

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

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

**With Confidential *ex parte* only available to the Chamber Annex A,
Confidential redacted Annex B and Public Annex C**

**Legal Representative's Application for the introduction of documentary evidence
under paragraphs 43-44 of the Amended Directions on the conduct of the
proceedings**

Source: Office of Public Counsel for Victims

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Eric Macdonald

Counsel for Mr Laurent Gbagbo

Mr Emmanuel Altit
Ms Agathe Bahi Baroan

Counsel for Mr Blé Goudé

Mr Geert-Jan Alexander Knoops
Mr Claver N'dry

Legal Representatives of the Victims

Ms Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda
Mr Enrique Carnero Rojo
Ms Ludovica Vetrucchio
Mr Alexis Larivière

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. The Common Legal Representative of the victims admitted to participate in the proceedings (the “Legal Representative”)¹ seeks the introduction and submission of documentary evidence (the “Application”), under paragraphs 20, 43 and 44 of the Amended Directions on the conduct of the proceedings (the “Amended Directions”).²

2. The documentary evidence comprises of one item, consisting of a list of names of Nigerien nationals who were killed during the post-electoral crisis (the “List”), provided by the Embassy of the Republic of Niger in Côte d’Ivoire, *Haut Conseil des Nigériens de l’Extérieur en Côte d’Ivoire*.

3. The evidence in question is relevant, probative and authentic. Furthermore, its direct submission (a) is relevant to the victims’ interests and to the matters at issue in the case; (b) would contribute to the determination of the truth and not be repetitive of evidence already before the Chamber, and, as such, would not be inconsistent with the rights of the accused and a fair and expeditious trial.

II. Confidentiality

4. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, Annex A is filed confidential *ex parte* only available to the Chamber as it contains the contact details of certain individuals. The same Annex is filed as Annex B confidential redacted.

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

III. Background

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

6. On 2 November 2017, the Chamber authorised the Legal Representative to file any application to present evidence by 15 December 2017.³

7. On 13 December 2017, the Legal Representative received the List from the Embassy of the Republic of Niger in Côte d’Ivoire, *Haut Conseil des Nigériens de l’Extérieur en Côte d’Ivoire*.

IV. Submissions

8. The Legal Representative tenders the List contained in Annex A, *ex parte* Chamber only, and in Confidential redacted Annex B, and requests that it be considered as submitted. The List will be made available to the Chamber, the Prosecution and the Defence in e-Court if the Application is granted, unless otherwise ordered by the Chamber.

9. 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. Furthermore, the Chamber has indicated that the direct introduction of any documentary evidence will be permitted 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”.⁴

³ See the Chamber’s email received on 2 November 2017 at 16:17 hours.

⁴ See Amended Directions, *supra* note 2, para. 44.

10. In turn, paragraph 20 of the Amended Directions indicates that for an application to submit non-testimonial evidence, including documentary evidence, the Legal Representative shall give *“concise information as to why the piece of evidence: (a) is relevant to the victims’ interests and to the matters at issue in the case; (b) would contribute to the determination of the truth and not be repetitive of evidence already before the Chamber; and, as such, would not be inconsistent with the rights of the accused and a fair and expeditious trial”*.⁵

a) Relevance, probative value and authenticity of the List

11. The Legal Representative submits that the evidence in question is relevant, probative and authentic. The List 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 targeting and persecution of civilians on political, racial, national, ethnic, cultural and religious grounds.

12. The List contains 48 names of individuals of Nigerien nationality who were killed in Abidjan and in various locations on the territory of Côte d’Ivoire during the relevant timeframe of the case – *i.e.* between January 2010 and May 2011.

13. The Legal Representative recalls that among the Economic Community of West-African States (ECOWAS), and together with Mali and Burkina Faso, the Republic of Niger suffered the highest number of casualties among its citizens residing in Côte d’Ivoire during the post-electoral crisis of 2010-2011.⁶ In this regard, the Legal Representative underlines that similar lists related to citizens of both Mali and Burkina Faso were provided by her to the Prosecution on 7 November 2013 and

⁵ *Idem*, para. 20.

⁶ See the Security Council “Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d’Ivoire”, S/2011/211, 30 March 2011, para. 38. See also the ECOWAS “Resolution A/Res.1/03/11 of the authority of Heads of State and Government of ECOWAS on the situation in Côte d’Ivoire”, N°: 043/2011, 25 March 2011.

subsequently disclosed to the Defence on 18 and 30 June 2015.⁷ The two lists were obtained by the relevant diplomatic authorities in Côte d'Ivoire, the *Haut Conseil des Maliens de l'Extérieur de Côte d'Ivoire* and the Embassy of Burkina Faso in Côte d'Ivoire, respectively.

