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TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Geoffrey Henderson

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF
THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLÉ GOUDÉ

Public Document

Response to Mr Gbagbo's Request for Leave to Appeal the Oral Decisions
Issued on 3 May 2017 (ICC-02/11-01/15-908)

Source: Office of Public Counsel for Victims

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

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I. Introduction

1. The Common Legal Representative of the victims admitted to participate in the proceedings (the “Legal Representative”)¹ submits that Mr Gbagbo’s request (the “Request”) for leave to appeal the oral decisions issued by the Chamber on 3 May 2017 (the “Decisions”)² does not satisfy the requirements of article 82(1)(d) of the Rome Statute and must be rejected.

2. The alleged issues identified by the Defence do not arise from the Decisions and therefore cannot be the subject of an interlocutory appeal. Indeed, the issues referred to in the Request merely represent the Defence’s misunderstanding of or disagreement with the rulings because the Defence (i) merely reiterates its original submissions and provides speculative arguments in support of its contention that Witness P-0438’s statement drafted by Prosecution investigators may not reflect the witness’ words; (ii) discusses general aspects on the conduct of interviews and the preparation of statements by the Prosecution that were not relied upon by the Chamber in the Decisions; (iii) misreads the Chamber’s finding that Witness P-0438 confirmed the content of his statement; (iv) misinterprets the Chamber’s authorisation for the Prosecution to confront Witness P-0438 with his previous statement; and (v) provides submissions that have become moot in the meantime.

3. Moreover, the Request fails to show that the issues allegedly arising from the Decisions would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial. In particular, the Request does not articulate how each of the alleged Issues specifically affects the fairness and expeditiousness of the proceedings. Moreover, the Legal Representative submits that the Issues

¹ See the “Decision on victim participation” (Trial Chamber I), No. ICC-02/11-01/11-800, 6 March 2015; and the “Decision on victims’ participation status” (Trial Chamber I), No. ICC-02/11-01/15-379, 7 January 2016, p. 23.

² See the transcript of the hearing held on 3 May 2017, No. ICC-02/11-01/15-T-150-CONF-ENG ET (open session), p. 15, lines 4-16 (the “First Decision”); and p. 33, lines 13-25 (the “Second Decision”; the “Decisions” when referred together with the First Decision).

identified by the Defence do not significantly affect the fairness of the proceedings or the outcome of the trial because the Decisions (i) did not concern the submission of Witness P-0438's statement; (ii) allowed the Defence to confront Witness P-0438's with relevant parts of his statement; and (iii) did not prevent the Chamber from considering the Defence's arguments on the lack of a justification to maintain the redactions in question.

II. Background

4. On 3 May 2017, the Defence of Mr Gbagbo (the "Defence") orally submitted two requests related to the testimony of Witness P-0438, namely a request to prevent the Prosecution from confronting said witness with his previous statement (the "First Request"),³ and a request to lift the redactions to the name of the interpreter who assisted the Prosecution investigators in questioning Witness P-0438, to be provided with the interpreter's qualification, and the audio recordings of said questioning (the "Second Request").⁴

5. On the same day, the Chamber issued its oral rulings rejecting the First Request and the Second Request (the "Decisions" or separately, the "First Decision" and the "Second Decision").⁵

6. On 9 May 2017, the Defence submitted its request (the "Request"),⁶ seeking leave to appeal the Decisions on the following three issues:

³ See the transcript of the hearing held on 3 May 2017, No. ICC-02/11-01/15-T-150-CONF-ENG ET (open session), p. 12, line 23 to p. 13, line 13 (the "First Request").

⁴ *Idem*, p. 24, lines 8-22; and p. 29, line 14 to p. 32, line 1 (the "Second Request").

⁵ See *supra* note 2.

⁶ See the "Demande d'autorisation d'interjeter appel des deux décisions de la Chambre rendues oralement le 3 mai 2017, l'une rejetant la demande de la Défense visant à interdire au Procureur d'utiliser la déclaration antérieure de P-0438 lors de son interrogatoire, l'autre refusant à la Défense la levée de l'expurgation apposée par l'Accusation sur le nom de l'interprète ayant officié lors de la prise de la déclaration antérieure de P-0438", No. ICC-02/11-01/15-908, 9 May 2017 (the "Request").

