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**International
Criminal
Court**

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No: ICC-02/11-01/15

Date: 24 May 2016

TRIAL CHAMBER I

Before:

**Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera-Carbuccia
Judge Geoffrey Henderson**

SITUATION IN COTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLE GOUDE

PUBLIC

Public Redacted version of “Defence Objections to the Prosecution’s application to conditionally admit the prior recorded statements and related documents [REDACTED] under rule 68(3)” (ICC-02/11-01/15-496-Conf)

Source: Defence of Mr Charles Blé Goudé

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

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I. Introduction

1. On 19 April 2016, the Prosecution filed its first application to conditionally admit prior recorded testimony of 11 witnesses and related documents. The application seeks to conditionally admit prior recorded testimony of three witnesses, [REDACTED] under Rule 68(2)(b) of the Rules of Procedure and Evidence (“the Rules”) as well as to conditionally admit prior recorded testimony of 8 witnesses, [REDACTED] under Rule 68(3).¹ The Prosecution considers that these 11 witnesses out of a total of 19 witnesses² will primarily provide evidence on Incident 1.³ Thus, underlying this request is an application to have more than half of the Prosecution witnesses for Incident 1 to provide out of court testimony through the use of Rule 68.⁴ The drafters of the amendment to Rule 68 did not envisage such a stripping away at the principle of orality enshrined under Article 69(2) of the Rome Statute.

2. The Defence for Charles Blé Goudé (“the Defence”) hereby presents its objections to the Prosecution’s application that concerns the conditional admission of the prior recorded testimony and documents made pursuant to Rule 68(3), which relates to witnesses, [REDACTED] (“the eight witnesses”).⁵ The Defence avers that in certain instances there may be certain material advantages to admitting prior recorded testimony and documentary evidence of such testimony. However, in the present case, the Prosecution has failed to follow the applicable directions on the conduct of proceedings (“Directions”). The prosecution submits

¹ ICC-02/11-01/15-487-Conf.

² P-547 has already completed his testimony.

³ ICC-02/11-01/15-487-Conf, para. 3.

⁴ *Ibid*, para. 3.

⁵ The Defence’s objections with respect to the part of the application, which is made pursuant to Rule 68(2)(b) will shortly follow.

a total of 293 pages of entire witness statements and annexes thereto⁶ that cannot be considered to fall within the scope of prior recorded testimony as defined by Rule 68 and the Directions. Moreover, fundamental issues regarding both admissibility and content of the statements and annexes will entail numerous objections and need for the Defence to extensively examine each of the witnesses. Therefore, the minimal if any time saved from introducing the prior recorded testimony through Rule 68 (3) is not sufficient for the Chamber to find that the Prosecution's request should be granted.

II. Confidentiality

3. The Defence files the present response as confidential pursuant to regulation 23bis(2) of the Regulations of the Court ("the Regulations") as it relates to confidential information pertaining to eight Prosecution witnesses. A public redacted version shall follow in due course.

III. Procedural history

4. On 3 September 2015, Trial Chamber I rendered its Directions, whereby it provided detailed instructions concerning any application made to introduce prior recorded testimony under Rule 68.⁷
5. On 19 April 2016, the Prosecution requested for the Chamber 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). Annexes 3-A to 3-K of application contain the material that the Prosecution seeks to admit in its application.
6. On 28 April 2016, the Legal Representative of Victims ("the LRV") responded to

⁶ Annex 3-D-1 to Annex 3-K-1 span a total of 296 pages.

⁷ ICC-02/11-01/15-205.

the Prosecution's application, and asked the Chamber to grant the application.⁸ She also informed the Chamber that she too would like to question witnesses [REDACTED] and [REDACTED] for up to half an hour.⁹

