Cour Pénale Internationale

International Criminal Court

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No: *ICC-02/11-01/15*
Date: **14 September 2016**

THE APPEALS CHAMBER

Before: **Judge Kuniko Ozaki**
Judge Sanji Mmasenono Monageng
Judge Howard Morrison
Judge Piotr Hofmanski
Judge Chang-ho Chung

SITUATION IN COTE D'IVOIRE

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

PUBLIC

Public Redacted Version of "Defence appeal against the "Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)" 21 July 2016, ICC-02/11-01/15-632-Conf

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. On 9 June 2016, a majority of Trial Chamber I ("the Majority"), Judge Henderson partially dissenting, rendered its "Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)"("the Impugned Decision").[1] Consequently, the statements of 10 witnesses[2] were introduced under Rule 68(3), in spite of the Majority finding that the facts of the statements were central to the case and materially in dispute. Further, the Chamber granted the Prosecution's request to introduce witness P-590's statement under Rule 68(2)(b). The statement was found to demonstrate "sufficient indicia of reliability" on the sole basis that it was freely given during the course of the Prosecution's investigations in a language the witness fully speaks and understands. The Majority's reasoning did not extend further, and thus it did not find it necessary to examine the content of the statement, which contained anonymous hearsay.

2. The Prosecution has announced that it intends to make at least 78 applications pursuant to Rule 68(3) and Rule 68(2), [3] which translates to more than half of its anticipated witnesses being subject to what is supposed to be an exceptional application of Rule 68. Therefore, the Impugned Decision is of utmost importance as it is the first decision to set out the parameters of the applicability of Rule 68(3) and Rule 68(2)(b) in the instant case. The Defence for Charles Blé Goudé ("the Defence") submits that the Majority made four fundamental errors in the Impugned Decision.[4] Trial Chamber I ("the Chamber") granted leave to appeal on the following two issues, which will be addressed in the present submissions:

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[1] ICC-02/11-01/15-573.

[2] P-0112, P-0169, P-0217, P-0230, P-0344, P-0555, P-0573, P-0587, P-0588, P-0589.

[3] The Prosecution made these statements at a Status conference on 27 may 2016, ICC -02/11-01/15-T-45-ENG.

[4] The four issues for which the Defence requested leave to appeal were: (1) whether the Chamber erred in allowing the submission of the Rule 68 statements that include opinion evidence and speculative evidence, including anonymous hearsay, which contravenes paragraph 23 of the amended Directions on the Conduct of Proceedings, and impermissibly contravenes Article 66(2) of the Statute; (2) whether the Chamber erred by failing to apply the requirement that prior recorded testimony admitted under Rule 68(3) must not be

1.) Whether the Chamber erred by failing to apply the requirement that prior recorded testimony admitted under Rule 68(3) must not be prejudicial to the accused, by ignoring the guidance provided by the Appeals Chamber in *The Prosecutor v. Bemba,* which guidance does not provide for the criterion of "good trial management," as introduced by paragraph 25 of the Impugned Decision

2.) Whether the Chamber erred by limiting its analysis of sufficient indicia of reliability to the formal requirement that the statement be taken by the Prosecution "pursuant to Rule 111 of the Rules and under all applicable guarantees, including article 54(1)," and not expanding it to include other factors included in Judge Henderson's dissent such as but not limited to : "the competence of the witness to testify about the facts… potential bias of the witness, his or her (in)sincerity, but also the possibility of honest mistake." [5]

3. The Defence respectfully requests that the Appeals Chamber grant the appeal on both of the issues, and find that Rule 68(3) and Rule 68(2)(b) cannot apply to the eleven witnesses referenced in the Impugned Decision.

II. Confidentiality

4. The Defence files these submissions confidentially since they refer to confidential information pertaining to Prosecution witnesses. A public redacted version will follow in due course.

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prejudicial to the accused, by ignoring the guidance provided by the Appeals Chamber in *The Prosecutor v. Bemba*, which guidance does not provide for the criterion of "good trial management", as introduced by paragraph 25 of the Impugned Decision; (3) whether the Chamber erred by limiting its analysis of sufficient indicia of reliability to the formal requirement that the statement be taken by the Prosecution "pursuant to Rule 111 of the Rules and under all applicable guarantees, including article 54(1)," and not expanding it to include other factors included in Judge Henderson's dissent such as but not limited to: "the competence of the witness to testify about the facts… potential bias of the witness, his or her (in)sincerity, but also the possibility of honest mistake;" (4) whether the Chamber by Majority erred in law by finding that documentary evidence could be admitted through Rule 68 on the sole basis that such evidence was referred to in the individual's statement, irrespective of the author of the statement being the producer of the document him or herself without the proffering party being obliged to provide information indicating the item's relevance, probative value as well as authenticity. ICC-02/11-01/15-592-Corr, para. 4.

