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**International
Criminal
Court**



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Date: 15 September 2017

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
with one confidential Annex and same public redacted Annex**

Response to the "Prosecution's application for the introduction of documentary evidence under paragraphs 43-44 of the directions on the conduct of the proceedings" (ICC-02/11-01/15-895)

Source: Office of Public Counsel for Victims

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

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I. Introduction

1. The Common Legal Representative of the victims admitted to participate in the proceedings (the “Legal Representative”)¹ submits that the request by the Prosecution for the introduction of documentary evidence under paragraphs 43 and 44 of the Amended Directions on the conduct of the proceedings (the “Amended Directions”)² should be granted (the “Application”).³

2. Indeed, the Application meets the requirements under paragraphs 43 and 44 of the Amended Directions, as the 987 items listed in its Annex A and the 16 items listed in its Annex B (the “Items”) are *prima facie* relevant, probative and authentic and their direct submission would result in an enhancement of the efficiency of the proceedings. Moreover, the introduction of such Items will not be prejudicial to the rights of the Accused.

II. Classification of the submission

3. The Legal Representative has noticed the classification of Annexes A and B of the Application and indicates that the present submission can be filed “public” because it does not refer to information still classified “confidential”. The Annex to the present submission is filed “confidential” because it contains the full electronic address of Lead Counsel of Mr Gbagbo. A public redacted version of said Annex is filed simultaneously.

¹ See the “Decision on victim participation” (Trial Chamber I), No. ICC-02/11-01/11-800, 6 March 2015; and the “Decision on victims’ participation status” (Trial Chamber I), No. ICC-02/11-01/15-379, 7 January 2016, p. 23.

² See the “Decision adopting amended and supplemented directions on the conduct of the proceedings” and its Annex A (Trial Chamber I), No. ICC-02/11-01/15-498+AnxA, 4 May 2016 (the “Amended Directions”), paras. 43-44.

³ See the “Prosecution’s application for the introduction of documentary evidence under paragraphs 43-44 of the directions on the conduct of the proceedings”, No. ICC-02/11-01/15-895, 28 April 2017 (the “Application”).

III. Background

4. On 29 January 2016, Trial Chamber I (the “Chamber”) issued the “Decision on the submission and admission of evidence” (the “Decision on the Admission of Evidence”).⁴

5. On 4 May 2016, the Chamber adopted the Amended Directions.⁵

6. On 9 December 2016, the Chamber, by majority, Judge Henderson dissenting, granted previous requests by the Prosecution for the submission of documentary evidence⁶ concerning 161 items collected from Camp Agban in Abidjan, Ivory Coast, or related to the testimony of Witnesses P-0048, P-0501 and P-0321 (the “Decision of 9 December 2016”).⁷ The Defence filed requests for leave to appeal said Decision,⁸ which were granted by the Chamber, Judge Tarfusser partly dissenting, on 4 May 2017.⁹

⁴ See the “Decision on the submission and admission of evidence” (Trial Chamber I), No. ICC-02/11-01/15-405, 29 January 2016 (the “Decision on Admission of Evidence”).

⁵ See the Amended Directions, *supra* note 2.

⁶ See the “Public redacted version of “Prosecution’s application for the introduction of documentary evidence under paragraph 43 of the directions on the conduct of proceedings”, 13 June 2016, ICC-02/11-01/15-583-Conf”, No. ICC-02/11-01/15-583-Red, 18 July 2017; the “Prosecution’s application to submit documentary evidence under paragraph 43 of the directions on the conduct of the proceedings relating to the testimony of Witness P-0048”, No. ICC-02/11-01/15-616-Conf, 14 July 2016; the transcript of the hearing held on 7 September 2016, No. ICC-02/11-01/15-T-72-CONF-ENG ET, p. 25, lines 12 et seq.; the transcript of the hearing held on 19 September 2016, No. ICC-02/11-01/15-T-74-CONF-ENG, p. 4, line 24 et seq.; and the “Prosecution’s application to submit documentary evidence under paragraph 43 of the directions on the conduct of the proceedings relating to the testimony of Witness P-0321”, No. ICC-02/11-01/15-687-Conf, 27 September 2016.

⁷ See the “Decision concerning the Prosecutor’s submission of documentary evidence on 13 June, 14 July, 7 September and 19 September 2016” (Trial Chamber I), No. ICC-02/11-01/15-773, 9 December 2016 (the “Decision of 9 December 2016”).

⁸ See the “Version publique expurgée de la «Demande d’autorisation d’interjeter appel de la «Decision concerning the Prosecutor’s submission of documentary evidence on 13 June, 14 July, 7 September and 19 September 2016» (ICC-02/11-01/15-773)», No. ICC-02/11-01/15-776-Red, 19 December 2016; and the “Request for leave to appeal the “Decision concerning the Prosecutor’s submission of documentary evidence on 13 June, 14 July, 7 September and 19 September 2016” (ICC-02/11-01/15-773)”, No. ICC-02/11-01/15-777, 19 December 2016.