IV. Applicable Law

7. The primacy of the principle of orality under Article 69(2) of the Statute creates the presumption that "the testimony of a witness in trial shall be given in person," and any departure therefrom "shall not be prejudicial or inconsistent with the rights of the accused." Rule 68 constitutes an exception to this general rule, and despite the recent 2013 amendment to this Rule, the Appeals Chamber in *The Prosecutor v. Ruto and Sang* reiterated the Court's earlier rulings on the issue, and found that a cautious item by item assessment must be made of the evidence that the Prosecution is seeking to introduce as prior recorded testimony.¹⁰ Such an approach is absent from the current Application.
8. Material may be admitted as prior recorded testimony under Rule 68(3) if the following five requirements are met: (1) the witness must be present, (2) the witness must not object to the admission of such testimony, (3) the material in question must constitute previously recorded testimony, (4) the witness must be subject to examination by the parties and the Chamber, and (5) any admission must be consistent with the rights of the accused, and the Court must consider whether the material admitted relates to issues materially in dispute.¹¹ Under the jurisprudence of the Court, the examination by the parties must be real, and not

⁸ ICC-02/11-01/15-491-Conf.

⁹ *Ibid.*, para. 5.

¹⁰ ICC-01/09-01/11-2024, para.85.

¹¹ Rule 68(1) requires that the material concerned must constitute previously recorded testimony and be applied in accordance with article 69(2) and the rights of the accused, whereas Rule 68(3) provides further requirements such as the witness not objecting to the submission of the testimony, and the opportunity for the parties and the Chamber to examine the witness.

theoretical.¹² Lastly, if the prior recorded testimony meets these requirements, the Chamber will consider whether such testimony is admissible under Article 69(4) of the Statute.¹³

V. Submissions

9. The Defence respectfully submits that no material advantage would be gained through admitting the prior recorded testimony requested by the Prosecution under Rule 68(3). An item by item analysis of the statements and annexes of each of the eight witnesses concerned demonstrates that: (1) the Prosecution did not follow the Directions when making its application, and thereby inappropriately seeks to use Rule 68(3) as a new avenue to introduce documentary evidence, (2) the material which the Prosecution seeks to admit concerns core issues in the case, and issues that are materially in dispute, and (3) the prejudice to the accused in addition to the limited time, if any, saved by admitting the prior recorded testimony militate against granting the Prosecution's Rule 68 (3) request. Therefore, the Chamber should reject the Prosecution's request.

- a. **The Prosecution did not follow the Directions when making its application, and as a result inappropriately attempts to use Rule 68(3) as a new avenue to introduce documentary evidence**

10. Under paragraph 57 of the Directions, the party seeking to tender evidence under Rule 68 shall identify in its application "*precisely* which passages the party wishes to tender into evidence" (*Emphasis added*).¹⁴ If these specific passages contain references to material that would render the passages incomprehensible, then the party should attach such material to its Rule 68 application. Other Trial

¹² ICC-01/04-01/06-2727-Red para. 53.

¹³ See ICC-01/05-01/08-2012-Red, paras 136-141.

¹⁴ ICC-02/11-01/15-205.

Chambers' conduct of proceedings have specified similar requirements, and have thus found that prior recorded testimony encompasses statements and transcripts made in the course of the Prosecution's investigations under Rules 111 and 112 of the Rules, as well as certain other exhibits attached to the application.¹⁵ However, such directives in no way allow a party to circumvent the rule that documents should only be admitted through a witness who can testify as to its authenticity, relevance and probative value.¹⁶ In *The Prosecutor v. Katanga*, where it was required that the party attach to its application the material which was referred to in the prior recorded statement, the Court held that the Prosecution's request could not be granted because Rule 68(b)¹⁷ was not an appropriate channel through which to introduce several videos.¹⁸ The Court found that such videos should be introduced through a witness.¹⁹ Moreover, for one of the experts of videos the Chamber found *inter alia* that the lengthy excerpt if admitted into evidence would place an undue burden on the defence to raise all issues in the video, and should not be admitted to the case record.²⁰

11. Similarly, in the *Prosecutor v. Bemba et al.*, the Court limited the kind of documentary evidence that could be introduced through Rule 68 by determining that intercepted phone calls could not be considered prior recorded testimony, seeing as these calls are not made in the context of questioning these persons in their capacity as witnesses.²¹ These various limits imposed on the nature of documentary evidence that is permitted under Rule 68 as well as to the amount

¹⁵ See e.g. ICC-01/04-01/07-2233, para.10; ICC-01/09-01/11-1938-Corr-Red2, para. 33.

