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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 Document

Legal Representative's consolidated response to Prosecution's filings
Nos. ICC-02/11-01/15-998 and ICC-02/11-01/15-1089

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 application by the Prosecution for the introduction of video evidence under paragraphs 43-44 of the Amended Directions on the Conduct of the Proceedings (the “Application”),² together with the supplemental submission of transcriptions of said evidence (the “Supplemental Submission”),³ should be granted.

2. The Application meets the requirements under paragraphs 43 and 44 of the Amended Directions on the Conduct of the Proceedings (the “Amended Directions”)⁴ as all the video evidence and related material listed in Annexes B,⁵ C⁶ and D⁷ are *prima facie* relevant, probative and authentic and their direct submission would result in an enhancement of the efficiency of the proceedings.

3. The Legal Representative also supports the Prosecution’s request for the items not originally included in its list of evidence⁸ to be considered as submitted through the exercise of the Chamber’s functions and powers under articles 64(6)(d) and 69(3) of the Rome Statute. In this regard, the Legal Representative argues that (i) the

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 “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”, No. ICC-02/11-01/15-998, 1 August 2016 (the “Application”).

³ See 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”, No. ICC-02/11-01/15-1089, 18 December 2017 (the “Supplemental Submission”).

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

⁵ See Annexes B1, B2, B3, B4 and B6 to the Supplemental Submission, *supra* note 3; and the corrected version of Annex B5 of the Application, *supra* note 2.

⁶ See Annexes C1 and C3 to the Supplemental Submission, *supra* note 3; and Annex C2 to the Application, *supra* note 2.

⁷ See Annex D to the Application, *supra* note 2.

⁸ See items listed in Annex B3 to the Supplemental Submission, *supra* note 3. See also Annex D to the Application, *supra* note 2.

complementarity of those videos *vis-à-vis* other items included in the list of evidence might indeed assist the Chamber in its determinations relevant to the trial; and (ii) the submission into evidence of those videos would not be prejudicial to the Accused as both Defence teams had already access through rule 77 of the Rules of Procedure and Evidence (the “Rules”) or as potentially exonerating evidence (“PEXO”) disclosure to the videos contained in Annex B3, and the video tendered in Annex D is merely a higher quality version of a video disclosed as incriminating material in 2014.

II. Background

4. On 4 May 2016, Trial Chamber I (the “Chamber”) adopted the Amended Directions.⁹

5. On 23 January 2017, the Chamber ordered the Prosecution to file a consolidated submission of documentary evidence by 28 February 2017.¹⁰

6. On 9 February 2017, following a request from the Prosecution,¹¹ the Chamber granted an extension of time until 30 June 2017 for the submission of video evidence.¹²

7. On 7 June 2017, following a new request from the Prosecution,¹³ the Chamber granted an extension of time until 31 July 2017 for the submission of video evidence.¹⁴

⁹ See the Amended Directions, *supra* note 4.

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 “Public redacted version of ‘Prosecution’s urgent Request for an extension of time to comply with one of the time limits set out in the Chamber’s Order of ICC-02/11-01/15-787’, 8 February 2017”, No. ICC-02/11-01/15-798-Red, 9 February 2017.

¹² See the transcript of the hearing held on 9 February 2017, No. ICC-02/11-01/15-T-119-Red-ENG WT EK, p. 1, line 23 to p. 2, line 2.

8. On 31 July 2017, the Prosecution filed the Application.¹⁵ On the same day, the Legal Representative received from the Prosecution four CDs containing the items listed in Annexes B3 and D, as well as the searchable spreadsheet contained in Annex A of the Application.