[5] In his partially dissenting opinion, Judge Henderson found that leave to appeal should have also been granted for the first issue raised by the Defence in its request for leave to appeal. ICC-02/11-01/15- 612, para. 8.

III. Procedural History

5. On 19 April 2016, the Prosecution requested the Chamber to conditionally admit under Rule 68(3) the prior recorded statements and related documents of witnesses P-0169, P-0217, P-0230, P-0555, P-0573, P-0587, P-0112 and P-0344.[6] In the same application, the Prosecution also requested under Rule 68(2)(b) to admit the prior recorded statements and related documents for witnesses P-588, P-589 and P-590. [7]

6. On 2 May 2016, the Defence and the Defence for Laurent Gbagbo filed their responses opposing the Prosecution's request made under Rule 68(3).[8]

7. On 6 May 2016, the Defence and the Defence for Laurent Gbagbo filed their objections to the Prosecution's request relating to Rule 68(2)(b).[9]

8. On 9 June 2016, the Majority rendered the Impugned Decision, whereby it determined that the statement of Witness P-590 would be introduced and considered as conditionally submitted in its entirety along with its annexes. The Chamber further determined that while the introduction of P-588's and P-589's statement and annexes would be inappropriately introduced under Rule 68(2)(b), it found that the criteria to introduce such documents was met under Rule 68(3). The Chamber also granted the Prosecution's request pursuant to Rule 68(3) for witnesses P-0169, P-0217, P-0230, P-0555, P-0573, P-0587, and P-0112. In his partially dissenting opinion, Judge Henderson fundamentally disagreed with the Majority's application of Rule 68(3) and Rule 68(2)(b).[10] The said Judge found that the Majority should not have departed from the Appeals Chamber's guidance

[6] ICC-02/11-01/15-487.
[7] *Ibid*.
[8] ICC-02/11-01/15-496; ICC-02/11-01/15-495.
[9] ICC-02/11-01/15-504; ICC-02/11-01/15- 502.
[10] ICC-02/11-01/15-573-Anx.

regarding the application of Rule 68(3), and also disagreed with the Majority's limited interpretation of sufficient indicia of reliability.[11]

9. On 15 June 2016, the Defence and the Defence for Laurent Gbagbo requested the Chamber for leave to appeal the Impugned Decision.[12]

10. On 20 June 2016, the Prosecution and the Common Legal Representative responded to both defence requests arguing that they should be rejected in their entirety.

11. On 7 July 2016, the Chamber granted the Defence's leave to appeal the Impugned Decision on the second and third issue raised in its request. In his partially dissenting opinion, Judge Henderson found that leave should also be granted for the Defence's first issue.[13]

IV. Standard of Review

12. The Appeals Chamber does not review appeals *de novo*, seeing as "its review is corrective in nature."[14] In regard to clear errors of law, the Appeals Chamber has found that "it will not defer to the Trial Chamber's interpretation of the law. Rather, it will arrive at its own conclusions as to the appropriate law and determine whether or not the Trial Chamber misinterpreted the law."[15] If the Appeals Chamber finds that such an error was made in the first instance, it "will only intervene if the error materially affected the Impugned Decision."[16]

13. While the Appeals Chamber will not interfere with the exercise of the Trial Chamber's discretion at the first instance for the simple reason that it would have

[11] *Ibid.*, para. 2.
[12] ICC-02/11-01/15-592; ICC-02/11-01/15-591. The Defence filed a corrigendum of its request on 16 June 2016, ICC-02/11-01/15-Corr.
[13] ICC-02/11-01/15-612-Anx, paras 6-8.
[14] ICC-02/05-03/09-295, para. 20.
[15] *Ibid.*
[16] ICC-02/05-03/09-295 OA 2, para. 20.

made a different ruling in the first instance, it will interfere with a discretionary decision "where: (i) it is based upon an erroneous interpretation of the law; (ii) it is based upon a patently incorrect conclusion of fact; or (iii) the decision amounts to an abuse of discretion."[17]

