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**International
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Date: **25 November
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 “Blé Goudé Defence response to ‘The Prosecution’s application to conditionally admit the prior recorded statements and related documents in relation to Witnesses P-0106, P-107, P-117, P-578 under rule 68(3)’ (ICC-02/11-01/15-636-Conf)” 22 August 2016

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. The “Prosecution’s application to conditionally admit the prior recorded statements and related documents in relation to Witnesses P-106, P-107, P-117, and P-578,” (“Prosecution’s application”) should be rejected. The Prosecution has failed to substantiate the lack of prejudice to Mr. Blé Goudé as required by the terms of Rule 68. Its reliance on Mr. Blé Goudé’s opportunity to fully examine P-106, P-107, P-117, and P-578 (“the four witnesses”) is not sufficient to mitigate the prejudice that will result in allowing the Prosecution to conditionally submit their prior recorded testimony for the following two reasons. First, the four witnesses statements relate to core issues that are materially in dispute, and which are not corroborative of other evidence. Moreover, the statements cover a broad range of topics and issues that go far beyond the first incident, and do so in a great detail. Second, P-578 provides a statement whose content relating to certain video footage he filmed does not demonstrate a sufficient indicia of reliability.
2. The Defence wishes to recall that a judgment on appeal of Trial Chamber I ‘s (“the Chamber’s”) “Decision on the Prosecutor’s application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)”¹ is currently pending.² One of the certified issues relates to the criteria that must be applied in assessing Rule 68(3) applications. Thus, the present response is based on the factors that the Court has applied to Rule 68(3) applications in the past, as well as the new factors applied by the Chamber in the impugned decision.

II. Confidentiality

¹ ICC-02/11-01/15-573.

² ICC-02/11-01/15-612.

3. Pursuant to regulation 23*bis* (2) of the Regulations of the Court, the Defence files its response as “confidential” as it responds to an application, which has been classified as confidential.

III. Procedural history

4. 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).”³
5. On 2 May 2016, the Defence responded and filed its “Objections to the Prosecutions application to conditionally admit the prior recorded statements and related documents of P-169, P-217, P-230, P-555, P-573, P-587, P-112, P-344 (ICC-02/11-01/15-487-Conf).”It requested that the Prosecution’s application be rejected in its entirety. ⁴
6. On 6 May 2016, the Defence filed its “Objections to the Prosecution’s application to conditionally admit the prior recorded statements and related documents of P-588, P-589, P-590 under rule 68(2)(b),” and requested that the Prosecution’s application be rejected in its entirety.⁵
7. On 9 June 2016, the Majority of the Chamber, Judge Henderson dissenting, rendered its “Decision on the Prosecutor’s application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)” (“First Rule 68 Decision”).⁶

³ ICC-02/11-01/15-487-Conf.

⁴ ICC-02/11-01/15-496-Conf.

⁵ ICC-02/11-01/15-504-Conf.

⁶ ICC-02/11-01/15-573-Conf.

8. On 10 June 2016, the Prosecution requested to submit material in written form in relation to Witnesses P-414, P-428, P-501, P-549, and P-550.⁷
9. On 15 June 2016, the Defence requested leave to appeal the First Rule 68 Decision on the basis of four appealable issues.⁸
10. On 30 June 2016, the Defence responded and did not oppose the introduction of Witness P-501's statement under Rule 68(3). It did object to the introduction of prior recorded testimony for Witnesses P-414 and P-428.⁹
11. On 7 July 2016, the Chamber rendered its "Decision on the Defence request for leave to appeal the First Rule 68 Decision", and certified two issues for appeal, namely whether Rule 68(3) applications could be determined on the sole basis of "good trial management," and whether sufficient indicial of reliability could be limited to formal requirements.
12. On 19 July 2016, the Majority of the Chamber rendered its decision, Judge Henderson partially dissenting, and allowed the Prosecution to introduce material in written form for Witnesses P-501, P-549, P-550, P-414, and P-428.¹⁰
13. On 21 July 2016, the Defence filed its appeal against the First Rule 68 Decision.¹¹
14. On 26 July 2016, the Prosecution filed its "application to conditionally admit the prior recorded statements and related documents in relation to Witnesses P-106, P-107, P-117, P-578."¹²

IV. Applicable Law

⁷ ICC-02/11-01/15-582-Conf.

⁸ ICC-02/11-01/15-592-Corr.

⁹ ICC-02/11-01/15-607-Conf.

¹⁰ ICC-02/11-01/15-629.

