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**International
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Date: **25 April 2017**

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 the “Defence Response to the Prosecution’s application to conditionally admit the prior recorded statements and related documents of Witnesses P-0108, P-0433, P-0436, P-0402, P-0438, P-0459 and P-0109 under rule 68(3)”

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 6 February 2017, the Prosecution filed under Rule 68(3) an application to conditionally admit the prior recorded statements and related documents of Witnesses P-0108, P-0433, P-0436, P-0402, P-0438, P-0459 and P-0109 (“the Application”).¹ It is the Prosecution’s fifth application to introduce prior recorded testimony under Rule 68(3).² The Defence for Charles Blé Goudé (“the Defence”) hereby presents its objections to the application, and submits it should be rejected in its entirety.
2. Like in its other Rule 68(3) requests, the Prosecution submits that the introduction of these statements and documents will contribute to the expeditiousness of the proceedings and will not be prejudicial to the Accused.³ These arguments lack merit for the following three reasons: (1) the Prosecution’s use of Rule 68(3) in the present proceedings has not contributed to good trial management, (2) The Defence will need time for extensive examination of these seven witnesses in order to safeguard Mr. Blé Goudé’s rights, and (3) the witnesses P-433 and P-436 do not testify from their own personal perspective as suggested, and crucial parts of their statements are uncorroborated.

II. Confidentiality

3. Pursuant to regulation 23bis (2) of the Regulations, the Defence requests that the present response be received and classified as “confidential”, as it refers to a request which has been classified as confidential.

¹ ICC-02/11-01/15-796-Conf. In the same application, the Prosecution requested that witnesses P-0436, P-0402, P-0438, P-0459 and P-0109 testify via video link. The Defence for Mr Blé Goudé will respond to this request separately, and will file a response concurrently with the present submissions.

² See ICC-02/11-01/15-789, para. 3.

³ ICC-02/11-01/15-796-Conf, paras. 19-20.

III. Applicable law

4. 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.⁴
5. In its first Rule 68 Decision, Trial Chamber I (“the Chamber”) ruled that Rule 68 decisions would be based on the criterion of “good trial management.”⁵ The Chamber further held that this criterion 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*” (emphasis added).⁶ While the Appeals Chamber upheld this ruling, it also found that “where statements relate to issues that are materially in dispute, central to core issues of the case or are uncorroborated, a Chamber must be extra vigilant that introduction of the prior recorded testimony in question will not be prejudicial to or inconsistent with the rights of the accused or the fairness of the trial generally.”

IV. Submissions

a. The Prosecution’s use of Rule 68(3) in the present proceedings has not contributed to good trial management

6. In the Appeals Chamber Judgement, the Court noted that the principle reasons for amending Rule 68 in 2013 were to reduce the length of the proceedings and to streamline the presentation of evidence, while fully respecting the rights of the accused.⁷ However, in the present proceedings, the application of this rule has had no measurable effect on the reducing in-court testimony. The Defence submits that this results from the Prosecution

⁴ ICC-02/11-01/15-496-Conf

⁵ ICC-02/11-01/15-744

⁶ ICC-02/11-01/15-573-Conf, para. 25.

⁷ ICC-02/11-01/15-744, para. 60.

using rule 68 to admit entire statements of witnesses without any specifications, whose evidence pertains to very important and highly contentious issues in the case. Additionally, in the instant case there have been great discrepancies between the witness' statement and the evidence that the witness gives on the stand.

7. To date, 16 crime base witnesses have testified of which 8 have had their prior recorded statements introduced under Rule 68(3).⁸ The remaining 8 testified *viva voce*.⁹ An honest comparison between Rule 68(3) and *viva voce* crime base witnesses with respect to time spent on the stand reveals that this mechanism has not contributed to the expediency of the proceedings.¹⁰

8. At first glance, the application of Rule 68(3) in this case appears to be effective with respect to crime base witnesses. Rule 68(3) Witness P-0589's questioning by the parties has been the shortest,¹¹ and *viva voce* Witness P-441's questioning has been the longest.¹² However, the Chamber should not limit itself to such a perfunctory analysis because *viva voce* Witnesses P-190, P-536, P-579, P-513, and P-350 all spent considerably less time on the stand than Rule

⁸ The Rule 68(3) crime base witnesses that have testified are P-578, P-230, P-107, P-117, P-555, P-588, P-589 and P-106. The *viva voce* crime base witnesses that have testified are P-547, P-442, P-0190, P-536, P-441, P-0579, P-0513, P-0350.