9. On 6 September 2017, the Prosecution filed corrected versions of five annexes to the Application.¹⁶

10. On 11 September 2017, the Chamber decided to extend until 15 January 2018 the time limit for any response to the Application.¹⁷

11. On 18 December 2017, the Prosecution filed the Supplemental Submission.¹⁸

III. Submissions

12. Paragraph 43 of the Amended Directions allows for the introduction of documentary evidence other than testimonial (i.e. documents and audio-visual material), without producing it by or through a witness. The Chamber has further indicated that the direct introduction of any documentary evidence will be permitted

¹³ See the “Public redacted version of ‘Prosecution’s Request for an extension of time for the submission of its video evidence, 29 May 2017’”, No. ICC-02/11-01/15-939-Red, 29 May 2017.

¹⁴ See the “Decision on the Prosecutor’s request for an extension of time for the submission of video evidence” (Trial Chamber I), No. ICC-02/11-01/15-951, 7 June 2017.

¹⁵ See the Application, *supra* note 2.

¹⁶ See the “Corrected version of annexes B1, B2, B5, B6 and D to 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”, No. ICC-02/11-01/15-998-AnxB1-Corr-Anx; No. ICC-02/11-01/15-998-AnxB2-Corr-Anx; No. ICC-02/11-01/15-998-AnxB5Corr-Anx; No. ICC-02/11-01/15-998-AnxB6-Corr-Anx, and ICC-02/11-01/15-998-AnxD-Corr-Anx, 6 September 2017.

¹⁷ See the transcript of the hearing held on 11 September 2017, No. ICC-02/11-01/-15-T-189-ENG ET WT, p. 2, lines 22-25.

¹⁸ See the Supplemental Submission, *supra* note 3.

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”.¹⁹

13. 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 of the items identified in the relevant tables annexed to the Application and the Supplemental Submission. 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 also argues that the direct submission of each of said items would result in an enhancement of the efficiency of the proceedings.

A. The video evidence is relevant, authentic and reliable

(i) Annexes A and B: RTI videos and related material

14. The Prosecution identifies in tables B2, B3 and B4 annexed to the Supplemental Submission the date, relevance and probative value for each of the documents. The Legal Representative notes that all the RTI videos listed in Annexes B2 and B3, and videos CIV-OTP-0022-0067 and CIV-OTP-0074-0073 contained in Annex B4, were broadcasted during the relevant timeframe of the case,²⁰ i.e. between the months of December 2010 and April 2011.

15. The Legal Representative posits that the evidence in question is relevant and probative as, on the one hand, it shows the key role of the RTI itself as a propaganda tool, and in particular in the mobilisation of the youth through broadcasted instructions and incitements from the two Accused. On the other hand, this video evidence goes to the proof of a wide range of issues in this case, including crucial

¹⁹ See the Amended Directions, *supra* note 4, para. 44.

²⁰ 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. 11.

ones such as the implementation of the common plan through the use of the FDS²¹ and the youth²² for the commission of violent acts; the activities of the inner circle – also covering their knowledge and denial of the crimes charged.²³

16. Moreover, the Legal Representative supports the submission of the RTI videos contained in Annex B4 which were broadcasted before the period addressed in the charges, insofar as they are relevant to the background of the crisis and all provide key information about: (i) Mr Blé Goudé's role as leader of the COJEP;²⁴ (ii) the activities of the Young Patriots,²⁵ and (iii) their support to Mr Gbagbo.²⁶

17. Furthermore, the Legal Representative argues that each of the items contained in Annexes B2, B3 and B4 bears *prima facie* sufficient indicia of reliability.²⁷ The Legal Representative notes that, as indicated in the Application,²⁸ all documents were collected by Prosecution staff from the Ivorian *Cellule Spéciale d'Enquête* ("CSEI")/Ministry of Justice, the United Nations and the RTI and the original source of each document is indicated in tables B2, B3 and B4 annexed to the Application. In this regard, the Investigation Report on the screening and collection of video, audio and documentary material (the "Investigation Report")²⁹ details the locations and conditions of the review of documents at UNOCI and at the RTI's archives, showing

²¹ See, *inter alia*, the following items: CIV-OTP-0026-0022; CIV-OTP-0061-0095; CIV-OTP-0061-0540; CIV-OTP-0061-0542; CIV-OTP-0061-0546; CIV-OTP-0061-0568; CIV-OTP-0069-0372; CIV-OTP-0074-0054; CIV-OTP-0074-0055; CIV-OTP-0074-0056.

