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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

Redacted version of "Consolidated response to Prosecution's filings No. ICC-02/11-01/15-829-Conf and No. ICC-02/11-01/15-853-Conf" (ICC-02/11-01/15-881-Conf)

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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 the Prosecution application to conditionally admit the prior recorded testimony and related documents of 16 witnesses under rule 68(2)(b) and of a further 23 witnesses under rule 68(3) of the Rules of Procedure and Evidence (the “Rules”), as well as to submit certain documents under paragraphs 43 and 44 of the Amended Directions on the conduct of the proceedings² (the “Application”)³ should be granted.

2. As regards the introduction of the identified statements and related documents pursuant to rule 68(2)(b) of the Rules, the Legal Representative submits that these documents go to “*proof of a matter other than acts and conduct of the accused*” because they concern specific and limited events related to the acts of persons other than the Accused and the Prosecution does not intend to rely on said documents to prove the alleged conduct of Mr Gbagbo and Mr Blé Goudé.

3. In relation to the introduction of the previously recorded statements, and related annexes, pursuant to rule 68(3) of the Rules, the Legal Representative supports the Application as the concerned testimonies are limited in nature and/or of a corroborative character.

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 “Annex A to Decision adopting amended and supplemented directions on the conduct of the proceedings” (Trial Chamber I), No. ICC-02/11-01/15-498-AnxA, 4 May 2016 (the “Amended Directions”), paras. 43-44.

³ See the “Prosecution’s consolidated application to conditionally admit the prior recorded statements and related documents of various witnesses under rule 68 and Prosecution’s application for the introduction of documentary evidence under paragraph 43 of the directions on the conduct of proceedings relating to the evidence of Witnesses [REDACTED] and [REDACTED]”, No. ICC-02/11-01/15-829-Conf, 28 February 2017 (the “Application”) and the “Prosecution’s supplementary submission related to its application for the introduction of documentary evidence under paragraph 43 of the directions on the conduct of proceedings relating to the evidence of Witnesses P-0087 and P-0088”, No. ICC-02/11-01/15-853-Conf, 16 March 2017 (the “Supplementary Submission”).

4. The Legal Representative also submits that the introduction of the documents attached to the relevant statements should be granted because said material is referred to in the respective statements and their admission is therefore in compliance with the Amended Directions.

5. In relation to the submission of documentary evidence pertaining to Witnesses P-0087 and P-0088 under paragraphs 43 and 44 of the Amended Directions, the Legal Representative supports the Application as the evidence in question is *prima facie* relevant, probative, authentic and its direct submission would result in an enhancement of the efficiency of the proceedings.

6. Finally, the Legal Representative recalls her submissions of 3 February 2017 in which she indicates the witnesses she intends to question upon condition that the Prosecution's application under rule 68(2)(b) was to be granted.⁴ Should the Chamber decide to deny or to partially grant the Application, the Legal Representative will further assess the need to preserve her clients' interests and she will eventually introduce a request for questioning at the time the relevant witnesses appear, in compliance with the Chamber's instructions.

II. Confidentiality

7. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this response is filed confidentially because it makes reference to submissions filed with the same classification. A public redacted version of this response will be filed in due course.

⁴ See the "Submission of information pursuant to Order ICC-02/11-01/15-787", No. ICC-02/11-01/15-791, 3 February 2017, paras. 5-7.

III. Background

8. On 4 May 2016, the Chamber adopted the Amended Directions.⁵

9. On 23 January 2017, the Chamber issued the “Order requesting the parties and participants to submit information for the purposes of the conduct of the proceedings pursuant to article 64(2) of the Statute and rule 140 of the Rules of Procedure and Evidence”, inviting, *inter alia*, the Prosecution to file (i) a consolidated application under rule 68 for all the remaining witnesses; and (ii) a consolidated submission of documentary evidence.⁶

10. On 28 February 2017, the Prosecution filed the Application.⁷

11. On 9 March 2017, following a joint request from the Defence and the Legal Representative,⁸ the Chamber granted an extension of time until 24 April 2017 to respond to the Application.⁹

12. On 16 March 2017, the Prosecution filed the “Prosecution’s supplementary submission related to its application for the introduction of documentary evidence under paragraph 43 of the directions on the conduct of proceedings relating to the evidence of Witnesses P-0087 and P-0088”.¹⁰

⁵ See Amended Directions, *supra* note 2.