¹¹ ICC-02/11-01/15-632.

¹² ICC-02/11-01/15-636.

15. The Defence incorporates by reference paragraphs 7-8, 23 of ICC-02/11-01/15-496-Conf, which relate to the applicable law for Rule 68(3) applications.¹³
16. In its First Rule 68 Decision, the Chamber noted that the criterion of “good trial management” would be applied on a case-by-case basis “taking into consideration the importance of the evidence for the case, the volume and detail of the evidence, among other factors”.¹⁴

V. Submissions

V.1. The Chamber should reject the Prosecution's application because the four witnesses' statements cover a broad range of issues that are materially in dispute, and which are not corroborated by other evidence.

17. In determining whether admitting prior recorded testimony under Rule 68(3) would be prejudicial to the accused, Chambers have considered the following three factors: (1) whether the evidence is central to the core issues in the case, (2) whether the evidence relates to issues that are materially in dispute, and (3) whether the evidence is corroborative of other evidence.¹⁵ This Chamber has determined that it would consider among other factors the importance of the evidence to the case and the volume and detail of the evidence.¹⁶ The Prosecution application fails to address any of three abovementioned factors,

¹³ Defence Objections to “the Prosecution’s application to conditionally admit the Prior recorded statements and related documents of P-169, P-217, P-230, P-555, P-573, P587, P-112, P-344”(ICC-02/11-01/15-496-Conf).

¹⁴ ICC-02/11-01/15-573-Conf, para. 25.

¹⁵ ICC-01/05-01/08-1386, para. 78. *See also The Prosecutor v. Lubanga*, ICC-01/04-01/06-1603, paras 22, 24, finding that there are material advantages to admitting prior recorded testimony when challenges are likely to be limited, the testimony is of limited significance, and when it is not materially in dispute; *The Prosecutor v. Bemba*, ICC-01/05-01/08-886, para. 8, holding that “non-disputed evidence” or “evidence not of a central significance” are factors to be taken into consideration when the Chamber exercises its discretion to admit prior recorded testimony under Rule 68(b); *The Prosecutor v. Ntaganda*, ICC-01/04-02/06-961, para. 10, considering that the fact that the charges against the accused and his actions were described extensively in the prior recorded testimony and thus the Defence would need considerable time to examine the witness; *The Prosecutor v. Bemba et al.*, ICC-01/05-01/13-1478-Red-Corr, paras. 50-51.

¹⁶ First Rule 68 Decision, para. 25.

despite the Prosecution having noted that they were relevant for the Chamber in its First Rule 68 Decision.¹⁷

18. In support of introducing the statements of the four witnesses under Rule 68(3), the Prosecution submits that they are similar to the witnesses whose statements were introduced in the First Rule 68 Decision. The Prosecution fails to substantiate how these witnesses are similar, other than to say that they are considered to be crime base witnesses for the first incident, and that they testify to the “events and issues from their own personal perspective.”¹⁸ Such a submission is not sufficient to justify introduction of a statement through Rule 68(3) because it would mean that the Prosecution would have unbridled discretion to introduce the testimony of any crime base witness, as long as the witness did not oppose introduction, and that both parties and the Chamber had the opportunity to question the witness.

19. The Defence shall substantiate below how each of the four witnesses’ statements relate to a broad range of issues, which are central to the case, are materially in dispute and not corroborative of other evidence. This along with the importance and detail of the evidence should militate against the introduction of such testimony. Given the highly contentious nature of the issues in the statements, little if any time will be saved through the use of Rule 68(3).

P-106

20. P-106 as someone who allegedly [REDACTED] in [REDACTED] during the post electoral crisis, is a witness whose testimony is of utmost importance to the case, and which will be heavily contested for several reasons. First, the witness claims that on 16 December 2010, [REDACTED] along with protesters

¹⁷ ICC-02/11-01/15-644-Conf, para. 16.

¹⁸ Prosecution application, para. 21.

began marching from “[REDACTED]” and that before marching they were searched for weapons.¹⁹ The witness highlights the supposed unarmed character of the march by stating [REDACTED].²⁰ As the Chamber has acknowledged, the unarmed character of the march is a core issue in this case and is contested.²¹ The witness further states that the BMO threw tear gas at the protesters and fired upon them. He alleges that Liberian militia made up the entire BMO unit.²² The participation of such alleged mercenaries in the post-electoral crisis is a central issue in the case, and the Defence submits that this unit is part of the police, and it is patently false to state it was composed of Liberian militia.

