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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 Public Annexes A, B and C

Prosecution's application to submit video evidence related to the Bar le Baron speech, to present fullest possible reading of the speech

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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I. INTRODUCTION

1. This application is made to ensure that the Chamber has before it – in advance of hearing the block of crime base victims for the 25 February 2011 incident – the fullest reading possible of the speech given by the Accused Blé Goudé at the *Bar Le Baron* of Yopougon on 25 February 2011 (“*Bar le Baron* speech”).

2. The Prosecution is not in possession of a full video recording (“video”) of the *Bar le Baron* speech, but of various, overlapping, portions of that speech, including a large, unbroken portion disclosed by the Defence for Mr Gbagbo (“Gbagbo Defence”), which is not on the Prosecution’s List of Evidence (“LoE”). In addition to one video excerpt from the Prosecution’s LoE already submitted onto the case record (referred to below as “Excerpt 1”¹), the Prosecution now seeks to submit a further video excerpt already on its LoE (referred to below as “Excerpt 3”²), as well as the Defence video (also referred to below as “Excerpt 2”³). Together, the clips contained in these three excerpts form the fullest reading available of the *Bar Le Baron* speech.⁴

3. The Prosecution therefore seeks to submit, pursuant to paragraphs 43 and 44 of the Directions on the conduct of the proceedings (“Directions”),⁵ Excerpt 3 along with its accompanying transcript.

4. Further, and to provide the Chamber with the fullest reading available of the speech, the Prosecution requests an extension of time, under articles 64(2) and 64(3)(c) of the Rome Statute (“Statute”), rule 84 of the Rules of Procedure and Evidence (“Rules”) and regulation 35 of the Regulations of the Court (“Regulations”), to re-disclose the Defence video as incriminatory material and to add this document to its LoE. If this request is

¹ CIV-OTP-0064-0087 at 00:12:33 – 00:16:00.

² CIV-OTP-0074-0083 at 00:11:48 – 00:18:53.

³ CIV-D15-0001-0586 (all).

⁴ Throughout this request, the Prosecution has used the language of “item”, “excerpt” and “clip”. “Item” refers to the entire video document, identifiable by ERN. An item may contain one or more separate “excerpts”, which are usually stand-alone news stories. Typically an RTI broadcast will consist of multiple “excerpts”, each of which is normally announced by the news anchor/presenter. An excerpt may contain various “clips”, which are defined by the Prosecution, for the purpose of submission.

⁵ ICC-02/01-01/15-498-AnxA.

granted, the Prosecution seeks introduction of the Defence video and its corresponding transcript, under paragraphs 43 and 44 of the Directions. Alternatively, the Prosecution asks that the Chamber allow submission of the Defence video in the exercise of its own functions and powers under articles 64(6)(d) and 69(3) of the Statute, and in furtherance of the determination of the truth.

5. Annex A includes the Evidence Registration Number (“ERN”) for each video and transcript. The video excerpts are available to the Trial Chamber, the Parties and participants in E-court. The two transcripts are contained in Public Annexes B and C.⁶

II. REQUEST FOR EXTENSION OF TIME

6. The Prosecution was directed to file its LoE no later than 30 June 2015.⁷ It hereby seeks an extension of time under under articles 64(2) and 64(3)(c) of the Statute, rule 84 of the Rules and regulation 35 of the Regulations, to re-disclose the Defence video - item CIV-D15-0001-0586⁸ - as incriminatory material, and add it to its LoE. In the alternative, the Prosecution asks that the Chamber request submission of the Defence video, in the exercise of its own functions and powers under articles 64(6)(d) and 69(3) of the Statute, and in furtherance of the determination of the truth.

