

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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TRIAL CHAMBER I

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

SITUATION IN CÔTE D'IVOIRE

IN THE CASE OF
THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLÉ GOUDÉ

Public Document

Redacted version of "Response to the 'Prosecution's application for the introduction of documentary evidence under paragraph 43 of the directions on the conduct of the proceedings' (ICC-02/11-01/15-583-Conf)", ICC-02/11-01/15-617-Conf, 15 July 2016

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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 documentary evidence under paragraph 43 of the directions on the conduct of the proceedings (the “Application”)² should be granted.

2. The Application meets the requirements under paragraphs 43 and 44 of the directions on the conduct of the proceedings (the “Amended Directions”)³ and the documents collected by the Prosecution from Camp Agban in Abidjan in 2013 are *prima facie* relevant, probative and authentic and their direct submission would result in an enhancement of the efficiency of the proceedings.

II. Confidentiality

3. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this response is filed confidentially because it makes reference to submissions filed with the same classification. A public redacted version of this response will be filed in due course.

III. Background

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

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 “Public redacted version of ‘Prosecution’s application for the introduction of documentary evidence under paragraph 43 of the directions on the conduct of the proceedings’, 13 June 2016, ICC-02/11-01/15-583-Conf”, No. ICC-02/11-01/15-583-Red, 18 July 2016 (the “Application”).

³ 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”), paras. 43-44.

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 “Evidence Admission Decision”).

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

6. On 13 June 2016, the Prosecution filed the Application.⁶

7. On 15 June 2016, following a request from the Defence of Mr Gbagbo,⁷ the Chamber granted the Defence an extension of time until 29 July 2016 to submit observations on the Application.⁸

8. On 17 June 2016, the Chamber informed the parties and participants *via* email that the extended deadline also applies to the Legal Representative.⁹

IV. Submissions

9. 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 documents identified in the Application and annexed table. 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 agrees with the Prosecution that the direct submission of each of said documents would result in an enhancement of the efficiency of the proceedings.

10. The Legal Representative wishes to stress that the introduction of evidence without producing it by or through a witness is an established practice of the Court

⁵ See *supra* note 3.

⁶ See *supra* note 2.

⁷ See the transcript of the hearing held on 14 June 2016, No. ICC-02/11-01/15-T-50-CONF-ENG RT (private session), p. 101, line 16 to p. 102, line 2.

⁸ See the transcript of the hearing held on 15 June 2016, No. ICC-02/11-01/15-T-51-CONF-ENG RT (private session), p. 67, lines 6-9.

⁹ See the email received from the Chamber on 17 June 2016 at 16:54 hours.

pursuant to its jurisprudence,¹⁰ and it is also in line with the Evidence Admission Decision.¹¹

11. Indeed, as indicated by the various Chambers of the Court “[t]he statutory framework confers a broad degree of discretion on the Chamber to assess and consider various types of evidence”.¹² In this regard, this 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”.¹³

12. Furthermore, article 64(9)(a) of the 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’”.¹⁴

13. Accordingly, the Appeals Chamber explained that 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”.¹⁵ The Appeals Chamber has further clarified that the

¹⁰ 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.

¹¹ See the Evidence Admission Decision, *supra* note 4, paras. 8- 9.

¹² See the “Decision on Prosecution’s first request for the admission of documentary evidence”, *supra* note 10, para. 6; and the “Decision on the Prosecution’s Request for Admission of Documentary Evidence”, *supra* note 10, para. 13.

¹³ See the Evidence Admission Decision, *supra* note 4, para. 4.

¹⁴ See the “Decision on Prosecution’s first request for the admission of documentary evidence”, *supra* note 10 and the “Decision on the Prosecution’s Request for Admission of Documentary Evidence”, *supra* note 10, para. 13. See also the Evidence Admission Decision, *supra* note 4, para. 8.

¹⁵ 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

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 introduced.¹⁶

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 in so far 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”.¹⁷

15. Firstly, as regards 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”.¹⁸ By the same token, the relevance criterion forms “[t]he legal basis for excluding irrelevant evidentiary material from the trial”¹⁹ and defines “[t]he purpose of a specific item of evidence in the proceedings”.²⁰

16. Secondly, the probative value of the evidence on the one hand is determined by the reliability of the exhibit, and on the other hand is strictly linked to the

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.

¹⁶ 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 15, para. 37.

¹⁷ See the Amended Directions, *supra* note 3, para. 44.

¹⁸ See the “Decision on Prosecutor’s Bar Table Motions”, *supra* note 10, para. 16. See also the “the ‘Decision on the Prosecution’s Request for Admission of Documentary Evidence’”, *supra* note 10, para. 15.