⁹ . The *viva voce* crime base witnesses that have testified are P-547, P-442, P-0190, P-536, P-441, P-0579, P-0513, P-0350

¹⁰ The Defence in its present analysis has not included P-547, who was the first witness to testify in the proceedings, and whose testimony was wrought with issues because of certain preliminary matters regarding the conduct of proceedings. Therefore, the considerable time this witness spent on the stand was atypical due to extrinsic factors that are not related to the application of Rule 68.

¹¹ See ICC-02/11-01/15-T-114-FRA; ICC-02/11-01/15-T-115-FRA. It should be noted that the Prosecution originally sought to introduce P-589's statement and related documents under Rule 68(2)(b). ICC-02/11-01/15-487-Conf

¹² See ICC-02/11-01/15-T-35-FRA; ICC-02/11-01/15-T-36-FRA ; ICC-02/11-01/15-T-37-FRA ; ICC-02/11-01/15-T-38-FRA.

68(3) Witnesses P-578, P-230, P-107, P-588 and P-106.¹³ Another comparison shows that Rule 68(3) crime base witnesses were on the stand for approximately the same duration as *viva voce* witnesses. For example, Rule 68 Witness P-555 and *viva voce* witnesses P-190, P-536, and P-350 were in court for approximately the same amount of time.¹⁴ Rule 68(3) Witness P-107 and *viva voce* Witness P-442 also testified for similar durations.¹⁵ These different comparisons demonstrate that no correlation can be made between reducing the length of testimony of crime base witnesses and the introduction of prior recorded statements under Rule 68(3). Therefore, the Defence's previous submissions in which it argued that the application of Rule 68(3) would not reduce the length of the proceedings¹⁶ can no longer be considered speculative and unfounded, but are now real and substantiated.

9. The reason for Rule 68(3) has proved ineffective in these proceedings is that the Prosecution has not properly used this tool, and has not taken heed of the Appeals Chamber guidance, which provides that a Trial Chambers must make a "cautioned item-by-item analysis." The Prosecution in her 31 January 2017 submissions regarding the conduct of proceedings argued that all crime base witnesses could and should have their statements admitted through Rule

¹³ Compare **P-190**, ICC-02/11-01/15-T-21-ENG, ICC-02/11-01/15-T-22-ENG; **P-536**, ICC-02/11-01/15-T-22-ENG, ICC-02/11-01/15-T-23-ENG; **P-579**, ICC-02/11-01/15-T-39-ENG ; **P-513**, ICC-02/11-01/15-T-104-ENG ; **P-350**, ICC-02/11-01/15-T-107-ENG with **P-578**, ICC-02/11-01/15-T-84-ENG, ICC-02/11-01/15-T-85-ENG; **P-230**, ICC-02/11-01/15-T-105-ENG, ICC-02/11-01/15-T-106-ENG ; **P-107**, ICC-02/11-01/15-T-107-ENG, ICC-02/11-01/15-T-108-ENG, ICC-02/11-01/15-T-109-ENG, **P-588**, ICC-02/11-01/15-T-113-ENG, ICC-02/11-01/15-T-114-ENG ; and **P-106**, ICC-02/11-01/15-T-116-ENG, ICC-02/11-01/15-T-117-ENG.

¹⁴ Compare **P-555**, ICC-02/11-01/15-T-111-ENG, ICC-02/11-01/15-T-112-ENG with **P-190**, ICC-02/11-01/15-T-21-ENG, ICC-02/11-01/15-T-22-ENG ; **P-536**, ICC-02/11-01/15-T-22-ENG, ICC-02/11-01/15-T-23-ENG, and **P-350**, ICC-02/11-01/15-T-107-ENG.

