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**International
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Court**

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Date: **21 June 2017**

TRIAL CHAMBER I

Before:

**Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera-Carbuccia
Judge Geoffrey Henderson**

SITUATION IN COTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLE GOUDE***

**Public
with Confidential Annex A**

Public redacted version of “Defence Response to 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 P-0087 and P-0088” (ICC-02/11-01/15-829-Conf)”ICC-02/11-01/15-883

Source: Defence of Mr Charles Blé Goudé

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

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I. Introduction

1. The Defence of Mr Blé Goudé (the “Defence”) hereby responds to 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 P-0087 and P-0088” dated 28 February 2017 (“the Application”).¹
2. The Defence objects to the portion of the Prosecution’s Request that relates to:
 - i. the conditionally introduction under Rule 68(2)(b) of the prior recorded testimony and related documents of Witnesses P-266, P-426, P-471, P-476, P-479, P-543, P-580, P-582, P-129, P-294, P-360, P-489, P-573, P-0380, P-0594, P-0088
 - ii. the conditional introduction under Rule 68(3) of the prior recorded testimony and related documents of Witnesses P-114, P-172, P-184, P-237, P-105, P-293, P-297, P-362, P-363, P-364, P-185, P-407, P-554, P-567, P-568, P-54, P-164, P-226, P-239, P-316, P-521, P-381, P-0087
 - iii. the submission and admission of 75 items of documentary evidence related to Witnesses P-87 and P-88, pursuant to paragraphs 43 and 44 of the Directions on the Conduct of Proceedings (“the Directions”).

II. Confidentiality

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

III. Applicable Law

III.1. Rule 68(2)(b)

¹ ICC-02/11-01/15-829-Conf with confidential annexes 1 to 5.

4. The Defence incorporates by reference the law set out in paragraphs 6-8 of its response to the Prosecution's first Rule 68(2)(b) application.²

5. In the its decision of 19 July 2017 this Chamber held that:

The conditions for the introduction of prior recorded testimony under Rule 68(2)(b) of the Rules are that the prior recorded testimony "*goes to proof of a matter other than the acts and conduct of the accused*", and that it is accompanied by a declaration confirming the veracity of its content under certain formal requirements. Importantly, after finding that these conditions are met, the Chamber must not automatically allow the introduction of the prior recorded testimony, but must determine whether this is appropriate in the particular circumstances. In particular, the Chamber shall take into account, *inter alia*, the factors listed in Rule 68(2) (b) (i). The Chamber must also always bear in mind the general condition of Rule 68(1) of the Rules, which prohibits introduction of prior recorded testimony where this would be prejudicial to or inconsistent with the rights of the accused.³

III.2. Rule 68(3)

6. The Defence incorporates by reference the law as stated in paragraphs 4-5 of its response to the Prosecution's last Rule 68(3) application.⁴

III.3. Introduction of documentary evidence

7. The Defence incorporates by reference the law as set out in its first response to an application under paragraphs 43 and 44 of the Directions.⁵

8. Under the jurisprudence of the Court, "[s]ince the relevance of [...] video material depends on the date and/or location of recording, evidence must be provided in this regard." Also, "the Chamber will require evidence of originality and integrity".⁶ To admit unauthenticated evidence would unjustifiably burden the record of the trial with non-probative material and serve no purpose in the determination of the truth.⁷

9. Among the types of evidence generally lacking probative value, Trial Chamber II in *Katanga and Ngudjolo* included media reports which "often contain opinion evidence about events [...] and rarely provide detailed information about their sources." Trial Chamber II continues in recalling that opinion evidence is only admissible, in

² ICC-02/11-01/15-504-Conf.

³ ICC-02/11-01/15-629-Conf, para. 5.

⁴ ICC-02/11-01/15-838-Conf.

⁵ ICC-02/11-01/15-640-Conf, paras 14-18.

⁶ ICC-01/04-01/07-2635, para. 24d.

⁷ One of the key factors allowing testing such reliability is "whether the source of the information has an allegiance towards one of the parties in the case or has a personal interest in the outcome of the case, or whether there are other indicators of bias" (emphasis added). *Ibid.*, para. 27.

principle, if provided by an expert and that unless the Chamber is satisfied as to the objectivity and professionalism of the journalists or their sources, the Chamber will be “unable to attach sufficient probative value to the opinions of even informed bystanders such as journalists in relation to specific contested facts”.⁸

IV. Submissions

A. Introduction of Rule 68(2)(b) documents

10. The Prosecution requests for the following witness statements under rule 68 (2) (b):

- Eight 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;
- Four witnesses from the 17 March 2011 crime block (Witnesses P-0129, P-0294, P-0360 and P-0489;
- One 16 December 2010 incident (Witness P-0573);
- Two [REDACTED]witnesses (Witnesses P-0380 and P-0594); 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

11. The Defence submits that the Prosecution request should be rejected because as will be shown below: some of the anticipated evidence goes to the acts and conduct of Mr Blé Goudé, for example p-0088; it concerns issues materially in dispute; it is not corroborative or cumulative; it does not merely relate to background information; and it lacks sufficient indicia of reliability. For these reasons, introduction of these witness statements under rule 68 (2) (b) would be prejudicial to the rights of Mr Blé Goudé

A.1. Relate to the Acts and conducts of the accused

Witness P-0088

12. The [REDACTED] by P-0088 relate to the acts and conducts of Mr Blé Goudé. The Prosecution submits that it will refrain from relying on certain excerpts of Witness P-0088’s statement relating to the acts and conduct of Mr Blé Goudé.⁹ Yet, certain

⁸ *Ibid.*, para. 31.

⁹ Application, para. 35.

excerpts of Witness P-0088's statement relating to the acts and conduct of Charles Blé Goudé have not been excluded from the Application.¹⁰

A.2. The statements relate to issues which are materially in dispute

13. According to rule 68 (2) (b) (i) and the jurisprudence of the Chamber cited in paragraphs 4-5 above, the Chamber should take into account whether the testimony relates to issues materially in dispute in determining whether a document should be submitted under rule 68 (2) (b). The Defence submits that contrary to the assertion of the Prosecution, the testimony of the witnesses sought to be admitted under rule 68 (2) (b) relate to issues which are materially in dispute. This is illustrated by the following examples:

P-0594

14. Witness P-0594 is the only witness testifying in relation [REDACTED] during and immediately after the post-electoral crisis. The Prosecution intends to use this witness' statement and the [REDACTED].¹¹ Whether, where or how certain FDS units fired many mortars on 17 March 2011 is an issue that is materially in dispute. Similarly, the Prosecution's interpretation of the [REDACTED], is also in dispute. In addition, there are a number of inconsistencies in Witness P-0594's statement that the Defence deems necessary to have tested directly with the witness in court.¹² Moreover, the Defence needs to obtain further details as to the [REDACTED].¹³ Given these ambiguities in Witness P-0594's statement related to crucial facts in the case, Mr. Blé Goudé's position would be adversely affected if the Defence was not given an opportunity to examine Witness P-0594 in court.

15. According to the stipulation of Rule 68(2)(b)(i) and the jurisprudence of the Chamber cited in paragraphs 4-5 above, the Chamber should take into account whether the testimony relates to issues materially in dispute in determining whether a statement

¹⁰ For instance, from paragraphs 53 to 58 of his statement, Witness P-0088 [REDACTED]. The Defence has similar submissions in relation to paragraphs 61 and 64 of P-088's statement.

¹¹ Prosecution's pre-trial brief, para. 353.

¹² For instance, Witness P-0594 [REDACTED] CIV-OTP-0083-0035, paras 82-92, 24, 26. Also, regarding the question whether [REDACTED] the statements of P-0594 and P-0294 contradict themselves, P-0594 claiming [REDACTED] P-0294 claiming that [REDACTED]. CIV-OTP-0083-0035, para. 38.

¹³ CIV-OTP-0083-0035, paras 58-59.

should be submitted under Rule 68(2)(b). The Defence submits that contrary to the assertion of the Prosecution, the testimony of the witnesses sought to be submitted under Rule 68(2)(b) relate to issues which are materially in dispute. This is illustrated by the following examples:

P-0479

16. [REDACTED], are issues which are materially in dispute. The witness statement refers inter alia to “[REDACTED]” and “[REDACTED]” in Abobo. The witness says:

« [REDACTED] »¹⁴

17. The witness then proceeds to describe [REDACTED]. Since this issue is very central to the prosecution case against Mr Blé Goudé, the Defence therefore requests the Chamber not to allow the submission of the witness statement of P-0479 under rule 68 (2) (b) since this will deny the Defence the opportunity to question the witness as envisioned by Article 67 of the Rome Statute.

P-0476

18. Similar to witness P-479 above, witness p-0476 also refers to the presence of “[REDACTED]”. The witness says for example that:

« [REDACTED] »¹⁵

19. The issue of [REDACTED] is particularly central to the Prosecution’s case against Mr Blé Goudé especially with regard to the 25-28 February incident. For this reason the Defence submits that in order to protect the rights of Mr Blé Goudé, there is absolute need to question this witness.

20. Apart from this, the witness also refers to the “[REDACTED]” and says “[REDACTED]”¹⁶ which is an issue materially in dispute.

P-0266

¹⁴ CIV-OTP-0068-0110 para 18.

¹⁵ CIV-OTP-0066-0436, at 0440, para. 2.

¹⁶ Ibid., para. 16.

21. In the same vein, witness P-0266 gives evidence concerning [REDACTED], like the above two witnesses. He says the following:

[REDACTED].¹⁷ [REDACTED].¹⁸ [REDACTED].¹⁹

22. The witness goes on to explain [REDACTED].²⁰ As explained above, the issue of [REDACTED] is central to the Prosecution's case against Mr Blé Goudé and therefore the Defence should have the opportunity to question this witness on these issues.