¹⁶ In the instant case, the Directions on the Conduct of proceedings specify that evidence shall in principle be tendered through a witness. ICC-02/11-01/15-205, para. 58. The Court in *Katanga* affirmed this principle. ICC-01/04-01/07-2233, para. 10.

¹⁷ After the 2013 amendment to the Rules, Rule 68(3) replaced the former Rule 68(b). Rule 68(b) and the current Rule 68(3) are identical.

¹⁸ ICC-01/04-01/07-2233, para. 10.

¹⁹ *Ibid.*

²⁰ ICC-01/04-01/07-2233, para. 14

²¹ ICC-01/05-01/13-1478-Red-Corr, para. 33.

of documents, function within the ICC system as a safeguard to ensure that the principle of orality is respected.

12. . In the instant case, the Prosecution does not precisely identify which passages of the statements, of any of the eight witnesses, it would like to admit into evidence. Instead, the Prosecution simply states that it seeks to admit the statements *in toto*. The Directions clearly specify that certain passages need to be identified, and therefore, according to the Defence, the Directions preclude the attempt to introduce an entire statement into evidence under Rule 68. Since according the Prosecution these witness statements pertain wholly or in part to Incident 1, then the Prosecution should have specified the portions of the statement that pertain to this incident.²²

13. In addition to failing to specify which passages it seeks to tender into evidence, the Prosecution has also erroneously attached all annexes referred to in each of the 8 statements. Unlike in *Katanga* where the Directions on the Conduct of proceedings specifically allowed the party making the Rule 68 application to attach material referred to in the previously recorded testimony, in the instant case the requirement is that the material be necessary for the understanding of the passages of the statement. For 6 of the 8 witnesses, the Prosecution attempts to use Rule 68(3) as an inappropriate channel to introduce documentary evidence that needs to be introduced through a suitable witness, which the present witnesses clearly are not. The Defence shall present below the reasons for which

²² [REDACTED]'s statement is a total of 16 pages; only one page relates to Incident 1. Annex 3-D-1, p. 10-11. [REDACTED]'s statement is a total 44 pages; only 5 pages relate to Incident 1. Annex 3-E-1, p. 13-18. [REDACTED]'s statement is a total of 28 pages of which 11 relate to Incident 1, Annex 3-F-1, p.11-22. [REDACTED]'s statement is a total of 20 pages of which 11 pertain to Incident 1. Annex 3-G-1, p. 7- 18. [REDACTED]'s statement is a total of 23 pages of which 4 pertain to Incident 1. Annex 3-H-1, p. 15-19. [REDACTED]'s statement is a total of 21 pages of which 10 relate to Incident 1, Annex-3-I-1, p. 8-18. [REDACTED]'s statement is a total of 21 pages; only 6 pages relate to Incident 1. Annex 3-J-1, p. 6-12. [REDACTED]'s statement is a total of 12 pages of which 4 pages pertain to Incident 1. Annex 3-K-1, p. 4-8.

certain annexes of the six witnesses must be submitted through a specific witness who has the most direct link to the document, or an application to submit documentary evidence as provided by the Directions.²³ According to the Defence, this link does not exist between the many annexes the Prosecution seeks to admit, and the current witnesses.

[REDACTED]

14. Annexes 3-D-2 and 3-D-3 to [REDACTED]'s statement represent alleged statistics [REDACTED]. According to the Defence these two annexes may not be introduced through Rule 68(3). *Assuming arguendo* that the items fall within the scope of prior recorded testimony, serious admissibility issues arise. Firstly, the witness is not an author of Annex 3-D-2, and was not present when it was made. Moreover, the document consists of [REDACTED].²⁴ The second document Annex 3-D-3 appears to be [REDACTED]. The witness did not author the document, and more generally, it lacks authenticity since the author of the document is not mentioned. Moreover, the document might have a misleading effect because [REDACTED].²⁵

[REDACTED]

15. The Defence objects to the introduction through Rule 68(3) of the following annexes (1) [REDACTED], (2) [REDACTED], and (3) [REDACTED]. The [REDACTED]²⁶ are not necessary to the comprehension of [REDACTED]'s

²³ ICC-02/11-01/15-205, para. 58.

