



Original: English

No.: ICC-02/11-01/15

Date: 8 June 2017

TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera-Carbuccia
Judge Geoffrey Henderson

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR

v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ

Public

With Confidential Annexes 1, 2, 3 4 & 5

Lesser public redacted version of “Public redacted version of 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 P-0087 and P-0088”, 21 March 2017, ICC-02/11-01/15-829-Red

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Single Judge ordered the Prosecution to file a consolidated application under rule 68 of the Rules of Procedure and Evidence (“Rules”) for all remaining witnesses.¹ This consolidated request relates to 28 crime base witnesses, as well as 11 other witnesses who provide insider, overview and/or authentication evidence.

2. The Prosecution seeks:

- (i) *conditional* admission into evidence of the prior recorded statements, including related documents (collectively, “Rule 68(2)(b) Documents”), of 16 witnesses (Witnesses P-0226, P-0426, P-0471, P-0476, P-0479, P-0543, P-0580, P-0582, P-0129, P-0294, P-0360, P-0489, P-0573, P-0380, P-0594 and P-0088) (“Rule 68(2)(b) Witnesses”), in accordance with rule 68(2)(b) of the Rules of Procedure and Evidence (“Rules”), as well as articles 69(2), 64(9)(a) and 69(4) of the Rome Statute (“Statute”) and rule 63(2) of the Rules; and
- (ii) *conditional* admission into evidence of the prior recorded statements, including related documents (collectively, “Rule 68(3) Documents”), of a further 23 witnesses (Witnesses P-0114, P-0172, P-0184, P-0237, P-0105, P-0293, P-0297, P-0362, P-0363, P-0364, P-0185, P-0407, P-0554, P-0567, P-0568, P-0054, P-0164, P-0226, P-0239, P-0316, P-0521, P-0381 and P-0087) (“Rule 68(3) Witnesses”), in accordance with rule 68(3) of the Rules, paragraph 49 of the amended and supplemented directions on the conduct of the proceedings (“Conduct Directions”),² as well as articles 69(2), 64(9)(a) and 69(4) of the Statute and rule 63(2) of the Rules.

¹ ICC-02/11-01/15-787, p. 6.

² ICC-02/11-01/15-498-AnxA.

3. Should the Chamber decline to grant the Prosecution's request under rule 68(2)(b) for any witness, the Prosecution requests, alternatively, submission of the statement/s and related documents under rule 68(3).³

4. In relation to Witness P-0188, as previously indicated,⁴ the Prosecution intends to file a request [REDACTED]. This request is not submitted in the present application, as the Prosecution is awaiting documents [REDACTED] and necessary to support such application. In relation to Witness P-0458, for whom a request under rule 68(3) was also anticipated,⁵ the Prosecution is currently evaluating whether to call this witness as part of its case.

5. The Prosecution further seeks the submission of 75 items of documentary evidence related to the statements of Witnesses P-0087 and P-0088, pursuant to paragraphs 43 and 44 of the Conduct Directions.

II. CONFIDENTIALITY

6. This filing and its annexes are classified as "Confidential", as they refer to information that is not yet available to the public. The Prosecution will file a public redacted version of the cover filing that will maintain the confidentiality of the relevant witness pseudonyms and other confidential information as soon as practicable.

III. PROCEDURAL HISTORY

7. On 31 January 2017, the Prosecution filed its submission of information pursuant to Chamber's order ICC-02/11-01/15-787.⁶ In Confidential Annex A to that filing, it indicated that it would seek to submit the testimony of various witnesses under rule 68(2)(b) and rule 68(3).

³ The Chamber took this approach in ICC-02/11-01/15-573.

⁴ ICC-02/11-01/15-788-Conf-AnxA, p. 19.

⁵ ICC-02/11-01/15-788-Conf-AnxA, p. 17.

⁶ ICC-02/11-01/15-788.

8. On 7 February 2017, the Prosecution filed its application to conditionally admit the prior recorded statements and related documents of various witnesses in its next crime block under rule 68(3), given that these witnesses would be testifying shortly.⁷

IV. ADMISSION UNDER RULE 68(2)(B) AND 68(3)

A. Applicable Law

1. Rule 68 generally

9. The Prosecution incorporates by reference the law as set out in its first application under rule 68, in paragraph 11 on article 69(2) of the Statute; paragraph 12 on the meaning of “prior recorded testimony”; and paragraphs 20-21 on the applicability of amended rule 68.⁸

10. It is a general condition of rule 68(1) of the Rules that the introduction of prior recorded testimony is not prejudicial to or inconsistent with the rights of the Accused.⁹

11. The Chamber has found that “[i]n case of introduction of written statements under Rule 68 of the Rules, any documentary evidence annexed is also to be considered submitted.”¹⁰

2. Rule 68(2)(b)

12. Under rule 68(2)(b), the prior recorded testimony must go to proof of a matter other than the acts and conduct of the Accused, as well as be accompanied by a declaration confirming the veracity of its content under certain formal requirements.¹¹ If these two conditions are met, then, as the Chamber has clarified, it must determine whether such introduction is appropriate in the particular circumstances.¹²

⁷ ICC-02/11-01/15-796.

