



Original: English

No.: ICC-02/11-01/15
Date: 14 October 2016

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 Confidential Annexes 1 & 2

Public redacted version of "Prosecution's application to conditionally admit the prior recorded statements and related documents in relation to Witnesses P-0106, P-0107, P-0117 and P-0578 under rule 68(3)", 26 July 2016, ICC-02/11-01/15-636-Conf

Source: Office of the Prosecutor

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 Charles 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 for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**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

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. This request relates to four 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").

2. The Prosecution seeks conditional submission into evidence of the prior recorded statements, including related documents (collectively, "Rule 68(3) Documents"), of Witnesses P-0106, P-0107, P-0117 and P-0578 ("Rule 68(3) Witnesses"), in accordance with rule 68(3) of the Rules of Procedure and Evidence ("Rules"); paragraph 49 of the amended and supplemented directions on the conduct of the proceedings ("Conduct Directions");¹ and articles 69(2), 64(9)(a) and 69(4) of the Rome Statute ("Statute") and rule 63(2) of the Rules.

3. The Prosecution seeks the introduction of the Rule 68(3) Documents conditionally, because rule 68(3) requires a witness's 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.

4. The Rule 68(3) Documents are admissible because Rule 68(3) 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 Prosecution also believes that the Rule 68(3) Witnesses will not object to the admission of their prior statements. The Rule 68(3) Documents are *prima facie* relevant, probative and reliable, and Witnesses P-0106, P-0107, P-0117 and P-0578 will each be asked to confirm the accuracy of his/her statement and related documents.

¹ ICC-02/11-01/15-498-AnxA.

5. Introduction of the Rule 68(3) Documents is not prejudicial to or inconsistent with the rights of the Accused.

Confidentiality

6. 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

7. On 19 April 2016, the Prosecution filed the “Prosecution application to conditionally admit the prior recorded statements and related documents of Witnesses P-0588, P-0589 and P-0590 under rule 68(2)(b) and the prior recorded statements and related documents of Witnesses P-0169, P-0217, P-0230, P-0555, P-0573, P-0587, P-0112 and P-0344 under rule 68(3) (“First Rule 68 Application”).²
8. On 4 May 2016, the Chamber issued its Decision adopting amended and supplemented direction on the conduct of the proceedings.³
9. On 27 May 2016, the Chamber ordered the Prosecution to file applications pursuant to rule 68 for five witnesses: P-0414, P-0428, P-0549, P-0550 and P-0501.⁴ The Prosecution indicated that its application pertaining to the reports of Witnesses P-0549 and P-0550 might be filed pursuant to paragraph 43 of the Conduct Directions.⁵

² ICC-02/11-01/15-487-Red-Corr.

³ ICC-02/11-01/15-498.

⁴ ICC-02/11-01/15-T-45-CONF-ENG ET, p. 11 l. 6-13, p. 12, l. 8-15.

⁵ ICC-02/11-01/15-T-45-CONF-ENG ET, p. 10 l. 22 - p. 12, l. 84.

10. On 3 June 2016, the Prosecution filed the Prosecution's next order of witnesses pursuant to paragraph 4 of the amended and supplemented Directions on the conduct of the proceedings in which the Prosecution stated that it would be submitting an application for Witnesses P-0106, P-0107, P-0117 and P-0578 to testify under Rule 68(3) of the Rules.⁶
11. On 9 June 2016, the Chamber issued the Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3) ("Decision on the First Rule 68 Application").⁷
12. On 10 June 2016, the Prosecution filed the Prosecution application submitting material in written form in relation to Witnesses P-0414, P-0428, P-0501, P-0549 and P-0550 ("Second Rule 68 Application").
13. On 19 July 2016, the Chamber issued the Decision on the Prosecution's application submitting material in written form in relation to Witnesses P-0414, P-0428, P-0501, P-0549 and P-0550 ("Decision on the Second Rule 68 Application").⁸

Submissions

RULE 68 APPLICATIONS

A. Applicable Law

14. The Prosecution incorporates by reference the law as set out in its First Rule 68 Application, paragraphs 11-12 and 17-21.⁹

⁶ ICC-02/11-01/15-565-Conf-AnxA.

⁷ ICC-02/11-01/15-573-Red.

⁸ ICC-02/11-01/15-629-Red.

⁹ ICC-02/01-01/15-487-Red-Corr.

15. For introduction of prior recorded testimony under rule 68(3) of the Rules, the following conditions must be met: “(i) that the witness is present before the Trial Chamber; (ii) that the witness does not object to the introduction of the prior recorded testimony; and (iii) that the Prosecutor, the Defence and the Chamber have the opportunity to examine the witness during the proceedings.”¹⁰
16. The introduction of prior recorded testimony under rule 68 must also not be prejudicial to or inconsistent with the rights of the accused.¹¹
17. In its Decision on the First Rule 68 Application, this Chamber found that rule 68(3) of the Rules must be understood as a tool in the exercise of the Chamber’s duty “to ensure that the trial unfolds in a focused and expeditious manner, while respecting the procedural rights of the parties and participants.”¹² In its Decision on the Second Rule 68 Application, the Chamber considered that “introduction of prior recorded testimony under Rule 68(3) of the Rules typically carries a lower risk of interfering with the fair trial rights of the accused, because the witness still appears before the Chamber and is available for examination, including by the Defence.”¹³
18. As the Chamber has also found: “[i]n case of introduction of written statements under Rule 68 of the Rules, any documentary evidence annexed is also to be considered submitted.”¹⁴

¹⁰ ICC-02/11-01/15-573-Red, para. 24.

¹¹ ICC-02/11-01/15-573-Red, para. 24.