⁶ See the “Order requesting the parties and participants to submit information for the purposes of the conduct of the proceedings pursuant to article 64(2) of the Statute and rule 140 of the Rules of Procedure and Evidence” (Trial Chamber I), No. ICC-02/11-01/15-787, 23 January 2017.

⁷ See the Application, *supra* note 3.

⁸ See the email sent on 6 March 2017 at 16:33 hours.

⁹ See the email received from the Chamber on 9 March 2017 at 11:18 hours.

¹⁰ See the Supplementary Submission, *supra* note 3.

IV. Submissions

13. The Legal Representative submits that the documents identified in the Application meet the requirements of rule 68(2)(b) and rule 68(3) of the Rules and that their submission under these provisions is in line with relevant previous decisions.¹¹

14. As regards the applicable law, the Legal Representative refers to her submissions in relation to the applicability of rule 68(2)(b) and 68(3) of the Rules filed in response to the first Prosecution's application.¹²

a) Introduction of prior recorded testimony under rule 68(2)(b) of the Rules

15. The Legal Representative argues that the prior recorded testimony of Witnesses [REDACTED] and accompanying annexes go to the proof of a matter other than the acts and conduct of the Accused; concern specific and limited aspects of the events that are not related to disputed issues, and bear sufficient *indicia* of reliability. Accordingly, the Legal Representative agrees with the Prosecution that they may be introduced under rule 68(2)(b) of the Rules.

¹¹ See the "Decision on the Prosecution's application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)" (Trial Chamber I), No. ICC-02/11-01/15-573-Conf, 9 June 2016 (the "First Rule 68 Decision"); see also the "Judgment on the appeals of Mr Laurent Gbagbo and Mr Charles Blé Goudé against the decision of Trial Chamber I of 9 June 2016 entitled "Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)" (Appeals Chamber), No. ICC-02/11-01/15-744 OA8, 1 November 2016.

¹² See the "Response to the Prosecution's application under rules 68(2)(b) and 68(3) of the Rules for the admission of prior recorded testimony of Witnesses [REDACTED] (ICC-02/11-01/15-487-Conf)", No. ICC-02/11-01/15-491-Conf 28 April 2011, paras. 11-16.

(i) 3 March 2011 Witnesses

16. In relation to the 3 March 2011 witnesses,¹³ the prior recorded testimony of six out of the eight witnesses - *i.e.* [REDACTED] – solely relate to (i) [REDACTED],¹⁴ and [REDACTED];¹⁵ and (ii) [REDACTED].¹⁶

17. In no instance reference is made to the nature of the 3 March 2011 demonstration, how those people were killed or who is responsible for their death. In this regard, the Legal Representative notes that while the prior recorded testimonies relate to a major event in the context of the charges, they clearly go to the proof of a matter other than the acts and conduct of the Accused and provide evidence to limited and specific aspects which are not linked to disputed issues at the core of the case. Indeed, all the concerned witnesses were [REDACTED].¹⁷

18. Furthermore, all these prior recorded testimonies bear “*sufficient indicia of reliability*”¹⁸ as regards in particular the [REDACTED].

19. In the same vein, the prior recorded testimony of both dual status individuals [REDACTED] provide evidence that goes to the proof of a matter other than the acts and conduct of the Accused, insofar as their content is limited to (i) [REDACTED];¹⁹ and (ii) [REDACTED].²⁰ In this regard, the Chamber has already clarified that evidence providing information of a single casualty of one event “*cannot be reasonably said to provide evidence that can assist the Chamber in resolving the central issues of the*

¹³ See the Application, *supra* note 3, paras. 25-28.

¹⁴ See in particular: [REDACTED].

¹⁵ See in particular: [REDACTED].

¹⁶ See in particular: [REDACTED].

¹⁷ See the First Rule 68 Decision, *supra* note 11, para. 19.

¹⁸ *Idem*, para. 22.

