

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-02/11-01/15
Date: **9 December 2016**

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 13
June, 14 July, 7 September and 19 September 2016**

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 Mr 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

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

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, 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 and Evidence (“Rules”), 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”).¹
2. On 4 May 2016, the Chamber adopted the amended and supplemented directions on the conduct of proceedings (“Directions on the Conduct of Proceedings”).²
3. On 13 June 2016, the Prosecutor requested the introduction of documentary evidence under paragraph 43 of the Directions on the Conduct of Proceedings (“Request of 13 June 2016”).³
4. On 14 July 2016, the common legal representative of the victims participating in the proceedings (“Common Legal Representative”) filed a response, supporting the Prosecutor request.⁴
5. On that same date, the Prosecutor requested the introduction of documentary evidence related to the testimony of Witness P-0048.⁵
6. On 29 July 2016, the Defence of Charles Blé Goudé⁶ and the Defence of Laurent Gbagbo⁷ filed their consolidated responses to the two applications above.

¹ ICC-02/11-01/15-405.

² ICC-02/11-01/15-498.

³ ICC-02/11-01/15-583-Conf; with confidential Annex A (ICC-02/11-01/15-583-Conf-AnxA).

⁴ ICC-02/11-01/15-617-Conf.

⁵ ICC-02/11-01/15-616-Conf; with confidential Annex A (ICC-02/11-01/15-616-Conf-AnxA) (“Request of 14 July 2016”).

7. On 11 August 2016, the Prosecutor submitted its reply to the consolidated response of the Defence of Laurent Gbagbo.⁸
8. On 7 September 2016, the Prosecutor orally requested the introduction of items related to Witness P-0501.⁹
9. On 9 September 2016, the Defence of Laurent Gbagbo submitted observations, opposing the introduction of the items related to Witness P-0501.¹⁰
10. On 14 September 2016, the Defence of Charles Blé Goudé filed observations, opposing the introduction of the aforesaid items related to Witness P-0501.¹¹
11. On 19 September 2016, the Prosecutor orally requested the introduction of evidence related to Witness P-0330. Submissions were heard that same day.¹²
12. On 27 September 2016, the Prosecutor filed a further application to submit documentary evidence related to Witness P-0321.¹³
13. On 7 October 2016, both the Defence of Laurent Gbagbo¹⁴ and the Defence of Charles Blé Goudé¹⁵ filed their respective responses to the Prosecutor request related to Witness P-0321.

⁶ ICC-02/11-01/15-640-Conf; with Annex A (ICC-02/11-01/15-640-Conf-AnxA). The original time limit was extended pursuant to the parties' request (see ICC-02/11-01/15-T-51-ENG RT, p. 69, lines 6-11 and ICC-02/11-01/15-T-50-CONF-ENG ET, pp. 91-92. Thereafter, a further extension of time limit was granted on 18 July 2016 (see e-mail of Trial Chamber I Communications at 10:16), pursuant to the request of the Defence of Mr Blé Goudé (see e-mail from the Defence of Mr Blé Goudé to Trial Chamber I communications of 15 July 2016 at 17:53).

⁷ ICC-02/11-01/15-641-Conf; with Annex 1 (ICC-02/11-01/15-641-Conf-Anx1), Annex 2 (ICC-02/11-01/15-641-Conf-Anx2) and Annex 3 (ICC-02/11-01/15-641-Conf-Anx3).

⁸ ICC-02/11-01/15-641-Conf. The Prosecutor sought leave to reply (ICC-02/11-01/15-641-Conf), which was granted by the Chamber on 5 August 2016 (see e-mail from Trial Chamber I Communications at 11:19).

⁹ ICC-02/11-01/15-T-72-CONF-ENG ET, p. 25, lines 12 et seq.

¹⁰ ICC-02/11-01/15-664-Conf.

¹¹ ICC-02/11-01/15-665-Conf.

¹² ICC-02/11-01/15-T-74-CONF-ENG, p. 4, line 24 et seq.