⁸ ICC-02/11-01/15-487-Red-Corr.

⁹ ICC-02/11-01/15-573-Red, para. 24.

¹⁰ ICC-02/11-01/15-573-Red, para. 9.

¹¹ ICC-02/11-01/15-573-Red, para. 10.

¹² ICC-02/11-01/15-573-Red, para. 10.

13. Rule 68(2)(b)(i) of the Rules provides examples of factors that the Chamber may take into account for its determination. As to the factor of “sufficient *indicia* of reliability”, the Appeals Chamber has clarified that Trial Chambers “are not obliged to consider factors beyond formal requirements” because factors such as competence and internal consistency can be considered when assessing the probative value of the evidence. Trial Chambers may however do so, “if they consider it appropriate in a particular case”.¹³

14. As to the factor of “issues that are not materially in dispute”, the Trial Chamber in the *Ongwen* case has found that “it is ultimately the Chamber, not the parties, which determines what is materially in dispute in the case,” based on an objective assessment, “irrespective of the parties’ own assertions,” of the “degree to which a prior recorded testimony potentially impacts on material matters actually contested in the proceedings.”¹⁴

3. Rule 68(3)

15. For introduction of prior recorded testimony under rule 68(3) of the Rules, the following conditions must be met: (i) that the witness is present before the Trial Chamber; (ii) that the witness does not object to the introduction of the prior recorded testimony; and (iii) that the Prosecutor, the Defence and the Chamber have the opportunity to examine the witness during the proceedings.¹⁵

16. This Chamber has found that “a decision authorising the introduction of testimonial evidence via rule 68 of the rules instead of *viva voce* will be based on the criterion of good trial management, which includes considerations of expeditiousness and streamlining the presentation of evidence. This criterion will 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.”¹⁶ As the Appeals Chamber has stated, “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

¹³ ICC-02/11-01/15-744, para. 104.

¹⁴ ICC-02/04-01/15-596-Red, para. 15. *See also*, in the context of rule 68(3) of the Rules, ICC-02/04-01/15-621, para. 8.

¹⁵ ICC-02/11-01/15-573-Red, para. 24. *See* rule 68(3) of the Rules.

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.”¹⁷ However, “(t)he fact that the evidence in question may have been materially in dispute, related to facts central to the case and may have been uncorroborated does not necessarily require rejection of” an application under rule 68(3).¹⁸

17. As the Appeals Chamber in this case has also affirmed, good trial management and the relative importance of the witnesses are relevant factors for the Chamber to consider in making a determination under rule 68(3).¹⁹ The factors referred to by the Appeals Chamber in the *Bemba* case “are not requirements but, rather, factors that may be considered in assessing whether the introduction of prior recorded testimony under rule 68(3) of the Rules is prejudicial to or inconsistent with the right of the accused or with the fairness of the trial generally.”²⁰

18. This Chamber has also found that rule 68(3) of the Rules must be understood as a tool in the exercise of the Chamber’s duty “to ensure that the trial unfolds in a focused and expeditious manner, while respecting the procedural rights of the parties and participants.”²¹ It further considered that “introduction of prior recorded testimony under Rule 68(3) of the Rules typically carries a lower risk of interfering with the fair trial rights of the accused, because the witness still appears before the Chamber and is available for examination, including by the Defence.”²²

¹⁶ ICC-02/11-01/15-573-Red, para. 25. *See also* ICC-02/11-01/15-744, paras. 71-72.

¹⁷ ICC-02/11-01/15-744, para. 69.

¹⁸ ICC-02/11-01/15-744, para. 81. *See also*, ICC-02/11-01/15-573-Red, para. 24.

¹⁹ ICC-02/11-01/15-744, para. 81.

²⁰ ICC-02/11-01/15-744, para. 69. *See* ICC-01/05-01/08-1386, para.78. *See also*, in the *Ongwen* case, ICC-02/04-01/15-621, para. 7.

²¹ ICC-02/11-01/15-573-Red, para. 25.

²² ICC-02/11-01/15-573-Red, para. 24.