¹⁹ See [REDACTED].

²⁰ See also [REDACTED].

case”²¹ because it “will possibly be taken into account in the context of the entirety of the relevant evidence, and is in this sense cumulative and corroborative”.²²

20. By the same token, the part of the prior recorded testimony of dual status individual [REDACTED] concerning the shelling of the *Siaka Koné* market is of a very limited nature and it does not provide any information on the surrounding circumstances or on the identification of the persons allegedly responsible of this event.²³

(ii) 17 March 2011 Witnesses

21. In relation to the 17 March 2011 witnesses,²⁴ the Legal Representative notes that [REDACTED] were present during the shelling of Abobo SOS neighbourhood. Therefore, their prior recorded testimony provides direct evidence about the events, but not about the Accused, their conduct or acts. In particular, the prior recorded testimony of [REDACTED].²⁵ Witness [REDACTED] prior recorded testimony provides also corroborative and cumulative evidence on the shelling of Abobo.²⁶ [REDACTED]²⁷ and of [REDACTED].²⁸ Witness [REDACTED] was instead present in the immediate aftermath of the shelling of *Siaka Koné* market, [REDACTED].²⁹ In this regard, the Legal Representative recalls the observations made *supra* on this type of prior recorded testimony³⁰ and submits that evidence that goes to the identification of casualties on one event is to be considered cumulative and corroborative in nature.³¹

²¹ See the First Rule 68 Decision, *supra* note 11, para. 20.

²² *Idem*.

²³ See [REDACTED].

²⁴ See the Application, *supra* note 3, paras. 26-27

²⁵ See in particular, [REDACTED].

²⁶ See [REDACTED]. See also the Application, *supra* note 3, para. 27.

²⁷ See [REDACTED].

²⁸ [REDACTED].

²⁹ See [REDACTED].

³⁰ See *supra*, para. 19.

³¹ See the First Rule 68 Decision, *supra* note 11, para. 19.

22. In light of the foregoing, while the incidents of the 3 and 17 March 2011 are core events of the case, the evidence related to the 3 March 2011 witnesses and the 17 March 2011 witnesses cannot reasonably be said to provide evidence that can assist the Chamber in resolving the central issues in relation to those events. Furthermore, as this evidence is cumulative and corroborative in nature, the Defence will have proper opportunity to counter it in relation to both the women's demonstration of 3 March 2011 and the Abobo shelling of 17 March 2011, including by questioning other witnesses testifying on the same events, and to present its own evidence. From this perspective, the Legal Representative argues that the admission of the prior recorded testimony of Witnesses [REDACTED] under rule 68(2)(b) is not prejudicial to or inconsistent with the rights of the Accused.³² It is also appropriate because it "[w]ill save court time and spare the witness the burden of appearing";³³ serving the best interest of witnesses, [REDACTED].³⁴

(iii) Witness [REDACTED]

23. In relation to the prior recorded testimony of Witness [REDACTED], the Legal Representative notes that he provides (i) [REDACTED],³⁵ and (ii) specific evidence about the [REDACTED].³⁶ In relation to point (i), the Legal Representative submits that the evidence essentially relates to background information which is not linked to any disputed issues of the case and that - [REDACTED] - bears sufficient *indicia* of reliability in relation to [REDACTED]. As regard the evidence at point (ii), the Legal Representative notes that, while the event of 16 December 2011 is at the core of the case, the evidence of Witness [REDACTED] is corroborative and cumulative in

³² *Idem*, para. 21

³³ *Ibid.*

³⁴ See the "Decision on Prosecution application under Rule 68(3) of the Rules for admission of prior recorded testimony of Witness P-0010" (Trial Chamber VI), No. ICC-01/04-02/06-988, 6 November 2015, para. 13.

³⁵ See [REDACTED].

³⁶ See [REDACTED].

nature and will not reasonably assist the Chamber in resolving any central issue in relation to that event. Accordingly, the absence of opportunity to examine Witness [REDACTED] will not adversely affect the Defence while the introduction of the written statement will save court time.