14. By the same token, and with respect its probative value and authenticity, the List attached to this Application was compiled by the authorities of the Republic of Niger that were on the territory of Côte d'Ivoire during the relevant timeframe of the case. The document contains for each individual listed the complete name and, when available, the exact date and place of death.

15. The Legal Representative personally met the President of the *Haut Conseil des Nigériens de l'Extérieur en Côte d'Ivoire* in September 2017 and received the document on 13 December 2017 from the Embassy of the Republic of Niger in Côte d'Ivoire, *Haut Conseil des Nigériens de l'Extérieur en Côte d'Ivoire*. The three pages document bears both the official stamp and signature of the President of the *Haut Conseil des Nigériens de l'Extérieur en Côte d'Ivoire*, on each page,⁸ and as such shows sufficient indicia of reliability.⁹ 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”.¹⁰ The Legal Representative attaches in Annex C to this Application an official attestation of the Ambassador of the Republic of Niger on the relevant qualification of the President of

⁷ See CIV-OTP-0052-0292-R02, “Crise post-électorale en Côte d'Ivoire, le vécu de la communauté malienne” and CIV-OTP-0052-0386-R02, “Correspondence – Letter”.

⁸ 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. See also Annex C to the Application.

⁹ 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.

¹⁰ See the “Decision on the Prosecutor’s Bar Table Motions” (Trial Chamber II), No. ICC-01/04-01/07-2635, 17 December 2010, para. 24(b).

the *Haut Conseil des Nigériens de l'Extérieur en Côte d'Ivoire*, as well as the Statute of the institution.

- b) *The submission of the List is relevant to the victims' interests and to the matters at issue in the case, would contribute to the determination of the truth and is not repetitive of evidence already presented***

16. The Legal Representative submits that the List directly relates to the contextual elements of the crimes against humanity charged by the Prosecution in this case and in particular to the widespread and systematic character of the attack against the civilian population. Furthermore, the document the Legal Representative seeks to introduce goes to the proof of death of certain victims identifiable on national, ethnic and religious grounds. As such, the document provides relevant information on the extent of the victimisation suffered by a specific category of civilians targeted during the post-electoral crisis.

17. In this regard, the Legal Representative further notes that among the victims she represents, a significant number are Nigerien nationals and Ivoirians of West African descent. Accordingly, the submission of this evidence is highly relevant to the interests of the victims participating in the case and would contribute to the determination of the truth.

18. Moreover, the evidence tendered is not repetitive of the one that is already before the Chamber and, as such, would not be inconsistent with the rights of the accused and a fair and expeditious trial. Indeed, while some Prosecution's witnesses have provided testimony on the targeting and the crimes suffered by nationals of certain West-African neighbouring countries, the specific case of the Republic of Niger has not been addressed. In this regard, the Legal Representative recalls that the Prosecution alleges that *"[o]n account of their ethnicity (such as the Dioula), religion (Muslims) or nationality (citizens of West African States such as Mali, Burkina Faso or Niger, as well as Ivoirians of West African descent), members of these groups were attacked*

by the pro-GBAGBO youth and militia members who considered them to be Ouattara supporters".¹¹

19. Finally, the Defence will have time and opportunity to present its evidence following the filing of this document, and the direct introduction of the List would streamline the proceedings by avoiding calling *viva voce* witnesses for the purpose of its submission.

V. Conclusion

20. The Legal Representative submits that the List meets the requirements under paragraphs 20, 43 and 44 of the Amended Directions as it (i) is relevant, authentic, and has probative value; and (ii) contains information relevant to the victims' interests, which will contribute to the determination of the truth and is not repetitive of evidence already before the Chamber, and, as such, will not be inconsistent with the rights of the accused and a fair and expeditious trial.

21. For the foregoing reasons, the Legal Representative respectfully requests the Chamber to grant the Application and consider the List as submitted.



Paolina Massidda
Principal Counsel

Dated this 15th day of December 2017

At The Hague, The Netherlands

¹¹ See the "Prosecution's pre-trial brief", No. ICC-02/11-01/15-148-Anx1-Corr, 28 July 2015, para. 293 (emphasis added); see also *Idem*, para. 288. The Legal Representative notes that the Pre-Trial Brief contains an error insofar it refers to Nigeria instead of Niger in several paragraphs (namely, paras. 8, 286, 288-289, 293, 303, 365, 503, 506). However, it is evident – as also noted by the Legal Representative at the pre-trial stage and during the opening statements at trial – that the correct reference is to citizens from Niger who are francophone.