¹² ICC-02/11-01/15-573-Red, para. 25.

¹³ ICC-02/11-01/15-629-Red, para. 16.

¹⁴ ICC-02/11-01/15-573-Red, para. 9.

B. Introduction of Rule 68(3) Documents

19. The Prosecution requests the *conditional*¹⁵ introduction and submission of the Rule 68(3) Documents, namely the prior recorded statements, accompanying annexes and related documents of Witnesses P-0106, P-0107, P-0117, and P-0578 as listed at Confidential Annex 1. Confidential Annex 2 provides summaries of the evidence of each witness and time estimates for examination by the calling party. Also at Annex 2, the Prosecution (i) identifies the specific passages which the Prosecution wishes to submit as evidence;¹⁶ (ii) provides the ERNs for the other material, within the meaning of paragraph 51 of the Conduct Directions, which it is sought to admit under rule 68(3); and (iii) identifies additional topics to be addressed orally, within the meaning of paragraph 49 of the Conduct Directions.
20. The Chamber should exercise its discretion to allow the introduction of the Rule 68(3) Documents.
21. First, as detailed in Confidential Annex 2, the statements of the four Rule 68(3) Witnesses relate in great part to the events of 16 December 2010.¹⁷ Similar to the RTI crime base witnesses who were the subject of the First Rule 68 Application, the four Rule 68(3) Witnesses, P-0106, P-0107, P-0117 and P-0578 all testify to the events and issues “[...] from their own personal perspective. None of them have insider or other quality knowledge of the planning and overall conduct of the FDS operation during the events.”¹⁸ As such, the same reasoning applies and “provided that the Defence is given adequate time to examine [these] witnesses, there is no overriding reason preventing the streamlining of the presentation of

¹⁵ Contingent upon their actual presence before the Chamber and consent to the submission of the previously recorded testimony. See para. 25 below.

¹⁶ As required by paragraph 51 of the Conduct Directions.

¹⁷ They nonetheless also include other important information such as, for example, information about the 3 and 17 March incidents and the incitement and recruitment of youth militia

¹⁸ See ICC-02/11-01/15-573-Red, para. 38.

evidence by allowing the introduction of the witness statements pursuant to Rule 68(3) of the Rules.”¹⁹

22. Second, in relation to all four witnesses, the Rule 68(3) Documents bear sufficient *indicia* of reliability. They were obtained by the Prosecution in the ordinary course of investigations and Witnesses P-0106, P-0107, P-0117 and P-0578 each voluntarily provided his/her statement in a language he/she fully speaks and understands.
23. Third, in relation to all four witnesses, admitting the Rule 68(3) Documents would foster judicial efficiency and economy in reducing the estimated duration of the Prosecution’s case-in-chief.
24. Finally, introduction of the Rule 68(3) Documents is not prejudicial to or inconsistent with the rights of the Accused as they each will have ample opportunity to put questions to Witnesses P-0106, P-0107, P-0117 and P-0578.²⁰
25. As for the criteria under rule 68(3), Witnesses P-0106, P-0107, P-0117 and P-0578 will be present before the Trial Chamber, and the Prosecution, Defence and Chamber will have the opportunity to examine them during the proceedings. The request is made for conditional introduction of the Rule 68(3) Documents because rule 68(3) requires a witness’s actual presence before the Chamber and consent to the submission of the previously recorded testimony as conditions of admissibility of their previously recorded testimony.²¹

¹⁹ See ICC-02/11-01/15-573-Red, para. 38.

²⁰ See ICC-02/11-01/15-573-Red, para. 24.

²¹ See rule 68(3) of the Rules: “if the witness [...]. See also ICC-02/11-01/15-573-Red, para. 39.

26. By its terms, rule 68(3) allows the tendering party to examine the witness whose previously recorded statement it seeks to admit. The Prosecution seeks permission to question these witnesses to confirm, clarify or highlight passages of the prior recorded statement, and to question on additional topics.²² These topics are described in Confidential Annex 2.
27. With respect to Witness P-0106, the Prosecution anticipates asking him to expand upon his knowledge of the insecurity in [REDACTED] during the election and the post-election period as well as his personal experiences during the 16 December march [REDACTED] and the incidents of 3 and 17 March. He will also be asked to expand upon his knowledge of Blé Goudé's incitement and authority over youth groups and the crimes committed by these youth groups.
28. With respect to Witness P-0107, the Prosecution anticipates asking him to expand upon his knowledge of the youth meetings held [REDACTED] before the 2010 election and his personal experiences during the 16 December march.
29. With respect to Witness P-0117, the Prosecution anticipates asking her about the events of 16 December 2010 [REDACTED] as well as the 3 March 2011 and the 17 March 2011 incidents. She will also be asked about the general situation [REDACTED] as well as her knowledge [REDACTED]. Finally, Witness P-0117 will be asked a few questions about [REDACTED]. [REDACTED]²³ [REDACTED].
30. With respect to Witness P-0578, the Prosecution anticipates asking him about what he witnessed and experienced on 16 December 2010 with a particular emphasis on the videos that he filmed that day (process, posting on social media,

²² Conduct Directions, para. 49.

²³ ICC-01/05-01/08-886, para. 19.

etc.). He will also be asked about youth militia groups and the prevailing situation in Williamsville during the post-electoral crisis.

Conclusion

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

- (i) *Conditionally* introduce and consider submitted the Rule 68(3) Documents, subject to the fulfilment of the further conditions of admissibility set out in rule 68(3) of the Rules.
- (ii) Grant the Prosecution leave to conduct a limited examination by the calling party of the Rule 68(3) Witnesses.



Fatou Bensouda, Prosecutor

Dated this 14th day of October 2016

At The Hague, The Netherlands