²⁴ The document allegedly comes from [REDACTED], who [REDACTED], but under [REDACTED]. Annex 3-D-1, paras. 69-72, 82. The document is undated both in the metadata and on the document itself. Nothing on the face of the document lends itself to the conclusion that it is [REDACTED]. The witness cannot testify to this since he was not present at the time the document was drawn.

²⁵ [REDACTED]. The [REDACTED] is of limited probative value since it is impossible to ascertain from it, [REDACTED]. Moreover, the table does not specify [REDACTED]. [REDACTED] can occur due to [REDACTED]. None of these specifications are made, and the witness who does not have access to [REDACTED] cannot clarify these issues.

²⁶ The [REDACTED] are contained in annexes 3-E-8-3-E-10.

testimony since [REDACTED].²⁷ Moreover, serious concerns regarding the admissibility of the documents arise. [REDACTED].²⁸ [REDACTED]. Therefore, due to serious admissibility concerns, namely [REDACTED], these [REDACTED] should not be admitted using Rule 68(3).

16. The [REDACTED]²⁹ that the Prosecution seeks to admit with its associated [REDACTED]³⁰ presents similar admissibility challenges. Not only did the witness not [REDACTED], but also this very witness was not [REDACTED].³¹ [REDACTED] also admits that [REDACTED], and that [REDACTED].³² Moreover, the [REDACTED] contains no main date.³³ Thus, no certainty exists as to the probative value of [REDACTED]'s commentary of the [REDACTED] due to these factors.³⁴ The Court should find in the instant case, like in *Katanga*, that the Prosecution inappropriately seeks to admit [REDACTED], and thus does not form part of his testimony. If the Prosecution would like to tender into evidence this [REDACTED], it should be introduced through an appropriate witness or a bar table motion.

[REDACTED]

17. The Defence objects to the admission of annex 3-G-3 because this is not necessary to the understanding that [REDACTED]. Moreover, the Defence notes important

²⁷ Annex 3-E-1, para. 129.

²⁸ Annex 3-E-8 corresponds to document CIV-OTP-0040-0422; Annex 3-E-9 corresponds to document CIV-OTP-0040-0423; Annex 3-E-10 corresponds to CIV-OTP-0040-0424. Annex 3-E-10 corresponds to CIV-OTP-0040-0424. Annex 3-E-11 corresponds to CIV-OTP-0040-0425. An analysis of the metadata of these annexes reveals that the main date is missing, and does not include in the chain of custody [REDACTED].

²⁹ Annex 3-E-12

³⁰ Annex 3-E-15-3-E-16.

³¹ Annex 3-E-1, para. 164.

³² [REDACTED] thinks that it is [REDACTED]. Annex 3-E-1, para. 164.

³³ Annex 3-E-12 corresponds to document CIV-OTP-0040-0426. The metadata does not include a main date of the video.

³⁴ The commentary of [REDACTED] is contained in Annex 3-E-13.

discrepancies between [REDACTED], and [REDACTED].³⁵ The [REDACTED] is not legible on the document, and thus the Prosecution cannot attest to its authenticity.³⁶ According to the Defence not only must the Prosecution ask clarifying questions regarding the document, but it should not be introduced through this witness, but rather a witness who has a clear link to the document.

[REDACTED]

18. The annexes to [REDACTED]'s statement consist of two newspaper articles that are referred to in [REDACTED]'s statement. Unlike in *Katanga*, in the instant case Rule 68 applications must contain material that was not only referred to in the relevant passages, but also such material must be necessary to understand the passages. The witness in his statement clearly explains that the [REDACTED]. The witness subsequently rebutted these comments in [REDACTED].³⁷ The content of the [REDACTED] is wholly unnecessary to the understanding of the witness' statement, which concerns [REDACTED], and [REDACTED].