⁹ See the “Decision on request for leave to appeal the Decision concerning the Prosecutor’s submission of documentary evidence on 13 June, 14 July, 7 September and 19 September 2016” (Trial Chamber I), No. ICC-02/11-01/15-901, 4 May 2017.

7. On 23 January 2017, the Chamber issued an Order requesting, *inter alia*, the Prosecution to file a consolidated submission of documentary evidence by 28 February 2017.¹⁰ On 9 February, the Chamber, upon request by the Prosecution, granted an extension of time for the filing of said submission.¹¹

8. On 28 April 2017, the Prosecution filed the Application.¹²

9. On 8 May 2017, the two Defence teams and the Legal Representative requested an extension of time to file a response to the Application until 15 September 2017.¹³ Said request was orally granted on 9 May 2017.¹⁴

10. On 24 July 2017, the Appeals Chamber rejected the Defence's appeals against the Decision of 9 December 2016 (the "Judgment of 24 July 2017").¹⁵ The Appeals Chamber confirmed said ruling concluding that the Chamber did not incorrectly balance its discretion to defer its consideration of the admissibility of the items with its obligations under article 64(2) of the Rome Statute.¹⁶

¹⁰ See the "Order requesting the parties and participants to submit information for the purposes of the conduct of the proceedings pursuant to article 64(2) of the Statute and rule 140 of the Rules of Procedure and Evidence" (Trial Chamber I), No. ICC-02/11-01/15-787, 23 January 2017, para. 11.

¹¹ See the transcript of the hearing held on 9 February 2017, No. ICC-02/11-01/15-T-119-Red-ENG ET, p. 1, line 23 to p. 2, line 2.

¹² See the Application, *supra* note 3.

¹³ See the Annex to this response.

¹⁴ See the transcript of the hearing held on 9 May 2017, No. ICC-02/11-01/15-T-154-Red-ENG, p. 1, line 21 to p. 2, line 14, requesting, *inter alia*, the parties to file the correspondence in the record of the case.

¹⁵ See the "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" (Appeals Chamber), No. ICC-02/11-01/15-995 OA11 OA12, 24 July 2017 (the "Judgment of 24 July 2017").

¹⁶ *Idem*, para. 65.

IV. Submissions

a. Legal framework

11. The Legal Representative recalls that the introduction of evidence without producing it by or through a witness is an established practice of the Court,¹⁷ and is in line with the Decision on the Admission of Evidence,¹⁸ the Amended Directions,¹⁹ and the Decision of 9 December 2016.²⁰ Indeed, as indicated by various Chambers *“[t]he statutory framework confers a broad degree of discretion on the Chamber to assess and consider various types of evidence”*.²¹ In this regard, the Chamber has already noted that *“[a]rticles 64(8)(b) and 69(3) of the Statute stipulate that the parties may submit evidence relevant to the case in accordance with the provisions of the Statute and subject to any directions of the Presiding Judge”*.²²

12. Furthermore, article 64(9)(a) of the Rome Statute gives the Chamber *“[t]he power to rule on the ‘admissibility or relevance of evidence’ and rule 63(2) of the Rules provides that the Chamber shall have the authority to ‘assess freely all evidence submitted in order to determine its relevance or admissibility in accordance with article 69’”*.²³

¹⁷ See the “Decision on Prosecution’s first request for the admission of documentary evidence” (Trial Chamber VI), No. ICC-01/04-02/06-1181, 19 February 2016, para. 6; and the “Decision on the Prosecution’s Request for Admission of Documentary Evidence” (Trial Chamber V(A)), No. ICC-01/09-01/11-1353, 10 June 2014, para. 13. See also the “Public redacted version of the First decision on the prosecution and defence requests for the admission of evidence, dated 15 December 2011” (Trial Chamber III), No. ICC-01/05-01/08-2012-Red, 9 February 2012; the “Corrigendum to Decision on the admissibility of four documents” (Trial Chamber I), No. ICC-01/04-01/06-1399-Corr, 20 January 2011; and the “Decision on Prosecutor’s Bar Table Motions” (Trial Chamber II), No. ICC-01/04-01/07-2635, 17 December 2010.

¹⁸ See the Decision on the Admission of Evidence, *supra* note 4, paras. 8-9.

¹⁹ See the Amended Directions, *supra* note 2, para. 43.

²⁰ See the Decision of 9 December 2016, *supra* note 7, paras. 33-34.

²¹ See the “Decision on Prosecution’s first request for the admission of documentary evidence”, *supra* note 17, para. 6; and the “Decision on the Prosecution’s Request for Admission of Documentary Evidence”, *supra* note 17, para. 13.

²² See the Decision on the Admission of Evidence, *supra* note 4, para. 4.

²³ See the “Decision on Prosecution’s first request for the admission of documentary evidence”, *supra* note 17; and the “Decision on the Prosecution’s Request for Admission of Documentary Evidence”, *supra* note 17, para. 13. See also the Decision on the Admission of Evidence, *supra* note 4, para. 8.