¹⁹ See the “Decision on Prosecutor’s Bar Table Motions”, *supra* note 10, para. 17.

²⁰ *Idem*.

relevance criterion,²¹ 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”.²²

17. In this regard, the Prosecution identifies in the table annexed to the Application the date, relevance and probative value for each of the documents.²³ The Legal Representatives notes that all the documents – with the exception of [REDACTED] –²⁴ bear the date of their creation and were issued during the relevant timeframe of the case or in the months that immediately preceded the events,²⁵ *i.e.* between the months of June 2010 and April 2011.

18. The Legal Representative submits that the evidence in question is relevant and probative as the identified items go to the proof of the common plan and, more specifically, to the proof of four main categories of relevant facts: (i) the formal organisation and line of command,²⁶ as well as the functioning and reporting system of the FDS during the 2010-2011 elections;²⁷ (ii) [REDACTED];²⁸ (iii) [REDACTED],²⁹ [REDACTED],³⁰ [REDACTED],³¹ [REDACTED],³² [REDACTED];³³ and (iv) [REDACTED],³⁴ [REDACTED].³⁵

²¹ 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 15, para. 11.

²² See the “Decision on Prosecutor’s Bar Table Motions”, *supra* note 10, para. 20.

²³ The Legal Representative notes that in relation to [REDACTED]. [REDACTED].

²⁴ In this regard, the Legal Representative notes that these documents contain [REDACTED]. [REDACTED].

²⁵ See the “Decision on Prosecution’s first request for the admission of documentary evidence”, *supra* note 10, para. 11.

²⁶ [REDACTED]

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ [REDACTED].

³⁰ [REDACTED].

³¹ [REDACTED].

³² [REDACTED].

³³ [REDACTED].

³⁴ [REDACTED].

³⁵ [REDACTED].

19. Furthermore, the Legal Representative argues that each of the documents bears *prima facie* sufficient indicia of reliability.³⁶ Indeed, all the documents – with the exception of [REDACTED] –³⁷ bear an official stamp, signature or both.³⁸ In this regard, Trial Chamber II indicated that “[w]hen the author of a public document is an identified representative or agent of an official body or organisation [...] that document will be presumed authentic if it has been signed by the identified official and the authenticity of that signature is not called into question”.³⁹

20. Similarly, [REDACTED] indicates the author of the document, while [REDACTED] contain the relevant number of protocol and the official letterhead. According to the relevant jurisprudence, “[o]fficial documents with no identified author but whose origin is immediately apparent from the documents themselves (e.g. from a letterhead or logo) may be accepted by the Chamber without certification, unless their authenticity has been challenged by one of the parties”.⁴⁰

21. The Legal Representative further notes that, as indicated in the Application,⁴¹ all documents were collected by Prosecution staff from Camp Agban during a mission undertaken [REDACTED] 2013 to Abidjan and the original source of each document is indicated in the table annexed to the Application. Furthermore, the “Investigator’s report on document collection at the *Gendarmerie Nationale*”⁴² details the [REDACTED] of documents [REDACTED] at Camp Agban and shows that the chain of custody remained unbroken.

³⁶ See the “Decision on the Prosecution’s Request for Admission of Documentary Evidence”, *supra* note 10, para. 16.

³⁷ In relation to these three items see *supra* note 24.

³⁸ See the “Decision on Prosecution’s first request for the admission of documentary evidence”, *supra* note 10, para. 11.

³⁹ See the “Decision on the Prosecutor’s Bar Table Motions”, *supra* note 10, para. 24(b).

⁴⁰ *Idem*.

⁴¹ See the Application, *supra* note 2, para. 10.

⁴² *Idem*, footnote 6. See the “Investigator’s report on document collection at the *Gendarmerie Nationale*”, CIV-OTP-0049-2986, pp. 12-14.

22. Lastly, the Legal Representative argues that the introduction of the documents will not be prejudicial to the rights of the Accused. On the contrary, it will save Court time and will ensure that the Accused are tried without undue delay.⁴³ 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 several similar documents 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.⁴⁴

V. Conclusion

23. For the foregoing reasons, the Legal Representative respectfully requests the Chamber to grant the Application.



Paolina Massidda
Principal Counsel

Dated this 19th day of June 2018

At The Hague, The Netherlands

⁴³ See the “Decision on the Prosecutor’s Bar Table Motions”, *supra* note 10, para. 41.

⁴⁴ See the Evidence Admission Decision, *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 15, paras. 9 and 16.