

**Cour
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**International
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Court**

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No.: ICC-02/11-01/15
Date: **22 December 2017**

TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera-Carbuccia
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 Confidential Annexes A, B, C and D

**Prosecution's application for the introduction of documentary evidence under
paragraphs 43-44 of the directions on the conduct of the proceedings**

Source: Office of the Prosecutor

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

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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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I. INTRODUCTION

1. Pursuant to the Trial Chamber's Order of 23 January 2017,¹ the Prosecution seeks to introduce and submit 72 documents ("Items") under paragraphs 43 and 44 of the directions on the conduct of the proceedings.²

2. Having carried out a further review of its List of Evidence ("LoE")³ as it nears the end of its case, the Prosecution has identified the Items among material not previously, or sought to be, submitted.

3. The Items, which include, *inter alia*, 21 transcripts or translations of video/audio evidence, should be recognised as submitted because they are relevant to, and probative of, issues in the case. As explained further below, depending on their bearing on particular witnesses' testimonies and other issues, the Items are listed in tables provided in Confidential Annexes A, B, C and D, detailing the given document's relevance and probative value including authenticity.

II. CONFIDENTIALITY

4. Annexes A, B, C and D are filed as "Confidential" pursuant to regulation 23bis(1) of the Regulations of the Court, as they refer to underlying confidential material, contain identifying information about protected witnesses and/or because they refer to testimony of witnesses given in private session.

III. PROCEDURAL HISTORY

5. The Chamber's 23 January 2017 Order, which directed the Prosecution to file a consolidated submission of documentary evidence, was made "without prejudice to

¹ 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 ("Order"), ICC-02/11-01/15-787, para. 10 (notified on 24 January 2017).

² ICC-02/11-01/15-498-AnxA ("Directions").

³ ICC-02/11-01/15-T-213-CONF-ENG-ET, p. 3, l. 9-13 (indicating that the Prosecution would review remaining documents for potential submission via bar table motion).

the further submission of additional documentary evidence if necessary”.⁴ The Prosecution filed its consolidated submission of documentary evidence on 28 April 2017 (“April Submission”).⁵ The Prosecution also filed, on 31 July 2017, a consolidated submission focusing specifically on video evidence,⁶ which it later supplemented by submitting corresponding transcripts.⁷

6. In anticipation of the end of its case, the Prosecution has carried out a further review of its LoE. The Prosecution announced its intention to file the current application during the hearing of 29 November 2017.⁸

IV. SUBMISSIONS

7. Having carefully reviewed its LoE as noted, the Prosecution tenders the Items listed at Annexes A, B, C and D under paragraphs 43-44 of the Directions and requests that they be considered as submitted. With the exception of two declarations which are annexed to the present application, the listed Items are all available to the Trial Chamber, the Parties and participants in e-Court.⁹

8. Paragraph 43 of the Directions allows Parties to “introduce documentary evidence directly, without producing it by or through a witness.” The Prosecution has met the requirements of paragraph 44 of the Directions by providing, at each Annex, the Items’ (i) relevance and probative value, including authenticity; and (ii) the first INCRIM disclosure date.¹⁰

⁴ Order, para. 11.

⁵ ICC-02/11-01/15-895.

⁶ ICC-02/11-01/15-998.

⁷ ICC-02/11-01/15-1089.

⁸ ICC-02/11-01/15-T-213-CONF-ENG-ET, p. 3, l. 9-18. *See also* April Submission, para. 13 (acknowledging that even if the Prosecution had endeavored to submit in that application most if not all of the documents it wished to submit by way of written submissions, it might, should the need arise, make further submissions of additional documentary evidence before the close of its case).

⁹ As set out in Annex D, the two declarations will be disclosed and uploaded in e-Court shortly.

¹⁰ Directions, para. 44. Although the Prosecution is mindful of regulation 36(2)(b) of the Regulations of the Court and the main submission is contained in the April Submission and herein at paragraphs 9-15, the Annexes provide the information specifically as to each Item’s relevance and probative value including authenticity.

9. The Items consist of documents obtained by the Prosecution during the investigation from a variety of sources. They are relevant to a number of issues in this case, such as: the common plan, activities of members of the Inner Circle, non-charged crimes forming the widespread or systematic attack against a civilian population, proof of death or injury of victims, *etc.* The specific relevance of each Item is developed in the tables provided in the Annexes. These tables also show, with respect to the Items' probative value and authenticity, the provenance as well as distinctive features of each document.

10. Items are placed in the different Annexes depending on their significance to particular witnesses' testimony and other issues.

11. Annex A is general, consisting of 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. Following the approach taken by the Prosecution in its April Submission—where it made observations regarding the probative value of documents obtained from particular collections—the collections to which these items belong are indicated where relevant.¹¹

12. Annex B consists of 14 documents related to Prosecution expert Witness P-0410. These are composed of letters of instruction, envelopes related to x-rays submitted during Witness P-0410's testimony, and a consent form related to a witness examined by P-0410. In the interests of judicial economy in order to expedite the examination of expert Witness P-0410 at the time of his testimony, submission of these documents is now sought.¹²

¹¹ April Submission, paras. 14-41.

¹² See ICC-02/11-01/15-T-217-Conf-ENG ET, p. 13, l. 1-12 (Presiding Judge noting that the letters of submission are the same), p. 62, l. 7-15 (Presiding Judge encouraging proposal to submit the envelopes that were related to x-rays through paragraphs 43-44 of the Directions).

13. Annex C consists of 13 documents related to upcoming Prosecution Witness P-0564, which the Prosecution applies to submit now in order to streamline its examination of this witness.

14. Annex D consists of two investigator's reports and accompanying declarations. Their submission serves the interests of judicial economy, avoiding the need to call several witnesses on matters relating to chain of custody or to provide an overview of the relevant documentary evidence. P-0535's investigator's report (CIV-OTP-0073-0920) is mainly a chain of custody report for the consent form which is offered for submission as part of this application under Annex B, and also describes the process by which expert Witness P-0410 met with other Prosecution witnesses. P-0616's investigator's report (CIV-OTP-0084-4434) is provided to facilitate the Chamber's understanding of issues related to the identification of some of the victims of the Abobo 17 March 2011 incident, by giving an overview of the relevant and available documentary evidence. Alternatively, following the testimony of Prosecution expert P-0564, should the Chamber decide that it would benefit from *viva voce* testimony regarding this overview, it could order Witness P-0616's appearance pursuant to article 64(6)(d).

15. The accompanying declarations are signed and confirm the authenticity of the investigator's reports submitted.¹³

¹³ See also April Submission, para. 13 and references therein (submitting that a similar approach was adopted with respect to the paragraphs 43-44 filing of reports relating to witnesses P-0549 and P-0550, where the Chamber considered as submitted the accompanying declarations).

V. CONCLUSION

16. For the foregoing reasons, the Prosecution tenders the Items listed at Annexes A, B, C and D, and requests that the Trial Chamber recognise them as submitted.



Fatou Bensouda, Prosecutor

Dated this 22nd day of December 2017

At The Hague, The Netherlands