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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

With Confidential Annexes 1, 2 and 3.

Public redacted version of "Prosecution application to conditionally admit the prior recorded statements and related documents of [REDACTED] under rule 68(2)(b) and the prior recorded statements and related documents of [REDACTED] under rule 68(3)", 19 April 2016, ICC-023-/11-01/15-487-Conf

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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Other

Introduction

1. This request relates to the crime base witnesses upon whose evidence the Prosecution will rely to prove Incident 1: Attacks connected to the demonstrations outside RTI headquarters (16-19 December 2010) ("Incident 1"). The Prosecution seeks :
 - (i) *conditional* admission into evidence of the prior recorded statements, including related documents (collectively, "Rule 68(2)(b) Documents"), of three crime base Witnesses [REDACTED] ("Rule 68(2)(b) witnesses"), in accordance with rule 68(2)(b) of the Rules of Procedure and Evidence ("Rules"), as well as articles 69(2), 64(9)(a) and 69(4) of the Rome Statute ("Statute") and rule 63(2) of the Rules; and
 - (ii) *conditional* admission into evidence of the prior recorded statements, including related documents (collectively, "Rule 68(3) Documents"), of a further eight crime base Witnesses [REDACTED]¹ ("Rule 68(3) witnesses"), in accordance with rule 68(3) of the Rules, paragraph 55 of the "Directions on the conduct of the proceedings" ("Conduct Directions"), as well as articles 69(2), 64(9)(a) and 69(4) of the Statute and rule 63(2) of the Rules.
2. The Prosecution seeks *conditional* admission of (i) the Rule 68(2)(b) Documents, in order to save the unnecessary expenditure of resources, as explained below;² and (ii) the Rule 68(3) Documents, because rule 68(3) posits a witness' actual presence before the Chamber and his/her consent to the submission of the previously recorded testimony as conditions of admissibility of their previously recorded testimony.³
3. In its presentation of evidence, the Prosecution anticipates that it will rely upon 27 crime base witnesses whose evidence pertains (wholly or partly) to Incident 1.⁴

¹ [REDACTED].

² See the requirements under rule 68(2)(b)(ii) and (iii) of the Rules; and ICC-02/11-01/15-303.

³ See rule 68(3) of the Rules: "if the witness [...]".

⁴ Another 13 insider witnesses will provide evidence related to Incident 1, one of whom, P-0625, has already concluded his testimony.

Of these, one has already testified⁵ and eight provide evidence primarily with respect to other incidents; these Witnesses do provide some evidence with respect to Incident 1 but will be called in the blocks relating to the other incidents.⁶ Therefore, for the purposes of the presentation of the Incident 1 block, the Prosecution focuses on 18 crime base witnesses. Of these, it is intended that eight (the Rule 68(3) witnesses) will be present in court for limited, supplemental examination by the Prosecution, followed by questioning by the Parties/participants and re-examination, in the usual way. Another three would not need to appear in person (the Rule 68(2)(b) witnesses). Confidential Annex 1 contains a list of the evidence registration numbers of the proposed materials. Confidential Annex 2 sets out the proposed mode of testimony of the witnesses in the Incident 1 block.

4. The Prosecution expects to make similar requests in advance of calling its evidence in relation to each crime base block relating to each of the other four charged incidents.
5. Admitting the Rule 68(2)(b) Documents and the Rule 68(3) Documents advances the interests of justice and contributes to a fair and expeditious trial by enabling the Prosecution to present its evidence in a more concise and streamlined manner without causing any prejudice to the fair trial rights of the Accused. This aligns with the stated goal behind the rule's adoption which was to "reduce the length of ICC proceedings and streamline evidence presentation."⁷ Their admission under rule 68 complies with article 51(4) of the Statute.
6. The Rule 68(2)(b) Documents are admissible because they are *prima facie* relevant and probative of the charges and do not concern the acts and conduct of the two Accused. The nature and content of the evidence contained within the Rule 68(2)(b) Documents is such that the respective witness' appearance for cross-

⁵ Witness P-0547 has already concluded his testimony.

⁶ These eight Witnesses are [REDACTED].