P-0360

23. The witness alleges that [REDACTED]. The relevant part states as follows :

« [REDACTED] ». ²²

24. The issue of whether [REDACTED] were [REDACTED] in Abidjan on [REDACTED] is undoubtedly one of the pillars of the Prosecution case on the alleged common plan. This statement is therefore materially in dispute and therefore should not be submitted under Rule 68(2)(b).

P-0580

25. The witness speaks of [REDACTED]. The witness states that:

« [REDACTED] ». ²³

26. The involvement of [REDACTED] and the allegation that they fired at civilians are both issues which are materially in dispute.

P-0482

27. The witness' testimony refers to the women's march where she describes [REDACTED]. The question of whether or not there was an attack against women on that day is materially in dispute. The witness also speaks [REDACTED]. In this

¹⁷ CIV-OTP-0066-046,3 at 0468, para. 17.

¹⁸ CIV-OTP-0066-0463, at 0468, para. 18.

¹⁹ CIV-OTP-0066-0463, at 0470, para. 25.

²⁰ Ibid.

²² CIV-OTP-0046-1203, at 1210-1211, para. 31.

²³ CIV-OTP-0081-0416, at 0421, para. 22.

regard, she says [REDACTED]. The question of whether [REDACTED] and whether or not [REDACTED] men were armed is materially in dispute.

28. Furthermore the witness gives evidence concerning one of the most contested pieces of evidence in the case - [REDACTED] clear from the questions of the parties during the testimonies of witnesses p-0190, p-0579, p-0321, p-0330 and P-0414. The witness allegedly identifies [REDACTED].²⁴ The witness also confirms that [REDACTED]²⁵ which is also an issue in material dispute. Furthermore the witness says she [REDACTED] and the question arises of how [REDACTED], how she [REDACTED].

29. The witness' account of the third incident seems to be detailed, chronological and is all materially in dispute. The Defence should be afforded the opportunity to question this witness. This issue is materially in dispute.

P-0129

30. In reference to the fourth incident, witness P-0129 states that on the material day he saw [REDACTED]. He further states that [REDACTED].²⁶ The involvement of the FDS in the fourth incident is an issue which is materially in dispute.

P-489

31. Similarly with regard to the fourth incident, witness P-0489 testifies [REDACTED].²⁷ [REDACTED] statement also relates to [REDACTED] obus fell, that they fell in Siaka Kone Market, what she heard, and allegedly saw [REDACTED].²⁸ Whether there was an "obus", where it fell and what time if at all, are all issues materially in dispute.

P-573

32. P-0573 was [REDACTED] and talks about the [REDACTED] of the hospital at that time of the crisis and how [REDACTED]. He explains how [REDACTED]. In

²⁴ CIV-OTP-0078-0505 to CIV-OTP-0078-0512.

²⁵ CIV-OTP-0081-0468, para. 27.

²⁶ CIV-OTP-0071-2186, at 2192, para. 25.

²⁷ CIV-OTP-0071-2199, paras 16-28.

²⁸ *Ibid.*

addition to this, the witness speaks about [REDACTED], he says [REDACTED].²⁹ He also speaks of [REDACTED].³⁰ The conduct [REDACTED] on that day as well as the presence of any persons [REDACTED] at the hospital are materially in dispute and have been subject of debate with many witnesses in the case.

33. Furthermore, the witness testifies to the first incident where he says he [REDACTED]. He states [REDACTED]. These are issues in dispute which the Defence would wish to question the witness about.

A.3. The statements are not corroborative or cumulative

1. 3 March 2011 Witnesses

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

34. The requirement of Rule 68 (2) (b) is that the testimony be “*of a cumulative or corroborative nature, in that other witnesses will give or have been given oral testimony of similar facts*”.

35. As noted by the Prosecution, evidence provided by Witnesses P-0266, P-0426, P-0471, P-0476, P-0479 and P0543 explains the [REDACTED] of the alleged 3 March 2011 victims. For this reason, each [REDACTED] is necessary in order to understand the [REDACTED] since each point is an essential link to the chain.

36. The Prosecution asserts that Witnesses P-0266 and P-0479 both describe [REDACTED] and that Witness P-0543 confirms [REDACTED]. First of all, P-0266 is a [REDACTED]³¹ whereas P-0479 is a [REDACTED]³². P-0266 is the only one to explain [REDACTED].³³ Alternatively, if the Chamber deems there is corroboration, introducing these two testimonies under Rule 68 (2) (b) would prevent the Chamber from hearing *viva voce* any evidence concerning [REDACTED] and the Defence from contesting this part of the [REDACTED].

²⁹ CIV-OTP-0069-0221, para. 80.

³⁰ CIV-OTP-0069-0221, paras 84-85.

³¹ CIV-OTP-0066-0463, at 0467, para. 15.

³² CIV-OTP-0068-0110, at 0114, para. 15.

³³ CIV-OTP-0066-0463, at 0469, para. 22 and at 0474 paras 44-45.

37. Regarding Witness P-0543, there are several contradictions with the testimony of Witness P-0266. The latter asserts that Witness P-0453 was [REDACTED]³⁴ whereas Witness P-0453 explains that [REDACTED]³⁵, including Witness P-0266. Witness P-0266 says [REDACTED]³⁶. On the contrary, the [REDACTED], Witness P-0453, does not recollect [REDACTED] and explains [REDACTED]³⁷. Besides, Witness P-0266 affirms he [REDACTED]³⁸ while Witness P-0453 confirms [REDACTED]³⁹. The Prosecution states that their evidence refers to “[REDACTED]”. Finally, the Prosecution mentions the [REDACTED]. In this regard, the testimony of Witness P-0266 is crucial since [REDACTED] he participated in [REDACTED]⁴⁰.

(b) Witnesses P-0580 and P-0582

38. According to the Prosecution, the evidence these witnesses provide is of cumulative and corroborative nature because it is corroborated [REDACTED]. The Defence considered that these prior recorded statements are not merely aiming at identifying [REDACTED]. They also purport to give unique [REDACTED].⁴¹ These pieces of information are not corroborated.

2. 17 March 2011 Witnesses

39. According to the Prosecution, Witnesses P-0489, P-0360, P-0129 and P-0294 corroborate each other and other witnesses on the shelling of Abobo and on specific details of the shelling. The Defence asserts that there are contradictions and discrepancies.

40. Witnesses P-0294⁴², P-0293⁴³ and P-0362⁴⁴ give [REDACTED] for the alleged shelling on the 17 March 2011.

³⁴ CIV-OTP-0066-0463, at 0474, para. 48 and at 0476, para. 52.

³⁵ CIV-OTP-0073-0864, at 0869, para. 24.

³⁶ CIV-OTP-0066-0463, at 0474, para. 48.

³⁷ CIV-OTP-0073-0864, at 0870, paras 27, 30.

³⁸ CIV-OTP-0066-0463, at 0472, paras 38, 40 and at 0473, para. 41.

³⁹ CIV-OTP-0073-0864, at 0870, para. 30.

⁴⁰ CIV-OTP-0068-0099, at 0104, para. 22.

⁴¹ For P-0580, CIV-OTP-0081-0416, at 0423-0425, paras 35-41 ; For P-0582, CIV-OTP-0081-0468, at 0477 paras 38-40.

⁴² CIV-OTP-0041-0388, at 0392, para. 18.

⁴³ CIV-OTP-0041-0328, at 0334, para. 31.

41. Furthermore, concerning [REDACTED], the Prosecution states that P-0489 does not need to be heard since her testimony only corroborates that of P-0364. However, Witness P-0364 merely gives hearsay evidence⁴⁵ whereas Witness P-0489 allegedly witnessed [REDACTED]⁴⁶. It would be in the interest of justice for the court to hear the testimony of P-0489 *viva voce*.

42. Concerning Witness P-0129, he was [REDACTED] on the 17 March 2011⁴⁷. Witness P-0131 was [REDACTED]⁴⁸. Witness P-0129's testimony was only corroborated by Witness P-0131 about what happened on that specific location. However, Witness P-0131 has been withdrawn from the Prosecution's list of Witnesses. Therefore, Witness P-0129 remains the only one to be able to testify about the event at this [REDACTED] on that day⁴⁹. His testimony is no longer corroborative.

iii. Authentication Witness

(a) P-0088

43. P-0087's evidence is not corroborative of that of P-0088 on important technical points because by his own admission, P-0087 states⁵⁰ that he was not involved in any of the [REDACTED] and issues encountered during [REDACTED].⁵¹ The uncorroborated [REDACTED] issues addressed in P-0088's statement are of great importance because they resulted, as confirmed by both witnesses, in anomalies in relation to [REDACTED].⁵² These issues have an impact on the probative value of the [REDACTED].⁵³

44. P-0088 admits that he generally relied on the dates noted [REDACTED] to confirm to the [REDACTED].⁵⁴ Yet, the [REDACTED] makes no mention of several events or makes mention of upcoming events, which ended up not occurring due to the security

⁴⁴ CIV-OTP-0046-1271, at 1275, para. 17.

⁴⁵ CIV-OTP-0071-0437, at 0445, para. 31.

⁴⁶ CIV-OTP-0071-2199, at 2203, paras 20-22.

⁴⁷ CIV-OTP-0071-2186, at 2191, paras 20-21.

⁴⁸ CIV-OTP-0071-2160, at 2165, para. 20, at 2167, para. 26 and at 2176, para. 65.

⁴⁹ CIV-OTP-0071-2186, at 2192, paras 23-25.

⁵⁰ CIV-OTP-0011-0201, at CIV-OTP-0011-0206, para. 37: "[REDACTED]."

⁵¹ Application, para. 33.

⁵² CIV-OTP-0011-0201, para. 37; CIV-OTP-0021-0845, paras 36-39; 43.

⁵³ P-0088 claims that he can confirm [REDACTED]. CIV-OTP-0021-0845, para. 49. However, later in his statement, P-0088 does not seem so certain of this [REDACTED]. CIV-OTP-0021-0845, para. 66.