(iv) Authentication Witnesses

24. In relation to the two authentication witnesses - *i.e.* [REDACTED] -³⁷ the Legal Representative submits that because of their respective role of [REDACTED], their prior recorded testimony contain sufficient *indicia* of reliability in relation to (i) [REDACTED];³⁸ and (ii) [REDACTED];³⁹ [REDACTED];⁴⁰ and the [REDACTED].⁴¹ Furthermore, Witness [REDACTED] provides evidence about the [REDACTED].⁴² As such, Witness [REDACTED] statements do not relate to disputed issues at the core of the case and their introduction under rule 68(2) of the Rules is not prejudicial to the Defence.

(v) Witness [REDACTED]

25. Lastly, as regards the prior recorded testimony of Witness [REDACTED],⁴³ the Legal Representative submits that its introduction under rule 68(2) of the Rules is suitable insofar as it relates to evidence merely repetitive of the one provided by [REDACTED].⁴⁴ As such, the evidence is clearly of a cumulative and corroborative nature and the Defence will still be in a position to question Witness [REDACTED]. Furthermore, the evidence bears sufficient *indicia* of reliability as regards

³⁷ See the Application, *supra* note 3, paras. 31-32.

³⁸ See in particular, [REDACTED].

³⁹ See [REDACTED].

⁴⁰ See in particular, [REDACTED].

⁴¹ [REDACTED].

⁴² [REDACTED].

⁴³ See the Application *supra* note 3, paras. 33-35.

⁴⁴ See [REDACTED].

[REDACTED],⁴⁵ the [REDACTED],⁴⁶ and [REDACTED] the Prosecution is seeking to introduce under paragraphs 43 of the Amended Directions.⁴⁷

26. The Legal Representative further supports the submission of all the related annexes to the statements to be introduced under rule 68(2) of the Rules. As indicated by the Chamber in the First Rule 68 Decision, “[t]he documents referred to in the witness statements themselves [...] need to be joined in order to allow the Chamber and the parties to properly appreciate the content of the witness statements”.⁴⁸

b) Introduction of prior recorded testimony under rule 68(3) of the Rules

27. The Legal Representative supports the Prosecution’s request to introduce the previously recorded statements and related documents of 23 witnesses pursuant to rule 68(3) of the Rules,⁴⁹ as listed in Confidential Annex 3 of the Application.⁵⁰ However, the Legal Representative notes the recent guidance provided by the Chamber, according to which: “[r]ule 68(3) of the Rules does not preclude the introduction of prior recorded testimony if it goes to the acts and conduct of the accused (cf. Rule 68(2)(b)) or if it “offers opinion evidence””.⁵¹ Furthermore, the Appeals Chamber has recently clarified that: “pursuant to rule 68 (3) of the Rules, ‘the Prosecutor, the defence and the Chamber have the opportunity to examine the witness’ in Court. In this sense, the testimony cannot be considered to be exclusively written as it is not necessarily intended to replace oral

⁴⁵ See [REDACTED].

⁴⁶ See [REDACTED].

⁴⁷ See the Application *supra* note 3, paras. 34 and 62-67.

⁴⁸ See the First Rule 68 Decision, *supra* note 11, para. 9. See also the Amended Directions, *supra* note 2, para. 51.

⁴⁹ See the Application, *supra* note 3, paras. 36-42.

⁵⁰ See the Annex 3 to the Application, *supra* note 3 – i.e. [REDACTED].

⁵¹ See the “Decision on 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) and for testimony by means of video-link technology for Witnesses P-0436, P-0402, P-0438, P-0459 and P-0109 under rule 67(1)” (Trial Chamber I), No. ICC-02/11-01/15-870, 7 April 2017, para. 14.

testimony but, rather, complement it".⁵² Accordingly, the Legal Representative submits that the entirety of the statements of the 23 witnesses should be introduced under rule 68(3) of the Rules insofar as the Defence will have the opportunity to confront the witnesses with their statements and will not be constrained by the time used by the Prosecution for its limited examination.