V. Submissions

A. Whether the Chamber erred by failing to apply the requirement that prior recorded testimony admitted under Rule 68(3) must not be prejudicial to the accused, by ignoring the guidance provided by the Appeals Chamber in *The Prosecutor v. Bemba*, which guidance does not provide for the criterion of "good trial management," as introduced by paragraph 25 of the Impugned Decision

14. The Majority determined that prior recorded statements and associated annexes could be introduced under Rule 68(3) on the basis of one criterion, namely "good trial management."[18] The Majority reasoned that this criterion would be applied on a case-by-case basis and would involve considering factors such as, but not limited to "the importance of the evidence for the case, and the volume and detail of the evidence."[19] In so doing, the Majority erred. Under this Court's case law,[20] the Majority neither took into account all the relevant and necessary factors nor did it weigh them properly in its decision to authorize the application of Rule 68(3). But for this legal error in the exercise of the Majority's discretion, the witness statements and related documents would not have been introduced under Rule 68(3).

15. In *The Prosecutor v. Bemba,*[21] the Appeals Chamber did not consider good trial management as a factor for admitting prior recorded testimony under Rule 68. The Court noted that whilst being an exception to the principle of orality, the

[17] ICC-01/09-02/11-1032, para. 22.
[18] Impugned Decision, para. 25.
[19] *Ibid.*
[20] ICC-01/05-01/08-1386, para. 78.
[21] *Ibid.*

application of Rule 68, even in circumstances where the witness is present for examination, must be done such that it does not prejudice the accused or affect the fairness of the trial.[22] Therefore, the Appeals Chamber considered that a cautious assessment was required for such applications and suggested that Trial Chambers take into account the following three factors:

> *i. whether the evidence relates to issues that are not materially in dispute;*
>
> *ii. whether that evidence is not central to core issues in the case, but only provides relevant background information;*
>
> *iii. whether the evidence is corroborative of other evidence.*[23]

16. Trial Chambers have consistently considered these factors when assessing Rule 68 applications.[24] They have not deviated from the *Bemba* judgment, despite the 2013 amendments to Rule 68.[25] As Judge Henderson noted in his partially dissenting opinion, it is "significant" that the text of the old Rule 68(b), which was applied in *Bemba*, is identical to the new Rule 68(3).[26] The Defence submits that this decision to keep the text unaltered in Rule 68(3) demonstrates that neither the Working Group on Lessons Learnt nor the Assembly of State Parties (ASP) envisaged a change to the interpretation, scope and applicability of Rule 68 when the witness is present before the Court. Such an interpretation is further supported by the fact that amendments' object and purpose was to give Trial Chambers more discretion in introducing prior recorded testimony in instances where the witness was

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[22] *Ibid.*

[23] *Ibid.*

[24] *See The Prosecutor v. Lubanga,* ICC-01/04-01/06-1603, paras 22, 24, finding that there are material advantages to admitting prior recorded testimony when challenges are likely to be limited, the testimony is of limited significance, and when it is not materially in dispute; *The Prosecutor v. Bemba,* ICC-01/05-01/08-886, para. 8, holding that "non-disputed evidence" or "evidence not of a central significance" are factors to be taken into consideration when the Chamber exercises its discretion to admit prior recorded testimony under Rule 68(b); *The Prosecutor v. Ntaganda*, ICC-01/04-02/06-961, para. 10, considering that the fact that the charges against the accused and his actions were described extensively in the prior recorded testimony and thus the Defence would need considerable time to examine the witness; *The Prosecutor v. Bemba et al.,* ICC-01/05-01/13-1478-Red-Corr, paras 50-51.

[25] *See e.g.* ICC-01/05-01/13-1478-Red-Corr, paras 48, 50-51; ICC-01/04-02/06-961, paras 8-10; ICC-01/04-02/06-988, para. 12.

[26] ICC-02/11-01/15-573-Anx, footnote 16.

absent.[27]

17. As expounded upon by Judge Henderson, the Majority erred when it did not consider the guidance provided by the Appeals Chamber with respect to Rule 68(3) applications. This guidance ensures that the general principle of orality is not undermined by recourse to Rule 68(3) for the mere reason that its application will expedite the proceedings.