⁵⁴ CIV-OTP-0021-0845, paras 23, 51, 59, 61.

situation or other reasons.⁵⁵ In short, this [REDACTED] is a rough approximation of the [REDACTED] which cannot be relied upon without further corroborating evidence, such as [REDACTED], which in this case is known to be inaccurate.

45. Since for certain [REDACTED] the Prosecution relies on the [REDACTED] given by Witness P-0088 to reach certain conclusions as to the alleged related responsibility of the Accused,⁵⁶ and the precise [REDACTED] events that occurred between March and April 2011, the Defence submits that Witness P-0088 should be testifying *viva voce* in order for the Defence to test these critical [REDACTED] points addressed in his statement. More generally, P-0088 has [REDACTED] confirmed having [REDACTED] out of the [REDACTED] sought to be introduced into evidence under paragraphs 43 and 44 of the Directions. Therefore, this witness should testify to determine whether he [REDACTED].⁵⁷

A.4. The statements do not merely relate to background information

46. The statements do not merely relate to background information. As explained in the paragraphs 13-33 above, most of the witnesses describe the relative events in apparent details including the chronology, the place of the alleged incident, the time as well as the number of alleged injured persons. The Defence submits that such statements should not be admitted under rule 68 (2) (b).

47. For example, witnesses P-0129, p-0394, p-0360, and p-0489 all seem to give precise details relating to the 4th incident. To begin with, witness p-0129 states that during this incident, «[REDACTED]»⁵⁸ Furthermore, witness P-0394 states that « [REDACTED]. »⁵⁹ similarly witness p-0360 also testifies to very precise details about the same incident. He says: « [REDACTED] »⁶⁰. He further adds that :

⁵⁵ See for instance, CIV-OTP-0021-0845, para. 66.

⁵⁶ Application, para. 66, stating that the [REDACTED] of Young Patriots at checkpoints “[REDACTED]” (emphasis added). See *infra*, para. 123. See also Prosecution’s Pre-Trial Brief, ICC-02/11-01/15-148-Conf-Anx2, para. 109. The effect of Mr Blé Goudé’s calls on the alleged proliferation of roadblocks is an issue, which is materially in dispute.

⁵⁷ See *infra*, para. 122.

⁵⁸ CIV-OTP-0071-2186 at 2192, para. 25.

⁵⁹ CIV-OTP-0041-0388 at 0392, para. 18.

⁶⁰ CIV-OTP-0046-1203 at 1207, para. 16.

« (...) [REDACTED] »⁶¹ And lastly in this category witness p-0489 testifies that: [REDACTED]. »⁶² She further adds that: « [REDACTED]. »⁶³ These witnesses seem to give precise details concerning the 4th incident and do not merely give background information.

48. Similarly, witnesses relating to the 3rd incident also speak in apparent exact terms about [REDACTED] For example, witness p-0266, states *inter alia* that: « (...) [REDACTED] (...) »⁶⁴ and further adds that: « [REDACTED] ».⁶⁵

49. In the same vein, witness p-0580 describes the 3rd incident in apparent detail and says « [REDACTED].. ».⁶⁶ She further adds that : « [REDACTED] »⁶⁷

50. She further says that :

« (...) [REDACTED]. »⁶⁸

51. Furthermore, as described in paragraph 38 above, witness p-582 appears to testify in detail about the 3rd incident and her testimony does not just relate to the context. For the above reasons, the Defence submits that the statements do not simply relate to the context in general but also seem to contain specific information about where and when the alleged incidents took place and the number of the victims. Some of the witnesses were allegedly [REDACTED] and therefore it would be in line with Defence rights to examine these witnesses.

A.5. The statements lack sufficient indicia of reliability.

52. Admittedly, according to the jurisprudence of the Court the Trial Chamber is not obliged to consider factors beyond formal requirements when looking at the “indicia of reliability” criteria for the purposes of rule 68 (2) (b). However, the Appeals Chamber stated in this regard that the “*Trial Chambers are not precluded from looking beyond formal requirements if they consider it to be appropriate in a*

⁶¹ CIV-OTP-0046-1203 at 1208, para. 20.

⁶² CIV-OTP-0071-2199 at 2203, para. 16.

⁶³ CIV-OTP-0071-2199 at 2203-2204, paras 17-25.

⁶⁴ CIV-OTP-0066-0463 at 0469, para. 24.

⁶⁵ CIV-OTP-0066-0463 at 0472, paras 38 et 40.

⁶⁶ CIV-OTP-0081-0416 at 0423, para. 32.

⁶⁷ CIV-OTP-0081-0416 at 0423-0424, para. 35.

⁶⁸ CIV-OTP-0081-0416 at 0425, para. 41.

particular case”. The Defence submits that in this instance it is appropriate for the Chamber to look beyond formal requirements and consider the content of the statements because the nature and source of some of the statements makes them unreliable.

53. Firstly, there are instances where the witness relies on anonymous hearsay. For instance, P-0489 stated that : « [REDACTED].» However the witness did not see [REDACTED]. She also says [REDACTED].

54. Secondly, the annexes attached to some of the statements contain inaccurate and/or incorrect information. For example, witness p-0471 admits that one of the documents shown to him, [REDACTED], was [REDACTED]. He says : « [REDACTED] ». This is important because the [REDACTED] was made by the [REDACTED] and if he considers part of it to be unreliable, the Defence would like the opportunity to ask him questions about what else he considers to be incorrect. In addition, in relation to document CIV-OTP-0066-0428, the witness says the words “événements à Abobo” were later added next to the [REDACTED] which were, according to the witness, [REDACTED] from [REDACTED]. Furthermore the witness says that numbers [REDACTED] up to [REDACTED] (in [REDACTED]) correspond to his entries numbers [REDACTED], ([REDACTED]). However, the [REDACTED] in these two documents differ in one fundamental detail being where the [REDACTED]. While [REDACTED] states that the [REDACTED] came “[REDACTED]” [REDACTED] marks the [REDACTED] as coming [REDACTED]. Therefore, documents [REDACTED], [REDACTED] and [REDACTED] all which are annexed to the witness statement contain errors and irregularities which render these annexes unreliable and which the Defence would like to question the witness on.

55. Similarly witness p-0476 also testified to [REDACTED] and [REDACTED] in the [REDACTED] which is annexed to the witness statement and provides explanations for these. Some of the [REDACTED] which the witness testifies to were not made by him but by [REDACTED]. The Defence submits that this makes the [REDACTED] very unreliable. Furthermore, next to certain [REDACTED], the witness added the [REDACTED] which had no basis whatsoever. Upon interrogation, the witness explains that he came to conclusion about the alleged Abobo event after

[REDACTED]. Similarly, in his statement he qualifies certain [REDACTED]. The witness is not [REDACTED] and is therefore not in a position to [REDACTED]. The Defence submits that these points cumulatively make the [REDACTED] annexed to the statement, as well as the witness statement itself unreliable.

56. In the same vein, with regard to witness p-0479, the annexes submitted by the OTP under him were not made by [REDACTED]. The witness says that « [REDACTED] ». The witness cannot testify to the authenticity or reliability of the same therefore these annexes should not be introduced through this witness under rule 68 (2) (b).

57. The third category is that of witness statements which contain inconsistencies. For example, witness p-0482 contains inconsistencies about [REDACTED], which [REDACTED] during the women's march.. The OTP investigators confront [REDACTED] her with the [REDACTED] which [REDACTED] and [REDACTED] provides an explanation for the inconsistency. The Defence submits that it is in the interest of justice for the Defence to be allowed the opportunity to question the witness about these inconsistencies. For this reason, the statement should not be admitted under rule 68 (2) (b).

58. Lastly in this category is witness p-0489 who alleges to [REDACTED] of the fourth incident. [REDACTED] states that [REDACTED] had [REDACTED] after the alleged attack by [REDACTED]. However, [REDACTED] says she only had [REDACTED] which [REDACTED] allegedly [REDACTED]. It is noteworthy that the witness [REDACTED] to [REDACTED], while before the witness had [REDACTED]. The Defence finds that the witness behaviour is contradictory and would like to ask [REDACTED] questions.

59. Also, P-0380 states that the OTP investigators [REDACTED] reviewed the [REDACTED] and then [REDACTED] while P-0381 states that it is [REDACTED] that the OTP investigators [REDACTED].⁶⁹ The investigators also seem to have corrected P-0380 in relation to answers he gave about [REDACTED].⁷⁰

⁶⁹ CIV-OTP-0049-2801, at CIV-OTP-0049-2812, para. 55; CIV-OTP-0049-2818, at CIV-OTP-0049-2832, para. 63.

⁷⁰ CIV-OTP-0049-2801, at CIV-OTP-0049-2812, para. 55.

60. Finally, the witness statement of P-0088 does not demonstrate *prima facie* indicia of reliability. Witness P-0088 explains [REDACTED] in his statement what people allegedly said during [REDACTED]. However, P-0088 admits that [REDACTED] and that he relied upon [REDACTED] to understand the different [REDACTED] or different [REDACTED],⁷¹ which is problematic since, as will be expounded upon below, [REDACTED] often [REDACTED].⁷² Out of the many examples to be found in P-0088's statement, the Defence refers the Chamber to [REDACTED] made by (i) [REDACTED] (paragraph 68) and (ii) [REDACTED] (paragraph 60). It is clear from the corresponding [REDACTED] that [REDACTED] does not make [REDACTED].

61. The Defence submits that the above explained instances make it appropriate for the Chamber to go beyond the formal requirements and consider the content of the statements and the annexes. The Chamber should therefore reject the above rule 68 (2) (b) requests because they lack sufficient indicia of reliability.

