

**Cour
Pénale
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**International
Criminal
Court**

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

Date: **6 June 2017**

TRIAL CHAMBER I

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

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ***

Public redacted

Decision on 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"

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

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Trial Chamber I (“Chamber”) of the International Criminal Court, in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Articles 64, 67(1)(e), 68(1) and 69 of the Rome Statute (“Statute”), and Rules 67 and 68 of the Rules of Procedure and Evidence (“Rules”), issues this decision on 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”, filed on 28 February 2017 (“Application”).¹

1. By way of the Application, the Prosecutor: (i) seeks the “conditional admission into evidence of the prior recorded statements, including related documents”, of Witnesses P-0088, P-0129, P-0266, P-0294, P-0360, P-0380, P-0426, P-0471, P-0476, P-0479, P-0489, P-0543, P-0573, P-0580, P-0582 and P-0594 under Rule 68(2)(b) of the Rules; (ii) seeks the “conditional admission into evidence of the prior recorded statements, including related documents”, of Witnesses P-0054, P-0087, P-0105, P-0114, P-0164, P-0172, P-0184, P-0185, P-0226, P-0237, P-0239, P-0293, P-0297, P-0316, P-0362, P-0363, P-0364, P-0381, P-0407, P-0521, P-0554, P-0567 and P-0568 under Rule 68(3) of the Rules; and (iii) submits 32 items of documentary evidence related to the statements of Witnesses P-0087 and P-0088, pursuant to paragraphs 43 and 44 of the Directions on the Conduct of Proceedings, together with 43 associated transcripts and translations.² For each of these categories, the specific documents are identified in annexes 1, 3 and 5 to the Application, respectively.³
2. On 16 March 2017, the Prosecutor filed the “Prosecution’s supplementary submission related to its application for the introduction of documentary evidence under paragraph 43 of the directions on the conduct of proceedings relating to the evidence

¹ ICC-02/11-01/15-829-Conf and confidential annexes 1-5. A public redacted version has been filed, see ICC-02/11-01/15-829-Red.

² Application, paras 2 and 5.

³ ICC-02/11-01/15-829-Conf-Anx1, ICC-02/11-01/15-829-Conf-Anx3, ICC-02/11-01/15-829-Conf-Anx5.

of Witnesses P-0087 and P-0088”, whereby it submitted an item of documentary evidence and a transcript, as specified in annex A, which she states she had omitted to submit with the Application.⁴

3. The common legal representative of the participating victims responded on 24 April 2017, supporting the Application.⁵ On the same day, the Defence of Charles Blé Goudé⁶ and the Defence of Laurent Gbagbo⁷ responded, both objecting to the Application.
4. On 12 May 2017, the Chamber orally ruled on the Application insofar as it concerns Witness P-0114, finding that the written statement of Witness P-0114 is in principle suitable for introduction under Rule 68(3) of the Rules and directing the parties to prepare accordingly.⁸ The Chamber announced that the reasoning would follow in writing.⁹ The present decision, accordingly, resolves the remainder of the Application, and also provides reasoning for the Chamber’s ruling in respect of the written statement of Witness P-0114.
5. This is the sixth instance in which the Chamber addresses a request from the Prosecutor to introduce prior recorded testimony under Rule 68 of the Rules. In the present decision, the Chamber follows the same general approach as that laid out in the first decision on the matter.¹⁰ The Chamber also notes that its previous ruling has been confirmed on interlocutory appeal.¹¹

⁴ ICC-02/11-01/15-853-Conf and annex.

⁵ ICC-02/11-01/15-881-Conf.

⁶ ICC-02/11-01/15-883-Conf (“Blé Goudé Response”).

⁷ ICC-02/11-01/15-884-Conf (“Gbagbo Response”).

⁸ ICC-02/11-01/15-T-162, p. 87.

⁹ *Id.*

¹⁰ “Decision on the Prosecutor’s application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)”, 9 June 2016, ICC-02/11-01/15-573-Conf (“Decision of 9 June 2016”). A public redacted version is available, see ICC-02/11-01/15-573-Red.