¹⁵ Compare **P-107**, ICC-02/11-01/15-T-107-ENG, ICC-02/11-01/15-T-108-ENG, ICC-02/11-01/15-T-109-ENG with **P-442**, , ICC-02/11-01/15-T-19-ENG, ICC-02/11-01/15-T-20-ENG, ICC-02/11-01/15-T-21-ENG

¹⁶ ICC-02/11-01/15-496-Conf, para. 2.

68(3).¹⁷ This submission flies in the face of the cautions item-by-item analysis that the Appeals Chamber found must be done when considering Rule 68(3) applications.

10. The Appeals Chamber further held that where witness statements concern facts that are: central to the case, materially in dispute and uncorroborated, the Chamber must be extra vigilant in ensuring that the application of Rule 68(3) is not prejudicial to the accused. In the instant case, the Chamber has exercised such vigilance by not constraining the Defence's time to examine the witnesses until each contentious, uncorroborated and central issue in the case has been tested with the witness on the stand. The Defence must use and has used a significant amount of time to examine these witnesses because to not do so would be careless and an abnegation of its responsibility to zealously advocate for the rights of Mr. BLE GOUDE. Therefore, this prolongs the proceedings and the whole *raison d'être* for applying Rule 68(3) ceases to exist. In rejecting the Prosecution's application to use Rule 68(3) with witness P-45, the Chamber found that Rule 68(3) does not always contribute to the expediency of the proceedings.

11. Additionally, a more general problem also contributes to the amount of time that the Defence must spend examining Rule 68(3) witnesses. The present proceedings have shown time and again that a witness' statement can differ considerably from the evidence that is lead on the stand. ¹⁸This was acknowledged as such by Judge Henderson in his dissent to the "Decision on the "Prosecution's application to conditionally admit the prior recorded

¹⁷ ICC-02/11-01/15-788, para 13.

¹⁸ See for example, P-117, ICC-02/11-01/15-T-110-FRA ET 02-12-2016 T, p. 60, lines 4-18 (stating in her declaration that [REDACTED], whereas during her testimony she [REDACTED]); See also P-350, ICC-02/11-01/15-T-107-FRA, p. 49, lines 9-10, p. 50, lines 5-7 (testifying [REDACTED], but in her statement she [REDACTED]).

statements and related documents in relation to Witnesses P-0106, P-0107, P-0117 and P-0578 under rule 68(3).”¹⁹ Thus, when a witness’ statement is submitted under Rule 68(3), the Defence must sometimes comb through each paragraph of the statement to ensure that it is accurate.

b. The Defence will need time for extensive examination of the seven witnesses in order to safeguard Mr. Blé Goudé’s rights

12. As in its previous Rule 68(3) applications, the Prosecution again seeks to introduce the prior recorded testimony for crime base witnesses whose statements relate to facts, which are core to the case, materially in dispute or are otherwise uncorroborated.²⁰ Witnesses P-108, P-433, P-436, P-402, P-438, P-459, and P-109, gave statements relating to the following issues which are materially in dispute and are core or central to the Prosecution’s case: 1.)[REDACTED]; 2.)[REDACTED]; 3.) [REDACTED], 4.) [REDACTED]; and 5.) [REDACTED].

1.) Whether the alleged acts of violence at [REDACTED] had any connection to [REDACTED] at the [REDACTED]

13. Witnesses P-433, P-436, P-438, P-459 and P-109 all allege that [REDACTED] after [REDACTED].²¹ Further, Witness P-436 compiled [REDACTED] and

¹⁹ ICC-02/11-01/15-722-Anx, Judge Henderson *dissenting* (“ A feature of these proceedings has been the emergence of inconsistencies between the oral evidence of the witness when examined and what they may have said in their statement to the investigators. Exploring such inconsistencies is a legitimate approach in assessing the credibility of such witnesses.”)