- i) The Chamber made an error of law in finding that Witness P-0438 could be confronted with his previous statement without any guarantee that said “statement” faithfully reflected the account of the witness (the “First Issue”);⁷
- ii) The Chamber made an error of law in allowing the use of a summary as previous statement when it appears that there is no recording and/or *verbatim* notes of the interview (the “Second Issue”);⁸ and
- iii) The Chamber made an error of law in not demanding the Prosecution to justify the maintenance of the redaction, thereby reversing the burden of proof regarding redactions (the “Third Issue”).⁹

III. Submissions

1. The issues identified by the Defence do not arise from the Decisions

a. The First Issue

7. The Legal Representative submits that the First Issue does not arise from the Decisions and it simply shows the Defence’s disagreement with and misunderstanding of the First Decision.

8. The Defence argued the First Request on the basis that, *inter alia*, it did not know whether Witness P-0438 “has read any statement in Dioula before signing it [the statement in French]”,¹⁰ and that it “suspect[s] that there may have been some difficulties

⁷ *Idem*, paras. 12-24.

⁸ *Ibid.*, paras. 25-29.

⁹ *Ibid.*, paras. 30-36.

¹⁰ See the First Request, *supra* note 3, p. 13, lines 6-7.

in interpretation during the investigation".¹¹ The Defence reiterates these arguments in the Request.¹² As already explained by the Chamber, a mere repetition of the submissions, made when the Defence was given the opportunity to present observations on the matter, cannot suffice for granting leave to appeal.¹³

9. Moreover, the Defence provides no substantive basis for its argument that Witness P-0438's statement drafted by Prosecution investigators may not reflect the witness' words, pointing out instead that *"rien n'indique que les réponses n'aient pas reformulées par la personne qui a pris la déposition puisque c'est elle qui construit le texte synthétique"*.¹⁴ The only concrete submission by the Defence in this regard is that the French statement *"ne reprend pas tout ce qu'il [Witness P-0438] a dit aux enquêteurs puisque la lecture a pris 2 heures et 23 minutes alors que l'entretien a duré 8 heures et 39 minutes"*.¹⁵

10. In this regard, contrary to the Defence's unfounded argument, the different time spent in interviewing Witness P-0438 and in reading the statement to him may not necessarily result from the statement not reflecting everything said by the witness. Witness P-0438 may have requested clarification or repeated several times the same answers to the investigators, as experienced while he was giving his testimony at trial via video-link. In any event, as already stated by several Chambers, speculative arguments like the ones advanced by the Defence do not suffice to grant leave to appeal a decision.¹⁶

¹¹ *Idem*, p. 13, lines 9-10.

¹² See the Request, *supra* note 6, paras. 13-16.

¹³ See the "Decision on the request for leave to appeal the 'Decision on the mode of testimony of Rule 68(3) witnesses'" (Trial Chamber I), No. ICC-02/11-01/15-756, 15 November 2016, para. 8. See also the "Decision on Defence request for leave to appeal the 'Decision on Prosecution request seeking the admission of the medical report related to Witness P-0790 under Rule 68(2)(b) of the Rules'" (Trial Chamber VI), No. ICC-01/04-02/06-1784, 13 February 2017, para. 12.

¹⁴ See the Request, *supra* note 6, para. 16.

¹⁵ *Idem*, para. 20.

¹⁶ See the "Decision on the Prosecutor's and Defence requests for leave to appeal the decision adjourning the hearing on the confirmation of charges" (Pre-Trial Chamber I), No. ICC-02/11-01/11-464, 31 July 2013, para. 8. See also the "Decision on 'Defence Request for Leave to Appeal the 'Decision on issues related to the conclusion of the defence's presentation of oral evidence at trial and on the

11. Furthermore, the Defence refers to statements previously disclosed by the Prosecution, different from those of Witness P-0438,¹⁷ and to the alleged way in which interviews are conducted and statements are prepared in general by the Prosecution.¹⁸ These general issues were not addressed or relied upon by the Chamber in the First Decision, limited to whether all the rules were followed in taking Witness P-0438's statement,¹⁹ and therefore cannot lead to granting leave to appeal.²⁰

12. The Legal Representative submits that all the arguments indicated in the preceding paragraphs do not indicate the existence of any "issue" arising from the First Decision, but merely show the Defence's disagreement with it. As repeatedly stated by the Chamber, disagreements with a decision do not suffice for granting leave to appeal under article 82(1)(d) of the Rome Statute.²¹