B. Introduction of Rule 68(2)(b) Documents

19. The Prosecution requests the *conditional*²³ introduction and submission of the Rule 68(2)(b) Documents, namely the prior recorded statements, accompanying annexes and related documents of 16 witnesses, as listed at Confidential Annex 1. Of these 16 witnesses:

- Eight are witnesses from the 3 March 2011 crime block (Witnesses P-0226, P-0426, P-0471, P-0476, P-0479, P-0543, P-0580 and P-0582: “3 March 2011 Witnesses”);
- Four are witnesses from the 17 March 2011 crime block (Witnesses P-0129, P-0294, P-0360 and P-0489: “17 March 2011 Witnesses”);
- One is the [REDACTED] *Centre hospitalier universitaire de Cocody* (Witness P-0573) whose evidence relates to the 16 December 2010 incident;
- Two are witnesses whose evidence relates mainly to the authentication of documents (Witnesses P-0380 and P-0594: “Authentication Witnesses”); and
- One is a [REDACTED] (Witness P-0088), who [REDACTED] sought to be introduced concurrently by the Prosecution under paragraph 43 of the Conduct Directions.²⁴

20. Confidential Annex 2 provides summaries of the evidence of each witness and time estimates for examination by the Prosecution. Also at Annex 2, the Prosecution (i) identifies the specific passages which the Prosecution wishes to submit as evidence;²⁵ and (ii) provides the Evidence Registration Numbers (“ERNs”) for the other material, within the meaning of paragraph 51 of the Conduct Directions, which it seeks to introduce under rule 68(2)(b). Annex 2 also identifies those passages that have been excluded from the present application for the reason that they go to evidence of acts and conduct of the Accused and/or offer opinions on the Accused.

²³ Contingent upon their providing the requisite accompanying declaration. See para. 24 below.

²⁴ See Part V and Confidential Annex 5.

²⁵ As required by paragraph 51 of the Conduct Directions.

21. The Chamber should exercise its discretion to allow the introduction of the Rule 68(2)(b) Documents. First, for the specific reasons set out below by witness group,²⁶ the evidence of the Rule 68(2)(b) Witnesses does not relate to matters materially in dispute and/or is cumulative or corroborative in nature. As such, the introduction of the Rule 68(2)(b) Documents would not be prejudicial to or inconsistent with the rights of the Accused.

22. Second, in relation to all 16 witnesses, the Rule 68(2)(b) Documents bear sufficient *indicia* of reliability. They were obtained by the Prosecution in the ordinary course of investigations and each witness voluntarily provided his or her statement in a language he or she fully speaks and understands.

23. Third, in relation to all 16 witnesses, introduction of the Rule 68(2)(b) Documents would foster judicial efficiency and economy in reducing the estimated duration of the Prosecution's case-in-chief. The Prosecution notes, in particular, that if the Chamber allows introduction of the Rule 68(2)(b) Documents, this will result in considerable time saved when compared to the time estimated for its examination without the use of rule 68(2)(b) of the Rules. In this regard, the Prosecution refers the Chamber to the table at Confidential Annex 2.²⁷

24. As for the criteria under rules 68(2)(b)(ii) and (iii), in the event that the Chamber determines, in the exercise of its discretion, that the Rule 68(2)(b) Documents should, in principle, be admitted, the Prosecution will obtain the requisite accompanying declaration by each of the 16 witnesses, in accordance with rule 68(2)(b)(iii) and the Chamber's corresponding decision.²⁸

²⁶ See paras. 25-35, below.

²⁷ See the table at Confidential Annex 2, last two columns. See also ICC-02/11-01/15-789, para. 9.

²⁸ ICC-02/11-01/15-303. See also ICC-02/11-01/15-573-Red, para. 23.

1. 3 March 2011 Witnesses

(a) *Witnesses P-0266, P-0426, P-0471, P-0476, P-0479 and P-0543*

25. The statements of Witnesses P-0266, P-0426, P-0471, P-0476, P-0479 and P-0543 relate mostly to the [REDACTED]. Their prior recorded statements do not relate to disputed issues at the core of this case. The evidence these witnesses provide is of a cumulative and corroborative nature in that other witnesses have given and will give evidence of similar facts, as detailed below.

26. The evidence provided by Witnesses P-0266, P-0426, P-0471, P-0476, P-0479 and P-0543 explains [REDACTED].

27. The information provided by these six witnesses is corroborated by [REDACTED].²⁹ Their evidence is also corroborated by other sources; in particular [REDACTED].³⁰

(b) *Witnesses P-0580 and P-0582*

28. Witnesses P-0580 and P-0582 [REDACTED]. Their prior recorded statements go to the [REDACTED] and do not relate to disputed issues at the core of this case. The evidence these witnesses provide is of cumulative and corroborative nature. In particular, [REDACTED].³¹

2. 17 March 2011 Witnesses

26. Witnesses P-0489, P-0360, P-0129 and P-0294 are witnesses to the shelling of Abobo on 17 March 2011. Witnesses P-0489 and P-0129 [REDACTED] during the shelling of the Abobo SOS village neighbourhood. Witness P-0360 [REDACTED]. Witness P-0294's [REDACTED] at the Siaka Koné market. The evidence of these four witnesses does not relate to the acts and conduct of the Accused, and the shelling of Abobo cannot reasonably be in dispute.