A.6. Admission of these witness statements under rule 68 (2) (b) would be prejudicial to the rights of Mr Blé Goudé and the interests of justice

62. One of the fundamental rights of the accused person under article 67 of the Rome Statute is the right to question witnesses against him. It is for this reason that rule 68 (2) (b) contain stringent rules that must be followed in order to admit statements under this rule which denies the accused the right to question the witness. The Defence submits, as explained above, that with respect to all the witnesses, these rule 68 (2) (b) requirements are not met and therefore it would be prejudicial to the rights of Mr Blé Goudé to allow the submission of these statements. As demonstrated above, the witness statements refer to the alleged acts and conduct of Mr Blé Goudé, contain matters materially in dispute, are not corroborative and/or do not have sufficient indicia of reliability. Therefore, it would be in the interest of justice to allow these witnesses to testify *viva voce*. Below are some examples explaining why witnesses should testify *viva voce* in the interest of justice and the rights of Mr Blé Goudé.

⁷¹ CIV-OTP-0021-0845, paras 55, 64.

⁷² CIV-OTP-0021-0845, paras 55, 64. *See infra* the Defence's submissions and examples on the unreliability of P-0087's interpretations and comments.

P-0573

63. P-0573 was the [REDACTED] and talks about the [REDACTED] at that time. It would be in the interest of justice for the Defence to question this witness in view of the numerous allegations made by other witnesses [REDACTED]. In the initial request of the prosecution to submit this witness' statement under rule 68 (3), the Prosecution stated its intention to question the witness on similar issues. The Prosecution has since "revised its previous position" on the issue, and perhaps no longer considers it necessary to question this witness on this issue. However, the Defence submits that it would be in the interest of justice and the rights of Blé Goudé to allow the Defence the opportunity to question this witness on this issue.

P-0266

64. In the second statement the witness refers to the [REDACTED] and [REDACTED] at Abobo [REDACTED].⁷³ He is one of the few witnesses that mention it and it would be in the interest of justice to be able to question this witness.

The statements should all not be submitted under rule 68 (3) as an alternative

65. The Defence submits that the application should also be denied under rule 68 (3) in view of the last Trial Chamber's decision on rule 68 (3) since the same arguments the Trial Chamber adopted apply here.

B. Introduction of Rule 68(3) documents

66. The Prosecution seeks to submit the following witness statements under rule 68(3) of the Rules:

- Four witnesses from the 3 March 2011 crime block (Witnesses P-0114, P-0172, P-0184 and P-0237);
- Six witnesses from the 17 March 2011 crime block (Witnesses P-0105, P-0293, P-0297, P-0362, P-0363 and P-0364);

⁷³ CIV-OTP-0068-0099 at 0102-0105.

- Five witnesses from the 12 April 2011 crime block (Witness P-0185, P-0407, P-0554, P-0567 and P-0568);
- Six insider witnesses (Witnesses P-0054, P-0164, P-0226, P-0239, P-0316 and P-0521);
- One [REDACTED] witness (Witness P-0381); and
- One [REDACTED] (Witness P-0087).

67. The Defence submits that the Prosecution request with respect to the Rule 68(3) Witnesses should be rejected because:

- i. Applying Rule 68(3) to witnesses that the Prosecution associates with the 3 March 2011, 17 March 2011 and 11-12 April 2011 incidents will result in no significant time being saved since: (1) the anticipated testimony relates to core issues in the case that are materially in dispute or uncorroborated, (2) the witnesses allegedly have insider or quality information, or (3) the Prosecution included the acts and conduct of Mr Blé Goudé in its application.
- ii. Applying Rule 68(3) to the six insider witnesses would contravene the Chamber's first Rule 68(3) Decision in which it reasoned that Witnesses whose testimony relates to [REDACTED] should testify *viva voce* given the importance and detail of their purported evidence. Additionally, contrary to the Prosecution's submissions, the Prosecution included passages that relate to the acts and conduct of Mr Blé Goudé.
- iii. Applying Rule 68(3) to [REDACTED] Witness P-0087 will not result in expediting the proceedings since the Prosecution will have to elicit a quarter of his statement orally because it relates to the alleged acts and conduct of Mr Blé Goudé. Additionally, P-0087's anticipated testimony appears to be based on opinion evidence in regard to core issues in the case that are materially in dispute.

68. With respect to the crime base Rule 68(3) witnesses, the Defence notes that the Prosecution presented the witnesses as being associated with specific incidents, referring to them as "3 March 2011 Witnesses", "17 March 2011 Witnesses" and "12

April 2011” Witnesses.⁷⁴ However, these witnesses’ statements are not limited to these individual incidents.

69. As the Prosecution did not exclude from the Application the paragraphs related to such other events, the Defence will have to address all the events mentioned in the statements, which will further increase the time needed for its questioning.

70. Hence, the introduction of the prior recorded statements under Rule 68(3) of the Rules will not ensure good trial management, nor the expeditiousness and streamlining the presentation of evidence as it will oblige the Defence to question the statements with regard to all the incidents mentioned in the statement, and not just the incident the Prosecution associates the witness with.

B.1 - 3 March 2011 Witnesses

71. In its Application, the Prosecution holds that four Witnesses provide evidence that “*relate in great part to the events of 3 March 2011*”: P-0114, P-0172, P-0184 and P-0237.⁷⁵ The Defence opposes the Application of these witnesses’ statements for the following reasons: the statements concern core issues of the case that are materially in dispute, parts of the statements are uncorroborated, a paragraph related to the acts and conducts of the Accused has not been excluded from the Application and serious concerns regarding the reliability of Witnesses P-0114 and P-0237’s statements arise.

72. Witnesses P-0114, P-0172, and P-0184 expound upon events that occurred on 3 March 2011, during a women’s march, which constitutes one of the charged incidents.⁷⁶ As such, their statements touch upon core issues of the case that are materially in dispute. More specifically, these three witnesses address in their statements [REDACTED] which are core issues of the case related to the 3 March 2011 and materially in dispute. Witness P-0237 did not [REDACTED]and, as such, may not be considered [REDACTED]during the march.⁷⁷

⁷⁴ ICC-02/11-01/15-829-Conf, para. 36.

⁷⁵ ICC-02/11-01/15-829-Conf, para. 43.

⁷⁶ P-114, CIV-OTP-0076-0951, paras. 23-28. P-172, CIV-OTP-0028-0550, paras. 51-102. P-184, CIV-OTP-0032-0011, paras. 80-105.

⁷⁷ P-237, CIV-OTP-0081-0380, paras 24-25.

73. Witnesses [REDACTED] and [REDACTED] also provide evidence as to the events that occurred on 16 December 2010 and 17 March 2011,⁷⁸ which are also core issues of the case that are materially in dispute.

74. P-0114 is the alleged [REDACTED] during the women's march⁷⁹ for which the Prosecution [REDACTED].⁸⁰ Identifying himself as [REDACTED], P-0114 gives a [REDACTED]. As such, P-0114 provides evidence on a core issue of the case that is materially in dispute.

75. P-0114, P-0172 and P-0184 also address [REDACTED] in Abobo,⁸¹ which includes [REDACTED] of FDS members.⁸² The [REDACTED] and its [REDACTED] are core issues of the case, for which the Defence and the Prosecution have very different narratives and analysis. As such, they are materially in dispute.

76. The Witnesses associated with the events of 3 March 2011 also provide potential evidence that is not corroborated. P-114, P-172 and P-184 discuss [REDACTED].⁸³

77. P-0172 [REDACTED].⁸⁴ Not only this incident is not corroborated by other witnesses, but Witness P-580's statement shows the two witnesses have varying accounts with respect to this incident. P-580 only mentioned [REDACTED].⁸⁵ P-0172 also [REDACTED].⁸⁶ Finally, P-172 defines [REDACTED] which is not corroborated.⁸⁷

⁷⁸ For the events of 16 December 2010, P-172, CIV-OTP-0028-0550, paras 40-50; P-184, CIV-OTP-0032-0011, paras 56-70. For the events of 17 March 2011, P-172, CIV-OTP-0028-0550, paras 116-123 and P-184, CIV-OTP-0032-0011, paras 114-123.

⁷⁹ P-114, CIV-OTP-0076-0951, paras 29-68.

⁸⁰ [REDACTED] is [REDACTED]. See P-114, [REDACTED], paras 8-9.

⁸¹ P-0114 mentions that the investigators questioned him about [REDACTED] in the context of the women's march of 3 March 2011, CIV-OTP-0076-0951, para. 25. See also P-0172, CIV-OTP-0028-0550, para. 124. P-0184 discusses the activity of [REDACTED]. [REDACTED] calls them [REDACTED]. CIV-OTP-0032-0011, para. 73. [REDACTED] also describes how they took the neighbourhood of Abobo and forbid the [REDACTED], CIV-OTP-0032-0011, paras 108-113.

⁸² P-0172 heard [REDACTED] that [REDACTED] attributes to [REDACTED] against the [REDACTED] during the night. CIV-OTP-0028-0550, para. 124. P-0184 heard [REDACTED] and mentions that the next morning, [REDACTED]. CIV-OTP-0032-0011, paras 73-74.

⁸³ P-114 claims according hearsay [REDACTED], CIV-OTP-0032-0011, para. 81.

⁸⁴ P-172, CIV-OTP-0028-0550, paras 71-72, 103-105.

⁸⁵ P-580, CIV-OTP-0081-0416-R01, para. 41.

⁸⁶ P-172, CIV-OTP-0028-0550, paras 125-126.

⁸⁷ P-172, CIV-OTP-0028-0550, para. 127.