²² See, *inter alia*, the following items: CIV-OTP-0061-0546; CIV-OTP-0064-0131; CIV-OTP-0069-0372; CIV-OTP-0069-0375; CIV-OTP-0069-0376; CIV-OTP-0069-0377; CIV-OTP-0069-0378; CIV-OTP-0069-0379; CIV-OTP-0069-0380; CIV-OTP-0069-0381.

²³ See, *inter alia*, the following items: CIV-OTP-0026-0018; CIV-OTP-0026-0022; CIV-OTP-0061-0095; CIV-OTP-0061-0567; CIV-OTP-0064-0083; CIV-OTP-0069-0369; CIV-OTP-0069-0594; CIV-OTP-0074-0054; CIV-OTP-0074-0055.

²⁴ See the following items: CIV-OTP-0075-0040; CIV-OTP-0075-0043; CIV-OTP-0075-0044.

²⁵ See the following items: CIV-OTP-0075-0042; CIV-OTP-0075-0044; CIV-OTP-0075-0045; CIV-OTP-0075-0046; CIV-OTP-0075-0047.

²⁶ See the following items: CIV-OTP-0075-0037; CIV-OTP-0075-0041; CIV-OTP-0075-0044; CIV-OTP-0075-0045; CIV-OTP-0075-0046; CIV-OTP-0075-0047.

²⁷ See 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. 16.

²⁸ See the Application, *supra* note 2, para. 22.

²⁹ See the "Investigation Report on the screening and collection of video, audio and documentary material at UNOCI, Abidjan and the *Radiodiffusion Télévision Ivoirienne*, Abidjan", CIV-OTP-0073-0938 (the "Investigation Report").

that the chain of custody remained unbroken. The Investigation Report is further supported by a signed declaration confirming its authenticity.³⁰

18. Together with the Investigation Report, Annex B5 to the Application³¹ also provides the relevant evidence logs and lists of evidence related to the first,³² second³³ and third missions at the UNOCI,³⁴ as well as the evidence logs and list of evidence collected from the CSEI.³⁵ Annex B5 further contains the list of the “*films conducteurs*” of the planned news items to be broadcasted and related to the RTI videos, contained in Annex B, that the Prosecution is seeking to submit. Their original source is indicated in Annex B5 itself and further supported by the same Investigation Report.³⁶ Accordingly, the Legal Representative submits that the RTI video evidence, coupled with the relevant transcriptions in Annex B6 to the Supplemental Submission,³⁷ also bears adequate indicators of authenticity and reliability.

(ii) *Annexes C and D: non-RTI videos and related material*

19. In the same vein, the Legal Representative submits that the non-RTI videos listed in Annex C1 are relevant and probative. All the items - with the limited exception of videos CIV-OTP-0062-1004; CIV-OTP-0062-1003; CIV-OTP-0062-1020; CIV-OTP-0063-3200 to CIV-OTP-0063-3203; CIV-OTP-0078-0046; CIV-OTP-0078-0498, and CIV-OTP-0081-0338 – were recorded during the period addressed in the charges.³⁸ They include: (i) public speeches and interviews given by the two Accused and members of their inner circle before, during and in the aftermath of the

³⁰ See the addendum CIV-OTP-0097-0222.

³¹ See the corrected version of Annex B5 to the Application, *supra* note 16.

³² See the following items: CIV-OTP-0064-0021 and CIV-OTP-0064-0050.

³³ See the following items: CIV-OTP-0064-0029 and CIV-OTP-0064-0050.

³⁴ See the following item: CIV-OTP-0074-0033.

³⁵ See the following items: CIV-OTP-0061-0383 and CIV-OTP-0061-0529.

³⁶ See the Investigation Report, *supra* note 29.

³⁷ See the Supplemental Submission, *supra* note 3.