²⁹ [REDACTED].

³⁰ [REDACTED].

³¹ [REDACTED].

27. These four witnesses corroborate each other and other witnesses, including Witness P-0536, on the shelling of Abobo.³² They also corroborate each other and other witnesses on specific details of the shelling, including: (i) Witness P-0294 corroborates the location of the shelling site at Siaka Koné Market;³³ (ii) Witnesses P-0360, P-0129 and P-0489 corroborate Witnesses P-0363 and P-0364 in regards to the location of the shelling site at Abobo SOS village neighbourhood;³⁴ (iii) Witness P-0489 corroborates Witness P-0364 [REDACTED] as a result of the shelling in Abobo SOS neighbourhood;³⁵ and (iv) Witnesses P-0489 and P-0129 corroborate Witness P-0364 as to the injured and dead people at the hospital in Abobo.³⁶ Furthermore, Witness P-0360 [REDACTED]³⁷ thereby corroborating Witness P-0536's testimony in this regard.³⁸

3. Witness P-0573

29. The Prosecution has previously applied to conditionally admit the prior recorded statement and annexes of Witness P-0573 under rule 68(3).³⁹ This application was granted by the Chamber on 9 June 2016.⁴⁰ In light of the Chamber's subsequent guidance on the applicability of Rule 68(2)(b)⁴¹ and more recent guidance on presentation of evidence,⁴² the Prosecution has revised its previous position and now seeks the Chamber's authorisation to admit this witness's statement and annexes under Rule 68(2)(b).

30. Witness P-0573's prior recorded statement relates to his [REDACTED] the *Centre hospitalier universitaire (CHU) de Cocody* during the post-electoral crisis. [REDACTED]. Witness P-0573 cannot reasonably be said to provide evidence that can assist the Chamber

³² [REDACTED].

³³ [REDACTED].

³⁴ Witnesses P-0364 and P-0363, subject to rule 68(3) requests, corroborate this location. [REDACTED].

³⁵ Witness P-0364, subject to rule 68(3) request, corroborates this incident. [REDACTED].

³⁶ Witnesses P-0489 and P-0129's evidence in this respect is corroborated by Witness P-0364, subject to rule 68(3) request. [REDACTED].

³⁷ Witness P-0360's statement, [REDACTED].

³⁸ Witness P-0536 was the 5th witness to testify during the Prosecution's case. Witness P-0536 was passing by the neighbourhood when a shell fell, injuring her and killing her son. See ICC-02/11-01/15-T-23-Red-ENG; p. 9, l. 9-24.

³⁹ ICC-02/11-01/15-487-Red, paras. 15-20.

⁴⁰ ICC-02/11-01/15-573-Red.

⁴¹ See ICC-02/11-01/15-573-Red.

⁴² See ICC-02/11-01/15-787, paras. 6-8 and 10.

in resolving the central issues of the case. He was not a direct witness to any of the five charged incidents and he does not provide any linkage evidence to the Accused.

4. Authentication Witnesses

(a) *Witness P-0380*

31. Witness P-0380's statement relates to [REDACTED] office of the Armed Forces Chief of Staff ("General Staff"). It is limited to the chain of custody and other information related to documents collected by the Prosecution from the General Staff archive in August 2013. As such, Witness P-0380's statement does not relate to disputed issues at the core of this case.

(b) *Witness P-0594*

32. Witness P-0594's statement primarily relates to [REDACTED] during the post-electoral crisis of 2010-2011. Witness P-0594 [REDACTED]. His statement is relevant, in particular, to the victims of the 17 March 2011 incident, and does not relate to disputed issues at the core of this case.

5. Witness P-0088

33. Witness P-0088 [REDACTED], along with Witness P-0087,⁴³ [REDACTED]. Witness P-0088 [REDACTED] and Witness P-0087 [REDACTED].⁴⁴ To this extent, the main value of Witness P-0088's evidence [REDACTED]. His evidence is otherwise of a repetitive, cumulative and of corroborative of that of Witness P-0087, who will be available for examination by the Defence.

34. [REDACTED] Witness P-0088's statement, as set out in Confidential Annexes 1 and 2. However, the Prosecution further seeks to introduce, under paragraph 43 of the

⁴³ The Prosecution seeks to introduce Witness P-0087's statement under rule 68(3) of the Rules: see Part IV. C. 6, below.

⁴⁴ [REDACTED].

Conduct Directions, the entirety of the [REDACTED]. The Prosecution's request, under paragraph 43, follows below at Part V.

35. As noted in Confidential Annex 2, the Prosecution does not rely on certain excerpts of Witness P-0088's statement, as they relate to the acts and conduct of Mr Blé Goudé.