¹³ ICC-02/11-01/15-687-Conf ; with confidential Annex A ("Request of 27 September 2016").

¹⁴ ICC-02-11/01/15-716-Conf.

¹⁵ ICC-02/11-01/15-717-Conf.

II. Submissions

The Prosecutor

14. In her first application, the Prosecutor requests the introduction of 131 documents allegedly emanating from the Gendarmerie and collected from Camp Agban in Abidjan during a mission in 2013.¹⁶ She submits that the documents are relevant to and probative of issues including the common plan, formal command structure of the *Forces de Défense et Sécurité* (“FDS”), coordination between the various units of the FDS, and the functioning and operation of the Gendarmerie.¹⁷ In terms of authenticity, it states that the documents were collected by her staff during the mission, and further submits that direct submission of the documents promotes efficiency of proceedings and saves court time.¹⁸
15. In the second application related to Witness P-0048, the Prosecutor submits 24 documents, on grounds that they were either mentioned during testimony or support and corroborate the given testimony.¹⁹ The Prosecutor also states that the submission of the said documents promotes efficiency, as it avoids having added hours of testimony.²⁰
16. In relation to Witness P-0501, the Prosecutor seeks to introduce two items (CIV-OTP-0095-0877 and CIV-OTP-0095-0780). The Prosecutor did not make any submissions as to their relevance or probative value. These documents are transcripts of two scanned copies of notebooks (CIV-OTP-0067-0003 and CIV-OTP-0067-0643 respectively).
17. The application related to Witness P-0330 includes four items (CIV-OTP-0043-0235 and CIV-OTP-0043-0236, CIV-OTP-0044-0006 and CIV-OTP-0025-0162). The

¹⁶ Request of 13 June 2016, para. 2.

¹⁷ *Ibid.*, para. 9.

¹⁸ *Ibid.*, para. 10.

¹⁹ Request of 14 July 2016, para. 6.

²⁰ *Ibid.*, para. 9.

Chamber notes that the first three items are part of the Gendarmerie documents included in the Request of 13 June 2016. The Prosecution submits, as regards P-0330, that these documents corroborate the witness's testimony, while the fourth document allegedly emanates from the *Centre de Commandement des Opérations de Sécurité* ("CECOS") and were obtained from the Presidential Palace and collected during a mission in 2010.²¹

18. Finally, as regards the documents pertaining to Witness P-0321 the Prosecutor submits three documents related to the given testimony.²² She submits that the documents were included on the list of material intended to be used in the witness's questioning, and corroborate his testimony, although they were not used in Court due to time limitations.²³

Common Legal Representative

19. The Common Legal Representative agrees with the Prosecutor's requests. She contends that the Prosecutor has clearly indicated the relevance, probative value and authenticity, as well as the date of disclosure for each of the documents.²⁴ She further stresses that introduction of evidence other than through a witness is an established practice of the Court and that all documents are *prima facie* relevant and authentic.²⁵

20. In the context of her submissions related to the documents concerning Witness P-0330, the Legal Representative of Victims noted it is not necessary to put questions to a witness related to issues contained in the documents to be submitted pursuant to paragraph 43 of the Directions on the Conduct of Proceedings.²⁶ Further, she

²¹ ICC-02/11-01/15-T-74-CONF-ENG, pp. 4-7.

²² Request of 27 September 2016, para. 1.

²³ *Ibid.*, para. 4.

²⁴ ICC-02/11-01/15-617-Conf, para. 9.

²⁵ *Ibid.*, paras 10-21.