[REDACTED]

19. The Defence primarily objects to the Prosecution introducing the annexes 3-I-5, 3-I-6, and 3-I-7 as prior recorded testimony under Rule 68. These documents consist of documentary evidence of [REDACTED]. Not only are these documents wholly unnecessary to understand the relevant testimony regarding the [REDACTED], but also numerous contentious issues arise, that will necessitate introducing this documentary evidence through the appropriate witness who in the instant case would not be [REDACTED]. Thus, Rule 68 is not the appropriate means through which to admit these documents.

³⁵ Compare Annex 3-G-3 with Annex 3-G-1, p.1.

³⁶ See Annex 3-G-3.

³⁷ Annexes 3-H-1, paras. 67-69.

20. The Defence notes that according to [REDACTED]'s statement, he was not present when [REDACTED],³⁸ and was not present when [REDACTED].³⁹ The witness statement attests to the fact that he never saw [REDACTED]. The witness therefore cannot attest to why [REDACTED].

21. Moreover, there are three annexes [REDACTED]'s statement, which were signed and prepared by witness [REDACTED].⁴⁰ Since [REDACTED] will appear before this Chamber, [REDACTED] is the appropriate witness through which to introduce this documentary evidence. As the author of the document, she can provide evidence on contentious issues such as: (1) [REDACTED], (2) the [REDACTED],⁴¹ and (3) [REDACTED]. For similar reasons, the Defence objects to also introducing Annex 3-I-7, which is a [REDACTED]. The document was not drawn up by the witness, and was not made in [REDACTED] presence, and thus [REDACTED] cannot provide evidence as to why the document asserts that [REDACTED].⁴² Moreover, the [REDACTED] states that [REDACTED].⁴³

22. Due to the Prosecution's failure to follow the Directions on the conduct of proceedings in addition to the serious questions regarding authenticity and admissibility under Article 69(4) that arise therefrom, the Chamber should not grant the Prosecution's application.

b. The material which the Prosecution seeks to admit concerns core issues in the case which are materially in dispute

³⁸ Annex 3-H-1, paras- 58-68.

³⁹ 3-I-6 contains a [REDACTED]. The annex corresponds to document CIV-OTP-0084-0066. The metadata shows that the main date of document is [REDACTED].

⁴⁰ Annex 3-I-6 contains a [REDACTED].

⁴¹ [REDACTED]. Annex 3-I-1, Para. 81.

⁴² Compare CIV-OTP-0084-0068 with CIV-OTP-0084-0070.

⁴³ See CIV-OTP-0084-0070.

23. In determining whether to admit prior recorded testimony under Rule 68 would be prejudicial to the Accused, Chambers have considered *inter alia* whether the evidence concerned relates to issues that are materially in dispute, whether the evidence is central to core issues in the case, and whether the evidence is corroborative of other evidence.⁴⁴ The Defence submits that the eight witness statements that Prosecution seeks to admit *in toto* under Rule 68(3) contain passages that go to the following core issues of the case, which are materially in dispute. These issues are whether: 1.) the march on the RTI was armed, and 2.) the nexus between the alleged acts of violence and Mr. Blé Goudé.

24. A central issue in this case is whether the march on the RTI to install a new Directeur Général constituted a hostile act by the pro-Ouatarra forces because it goes to the heart of the existence or not of an alleged policy to attack civilians under Article 7 of the Statute. The eight witnesses for whom the Prosecution seeks to admit their prior recorded testimony under Rule 68(3) provide conflicting information as to the armed character of the march.⁴⁵ Therefore, the importance of having them fully testify in court would benefit the Court in determining whether the march was armed.

25. The other central issues in dispute relate to the alleged acts of violence committed by “*jeunes patriotes*” or more generally militia groups and Mr. Blé Goudé’s role

⁴⁴ ICC-02/11-01/15, para. 85 *citing* ICC-01/05-01/08-1386, para. 78; ICC-01/05-01/08-1386, para. 78; ICC-01/05-01/08-886, para. 8.