13. Accordingly, the Appeals Chamber ruled that the evidence is “submitted” when “[i]t is presented to the Trial Chamber by the parties on their own initiative or pursuant to a request by the Trial Chamber for the purpose of proving or disproving facts in issue before the Chamber”.²⁴ The Appeals Chamber has further clarified that the assessment of the relevance and/or admissibility of the evidence submitted may be deferred until the end of the proceedings – *i.e.* when evaluating the guilt or innocence of the accused –, and that in its evaluation the chamber has to consider the relevance, probative value and potential prejudice of each of the items sought to be introduced.²⁵

14. The Chamber has already indicated in the Amended Directions that the direct introduction – *i.e.* without producing it by or through a witness – of any documentary evidence will be permitted insofar as it is accompanied by “[s]uccinct information indicating (i) the item’s relevance, its probative value (including authenticity); and (ii) the date on which it was disclosed”.²⁶

15. The Chamber further clarified, in its Decision of 9 December 2016, that “the party submitting the evidence must make sufficiently detailed and precise submissions, so as to enable the other parties to make informed responses and the Chamber to resolve the matter, including ruling on admissibility if necessary”.²⁷ The Appeals Chamber, however, recently confirmed that failure to provide sufficient information in this regard does not necessarily entail the inadmissibility of the evidence in question, and that it remains in the Chamber’s discretion to address shortcomings in a party’s

²⁴ See the “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’” (Appeals Chamber), No. ICC-01/05-01/08-1386 OA5 OA6, 3 May 2011, para. 43. See also the “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)” (Trial Chamber VII), No. ICC-01/05-01/13-1285, 24 September 2015, para. 5.

²⁵ See the “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’”, *supra* note 24, para. 37.

²⁶ See the Amended Directions, *supra* note 2, para. 44.

²⁷ See the Decision of 9 December 2016, *supra* note 7, para. 38; see also the Judgment of 24 July 2017, *supra* note 15, para. 54.

submission.²⁸ The Appeals Chamber also confirmed that *“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”*.²⁹ Therefore, the Chamber has the discretion not to rule on the admissibility of an item of evidence, even if it identified concerns as to the authenticity of said evidence.³⁰

16. As to the criterion of relevance, the applicable jurisprudence indicates that *“[i]f the evidence tendered makes the existence of a fact at issue more or less probable, it is relevant. Whether or not this is the case depends on the purpose for which the evidence is adduced”*.³¹ By the same token, the relevance criterion forms *“[t]he legal basis for excluding irrelevant evidentiary material from the trial”*³² and defines *“[t]he purpose of a specific item of evidence in the proceedings”*.³³

17. As to the probative value of the evidence, it is determined by the reliability of the latter, bearing in mind that it is also strictly linked to the relevance criterion,³⁴ insofar as it relates to *“[t]he measure by which an item of evidence is likely to influence the determination of a particular issue in the case”*.³⁵

b. Analysis of the Items for which the Prosecution is seeking admission in the record of the case

18. In the present case, and in accordance with the above-mentioned criteria, the Legal Representative submits that the Prosecution has clearly indicated the relevance, probative value and authenticity, as well as the date of disclosure for each

²⁸ See the Judgment of 24 July 2017, *supra* note 15, para. 54.

²⁹ *Idem*, para. 52.

³⁰ *Ibidem*.

³¹ See the “Decision on Prosecutor's Bar Table Motions”, *supra* note 17, para. 16. See also the “Decision on the Prosecution's Request for Admission of Documentary Evidence”, *supra* note 17, para. 15.

³² See the “Decision on Prosecutor's Bar Table Motions”, *supra* note 17, para. 17.

³³ *Idem*.

³⁴ See the “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)”, *supra* note 24, para. 11.

³⁵ See the “Decision on Prosecutor's Bar Table Motions”, *supra* note 17, para. 20.

of the Items. As such, their direct introduction in the record of the case under paragraphs 43 and 44 of the Amended Directions should be granted. The Legal Representative further submits that the direct introduction of said Items would result in an enhancement of the efficiency of the proceedings.

19. The Legal Representative notes that some of the Items are of particular importance for the interests of the victims she represents. Indeed, and firstly, all the items that tend to prove the responsibility of the Accused are of particular relevance, whether they go to the knowledge of the Accused of the crimes committed (or the knowledge of the members of the inner circle),³⁶ or to the proof of the common plan.

20. More specifically, numerous items are directly relevant to the existence and details of the common plan by showing, *inter alia*, (i) the functioning and reporting system of the Defence and Security Forces ("FDS"),³⁷ (ii) the FDS' resources and capacity during the crisis,³⁸ (iii) the recruitment and integration of the youth and

³⁶ See *e.g.* CIV-OTP-0018-0590, CIV-OTP-0044-0903, CIV-OTP-0048-1570, CIV-OTP-0018-0054, CIV-OTP-0018-0599, CIV-OTP-0002-0131, CIV-OTP-0048-1570, CIV-OTP-0025-0887, CIV-OTP-0025-0897, CIV-OTP-0025-0902, CIV-OTP-0018-0165, CIV-OTP-0002-0085, CIV-OTP-0045-1300, CIV-OTP-0045-0379, CIV-OTP-0046-0029, CIV-OTP-0045-1493, CIV-OTP-0045-0698, CIV-OTP-0018-0451, CIV-OTP-0018-0800.