18. The Majority's reliance on the right for the Defence to have adequate time to examine Rule 68(3) witnesses is not sufficient to protect Mr. Blé Goudé's statutory rights for at least two reasons. First, taken to its logical conclusion, the Majority's interpretation means that the Prosecution could have its entire set of crime-base witnesses testify under Rule 68(3) as long as the witnesses do not "have insider or other quality knowledge of the planning and overall conduct"[28] of the alleged direct perpetrators acts during the events. Such a potential result clearly erodes the principle of orality given that Trial Chambers would be deprived of the opportunity to directly hear from the witnesses whose evidence allegedly forms the basis of the charges. Therefore, the Majority erred when it gave considerable weight to factors relating to the source of the witness statement,[29] while not considering the three factors relating to the (material) content of the statements as suggested in *The Prosecutor v. Bemba*.[30]

19. Second, in not considering that the statements of the ten witnesses referenced in the Impugned Decision relate to facts that are central to the case, and that are materially in dispute, the Majority, while exercising its discretion, did not significantly weigh the heavy burden imposed on the Defence to prepare its

[27] *See* ICC-ASP/12/37/Add.1, para. 11.
[28] Impugned Decision, para. 38.
[29] The emphasis of the Majority on the source of the statements is apparent from the distinction the Majority draws "between the facts to the proof of which go the statements, which are undoubtedly of great importance for the case, and the relative importance of the witnesses within the system of the evidence that has been and is expected to be presented to the Chamber." *Ibid.*, para. 38.
[30] *See supra*.

examination of these ten witnesses. Instead of only examining the relevant witness based on his/her testimony which he/she will orally give on the stand, the Defence in order to meet its obligation to defend Mr. Blé Goudé, will have to examine the witness at length also based upon the underlying statements the witness gave to the Prosecution, which by the Majority's own admission are central to the case and materially in dispute.[31] Since the prior recorded testimony at hand does not concern transcripts, but rather, Prosecution summaries, the facts therein are presented in a version that is most favorable to the Prosecution's case theory. Having such versions of the facts submitted for the truth of their content requires the Defence to use more time exploring these highly contested and important issues with Rule 68(3) witnesses, compared to the situation where the Defence is merely confronted with crime base witnesses testifying *viva voce*, without Rule 68(3). Furthermore, the Defence is also duty-bound to examine any issues that come up during the supplementary questioning of Rule 68(3) witnesses by the Prosecution.

20. Thus, even when assuming *arguendo* that good trial management could be the sole criterion or one of the factors on the basis of which Trial Chambers may decide to admit prior recorded testimony under Rule 68(3), the Majority nevertheless did not appropriately weigh this criterion against the potential prejudice to Mr. Blé Goudé. While the Majority held that the Defence will be allotted a reasonable time to examine the ten Rule 68(3) witnesses, the Defence submits that it envisages needing more time to examine the witnesses for the reasons stated above. Thus, in finding that time would be saved by introducing these statements under Rule 68(3), the Majority did not take into account this Defence argument, which results in disproportionate prejudice, and therefore the relevant statements should not have been introduced under Rule 68(3).

21. Since Rule 68(3) concerns the potential admission of incriminatory evidence that

[31] *Ibid*.

has not been tested by the Defence, any ambiguity as to the factors to be weighed when assessing Rule 68(3) should be construed in favor of the accused pursuant to the *in dubio pro reo* principle. Thus, the Majority's interpretation should not have been adopted.

22. Had the Majority not erred, it would not have conditionally introduced the ten witness statements under Rule 68(3). Consequently, Judge Henderson found that Rule 68(3) should not have applied to the statements of witnesses P-213 and P-217. He reasoned that their statements "cover[ed] a rather wide range of issues and topics that are central to this case, which relate to issues that are materially in dispute and that go far beyond what they may have personally experienced during the march on the RTI of 16 December 2010".[32] The Judge also considered that [REDACTED], due to their affiliation with the Ouattara camp were closely involved in the organizing of the relevant events, and were in effect "insider witnesses of the opposing side."[33]

23. The Defence further submits that in applying the different relevant factors, Judge Henderson should have also found that the witness statements of the other ten witnesses could not be introduced under Rule 68(3). After all, like P-217 and P-230, P-169 and P-573 also cover a broad range of topics and issues that extend beyond the first incident. Both were [REDACTED] in Abidjan during the events - P-169 was [REDACTED] whereas [REDACTED] was based in the [REDACTED]. Thus, their expected testimony extends far beyond what they personally observed during the course of the first incident. As the [REDACTED], P-573 provides [REDACTED], which issues are materially in dispute.[34]

24. In addition to providing information relating to the march on the RTI, P-169's statement discusses at length the [REDACTED] during the crisis; his statement

[32]ICC-02/11-01/15-573-Anx, para. 30.
[33] *Ibid*.
[34] CIV-OTP-0069-0221, at p. 0237.

makes reference to alleged instructions ordering that Dioula people [REDACTED], which issue is also materially in dispute.[35] He also makes assertions as to how the [REDACTED].[36] This witness is supposed to provide essential information to understanding the conflict [REDACTED] during the crisis, all of which are materially in dispute.