21. Second, P-106 alleges [REDACTED] witnessed in some form the two Abobo incidents. [REDACTED] claims to have heard the shelling of the market on 17 March 2011 because [REDACTED] from the “Marché Chaka [sic] Koné,” market on the day of the incident and [REDACTED].²³ Similarly, [REDACTED] states [REDACTED] tanks firing on the day of the women’s march.²⁴ [REDACTED] claims that before hearing the firing, [REDACTED] saw unarmed women going towards the march. After the incident, [REDACTED].²⁵ The Defence submits that the alleged firing of the tanks is materially in dispute in this case and that it must be taken into account that the two alleged incidents in Abobo took place in the context of an armed conflict. Abobo was the site of a guerrilla warfare employed by pro-Ouatarra forces, and that the state forces along with the local population were constantly trying to defend themselves against raids, strikes, and killings. While the witness describes the deteriorating security situation in Abobo

¹⁹ CIV-OTP-0019-0211, para. 29.

²⁰ *Ibid.*

²¹ First Rule 68 Decision, para. 38.

²² CIV-OTP-0019-0211, paras 33, 40.

²³ CIV-OTP-0019-0211, para. 91.

²⁴ CIV-OTP-0019-0211, para. 48.

²⁵ CIV-OTP-0019-0211, paras 48-49.

[REDACTED],²⁶ the Defence submits that the nature of the Commando Invisible's role is a core issue in the case that is materially in dispute.

22. Third, the witness makes several claims regarding Mr. Blé Goudé's alleged role during the post-electoral crisis. P-106 states that Mr. Blé Goudé [REDACTED].²⁷ The Defence submits that the existence of "jeunes patriotes" as an organisation as well as any control Mr Blé Goudé had over it as well as other youth groups such as FESCI is a key issue in this case because it determines his ultimate individual criminal responsibility. The Defence disputes the witnesses' assertion, that Mr. Blé Goudé had any control over [REDACTED]. Additionally, the Defence submits that the alleged causal link between Mr. Blé Goudé's call for the youth to enrol in the army and the arming of the youth who supported Mr. Gbagbo is a core issue in the case that is materially in dispute.²⁸ Mr. Blé Goudé's call was to channel the population's fear into legal means of defence, and the Defence has submitted that no recruitment took place after his call.²⁹

23. Lastly, P-106's evidence is not corroborative of other evidence. In fact P-106 is the only crime base witness relevant to the first incident who attests [REDACTED] before the march on the RTI.³⁰ [REDACTED] is also the only alleged eyewitness of the first incident who states that the BMO was compromised of Liberian mercenaries, which is patently false seeing as the unit is part of the police.³¹

²⁶ CIV-OTP-0019-0211, paras. 74- 88.

²⁷ CIV-OTP-0019-0211, paras. 57, 60.

²⁸ CIV-OTP-0019-0211, paras. 53-56, 71.

²⁹ ICC-02/11-02/11-179-Conf, para. 12.

³⁰ CIV-OTP-0019-0211, para. 29.

³¹ CIV-OTP-0019-0211, paras. 40-41.

24. The breadth of issues upon which the witness is expected to testify militates against accepting the Prosecution's application. The Chamber can thus parse through what is rumour, opinion and events that the witness perceived.

P-117

25. P-117 was [REDACTED] during the post-electoral crisis, and thus [REDACTED] statement also relates to the deteriorating security situation in this northern suburb of Abidjan. The witness states that Abobo [REDACTED] were attacked because pro-Gbagbo militants wanted to attack the pro-Ouattara supporters who lived there.³² [REDACTED].³³ [REDACTED] alleges that [REDACTED] saw young pro-Gbagbo militia at [REDACTED].³⁴ [REDACTED] also describes seeing the military convoys the day of the women's march and hearing very loud gun shots shortly thereafter.³⁵

26. The origin of the armed conflict in Abobo is in dispute, and is a central issue in the case because it goes to the heart of the existence of an alleged widespread or systematic attack targeting a civilian population. As submitted above, it is the position of the Defence that the pro-Ouattara forces and the Commando invisible took the offensive by conducting guerrilla warfare in Abobo. Additionally, the Defence disputes the alleged integration of militia into different units of the armed forces, and has shown on examination of P-321 that sometimes members of the gendarmerie trained in civilian clothing and could be mistaken for civilians.³⁶

³² CIV-OTP-0019-0211, para. 130.

³³ CIV-OTP-0020-0033, paras. 132, 135.