³⁷ See *e.g.* CIV-OTP-0045-1198, CIV-OTP-0053-0477, CIV-OTP-0045-0023, CIV-OTP-0053-0505, CIV-OTP-0046-0080, CIV-OTP-0045-1536, CIV-OTP-0045-0451, CIV-OTP-0045-0519, CIV-OTP-0046-0027, CIV-OTP-0045-1438, CIV-OTP-0045-0541, CIV-OTP-0045-1132, CIV-OTP-0045-0625, CIV-OTP-0045-1190, CIV-OTP-0045-1493, CIV-OTP-0045-0184, CIV-OTP-0045-1135, CIV-OTP-0046-0294, CIV-OTP-0045-1134, CIV-OTP-0045-0107, CIV-OTP-0045-1133, CIV-OTP-0045-0199, CIV-OTP-0045-1124, CIV-OTP-0045-1105. Specifically on the issue of the radio call signs, see the following items: CIV-OTP-0007-0263, CIV-OTP-0012-0252, CIV-OTP-0012-0256, CIV-OTP-0007-0263.

³⁸ See *e.g.* CIV-OTP-0045-1512, CIV-OTP-0045-0519, CIV-OTP-0046-0131, CIV-OTP-0045-1132, CIV-OTP-0045-0184, CIV-OTP-0045-1135, CIV-OTP-0046-0294, CIV-OTP-0045-1134, CIV-OTP-0045-1133, CIV-OTP-0045-0195, CIV-OTP-0045-0231, CIV-OTP-0045-0196, CIV-OTP-0045-1131, CIV-OTP-0045-1130, CIV-OTP-0045-1126, CIV-OTP-0045-0219, CIV-OTP-0045-1474, CIV-OTP-0045-1124, CIV-OTP-0045-1125, CIV-OTP-0045-1473, CIV-OTP-0045-1123, CIV-OTP-0045-1122, CIV-OTP-0045-1472, CIV-OTP-0045-1471, CIV-OTP-0045-1470, CIV-OTP-0045-1105, CIV-OTP-0045-1121, CIV-OTP-0045-0224, CIV-OTP-0045-1485, CIV-OTP-0045-1486, CIV-OTP-0045-1119, CIV-OTP-0045-1489, CIV-OTP-0045-1120, CIV-OTP-0045-0226, CIV-OTP-0045-0225, CIV-OTP-0045-1490, CIV-OTP-0045-1487, CIV-OTP-0045-1110, CIV-OTP-0045-1118, CIV-OTP-0045-1488, CIV-OTP-0045-1116, CIV-OTP-0045-1117, CIV-OTP-0045-1484, CIV-OTP-0045-1114, CIV-OTP-0045-1115, CIV-OTP-0045-1483, CIV-OTP-0045-1482, CIV-OTP-0045-1111, CIV-OTP-0045-1113, CIV-OTP-0045-1109, CIV-OTP-0045-1108, CIV-OTP-0045-1107, CIV-OTP-0045-1106, CIV-OTP-0055-0356.

militia members into the FDS,³⁹ (iv) the links between the self-defence groups and/or militia with Mr Gbagbo's government and/or members of the inner circle,⁴⁰ (v) the targeting and negative behaviour towards the ONUCI and the international community,⁴¹ and (vi) the use of the media, and especially the Ivorian Radio and Television ("RTI"), as a means to control the information received by the population, disseminate messages and generally promote the common plan of keeping Mr Gbagbo in power by all means.⁴²

21. Numerous items of evidence are also undoubtedly relevant as they refer to the five charged incidents of 16-19 December 2010,⁴³ 25-28 February 2011,⁴⁴ 3 March

³⁹ See *e.g.* CIV-OTP-0018-0533, CIV-OTP-0071-2436, CIV-OTP-0071-2433, CIV-OTP-0048-0276, CIV-OTP-0048-1110, CIV-OTP-0048-0279, CIV-OTP-0047-0356, CIV-OTP-0048-1092, CIV-OTP-0044-1497, CIV-OTP-0003-0527, CIV-OTP-0071-0273, CIV-OTP-0048-0225, CIV-OTP-0048-0227, CIV-OTP-0048-1117, CIV-OTP-0048-1121, CIV-OTP-0048-1124, CIV-OTP-0048-1129, CIV-OTP-0048-1134, CIV-OTP-0048-1138, CIV-OTP-0048-0264, CIV-OTP-0074-0029, CIV-OTP-0071-2476, CIV-OTP-0071-2471, CIV-OTP-0071-2478, CIV-OTP-0071-2484, CIV-OTP-0048-0183, CIV-OTP-0048-0273, CIV-OTP-0048-0203, CIV-OTP-0018-0800.