⁷ Assembly of State Parties, Study Group on Governance, Working Group on Lessons Learnt: Recommendation on a proposal to amend rule 68 of the Rules of Procedure and Evidence (Prior Recorded Testimony), 31 October 2013, para. 11.

examination is unnecessary. To the contrary, the Parties and participants will benefit from an expedited presentation of the Prosecution's case-in-chief.

7. The Rule 68(3) Documents are admissible because these Witnesses will be available before the Chamber and the Parties and the Chamber will have the opportunity to examine the Witnesses during the proceedings. The Rule 68(3) Documents are *prima facie* relevant, probative and reliable, and each of Witnesses [REDACTED] will be asked to confirm the accuracy of his/her statement and related documents.

Confidentiality

8. This filing is classified as "Confidential", as it refers to information that is not yet available to the public. The Prosecution will file a Public Redacted version that will maintain the confidentiality of the relevant witness pseudonyms.

Procedural History

9. On 3 September 2015, the Single Judge issued the Conduct Directions which foresaw the possibility for admission into evidence of prior recorded testimony and set out the procedure for filing such requests."⁸
10. On 21 October 2015, pursuant to a Prosecution request,⁹ the Chamber issued its "Decision on the Prosecution's request to designate a person authorised to witness a declaration under Rule 68(2)(b) of the Rules" authorising the Registry Lead Counsel, or anyone designated by him, to witness declarations made pursuant to rule 68(b)(iii) of the Rules.¹⁰

Submissions

I. Applicable Law

a. Article 69(2) of the Statute

⁸ ICC-02/11-01/15-205, para. 54-57; *See also* ICC-02/11-01/15-303, para. 7.

⁹ ICC-02/11-01/15-222 ("Prosecution's Request for an Authorized 68(2)(b) Person").

¹⁰ ICC-02/11-01/15-303, para. 8.

11. Rule 68 provides exceptions to the principle of primacy of orality set out in article 69(2) of the Statute.

b. “Prior recorded testimony”

12. While in-court personal testimony is the rule, the Appeals Chamber has confirmed that a Chamber has the discretion to receive the testimony of a witness by means other than in-court personal testimony in accordance with the Statute and the Rules.¹¹ Rule 68 addresses the introduction of “[p]rior recorded testimony”. Chambers of this Court have previously extended the notion of “prior recorded testimony” to include written witness statements and transcripts of interviews taken pursuant to rule 111 and rule 112 of the Rules, and associated exhibits.¹²

c. Criteria for admission under Rule 68(2)(b)

13. The only criteria for admission of evidence under rule 68(2)(b) are that first, the evidence relates to “a matter other than the acts and conduct of the accused”, and second, the formal requirements that prior recorded testimony only be introduced if it is accompanied by declarations by the testifying persons that the respective prior recorded statements are true and correct to the best of each person’s knowledge and belief.¹³

14. The expression “acts and conduct” has been construed in the jurisprudence of the *ad hoc* international criminal tribunals to refer plainly to the “deeds and behaviour of the accused”, such that they seek to establish the Accused’s responsibility under any applicable mode of liability.¹⁴ Importantly, acts and conduct of the

¹¹ ICC-01/05-01/08-1386, para. 77.

¹² ICC-01/09-01/11-1938-Corr-Red2, paras. 31-33; ICC-01/04-01/06-1603, para. 18; ICC-01/04-01/07-2289-Corr-Red, para.11; ICC-01/04-01/07-2362, para. 13; ICC-01/05-01/08-2012-Red, paras. 134-136 and ICC-01/05-01/08 1386, paras. 79-81.

¹³ See rule 68(2)(b)(ii) & (iii) of the Rules; ICC-02/11-01/15-303, para. 8.