⁴⁵ [REDACTED] discusses the [REDACTED] during Incident 1. Annex 3-D-1, para. 59. On the other hand [REDACTED] states that the march was unarmed and [REDACTED]. Annex 3-E-1, para. 87. P-230 also states that the march on the RTI was unarmed and [REDACTED]. Annex 3-F-1, paras. 37, 45. [REDACTED] discusses that [REDACTED]. Annex 3-G-1 para.25. The issue of [REDACTED] has been contested in this case. *See* examination of P-547 by the Defence of Mr. Charles Blé Goudé, ICC-02/11-01/15-T-18-ENG, p.18, lines 21-25-p. 19 lines 1-2. Moreover, [REDACTED] corroborates [REDACTED]’s statements when he states that [REDACTED]. Annex 3-G-1, para. 49. On the other hand, Witness [REDACTED], claims that the march was unarmed in addition to [REDACTED]. Annex 3-I-1, para. 36; Annex 3-K-1, para. 15. [REDACTED] statement does not specify whether the march was unarmed or not. *See* Annex 3-J-1.

therein. The Defence will lead evidence that the Galaxie Patriotique is not an organization under Article 7, and therefore Mr. Blé Goudé did not control the actions of the various autonomous youth groups.⁴⁶ [REDACTED], and [REDACTED] all make claims that Mr. Blé Goudé [REDACTED].⁴⁷ The statements of these [REDACTED] witnesses do not provide a source from these unsubstantiated allegations.⁴⁸ These detailed alleged acts of Mr. Blé Goudé go to the heart of his alleged individual criminal responsibility, and thus any testimony referring to such acts should be fully examined by all the parties and if necessary the Court in order for the Court to assess the credibility and the reliability of such statements.

c. The prejudice to Mr. Blé Goudé in addition to the limited if any time saved by admitting the prior recorded testimony militate against granting the Prosecution's Rule 68 (3) request

26. In assessing whether admitting prior recorded testimony unduly prejudices the accused, the Court must strike a balance between the Chamber's duty to ensure that the accused's rights are respected, and its discretionary power to admit documents under Rule 68.⁴⁹ The interests of expediting the proceedings cannot supersede the Accused's right to a fair trial. Therefore, in *The Prosecutor v.*

⁴⁶ See e.g. ICC-02/11-01/15-T-32-ENG, p.2, lines 10-25- p.3, lines-1-7.

⁴⁷ [REDACTED] alludes to several of Mr. Blé Goudé's speeches and states that [REDACTED]. Annex 3-E-1, para. 59. The source of this witness' knowledge is unknown. He only states [REDACTED]. Ibid. [REDACTED] refers to [REDACTED], and as being a lieutenant of Mr. Blé Goudé. Annex 3-F-1, para. 72. The source of his information is unspecified. The witness also refers to Mr. Blé Goudé as [REDACTED]. Annex 3-F-1, para. 75. Again, no source for such knowledge is provided. [REDACTED] claims that some individual [REDACTED] came to him and told him that the General Blé Goudé ordered [REDACTED]. Annex 3-E-1, para 28. No other identifying information for [REDACTED] is provided. [REDACTED] claims that Ble Goudé [REDACTED], which [REDACTED]. Annex 3-J-1, paras., 59, 62. He made speeches in which he called on the youth to enroll massively in the army, which [REDACTED]. Annex 3-J-1, para. 63. No source of the witness' knowledge is provided. Lastly, [REDACTED] states without specifying how [REDACTED] knows it that Mr. Blé Goudé brought [REDACTED]. Annex 3-K-1, para. 35.

⁴⁸ [REDACTED] claims that some individual [REDACTED] came to him and told him that [REDACTED]. Annex 3-E-1, para 28.

⁴⁹ See ICC-01/04-02/06-988, paras. 12, 15.

