</sup> "Decision concerning the Prosecutor's submission of documentary evidence on 13 June, 14 July, 7 September and 19 September 2016", 9 December 2016, ICC-02/11-01/15-773, para. 33.

evidence is required (such as under Article 69(7) of the Statute or Rule 68 of the Rules), the Chamber will not as a general rule decide on its relevance or admissibility before having heard the entirety of the case.

59. The Chamber notes that its previous decision not to rule on the admissibility of certain evidence submitted despite finding potential deficiencies in its authenticity has been confirmed by the Appeals Chamber on interlocutory appeal.<sup>97</sup> In the same appeal, the Appeals Chamber emphasised that “[d]epending on the circumstances, the authenticity of a given document may be further elucidated by other evidence, be it evidence specifically adduced for that purpose or evidence otherwise submitted in the course of the trial”.<sup>98</sup>
60. Accordingly, the Chamber will not entertain general submissions made by the parties effectively seeking reconsideration of the Decision of 28 January 2016 and of the Directions on the Conduct of Proceedings.
61. The Chamber has considered the submissions before it in order to determine whether, with respect to one or more items of evidence submitted by the Prosecutor, a ruling on relevance or admissibility is appropriate at this stage, in line with the Decision of 28 January 2016.
62. In the assessment of the Chamber, such ruling is warranted with respect to items CIV-OTP-0043-0063 and CIV-OTP-0043-0064. The Prosecutor stated that these documents were provided by Witness P-321, but clarified in the reply that they were in fact shown to the witness by OTP investigators during the interview.<sup>99</sup> The Chamber notes that the original items which were shown to the witness, respectively CIV-OTP-0025-0709 and CIV-OTP-0025-0682, are also submitted by way of the First

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<sup>97</sup> Appeals Chamber, “Judgment on the appeals of Mr Laurent Gbagbo and Mr Charles Blé Goudé against Trial Chamber I’s decision on the submission of documentary evidence”, 24 July 2017, ICC-02/11-01/15-995.

<sup>98</sup> *Ibid.*, para. 1.

<sup>99</sup> ICC-02/11-01/15-1063-Conf, para. 4.

Application. The duplicate items submitted as annexes to the transcripts of the interview of Witness P-321, which are themselves not evidence in the trial, are manifestly irrelevant.

63. With respect to all other items of evidence submitted by the Prosecutor, the Chamber does not consider that a ruling on relevance or admissibility is warranted. The Chamber acknowledges the arguments raised by the Defence regarding the relevance and probative value, including authenticity, of these items of evidence, as well as the submissions of the common legal representative of victims. The arguments raised with respect to these aspects will be considered by the Chamber as part of its eventual determination on the facts of the case.
64. The items recognised as submitted in the present decision shall be marked as such in E-court by the Registry. In cases where E-court metadata already indicates a previous submission, in particular by way of use during trial hearings, both the first submission and the recognition of submission pursuant to the present decision shall be recorded.<sup>100</sup>
65. The Chamber notes that for some video evidence submitted, the Prosecutor has set out “the individual excerpts upon which the Prosecution relies within a news broadcast”.<sup>101</sup> The Chamber understands that in respect of this indication of excerpts paragraph 47 of the Directions on the Conduct of Proceedings applies.

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

**RECOGNISES** as submitted the items of evidence listed in Annex A to the present decision;

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<sup>100</sup> See also ICC-02/11-01/15-998, para. 16.

<sup>101</sup> See ICC-02/11-01/15-998, para. 21, and annexes B2 and B4.

**REJECTS** the requested extension of time for submission of items CIV-OTP-0075-0054, CIV-OTP-0075-0055, CIV-OTP-0075-0056, CIV-OTP-0061-0604, CIV-OTP-0075-0069, CIV-OTP-0075-0071, CIV-OTP-0075-0072, CIV-OTP-0064-0119, CIV-OTP-0074-0082, CIV-OTP-0061-0556, CIV-OTP-0069-0369, CIV-OTP-0069-0370, CIV-OTP-0069-0372 and CIV-OTP-0069-0373;

**DECIDES** that items CIV-OTP-0043-0063 and CIV-OTP-0043-0064 are irrelevant and shall not be considered by the Chamber;

**ORDERS** the Defence of Laurent Gbagbo to file, as soon as practicable, public redacted versions of filings ICC-02/11-01/15-1029-Conf, ICC-02/11-01/15-1127-Conf and ICC-02/11-01/15-1161-Conf; and

**ORDERS** the Defence of Charles Blé Goudé to file, as soon as practicable, public redacted versions of filings ICC-02/11-01/15-1028-Conf, ICC-02/11-01/15-1099-Conf, ICC-02/11-01/15-1126-Conf and ICC-02/11-01/15-1162-Conf.

Judge Henderson appends a dissenting opinion.

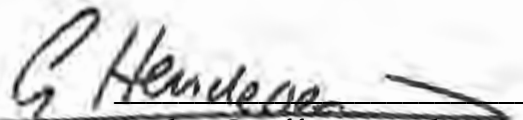
Done in both English and French, the English version being authoritative.



Judge Cuno Tarfusser, Presiding Judge



Judge Olga Herrera Carbuccion



Judge Geoffrey Henderson

Dated 1 June 2018

At The Hague, The Netherlands