C. Introduction of Rule 68(3) Documents

36. The Prosecution requests the *conditional*⁴⁵ introduction and submission of the Rule 68(3) Documents, namely the prior recorded statements, accompanying annexes and related documents of 23 witnesses, as listed at Confidential Annex 3. Of these 23 witnesses:

- Four are 3 March 2011 Witnesses (Witnesses P-0114, P-0172, P-0184 and P-0237);
- Six are 17 March 2011 Witnesses (Witnesses P-0105, P-0293, P-0297, P-0362, P-0363 and P-0364);
- Five are witnesses from the 12 April 2011 crime block (Witnesses P-0185, P-0407, P-0554, P-0567 and P-0568: "12 April 2011 Witnesses");
- Six provides evidence of an "insider" nature (Witnesses P-0054, P-0164, P-0226, P-0239, P-0316 and P-0521);
- One is an Authentication Witness (Witness P-0381); and
- One is a [REDACTED] (Witness P-0087), [REDACTED] Witness P-0088.

37. Confidential Annex 4 provides summaries of the evidence of each witness and time estimates for examination by the Prosecution. Also at Annex 4, the Prosecution (i) identifies the specific passages which the Prosecution wishes to submit as evidence;⁴⁶ and (ii) provides the ERNs for the other material, within the meaning of paragraph 51 of the Conduct Directions, which it seeks to introduce under rule 68(3).

⁴⁵ Contingent upon their actual presence before the Chamber and consent to the submission of the previously recorded testimony. See para. 55 below.

⁴⁶ As required by paragraph 51 of the Conduct Directions.

38. The Chamber should exercise its discretion to allow the introduction of the Rule 68(3) Documents. First, for the specific reasons set out below by witness group,⁴⁷ submission under rule 68(3) is an appropriate mode of introduction of the Rule 68(3) Witnesses' evidence.

39. Second, in relation to all 23 witnesses, the Rule 68(3) Documents bear sufficient *indicia* of reliability. They were obtained by the Prosecution in the ordinary course of investigations and each witness voluntarily provided his or her statement in a language he or she fully speaks and understands.

40. Third, in relation to all 23 witnesses, introduction of the Rule 68(3) Documents would expedite the proceedings and further streamline the presentation of the evidence, in reducing the estimated duration of the Prosecution's case-in-chief. The Prosecution notes, in particular, that if the Chamber allows introduction of the Rule 68(3) Documents, the Prosecution will require for its supplemental questioning of crime base witnesses only 30 minutes or one hour each, and no more than two hours for other witnesses, resulting in considerable time saved when compared to the time estimated for its examination without the use of rule 68(3) of the Rules. In this regard, the Prosecution refers the Chamber to the table at Confidential Annex 4.⁴⁸

41. Finally, introduction of the Rule 68(3) Documents is not prejudicial to or inconsistent with the rights of the Accused as they each will have ample opportunity to put questions to the Rule 68(3) Witnesses.⁴⁹ Furthermore, the Prosecution has excluded from the present application those excerpts of the 68(3) Witnesses' statements that are evidence of acts and conduct of the Accused and/or offer opinions on the Accused. Although the Prosecution acknowledges that whether the evidence pertains to the acts and conduct of the Accused is not a formal consideration under rule 68(3), as it is under rule 68(2)(b), it has decided in this instance, out of an abundance of caution, not to seek introduction of such evidence. Where the Prosecution wishes to rely on such evidence, it

⁴⁷ See paras. 43-51, below.

⁴⁸ See the table at Confidential Annex 4, last two columns. See *also* ICC-02/11-01/15-789, para. 9.

intends to lead it by way of limited supplementary examination within the projected time estimate.

42. As for the conditions under rule 68(3), the Rule 68(3) Witnesses will be present before the Trial Chamber, and the Prosecution, Defence and Chamber will have the opportunity to examine them during the proceedings. The request is made for conditional introduction of the Rule 68(3) Documents because rule 68(3) requires a witness's actual presence before the Chamber and consent to the submission of the previously recorded testimony before the evidence may be introduced.⁵⁰

1. 3 March 2011 Witnesses

43. As detailed in Confidential Annex 4, the statements of the four Rule 68(3), Witnesses P-0114, P-0172, P-0184 and P-0237, relate in great part to the events of 3 March 2011.⁵¹ Similar to the RTI crime base witnesses who were the subject of the Prosecution's first and second Rule 68 applications, the four Rule 68(3) Witnesses all testify to the events and issues from their own personal perspective.⁵² None of them have insider knowledge related to the 3 March 2011 incident. As such, the same reasoning applies and "provided that the Defence is given adequate time to examine [these] witnesses, there is no overriding reason preventing the streamlining of the presentation of evidence by allowing the introduction of the witness statements pursuant to Rule 68(3) of the Rules."⁵³

2. 17 March 2011 Witnesses

44. As detailed in Confidential Annex 4, the statements of Witnesses P-0364, P-0363, P-0297, P-0362, P-0293 and P-0105 relate in great part to the events of 17 March 2011.⁵⁴ Similar to the RTI crime base witnesses who were the subject of the Prosecution's first and

⁴⁹ See ICC-02/11-01/15-573-Red, para. 24.