²⁰ See ICC-02/11-01/15-496-Conf; ICC-02/11-01/15-650-Conf. The Prosecution has also sought to introduce the statements in their entirety though many contain passages outside the temporal scope of the charges, which will require further examination by the Defence.. See e.g. **P-433**, CIV OTP 0057 1345, para 37(attributing [REDACTED] in 2004) ; P-459, CIV OTP 0058 0386, paras. 41-44 (alleging that [REDACTED] in 2002/2004); **p-108**, CIV OTP 0013 0108, paras 168-171 (alleging [REDACTED] in May 2011)

²¹ Witness P-433, CIV-OTP-0057-1345, at para. 91,92 (stating [REDACTED]); Witness P-436, CIV-OTP-0058-0289, at para. 104-110 (alleging [REDACTED]) ; Witness P-438, CIV-OTP-0057-1570, at para. 42 (claiming that[REDACTED]); Witness P-459, CIV-OTP 0020-0335, at para. 104 (alleging that [REDACTED]); Witness P-109, CIV-OTP-0020-0335, at para. 73-75 (alleging the [REDACTED]).

alleges that [REDACTED].²² P-433 claims that these violent acts were [REDACTED].²³ Witness P-402, P-438 and P-109 also claim to have seen the [REDACTED].²⁴

14. The Defence submits that the link between Mr. Blé Goudé and these events is in dispute. The Defence submits that one reason the alleged [REDACTED]. [REDACTED]. The Prosecution's own witnesses lend credence to this case theory. Prosecution Witness [REDACTED]. The witness claimed that [REDACTED].²⁵ After the [REDACTED].²⁶ Similarly, Witnesses P-109, P-433 and P-436 also allege that [REDACTED].²⁷ Witness P-109 also mentions in his statement that [REDACTED]. His anticipated testimony thereby highlights [REDACTED].²⁸

15. Given these other contributions to the alleged crimes, the Prosecution must show that [REDACTED] began [REDACTED]. Thus, the time that at which the alleged incidents started is of crucial importance. Witnesses 438, 459 and 109, who are subject to this Rule 68 application gave statements alleging [REDACTED].²⁹ It appears that [REDACTED], before Mr Blé Goudé had [REDACTED].

²² Witness P-436, CIV-OTP-0058-0289 at para. 75 (alleging [REDACTED]) ; CIV-OTP-0058-0320.

²³ P-433, CIV-OTP-0057-1345, at para. 76.

²⁴ Witness P-402, CIV-OTP-0058-0289 at para. 59 (alleging that [REDACTED]) ; Witness P-438, CIV-OTP-0057-1570, at paras. 58, 63 ; Witness P-109, CIV-OTP-0020-0335, paras.101-112.

²⁵ ICC-02/11-01/15-T-21-CONF-ENG, p. 25, lines 8-11.

²⁶ ICC-02/11-01/15-T-21-CONF-ENG, p. 24, lines 1-4.

²⁷ Witness P-433, CIV-OTP-0057-1345, at paras 47-48, 60; Witness P-436, CIV-OTP-0058-0289, at para. 75, and Witness P-109, CIV-OTP-0020-0335, at para 101-112.

²⁸ Witness P-109, CIV-OTP-0020-0335, at para. 113.

²⁹ Witness P-438 states that he saw [REDACTED]. CIV-OTP-0057-1570, paras. 56-57. There is also an inconsistency as to when [REDACTED]. At paragraphs 62 and 63 of his statement Witness P-438 states they [REDACTED] and the [REDACTED]. However, in paragraph 31 the witness states that [REDACTED]. CIV-OTP-0057-1570. Witness P-459 alleges [REDACTED]. CIV-OTP-0058-0289 at para. 56. Witness P-109 alleges [REDACTED]. CIV-OTP-0020-0335, paras.101-112.

16. In regard to the [REDACTED] mentioned in the statements of P-433, P-436, P-438, P-459 and P-109, the Defence submits that it has led evidence showing that the [REDACTED].³⁰ P-97 and P-321 also testified that [REDACTED].³¹

17. [REDACTED], the Defence submits that Mr. Blé Goudé's Baron Bar speech was not intended to target foreigners. In the confirmation stage of the proceedings, the Defence submitted that the word "*personne étrangère*" means also stranger. In the context of the post-electoral crisis, the civilian population began to fear people that they didn't recognize in their neighbourhoods because of the growing fear of the guerrilla tactics of the rebellion.³²

2.) Whether Mr Blé Goudé gave [REDACTED]

18. Witness P-433, P-436 and P-459 all allege that [REDACTED].³³ Though none of the three witnesses were [REDACTED],³⁴ Witness P-433 and Witness P-436 further allege [REDACTED].³⁵ Videos have been submitted in which [REDACTED], which contradicts these witnesses' allegations. Witness P-436 tries to buttress his claims by stating that he [REDACTED].³⁶ The Defence will show that the [REDACTED] was not exclusive to [REDACTED], especially if [REDACTED].

