

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **19 June 2018**

TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Geoffrey Henderson

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ***

Public

**Decision on the common legal representative of victims' application to submit one
item of documentary evidence**

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

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Eric MacDonald

Counsel for Mr Laurent Gbagbo

Emmanuel Altit

Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Geert-Jan Alexander Knoops

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

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber I (“Chamber”) of the International Criminal Court, in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Articles 64, 68(3) and 69 of the Rome Statute, and Rules 63, 64 and 81 of the Rules of Procedure of Evidence (“Rules”), issues the following decision on the “Legal Representative’s Application for the introduction of documentary evidence under paragraphs 43-44 of the Amended Directions on the conduct of the proceedings” (“Application”).¹

1. On 28 January 2016, the Chamber adopted the “Decision on the submission and admission of evidence” (“Decision of 28 January 2016”).²
2. On 4 May 2016, the Chamber adopted the amended and supplemented directions on the conduct of proceedings (“Directions on the Conduct of Proceedings”).³
3. On 15 December 2018, the common legal representative of the victims participating in the proceedings submitted the Application. She seeks the introduction, under paragraphs 20, 43 and 44 of the Directions on the Conduct of Proceedings, of one document, which is “a list of names of Nigerien nationals who were killed during the post-electoral crisis”.⁴ The document is annexed to the application in two versions, one unredacted only made available to the Chamber *ex parte*,⁵ and one redacted made available also to the Prosecutor and the Defence teams.⁶ The common legal representative states that this level of classification is justified as the document “contains the contact details of certain individuals”.⁷
4. The common legal representative submits that the proposed item of evidence is “relevant to a number of issues in this case including: (i) the widespread and systematic character of the attack against the civilian population; and (ii) the

¹ ICC-02/11-01/15-1088 and annexes.

² ICC-02/11-01/15-405.

³ ICC-02/11-01/15-498 and annex A.

⁴ Application, paras 1-2.

⁵ ICC-02/11-01/15-1088-Conf-Exp-AnxA.

⁶ ICC-02/11-01/15-1088-Conf-AnxB-Red.

⁷ Application, para. 4.

targeting and persecution of civilians on political, racial, national, ethnic, cultural and religious grounds”.⁸ Further, the common legal representative provides information as to how she obtained the document.⁹

5. The common legal representative also argues that the submission of the document is relevant to the victims’ interests because it “provides relevant information on the extent of the victimisation suffered by a specific category of civilians targeted during the post-electoral crisis”.¹⁰ She also submits that the document is related to, but not repetitive of the other evidence in this trial.¹¹
6. On 22 January 2018, the Defence of Laurent Gbagbo responded to the Application, submitting that that the common legal representative of the participating victims cannot submit evidence under paragraphs 43-44 of the Directions on the Conduct of Proceedings,¹² that the proposed item does not possess any relevance or probative value,¹³ that in the absence of a witness being called the submission of the item would be prejudicial to the Defence,¹⁴ and, in any case, that the redactions vis-à-vis the Defence are without basis.¹⁵
7. On 22 January 2018, the Defence of Charles Blé Goudé also responded to the Application, arguing that it should be rejected *in limine* because only parties may submit evidence under paragraphs 43-44 of the Directions on the Conduct of Proceedings,¹⁶ that the relevance of the proposed item has not been substantiated,¹⁷

⁸ Application, para. 11.

⁹ *Ibid.*, paras 14-15.

¹⁰ *Ibid.*, para. 16.

¹¹ *Ibid.*, para. 18.

¹² ICC-02/11-01/15-1103, paras 2-3.

¹³ *Ibid.*, paras 4-21.

¹⁴ *Ibid.*, paras 22-23.

¹⁵ *Ibid.*, paras 24-28.

¹⁶ ICC-02/11-01/15-1105, paras 6-11.

¹⁷ *Ibid.*, paras 12-16.

and that the redactions vis-à-vis the Defence are unnecessary and prevent any investigation on the probative value of the document.¹⁸

8. The Prosecutor did not respond to the Application.
9. The procedure for the presentation of evidence by the common legal representative is set forth at paragraphs 18-21 of the Directions on the Conduct of Proceedings, in particular – for documentary evidence – at paragraph 20. The Application makes reference to paragraph 20,¹⁹ and contains submissions on its requirements.²⁰ It is therefore properly before the Chamber.
10. The Chamber considers that the requirements of paragraph 20 of the Directions of the Conduct of the Proceedings have been met with respect to the proposed item. The common legal representative has sufficiently established that the proposed document is relevant to the victims' interests, would contribute to the determination of truth and is not repetitive of other evidence in this trial. The application to submit the document must therefore be granted.
11. The Defence of Laurent Gbagbo and the Defence of Charles Blé Goudé have made submissions on the relevance and probative value of the proposed item. In line with the Decision of 28 January 2016, and considering that a ruling on relevance or admissibility is not appropriate at this stage, the Chamber will consider the arguments raised as part of its eventual determination on the facts of the case.
12. The Chamber notes that both Defence teams oppose the redactions applied to the document by the common legal representative. The Chamber notes, however, that the redactions concern identifying and contact information in line with the applicable protocol.²¹ Therefore, while the redactions may be reviewed in the future, the

¹⁸ *Ibid.*, paras 17-20; see also paras 21-23.

¹⁹ Application, para. 1.

²⁰ *Ibid.*, paras 16-19.

²¹ See ICC-02/11-01/11-737-AnxA, paras 40-43.

Chamber considers that they are currently justified. In this regard, it is clarified that the redacted version of the document is recognised as submitted.

13. Finally, the Chamber notes that the common legal representative has stated her intention to make the document available in Ecourt if the Application is granted.²² This is indeed the appropriate procedure to ensure a complete evidentiary record on Ecourt.

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

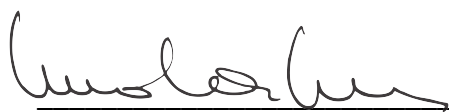
AUTHORISES the submission of the document annexed to the Application as Annex B and **RECOGNISES** the document as submitted; and

ORDERS the common legal representative to ensure that the document is made available to the Chamber and the parties on Ecourt.

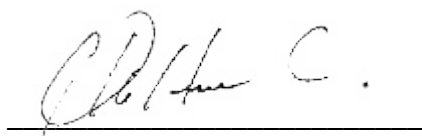
Judge Henderson appends a dissenting opinion.

²² *Ibid.*, para. 8.

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



Judge Cuno Tarfusser, Presiding Judge



Judge Olga Herrera Carbuccion



Judge Geoffrey Henderson

Dated 19 June 2018

At The Hague, The Netherlands