⁵⁰ See rule 68(3) of the Rules: "if the witness [...]. See also ICC-02/11-01/15-573-Red, para. 39.

⁵¹ The statements of Witnesses P-0184 and P-0172 nonetheless also include other important information such as, for example, information about the 16 December 2010 and 17 March 2011 incidents.

⁵² See ICC-02/11-01/15-573-Red, para. 38.

⁵³ See ICC-02/11-01/15-573-Red, para. 38.

second rule 68 applications, these Rule 68(3) Witnesses, apart from Witness P-0297, all testify to the events and issues from their own personal perspective.⁵⁵ Witness P-0297 was not a direct witness to the shelling of Abobo, [REDACTED]. None of the witnesses have insider knowledge related to the planning of the shelling in Abobo, including the Siaka Koné Market, Abobo SOS neighbourhood and Derrière Rails. As such, and again, “there is no overriding reason preventing the streamlining of the presentation of evidence by allowing the introduction of the witness statements pursuant to Rule 68(3) of the Rules.”⁵⁶

3. 12 April 2011 Witnesses

45. As detailed in Confidential Annex 4, the statements of Witnesses P-0185, P-0407, P-0554, P-0567 and P-0568 relate in great part to the events of 12 April 2011.⁵⁷ They all testify to the events and issues from their own personal perspective.⁵⁸ None of them have insider knowledge related to the planning of the attack on Yopougon.

4. Insider Witnesses

(a) *Witness P-0054*

46. As detailed in Confidential Annex 4, Witness P-0054’s evidence relate mainly to the communication system of the Republican Guard and to a lesser extent to the integration of youth into the FDS. It corroborates in most part evidence already heard on record: i) the testimony of Witness P-0045 about code names used during the crisis in the Republican Guard, and about the conversation between Dogbo Blé and Mody regarding the Novotel incident;⁵⁹ ii) the testimony of Witness P-0347 on the code names of the Republican Guard

⁵⁴ The statements also include other important information such as, for example, information about the 16th December 2010 and 3rd of March incidents.

⁵⁵ See ICC-02/11-01/15-573-Red, para. 38.

⁵⁶ See ICC-02/11-01/15-573-Red, para. 38.

⁵⁷ They nonetheless also include other important information such as, for example, information about the 25 February 2011 incidents and the rising tensions and roadblocks in their neighbourhood.

⁵⁸ See ICC-02/11-01/15-573-Red, para. 38.

⁵⁹ ICC-02/11-01/15-T-118-Red-ENG, p. 27-32 and 61-64.

as well as documentary evidence emanating from him;⁶⁰ and iii) the testimony of Witness P-0435 about the integration of militiamen into the FDS.⁶¹

(b) *Witness P-0316*

47. As detailed in Confidential Annex 4, Witness P-0316's evidence relates mainly to the [REDACTED]. Some parts of his statement are corroborated by the testimonies of i) Witness P-0435 regarding the recruitment and integration of the youth into the FDS;⁶² ii) Witness P-0330 regarding the parallel structure;⁶³ and iii) Witnesses P-0164 and P-0239 who will be heard *viva voce* on topics relating to the parallel structure.⁶⁴

(c) *[REDACTED] P-0164, P-0226, P-0239 and P-0521*

48. As described in Confidential Annex 4, the evidence of Witnesses P-0164, P-0226, P-0239 and P-0521 relates largely to the [REDACTED]. The evidence of Witnesses P-0164, P-0226 and P-0239 [REDACTED]. Some of the evidence of these three witnesses also pertains to certain acts and conduct of both accused, however, the Prosecution intends to elicit this evidence *viva voce*, and is therefore excluding such portions of these witnesses' statements from this application. Witness P-0521's statement is proposed to be submitted in whole, as he does not speak to the acts and conduct of either Accused. Although all four are insider witnesses, their evidence is largely corroborative of the testimony of Witness P-0238, who the Chamber has already heard testify and who has already been examined by the Defence.⁶⁵

5. Witness P-0381

48. Witness P-0381 [REDACTED]. The main utility of his evidence is [REDACTED] and to provide chain of custody evidence [REDACTED].⁶⁶ His evidence only relates to Mr Blé

⁶⁰ ICC-02/11-01/15-T-77-Red-ENG, p. 80-83 and CIV-OTP-0012-0257.