²⁶ ICC-02/11-01/15-T-74-CONF-ENG, p. 15, lines 8-13.

submitted that when the author a document is an identified representative or agent of an official body or organisation, the document will be presumed authentic.²⁷

The Defence of Laurent Gbagbo

21. The Defence of Laurent Gbagbo submits that the Chamber should rule straightaway on the admissibility of the documents on the basis of clear criteria.²⁸ It also stresses that submission of evidence other than through a witness should be exceptional and should, in principle, take place in a later phase of the proceedings.²⁹
22. In terms of the criteria for admissibility, the Defence argues that the Prosecutor has failed to demonstrate the authenticity for many of the documents and has equally failed to explain the relevance of the evidence in sufficient detail.³⁰ The Defence also contends that a large number of documents that form part of the Request of 13 June 2016 are not mentioned in the Prosecutor's Pre-Trial Brief.³¹
23. Albeit attaching three annexes to its observations pertaining to the documents related to Witness P-0048, the Defence mainly repeats the general submissions made in the context of the Request of 13 June 2016. The Defence contests the authenticity (including the chain of custody) and the relevance of the said documents.³² The Defence submits that all the items, except CIV-OTP-0018-0039 (*Conseil Constitutionnel* 2010 election results), should not be introduced.³³
24. In relation to the documents pertaining to P-0501, the Defence notes that the Prosecutor did not meet the minimum requirements established in the Directions on the Conduct of Proceedings and argues that the request should be rejected *in limine*.³⁴

²⁷ *Ibid.*, p. 15, line 16, to p. 16, line 3.

²⁸ ICC-02/11-01/15-641-Conf, paras 2-18.

²⁹ *Id.*

³⁰ *Ibid.*, paras 23-45.

³¹ *Ibid.*, para. 30.

³² *Ibid.*, paras 46-47.

³³ *Id.*

³⁴ ICC-02/11-01/15-664-Conf, para. 17.

It also notes that given its objection to the authenticity of the originals, it also opposes the documents sought to be submitted, which are transcripts thereof.³⁵ The Defence further reiterates its submission related to the items of evidence already submitted in the record related to P-0501 (see Decision ICC-02/11-01/15-629-Conf). It contests the authenticity of the documents, alleging possible mishandling of the evidence.³⁶

25. Concerning the documents related to Witness P-0330, the Defence notes that three of these documents are already included in the Prosecutor's request of Gendarmerie documents and reiterates its submissions in this regard.³⁷ In relation to document CIV-OTP-0025-0162, the Defence contends that there is nothing as to its authenticity and further raises questions as to possible forged nature of the document.³⁸

26. Finally, as regards the documents pertaining to Witness P-0321, the Defence reiterates its view that the Chamber should rule immediately upon the admissibility of the documents.³⁹ It also argues that the Prosecutor has not established the authenticity and relevance of the said documents.⁴⁰

The Defence of Charles Blé Goudé

27. As a preliminary observation, the Defence of Charles Blé Goudé submits that the introduction of documents through the bar should be the exception rather than the rule.⁴¹

28. As regards the first application pertaining to the Gendarmerie documents, it objects to the admission of all documents with the exception of the two already submitted through Witness P-0321.⁴² It takes no position as to the relevance, authenticity or

³⁵ *Ibid.*, para. 19.

³⁶ *Ibid.*, paras 20-28.

³⁷ ICC-02/11-01/15-74-CONF-ENG, p. 8, line 15, to p. 9, line 12.

³⁸ *Ibid.*, p. 9, line 13, to p. 11, line 19.

³⁹ ICC-02/11-01/15-716-Conf, paras 2-13.

⁴⁰ *Ibid.*, paras 14-44.

⁴¹ ICC-02/11-01/15-640-Conf, para. 19.