25. Similarly, the statements of P-587, P-112, P-588, P-589, and P-344 relate to the events of the first incident, but also make important assertions relating to the "Jeunes Patriotes". P-344, P-112, P-587 all describe Mr. Blé Goudé's alleged control of militia group through his speeches and alleged orders.[37] Mr. Blé Goudé's alleged control of militia groups is a core element in dispute, in addition to the insurrectional nature of the march on the RTI. Lastly, P-555's prior recorded statement is of utmost importance since it asserts that he was [REDACTED]. Questioning on this topic will give the Chamber key information in determining whether the participants in the march coordinated their actions with rebel movements.

26. In sum, had the aforementioned facts been appropriately weighed by the Chamber under Rule 68(3), it would have not admitted these statements and related documents. Thus, the error materially affected the Decision.

B. **Whether the Chamber erred by limiting its analysis of sufficient indicia of reliability to the formal requirement that the statement be taken by the Prosecution "pursuant to Rule 111 of the Rules and under all applicable guarantees, including article 54(1)"**

[35] CIV-OTP-0029-0323, at p.0329.
[36] *Ibid*.
[37] *See* "Defence Response to the Prosecutions application to introduce prior recorded testimony under Rule 68", ICC-02/11-01/15-496, footnote 47.

27. In the Impugned Decision, with regard to the indicia of reliability, the Chamber decided that:

> "The Chamber also considers that the statement of Witness P-0590, bearing in mind that it was taken by the Office of the Prosecutor pursuant to Rule 111 of the Rules and under all applicable guarantees, including Article 54(1) of the Statute, bears sufficient indicia of reliability. The witness was explained the procedure and the significance of providing a statement to the Office of the Prosecutor. The statement also includes information as to how the witness came to know of particular facts."

28. The Defence submits that the Chamber made an error of law by applying only a formalistic interpretation to the indicia of reliability criteria in complete disregard to the indicia relating to the content of the witness statement.

29. Rule 68(2)(b)(i) requires the Chamber to satisfy itself *inter alia* that prior recorded testimony contains sufficient indicia of reliability before allowing the introduction of such testimony. The Rule does not however set out the criteria for the determination of such reliability; therefore, one has to turn to jurisprudence to find the relevant factors to be considered, pursuant to article 21(2) of the Rome Statute.

30. In *The Prosecutor v Lubanga*, Trial Chamber I, while quoting an ICTY decision, held that "[…] the indicia of reliability include whether the evidence is 'voluntary, truthful and trustworthy, as appropriate; and for this purpose [the Trial Chamber] may consider both the content of the hearsay statement and the circumstances under which the evidence arose…'".[38] A second precedent which indicates that the Trial Chamber erred in law relates to *The Prosecutor v Ruto*, where it was held that the "Chamber can take into account the circumstances in which the testimony arose, as well as its content."[39] Furthermore, in his partially dissenting opinion, Judge Henderson stated that: "There can be little disagreement, at least in my view, about the fact that rule 68(2)(b)(i) of the Rules requires the Chamber to make at least a preliminary assessment of the reliability

[38] ICC-01/04-01/06-1399-Corr, para. 28.
[39] ICC-01/09-01/11-1938-Corr-Red2, para. 65.

of the content of the testimony." [40] Therefore, the Chamber also overlooked the plain text of Rule 68 and its underlying purpose.

31. The issue of indicia of reliability has also been considered in the ICTY, for example in the cases of the *Prosecutor v Aleskovic*,[41] *the Prosecutor v Karadic*[42] and *the Prosecutor v Galic*,[43] where the ICTY ruled to the effect that the Chamber should not only consider the formal criteria, but also the content of the testimony sought to be introduced.

32. From the jurisprudence it is clear that, even though there is no abstract of fixed catalogue of factors which a Chamber has to consider when making a decision thereto, there is a consensus that a Chamber not only needs to consider the formal requirements but also the content of the purported testimony or statement. In the Impugned Decision, the Majority restricted itself to only address the formal requirement, that is the fact that the statement was taken in the ordinary course of the Prosecution investigation under rule 111 of the RPE and article 55 of the Rome Statute.