7. The Defence video consists of just one excerpt. At time stamps 00:01:09 to 00:03:59, it contains 2 minutes and 50 seconds of unbroken footage from the *Bar Le Baron* speech (referred to as “Clip 2” below, in the request for submission), some portions of which are not contained in other versions of the speech on the Prosecution’s current LoE. Throughout this video clip, Mr. Blé Goudé states words to the effect that France and the United Nations are trying to push Côte d’Ivoire towards civil war and genocide, which must be avoided. He acknowledges his power over the pro-Gbagbo youth assembled and their readiness to carry out his orders by stating “*Vous savez, je peux tout de suite vous dire:*

⁶ CIV-OTP-0094-0023: transcript of Defence video; CIV-OTP-0097-0213: transcript of Excerpt 3. Neither document has been disclosed *via* Ringtail. CIV-OTP-0097-0213 is included in INCRIM package 66, scheduled for 13 April 2017.

⁷ ICC-02/11-01/15-58, para. 25.

⁸ The transcript of this video, CIV-OTP-0094-0023, has been provided to the Defence by email, but not yet formally disclosed by Ringtail.

« Allons dans tel quartier, on va attaquer les gens », et puis vous allez m'applaudir. Je n'ai pas besoin d'applaudissement, j'ai besoin de vous orienter, et c'est mon devoir, et c'est ma responsabilité.”⁹ He goes on to distinguish himself and Mr. Gbagbo from Alassane Ouattara and Guillaume Soro, whom he implies are connected to instances of throat cuttings.¹⁰ In an apparent allusion to the Rwandan genocide, he states “... c'est comme ça que ça a commencé au Rwanda....”¹¹ A transcript of the video has been generated by the Prosecution and is annexed as Public Annex B.

8. The Defence video has been available to the Prosecution since its disclosure by the Gbagbo Defence on 1 June 2012.¹² Whilst the criterion under regulation 35(2), second sentence, of the Regulations may not be entirely met, the Prosecution nevertheless submits that first, there is good cause for re-disclosure of the Defence video and its addition to the LoE, and second, that it is in the interests of justice for the Chamber to have before it all available footage of this crucial speech, given its temporal and geographic connection to the events in Yopougon on 25 February 2011. Having in mind the Trial Chamber's Decision of 13 May 2016,¹³ as recently cited to by the Chamber in its Decision of 8 March 2017,¹⁴ the Prosecution, alternatively, asks that the Chamber requests submission of this video in the exercise of its own functions and powers under articles 64(6)(d) and 69(3) of the Statute.¹⁵

9. The Defence video contains portions that are not available in other versions of the *Bar Le Baron* speech on the Prosecution's LoE, and furthermore, as Clip 2 is unbroken, it confirms the sequence of the sentences uttered. Addition of the Defence video to the LoE and/or submission of the Defence video into evidence would therefore provide the

⁹ CIV-OTP-0094-0023 at 0024, l. 38-40.

¹⁰ “Moi je ne suis pas Alassane OUATTARA, je ne suis pas Guillaume SORO... GBAGBO Laurent n'est pas Alassane OUATTARA, GBAGBO Laurent n'est pas Guillaume SORO. Quand tu es même pays, ce pays-là, tu veux le voir évoluer. Voyez-vous, comment dans un pays, des gens ils prennent une machette et un couteau et ils égorgent. Ça c'est quoi ça ?” (CIV-OTP-0094-0023 at 0024-0025, l.40-45.)

¹¹ CIV-OTP-0094-0023 at 0024-0025, l. 52.

¹² Gbagbo Disclosure R78 package 1 (1 June 2012).

¹³ ICC-02/11-01/15-524, paras 21-22.

¹⁴ See ICC-02/11-01/15-T-130-ENG CT, 8 March 2017, p.2, ln. 21 - p. 3, ln. 3.

¹⁵ See ICC-02/11-01/15-T-130-ENG CT, 8 March 2017, p.4, ln. 3 – p. 5, ln. 11; and ICC-02/11-01/15-T-142-Red-ENG WT, 3 April 2017, p. 47, lns. 14-21.