⁴² *Ibid.*, para. 3.

significance of certain documents, but contends that all lack the minimum indicia of reliability.⁴³ The Defence is of the view that the Prosecutor's arguments conflate relevance and probative value by providing the same information for both, and contends that the Prosecutor fails to explain how certain items of evidence, *e.g.* those related to the common plan, make such a plan more or less probable.⁴⁴ In terms of authenticity, it notes that the Gendarmerie or relevant author(s) did not certify the documents, and the only alleged evidence of the provenance of the documents comes from the investigator's report, which emanates from an interested party in the proceedings.⁴⁵ Moreover, the Defence disputes the neutrality/partiality of the Gendarmerie and alerts to a risk of falsification.⁴⁶ Finally, the Defence argues that allowing the introduction of certain documents would cause prejudice to the Accused that outweighs any *prima facie* probative value they may have.⁴⁷

29. The Defence partially opposes this request and objects to the admission of eleven documents out of the 24 documents related to Witness P-0048, challenging their relevance to the testimony of the witness.⁴⁸ The Defence does not oppose the submission of items related to the peace agreements, as they submit these are mostly agreed facts.⁴⁹ However, for the other documents, it argues that the documents are unfairly prejudicial to the Accused as they contain more elements than those evoked by the witness during testimony and that their admission would constitute circumvention to the rights of the defence.⁵⁰

30. Concerning the documents related to Witness P-0501, the Defence reiterates its objections as to the authenticity of the original notebooks related to the transcripts

⁴³ *Id.*

⁴⁴ *Ibid*, paras 21-22.

⁴⁵ *Ibid*, para. 26.

⁴⁶ *Ibid.*, paras 30-32.

⁴⁷ *Ibid.*, paras 38-40.

⁴⁸ *Ibid.*, paras 42 and 49.

⁴⁹ *Ibid.*, para. 46.

⁵⁰ *Ibid.*, para. 50.

sought to be admitted and the Prosecutor's failure to comply with the instructions in paragraph 43 of the Directions on the Conduct of Proceedings.⁵¹

31. Pertaining to the documents related to Witness P-0330, the Defence restates its submissions in relation to the Gendarmerie documents.⁵² It also submits that the introduction of these documents would be tantamount to introducing a new fact that was never subjected to examination by the parties.⁵³ As regards the document allegedly emanating from CECOS, the Defence states that the document is not self-authenticating and no certification from an authority has been provided.⁵⁴

32. Finally, as regards the documents pertaining to Witness P-0321 the Defence opposes their submission.⁵⁵ It argues that the Prosecutor's practice of submitting documents through a bar table motion impairs the Defence's right to confront the witness with the document.⁵⁶ It also notes that two of the documents consist in actual fact of numerous other documents.⁵⁷ Hence, they are not clearly and individually identified.⁵⁸ The Defence further disputes the neutrality of the producers of the documents.⁵⁹

III. Analysis

33. The Chamber decided in the Decision of 28 January 2016 that, as a matter of principle, it would postpone making any rulings on the relevance or admissibility of evidence submitted by the parties until the end of the trial. Accordingly, the Chamber will not entertain general submissions made by the parties seemingly seeking reconsideration of its previous decision. Evidence must not be evaluated in

⁵¹ ICC-02/11-01/15-665-Conf, paras 4-5.

⁵² ICC-02/11-01/15-74-CONF-ENG, p. 12, lines 5-9.

⁵³ *Ibid.*, pp. 12-14.

⁵⁴ *Ibid.*, p. 14, lines 3-8.

⁵⁵ ICC-02/11-01/15-717-Conf, para. .

⁵⁶ *Ibid.*, para. 17.

⁵⁷ *Ibid.*, para. 19.

⁵⁸ *Ibid.*, para. 20.

⁵⁹ *Ibid.*, para. 23.

isolation, but as a whole, in the system of evidence presented in a case. Unless a preliminary evaluation of the 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.

34. Similarly, the Chamber has not attached consequence to the general arguments presented by the Defence teams as regards the submission of evidence other than through a witness. Recently, the Appeals Chamber reiterated that the principle of orality is not absolute.⁶⁰ Bearing in mind good trial management, the Chamber, in its Directions on the Conduct of Proceedings, unambiguously encouraged the parties to introduce documentary evidence whenever feasible and indicated that they may do so without producing it by or through a witness.⁶¹ As noted by the Appeals Chamber, the “expeditious conduct of the proceedings in one form or another constitutes an attribute of a fair trial”.⁶² Accordingly, the introduction of evidence other than through witnesses must not be regarded as extraordinary, but as common practice that this Chamber has urged the parties to use in order to expedite proceedings, insofar as this is not prejudicial to the rights of the accused.⁶³ It has done so bearing in mind that the introduction of evidence other than oral testimony may ultimately reduce the amount of time devoted to hearing evidence in court.