⁶¹ ICC-02/11-01/15-T-89-Red-ENG, p. 11-13 and ICC-02/11-01/15-T-90-Red-ENG, p. 8-10.

⁶² ICC-02/11-01/15-T-89-Red-FRA, p. 11-13 and ICC-02/11-01/15-T-90-Red-ENG, p. 6-7

⁶³ [REDACTED].

⁶⁴ [REDACTED].

⁶⁵ For example, P-0238 has already testified [REDACTED].

⁶⁶ [REDACTED].

Goudé's conduct insofar as he describes [REDACTED].⁶⁷ His evidence on other topics, [REDACTED] is uncontroversial and does not go to the acts and conduct of the Accused.

6. Witness P-0087

49. Witness P-0087 [REDACTED],⁶⁸ [REDACTED]. Witness P-0087 witnessed key events that directly relate to the charges, including, among others: (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED]; and (iv) [REDACTED].⁶⁹

50. As noted in Confidential Annex 4, the Prosecution is not seeking the admission of certain excerpts of Witness P-0087's statement. Witness P-0087 gives direct evidence on the acts and conduct of Mr Blé Goudé. Given that this evidence is of importance to the Prosecution's case against the Accused, the Prosecution will examine the witness *viva voce* on these aspects of the statement. The Prosecution will refrain from asking the witness to speculate or provide opinion evidence,⁷⁰ in particular, as it relates to Mr Blé Goudé.

51. In order to expedite the proceedings, the Prosecution does not seek to introduce or rely upon [REDACTED].⁷¹ Instead, and as noted above in relation to Witness P-0088, the Prosecution seeks to introduce, under paragraph 43 of the Conduct Directions, [REDACTED].⁷² The Prosecution's request, under paragraph 43, follows below at Part V.

D. Limited Supplementary Examination of the 68(3) Witnesses

52. If the Chamber allows introduction of the Rule 68(3) Documents, then the Prosecution will limit its questioning of the Rule 68(3) Witnesses to confirming, clarifying

⁶⁷ [REDACTED].

⁶⁸ The Prosecution seeks to introduce Witness P-0088's statement under rule 68(2)(b) of the Rules.

⁶⁹ [REDACTED].

⁷⁰ [REDACTED].

⁷¹ [REDACTED].

⁷² See [REDACTED].

or highlighting passages of the prior recorded statements, and questioning on additional topics as follows.⁷³

1. 3 March 2011 Witnesses

53. With respect to Witnesses P-0172 and P-0237, the Prosecution anticipates asking the witnesses to describe the impact of the crimes on their lives. They will also be asked additional clarification questions on a [REDACTED]. Witness P-0237 will also be asked some clarification questions in relation to [REDACTED].⁷⁴ With respect to Witnesses P-0114 and P-0184, the Prosecution anticipates showing them certain items of evidence relevant to their testimony. Witness P-0184 will also be asked additional questions about [REDACTED].⁷⁵

2. 17 March 2011 Witnesses

54. With respect to Witnesses P-0364 and P-0105, the Prosecution anticipates asking the witnesses to describe the effect of their injuries. With respect to Witnesses P-0363, P-0297, P-0362 and P-0293, the Prosecution anticipates showing the witnesses certain items of evidence relevant to their testimony. With respect to Witnesses P-0293 and P-0297, the Prosecution also anticipates asking them clarifying questions about the shelling sites.

3. 12 April 2011 Witnesses

55. In relation to all five witnesses, the Prosecution anticipates asking the witnesses to describe the impact of the crimes on their lives and – in some cases – on the lives of their family members.

4. Insider Witnesses

56. With respect to Witness P-0054, the Prosecution may show him certain items of evidence relevant to his testimony.

⁷³ Conduct Directions, para. 49.

⁷⁴ [REDACTED].

⁷⁵ [REDACTED].

57. With respect to Witness P-0316, the Prosecution anticipates asking him questions going to the acts and conduct of the Accused [REDACTED].

58. With respect to Witness P-0164, the Prosecution anticipates asking him questions about [REDACTED]. The Prosecution also expects to show this witness certain items of evidence relevant to his testimony.

59. With respect to Witness P-0226, the Prosecution anticipates asking him questions about [REDACTED]. The Prosecution also anticipates showing this witness certain items of evidence relevant to his testimony.

60. With respect to Witness P-0239, the Prosecution anticipates asking him questions about [REDACTED]. The Prosecution expects to show certain items of evidence relevant to his testimony.

5. Witness P-0087

61. Noting the excerpts excluded from application under Rule 68(3), the Prosecution intends to examine the witness *viva voce* on relevant aspects of his statement, in particular his evidence related to the acts and conduct of the Accused Mr Blé Goudé,⁷⁶ and his evidence [REDACTED] on 19 and 26 March 2011.⁷⁷ The Prosecution will refrain from asking the witness to speculate or to provide opinion evidence,⁷⁸ in particular, as it relates to Mr Blé Goudé. It will also question the witness regarding [REDACTED].