78. P-0184 related several events that are not corroborated by other witnesses. She [REDACTED],⁸⁸ [REDACTED]⁸⁹ [REDACTED]⁹⁰ [REDACTED]⁹¹ [REDACTED] which is not corroborated by other witnesses.⁹²
79. Other uncorroborated passages of the statements will be addressed further, in the section dedicated to 17 March 2011 witnesses as parts of their statements are dedicated to the 3 March 2011 events.
80. The Defence notes that the Prosecution did not exclude from its application a paragraph related to the acts and conducts of the Accused, where it is alleged that [REDACTED].⁹³ This paragraph should be excluded from the Application.
81. Finally, the Defence notes the lack of reliability of two witnesses, namely P-114 and P-237. In his statement, P-114 acknowledged [REDACTED]⁹⁴ Hence, there is no guarantee that [REDACTED] and a *viva voce* testimony seems to be the only way to provide a unique and definitive account of what he witnessed. [REDACTED]⁹⁵
82. For the foregoing reasons, the Defence asserts that the Application should be rejected as to the statements of P-0114, P-0172, P-0184 and P-0237. Therefore, the Application should also be rejected so as to all the documents annexed to the said statements.

B.2 - 17 March 2011 Witnesses

83. In its Application, the Prosecution holds that six Witnesses provide evidence that “*relate in great part to the events of 17 March 2011*”, namely P-0105, P-0293, P-0297, P-0362, P-0363 and P-0364.⁹⁶ The Defence opposes the Application as to these witnesses’ statements for the following reasons: the statements concern core issues of the case that are materially in dispute and parts of the statements are uncorroborated.

⁸⁸ P-184, CIV-OTP-0032-0011, paras 31-33.

⁸⁹ P-184, CIV-OTP-0032-0011, paras 45-47.

⁹⁰ P-184, CIV-OTP-0032-0011, para. 79.

⁹¹ P-184, CIV-OTP-0032-0011, para. 107.⁹² P-184, CIV-OTP-0032-0011, paras 135-136.

⁹² P-184, CIV-OTP-0032-0011, paras 135-136.

⁹³ P-184, CIV-OTP-0032-0011, para. 134.

⁹⁴ P-114 did not tell the truth about the fact [REDACTED]. CIV-OTP-0076-0951, paras 71-72.

⁹⁵ P-237, CIV-OTP-0081-0380, paras 28-47.⁹⁶ ICC-02/11-01/15-829-Conf, para. 44.

⁹⁶ ICC-02/11-01/15-829-Conf, para. 44.

Witnesses P-105, P-0293 and P-0364 also provide accounts on the event of 3 March 2011 that make the statements of the previous witnesses uncorroborated.

84. The statements of Witnesses P-0105, P-0293, P-0362, P-0363 and P-0364 refer to [REDACTED]⁹⁷ [REDACTED].⁹⁸ Being at the origin of one of the charges against the Accused, the events of 17 March 2011 constitute a core issue of the case that is materially in dispute.
85. P-105, P-297, P-362, P-363 and P-364 describe [REDACTED],⁹⁹ [REDACTED],¹⁰⁰ [REDACTED]¹⁰¹ [REDACTED]¹⁰² [REDACTED] are core issues of the case for which the Defence and the Prosecution have very different narratives and analysis. As such, they are materially in dispute.
86. P-297 and P-364 mention [REDACTED]¹⁰³ [REDACTED]¹⁰⁴ [REDACTED] is a core issue of the case that is materially in dispute.
87. P-293 relates that he saw [REDACTED].¹⁰⁵ [REDACTED] is a core issue of the case that is highly and materially in dispute.
88. The Defence also notes that these 6 witnesses also provide statements on other events that are core issues of the case and materially in dispute since they relate to the other charges of the case. Passages of Witnesses P-105's, P-293's, P-297's, P-363's and P-364's statements are dedicated to the events of 3 March 2011.¹⁰⁶ Witness P-363 also addresses the march on RTI.¹⁰⁷

⁹⁷ [REDACTED].

⁹⁸ P-297 even says that [REDACTED]. CIV-OTP-0041-0412, para. 44.

⁹⁹ P-105, CIV-OTP-0019-0245, paras 52-53. P-297, CIV-OTP-0041-0412, paras 48-57.

¹⁰⁰ P-105, CIV-OTP-0019-0245, paras 45-47. P-0362, CIV-OTP-0046-1271, paras 43-49. P-0363

[REDACTED], CIV-OTP-0046-0275, paras 29-32. P-0364 [REDACTED], CIV-OTP-0071-0437, para. 26.

¹⁰¹ P-0362, CIV-OTP-0046-1271, paras. 43-49. P-0363, CIV-OTP-0046-0275, paras 20, 29. P-0364, CIV-OTP-0071-0437, para. 26.

¹⁰² P-105, CIV-OTP-0019-0245, paras 48-49.

¹⁰³ P-0297, CIV-OTP-0041-0412, para. 53. P-0364, CIV-OTP-0071-0437, paras 17, 21 and 30.

¹⁰⁴ P-0363, CIV-OTP-0046-0275, para. 35.

¹⁰⁵ P-0293, CIV-OTP-0071-0328, para. 28.

¹⁰⁶ P-105, CIV-OTP-0019-0245, paras 30-35. P-293, CIV-OTP-0071-0328, paras 66-69. P-297, CIV-OTP-0041-0412, para. 59. P-363, CIV-OTP-0046-0275, para. 38. P-0364, CIV-OTP-0071-0437, paras 43-48.

¹⁰⁷ P-363, CIV-OTP-0046-0275, para. 39.

89. Regarding the events of 3 March 2011, P-105 and P-364 allege [REDACTED].
[REDACTED]¹⁰⁸,
[REDACTED].¹⁰⁹[REDACTED].¹¹⁰[REDACTED]¹¹¹[REDACTED].¹¹²This element
appears to be uncorroborated.

90. [REDACTED]¹¹³[REDACTED].¹¹⁴ To this regard, the Defence notes that the
Prosecution excluded this paragraph of P-0293's statement from the Application
without providing any reason for such exclusion. Therefore, as such paragraph shows
that statements with regard to [REDACTED] are actually uncorroborated, the
Application should be rejected in light of it.

91. P-364 [REDACTED]¹¹⁵[REDACTED] and as such, it is not corroborated.

92. For the foregoing reasons, the Defence asserts that the Application should be rejected
so as to the statements of P-0105, P-0293, P-0297, P-0362, P-0363 and P-0364.
Therefore, the Application should also be rejected so as to all the documents annexed
to the said statements.

B.3- 12 April 2011 Witnesses

93. Like the March 2011 witnesses who are subject to the present Rule 68(3) application,
the 11-12 April 2011 witnesses also provide statements, which should not be
introduced through Rule 68(3). Rule 68(3) is an inappropriate tool with regard to
these witnesses for the following four reasons: (1) little if any time will be saved if the
application is granted, (2) the Prosecution has not eliminated all references to the acts
and conduct of Mr. Blé Goudé, (3) serious concerns regarding the reliability of
Witness P-407's statement arise, and (4) P-568's, [REDACTED].

94. Witnesses P-185, P-554 P-407, P-567 provided statements, which relate to central
issues in the case that are materially in dispute, or are otherwise uncorroborated.
Despite the Prosecution eliminating from its request certain passages relating to the

¹⁰⁸ P-0364, CIV-OTP-0071-0437, para. 45.

¹⁰⁹ P-105, CIV-OTP-0019-0245, para. 30.

¹¹⁰ P-105, CIV-OTP-0019-0245, para. 35.

¹¹¹ P-0364, CIV-OTP-0071-0437, para. 47.¹¹² P-0293, CIV-OTP-0071-0328, para. 66.

¹¹² P-0293, CIV-OTP-0071-0328, para. 66.

¹¹³ P-105, CIV-OTP-0019-0245, para. 18.

¹¹⁴ P-0293, CIV-OTP-0071-0328, para. 31 together with para. 34.

¹¹⁵ P-0364, CIV-OTP-0071-0437, para. 18.¹¹⁶ [REDACTED] CIV-OTP-0077-0153, paras. 40-41.

acts and conduct of Mr. Blé Goudé, the Defence will still need significant time to examine P-185, P-554, P-407 and P-567 with respect to other critical and disputed facts to which they are expected to testify. These facts pertain to: (1) [REDACTED],¹¹⁶ (2) [REDACTED],¹¹⁷ (3) [REDACTED],¹¹⁸ (4) [REDACTED],¹¹⁹ and (5) [REDACTED].¹²⁰ [REDACTED] is largely uncorroborated, and will require a thorough examination of these witnesses' ability to [REDACTED], and the alleged victims' ethnic origin and background.¹²¹

95. While the Prosecution will shorten its time needed to examine these witnesses by a couple of hours, several hours will need to be added to the Defence's time of questioning the witnesses. The Defence will need to thoroughly examine P-185, P-554 P-407, P-567 on the aforementioned issues in order for Mr. Blé Goudé's rights not to be prejudiced. Moreover, the Defence notes that similar to its Amended Rule 68(3), the Prosecution has once again not excluded all the passages that relate to Mr. Blé Goudé's acts and conduct. For example, paragraphs 29 and 38 of Witness P-185 go to the heart of Mr. Blé Goudé's alleged individual criminal responsibility, and the facts to which they relate are materially in dispute.¹²²

96. In addition to P-407's statement relating to issues that are central to the case and materially in dispute, it also gives rise to serious concerns regarding material interpretation errors, that would be unmitigated if the Prosecutor were able to submit the statement under Rule 68(3). Witness P-407 met [REDACTED]¹²³, [REDACTED]. [REDACTED], the Prosecution confronted the witness with these discrepancies several times, and in response P-407 states that [REDACTED].¹²⁴ This raises doubts as to reliability of the statement given [REDACTED] since it is not a verbatim transcript. Rather, it is a statement written in French based on an interpretation that

¹¹⁶ [REDACTED] CIV-OTP-0077-0153, paras. 40-41.

¹¹⁷ [REDACTED] See ICC-02/11-01/15-838-Conf, para. 14.

¹¹⁸ [REDACTED]. CIV-OTP-0029-0656, para. 84. [REDACTED]. CIV-OTP-0029-0656, paras 70, 82.

¹¹⁹ [REDACTED]. CIV-OTP-0029-0656, para. 54. [REDACTED]. ICC-02/11-01/15-T-25-FRA-CONF, p. 62.