³⁴ CIV-OTP-0020-0033, paras. 141-142.

³⁵ CIV-OTP-0020-0033, paras. 157, 161.

³⁶ See Real time transcript, ICC-02/11-01/15-T-64-Conf, p. 68, lines 10-28.

27. The witness also describes [REDACTED] partaking in the allegedly unarmed RTI march.³⁷ [REDACTED] describes [REDACTED], and next being allegedly subject to tear gas and firing by the police.³⁸ [REDACTED] also affirms that [REDACTED] saw mixed police and mercenary units as [REDACTED] allegedly tried to escape the police in [REDACTED].³⁹ After being apprehended by the Police, the witness states [REDACTED] on Simone Gbagbo's orders.⁴⁰ This anticipated evidence is not corroborative of other evidence, seeing as this is the only perpetrator who cited any such order from Simone Gbagbo.⁴¹

28. The Chamber has already found that the unarmed character of the march is a central and contested issue in this case. It is also the Defence's position that the alleged integration of mercenaries in these alleged attacks also forms a core issue.

29. Given this detailed and important evidence, the Chamber should find that witness P-117 should testify fully and not have [REDACTED] prior recorded statement submitted because little if any time would be saved by introducing the prior recorded testimony given that the Defence will have to refute each core issue that is in dispute.

P-107

30. As a [REDACTED] during the post-electoral crisis, the witness claims to have witnessed many Blé Goudé's youth groups' alleged activities. In regard to the first incident, [REDACTED] alleges that Mr Blé Goudé's youth groups

³⁷ CIV-OTP-0020-0033, para. 39.

³⁸ CIV-OTP-0020-0033, paras 47, 50.

³⁹ CIV-OTP-0020-0033, para. 60.

⁴⁰ CIV-OTP-0020-0033, para. 82.

⁴¹ CIV-OTP-0020-0033, para. 96; *see* [REDACTED].

[REDACTED].⁴² [REDACTED] is the only crime base witness to attest to FESCI elements allegedly shooting at demonstrators at this location during the first incident. [REDACTED] also describes how at the CHU hospital in Cocody the doctors did not want to treat [REDACTED].⁴³

31. The Defence not only disputes the unarmed nature of the RTI march, but also the fact that certain patients were not treated for being pro-Ouattara supporters at the CHU of Cocody.⁴⁴ Prosecution witness P-573 refutes this claim stating that the hospital was not equipped to treat patients.⁴⁵

32. In regard to Mr. Blé Goudé's alleged responsibility for the first incident, the Defence submits that one of the core issues in the case is whether one can consider the "jeunes patriotes" an organization and thus whether Mr. Blé Goudé exercised control over the alleged militant youth that supported Mr. Gbagbo. It is the submission of the Defence that Mr. Blé Goudé was the leader of one group, namely the COJEP, and thus the alleged violent acts of other youth groups cannot be imputed to him.

33. More generally, the witness accuses Mr. Blé Goudé of recruiting and training people in [REDACTED].⁴⁶ [REDACTED] claims to have seen these youths in the [REDACTED] neighborhood, and to have seen them engaging in military training.⁴⁷ [REDACTED] further alleges that these youths [REDACTED].⁴⁸ After the crisis, [REDACTED] allegedly saw the abandoned weapons of the militia in [REDACTED]. The collusion between youth groups and armed forces is one of the key issues in the case. As an individual who allegedly saw

⁴² CIV-OTP-0020-0064, paras. 89, 91.

⁴³ CIV-OTP-0020-0064, para. 105.

⁴⁴ CIV-OTP-0020-0064, paras. 106, 108.

⁴⁵ CIV-OTP-0069-00221.

⁴⁶ CIV-OTP-0020-0064, paras. 21, 23, 34.

⁴⁷ *Ibid.*

⁴⁸ CIV-OTP-0020-0064, para. 31.

such youth groups' numerous activities, it is important for the witness' evidence to be elicited fully on the stand.