'Defence Request for an Order for Cooperation'" (Trial Chamber III), No. ICC-01/05-01/08-2925-Red, 20 December 2013, para. 26 and the references contained therein; the "Decision on 'Defence Request for Leave to Appeal the 'Decision on Defence Request for Relief for Abuse of Process'" (Trial Chamber III), No. ICC-01/05-01/08-3273, 24 July 2015, para. 6 and the references contained therein; the "Decision on Defence Request for Leave to Appeal the Decision on Article 56 Evidence" (Trial Chamber IX), No. ICC-02/04-01/15-535, 9 September 2016, para. 9; the "Decision on request for leave to appeal the Chamber's decision rejecting the Defence request for a stay of proceedings" (Trial Chamber VI), No. ICC-01/04-02/06-1677, 12 December 2016, para. 18; and the "Decision on Defence request for leave to appeal the 'Decision on Defence request for extension of time to prepare for its presentation of evidence'" (Trial Chamber VI), No. ICC-01/04-02/06-1860, 13 April 2017, para. 19.

¹⁷ See the Request, *supra* note 6, para. 19.

¹⁸ *Idem*, paras. 17-18.

¹⁹ See the First Decision, *supra* note 2, p. 15, lines 12-13.

²⁰ See *mutatis mutandis* the "Decision on the 'Demande d'autorisation d'interjeter appel de la décision de la Chambre accordant des mesures de protection aux témoins P-0350, P-0513 et P-0117 rendue oralement le 22 Novembre 2016'" (Trial Chamber I), No. ICC-02/11-01/15-771, 8 December 2016, para. 13.

²¹ See the transcript of the hearing held on 10 November 2015, No. ICC-02/11-01/15-T-5-ENG ET, p. 15, lines 18-20; and the transcript of the hearing held on 28 January 2016, No. ICC-02/11-01/15-T-9-ENG ET, p. 38, lines 11-13. See also the "Decision on Defence's requests seeking leave to appeal the 'Decision on the Legal Representative of Victims' access to certain confidential filings and to the case record' and seeking suspensive effect of it." (Trial Chamber I, Single Judge), No. ICC-02/11-01/11-809, 11 March 2015, para. 9; and the "Decision on Defence requests for leave to appeal the 'Order setting the commencement date for trial'" (Trial Chamber I), No. ICC-02/11-01/15-117, 2 July 2015, para. 19.

13. Lastly, the Defence misunderstands the First Decision when it argues that Witness P-0438 “*a uniquement «confirmé» en la signant une interprétation en dioula [...] d’une déclaration*”.²² As clearly indicated in the First Decision, “[i]t was read back to the witness what he said, and he confirmed and signed the statement”.²³ Consequently, the Chamber did not find that Witness P-0438 confirmed the Dioula interpretation of his statement, but that said witness confirmed the *content* of the statement read to him.

14. Therefore, the Defence’s misinterpretation of the First Decision can only lead to the rejection of the Request.²⁴

b. The Second Issue

15. The Legal Representative submits that the Second Issue does not arise from the Decisions and it simply shows the Defence’s misreading of the Second Decision.

16. The Defence argues that the Chamber erred because it allowed the Prosecution to use the previous statement during the questioning of Witness P-0438 when there were no audio recordings of the interview.²⁵

17. However, the decision allowing the Prosecution to confront Witness P-0438 with his previous statement was not dependant on the existence of said recordings, but, as discussed regarding the First Issue,²⁶ on the Prosecution’s compliance with all the applicable rules when collecting said statement.

²² See the Request, *supra* note 6, para. 23.

²³ See the First Decision, *supra* note 2, p. 15, lines 13-14.

²⁴ See the “Decision on Defence requests for leave to appeal the ‘Order setting the commencement date for trial’” (Trial Chamber I), No. ICC-02/11-01/15-117, 2 July 2015, para. 19. See also the “Decision on request for leave to appeal the ‘Decision on objections concerning access to confidential material on the case record’” (Trial Chamber I, Single Judge), No. ICC-02/11-01/15-132, 10 July 2015, para. 3 and references contained therein.

²⁵ See the Request, *supra* note 6, para. 28.