⁶⁰ ICC-02/11-01/15-744, para. 77.

⁶¹ ICC-02/11-01/15-498, para. 43.

⁶² ICC-02/11-01/15-744, para. 59.

⁶³ See e.g. *Prosecutor v. Thomas Lubanga Dyilo*, Trial Chamber I, Decision on the admissibility of four documents, 13 June 2008, ICC-01/04-01/06-1399-Corr; *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Trial Chamber II, Decision on Prosecutor’s Bar Table Motions, 17 December 2010, ICC-01/04-01/07-2635; *Prosecutor v. Jean-Pierre Bemba Gombo*, Trial Chamber III, Public redacted version of the First decision on the prosecution and defence requests for the admission of evidence, dated 15 December 2011, 9 February 2012, ICC-01/05-01/08-2012-Red; *Prosecutor v. Jean-Pierre Bemba Gombo*, Appeals Chamber, Judgment on the appeals of Mr Jean-Pierre Bemba Gombo and the Prosecutor against the decision of Trial Chamber III entitled “Decision on the admission into evidence of materials contained in the prosecution’s list of evidence”, 3 May 2011, ICC-01/05-01/08-1386; *Prosecutor v. William Samoei Ruto and Joshua arap Sang*, Trial Chamber V-A, Decision on the Prosecution’s Request for Admission of Documentary Evidence, 10 June 2014, ICC-01/09-01/11-1353; *Prosecutor v. Jean-Pierre Bemba Gombo et al*, Trial Chamber VII, Decision on Prosecution Requests for Admission of Documentary Evidence (ICC-01/05-01/13-1013-Red, ICC-01/05-01/13-1113-Red, ICC-01/05-01/13-1170-Conf), 24 September 2015, ICC-01/05-01/13-1285.

35. Although the Chamber may take the discretionary decision to rule on relevance or admissibility of evidence at the time of its submission, there is no indication in the present instance that this is necessary or appropriate. The evidence introduced should be evaluated as a whole. Although some items of evidence may currently not clearly appear relevant or lack *prima facie* probative value, the situation may change as other evidence is presented to the Chamber. Thus, making an authoritative affirmative finding or excluding some items of evidence at this stage of the proceedings would be premature, as it would be based on a partial knowledge of the evidence in the case. As previously stated, this would prevent the Chamber from assessing freely all evidence submitted.⁶⁴

36. Although it will not rule on the relevance or admissibility of the evidence submitted at this moment in time, the Chamber considers it appropriate, in light of its responsibility to ensure the proper conduct of the trial, and also in light of paragraph 44 of the Directions on the Conduct of Proceedings, to make an exception in the established procedure,⁶⁵ so as to give some guidance to the parties with respect to submission of documentary evidence.

37. The Chamber reiterates that the Directions on the Conduct of Proceedings require that the introduction of any item of evidence is accompanied by “succinct information” on the relevance and probative value (including authenticity).⁶⁶

38. However, succinct should not be understood as deficient or incomplete. Parties are expected to fully litigate the relevance and admissibility of each item of evidence at the time it is submitted (cf. Rule 64(1) of the Rules). Unless the relevance of an item of evidence is readily apparent – on its face or from submissions that are already on the record of the case (such as the pre-trial brief) – the party submitting the evidence must make sufficiently detailed and precise submissions, so as to enable the other

⁶⁴ Decision of 28 January 2016, para 13.

⁶⁵ *Ibid.*, para. 17.