⁴⁰ See *e.g.* CIV-OTP-0025-0873, CIV-OTP-0053-0416, CIV-OTP-0018-1072, CIV-OTP-0018-1081, CIV-OTP-0025-0754, CIV-OTP-0025-0836, CIV-OTP-0025-0868, CIV-OTP-0025-0799, CIV-OTP-0018-0581, CIV-OTP-0025-0423, CIV-OTP-0025-0422, CIV-OTP-0025-0796, CIV-OTP-0044-2282, CIV-OTP-0025-0794, CIV-OTP-0053-0401, CIV-OTP-0025-0381, CIV-OTP-0055-0176, CIV-OTP-0071-2436, CIV-OTP-0025-0817, CIV-OTP-0025-0322, CIV-OTP-0025-0850.

⁴¹ See *e.g.* CIV-OTP-0064-0135, CIV-OTP-0044-0868, CIV-OTP-0044-0882, CIV-OTP-0071-0670, CIV-OTP-0071-0668, CIV-OTP-0044-0895, CIV-OTP-0055-0196, CIV-OTP-0044-0935, CIV-OTP-0002-0131, CIV-OTP-0046-0119, CIV-OTP-0046-0124, CIV-OTP-0044-0975, CIV-OTP-0018-0395, CIV-OTP-0046-0131, CIV-OTP-0044-1341, CIV-OTP-0044-0996, CIV-OTP-0045-1415, CIV-OTP-0045-1411, CIV-OTP-0025-0138, CIV-OTP-0025-0910, CIV-OTP-0044-1059, CIV-OTP-0046-0032, CIV-OTP-0045-0389, CIV-OTP-0045-0188, CIV-OTP-0045-0625, CIV-OTP-0045-0170, CIV-OTP-0045-0184, CIV-OTP-0044-1615, CIV-OTP-0044-1155, CIV-OTP-0025-0113, CIV-OTP-0044-1173, CIV-OTP-0044-1211, CIV-OTP-0025-0127, CIV-OTP-0042-0683, CIV-OTP-0044-1239, CIV-OTP-0002-0130, CIV-OTP-0044-1383, CIV-OTP-0003-0123.

⁴² See *e.g.* CIV-OTP-0025-0143, CIV-OTP-0002-0076, CIV-OTP-0048-0047, CIV-OTP-0058-0255, CIV-OTP-0044-0868, CIV-OTP-0025-0897, CIV-OTP-0045-1417, CIV-OTP-0047-0417, CIV-OTP-0025-0910, CIV-OTP-0025-0082, CIV-OTP-0003-0527, CIV-OTP-0025-0113, CIV-OTP-0044-0310, CIV-OTP-0018-0070, CIV-OTP-0025-0061.

⁴³ For the awareness of the December 2010 march by the authorities and the preparation by the FDS prior to the march, see *e.g.* CIV-OTP-0025-0379, CIV-OTP-0045-0451, CIV-OTP-0045-1510; for the FDS positions and coordination during said march, see *e.g.* CIV-OTP-0045-1512, CIV-OTP-0071-0682, CIV-OTP-0045-1528, CIV-OTP-0045-0541, CIV-OTP-0071-0676, CIV-OTP-0071-0674, CIV-OTP-0071-0672, CIV-OTP-0071-0703; for the proof of death of victims during said march and details on the victims, see *e.g.* CIV-OTP-0084-3044, CIV-OTP-0084-3272, CIV-OTP-0046-0027, CIV-OTP-0044-0860, CIV-OTP-0064-0135, CIV-OTP-0044-2397, CIV-OTP-0044-2393, CIV-OTP-0044-2401, CIV-OTP-0044-1398, CIV-OTP-0063-0818. See also, in general, CIV-OTP-0055-0186, CIV-OTP-0053-0505, CIV-OTP-0055-0176, CIV-OTP-0045-1438, CIV-OTP-0044-0852, CIV-OTP-0018-0590, CIV-OTP-0045-0430, CIV-OTP-0045-

2011,⁴⁵ 17 March 2011,⁴⁶ and 12 April 2011⁴⁷, by detailing, *inter alia*, the FDS' positions during these incidents, the level of preparation and coordination between the different FDS' units and the militia/mercenaries, and the number and identities of victims of these incidents.

22. The Legal Representative also notes that some Items are directly relevant to the non-charged incidents included in the Decisions on the confirmation of charges,⁴⁸ notably by listing victims of these incidents, the alleged authors and the circumstances surrounding these events.⁴⁹ If these Items are definitely pertinent to the qualification of the nature of the attack that occurred during the post-electoral crisis as widespread and systematic, the Legal Representative stresses that they are also highly relevant to prove the extent of the victimisation during the 2010-2011 crisis, which necessarily extends beyond the charged incidents.

0717, CIV-OTP-0045-1432, CIV-OTP-0045-1407, CIV-OTP-0045-1450, CIV-OTP-0044-2408, CIV-OTP-0003-0527, CIV-OTP-0045-0379

⁴⁴ See *e.g.* CIV-OTP-0046-0031, CIV-OTP-0044-1542, CIV-OTP-0044-1538, CIV-OTP-0045-0389, CIV-OTP-0046-0029, CIV-OTP-0044-1738, CIV-OTP-0046-0031, CIV-OTP-0044-1542, and CIV-OTP-0045-0389.