²⁶ See *supra* para. 11.

18. The Chamber made reference to the recordings in the Second Decision, *after* the ruling on the use of the statement was read out,²⁷ and only because the Defence subsequently requested to have access to said recordings.²⁸

19. Therefore, the Defence's misinterpretation of the Second Decision can only lead to the rejection of the Request.²⁹

c. The Third Issue

20. The Legal Representative submits that the Defence already presented to the Chamber, almost literally and before the issuance of the Second Decision, most of the arguments conforming this Issue.³⁰ Therefore, the Third Issue is not an appealable issue but a mere criticism of the Second Decision.³¹

21. Moreover, the Legal Representative notes that the Third Issue incorporates additional – and unsubstantiated – arguments against the Second Decision, related to the allocation of the burden for maintaining redactions and an alleged mistrust towards the Defence.³² These arguments have become moot since the filing of the Request, following the recent judgement delivered by the Appeals Chamber.³³

²⁷ See the First Decision, *supra* note 2, p. 15, lines 4-7.

²⁸ See the Second Decision, *supra* note 2, p. 33, lines 22-25.

²⁹ See *supra* note 24.

³⁰ Compare the Request, *supra* note 6, paras. 33-34, with the Second Request, *supra* note 4, p. 29, lines 14-17, and p. 31, lines 10-13.

³¹ See the "Decision on the Gbagbo Defence Request for leave to appeal the Chamber's Decision granting protective measures to P-0321 (ICC-02/11-01/15-561)" (Trial Chamber I), No. ICC-02/11-01/15-598, 23 June 2016, para. 5.

³² See the Request, *supra* note 6, paras. 34-35.

³³ See the "Judgment on the appeal of Mr Laurent Gbagbo against the oral decision on redactions of 29 November 2016" (Appeals Chamber), No. ICC-02/11-01/15-915-Conf OA9, 11 May 2017, paras. 1 and 61-63.

22. In these circumstances, the Legal Representative submits that the Third Issue is not an appealable issue under article 82(1)(d) of the Rome Statute, but a mere disagreement or conflicting opinion with the Second Decision.³⁴

2. The issues identified by the Defence do not significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial

23. Since neither of the Issues identified by the Defence arises from the Decisions, the Request must be dismissed on this basis alone.³⁵

24. Assuming *arguendo* that any of said Issues arises from the Decisions, the Legal Representative opposes the Defence's contention that they significantly affect the fairness and expeditiousness of the proceedings or the outcome of the trial for the following reasons.

25. Firstly, the Request fails to address the alleged impact of each Issue on the expeditiousness of the proceedings. Indeed, article 82(1)(d) of the Rome Statute requires verifying that each of the issues affects both the fair and the expeditious conduct of the proceedings.³⁶

26. Secondly, the Request does not articulate how each of the alleged Issues specifically affects the fairness of the proceedings.³⁷ The Request only makes a

³⁴ See *supra* note 21.

³⁵ See *e.g.* the "Decision on the request for leave to appeal the 'Decision on the mode of testimony of Rule 68(3) witnesses'" (Trial Chamber I), No. ICC-02/11-01/15-756, 15 November 2016, p. 6.

³⁶ See the "Decision on Prosecutor's Application for leave to appeal in part Pre-Trial Chamber II's Decision on the Prosecutor's Applications for Warrants of Arrest under article 58" (Pre-Trial Chamber II), No. ICC-02/04-01/05-20, 19 August 2005, para. 21; and the "Decision on the Prosecutor's Application for Leave to Appeal the 'Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo'" (Pre-Trial Chamber II), No. ICC-01/05-01/08-532, 18 September 2009, para. 16.

³⁷ See the "Decision on the Gbagbo Defence Request for leave to appeal the Chamber's Decision granting protective measures to P-0321 (ICC-02/11-01/15-561)" (Trial Chamber I), No. ICC-02/11-01/15-598, 23 June 2016, para. 8; the "Decision on requests for leave to appeal the 'Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68(2)(b) and (68(3))'" (Trial

general and vague reference to the Defence's alleged inability to test Witness P-0438's testimony, and to the alleged impossibility for the Defence to have access to "*l'unique information [...] lui permettant d'avoir une idée de la manière dont les propos du témoin ont été interprétés et retranscrits*".³⁸