¹⁴ “The phrase ‘acts and conduct of the accused’ in Rule 92bis is a plain expression and should be given its ordinary meaning: deeds and behaviour of the accused. It should not be extended by fanciful interpretation. No mention is made of acts and conduct by alleged co-perpetrators, subordinates or, indeed, of anybody else. Had the rule been intended to extend to acts and conduct of alleged co-perpetrators or subordinates it would have said so”, see *Prosecutor v. Milošević*, IT-02-54-T, Decision on Prosecution’s Request to Have Written Statements Admitted under Rule 92 bis, 21 March 2002, para.22 (“Milošević Decision”); *Prosecutor v. Karadžić*, IT-955/18-PT, Decision on the Prosecution’s Third Motion for Admission of Statements and Transcripts of Evidence in Lieu of Viva Voce Testimony Pursuant to Rule 92 bis (Witnesses for Sarajevo Municipality), 15

Accused must be distinguished from acts and conduct of others who commit crimes for which the Accused is alleged to be responsible.¹⁵ Proof of the latter is admissible under rule 68(2)(b).

d. Exercise of discretion under rule 68(2)(b)(i)

15. Rule 68(2)(b)(i) provides a non-exhaustive list of factors to guide a Chamber's exercise of its discretion. The list covers factors both for and against introducing the prior recorded testimony;¹⁶ these factors are not pre-requisites for the admission of evidence under the rule.

16. Rule 68(2)(b), by its terms, does not unfairly prejudice the Defence; that both Parties can avail themselves of this provision underscores its inherent neutrality.¹⁷ Thus, any claim of prejudice should only be entertained in light of the circumstances of each case.

e. Criteria for admission under Rule 68(3)

17. Rule 68(3) requires both that (i) a witness is present before the Chamber; (ii) that the witness does not object to the submission of the previously recorded testimony; and (iii) that the Parties and the Chamber have the opportunity to examine the witness.

f. Exercise of discretion under rule 68(3)

18. The rule's wording of "may allow the introduction" provides the Chamber with discretionary power to admit prior recorded testimony.

October 2009, para. 5 ("Karadžić Decision"); *Prosecutor v. Hadžić*, IT-04-75-T, Decision on Prosecution Omnibus Motion for Admission of Evidence Pursuant to Rule 92 bis and Prosecution Motion to Admit GH-139's Evidence Pursuant to Rule 92 bis, 24 January 2013, para. 15 ("Hadžić Decision").

¹⁵ Karadžić Decision, para. 5; *Prosecutor v. Galić*, IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92 bis(C), 7 June 2002, para. 10 ("Galić Decision"); Hadžić Decision, para. 15; *Prosecutor v. Lukić and Lukić*, IT-98-32/1-T, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 bis, 22 August 2008, para. 17 ("Lukić Decision").

¹⁶ Assembly of State Parties, Study Group on Governance, Working Group on Lessons Learnt: Recommendation on a proposal to amend rule 68 of the Rules of Procedure and Evidence (Prior Recorded Testimony), 31 October 2013, para. 22.

¹⁷ ICC-01/05-01/13-1478-Red-Corr, para. 38.

19. In ruling on the admission of the written evidence of witnesses under the old rule 68(b),¹⁸ the Appeals Chamber has provided guidance as to factors to be taken into account, including: “(i) whether the evidence relates to issues that are not materially in dispute; (ii) whether that evidence is not central to core issues in the case, but only provides relevant background information; and (iii) whether the evidence is corroborative of other evidence.”¹⁹ Bearing in mind these factors, the fact that in-court testimony of a witness can be considerably shortened through the admission of prior recorded testimony can be, in itself, a sufficient reason for granting a rule 68(3) request.²⁰ Trial Chambers have also considered factors such as: (i) whether the admission of written evidence would avoid its unnecessary repetition; (ii) whether its admission would reduce the trial’s potentially excessive duration; (iii) whether a challenge to the relevant evidence is likely to be limited; (iv) whether the proposed material is of central significance to the case; and (v) whether the admission of written evidence would affect the Accused’s right to a fair trial.²¹

II. Applicability of amended rule 68

20. For the avoidance of any doubt, admitting the Rule 68(2)(b) Documents and the Rule 68(3) Documents under amended rule 68 of the Rules complies with article 51(4) because its application is not retroactive in this case.

21. In their respective responses to the Prosecution’s Request for an Authorised 68(2)(b) Person, both the Gbagbo and Blé Goudé Defence teams submitted that amended rule 68 was adopted approximately two years after the arrest warrants against the accused were issued.²² The Blé Goudé Defence further argued that a debate on the retroactive application of amended rule 68 in this case could only take place once a concrete rule 68 application was filed²³ while the Gbagbo

¹⁸ Transformed into the current rule 68(3) without modification.