Chamber with the best available evidence of the content of the *Bar le Baron* speech. As such, its submission would contribute to a better understanding of Mr. Blé Goudé's contribution to the events of 25 February 2011 in Yopougon, and ultimately to the determination of the truth. Furthermore, it is in the interests of justice, in the Prosecution's submission, for this evidence to be received at this stage – during the Prosecution phase of the case. The Prosecution elaborates further on the content of the Defence video in Part III, below.

10. The extension of time to re-disclose and add the Defence video to the LoE and/or its submission into evidence would not be prejudicial to the Accused, who have already been in a position to investigate the evidence. The Defence video originated from the Gbagbo Defence, and was disclosed by the Prosecution, under rule 77 of the Rules, to the Defence for Mr. Blé Goudé (“the Blé Goudé Defence”) on 25 June 2014.¹⁶ In addition, some portions of the Defence video are contained in other clips that are already on the Prosecution's LoE.¹⁷

11. The Prosecution notes that the Blé Goudé Defence indicated during the opening of the case its intention to rely on the Defence video at trial. After referring to a part of the speech from the Prosecution's “own video footage”, Counsel for Mr Blé Goudé, stated: “[i]n the course of this trial we will present you the next part of the speech made to the Baron Bar in order to show you what the Prosecution is attempting to conceal.”¹⁸ The Prosecution joins the Blé Goudé Defence in its submission, also made at the opening of the case, that it is necessary to take the speech “as a whole in order to explain things”.¹⁹

III. SUBMISSION OF DOCUMENTARY EVIDENCE

12. The *Bar Le Baron* speech, given on the morning of 25 February 2011 in Yopougon, was a crucial precursor to the subsequent attack on the Doukouré and Lem districts of

¹⁶ Pre-confirmation Rule 77 package 4, 25 June 2014.

¹⁷ See CIV-OTP-0074-0083 at 00:16:45 – 00:16:53; 00:16:53 – 00:17:03; 00:17:03 – 00:17:19; and 00:17:19 – 00:17:33, which form part of Clip 3 / Excerpt 3; and CIV-OTP-0043-0269 at 00:00:00 – 00:00:18, already submitted through Witness P-0369.

¹⁸ See ICC-02/11-01/15-T-12-Red-ENG, p. 49, l. 8-9.

¹⁹ See ICC-02/11-01/15-T-12-Red-ENG, p. 49, l. 8-9.

Yopougon by pro-Gbagbo youths, among others. While the speech had a total duration of approximately eight to ten minutes, and was previously obtainable in its entirety on YouTube,²⁰ the Prosecution, during its investigation has not been able to locate a recording of the speech in full. Instead, the Prosecution has footage of various portions of this speech, many of which overlap with each other.

13. The Prosecution has analysed these various portions with a view to presenting the Chamber with the closest presentation of the entirety of the footage in the Prosecution's possession, without duplication. The first excerpt (CIV-OTP-0064-0087 at 00:12:33 to 00:16:00), along with its transcript (CIV-OTP-0063-2998), has already been submitted ("Excerpt 1").²¹ This excerpt contains two separate clips of the *Bar le Baron* speech ("Clip 1(a)" and "Clip 1(b)"). The Prosecution now seeks submission of two further video excerpts: namely, the Defence video (Excerpt 2), as referred to above at paragraphs 6-11, and a further excerpt from a video on the LoE ("Excerpt 3"). The Prosecution also seeks submission of their corresponding transcripts. Each additional video excerpt sought for submission into the record contains one clip of the speech ("Clip 2" and "Clip 3" respectively). The Prosecution emphasises that the chronology of these four clips is not known, and their numerical descriptions are not intended to denote any such chronology.