3.) Whether on [REDACTED] Mr Blé Goudé [REDACTED and did a [REDACTED]

³⁰ ICC-02/11-01/15-T-94-FRA ET WT 31-10-2016, p. 17 lines 9-15.

³¹ ICC-02/11-01/15-T-49-FRA, p. 50 lines 6-12 ; ICC-02/11-01/15-T-63-FRA, p. 32 lignes 6-7

³² ICC-02/11-01/15-T-65 –FRA, p. 31 lignes 11-14

³³ Witness P-433, CIV-OTP-0057-1345, at para. 27 ; Witness P-436 CIV-OTP-0057-1345, at paras. 64-69 ; Witness P-459, CIV-OTP-0058-0586, paras. 94-95.

³⁴ See *ibid.*

³⁵ Witness P-433, CIV-OTP-0057-1345, para. 27 (alleging that on [REDACTED]) ; Witness P-436, CIV-OTP-0058-0289, at paras. 64-69 (claiming that Mr Blé Goudé [REDACTED])

³⁶ CIV-OTP-0058-0289, at para. 64.

19. Witness P-436 claims that Mr Blé Goudé [REDACTED] The witness was about 200 meters away, but he claims to know that Mr Blé Goudé [REDACTED].³⁷ According to some anonymous hearsay sources, Mr Blé Goudé, [REDACTED].³⁸ The witness further alleges that after Mr Blé Goudé [REDACTED].³⁹ Similarly, Witness P-459 claims that Mr Blé Goudé, after his [REDACTED]. The armed bodyguards of Mr Blé Goudé [REDACTED].⁴⁰

20. The Defence submits that these allegations are based partially on anonymous hearsay, and neither witness is [REDACTED]. Moreover, the Prosecution's own witness, P-118 who was [REDACTED]. Unlike these [REDACTED] witnesses, P-118 states that [REDACTED].⁴¹ Thus, after the [REDACTED] Mr Blé Goudé, [REDACTED].⁴² The Defence will show that [REDACTED] and [REDACTED].

4.) whether Mr Blé Goudé had [REDACTED] and [REDACTED]

21. Despite not being insiders, Witness P-108, P-433, P-402, P-438, P-459 and P-109 claim that Mr Blé Goudé was [REDACTED]. Thus, P-108 and P-436 claim that [REDACTED] with [REDACTED].⁴³ Witness P-436 also [REDACTED] would [REDACTED].⁴⁴ Similarly, Witness P-109 states that [REDACTED], thereby emphasizing [REDACTED].⁴⁵ In regard to the Galaxie Patriotique, Witness P-402 makes the allegation that [REDACTED].⁴⁶

³⁷ CIV-OTP-0058-0289 at paras 76-77.

³⁸ CIV-OTP-0058-0289, at para. 100. The source of this information is [REDACTED].

³⁹ CIV-OTP-0058-0289 at para. 78.

⁴⁰ CIV-OTP-0058-0586 at paras. 96-97.

⁴¹ CIV-OTP-0029-0193 at 0194 lns 38-44.

⁴² CIV-OTP-0029-0193 at 0194 lns 38-44.

⁴³ Witness, P-108, CIV-OTP-0013-0108, at para. 38 ; Witness P-436 CIV OTP 0058-0289 at paras. 103-104.

⁴⁴ Witness P-436 CIV OTP 0058-0289 at paras. 41-49

⁴⁵ P-109, CIV-OTP-0020-0335 at paras. 44-57.

⁴⁶ P-402, CIV-OTP-0058-0289 at paras. 33-35.