⁴⁵ For the context of the March 2011 march and the positions of the FDS during said march, see *e.g.* CIV-OTP-0044-1124, CIV-OTP-0045-1132, CIV-OTP-0045-0175, CIV-OTP-0045-1133, CIV-OTP-0045-1134; for the absence of mention of said march and the denial of the deaths by the government, see *e.g.* CIV-OTP-0045-0184, CIV-OTP-0025-0106, CIV-OTP-0046-0294; for the death of victims, see *e.g.* CIV-OTP-0082-1048, CIV-OTP-0082-1049. See also, in general, CIV-OTP-0042-0587, CIV-OTP-0044-1364, and CIV-OTP-0045-0199.

⁴⁶ See *e.g.* CIV-OTP-0073-1126, CIV-OTP-0044-2417, CIV-OTP-0084-2629, CIV-OTP-0044-1739, CIV-OTP-0037-0151, CIV-OTP-0044-1666, CIV-OTP-0044-1374, CIV-OTP-0002-0983, CIV-OTP-0071-0433, CIV-OTP-0071-0434, CIV-OTP-0049-0029, CIV-OTP-0049-0006, CIV-OTP-0049-0014, CIV-OTP-0049-0024, CIV-OTP-0049-0022, CIV-OTP-0049-0028, CIV-OTP-0049-0015, CIV-OTP-0049-0021, CIV-OTP-0049-0025, CIV-OTP-0049-0016, CIV-OTP-0049-0026, CIV-OTP-0049-0030, CIV-OTP-0049-0031, CIV-OTP-0049-0019, CIV-OTP-0049-0018, CIV-OTP-0049-0027, CIV-OTP-0049-0032, CIV-OTP-0049-0017, CIV-OTP-0049-0020, CIV-OTP-0049-0023, CIV-OTP-0071-0432.

⁴⁷ See *e.g.* CIV-OTP-0018-0567, CIV-OTP-0018-0564, CIV-OTP-0044-1270, CIV-OTP-0058-0320, CIV-OTP-0012-0037, CIV-OTP-0012-0042, and CIV-OTP-0037-0138.

⁴⁸ See the "Decision on the confirmation of charges against Laurent Gbagbo" (Pre-Trial Chamber I), No ICC-02/11-01/11-656-Conf, 12 June 2014, paras. 73-77; and the "Decision on the confirmation of charges against Charles Blé Goudé" (Pre-Trial Chamber I), No. ICC-02/11-02/11-186, 11 December 2014, paras. 51-55. See also the Application, *supra* note 3, para. 14.

⁴⁹ See *e.g.* CIV-OTP-0048-1290, CIV-OTP-0044-0868, CIV-OTP-0044-0895, CIV-OTP-0044-0337, CIV-OTP-0044-1332, CIV-OTP-0044-1350, CIV-OTP-0044-1481, CIV-OTP-0044-1119, CIV-OTP-0045-1300, CIV-OTP-0045-0379, CIV-OTP-0044-1501, CIV-OTP-0044-1538, CIV-OTP-0044-2412, CIV-OTP-0044-1201, CIV-OTP-0044-1398.

23. Also of particular importance for the victims are the numerous documents showing the specific and wilful targeting of political opponents and perceived Ouattara supporters, including on the basis of nationality, ethnicity, origin and/or religion,⁵⁰ which are directly relevant to the characterisation of the crimes committed as acts of persecution under article 7(1)(h) of the Rome Statute. In this sense, the Legal Representative supports the Prosecution's arguments as to the relevance of the numerous documents emanating from the United Nations collection,⁵¹ as those documents refer and detail numerous crimes, including rapes and killings, committed against civilians during the relevant period and often on one of the enumerated grounds of discrimination entailing the crime of persecution as a crime against humanity.

24. The Legal Representative also considers that some of the Items are directly relevant to corroborate the testimonies of other witnesses (including dual-status individuals) and to prove the identities of victims of the post-electoral crisis. Indeed, the Legal Representative agrees that lists included in Annex A of the Application⁵² corroborate the identities of victims included in the list provided by Witness P-0436