Excerpt 1: CIV-OTP-0064-0087 at 00:12:33 – 00:16:00 (already submitted)

Clip 1(a): at 00:14:02 – 00:14:33 (Transcript: CIV-OTP-0063-2998 at 3001, lns. 57-61)

14. In this clip, Mr. Blé Goudé speaks the following words:

"Dès maintenant, l'ordre que je vous donne et qui doit être valable dans tous les quartiers, c'est que quand vous retournez dans vos quartiers, vous devez empêcher l'ONUCI de circuler. Un. Deuxièmement, en retournant dans vos quartiers, vous devez contacter les présidents de quartier, vous devez vous réunir pour savoir et vérifier les entrées et les sorties de vos quartiers et dénoncer toute personne étrangère qui vient dans votre quartier."

²⁰ Testimony of Witness P-0369: ICC-02/11-01/15-T-40-Red, p. 38, l. 16. See also CIV-OTP-0004-0072, Human Rights Watch report "They Killed Them Like It Was Nothing", at 0118, fn 83: "The video clip was formerly available on RTI's website, but it has since been removed."

²¹ Witness P-0369, ICC-02/11-01/15-T-Red-ENG, p. 42, l. 1 to p. 43, l. 23.

Clip 1(b): at 00:14:45 – 00:15:14 (Transcript: CIV-OTP-0063-2998 at 3001, lns. 65-69)

15. In this clip, Mr. Blé Goudé speaks the following words:

“Avant une semaine, avant une semaine, le temps qu’on s’organise réellement, dans les quartiers, véritablement, et que nos systèmes soient rôdés, et qu’on sait qu’à Yopougon, derrière nous, il n’y a pas d’affrontements, et qu’on sait qu’à Koumasi, derrière nous, il n’y a pas d’affrontements, et qu’on sait que tous les groupes ont été organisés, et qu’on sait qui peut faire quoi et qui doit faire quoi, avant une semaine, je vais vous appeler devant le Golf Hotel.”

Excerpt 2 (Defence video): CIV-D15-0001-0586 (all)

Clip 2: at 00:01:09 – 00:03:59 (Transcript: CIV-OTP-0094-0023 at 0224-0225, lns. 29-55)

16. In this clip, Mr. Blé Goudé speaks the following words, as indicated:

“Charles Blé Goudé: Il y a un piège dans lequel on ne doit pas tomber. Quel est ce piège? C’est la guerre civile. Moi je suis un responsable et vous êtes avec nous, nous sommes ensemble, nous avons un idéal. Nous ne voulons pas que notre pays s’emboue dans la guerre civile. Or, là où l’ONU ne réussit pas à installer la personnalité de son choix, l’ONU installe un État de non-droit. Au Libéria, personne ne contrôlait personne. Et quand tu arrives à l’aéroport, c’est eux qui contrôlent tout. À défaut d’avoir leur homme à la tête du pays, ils installent un pays de non-droit... où les populations se poursuivent, c’est ça qu’ils cherchent. Et petit à petit, nous sommes en train de tomber dans ce piège. Écoutez-moi très bien, parce que eux ils n’ont rien à perdre, mais nous, nous avons notre pays à perdre. Je suis convaincu que cela vous ferait mal demain de voir tout Yopougon détruit. Vous savez, je peux tout de suite vous dire: « Allons dans tel quartier, on va attaquer les gens », et puis vous allez m’applaudir. Je n’ai pas besoin d’applaudissement, j’ai besoin de vous orienter, et c’est mon devoir, et c’est ma responsabilité. Moi je ne suis pas Alassane OUATTARA, je ne suis pas Guillaume SORO.

Intervenant non identifié : GBAGBO !

Charles Blé Goudé : GBAGBO Laurent n’est pas Alassane OUATTARA, GBAGBO Laurent n’est pas Guillaume SORO. Quand tu aimes un pays, ce pays-là, tu veux le voir évoluer. Voyez-vous, comment dans un pays, des gens ils prennent une machette et un couteau et ils égorgent. Ça c’est quoi ça ?

Intervenant non identifié : La démocratie.