¹⁹ ICC-01/05-01/13-1386 para. 79 (internal citations omitted) ; *See also* ICC-01/05-01/13-1478-Red-Corr para. 48.

²⁰ ICC-01/05-01/13-1478-Red-Corr para. 48 (citing ICC-01/05-01/08-1386 at para. 78).

²¹ ICC-01/04-01/06-1603, paras. 21-24; ICC-01/04-01/07-2289-Corr-Red, para. 14,

²² ICC-02/11-01/15-239, para. 19; ICC-02/11-01/15-237, para. 3.

²³ ICC-02/11-01/15-237, para. 3.

Defence pointed out that the issue was at the time before the Appeals Chamber on the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*.²⁴ On 12 February 2016, the Appeals Chamber issued its judgement on the matter.²⁵ It found that “in the case at hand, which involves the applicability of a rule concerning the introduction of evidence at trial, the date of the start of the trial is the appropriate point at which to determine ‘retroactivity’.”²⁶ In the present case, amended rule 68 was enacted prior to the commencement of trial. With clear guidance from the Appeals Chamber, there is no question as to the applicability of amended rule 68 in the current case.

III. Admission of Rule 68(2) Documents

22. The Prosecution requests *conditional* admission of the Rule 68(2)(b) Documents, namely the statements and annexes of Witnesses [REDACTED]. The Rule 68(2)(b) Documents go to the proof of matters other than the acts and conduct of the two Accused. The evidence is also probative and relevant within the meaning of rule 63(2) of the Rules. Further, the Chamber should exercise its discretion under rule 68(2)(b)(i) to allow its admission. The 68(2) Documents bear sufficient *indicia* of reliability: They were obtained by the Prosecution in the ordinary course of investigations; and the Witnesses voluntarily provided their statement in the language they fully speak and understand or assisted by an interpreter, where necessary. The Prosecution addresses other factors relevant to the Chamber’s exercise of its discretion in the paragraphs below.

23. As for the criteria under rules 68(2)(b)(ii) and (iii), in the event that the Chamber determines, in the exercise of its discretion, that the Rule 68(2) Documents should, in principle be admitted under rule 68(2)(b) of the Rules, the Prosecution will obtain the requisite accompanying declarations by the testifying persons, in accordance with rule 68(2)(b)(iii) of the Rules and the Chamber’s corresponding

²⁴ ICC-02/11-01/15-239, paras. 18-20.

²⁵ ICC-01/09-01/11-2024.

²⁶ ICC-01/09-01/11-2024, para. 81.

decision.²⁷ The Prosecution opted to wait for the Chamber's determination on the matter prior to expending its financial and time resources, and that of the Registry.

(i) Witness [REDACTED] – additional factors favouring admission

24. [REDACTED] is a crime base witness whose incriminatory evidence is limited to the 16 December 2010 incident. [REDACTED] prior recorded statement does not relate to disputed issues at the core of this case; his evidence is of a cumulative and corroborative nature in that other witnesses have given and will give evidence of similar facts; the interests of justice would be served by the introduction of this evidence; and the statement and annexes have sufficient *indicia* of reliability.

25. [REDACTED] statement centres on his observations on the 16 December 2010 RTI demonstration [REDACTED].²⁸ His information about the demonstration is general, uncontroversial, and corroborated:

(i) [REDACTED].²⁹ [REDACTED].³⁰

(ii) [REDACTED].³¹

(iii) [REDACTED]. [REDACTED].³² [REDACTED]³³ [REDACTED].
[REDACTED].³⁴

26. The summary of [REDACTED] evidence appears at ICC-02/11-01/15-314-Conf-AnxB. His examination-in-chief is expected to last three hours.³⁵ Dispensing with [REDACTED] live testimony would expedite the proceedings by saving up to

²⁷ ICC-02/11-01/15-303.

²⁸ [REDACTED].

²⁹ [REDACTED].

³⁰ [REDACTED].

³¹ [REDACTED].

³² [REDACTED].

³³ [REDACTED].

³⁴ [REDACTED].

³⁵ ICC-02/11-01/15-314-Conf-AnxB, p. 393-395.

nine court hours,³⁶ and would thus serve the interests of justice by ensuring that the Accused are tried without undue delay.