33. Admittedly, article 21 of the Rome Statute does not oblige the Chamber to consider the previous rulings of the Court nor those of other international criminal tribunals. However, the admission of witness statements under Rule 68 (2)(b) is crucial since it is an exception to the accused person's right to question a witness and it constitutes a deviation of the principle of orality, which might affect the truth finding process at the Court. Therefore, the Defence submits that the Majority ought to have taken into consideration the content of the statement, as was done by the Court in *Ruto* and *Lubanga* mentioned above.

[40] ICC-02/11-01/15-573-Anx-Red, para. 26.
[41] Prosecutor v Aleksovski, Case No IT-95-14/1, Decision on prosecutor's appeal on admissibility of evidence, 16 February 1999, para 15.
[42] *the Prosecutor v Karadic*, Case No IT-95-5/18-T, Decision On Accused's Motion For Admission Of Evidence Of Radislav Krstic Pursuant To Rule 92 Quarter, 26 November 2013 para 23.
[43] *Prosecutor v. Galic*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92bis (C), 7 June 2002 para 29-30

34. The Defence submits that the error materially affected the Impugned Decision because had the Chamber taken into account the content of the testimony of Witness P-0590, it would not have found it to have sufficient indicia of reliability and therefore would not have allowed its introduction under Rule 68(2)(b).

35. The Prosecution justified the introduction of the testimony of P-0590 saying that it would go towards proving that [REDACTED].[44] Therefore, the circumstances of the [REDACTED] in the RTI march are central to the case. However, the witness himself did not participate in the march and was actually out of town when it occurred.[45] He later learnt about [REDACTED] in the march and the circumstances surrounding his [REDACTED].[46] The only part of the testimony which connects it to the charges, that is the circumstances surrounding the [REDACTED], does not contain sufficient indicia of reliability because it is based on anonymous hearsay whose reliability cannot be ascertained.

36. In *Lubanga* for example, while expounding on their position on the criteria for determining the indicia of reliability, the Chamber held that:

> "The probative value of a hearsay statement will depend upon the context and character of the evidence in question. The absence of the opportunity to cross-examine the person who made the statements, and whether the hearsay is "first-hand" or more removed, are also relevant".[47] [emphasis added]

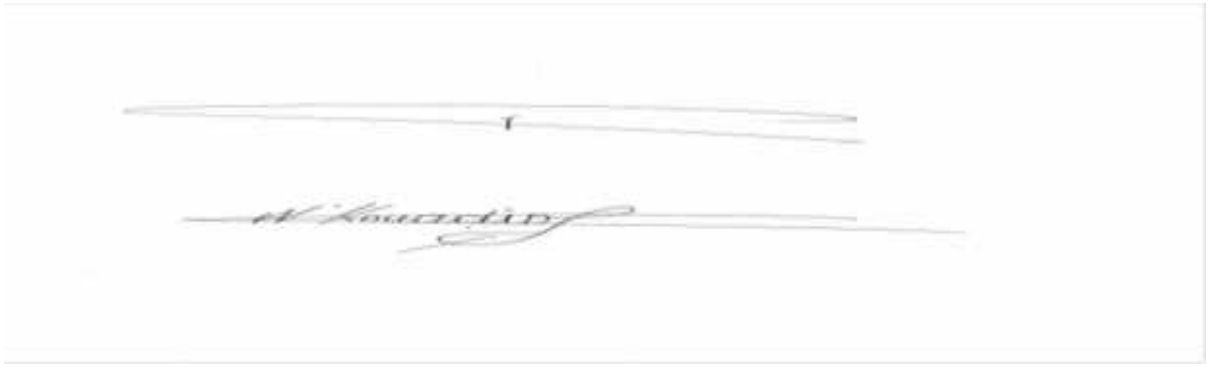
37. The Defence submits, with reference to the above finding of the Court in *Lubanga*, that the Majority erred by not taking into consideration the fact that the hearsay involved was not only "more removed" but is also anonymous. Because the Majority in the Impugned Decision restricted its determination to the formal criteria, the Defence submits that this error materially affected the Impugned Decision.

[44] *See* Pre-trial Brief, ICC-02/11-01/15-148-Conf-Anx2, para. 308.
[45] CIV-OTP-0084-0018, para. 19.
[46] *Ibid.*, paras 55-58.
[47] ICC-01/04-01/06-1399-Corr, para. 28.

RELIEF SOUGHT

38. The Defence respectfully requests the Appeals Chamber to find that the Chamber committed an error of law and to reverse the Impugned Decision.

Respectfully submitted,



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

Dated this
14 September 2016
At The Hague, the Netherlands