34. Lastly, the witness, like P-106 and P-117, provides evidence regarding the two incidents in Abobo. [REDACTED] allegedly [REDACTED] in Abobo for [REDACTED] following his alleged hospitalization on the 16-17 December 2010.⁴⁹

35. While [REDACTED], the witness alleges that the FDS would indiscriminately shoot at people who assembled in groups.⁵⁰ The witness further states that [REDACTED] on 3 March 2010.⁵¹ [REDACTED] states when [REDACTED] went to the alleged scene where the women were shot, that [REDACTED].⁵² [REDACTED] claims the FDS shot the women as their convoy was leaving Camp Commando.⁵³ The alleged responsibility of certain security forces and the sequence of events during the women's march are in dispute and are central to the case.⁵⁴ As stated above, Abobo at the time was a zone in which the Commando Invisible was employing guerrilla warfare tactics to bring down state forces, and it is necessary to explore this witness' testimony fully to account for this context. The witness hints at this context [REDACTED] when [REDACTED] affirms that [REDACTED] saw bodies of 10 members of the FDS at [REDACTED] during the crisis.⁵⁵

P-578

36. The prior recorded testimony of P-578, like the other aforementioned witnesses, concerns a broad range of issues that go to the heart of the

⁴⁹CIV-OTP-0020-0064, paras. 116, 117.

⁵⁰CIV-OTP-0020-0064, paras. 119, 121.

⁵¹CIV-OTP-0020-0064, para. 147.

⁵²CIV-OTP-0020-0064, para. 137.

⁵³CIV-OTP-0020-0064, para. 135.

⁵⁴ See P-321's testimony, ICC-02/11-01/15-62-Conf-FRA, pages, 28-43.

⁵⁵ CIV-OTP-0020-0064, para. 128

Prosecution's case. P-578's testimony should be heard *viva voce* for the following reasons. First, the witness claims to have seen CECOS units as well mercenaries and militia fire upon unarmed protesters.⁵⁶ He is the only witness to have seen CECOS units fire upon unarmed protesters on [REDACTED] at Williamsville. As substantiated above, it is not in dispute that the unarmed nature of the march is a central issue that is materially in dispute in the instant case.

37. Second, the witness uses the term parallel forces to describe irregular armed units within the FDS.⁵⁷ He goes on to say that he saw armed militia near 220 logement area, and that these men had integrated the armed forces and were stationed at camp Agban, which was located [REDACTED].⁵⁸ He also states that these parallel forces drove in white pickup trucks without license plates and would fire at civilians in Williamsville.⁵⁹ He claims to have seen the body of a gas station attendant after these parallel forces shot him.⁶⁰ Not surprisingly, P-578 statement was taken in late May early June of 2015.⁶¹ This legal characterization of facts most likely stems from the witness parroting the Prosecution's theory regarding an alleged parallel structure and unofficial recruitment of militia into certain units of the armed forces. The Defence disputes the existence of such an unofficial recruitment of youth, as shown by witness P-321 refuting the integration of any such units at camp Agban.⁶² Whether such unofficial recruitment occurred is a core issue at the case since Mr. Blé Goudé is accused of legitimizing such an act through his call to the youth to enrol in the army.⁶³ Moreover, the witness statements violates that

⁵⁶ CIV-OTP-0084-0142, paras. 80, 91.

⁵⁷ CIV-OTP-0084-0142, para. 124.

⁵⁸ CIV-OTP-0084-0142, para. 129.

⁵⁹ CIV-OTP-0084-0142, paras. 122, 124.

⁶⁰ CIV-OTP-0084-0142, para. 128.

⁶¹ CIV-OTP-0084-0142, p.2.

⁶² See P-321's testimony, ICC-02/11-01/15-T-61-Conf-FRA, p. 55, lines 11-17, 26-29, p. 56, lines 1-14.

⁶³ ICC-02/11-01/15-148-Conf-Anx2-Corr-Anx, para. 205.

Directions on the Conduct of proceedings by giving opinion evidence since the term parallel forces is clearly tantamount to a normative interpretation, which goes outside the competence of a crime base witness.

38. Lastly, the witness gives crucial evidence regarding the international armed conflict that was taking place in Abidjan during the post-electoral crisis. He describes the fighting of the Commando Invisible and the forces at the Camp Agban, and states that the bullet holes on the pedestrian bridge near [REDACTED] most likely came from this fighting.⁶⁴ He also describes the involvement of UN forces in the crisis and says that he filmed the bombing by French forces of the Agban camp.⁶⁵ The belligerent acts of the French and ONUCI forces are of utmost importance in this case because it undermines the existence of a common plan, and instead buttresses the Defence's submission that Mr. Blé Goudé was exercising his right to free speech to support his country, which was being attacked by foreign powers, and the candidate who had won the elections under the constitution of Cote d'Ivoire.

39. Given the detail with which P-578 describes the first incident in addition to the crucial issues to which his purported evidence relates, he should testify fully before the Court.