³⁸ Video CIV-OTP-0018-0005 relates to a speech given by Mr Gbagbo just a few months before the elections, on 27 August 2010 and as such, highly relevant to the charges.

elections³⁹ - which go to the proof of a number of key issues of this case, including Mr Gbagbo's control over the FDS, Mr Blé Goudé's leadership within the youth, the implementation of the common plan and the Accused's knowledge about crimes and their failure to take measures; (ii) the role played by the Young Patriots and their coordination with the FDS;⁴⁰ and (iii) the specific incidents on 25-28 February 2011,⁴¹ 3 March 2011,⁴² 17 March 2011,⁴³ and 12 April 2011.⁴⁴

20. Videos CIV-OTP-0062-1003; CIV-OTP-0062-1004; CIV-OTP-0062-1020; CIV-OTP-0063-3200 to CIV-OTP-0063-3203; CIV-OTP-0078-0046; CIV-OTP-0078-0498, and CIV-OTP-0081-0338 predate the period addressed in the charges. Nonetheless, they are highly relevant to material issues in this case insofar as they address the creation of the Young Patriots movement,⁴⁵ and Mr Blé Goudé's role and leadership within the COJEP and the FPI.⁴⁶

21. The Prosecution indicates the original source of each item in both Annex C1, listing the video evidence itself, and Annex C2, containing all the documents relating to the chain of custody of those videos.⁴⁷ Accordingly, the Legal Representative submits that all the video evidence contained in Annex C⁴⁸ with the related

³⁹ See in chronological order the following items: CIV-OTP-0063-2801; CIV-OTP-0062-1002; CIV-OTP-0041-0473; CIV-OTP-0007-0167; CIV-OTP-0019-0290; CIV-OTP-0088-0029; CIV-OTP-0022-0057; CIV-OTP-0028-2801; CIV-OTP-0028-0103; CIV-OTP-0055-0449; CIV-OTP-0001-0401; CIV-OTP-0052-0673; CIV-OTP-0062-0998; CIV-OTP-0072-0004; CIV-OTP-0002-0389; CIV-OTP-0003-0017; CIV-OTP-0041-0474; CIV-OTP-0003-0018; CIV-OTP-0047-0606; CIV-OTP-0039-0067; CIV-OTP-0081-0465; CIV-OTP-0081-0463; CIV-OTP-0047-0650; CIV-OTP-0010-0239; CIV-OTP-0041-0470; CIV-OTP-0042-0411.

⁴⁰ See the following items: CIV-OTP-0002-0995; CIV-OTP-0003-0713; CIV-OTP-0041-0480; CIV-OTP-0047-0670; CIV-OTP-0055-0464; CIV-OTP-0062-1007; CIV-OTP-0068-0075.

⁴¹ See the following item: CIV-OTP-0061-0379.

⁴² See the following items: CIV-OTP-0002-1062; CIV-OTP-0037-0387; CIV-OTP-0039-0141; CIV-OTP-0040-0342; CIV-OTP-0044-0738-R01.

⁴³ See the following items: CIV-OTP-0043-0267; CIV-OTP-0043-0268; CIV-OTP-0051-2092.

⁴⁴ See the following items: CIV-OTP-0004-0234; CIV-OTP-0016-0849; CIV-OTP-0017-0042; CIV-OTP-0047-0604.

⁴⁵ See the following item: CIV-OTP-0081-0338.

⁴⁶ See the following items: CIV-OTP-0062-1004; CIV-OTP-0062-1020; CIV-OTP-0063-3200 to CIV-OTP-0063-3203; CIV-OTP-0078-0046; CIV-OTP-0078-0498.

⁴⁷ See Annex C1 to the Supplemental Submission, *supra* note 3; and Annex C2 to the Application, *supra* note 2.

⁴⁸ *Idem*.

transcriptions and translations listed in Annex C3 to the Supplemental Submission is probative, authentic and reliable.