27. [REDACTED] prior recorded statement and accompanying annexes are appended as confidential Annex 3-A.

b. Witness [REDACTED] – additional factors favouring admission

28. [REDACTED] is a crime base witness whose incriminatory evidence is limited to the 16 December 2010 incident. [REDACTED] prior recorded statement does not relate to disputed issues at the core of this case; his evidence is of a cumulative and corroborative nature in that other witnesses have given and will give evidence of similar facts; the interests of justice would be served by the introduction of this evidence; and the statement and annexes have sufficient *indicia* of reliability.

29. [REDACTED] statement centres on his observations on 16 December 2010 RTI demonstration [REDACTED].³⁷ His information about the demonstration is very limited, general, uncontroversial, and corroborated:

(i) [REDACTED].³⁸ [REDACTED].³⁹ [REDACTED].⁴⁰ [REDACTED].⁴¹

(ii) [REDACTED].⁴² [REDACTED].⁴³ [REDACTED]. [REDACTED].⁴⁴

30. The summary of [REDACTED] evidence appears at ICC-02/11-01/15-314-Conf-AnxB. His examination-in-chief is expected to last three hours.⁴⁵ Dispensing with [REDACTED] live testimony would expedite the proceedings by saving up to nine court hours.⁴⁶

³⁶ ICC-02/11-01/15-314-Conf-AnxB, p. 393: The Prosecution estimated three hours of examination-in-chief which would entitle the Defence to 6 hours of cross-examination, totalling a maximum of nine hours.

³⁷ [REDACTED].

³⁸ [REDACTED].

³⁹ [REDACTED].

⁴⁰ [REDACTED].

⁴¹ P-0547, ICC-02/11-01/15-T-13-Red-ENG, p.17, l. 4-7, p.17, l. 24-25 - p.19, l. 21-23, p.39, l.7-9 & p.62, l.2-4.

⁴² [REDACTED].

⁴³ [REDACTED].

⁴⁴ [REDACTED].

⁴⁵ ICC-02/11-01/15-314-Conf-AnxB, p. 396-397.

⁴⁶ ICC-02/11-01/15-314-Conf-AnxB, p. 396: The Prosecution estimated three hours of examination-in-chief which would entitle the Defence to six hours of cross-examination, totalling a maximum of nine hours.

31. [REDACTED] prior recorded statement and accompanying annexes are appended as confidential Annex 3-B.

c. Witness [REDACTED] – additional factors favouring admission

32. [REDACTED] prior recorded statement does not relate to disputed issues at the core of this case; his evidence is of a cumulative and corroborative nature in that other witnesses have given and will give evidence of similar facts; the interests of justice would be served by the introduction of this evidence; and the statement and annexes have sufficient *indicia* of reliability.

33. [REDACTED].⁴⁷ [REDACTED]

(i) [REDACTED].⁴⁸

[REDACTED].⁴⁹

(ii) [REDACTED]⁵⁰ [REDACTED]. [REDACTED].⁵¹ [REDACTED].⁵²

34. The summary of [REDACTED] evidence appears at ICC-02/11-01/15-314-Conf-AnxB. His examination-in-chief is expected to last one hour.⁵³ Dispensing with [REDACTED] live testimony would expedite the proceedings by saving up to three court hours.⁵⁴

35. [REDACTED] prior recorded statement and accompanying annexes are appended as confidential Annex 3-C.

IV. Admission of Rule 68(3) Documents

36. The Prosecution requests the *conditional* admission of the Rule 68(3) Documents, namely the statements and annexes of Witnesses [REDACTED].

⁴⁷ [REDACTED].

⁴⁸ [REDACTED].

⁴⁹ [REDACTED].

⁵⁰ [REDACTED].

⁵¹ [REDACTED].

⁵² [REDACTED].

⁵³ ICC-02/11-01/15-314-Conf-AnxB, p. 398.

⁵⁴ ICC-02/11-01/15-314-Conf-AnxB, p. 396 : The Prosecution estimated one hour of examination-in-chief which would entitle the Defence to two hours of cross-examination, totalling a maximum of three hours.