V. SUBMISSION OF DOCUMENTARY EVIDENCE UNDER PARAGRAPH 43

62. The Prosecution submits 75 items related to the statements of Witness P-0087 and P-0088, pursuant to paragraphs 43 and 44 of the Directions on the conduct of the proceedings (“Directions”). The evidence comprises [REDACTED]. Submitting these items promotes the efficiency of proceedings and will save Court time.

⁷⁶ [REDACTED].

⁷⁷ [REDACTED].

⁷⁸ [REDACTED].

63. The proposed items are admissible because they are relevant and probative. As required under paragraph 44 of the Directions, the Prosecution indicates at Confidential Annex 5, and below (i) the relevance and probative value of [REDACTED], including in Annex 5 footnoted references to the relevant portions of Witness P-0087 and P-0088's statements; (ii) authenticity; and (iii) the date of disclosure. The items are available to the Trial Chamber, the Parties and participants in e-court.

64. [REDACTED] is relevant to and probative of a range of issues related to the acts and conducts of Mr Charles Blé Goudé, including but not limited to: (i) the use of xenophobic language against Ouattara supporters during public rallies, including on 19 March 2011 and 26 March 2011, his ability to rapidly mobilise pro-Gbagbo supporters by the thousands, his influence and leadership over the youth, his capacity to galvanise and his *mot d'ordres*.⁷⁹ Also, it relates to the coordinated contribution and control over the Young Patriots by Mr Blé Goudé and his essential contribution to the common plan.

65. [REDACTED]:

(i) [REDACTED]⁸⁰ [REDACTED];⁸¹

(ii) [REDACTED];⁸²

(iii) [REDACTED];⁸³

(iv) [REDACTED];⁸⁴

(v) [REDACTED];⁸⁵

(vi) [REDACTED];⁸⁶ and

⁷⁹ Pre-Trial Chamber I determined that Charles Blé Goudé was aware of and wilfully exploited his capacity to mobilise the youth. See Decision on the Confirmation of Charges against Charles Blé Goudé, ICC-02/11-02/11-186, para. 95.

⁸⁰ [REDACTED].

⁸¹ Items 1 to 34 in Confidential Annex 5.

⁸² Items 35 and 36 in Confidential Annex 5.

⁸³ Items 37 to 48 in Confidential Annex 5.

⁸⁴ Items 49 to 51 in Confidential Annex 5.

⁸⁵ Items 52 to 60 in Confidential Annex 5.

⁸⁶ Items 61 to 67 in Confidential Annex 5.

(vii) [REDACTED].⁸⁷

66. The rallies⁸⁸ are a fundamental part in Mr Gbagbo and Mr Blé Goudé's common plan, as these were held in overt support of Mr Gbagbo.⁸⁹ The main purpose of these rallies was to keep the youth mobilised, ready to receive instructions and move into action when Mr Blé Goudé would call upon them to act.⁹⁰ In this sense, [REDACTED] Young Patriots at a roadblock are particularly relevant as they portray the results of Mr Blé Goudé's calls, including at the rallies, which was to commit violence, and particularly against civilians.

67. As for authenticity, [REDACTED] were collected from [REDACTED] and sent to the Prosecution *via* courier on 3 February 2012. Witness P-0087 indicates that over [REDACTED].⁹¹ Witness P-0088 also states that he personally [REDACTED] and that Witness P-0087 was present with him the whole time [REDACTED].⁹²

VI. CONCLUSION

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

- (i) *Conditionally* introduce and consider submitted the Rule 68(2)(b) Documents, subject to the fulfilment of the further conditions of admissibility set out in rule 68(2)(b) of the Rules.
- (ii) *Conditionally* introduce and consider submitted the Rule 68(3) Documents, subject to the fulfilment of the further conditions of admissibility set out in rule 68(3) of the Rules.

⁸⁷ Items 68 to 75 in Confidential Annex 5.

⁸⁸ [REDACTED].

⁸⁹ Pre-Trial Chamber I determined that Charles Blé Goudé was the central figure in the mobilisation of the youth, who engaged in a sustained effort to control and direct the actions of the pro-Gbagbo youth throughout the time period relevant for the charges. See Decision on the Confirmation of Charges against Charles Blé Goudé, ICC-02/11-02/11-186, para. 95.

⁹⁰ [REDACTED].

⁹¹ [REDACTED].

⁹² [REDACTED].

(iii) Consider submitted the [REDACTED].

A handwritten signature in blue ink, appearing to read 'Bensouda', is written over a horizontal line.

Fatou Bensouda, Prosecutor

Dated this 8th day of June 2017

At The Hague, The Netherlands