22. Finally, as regards video CIV-OTP-0100-0434 and the related transcript contained in Annex D,⁴⁹ the Legal Representative submits that (i) it is relevant and probative as it shows youths throwing stones on the Boulevard Principal on 25 February 2011, and (ii) it is reliable, insofar as it is a contemporaneous recording of said incident and is therefore likely to influence the Chamber's determination on this particular incident.⁵⁰

B. The Prosecution clearly indicates the date of the relevant disclosure of each item contained in Annexes A to D

23. The Legal Representative notes that, pursuant to the requirements of paragraph 44 of the Amended Directions, the Prosecution indicates the date on which each item was firstly disclosed to the Defence – including when such disclosure was made through rule 77 of the Rules or as PEXO, as for Annex B3 and Annex D material.⁵¹

C. The additional video items listed in Annexes B3 and D shall be submitted pursuant to articles 64(6)(d) and 69(3) of the Rome Statute

24. The Legal Representative supports the Prosecution's request for the items contained in Annexes B3 and D⁵² - which were not originally included in its list of evidence - to be considered as submitted in the record of the case through the exercise of the Chamber's functions and powers under articles 64(6)(d) and 69(3) of the Rome Statute. In this regard, the Legal Representative posits that the

⁴⁹ See Annex D to the Application, *supra* note 2.

⁵⁰ See the "Decision on Prosecutor's Bar Table Motions" (Trial Chamber II), No. ICC-01/04-01/07-2635, 17 December 2010, paras. 20 and 27.

⁵¹ See Annex B3 to the Supplemental Submission, *supra* note 3; and Annex D to the Application, *supra* note 2.

⁵² *Idem.*

complementarity of those 16 videos vis-à-vis other items included in the list of evidence might indeed assist the Chamber in its determinations relevant to the trial in furtherance of establishing the truth. The Legal Representative recalls that the Chamber has adopted this view in similar instances in the past.⁵³

25. Moreover, the submission into evidence of said videos would not be prejudicial to the Accused. Indeed, as indicated in the relevant annexes, both Defence teams were already given access between December 2014 and June 2015 to the videos contained in Annex B3 through rule 77 disclosure or as PEXO. Video CIV-OTP-0100-0434, listed in Annex D, is simply a higher quality version of video CIV-OTP-0061-0379, disclosed as incriminating material to the Defence for Mr Gbagbo in July 2014 and to the Defence for Mr Blé Goudé in September 2014, and included in the Prosecution's List of Evidence.

26. Lastly, the Legal Representative argues that the introduction of the documents will save Court time and will ensure that the Accused are tried without undue delay.⁵⁴ Indeed, the direct introduction of the evidence in question avoids the trial proceedings being burdened by time-consuming or repetitive questioning of witnesses for the purposes of submitting several similar items which are *prima facie* relevant, probative and authentic and for which the admissibility will be in any case determined at the end of the trial.⁵⁵

⁵³ See the transcript of the hearing held on 8 March 2017, No. ICC-02/11-01/15-T-130-ENG CT WT, p. 4, line 25 to p. 5, line 4. See also the transcript of the hearing held on 3 April 2017, No. CC-02/11-01/15-T-142-Red-ENG WT, p. 47, lines 14-21.

⁵⁴ See the "Decision on the Prosecutor's Bar Table Motions", *supra* note 50, para. 41.

⁵⁵ See the "Decision on the submission and admission of evidence" (Trial Chamber I), No. ICC-02/11-01/15-405, 29 January 2016, 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) (Trial Chamber VII), No. ICC-01/05-01/13-1285, 24 September 2015, paras. 9 and 16.

IV. Conclusion

27. For the foregoing reasons, the Legal Representative respectfully requests the Chamber to grant the Application together with the Supplemental Submission.

A handwritten signature in black ink, reading 'Paolina Massidda', with a horizontal line drawn underneath the name.

Paolina Massidda
Principal Counsel

Dated this 15th day of January 2018

At The Hague, The Netherlands