V.2. The Chamber should not allow the Prosecution to introduce the portions of P-578's statement, which relate to the videos he made because they do not demonstrate a sufficient indicia of reliability

40. Witness P-578's statement consists in large part of a commentary of the videos he shot. He states that the videos show the security forces along with other parallel forces firing on unarmed protesters on the day of the march on the RTI. The Defence submits that the witness' commentary should not be submitted because looking at the videos it becomes clear that the witness was

⁶⁴ CIV-OTP-0084-0142, para. 136.

⁶⁵ CIV-OTP-0084-0142, para. 142.

not in a position to make the detailed observations he made in his statement because he was simply too far from the vehicles and individuals he observed.

41. For example, P-578 states that at minute 01:11-01:39, the video “Tirs Nourris”⁶⁶ shows two vehicles from CECOS firing. However, upon viewing the video, while it is possible to see the vehicles and hear the shooting, it is not possible to ascertain from where the shooting is coming and whether the vehicles in fact belong to CECOS. The distance is far too great between the witness and the vehicles and between the witness and the individuals on the bridge. He states that he knew that the vehicles are from CECOS because they are midnight blue and that you can see the CECOS inscription on them.⁶⁷ However, the video does not show that it was possible for the witness to make such observations. He also states on numerous occasions that those participating in the march were not armed; however he could not see this from his location.⁶⁸

42. The second video “Tirs sur les civils au mains nues”⁶⁹ does clearly show people running in the first ten seconds, however it is not possible to say from where the individuals were running. Next, the witness claims that you can see pickups that are heavily armed at second 00:14.⁷⁰ He also claims that the video shows CECOS members wearing protection gear. However the people are so small on the video that it is impossible to tell what they are wearing.⁷¹ While gunshots can be heard on the video, their provenance is not apparent and cannot be attributed to the white vehicles as P-578 given that he is too far

⁶⁶ CIV-OTP-0084-0188.

⁶⁷ CIV-OTP-0084-0142, para. 56.

⁶⁸ CIV-OTP-0084-0142, para. 61. See CIV-OTP-0084-0188 where it is impossible to see whether people on the bridge were armed.

⁶⁹ CIV-OTP-0084-0187.

⁷⁰ CIV-OTP-0084-0142, para. 67. The video shows that the vehicles are too far to see any type of weapon loaded onto them.

⁷¹ CIV-OTP-0084-0142, para. 69.

from the vehicles and the shots are fired after the vehicles have departed at minute 00 :52 à 00 :57.

43. The video “Journee du 16/12/10”⁷² also does not match with P-578’s commentary. It is impossible to tell whether the individuals coming out of the pickup trucks are in fact security forces because they are so far away.⁷³ P-578 asserts that that the individuals are wearing green uniforms and that they are pointing their weapons under the bridge.⁷⁴ Not only is it impossible to see the uniforms the individuals in the video are wearing, but also one cannot distinguish any weapons. At minute 02:42, P-578 describes how he ducks the wall because he saw an individual in the pickup shooting in his direction. However, it is impossible to see this on the video.⁷⁵

44. In the video “Repression manifestation RHDP”⁷⁶, the witness similarly states that he could identify the vehicles as belonging to the military⁷⁷ and that he knew it was the security forces who began shooting at minute 02:03. He even identifies one pickup as having a machine gun fixed to it.⁷⁸ Viewing the videos clearly shows that P-578 did not have a clear view of the vehicles and the individuals, and thus from that distance he could not see that the vehicles belong to CECOS. It is even difficult to make out the vehicles’ colour.⁷⁹

45. The statement does not explain these staggering differences between what the witness can see on the videos and what is actually observed when they are played. Thus, this portion of the statement does not demonstrate sufficient indicia of reliability.

⁷² CIV-OTP-0084-0184.

⁷³ CIV-OTP-0084-0142, para. 77.

⁷⁴ CIV-OTP-0084-0142, para. 78.

⁷⁵ CIV-OTP-0084-0142, para. 84.

⁷⁶ CIV-OTP-0084-0185.

⁷⁷ CIV-OTP-0084-0142, paras. 8, 91.

⁷⁸ CIV-OTP-0084-0142, para. 97.

⁷⁹ CIV-OTP-0084-0142, para. 102.

RELIEF SOUGHT

1. In light of the foregoing, the Defence respectfully requests the Chamber to **DENY** the Prosecution's Application.

Respectfully submitted,




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

Dated this
25 November 2016,
At The Hague, the Netherlands