¹²⁰ [REDACTED]. See CIV-OTP-0069-0245.

¹²⁰ [REDACTED]. See CIV-OTP-0069-0245.

¹²¹ P-185 states [REDACTED]. ICC-02/11-01/15-148-Conf-Anx2-Corr, para, 357.

¹²² Paragraph 29 of P-185's statement states in relevant part [REDACTED] CIV-OTP-0064-0092, 00:23:40-00:24:40. Paragraph 38 of P-185's statement relates to [REDACTED]. These paragraphs need to be read as a whole, and indeed, it is what the Prosecution intended when in its Pre-Trial Brief it cited paragraphs 36-41 of P-185's statement in support of the allegation that [REDACTED].

¹²³ [REDACTED]. CIV-OTP-0048-1745.

¹²⁴ [REDACTED].

has proven dubious in the past. The statement should therefore not be submitted before the Chamber since it has not been independently verified whether the interpretation done in [REDACTED] was correct.

97. Unlike witnesses P-185, P-554 P-407, P-567, Witness P-568 does not, as the Prosecution submits, testify from “to the events and issues from [his] own personal perspective.”¹²⁵ The witness describes himself as [REDACTED]..¹²⁶ [REDACTED].¹²⁷ [REDACTED].¹²⁸ [REDACTED].¹²⁹

B.4 - Insider witnesses

i. Witnesses P-0054, P-0316, P-164, P-0226, P-239, and P-0521

98. The Prosecution seeks to introduce the prior record statements and related documents of six insiders, namely witnesses P-0054, P-0316, P-164, P-0226, P-239, and P-0521. In doing so, the Prosecution attempts to erode the safeguards established by this Chamber. In its first decision granting the Prosecution’s application, the Chamber determined that it would apply the criterion of good trial management by taking into consideration “the importance of the evidence for the case, the volume and detail of the evidence, among other factors.”¹³⁰ Thus, in granting the Prosecution’s application, the Chamber found that none of the witnesses subject to the first Rule 68(3) application “[REDACTED].”¹³¹

99. Here, unlike the first Rule 68(3) application, the [REDACTED] during the events. P-226, P-316, P-239, P-164 all provide apparent detailed information as to [REDACTED]. These issues are not otherwise corroborated by other witnesses as the Prosecution submits, and are materially in dispute and central to the case. Therefore, not only is Rule 68(3) an inappropriate tool to be used with this type of witnesses, but also little if any time will be saved through the application of Rule 68(3).¹³²

¹²⁵ The Application, para. 45.

¹²⁶ CIV-OTP-0069-0069, paras 8-10.

¹²⁷ This list forms part of the Prosecution’s application. Annex 8, CIV-OTP-0069-0101.

¹²⁸ CIV-OTP-0069-0069, para.71. [REDACTED]. *Ibid.*

¹²⁹ [REDACTED]. ICC-02/11-01/15-148-Anx2-Corr, para 355.

¹³⁰ ICC-02/11-01/15-573-Conf, para. 25.

¹³¹ *Ibid*, para. 38.

¹³² The Defence notes that the Prosecution estimates [REDACTED]. ICC-02/11-01/15-829-Conf-Anx4, pp. 21, 23.

100. Contrary to the Prosecution's assertions, eliminating certain paragraphs relating to the acts and conduct of the accused does not mitigate the prejudice that introducing these statements would cause to Mr Blé Goudé. As this Chamber noted in its 7 April 2017 Rule 68(3) Decision, it would be "artificial to state that certain paragraphs of a statement are not considered submitted, but still may be needed in order to review the overall credibility and consistency of the testimony."¹³³ Moreover, the Prosecution has again included passages referencing Mr. Blé Goudé's acts and conduct, despite having submitted that all these passages would be excluded from their request.

101. The prejudice in seeking to introduce Witnesses P-316, P-164, and P-239 through Rule 68(3) lies in the importance of these witnesses for the Prosecution to prove the [REDACTED]. Such a [REDACTED] goes to the heart of the Prosecution's theory regarding the implementation of the alleged common plan, since according to the Prosecution, it was primarily [REDACTED].¹³⁴ It is also through [REDACTED].¹³⁵ The statements of Witnesses P-164, P-239, P-316 and P-226 contain passages relating to [REDACTED].¹³⁶ This evidence should be heard entirely *viva voce*, especially at this stage of the proceedings where the Defence has led evidence through several Prosecution witnesses who were high ranking members of the FDS [REDACTED].¹³⁷

102. These insider witnesses also purport to have detailed information as to [REDACTED],¹³⁸ and [REDACTED].¹³⁹ This information could be relevant in the Chamber's determination [REDACTED] during the women's march on 3 March 2011 and the alleged bombing occurring on 17 March 2011. It should be noted that the witnesses' statements do not corroborate each other or the testimony of past witnesses with respect to [REDACTED], and thus the Defence will need to extensively examine the witnesses as to these incidents.¹⁴⁰

¹³³ ICC-02/11-01/15-870, para. 14.

¹³⁴ ICC-02/11-01/15-1480Conf-Anx2-Corr, para. 76.

¹³⁵ *Ibid.*, para. 74.

¹³⁶ [REDACTED][REDACTED], CIV-OTP-0039-0143, paras 73-78.

¹³⁷ [REDACTED] *Ibid.*, para. 120. Witness P-239 was [REDACTED]. CIV-OTP-0037-0425, para. 22. [REDACTED]. CIV-OTP-0041-0534, paras 34-35.

¹³⁸ [REDACTED]. CIV-OTP-0039-0143, para. 106.

¹³⁹ [REDACTED]. CIV-OTP-0039-0143, para. 112.

¹⁴⁰ [REDACTED].

103. In addition to providing potential detailed information regarding acts and conduct of [REDACTED] during the crisis, Witnesses P-316's, P-164's, P-239's, P-226's and P-521's respective statements provide extensive information as to [REDACTED],¹⁴¹ [REDACTED].¹⁴² [REDACTED].¹⁴³ [REDACTED].

104. Whether and when [REDACTED] is also a relevant issue for the Chamber to determine since the Prosecution alleges that Mr Blé Goudé was [REDACTED]. [REDACTED].¹⁴⁴ Moreover, Witnesses P-164, P-316 and P-521 who are subject to this application contradict themselves with regard to [REDACTED].¹⁴⁵ P-238, who was [REDACTED], and thus the allegations of P-164, P-239 and P-226 are uncorroborated.

105. The prejudice in introducing the statements under Rule 68(3) stems from these [REDACTED]. Far from relating a [REDACTED]. Therefore, simply excluding from the Application the references to Mr Blé Goudé's acts and conduct does not change the essential nature of their anticipated testimony. Moreover, the Prosecution, once again inadequately applied this criterion, and omitted to exclude certain passages from the Application.¹⁴⁶ The Defence respectfully requests that the Chamber reject the Prosecution's application to avoid a convoluted record and unnecessary litigation on these issues.

106. Unlike the other witnesses [REDACTED].¹⁴⁷ [REDACTED]¹⁴⁸ [REDACTED].¹⁴⁹ The Defence notices that the major witnesses who testified on this materially in dispute core issue testified *viva voce*: [REDACTED]¹⁵⁰, P-0347 and P-0046. P-0054 also addresses [REDACTED].¹⁵¹ [REDACTED].¹⁵²

¹⁴¹ [REDACTED]. CIV-OTP-0071-2488, paras. 67-120.

¹⁴² [REDACTED]. CIV-OTP-0071-2488, paras 178-185.

¹⁴³ [REDACTED]. CIV-OTP-0028-0534; CIV-OTP-0028-0525; CIV-OTP-0053-0431. Also see P-521, CIV-OTP-0071-2488, paras 67-120.

¹⁴⁴ See for example [REDACTED].

¹⁴⁵ [REDACTED], CIV-OTP-0071-2488, paras 178-185.

¹⁴⁶ [REDACTED]. *Ibid.*, para. 49.

¹⁴⁷ P-0054, CIV-OTP-0007-0283, paras. 26-32.

¹⁴⁸ P-0054, CIV-OTP-0007-0283, paras. 43-80.

¹⁴⁹ P-0054, CIV-OTP-0007-0283, paras. 83-99.

¹⁵⁰ [REDACTED], ICC-02/11-01/15-782-Conf.

¹⁵¹ CIV-OTP-0007-0283, para. 24.

¹⁵² CIV-OTP-0007-0283, para. 25.

107. Lastly, The Prosecution claims that the main utility of P-0381's evidence is to [REDACTED]. The Prosecution argues that his anticipated evidence on other topics is uncontroversial and that the only anticipated evidence relating to the acts and conduct of Charles Blé Goudé is [REDACTED].¹⁵³

108. The Defence disagrees with the Prosecution's minimalistic appreciation of Witness P-0381's statement. The Defence submits actually the opposite, *i.e.*, that the most substantial part of Witness P-0381's evidence is on controversial topics [REDACTED],¹⁵⁴ [REDACTED],¹⁵⁵ [REDACTED],¹⁵⁶ [REDACTED],¹⁵⁷ and [REDACTED].¹⁵⁸

109. Given the substance of the statement of Witness P-0381 and the issues raised therein, the Defence will have to spend considerable time reverting to each of those contested points with the witness to test the evidence provided. The Defence submits that the potential time saved as a result of the introduction of the prior recorded testimony of Witness P-0381 will therefore be minimal, if any.

110. In addition, while taking the view for certain witnesses that excerpts of witness statements offering opinion evidence should be excluded from rule 68(3) applications, the Prosecution does not apply this principle to Witness P-0381's statement in which opinion evidence about contested facts is provided. For instance, Witness P-0381 gives his opinion as to [REDACTED].¹⁵⁹

111. For the foregoing reasons, the Defence submits that Witness P-0381 should be testifying *viva voce*.

iii. Witness P-0087

112. The Prosecution intends to examine Witness P-0087 *viva voce* on relevant aspects of his statement on the basis of its "*importance to the Prosecution's case against the*

¹⁵³ Application, para. 48.