Charles Blé Goudé : On n’a jamais eu ça en Côte d’Ivoire ici. Ça c’est Al-Qaïda qui fait ça. Vous comprenez, c’est comme ça que ça a commencé au Rwanda, ça n’a pas commencé

autrement, hein. C'est comme ça que ça a commencé au Rwanda. Je ne veux pas, et j'insiste là-dessus devant la presse, je ne veux pas d'affrontement entre civils en Côte d'Ivoire. C'est ça qu'ils cherchent. La France et l'ONUCI cherchent à organiser un génocide en Côte d'Ivoire, notez ça, n'oubliez jamais ça."

[Grey highlights added and explained below.]

(a) *Relevance*

17. While multiple small portions of this clip are contained in other videos on the Prosecution's LoE, including Excerpt 3 (below),²² this Defence video presents a longer and unbroken version of part of the *Bar Le Baron* speech, and therefore confirms the sequence of the sentences uttered. The portions of the clip that are contained in other videos already on the Prosecution's LoE are highlighted in grey in the above text.

18. This clip shows the anti-United Nations and anti-French rhetoric used by Mr Blé Goudé, at the *Bar Le Baron* speech. It also shows how Mr Blé Goudé instilled the pro-Gbagbo youth with the fear that Mr Gbagbo's political opponents, with support from the international community, would perpetrate massacres, even a genocide, if the pro-Gbagbo youth did not follow Mr Blé Goudé's guidance. Mr Blé Goudé suggests that the United Nations are trying to push Côte d'Ivoire towards civil war and genocide, which must be avoided. He distinguishes himself and Mr Gbagbo from Alassane Ouattara and Guillaume Soro, whom he implicates in instances of throat cuttings. In an apparent allusion to the Rwandan genocide, he states "... *c'est comme ça que ça a commencé au Rwanda...*". This appeal to avoid civil war is not a call for peace, given the tenor of the rest of the speech: Mr Blé Goudé also orders the youth to stop UNOCI from circulating, to monitor the entries and exits to the neighbourhoods, to report any "*personne étrangère*", and to await the call to go to the Golf Hotel.²³

²² See CIV-OTP-0074-0083 at 00:16:45 – 00:16:53; 00:16:53 – 00:17:03; 00:17:03 – 00:17:19; and 00:17:19 – 00:17:33, which form part of Clip 3 / Excerpt 3; and CIV-OTP-0043-0269 at 00:00:00 – 00:00:18, already submitted through Witness P-0369.

²³ See Clips 1(a) and 1(b) of the *Bar Le Baron* speech: CIV-OTP-0064-0087 at 00:14:02 – 00:14:33 and 00:14:45 – 00:15:14 (Transcript: CIV-OTP-0063-2998 at 3001, lns. 57-61 and 65-69).

19. The clip also shows Mr Blé Goudé's control – and his assertion of his control over the pro-Gbagbo youth assembled – and his knowledge of their readiness to carry out his orders, including as to acts of violence. This is apparent when he states: *“Vous savez, je peux tout de suite vous dire: « Allons dans tel quartier, on va attaquer les gens », et puis vous allez m’applaudir.”* Mr Blé Goudé then speaks to his apparent perception of his role in directing pro-Gbagbo youth by stating: *“Je n’ai pas besoin d’aplaudissement, j’ai besoin de vous orienter, et c’est mon devoir, et c’est ma responsabilité.”* These words show that Mr Blé Goudé represented himself and other youth leaders present (*“mes amis”*) as having the responsibility to direct pro-Gbagbo youth in their thinking.

(b) *Authenticity*

20. The video was provided to the Prosecution by the Gbagbo Defence on 1 June 2012, under the title *“Extrait Video de Djibito TV – La Guerre civile, le piège à éviter selon Blé Goudé”*. On its face, the video appears to be a news item published by Djibito *via* an unknown medium. The metadata indicates that it was obtained from Open Source by the Gbagbo Defence on 17 April 2012. It is apparent that “Clip 2” is an authentic recording of Mr Blé Goudé's *Bar Le Baron* speech, as it overlaps in part with clips broadcast on RTI, and submitted by the Prosecution.²⁴ While the footage is not duplicative, Mr Blé Goudé's identical words and appearance confirm that it depicts the same filmed event.