(i) 3 March 2011 Witnesses

28. The Legal Representative notes that the prior recorded testimony of Witnesses [REDACTED] relates to events which are central to the case, and are materially in dispute. The testimonies are mostly related to the women's march in Abobo on 3 March 2011, but some of the witnesses also provide evidence in relation to other important facts of the case, such as some events occurred on 16 December 2010.⁵³ However, all the witnesses will testify on the events of 3 March 2011 and the consequences of said events 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, and/or the surrounding circumstances or the identification of the alleged perpetrators.

29. In particular, dual status individuals [REDACTED]. Their evidence in this regard mainly relates to the immediate aftermath of the march,⁵⁴ the [REDACTED],⁵⁵ and [REDACTED].⁵⁶ In this sense, the Legal Representative submits that their evidence is largely cumulative and corroborative of evidence already presented before the Chamber.⁵⁷ In any case, evidence that goes to the proof of casualties of one event cannot be reasonably said to assist the Chamber in resolving the central issues

⁵² See the "Judgment on the appeals of Mr Laurent Gbagbo and Mr Charles Blé Goudé against the decision of Trial Chamber I of 9 June 2016 entitled "Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)", *supra* note 11, para. 79.

⁵³ See [REDACTED].

⁵⁴ See [REDACTED].

⁵⁵ See [REDACTED].

⁵⁶ See [REDACTED].

⁵⁷ See in particular [REDACTED].

of the event in question.⁵⁸ Indeed, while the alleged responsibility of the two Accused in relation to those events is disputed, the killing of those women on 3 March 2011 cannot be reasonably said to be so.

30. Therefore, the Legal Representative submits that the Defence will not be adversely affected and the introduction of the statements of Witnesses [REDACTED] will streamline the presentation of evidence and will reduce significantly the amount of time devoted to hearing oral testimony in court while contributing to protect the physical and psychological well-being of the witnesses.

(ii) 17 March 2011 Witnesses

31. By the same token, the statements of crime base Witnesses [REDACTED] relate to facts which are central to the case. These are mostly related to the events of 17 March 2011, but some of the witnesses also provide limited evidence in relation to other important facts of the case, such as the women's march in Abobo on 3 March 2011⁵⁹ and the 16-19 December 2010 incident.⁶⁰ However, all the witnesses will testify to the relevant events from their own personal perspective. They do not have any insider quality or pertinent knowledge beyond the mere observations of the facts. In particular, the evidence provided by these witnesses mainly focuses on [REDACTED],⁶¹ and [REDACTED].⁶² The prior recorded testimony of dual status individual [REDACTED] relates instead to [REDACTED].⁶³ Consequently, the Legal Representative submits that, whereas those witnesses' statements refer to some central facts of the case, the relative importance of these witnesses "[w]ithin the system of evidence that has been and is expected to be presented to the Chamber" in relation to

⁵⁸ See, *mutatis mutandis*, the First Rule 68 Decision, *supra* note 11, para. 20.

⁵⁹ See [REDACTED].

⁶⁰ See [REDACTED].

⁶¹ See [REDACTED].

⁶² See [REDACTED].

⁶³ See [REDACTED].

those events is very limited,⁶⁴ and as such, suitable for their introduction under rule 68(3) of the Rules.

(iii) 12 April 2011 Witnesses

32. In the same vein, the Legal Representative argues that the prior recorded testimony of crime base Witnesses [REDACTED] mostly⁶⁵ relates to the harm they personally suffered from as a consequence of the events occurred on 12 April 2011 and as such are mainly of a cumulative and corroborative character. In particular, both Witness [REDACTED]⁶⁶ and dual status individual [REDACTED],⁶⁷ while the prior recorded testimony of [REDACTED].⁶⁸ In turn, dual status individual [REDACTED], [REDACTED], describes the situation of that area of Yopougon during the post-electoral crisis and specifically during the night of 11-12 April 2011.⁶⁹ Accordingly, all the concerned witnesses provide evidence based on their own personal experience; they do not possess any insider knowledge of the attack, nor their testimony can reasonably be said to provide key evidence in relation to the events of 12 April 2011. Accordingly, their direct oral testimony is unlikely to provide additional information.⁷⁰

33. In these circumstances, and since the Defence will not be prejudiced because it will have in any case ample opportunities to question those witnesses, the Legal Representative submits that the introduction under rule 68(3) of the Rules of Witnesses [REDACTED] statements and related documents is appropriate and will

⁶⁴ See the First Rule 68 Decision, *supra* note 11, para. 38.

