

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



Original: English

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

Date: 5 October 2016

**TRIAL CHAMBER I**

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

**SITUATION IN CÔTE D'IVOIRE**

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

**Public Document**

**Redacted Version of the Response to the “Prosecution’s application submitting material in written form in relation to Witnesses P-0414, P-0428, P-0501, P-0549 and P-0550” (ICC-02/11-01/15-582-Red)**

**Source:** Office of Public Counsel for Victims

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

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## I. Introduction

1. The Common Legal Representative of the victims admitted to participate in the proceedings (the “Legal Representative”)<sup>1</sup> submits that the application by the Prosecution to admit the prior recorded testimony and related documents of three witnesses under rule 68(2)(b) and rule 68(3) of the Rules of Procedure and Evidence (the “Rules”) and to submit certain documents under paragraphs 43 and 44 of the Amended Directions on the conduct of the proceedings<sup>2</sup> (the “Application”)<sup>3</sup> should be granted.

2. Regarding the introduction of the statement, including related documents, of Witness P-0428 pursuant to rule 68(2)(b) of the Rules, the Legal Representative submits that these documents go to “*proof of a matter other than acts and conduct of the accused*” because they refer to persons other than the Accused and the Prosecution does not intend to rely on said documents to prove the alleged conduct of Mr Gbagbo and Mr Blé Goudé.

3. Regarding the introduction of the previously recorded statements, including related documents, of Witnesses P-0414 and P-0501 pursuant to rule 68(3) of the Rules, the Legal Representative supports the Application as the two testimonies are limited in nature and/or of a corroborative character.

4. The Legal Representative also submits that the introduction of all the documents attached to the statements of Witnesses P-0414, P-0428 and P-0501 should

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

<sup>2</sup> See the “Annex A to Decision adopting amended and supplemented directions on the conduct of the proceedings” (Trial Chamber I), No. ICC-02/11-01/15-498-AnxA, 4 May 2016 (the “Amended Directions”), paras. 43-44.

<sup>3</sup> See the “Public redacted version of ‘Prosecution’s application submitting material in written form in relation to Witnesses P-0414, P-0428, P-0501, P-0549 and P-0550’, 10 June 2016, ICC-02/11-01/15-582-Conf”, No. ICC-02/11-01/15-582-Red, 30 September 2016 (the “Application”).

be granted because said material is referred to in the respective statements and is therefore in compliance with the Amended Directions issued by the Chamber.

5. Furthermore, the Legal Representative supports the Prosecution's request to conduct limited witness preparation of Witnesses P-0414 and P-0501, in so far as it will ensure a more accurate and efficient presentation of the witnesses' evidence.

6. In addition, in relation to the submission of documentary evidence pertaining to Witnesses P-0501, P-0549 and P-0550 under paragraphs 43 and 44 of the Amended Directions, the Legal Representative supports the Application as the evidence in question is *prima facie* relevant, probative and authentic and its direct submission would result in an enhancement of the efficiency of the proceedings.

7. Finally, applying the general principles established by the Chamber for the questioning of witnesses, the Legal Representative will further assess the need to preserve her clients' interests and she will eventually introduce a request for questioning at the time the relevant witnesses appear, in compliance with the Chamber's instructions on the matter.

## **II. Confidentiality**

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

## **III. Background**

9. On 19 April 2016, the Prosecution filed the "Prosecution application to conditionally admit the prior recorded statements and related documents of

[REDACTED] under rule 68(2)(b) and the prior recorded statements and related documents of [REDACTED] under rule 68(3)” (the “First Rule 68 Application”).<sup>4</sup>

10. On 28 April 2016, the Legal Representative filed her response to the First Rule 68 Application.<sup>5</sup>

11. On 4 May 2016, the Chamber adopted the Amended Directions.<sup>6</sup>

12. [REDACTED].<sup>7</sup>

13. On 9 June 2016, the Chamber ruled on the First Rule 68 Application (the “First Rule 68 Decision”).<sup>8</sup>

14. On 10 June 2016, the Prosecution filed the Application.<sup>9</sup>

15. On 15 June 2016, [REDACTED],<sup>10</sup> the Chamber granted an extension of time until 30 June 2016 to submit observations on the Application.<sup>11</sup>

16. On 17 June 2016, the Chamber informed the parties and participants *via* email that the extended deadline also applies to the Legal Representative.<sup>12</sup>

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<sup>4</sup> See the “Corrected version of Public redacted version of ‘Prosecution application to conditionally admit the prior recorded statements and related documents of [REDACTED] under rule 68(2)(b) and the prior recorded statements and related documents of [REDACTED] under rule 68(3)’, 19 April 2016, ICC-02/11-01/15-487-Conf, 26 April 2016, ICC-02/11-01/15-487-Red”, No. ICC-02/11-01/15-487-Red-Corr, 28 April 2016.