Ntaganda, the Court rejected a Prosecution request to admit documents under rule 68(3) because of the added time created by the supplementary questions, as well as the importance of the witness' testimony against the accused.⁵⁰ In its submissions the Defence foresaw extensive objections and examination of the witness in order to test the credibility of the witness' statements pertaining to the accused.⁵¹

27. In the instant case, the Directions only allow the non-calling party to question witnesses for a maximum of twice the amount of time that the calling party took to examine the witness.⁵² Therefore, *assuming arguendo* that the Prosecution will adhere to the amount of time it has stated in its application, that would mean that for witnesses [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] the Defence would have only 30 minutes to examine each of the witnesses.⁵³ [REDACTED] and [REDACTED] are expected to testify for a total of one hour, thereby allowing the Defence to examine these witnesses for a period of an hour. Such a limited examination would not be real and effective as required by the Court's jurisprudence given that the Defence will have to prepare questions on the prior-recorded testimony that has been conditionally admitted in addition to any testimony adduced on the stand. Thus, the Defence respectfully submits that under the current allocated time the Defence would not be in a position to properly test the credibility of the witnesses, especially in the case of the 5 witnesses whose statements pertain to the Accused's acts that underlie the finding of any individual criminal responsibility. Such limited examination would render the admission unfair, and contrary to the interests of justices.

⁵⁰ ICC_01/04-02/06-988, paras. 7, 12.

⁵¹ Ibid.

⁵² ICC-02/11-01/15-205, para. 36.

⁵³ The Chamber has found that the Defence teams must share the time allocated for examination by the non-calling party, and therefore for every thirty minutes of examination each Defence team has 30 minutes to examine the witness. ICC-02/11-01/15-T-31-ENG, p. 44, lines 12-16.

28. The importance of *viva voce* testimony cannot be understated in this case, where three of the five witnesses who have given *viva voce* testimony have departed from their written statements, or have adduced evidence that was completely omitted from their previous statement.⁵⁴ Therefore, the Chamber can expect that most likely the Prosecution will not be able to adhere to the time it has allotted for the examination of the 8 witnesses. Not only may the witness' testimony at the bench differ from their statements, but also the Defence as explained in the aforementioned paragraphs, will object to most of the annexes presented to the witnesses, which will add to the time the Prosecution needs to examine the witnesses. Thus, Rule 68(3) purpose will be defeated, namely expediting the proceedings if the material is conditionally admitted.

29. Similar to the Court in *Ntaganda* and *Katanga*, the Chamber should find that advantage of saving time would not be served in the instant case because of the time of examination by both parties in addition to the importance of the prior recorded testimony to core contested issues in the case that relate to the accused individual criminal responsibility. The Defence respectfully submits that other time saving measures could be adopted that would expedite the proceedings and come at no or at a less disproportionate cost to the Defence. For example, limiting the amount of time for examining a witness by the calling party, without recourse to using Rule 68, would save the Chamber time, and would neither violate the

⁵⁴ P-625 testimony significantly differed from his testimony on the stand. This was seen in the numerous attempts by the Prosecution to refresh the witness' memory to which the Defence objected as not meeting the criteria to refresh the memory of a witness. *See e.g.*, ICC-02/11-01/15-T-25-ENG, p.54, lines 16-25- p. 55, lines 1-25; p. 57, lines 18-19; p. 68, lines 1-5, p.71, lines 1-25. P-547 and P-442 implicated Mr. Blé Goudé in the crimes where they had not previously done so in the statement. P-547 made outlandish claims that Mr. Blé Goudé fabricated and distributed videos of FDS soldiers who were killed during Incident 1. ICC-02/11-01/15-T-18-ENG, p.18, lines 21-25-p. 19 lines 1-2. He made no such statements in his witness statement.. P-442 claimed that the attack on his neighborhood began after Mr. Blé Goudé's speech at the Baron Bar- a crucial fact that was missing from his statement. ICC-02/11-01/15-T-20-ENG, p. 37, lines 19- p. 39, line 1.

principle of orality nor curtail the rights of Mr. Blé Goudé to examine the witnesses against him.

RELIEF SOUGHT

For the fore going reasons, the Defence respectfully requests the Chamber to:

- Reject the Prosecution's application

Respectfully submitted,



A rectangular box containing a handwritten signature in dark ink. The signature is cursive and appears to read 'Mr. Knoops'. Above the signature, there is a horizontal line with a small mark in the center, possibly a stamp or a reference mark.

Mr. Knoops, Lead Counsel and Mr. N'Dry, Co-Counsel

Dated this

24 May 2016

At The Hague, the Netherlands