¹⁵⁴ Prosecution's Pre-Trial Brief, para. [REDACTED].

¹⁵⁵ Prosecution's Pre-Trial Brief, para. [REDACTED].

¹⁵⁶ Prosecution's Pre-Trial Brief, para. [REDACTED].

¹⁵⁷ Prosecution's Pre-Trial Brief, para. [REDACTED].

¹⁵⁸ Prosecution's Pre-Trial Brief, para. [REDACTED].

¹⁵⁹ CIV-OTP-0049-2818, para. 34.¹⁶⁰ Application, para. 50.

accused”.¹⁶⁰ The Prosecution has therefore excluded from his rule 68(3) application 37 paragraphs of his statement, *i.e.*, approximately one fourth of it. These excluded excerpts of his statements relate to central questions at issue in the case, while the Prosecution seems to suggest that the other aspects of his statement would be less “important” to its case. Furthermore, the supplementary examination of P-0087 is estimated at one third of the estimated time needed if rule 68(3) of the Rules is not applied.¹⁶¹ The Defence submits that this ratio could even be ultimately bigger given the number and the importance of the questions addressed in those excluded paragraphs of the statement. Finally, should the Application be granted in relation to Witness P-0087’s statement, given the highly questionable reliability of that witness [REDACTED],¹⁶² the Defence would need time for extensive examination in order to safeguard Charles Blé Goudé’s rights. For the above reasons, the Defence submits that the potential time saving as a result of the introduction of prior recorded testimony for the non-excluded aspects of Witness P-0087’s statement would be negligible.

113. Moreover, additional portions of Witness P-0087’s statement, which either offer opinion evidence or relate to the acts and conduct of Charles Blé Goudé, have not been excluded from the Application. For instance, at paragraph 105, P-0087 refers to [REDACTED]. This paragraph relates to the acts and conduct of Charles Blé Goudé and should have therefore been excluded. Also, illustrations of opinion evidence can be found in paragraph 68, in which P-0087 gives details as to what seemed to him “[REDACTED]”, in paragraph 72, where P-0087 is convinced that [REDACTED].¹⁶³

114. In any event, many of the non-excluded portions of the statement of P-0087 relate to facts, which are materially contested. For instance, [REDACTED].¹⁶⁴ [REDACTED]¹⁶⁵ or [REDACTED].¹⁶⁶

¹⁶⁰ Application, para. 50.

¹⁶¹ See Annex 4 to the Application.

¹⁶² See *infra* the section in relation to the requested introduction of documentary evidence.

¹⁶³ See *also*, for similar examples, paragraphs 22 and 31 of P-0087’s statement.

¹⁶⁴ CIV-OTP-0011-0201, para. 64.

¹⁶⁵ Paragraph 104 of Witness P-0087’s statement, [REDACTED], is even cited in the Prosecution’s Pre-Trial Brief.

¹⁶⁶ See CIV-OTP-0011-0201, paras 99-105.¹⁶⁷ Application, para. 63.

115. Witnesses P-0087 and P-0088 are [REDACTED]. Therefore, given the substance of P-0087's testimony, the highly questionable reliability of his work[REDACTED] (please refer to the Defence's submissions on documentary evidence below) and given the minimal time saved should the rule 68(3) application be allowed, the Defence submits that Witness P-0087 should be testifying *viva voce in toto*.

C. Submission of documentary evidence under paragraphs 43 and 44

116. The Prosecution wishes to introduce into evidence, under paragraphs 43 and 44 of the Directions, 75 items related to the statements of Witnesses P-0087 and P-0088 [REDACTED]. The Prosecution claims that these documents "are admissible because they are relevant and probative".¹⁶⁷

117. As a preliminary remark, the Prosecution claims that it is mitigating the prejudice of the Accused in excluding from its application under Rule 68(3) certain excerpts of Witnesses P-0087's statement that constitute "[REDACTED]" and/or that offer opinions on the Accused.¹⁶⁸ One of the grounds for the Prosecution's *viva voce* examination of P-0087 in relation to those excerpts is the "*importance to the Prosecution's case against the Accused*" of such evidence.¹⁶⁹ Yet, the Prosecution is seeking to introduce into evidence under paragraphs 43 and 44 of the Directions [REDACTED]. While refraining on the one hand from seeking to introduce testimonial evidence in relation to [REDACTED] under Rule 68(3) and instead, examine the witness *viva voce* on these aspects, the Prosecution fails on the other hand to similarly refrain from seeking to introduce the corresponding documentary evidence pursuant to paragraphs 43 and 44 of the Directions. Yet, it would be just as prejudicial to Mr Blé Goudé to have [REDACTED] in relation to his acts and conduct and/or which provide opinion evidence, being automatically and indiscriminately submitted to the record of the case, without any filter being first applied by the Prosecution or without the assistance of a witness to better contextualize it. Therefore, the Defence submits that the Prosecution should be asked to refrain from introducing

¹⁶⁷ Application, para. 63.

¹⁶⁸ Application, paras 41, 61. *See also* Application, para. 50.

¹⁶⁹ Application, para. 50.

[REDACTED] related to the acts and conduct of the Accused or that provide opinion evidence on the Accused through a paragraph 43 and 44 request.¹⁷⁰

118. Similarly, and contrary to the Prosecution's assertions, submitting these items of evidence directly and automatically through paragraph 43 and 44 will not save any time in the present proceedings since the Defence will have no choice but to contextualize every single item of evidence with upcoming witnesses, including Witness P-0087.

119. Turning now to the question of the admission of the 75 items that the Prosecution seeks to introduce, the Defence objects to the admission of all documents contained in Annex 5 to the Application. **Annex A to this response** substantiates how the Prosecution has not adduced information that would allow for a *prima facie* finding that these items have probative value.¹⁷¹

C.1 Lack of relevance

120. The Prosecution contends *inter alia* that certain documents demonstrate "[REDACTED]".¹⁷² First, the alleged [REDACTED] of Mr. Blé Goudé is not a fact, but is a legal conclusion to be made by the Chamber once the Prosecution has presented its case. Instead of providing information as to the probative value of the [REDACTED], the Prosecution provides the Chamber with its legal qualification of certain [REDACTED]. Since the [REDACTED] in question clearly cannot show [REDACTED], the Prosecution has not substantiated how the submission of this [REDACTED] will advance the Chamber in its determination of a fact at issue in the case. Secondly, alleging that [REDACTED] is nothing more than the Prosecution's interpretation of the said [REDACTED]. According to the jurisprudence, the relevance criterion defines the purpose of a particular item of evidence in the proceedings.¹⁷³ Thus, the [REDACTED] in question cannot be submitted to prove this allegation. In view of the foregoing, the Defence submits that the following documents should not be admitted for the purpose of proving the specific propositions

¹⁷⁰ [REDACTED].

¹⁷¹ The Defence takes note of the ruling of the Chamber whereby the status of transcripts or translations of [REDACTED] shall automatically follow the status of the original item. ICC-02/11-01/15-773, para. 41.

¹⁷² See Annex A.

¹⁷³ ICC-01/04-01/07-2635, para. 17.

as detailed in **Annex A to this response**: CIV-OTP-0015-0435, CIV-OTP-0015-0442, CIV-OTP-0015-0462, CIV-OTP-0015-0467, CIV-OTP-0015-0475, CIV-OTP-0015-0476, CIV-OTP-0015-0477, CIV-OTP-0015-0481, CIV-OTP-0015-0482, CIV-OTP-0015-0484, CIV-OTP-0015-0501, CIV-OTP-0015-0524, CIV-OTP-0015-0526, CIV-OTP-0015-0528, CIV-OTP-0015-0547, CIV-OTP-0015-0548, CIV-OTP-0015-0549, CIV-OTP-0015-0552, CIV-OTP-0015-0574, CIV-OTP-0015-0578.

C.1 Lack of probative value

i. Lack of authenticity

121. As a preliminary remark, the Defence disputes that the 75 items of evidence constitute [REDACTED].¹⁷⁴ [REDACTED],¹⁷⁵ [REDACTED]¹⁷⁶ [REDACTED],¹⁷⁷ or [REDACTED]. Also, P-0087 declared that [REDACTED],¹⁷⁸ [REDACTED].

122. The Prosecution claims that the main value of Witness P-0088's statement [REDACTED].¹⁷⁹ [REDACTED]¹⁸⁰, the Defence submits that the Prosecution failed to demonstrate their authenticity. As a result, these items should be rejected unless Witness P-0088 authenticates them in court. Both Witnesses P-0087 and P-0088 confirmed [REDACTED].¹⁸¹ [REDACTED].¹⁸²

123. In addition, [REDACTED].¹⁸³ [REDACTED].¹⁸⁴ [REDACTED].¹⁸⁵ [REDACTED].¹⁸⁶ [REDACTED].¹⁸⁷ [REDACTED].¹⁸⁸ [REDACTED], their relevance and probative value is uncertain and it would therefore be unfair to admit those [REDACTED].

¹⁷⁴ Application, para. 62.

¹⁷⁵ ICC-OTP-0003-0670, at 00:01:25.

¹⁷⁶ ICC-OTP-0003-0670, at 00:00:58.

¹⁷⁷ ICC-OTP-0011-0201, paras 81-82. ¹⁷⁸ CIV-OTP-0011-0201, para. 39.

¹⁷⁸ CIV-OTP-0011-0201, para. 39.

¹⁷⁹ Application, para. 33.

¹⁸⁰ [REDACTED].

¹⁸¹ CIV-OTP-0011-0201, para. 34.

¹⁸² CIV-OTP-0011-0201, para. 37; CIV-OTP-0021-0845, paras 43, 48.

¹⁸³ CIV-OTP-0011-0305.