22. A central issue in this case is Mr. Blé Goudé's role within [REDACTED]. The Defence has led evidence that [REDACTED] under Article 7, and therefore [REDACTED].⁴⁷ These alleged links between Mr Blé Goudé and [REDACTED] 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.

5.) Whether Mr Blé Goudé had [REDACTED]

23. In his statement Witness P-108 claims that Mr Blé Goudé assisted [REDACTED].⁴⁸ His source for such a highly incriminating allegation is the [REDACTED].⁴⁹ The Defence disputes any connection between Mr Blé Goudé and [REDACTED]. The Prosecution has not produced the [REDACTED]. It has only produced one video in which the supposed [REDACTED]. Moreover, in the video, the commentator [REDACTED]. Moreover, the sole [REDACTED] to testify in this case, witness [REDACTED], stated that he did not have any [REDACTED], and thus he undermines the Prosecution's case theory that [REDACTED].⁵⁰

24. In addition to being materially in dispute and central to the case, some of the aforementioned allegations are uncorroborated. For example, in his statement, Witness P-436 states that [REDACTED].⁵¹ He learned of this from [REDACTED] who [REDACTED]. In the Prosecution's Pre-Trial Brief, the only other witnesses cited for [REDACTED]; the Prosecution has withdrawn

⁴⁷ See e.g. ICC-02/11-01/15-T-32-ENG, p.2, lines 10-25- p.3, lines-1-7.

⁴⁸ Witness P-108, CIV-OTP-0013-0108 at paras. 65-66.

⁴⁹ Ibid.

⁵⁰ During Witness [REDACTED]'s testimony he actually stated that [REDACTED]. ICC-02/11-01/115-T-101 pages 34, ln 2-7.

⁵¹ CIV-OTP-0058-0289, para. 67.

both of the witnesses from its list.⁵² Moreover, it is disconcerting, that witness [REDACTED] who was Witness P-436's source in regard to this allegation, does not corroborate Witness P-436's statement. Unlike Witness P-436, [REDACTED] states that [REDACTED].⁵³ Moreover, the names of the two individuals [REDACTED]'s statement. Witness P-436 told the Prosecution that he learned from [REDACTED],⁵⁴ whereas [REDACTED] mentions [REDACTED].⁵⁵ This is not a small detail, and affects the reliability of the annexes and [REDACTED], and gave to [REDACTED].

25. The only Prosecution witness that would have been present [REDACTED] is witness [REDACTED],⁵⁶ who is no longer available to testify. Given this lack of corroboration and the fact that not [REDACTED], it would be unduly prejudicial to Mr Blé Goudé if such uncorroborated statements were submitted into evidence under Rule 68(3).

26. Witness P-436 is also the only witness that is supposed to give evidence of [REDACTED].⁵⁷ Similarly, P-459 is also the only witness cited for [REDACTED].⁵⁸ Given that P-459's source is anonymous hearsay, and P-436 did not actually see [REDACTED], the Chamber should not allow such statements to be submitted without fully being tested by the Defence.

27. In order for the introduction of the seven aforementioned statements to not violate the rights of Mr Blé Goudé, the defence will need considerable time to

⁵² ICC-02/11-01/15-148-Conf-Anx-2, para. 339, footnote 1045.

⁵³ CIV-OTP-0069 0018, para. 23.

⁵⁴ CIV-OTP-0069 0018 paras. 20-21.

⁵⁵ CIV-OTP-0058-0289, para. 67.

⁵⁶ P-0188, CIV-OTP- 0068-0008 at paras.79-80 and paras.95- 101.

⁵⁷ See ICC-02/11-01/15-148-Conf-Anx-2, para. 340.