37. Each of the Witnesses will be present before the Trial Chamber, and the Prosecution, Defence and Chamber will have the opportunity to examine the Witnesses during the proceedings. The request is made for conditional admission of the Rule 68(3) Documents because rule 68(3) posits a witness' actual presence before the Chamber and consent to the submission of the previously recorded testimony as conditions of admissibility of their previously recorded testimony.⁵⁵

38. The Chamber should exercise its discretion to admit the Rule 68(3) Documents. The Rule 68(3) Documents bear sufficient *indicia* of reliability. They were obtained by the Prosecution in the ordinary course of investigations and the Witnesses voluntarily provided their statement in the language they fully speak and understand or assisted by an interpreter, where necessary. Admitting the Rule 68(3) Documents would foster judicial efficiency and economy. First, it would reduce the estimated duration of the Prosecution's case-in-chief. Second, it would avoid the unnecessary repetition of the recorded evidence. Third, the Accused will suffer no unfair prejudice as a result of the admission of the Rule 68(3) Documents as they will have ample opportunity to cross-examine all eight Witnesses. Alternatively, even if there were prejudice, it would be minimal and substantially outweighed by the probative value of the material entered.

39. The Prosecution addresses other factors relevant to the Chamber's exercise of its discretion to admit the Rule 68(3) Documents in the paragraphs below.

(i) Brief supplementary examination-in-chief

40. By its terms, rule 68(3) allows the tendering party to examine the witness whose previously recorded statement it seeks to admit. Chambers of this Court have routinely authorised such practice.⁵⁶ In this case, a limited and focused examination-in-chief - which the Prosecution will strive to keep to no more than half an hour - supplementing the Rule 68(3) Documents pertaining to each

⁵⁵ See rule 68(3) of the Rules: "if the witness [...]"

⁵⁶ See e.g., ICC-01/04-02/06-845, para. 10; ICC-01/04-01/06-1603, para. 25.

witness, would be beneficial for the proper adjudication of salient issues arising from the charges.

b. Witness [REDACTED] – additional factors favouring admission

41. [REDACTED] prior recorded statement and accompanying annexes are appended as confidential Annexes 3-D. The summary of [REDACTED] evidence appears at ICC-02/11-01/15-314-Conf-AnxB and his examination-in-chief was expected to last four hours.⁵⁷ Introducing his statements and annexes *via* rule 68(3) will save three and a half hours of court-time.

42. [REDACTED].

43. [REDACTED].

c. Witness [REDACTED] – additional factors favouring admission

44. [REDACTED] prior recorded statement and accompanying annexes are appended as confidential Annexes 3-E.⁵⁸ The summary of [REDACTED] evidence appears at ICC-02/11-01/15-314-Conf-AnxB and his examination-in-chief was expected to last three hours.⁵⁹ Introducing his statements and annexes under rule 68(3) will save two and a half hours of court-time.

45. [REDACTED].

46. [REDACTED].

d. Witness [REDACTED] – additional factors favouring admission

47. [REDACTED] prior recorded statement and accompanying annexes are appended as confidential Annexes 3-F.⁶⁰ The summary of [REDACTED] evidence appears at ICC-02/11-01/15-314-Conf-AnxB and his examination-in-chief is expected to last four hours.⁶¹ Introducing his statements and annexes under rule 68(3) will save three and a half hours of court-time.

⁵⁷ ICC-02/11-01/15-314-Conf-AnxB, p.102-105.

⁵⁸ [REDACTED].

⁵⁹ ICC-02/11-01/15-314-Conf-AnxB, p. 128-130.

⁶⁰ [REDACTED].

⁶¹ ICC-02/11-01/15-314-Conf-AnxB, p. 136-138.

48. [REDACTED].

49. [REDACTED].

e. Witness [REDACTED]⁶² – additional factors favouring admission

50. [REDACTED] prior recorded statement and accompanying annexes are appended as confidential Annexes 3-G.⁶³ The summary of [REDACTED] evidence appears at ICC-02/11-01/15-314-Conf-AnxB and his examination-in-chief is expected to last three hours.⁶⁴ Introducing his statements and annexes under rule 68(3) will save two and a half hours of court-time.

51. [REDACTED].