27. In this regard, the Defence contends that the Issues significantly affect its rights because "*il n'existe la moindre possibilité pour la Défense et les Juges d'en vérifier la conformité aux dires du témoin*".³⁹ The Defence argues that the First Decision prevents it from having detailed knowledge of what Witness P-0438 said to the investigators during the interview because his statement allegedly reflects the mind of the investigators who drafted it, and because it is allegedly impossible to know whether, and if so what, the investigators may have discarded when preparing Witness P-0438's statement.⁴⁰ In turn, the Defence argues that the Second Decision prevents it from knowing whether the content of the French-Dioula interpretation provided during the Witness P-0438's questioning by the Prosecution investigators is actually reflected in the French statement signed by him.⁴¹

28. In this regard, the Legal Representative submits that the Issues identified by the Defence do not significantly affect the fairness of the proceedings because the Decisions do not deal with the submission of Witness P-0438's statement under rule

Chamber I), No. ICC-02/11-01/15-612, 8 July 2016, paras. 5-6; and the "Decision on the request for leave to appeal 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'" (Trial Chamber I), No. ICC-02/11-01/15-685-Red, 27 September 2016, paras. 5-6. See also the "Decision on the 'Prosecution's Application for Leave to Appeal Oral Rulings on Clarifying Inconsistencies in Prior Statements and Partial Hostility" (Trial Chamber II), No. ICC-01/04-01/07-1958, 11 March 2010, para. 20; and the "Decision on 'Defence Request for Leave to Appeal the 'Decision on issues related to the conclusion of the defence's presentation of oral evidence at trial and on the 'Defence Request for an Order for Cooperation'" (Trial Chamber III), No. ICC-01/05-01/08-2925-Red, 20 December 2013, para. 34.

³⁸ See the Request, *supra* note 6, para. 37-38.

³⁹ *Idem*, para. 37. See also *ibid.*, para. 10.

⁴⁰ *Ibid.*, paras. 6, 9, 22.1, 22.2, 22.4, 24 and 27-28.

⁴¹ *Ibid.*, paras. 7, 9 and 22.6.

68 of the Rules of Procedure and Evidence⁴² or under paragraph 43 of the amended directions on the conduct of the proceedings.

29. Moreover, the First Decision allowed the Prosecution, and thereby also the Defence, to confront Witness P-0438's with parts of his statement. In doing so, the Chamber ensured the fairness of the proceedings.

30. In fact, by virtue of the First Decision, the Defence directly⁴³ or indirectly⁴⁴ referred to Witness P-0438's statement in several occasions during its questioning, inquiring about what he told the investigators and whether his statement reflected what he told the investigators.

31. Likewise, by impliedly relying on Witness P-0438's statement, the Defence enjoyed the possibility to question Witness P-0438 about whether his statement was interpreted to him in Dioula prior to his signature.⁴⁵

32. In conclusion, the possibility to confront Witness P-0438 with his previous statement was a means for the Defence to verify whether said statement truthfully reflected the account of the witness.

⁴² See the transcript of the hearing held on 3 May 2017, No. ICC-02/11-01/15-T-150-CONF-ENG ET (open session), p. 32, lines 22-23.

⁴³ See the transcript of the hearing held on 5 May 2017, No. ICC-02/11-01/15-T-152-CONF-ENG ET (open session), p. 16, line 19 to p. 17, line 13.

⁴⁴ For instance, compare the transcript of the hearing held on 5 May 2017, No. ICC-02/11-01/15-T-152-CONF-ENG ET (open session), p. 7, line 5 to p. 8, line 2, quoting from the transcript of the hearing held on 3 May 2017, No. ICC-02/11-01/15-T-150-CONF-ENG ET (open session), p. 16, line 25 to p. 17, line 5, with CIV-OTP-0057-1570 at 1574, para. 24. Compare also the transcript of the hearing held on 4 May 2017, No. ICC-02/11-01/15-T-151-CONF-ENG ET (open session), p. 18, lines 5-16, with CIV-OTP-0057-1570 at 1572, para. 36; p. 20, line 24 to p. 22, line 5 of the same transcript with CIV-OTP-0057-1570 at 1576, paras. 31, 33; p. 23, lines 11-16 and p. 25, lines 2-9 of the same transcript with CIV-OTP-0057-1570 at 1579, para. 50; p. 40, line 13 to p. 41, line 21 of the same transcript with CIV-OTP-0057-1570 at 1578, para. 41; p. 52, line 13 to p. 53, line 3 of the same transcript with CIV-OTP-0057-1570 at 1576, para. 35; and p. 70, lines 18-24 of the same transcript with CIV-OTP-0057-1570 at 1581, para. 58.