⁵⁸ See ICC-02/11-01/15-148-Conf-Anx-2, para. 340.

examine Witnesses P-108, P-433, P-436, P-402, P-438, P-459, and P-109. The present submissions discussed five issues that were materially in dispute and core or central to the case. All of them relate directly to [REDACTED], and will need to be fully tested in trial. Unlike with the first incident Rule 68(3) witnesses, some of these witnesses [REDACTED], and thus the Defence will have to conduct extensive examination in order to ensure that Mr Blé Goudé can confront the witnesses against him. In these circumstances, it is doubtful that any time can be saved through application of Rule 68(3), since the Defence will spend hours examining each of these witnesses. The Defence submits that a far better tool for expediting the proceedings without unduly prejudicing the rights of Mr Blé Goudé is to have the witnesses testify *viva voce* and to either shorten the time of the Prosecution's examination as the Chamber ordered for Witness P-45,⁵⁹ or to limit the scope of the Prosecution's questioning at the Chamber ordered with Witness P-350.⁶⁰

c. Witness P-433 and Witness P-436 do not testify from their own perspective and are [REDACTED]

28. Contrary to the Prosecution's submissions, Witnesses P-433 and P-436 do not testify from their unique personal perspective. Witness P-433, as the [REDACTED], and [REDACTED], was [REDACTED].⁶¹ When [REDACTED], P-433 [REDACTED], asked [REDACTED].⁶² After the alleged incidents began occurring [REDACTED], P-433 asked [REDACTED].⁶³ The annexes containing the [REDACTED], and are part of the Prosecution's Rule 68(3) application.⁶⁴ It is apparent that P-433 and P-436 investigated these [REDACTED], and thus their anticipated testimony goes above and beyond their personal

⁵⁹ ICC-02/11-01/15-789.

⁶⁰ ICC-02/11-01/15-T-107-FRA, p. 2, lines 20-27.

⁶¹ CIV-OTP-0057-1345, at paras. 15-17

⁶² CIV OTP 0057 1345 at paras.23-26.

⁶³ CIV-OTP-0057-1345, para. 74; CIV-OTP-0057-1378

⁶⁴ See ICC-02/11-01/15-796-Conf-Anx1.

experiences. Therefore, it would be unfair to submit their statements along with their annexes since both parties should test the reliability of these [REDACTED] during [REDACTED]'s and [REDACTED]'s testimony. Moreover, as mentioned previously, there are serious questions as to the reliability of these [REDACTED]. The annex CIV-OTP-0058-0320 at page 0321 states that [REDACTED] were [REDACTED], however as previously mentioned, [REDACTED] who is the source of this information, refers [REDACTED].

29. In addition to compiling [REDACTED], Witness P-436 is also [REDACTED], and is a [REDACTED].⁶⁵ As the [REDACTED] P-436 can answer important questions regarding the [REDACTED]⁶⁶ that do not appear to be originals. The [REDACTED] was established officially in [REDACTED],⁶⁷ and the lists all appear to be official [REDACTED] documents.⁶⁸ However, P-436 claims he began compiling the [REDACTED], and thus serious questions arise as to the authenticity [REDACTED].⁶⁹

30. In addition to this relevant role that Witness P-436 played in [REDACTED], the witness also served as an [REDACTED].⁷⁰ Thus, P-436 particularly has information regarding how [REDACTED], and thus his testimony goes well beyond his personal experience of the post-electoral crisis.

⁶⁵ CIV-OTP-0058-0289 paras.16-24

⁶⁶ CIV-OTP-0058-0320. P-433's annexes should be included since their source is [REDACTED]. They include: CIV-OTP-0057-1371; CIV-OTP-0057-1378, CIV-OTP-0057-1379; CIV-OTP-0057-1380; CIV-OTP-0057-1381; CIV-OTP-0057-1382; CIV-OTP-0057-1383; CIV-OTP-0057-1384; CIV-OTP-0057-1385.

⁶⁷ CIV-OTP-0058-0333.

⁶⁸ For example, the lists contain [REDACTED].

⁶⁹ CIV-OTP-0058-0289, para. 22.

⁷⁰ P-407 explains that she met [REDACTED] to talk about what [REDACTED] had allegedly suffered during the crisis. She further states that P-436 assembled [REDACTED]. CIV-OTP-0071-2215 paras. 24-27.

RELIEF SOUGHT

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

- REJECT the Application

Respectfully submitted,



A rectangular box containing a handwritten signature in dark ink. The signature is written in a cursive style and appears to be 'Mr. Knoop'.

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

Dated this

25 April 2017

At The Hague, the Netherlands