52. [REDACTED].

f. Witness [REDACTED] – additional factors favouring admission

53. [REDACTED] prior recorded statement and accompanying annexes are appended as confidential Annexes 3-H.⁶⁵ The summary of [REDACTED] evidence appears at ICC-02/11-01/15-314-Conf-AnxB and his examination-in-chief is expected to last three hours.⁶⁶ Introducing his statements and annexes under rule 68(3) will save two and a half hours of court-time.

54. [REDACTED].

55. [REDACTED].

g. Witness [REDACTED] – additional factors favouring admission

56. [REDACTED] prior recorded statement and accompanying annexes are appended as confidential Annexes 3-I.⁶⁷ The summary of [REDACTED] evidence appears at ICC-02/11-01/15-314-Conf-AnxB and his examination-in-chief is expected to last

⁶² [REDACTED].

⁶³ 3[REDACTED].

⁶⁴ ICC-02/11-01/15-314-Conf-AnxB, p. 350-351.

⁶⁵ [REDACTED].

⁶⁶ ICC-02/11-01/15-314-Conf-AnxB, p. 368-371.

⁶⁷ [REDACTED].

three hours.⁶⁸ Introducing his statements and annexes under rule 68(3) will save two and a half hours of court-time.

57. [REDACTED].⁶⁹ [REDACTED].⁷⁰ [REDACTED].⁷¹ [REDACTED].⁷² [REDACTED]. [REDACTED].⁷³

58. [REDACTED],⁷⁴ [REDACTED].

h. Witness [REDACTED] – additional factors favouring admission

59. [REDACTED] prior recorded statement is appended as confidential Annex 3-J.⁷⁵

The summary of [REDACTED] evidence appears at ICC-02/11-01/15-314-Conf-AnxB and her examination-in-chief is expected to last four hours.⁷⁶ Introducing her statement under rule 68(3) will save three hours of court-time. [REDACTED]⁷⁷ [REDACTED].

60. [REDACTED].⁷⁸ [REDACTED].⁷⁹ [REDACTED].⁸⁰

61. [REDACTED].

i. Witness [REDACTED]⁸¹ - additional factors favouring admission

62. [REDACTED] prior recorded statement and accompanying annex are appended as confidential Annexes 3-K.⁸² The summary of [REDACTED] evidence appears at ICC-02/11-01/15-314-Conf-AnxB and her examination-in-chief is expected to last three hours.⁸³ Introducing her statement and annex under rule 68(3) will save two hours of court-time. [REDACTED]⁸⁴ [REDACTED].

⁶⁸ ICC-02/11-01/15-314-Conf-AnxB, p. 390-392.

⁶⁹ [REDACTED].

⁷⁰ [REDACTED].

⁷¹ [REDACTED].

⁷² [REDACTED].

⁷³ [REDACTED].

⁷⁴ [REDACTED].

⁷⁵ [REDACTED].

⁷⁶ ICC-02/11-01/15-314-Conf-AnxB, p. 71-73.

⁷⁷ ICC-01/05-01/08-886, para. 19.

⁷⁸ [REDACTED].

⁷⁹ [REDACTED].

⁸⁰ [REDACTED].

⁸¹ [REDACTED].

⁸² [REDACTED].

⁸³ ICC-02/11-01/15-314-Conf-AnxB, p. 185-186.

⁸⁴ ICC-01/05-01/08-886, para. 19.

63. [REDACTED].

64. [REDACTED].⁸⁵

65. [REDACTED].

Conclusion

66. For the foregoing reasons, the Prosecution requests that the Chamber:

- (i) *Conditionally* admit the Rule 68(2) Documents, subject to the fulfilment of the further conditions of admissibility set out in rule 68(2)(b)(ii) and (iii) of the Rules.⁸⁶
- (ii) *Conditionally* admit the Rule 68(3) Documents, subject to the fulfilment of the further conditions of admissibility set out in rule 68(3) of the Rules.
- (iii) Grant the Prosecution leave to conduct a limited examination-in-chief of the Rule 68(3) witnesses.



Fatou Bensouda, Prosecutor

Dated this 26th day of April 2016
At The Hague, The Netherlands

⁸⁵ [REDACTED].

⁸⁶ See also ICC-02/11-01/15-303.