<sup>5</sup> See the “Redacted Version of the ‘Response to the Prosecution’s application under rules 68(2)(b) and 68(3) of the Rules for the admission of prior recorded testimony of Witnesses [REDACTED] (ICC-02/11-01/15-487-Conf)’, 28 April 2016, ICC-02/11-01/15-491-Conf”, No. ICC-02/11-01/15-491-Red, 2 May 2016.

<sup>6</sup> See *supra* note 2.

<sup>7</sup> See [REDACTED].

<sup>8</sup> See the “Public redacted Decision on the Prosecution’s application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)”, No. ICC-02/11-01/15-573-Red, 09 June 2016 (the “First Rule 68 Decision”).

<sup>9</sup> See *supra* note 3.

<sup>10</sup> See [REDACTED].

<sup>11</sup> See [REDACTED].

#### IV. Submissions

17. The Legal Representative submits that the documents identified by the Prosecution in the Application meet the requirements of rule 68(2)(b) and rule 68(3) of the Rules and that their submission under these provisions is in line with the First Rule 68 Decision.<sup>13</sup>

18. As regards the applicable law, the Legal Representative refers to her submissions in relation to both rule 68(2)(b) and 68(3) of the Rules made in response to the First Rule 68 Application.<sup>14</sup>

19. Addressing the content of the Application, the Legal Representative firstly agrees with the Prosecution that the prior recorded testimony of P-0428 and accompanying annexes go to the proof of a matter other than the acts and conduct of the Accused and, as a consequence, may be introduced under rule 68(2)(b).<sup>15</sup> Indeed, P-0428's testimony relates essentially to [REDACTED],<sup>16</sup> which clearly provides "*mere background information*" and cannot reasonably be said to constitute an issue "*materially in dispute*".<sup>17</sup> By the same token, because of the [REDACTED] position of P-0428 within [REDACTED], the witness statement bears "*sufficient indicia of reliability*"<sup>18</sup> as regards in particular the working methods and the organization of [REDACTED].

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<sup>12</sup> See the email received from the Chamber on 17 June 2016 at 16:54 hours.

<sup>13</sup> See the First Rule 68 Decision, *supra* note 8.

<sup>14</sup> See the "Redacted Version of the 'Response to the Prosecution's application under rules 68(2)(b) and 68(3) of the Rules for the admission of prior recorded testimony of Witnesses [REDACTED] (ICC-02/11-01/15-487-Conf), 28 April 2016, ICC-02/11-01/15-491-Conf'", *supra* note 5, paras. 11-16.

<sup>15</sup> See the Application, *supra* note 3, paras. 19-20.

<sup>16</sup> See Annex 2 to the Application, *supra* note 3, p. 6; and the Annex B to the "Prosecution's submission of its amended List of Witnesses and List of Evidence", No. ICC-02/11-01/15-314, 26 October 2015, pp. 235-237.

<sup>17</sup> See the First Rule 68 Decision, *supra* note 8, para. 15.

<sup>18</sup> *Idem*, para. 22.

20. From this perspective, the Legal Representative argues that the submission of P-0428's testimony under rule 68(2)(b) is not prejudicial to or inconsistent with the rights of the Accused.<sup>19</sup> Moreover, it is appropriate because it "[w]ill save court time and spare the witness the burden of appearing".<sup>20</sup> In the same vein, the Legal Representative supports the submission of the annexes to P-0428's statement. As indicated by the Chamber in the First Rule 68 Decision, "[t]he documents referred to in the witness statements themselves [...] need to be joined in order to allow the Chamber and the parties to properly appreciate the content of the witness statements".<sup>21</sup>

21. Secondly, the Legal Representative supports the Prosecution's request to introduce the previously recorded statements and related documents of Witnesses P-0414 and P-0501 pursuant to rule 68(3) of the Rules. Witness P-0414's testimony is limited in nature as it refers primarily to [REDACTED]; the methodology ONUCI used [REDACTED]; and the drafting of the relevant UN reports.<sup>22</sup> Consequently, the Legal Representative submits that whereas Witness P-0414's testimony refers to some of the reports [REDACTED] in relation to central facts of the case – such as the 16-19 December 2010 incident or the 3 March 2011 incident –, the relative importance of this witness "[w]ithin the system of evidence that has been and is expected to be presented to the Chamber" in relation to those events is very limited.<sup>23</sup>

22. In the same vein, the Legal Representative argues that Witness P-0501's testimony appears to be mostly of a cumulative and corroborative character as other witnesses in more important positions will be testifying on the same issue (*i.e.* [REDACTED]).<sup>24</sup>

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<sup>19</sup> *Ibidem*, para. 21

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*, para. 9. See also the Amended Directions, *supra* note 2, para. 51.