⁶⁵ Limited evidence on [REDACTED] is provided by both Witness [REDACTED] and Witness [REDACTED].

⁶⁶ See [REDACTED].

⁶⁷ In this regard, the testimony of Witness [REDACTED] is corroborated by Witness [REDACTED].

⁶⁸ See [REDACTED].

⁶⁹ See [REDACTED].

⁷⁰ See the "Judgment on the appeals of Mr Laurent Gbagbo and Mr Charles Blé Goudé against the decision of Trial Chamber I of 9 June 2016 entitled "Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)", *supra* note 11, para. 80.

contribute to streamline the presentation of the Prosecution's evidence.⁷¹ In relation to Witness [REDACTED] and dual status individual P-0407, the Legal Representative notes the Prosecution's intention to spend no more than half an hour for the questioning of each of these [REDACTED],⁷² and submits that reducing as well the time granted to the Defence for questioning them [REDACTED] and will be in their best interest.⁷³ This limitation would be consistent with the duty of the Court under article 68(1) of the Rome Statute to "[t]ake appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses".

(iv) Insider Witnesses

34. The Legal Representative further supports the introduction under rule 68(3) of the Rules of the statements of Witness [REDACTED].⁷⁴ As regards Witness [REDACTED], the Legal Representative agrees with the Prosecution's view that, insofar as the evidence provided is largely repetitive of the testimony of Witness [REDACTED],⁷⁵ Witness [REDACTED]⁷⁶ and Witness [REDACTED],⁷⁷ the statement is suitable for its introduction under rule 68(3) of the Rules.⁷⁸

35. Moreover, the Legal Representative notes that the prior recorded testimony of Witness [REDACTED] concerns background information about events which are peripheral since they relate to a period of time going from 2002 and 2009,⁷⁹ and to

⁷¹ See the First Rule 68 Decision, *supra* note 11, para. 42.

⁷² See the Annex 4 to the Application, *supra* note 3, pp. 16-17.

⁷³ See the "Decision on Prosecution application under Rule 68(3) of the Rules for admission of prior recorded testimony of Witness P-0010" (Trial Chamber VI), No. ICC-01/04-02/06-988, 6 November 2015, para. 13.

⁷⁴ See the Application, *supra* note 3, paras. 46-48.

⁷⁵ See [REDACTED].

⁷⁶ See [REDACTED].

⁷⁷ See [REDACTED].

⁷⁸ See the Application, *supra* note 3, para. 46.

⁷⁹ See [REDACTED].

evidence that is largely corroborated by Witness [REDACTED],⁸⁰ and by Witness P[REDACTED].⁸¹

36. By the same token, the Legal Representative notes that the prior recorded testimony of Witnesses [REDACTED] relates mostly to [REDACTED]. As such, it is largely cumulative with and corroborative of the testimony of Witness [REDACTED], [REDACTED] and already testified for four full days on the same topics.⁸²

37. In light of the foregoing, the Legal Representative submits that the statements of the five insider witnesses are suitable for the introduction under rule 68(3) of the Rules as they will allow for the streamlining of the Prosecution's evidence, will considerably save court time and are not prejudicial to the Defence.

(v) Witness [REDACTED] and Witness [REDACTED]

38. The Legal Representative also submits that the statements of both Witness [REDACTED] and Witness [REDACTED] are suitable for their introduction under rule 68(3) of the Rules. Witness P-0381 provides evidence about the [REDACTED],⁸³ and [REDACTED].⁸⁴ Said evidence cannot as such be reasonably said to go to the proof of disputed issues at the core of the case.

39. As regard Witness [REDACTED] statement on the [REDACTED],⁸⁵ and other limited evidence about [REDACTED],⁸⁶ [REDACTED],⁸⁷ [REDACTED],⁸⁸ as well as

⁸⁰ See [REDACTED].

⁸¹ See [REDACTED].

⁸² See [REDACTED].