⁶⁶ Directions on the Conduct of Proceedings, para. 44.

parties to make informed responses and the Chamber to resolve the matter, including ruling on admissibility if necessary.⁶⁷

39. As regards the relevance of the 131 documents allegedly emanating from the Gendarmerie and/or CECOS (including those related to Witness P-0330), these appear to relate to the timeframe of the charges and, *inter alia*, to the Gendarmerie, while others refer specifically to the incident of 16-18 December 2010. Thus, the Chamber cannot, at the present time, adhere to the submissions of the Defence that the items are irrelevant. The Chamber also notes that a large number of the submitted items allegedly emanated from the Ivorian Gendarmerie. The authenticity of the documents is disputed. Without going into further detail, the Chamber observes that further evidence may be necessary to determine the authenticity of some of the documents submitted.⁶⁸ The same applies to other documents allegedly emanating from other bodies, such as the United Nations.

40. At the same time, the Chamber rejects the argument that the simple fact that some of the documents were provided to the Prosecution by the current Ivorian authorities, who are purportedly biased in this case, automatically puts authenticity into question. Thus far, the Chamber notes that the allegations of fabrication and tampering of evidence are wholly unsubstantiated.

41. As regards the items related to Witness P-0501, the Chamber notes that they are in fact (partial) transcripts of two items of evidence previously submitted (CIV-OTP-0067-0003 and CIV-OTP-0067-0643).⁶⁹ In the view of the Chamber, transcripts (and translations) of audio/video or, as in this case, handwritten evidence should be submitted together with the original item if possible and their status, including being

⁶⁷ Decision of 28 January 2016, para. 17.

⁶⁸ For example, the Chamber notes that document CIV-OTP-0049-2986 has not been formally submitted so far. In this regard, the Chamber also notes that some documents are undated, bear no signature or no name appears on them.

⁶⁹ See ICC-02/11-01/15-582-Conf-Anx3; see also Trial Chamber I, “Decision on the ‘Prosecution’s application submitting material in written form in relation to Witnesses P-0414, P-0428, P-0501 and P-0550’”, 19 July 2016, ICC-02/11-01/15-629-Conf, p. 18.

affected by any evidentiary ruling, shall automatically follow the status of the original item.⁷⁰

42. As regards the documents related to Witness P-0048, the Chamber does not see a basis to deem them irrelevant to the charges (and the background information that has also been extensively referred to by witnesses during the questioning by both Defence teams (*i.e.* peace agreements)). The Chamber notes that as regards authenticity, the Defence teams do not appear to raise concerns in this regard.
43. Finally, as regards the documents related to Witness P-0321, the Chamber is of the view that these items are relevant, as they are related to issues dealt with in the testimony of witness P-0321, namely the purchase of weapons and police equipment and the role of FDS officers in alleged commission of crimes.
44. Accordingly, all items under consideration shall be considered as submitted and discussed within the meaning of Article 74(2) of the Statute. The Registry is directed to update the metadata to reflect the submission of the evidence and the issues raised.⁷¹

⁷⁰ See also, Trial Chamber VII, “Decision on ‘Prosecution’s Fifth Request for the Admission of Evidence from the Bar Table’”, 14 December 2015, ICC-01/05-01/13-1524, para. 7; Trial Chamber IX, “Initial Directions on the Conduct of Proceedings”, 13 July 2016, ICC-02/04-01/15-497, para. 30.

⁷¹ Decision of 28 January 2016, p. 10.

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY, BY MAJORITY,
JUDGE HENDERSON DISSENTING,**

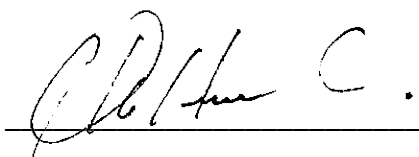
RECOGNISES as submitted the items of evidence listed in Annex A to the present decision.

Judge Henderson will append a dissenting opinion in due course.

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



Judge Cuno Tarfusser, Presiding Judge



Judge Olga Herrera Carbuccion



Judge Geoffrey Henderson

Dated 9 December 2016

At The Hague, The Netherlands