Excerpt 3: CIV-OTP-0074-0083 at 00:11:48 – 00:18:53

Clip 3: at 00:17:47 – 00:17:52 (Transcript: CIV-OTP-0097-0213 at 0217, ln. 113)

21. In this clip, Mr. Blé Goudé speaks the following words:

“Une fois que vous avez décidé là, c’est à moi maintenant et mes amis d’orienter.”

²⁴ See CIV-OTP-0074-0083 at 00:16:45 – 00:17:33, submitted in the present application; CIV-OTP-0043-0269 at 00:00:00 – 00:00:18, submitted through Witness P-0369.

22. The wider excerpt also contains portions of other clips.²⁵

(a) *Relevance*

23. This excerpt shows the anti-United Nations and anti-RHDP rhetoric broadcast by the RTI. The journalist claims that UNOCI has directly invited itself into the military theatre because the meeting between the African Union and the RHDP had not brought about the desired result. It claims that UNOCI Deputy Hamadoun Touré had ordered UNOCI troops to go to military camps to cause trouble. Some portions of Mr Blé Goudé's *Bar Le Baron* speech are shown, in which he accuses ONUCI of installing a state of lawlessness and suggests that France and the United Nations are trying to push Côte d'Ivoire towards war and genocide. The journalist concludes by referring to two major objectives: to neutralise the United Nations forces and to burst the insurrectional cyst at the Golf Hotel.

24. "Clip 3", specifically, shows that Mr Blé Goudé perceives himself and other youth leaders present ("*mes amis*") as having the responsibility to direct pro-Gbagbo youth in their thinking.

25. This excerpt also contains Clip 1(b) in its entirety (CIV-OTP-0064-0087 at 00 :14 :45 – 00 :15 :14). That clip shows Mr Blé Goudé's asserted ability to lead and organise the youths in a coordinated fashion, with his references to getting "properly organised" ("*qu'on s'organise réellement*") and establishing well-functioning systems ("*que nos systèmes soient rôdés*"), so that he can call them to go to the Golf Hotel. His reference to this organisation occurring within a week, before his call to go to the Golf Hotel, also implies a system of reporting whereby Mr Blé Goudé would be informed of the youths' capacity once they had organised themselves.

²⁵ At 00:16:45 – 00:17:33, it contains different portions of Clip 2. At 00:17:52 – 00:18:21, it contains Clip 1(b) in its entirety.

(b) *Authenticity*

26. This video was collected by the OTP from UNOCI in Abidjan, on its third such collection mission of 8-9 January 2015.²⁶

IV. CONCLUSION

27. For the foregoing reasons, the Prosecution requests:

- (i) an extension of time, under articles 64(2) and 64(3)(c) of the Statute, rule 84 of the Rules, and regulation 35 of the Regulations, to re-disclose video item CIV-D15-0001-0586 as incriminatory material and add this item of evidence to its LoE;
- (ii) the introduction of Excerpt 2 (Defence video) – CIV-D15-0001-0586 (all) – and its corresponding transcript, under paragraphs 43 and 44 of the Directions, or alternatively that the Chamber requests its submission under articles 64(6)(d) and 69(3) of the Statute;
- (iii) the introduction of Excerpt 3 – CIV-OTP-0074-0083 at 00:11:48 to 00:18:53 – and its corresponding transcript, under paragraphs 43 and 44 of the Directions; and

²⁶ See investigator report CIV-OTP-0073-0938, paras. 5-12, 17-23; and evidence log CIV-OTP-0074-0033 at 0046 (entry: “Video 93”). Both documents are available in eCourt, and will be submitted in the Prosecution’s consolidated video application by 30 June 2017.

- (iv) that both video excerpts and their corresponding transcripts be considered submitted.



Fatou Bensouda, Prosecutor

Dated this 12th day of April 2017

At The Hague, The Netherlands