⁵⁰ See *e.g.* CIV-OTP-CIV-OTP-0002-0076, CIV-OTP-0045-0329, CIV-OTP-0045-1198, CIV-OTP-0053-0477, CIV-OTP-0045-1350, CIV-OTP-0045-0023, CIV-OTP-0053-0505, CIV-OTP-0044-2441, CIV-OTP-0046-0080, CIV-OTP-0002-0212, CIV-OTP-0045-1536, CIV-OTP-0048-1290, CIV-OTP-0044-0948, CIV-OTP-0046-0027, CIV-OTP-0046-0027, CIV-OTP-0045-1438, CIV-OTP-0045-0541, CIV-OTP-0044-0895, CIV-OTP-0044-0903, CIV-OTP-0044-0912, CIV-OTP-0044-0935, CIV-OTP-0025-0765, CIV-OTP-0018-0895, CIV-OTP-0018-0430, CIV-OTP-0044-0903, CIV-OTP-0045-0717, CIV-OTP-0044-0337, CIV-OTP-0025-0250, CIV-OTP-0044-1323, CIV-OTP-0044-1332, CIV-OTP-0045-0361, CIV-OTP-0044-1341, CIV-OTP-0045-1397, CIV-OTP-0047-0414, CIV-OTP-0044-1004, CIV-OTP-0047-0417, CIV-OTP-0047-0356, CIV-OTP-0044-1119, CIV-OTP-0047-0533, CIV-OTP-0045-1497, CIV-OTP-0045-0389, CIV-OTP-0044-1743, CIV-OTP-0045-0184, CIV-OTP-0045-0213, CIV-OTP-0044-2412, CIV-OTP-0044-1364, CIV-OTP-0044-1161, CIV-OTP-0044-1379, CIV-OTP-0047-0430, CIV-OTP-0044-1551, CIV-OTP-0044-1481, CIV-OTP-0044-1483, CIV-OTP-0044-1486, CIV-OTP-0044-1488, CIV-OTP-0045-1478, CIV-OTP-0044-1497, CIV-OTP-0044-1501, CIV-OTP-0044-1506, CIV-OTP-0044-1509, CIV-OTP-0044-1514, CIV-OTP-0044-1518, CIV-OTP-0046-0031, CIV-OTP-0044-1542, CIV-OTP-0044-1538, CIV-OTP-0044-1568, CIV-OTP-0046-0029, CIV-OTP-0044-1547, CIV-OTP-0044-1124, CIV-OTP-0045-0188, CIV-OTP-0044-1480, CIV-OTP-0044-1490, CIV-OTP-0045-0170, CIV-OTP-0053-0055, CIV-OTP-0045-0157, CIV-OTP-0044-1211, CIV-OTP-0044-1216, CIV-OTP-0044-0310.

⁵¹ See the Application, *supra* note 3, para. 32-39; as well as the arguments contained in Annex A.

⁵² See *e.g.* CIV-OTP-0029-0454 (# 1598 of Annex A), CIV-OTP-0029-0471 (#1602 of Annex A), CIV-OTP-0029-0462 (#1607 of Annex A)

(list of the “*Collectif des Victimes du Quartier de Doukouré Yopougon*”),⁵³ while some photographs depict the graves of victims of the 17 March 2011 incident, including of the sister of Witness P-0297.⁵⁴

25. Moreover, the Legal Representative submits that items bearing a date outside of the timeframe of the charges are nevertheless relevant to this case, as they allow for a better understanding of the background of the post-electoral crisis of 2010-2011. Moreover, some of these Items show a pattern of conduct in the use of mercenaries or the integration of the youth in the FDS, as part of the common plan to keep Mr Gbagbo in power by all means, as well as a pattern of violence from the *Jeunes Patriotes* similar to the one occurred during the period covered by the charges.⁵⁵

26. The Legal Representative also notes that some Items are only relevant to one of the co-accused.⁵⁶ In this regard, she recalls that, as indicated in the *Katanga and Ngudjolo* case, “[i]n a case involving more than one accused, the fact that an item of evidence is only relevant to one of the accused and bears no relation to another co-accused, is not a ground for objection by the latter”.⁵⁷

27. As regard the probative value and authenticity of the Items, the Legal Representative stresses that the absence of a date and/or a signature in some of the documents concerned by the Application⁵⁸ should not prevent the Chamber from

⁵³ This list is also subject to the Application (CIV-OTP-0058-0320 (#1525 of Annex A)), but was already submitted by the Prosecution on 1 May 2017.

⁵⁴ See CIV-OTP-0049-0031 and CIV-OTP-0049-0032.

⁵⁵ On the pattern of violence similar to the one of 2010-2011 and the pattern of criminality from the *Jeunes Patriotes* and militia groups, see e.g. CIV-OTP-0008-0968, CIV-OTP-0063-3191, CIV-OTP-0052-0613, CIV-OTP-0063-3058, CIV-OTP-0063-3189, CIV-OTP-0008-0396, and CIV-OTP-0063-3106. On the use of mercenaries, see e.g. CIV-OTP-0008-0935, CIV-OTP-0047-0163, CIV-OTP-0047-0161, CIV-OTP-0047-0160, and CIV-OTP-0047-0162. See also, in general, e.g. CIV-OTP-0092-0245, CIV-OTP-0052-0615, CIV-OTP-0008-0968, CIV-OTP-0042-0423, CIV-OTP-0057-1245, and CIV-OTP-0018-0533.

⁵⁶ See e.g. CIV-OTP-0064-0296, CIV-OTP-0065-0024, and CIV-OTP-0018-0801.

⁵⁷ See the “Decision on the Prosecutor’s Bar Table Motions”, *supra* note 17, para. 18. See also the “Decision on the Bar Table Motion of the Defence of Germain Katanga” (Trial Chamber II), No. ICC-01/04-01/07-3184, 21 October 2011, para. 11.