⁸³ See [REDACTED].

⁸⁴ [REDACTED].

⁸⁵ [REDACTED]

⁸⁶ [REDACTED].

⁸⁷ [REDACTED].

⁸⁸ [REDACTED].

similar aspects of the testimony of Witness [REDACTED],⁸⁹ the Legal Representative recalls that *“the Appeals Chamber [...] did not per se preclude the introduction of prior recorded testimony under rule 68(3) of the Rules which related to issues that were materially in dispute, central to core issues of the case or were uncorroborated”*.⁹⁰ Such discretion is available to the Chamber since under rule 68(3) of the Rules, the Defence will still be given adequate opportunity to examine the Witnesses and, as clarified by the Chamber in its previous rulings, it will not be *“constrained to the amount of time used by the Prosecutor for her supplementary examination”*.⁹¹ Accordingly, the Legal Representative submits that the introduction of the prior recorded testimony of both Witness [REDACTED] and Witness [REDACTED] will not adversely affect the Defence and will instead permit to streamline the presentation of the evidence.

c) Submission of documentary evidence under paragraph 43 of the Amended Directions

40. Finally, in relation to the submission of documentary evidence pertaining to Witnesses [REDACTED] and [REDACTED] under paragraphs 43 and 44 of the Amended Directions,⁹² the Legal Representative supports the Application as the evidence in question is relevant, probative of material issues at trial and authentic.

41. Indeed, the documentary evidence related to Witnesses [REDACTED] and [REDACTED] – who are [REDACTED] –⁹³ has sufficient probative value and offers the highest degree of authenticity as it has been self-authenticated and its originality and integrity have not been compromised.⁹⁴ It is furthermore manifest that this evidence is relevant because it refers either directly or indirectly to the acts and

⁸⁹ See [REDACTED].

⁹⁰ See the “Judgment on the appeals of Mr Laurent Gbagbo and Mr Charles Blé Goudé against the decision of Trial Chamber I of 9 June 2016 entitled “Decision on the Prosecutor’s application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)”, *supra* note 11, para. 69.

⁹¹ See the First Rule 68 Decision, *supra* note 11, para. 38.

⁹² See the Amended Directions, *supra* note 2, paras. 43-44.

⁹³ See [REDACTED].

⁹⁴ See the “Decision on the Prosecutor’s Bar Table Motions” (Trial Chamber II), No. ICC-01/04-01/07-2635, 17 December 2010 para. 24(d). See also the “Corrigendum to Decision on the admissibility of four documents” (Trial Chamber I), No. ICC-01/04-01/06-1399-Corr, 20 January 2011, paras. 36-37.

conducts of Mr Blé Goudé. In this regard, the Legal Representative also underlines that, as indicated in the *Katanga and Ngudjolo* case, “[i]n a case involving more than one accused, the fact that an item of evidence is only relevant to one of the accused and bears no relation to another co-accused, is not a ground for objection by the latter”.⁹⁵

42. The Legal Representative underlines that the request meets the requirements under paragraphs 43 and 44 of the Amended Directions as the Prosecution has clearly indicated the relevance, probative value and authenticity, as well as the date of disclosure for each of the documents identified in the Application and annexed table.⁹⁶ By the same token and for the sake of completeness, the Legal Representative supports the introduction of two additional items of evidence of a similar nature related to Witness P-0087 and P-0088, as identified in the Supplementary Submission.⁹⁷

V. Conclusion

43. For the foregoing reasons, the Legal Representative respectfully requests the Chamber to grant both the Application and the Supplementary Submission.



Paolina Massidda
Principal Counsel

Dated this 8th day of June 2017

At The Hague, The Netherlands

⁹⁵ See the “Decision on the Prosecutor’s Bar Table Motions”, *supra* note 94, para. 18. See also the “Decision on the Bar Table Motion of the Defence of Germain Katanga” (Trial Chamber II), No. ICC-01/04-01/07-3184, 21 October 2011, para. 11.

⁹⁶ See the Application, *supra* note 3, paras. 62-67 and Annex 5 to the Application.

⁹⁷ See the Supplementary Submission, *supra* note 3.