¹⁸⁴ CIV-OTP-0015-0594; CIV-OTP-0015-0595 CIV-OTP-0015-0596.

¹⁸⁵ CIV-OTP-0021-0845, at CIV-OTP-00221-0851, para. 66. ¹⁸⁶ CIV-OTP-0021-0845, at CIV-OTP-00221-0851, paras 34-36.

¹⁸⁶ CIV-OTP-0021-0845, at CIV-OTP-00221-0851, paras 34-36.

¹⁸⁷ CIV-OTP-0021-0845, at CIV-OTP-00221-0851, para. 66.

¹⁸⁸ Application, para. 66.

124. More generally, Witness P-0087 claims that [REDACTED].¹⁸⁹

125. In view of the foregoing, the Defence submits that the following [REDACTED], which have not been authenticated by either witness or bear no indications as to their date and author, lack the minimum indicia of authenticity for admission: CIV-OTP-0015-0467; CIV-OTP-0015-0475; CIV-OTP-0015-0484; CIV-OTP-0015-0526; CIV-OTP-0015-0527; CIV-OTP-0015-0529; CIV-OTP-0015-0574; CIV-OTP-0015-0576; CIV-OTP-0015-0594; CIV-OTP-0015-0595; CIV-OTP-0015-0596.

ii. Lack of other indicia of reliability

126. The Defence submits that the [REDACTED] sought to be introduced into evidence is insufficiently reliable and that the Prosecution has failed to demonstrate, *prima facie*, its probative value.

127. It is clear [REDACTED],¹⁹⁰ [REDACTED].¹⁹¹ [REDACTED]¹⁹² reads as follows:

“[REDACTED].”¹⁹³

128. Having reviewed the whole section of the [REDACTED], it can be inferred from the context that the aforementioned comment was not only made at [REDACTED].¹⁹⁴ The combination of these different pieces of information suggests that no effort had been made to [REDACTED]. Moreover, the aforementioned comment is a clear example of opinion evidence.

129. As it is clearly shown in [REDACTED]¹⁹⁵ [REDACTED].¹⁹⁶

130. This lack of objectivity and the willingness to distort reality are confirmed and clearly illustrated by the methods used to [REDACTED]¹⁹⁷ [REDACTED].¹⁹⁸

¹⁸⁹ CIV-OTP-0011-0201, para. 37.¹⁹⁰ CIV-OTP-0021-0845, at CIV-OTP-00221-0849, para. 23.

¹⁹⁰ CIV-OTP-0021-0845, at CIV-OTP-00221-0849, para. 23.

¹⁹¹ CIV-OTP-0011-0305, at CIV-OTP-0011-0312, fifth paragraph.

¹⁹² [REDACTED].

¹⁹³ CIV-OTP-0011-0305, at CIV-OTP-0011-0312, fifth paragraph. [REDACTED].

¹⁹⁴ CIV-OTP-0011-0201, para. 123.

¹⁹⁵ [REDACTED].¹⁹⁶ See Annex A for further details.

¹⁹⁶ See Annex A for further details.

¹⁹⁷ CIV-OTP-0015-0476; CIV-OTP-0015-0594; CIV-OTP-0015-0595; CIV-OTP-0015-0596.

¹⁹⁸ See for instance, CIV-OTP-0015-0460, CIV-OTP-0015-0459; CIV-OTP-0015-0476.

[REDACTED]¹⁹⁹ Further, P-0087 does not merely try to [REDACTED], but repeatedly gives opinion evidence, most of the time on [REDACTED].

131. P-0087's [REDACTED].²⁰⁰

132. The Defence therefore submits that the repeated inclusion on the [REDACTED] results in the direct and indirect introduction of opinion evidence by a witness who is not an expert.²⁰¹ As recalled by Trial Chamber II, opinion evidence in the context of a bar table motion is inadmissible if it is not provided by an expert.²⁰² In the same vein, paragraph 23 of the Directions prevents parties from asking the witness to speculate or to provide opinion evidence and the Prosecution itself refrains from seeking to introduce into evidence under Rule 68(3) excerpts of statements containing opinion evidence.

133. Applying the above considerations to the present case, the reliability of the vast majority of [REDACTED] is highly questionable in light of the lack of objectivity and professionalism of [REDACTED].

134. Therefore, for the aforementioned reasons, the Defence submits that the following [REDACTED] lack the minimum indicia of reliability for admission, which admission should therefore be rejected: CIV-OTP-0015-0435; CIV-OTP-0015-0442; CIV-OTP- 0015-0449; CIV-OTP-0015-0459; CIV-OTP-0015-0460; CIV-OTP-0015-0462; CIV-OTP-0015-0476; CIV-OTP-0015-0477; CIV-OTP-0015-0482; CIV-OTP-0015-0501; CIV-OTP-0015-0524; CIV-OTP-0015-0528; CIV-OTP-0015-0530; CIV-OTP-0015-0534; CIV-OTP-0015-0547; CIV-OTP-0015-0548; CIV-OTP-0015-0549; CIV-OTP- 0015-0552; CIV-OTP-0015-0578; CIV-OTP-0015-0594; CIV-OTP-0015-0595; CIV-OTP-0015-0596; CIV-OTP-0015-0478; CIV-OTP-0015-0481; CIV-OTP-0015-0484.

iii. Lack of significance of the evidence

135. Although some evidence may be relevant, it may not be sufficiently material to advance the Chamber's inquiries or to persuade or dissuade the Chamber of anything.

¹⁹⁹ See for instance, CIV-OTP-0015-0476, 09:25; CIV-OTP- 0015-0482, at 02:15; CIV-OTP- 0015-0552.

²⁰⁰ CIV-OTP- 0015-0442, at 02:22.²⁰¹ [REDACTED].

²⁰¹ [REDACTED].

²⁰² ICC-01/04-01/07-2635, para. 31.

The Defence submits that certain [REDACTED] (as listed below and detailed in **Annex A hereto**) cannot significantly assist the Chamber in reaching a conclusion about the existence of a material fact.

136. Among the [REDACTED] sought to be introduced, there are a few [REDACTED].²⁰³ Without further detail (such as the actual [REDACTED] of these persons) or the assistance of a witness to better contextualize the relevant [REDACTED], these documents cannot have any material influence on or weight to the Chamber's determination of any issue. Similarly, [REDACTED], should have little to none impact on the Chamber's determination on the issues before it.²⁰⁴

137. Furthermore, certain [REDACTED].²⁰⁵ Therefore, the time anticipated for the evaluation by the Chamber of this repetitive evidence is disproportionate to its potential probative value.

138. For the foregoing reasons, the Defence submits that the following items of evidence should be rejected for lack of significance: CIV-OTP-0015-0449; CIV-OTP-0015-0459; CIV-OTP-0015-0467; CIV-OTP-0015-0475; CIV-OTP-0015-0478; CIV-OTP-0015-0481; CIV-OTP-0015-0526; CIV-OTP-0015-0527; CIV-OTP-0015-0529; CIV-OTP-0015-0574; CIV-OTP-0015-0576.

C.2. The prejudice suffered outweighs any *prima facie* probative value

139. Reliance on certain [REDACTED] in respect to central aspects of the charges or highly contentious issues, such as the alleged [REDACTED], may cause prejudice which outweighs any *prima facie* probative value to be found in those [REDACTED] material, especially when such probative value is insufficient as explained above. Reliance on such evidence with respect to central questions at issue could amount to an abdication of the fact-finding function of the Chamber.

140. Furthermore, the Prosecution contends that “[s]ubmitting these items promotes the efficiency of proceedings and will save Court time”.²⁰⁶ Yet, the Defence submits that the time anticipated for the evaluation by the Chamber of the repetitive evidence

²⁰³ CIV-OTP- 0015-0574; CIV-OTP-0015-0576.

²⁰⁴ CIV-OTP-0015-0467; CIV-OTP-0015-0475.

²⁰⁵ CIV-OTP-0015-0449; CIV-OTP-0015-0467.²⁰⁶ Application, para. 62.

²⁰⁶ Application, para. 62.

comprising, *inter alia*, different redundant [REDACTED] of the same event, is disproportionate to its potential probative value.

141. For the foregoing reasons, the Defence submits that the following items of evidence should be rejected for being unduly prejudicial to the rights of the accused: CIV-OTP-0015-0435; CIV-OTP-0015-0442; CIV-OTP-0015-0449; CIV-OTP 0015-0459; CIV-OTP-0015-0460; CIV-OTP-0015-0462; CIV-OTP-0015-0467; CIV-OTP- 0015-0476; CIV-OTP-0015-0477; CIV-OTP- 0015-0478; CIV-OTP- 0015-0481; CIV-OTP-0015-0482; CIV-OTP-0015-0501; CIV-OTP- 0015-0524; CIV-OTP- 0015-0526; CIV-OTP- 0015-0527; CIV-OTP-0015-0528; CIV-OTP- 0015-0529; CIV-OTP-0015-0530; CIV-OTP-0015-0534; CIV-OTP-0015-0547; CIV-OTP-0015-0548; CIV-OTP-0015-0549; CIV-OTP-0015-0552; CIV-OTP-0015-0578; CIV-OTP-0015-0594; CIV-OTP-0015-0595; CIV-OTP-0015-0596.

RELIEF SOUGHT

142. In light of the foregoing, the Defence respectfully requests the Chamber to:

- **DENY** the Prosecution's application to conditionally introduce the Rule 68(2)(b) documents presented in the Application,
- **DENY** the Prosecution's application to conditionally introduce the Rule 68(3) documents presented in the Application,
- **DECLINE** to consider as submitted under paragraphs 43 and 44 of the Directions the items of evidence related to the acts and conduct of the Accused or containing opinion evidence, as identified in the above submissions, and, if and when submitted, **DECLINE** to admit all 75 items into evidence.

Respectfully submitted,



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

Dated this

21 June 2017,

At The Hague, the Netherlands