⁵⁸ See e.g. CIV-OTP-0044-1551, CIV-OTP-0044-1481, CIV-OTP-0044-1483, CIV-OTP-0044-1486, CIV-OTP-0044-1488, CIV-OTP-0044-1497, CIV-OTP-0044-1501, CIV-OTP-0044-1506, CIV-OTP-0044-1509,

accepting their submission. Indeed, and in addition to the detailed arguments already presented in Annex A of the Application demonstrating the reliability of the documents bearing no signature and/or date,⁵⁹ the Appeals Chamber recently confirmed that “[i]t is clear that, depending 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”.⁶⁰

28. In this sense, and specifically in relation to the documents emanating from the ONUCI, the Legal Representative agrees that the fact that they are unsigned does not affect their authenticity and/or reliability, especially when these documents are evaluated in light of the testimony of Witness P-0414, who authenticated those types of documents and confirmed that they are typical reports prepared by the ONUCI.⁶¹

29. Moreover, the Legal Representative notes the arguments by the Prosecution referring to the chain of custody of the Items,⁶² especially those collected from the FDS’ collections or at the Presidential Palace and Residence, and submits that the investigators’ reports detailing the manner in which those documents were collected are strong indicators of the reliability of said Items.

30. In this regard, the Chamber made clear in the Decision of 9 December 2016, in relation to the documents that were provided by the current Ivorian authorities, that the allegations of fabrication and tampering of evidence were, to date, “wholly

CIV-OTP-0044-1514, CIV-OTP-0018-0409, CIV-OTP-0045-0341, CIV-OTP-0045-0698, CIV-OTP-0018-0070, CIV-OTP-0018-0409, CIV-OTP-0018-0037, CIV-OTP-0018-0158, CIV-OTP-0018-0426, CIV-OTP-0018-0185, CIV-OTP-0045-0102, CIV-OTP-0045-0541, CIV-OTP-0045-0543, CIV-OTP-0045-1432, CIV-OTP-0045-1397.

⁵⁹ See for example the arguments made by the Prosecution with regard to the unsigned and/or undated documents CIV-OTP-0044-1551, CIV-OTP-0044-1481, CIV-OTP-0044-1483 (#880, 887, and 899 of Annex A), CIV-OTP-0045-0698 (#1185 of Annex A), CIV-OTP-0018-0070 (#1532 of Annex A), CIV-OTP-0018-0409 (#1560 of Annex A), CIV-OTP-0018-0037 (#1579 of Annex A), CIV-OTP-0018-0158 (#1586 of Annex A).

⁶⁰ See the Judgment of 24 July 2017, *supra* note 15, para. 52.

⁶¹ See the Application, *supra* note 3, paras. 32-39.

⁶² See the Application, *supra* note 3, paras. 42-46; see also the arguments for each documents in Annex A.

unsubstantiated".⁶³ The Legal Representative also refers to the testimony of Witness P-0046, where the latter confirmed that some unsigned documents emanating from the archives of the National Police ("*Direction Générale de la Police Nationale*") were nevertheless authentic.⁶⁴

31. The Legal Representative also agrees with the Prosecution that the documents in Annex B merely serve to support the method by which some of the items listed in Annex A were obtained and, as such, their submission does not represent a substantive addition to the List of Evidence.⁶⁵

32. Moreover, having carefully reviewed the content of the Application and the explanations provided in its Annexes A and B, and considering the Decision of 9 December 2016 in relation to 161 documents previously submitted by the Prosecution,⁶⁶ the Legal Representative contends that the submission of the Items does not raise any issue requiring a preliminary evaluation of the evidence or an immediate ruling on the relevance or the admissibility.

33. Lastly, the Legal Representative argues that the introduction of the Items will not be prejudicial to the rights of the Accused. On the contrary, it will save time and will thereby ensure that they are tried without undue delay.⁶⁷ Indeed, the direct introduction of the evidence in question will avoid the trial proceedings being burdened by time-consuming or repetitive questioning of witnesses for the purposes of submitting documents which are *prima facie* relevant, probative and authentic and

⁶³ See the Decision of 9 December 2016, *supra* note 7, para. 40.

⁶⁴ See the transcript of the hearing held on 15 February 2017, No. ICC-02/11-01/15-T-123-Red-ENG, p. 81, line 24 to p. 83, line 18. See also the arguments on the reliability of the documents emanating from the National Police in the Application, *supra* note 3, paras. 27-31.

⁶⁵ See the Application, *supra* note 3, para. 46.

⁶⁶ See the Decision of 9 December 2016, *supra* note 7, para. 35.

⁶⁷ See the Decision of 9 December 2016, *supra* note 7, para. 34; and the "Decision on the Prosecutor's Bar Table Motions", *supra* note 17, para. 41.

for which the admissibility will be in any event determined at the end of the trial.⁶⁸ Furthermore, the Items have been timely disclosed by the Prosecution⁶⁹ and the Defence teams have the opportunity to advance any objections or observations on any of the Items, which the Chamber will take into account in its final assessment of the evidence.

V. Conclusion

34. For all these reasons explained *supra*, the Legal Representative respectfully requests the Chamber to grant the Application in its entirety.



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Principal Counsel

Dated this 15th day of September 2017

At The Hague, The Netherlands

⁶⁸ See the Decision on the Admission of Evidence, *supra* note 4, paras. 9-10 and 12. See also the "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)", *supra* note 24, paras. 9 and 16.

⁶⁹ See the details of the dates of disclosure of the Items in Annex A.