<sup>22</sup> See the Annex 2 to the Application, *supra* note 3, pp. 2-4; and Annex B to the "Prosecution's submission of its amended List of Witnesses and List of Evidence", *supra* note 16, pp. 231-233.

<sup>23</sup> See the First Rule 68 Decision, *supra* note 8, para. 38.

<sup>24</sup> See the Application, *supra* note 3, para. 26.

23. In these circumstances, and since the Defence will not be prejudiced because it will have ample opportunities to question both witnesses, the Legal Representative submits that the introduction of Witnesses P-0414 and P-0501's statements and related documents is appropriate and will contribute to streamline the presentation of the Prosecution's evidence.<sup>25</sup>

24. In relation to both Witnesses P-0414 and P-0501, the Legal Representative also shares the Prosecution's position that a limited preparation or contact with the calling party – in so far as it only relates to the correction of errors contained in the statements –<sup>26</sup> will ensure a more accurate and efficient presentation of the witnesses' evidence.

25. Finally, in relation to the submission of documentary evidence pertaining to Witnesses P-0501, P-0549 and P-0550 under paragraphs 43 and 44 of the Amended Directions,<sup>27</sup> the Legal Representative supports the Application as the evidence in question is relevant, probative and authentic.

26. Indeed, the documentary evidence related to Witnesses P-0549 and P-0550 – [REDACTED] the five panoramic reconstructions of sites and their related technical notes,<sup>28</sup> and [REDACTED] the report on the forensic mission to Abobo –<sup>29</sup> has sufficient probative value and offers the highest degree of authenticity as it has been self-authenticated by its sources and bears intact its originality and integrity.<sup>30</sup> It is furthermore manifest that this evidence is relevant because it refers either directly or

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<sup>25</sup> See the First Rule 68 Decision, *supra* note 8, para. 42.

<sup>26</sup> See the Application, *supra* note 3, para. 34.

<sup>27</sup> See the Amended Directions, *supra* note 2, paras. 43-44.

<sup>28</sup> For Witness P-0549, see CIV-OTP-0073-0862 and CIV-OTP-0073-0915 (360 presentation on Abobo district); CIV-OTP-0078-0085 and CIV-OTP-0078-0088 (360 presentation on Lem Mosque); CIV-OTP-0084-3957 and CIV-OTP-0083-1415 (360 presentation on Carrefour Djeni Kobenan); CIV-OTP-0084-3959 and CIV-OTP-0083-1413 (360 presentation on the RTI and the Carrefour de la Vie); and CIV-OTP-0084-3961 and CIV-OTP-0083-1411 (360 presentation on the Banco Rond Point).

<sup>29</sup> For Witness P-0550, see CIV-OTP-0073-0906, referring to [REDACTED] (CIV-OTP-0073-0862).

<sup>30</sup> See the "Decision on the Prosecutor's Bar Table Motions" (Trial Chamber II), No. ICC-01/04-01/07-2635, 17 December 2010 para. 24(d). See also the "Corrigendum to Decision on the admissibility of four documents" (Trial Chamber I), No. ICC-01/04-01/06-1399-Corr, 20 January 2011, paras. 36-37.



indirectly to the locations of the crimes charged. In this regard, the Legal Representative also underlines that, as indicated in the *Katanga and Ngudjolo* case, “[i]n a case involving more than one accused, the fact that an item of evidence is only relevant to one of the accused and bears no relation to another co-accused, is not a ground for objection by the latter”.<sup>31</sup>

27. Turning to the documentary evidence related to Witness P-0501, the Legal Representative agrees with the Prosecution’s view that submitting [REDACTED] this witness is constantly referring to in [REDACTED] testimony will promote the efficiency of the proceedings.<sup>32</sup> The Legal Representative further submits that the evidence is *prima facie* relevant and probative of material issues at trial. It constitutes direct evidence and mostly corroborates other evidence in the case.

## V. Conclusion

28. For the foregoing reasons, the Legal Representative respectfully requests the Chamber to grant the Application.



**Paolina Massidda**  
**Principal Counsel**

Dated this 5<sup>th</sup> day of October 2016

At The Hague, The Netherlands

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<sup>31</sup> See the “Decision on the Prosecutor’s Bar Table Motions”, *supra* note 30, para. 18. See also the “Decision on the Bar Table Motion of the Defence of Germain Katanga” (Trial Chamber II), No. ICC-01/04-01/07-3184, 21 October 2011, para. 11.

<sup>32</sup> See the Application, *supra* note 3, para. 37.