⁴⁵ For instance, compare the transcript of the hearing held on 4 May 2017, No. ICC-02/11-01/15-T-151-CONF-ENG ET (open session), p. 14, line 25 to p. 16, line 19, with CIV-OTP-0057-1570 at 1572, para. 2.

33. Moreover, contrary to the Defence's argument,⁴⁶ a debate about lifting the redactions applied to the interpreter's name took place in this instance, as shown by the extensive oral arguments made by the Defence on its alleged need to know the interpreter's identity.⁴⁷ After listening to the Defence's submissions, the Chamber retired to deliberate on whether the reasons underlying its initial decision to grant the redactions in question continued to exist, and concluded that the Defence had not demonstrated that the redacted information had become relevant for its preparation.⁴⁸

34. In these circumstances, the Decisions cannot be said to involve any issue that significantly affects the fair conduct of the proceedings or the outcome of the trial.

3. The Appeals Chamber's immediate resolution of the issues identified by the Defence will not materially advance the proceedings

35. The Defence contends that an immediate resolution by the Appeals Chamber would materially advance the proceedings because no adequate remedy could be provided for if the alleged Issues were to be decided in an appeal against the eventual judgement.⁴⁹

36. In this regard, since the Issues identified by the Defence do not affect the fair and expeditious conduct of the proceedings or the outcome of the trial, it is unnecessary to consider whether an immediate resolution by the Appeals Chamber may materially advance the proceedings.⁵⁰

⁴⁶ See the Request, *supra* note 6, para. 35.

⁴⁷ See the Second Request, *supra* note 4, p. 30, line 5 to p. 31, line 8.

⁴⁸ See the Second Decision, *supra* note 2, p. 33, lines 18-23.

⁴⁹ See the Request, *supra* note 6, paras. 41-42.

⁵⁰ See the "Decision on Defence requests for leave to appeal the 'Order setting the commencement date for trial'" (Trial Chamber I), No. ICC-02/11-01/15-117, 2 July 2015, para. 26; and the "Decision on Defence Request for Leave to Appeal Decision ICC-02/04-01/15-521" (Trial Chamber IX, Single Judge), No. ICC-02/04-01/15-529, 2 September 2016, para. 9.

37. Lastly, the general contentions by the Defence on the “*discussion plus large portant sur ce qui peut constituer une déclaration antérieure*”⁵¹ are neither related to any of the Issues identified in the Request nor to any matter addressed in the Decisions, which did not discuss the scope of rules 111 and 112 of the Rules of Procedure and Evidence. As already explained by the Chamber, it does not have the duty to identify specific issues to appeal from broadly formulated requests,⁵² and engaging the Appeals Chamber’s review in these circumstances would require the latter to assume an impermissible advisory function.⁵³ Therefore, the Legal Representative submits that these general contentions by the Defence ought to be dismissed *in limine*.

IV. Conclusion

38. For the foregoing reasons, the Legal Representative respectfully requests the Chamber to reject the Request.



Paolina Massidda
Principal Counsel

Dated this 15th day of May of 2017

At The Hague, The Netherlands

⁵¹ See the Request, *supra* note 6, paras. 39-40.

⁵² See the “Decision on request for leave to appeal the ‘Fourth decision on matters related to disclosure and amendments to the List of Evidence’ and other issues related to the presentation of evidence by the Office of the Prosecutor” (Trial Chamber I), No. ICC-02/11-01/15-524, 13 May 2016, para. 16; and the “Decision on request for leave to appeal the Chamber’s decision rejecting the Defence request for a stay of proceedings”, *supra* note 16, para. 14.

⁵³ See *mutatis mutandis* the “Decision on Defence Request for Leave to Appeal Decision ICC-02/04-01/15-521”, *supra* note 50, paras. 8 and 11; and the “Decision on Defence Request for Leave to Appeal the Decision on Article 56 Evidence” (Trial Chamber IX), No. ICC-02/04-01/15-535, 9 September 2016, para. 14.