¹¹ Appeals Chamber, “Judgment on the Appeals of Mr Laurent Gbagbo and Mr Charles Blé Goudé against the decision of Trial Chamber I of 9 June 2016 entitled ‘Decision on the Prosecutor’s application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)’”, 1 November 2016, ICC-02/11-01/15-744 OA8 (“Appeals Chamber Judgment”).

6. Before turning to the details of the Application, the Chamber notes that the Defence of Laurent Gbagbo has raised in its Response a number of arguments of principle. Insofar as these arguments are repetitive of arguments already raised and considered by the Chamber in previous rulings and confirmed by the Appeals Chamber, they are not addressed in the present decision. This applies to the argument that Article 69(2) of the Statute embodies a “principle of orality” which necessitates a restrictive interpretation of Rule 68 of the Rules,¹² as well as to the argument that the Prosecutor has filed requests under Rule 68 of the Rules for too high a proportion of the witnesses on her list.¹³
7. The Chamber also notes at this juncture the argument that there is “no control” over the investigators of the Office of the Prosecutor in the taking of statements from witnesses and that therefore, essentially, the statements must be received with circumspection,¹⁴ and the argument that no statement taken with the assistance of an interpreter may be introduced, including because it is not known whether the written statements in French were properly interpreted back to the witnesses before they were signed.¹⁵ The Prosecutor, her staff and interpreters engaged by the Court are subject to rules applicable to their function and/or profession¹⁶ and, in the absence of any indication of wrongdoing or negligence on their part, both arguments raised by the Defence of Laurent Gbagbo are entirely speculative and without merit.

¹² Gbagbo Response, paras 8-20, also paras 21-22, 43-47; see Decision of 9 June 2016, para. 24.

¹³ Gbagbo Response, paras 40-42, 48; see “Decision on the ‘Prosecution’s application to conditionally admit the prior recorded statements and related documents in relation to Witnesses P-0106, P-0107, P-0117 and P-0578 under rule 68(3)’”, 11 October 2016, ICC-02/11-01/15-722-Conf, para. 18. A public redacted version is available, see ICC-02/11-01/15-722-Red. See also Appeals Chamber Judgment, para. 78 (“The Appeals Chamber considers that respect for the principle of orality cannot be reduced to a purely mathematical calculation of the percentage of witnesses providing their entire evidence orally.”)

¹⁴ Gbagbo Response, paras 56-61.

¹⁵ *Ibid.*, paras 64-66.

¹⁶ Regulations of the Office of the Prosecutor, ICC-BD0/-01-09, 23 April 2009; Code of Conduct of the Office of the Prosecutor, 5 September 2013.

8. The Chamber turns now to the various witness statements of which the introduction is requested under Rule 68(2)(b) and 68(3) of the Rules. Under each of these headings, the Chamber analyses the witness statements in groups which broadly follow the structure of the Application and the responses. These groups are loose and partly overlap, and the Chamber clarifies that their purpose is only to streamline the presentation of the results of the Chamber's analysis, which has in any case been conducted individually.

I. Request for introduction of prior recorded testimony under Rule 68(2)(b) of the Rules

9. 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) of the Rules. 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.

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

10. The Prosecutor submits that the statements of Witnesses P-0266, P-0426, P-0471, P-0476, P-0479 and P-0543 "relate mostly to [REDACTED]"

the 3 March 2011 victims”, and as such provide evidence of cumulative and corroborative nature which does not relate to disputed facts at the core of the case.¹⁷

11. The Defence of Charles Blé Goudé opposes the introduction under Rule 68(2)(b) of the Rules of the statements of Witnesses P-0266, P-0476 and P-0479, on the ground that the issue of roadblocks (“barrages”) addressed in these statements is central to the prosecution case against Charles Blé Goudé and that therefore the Defence should have an opportunity to question these witnesses.¹⁸ Further, the Defence argues that the statements of these witnesses are not cumulative or corroborative of each other and that there are “several contradictions” among them.¹⁹ The Defence also argues that the statement of Witness P-0266 does not merely provide background information.²⁰ Finally in this regard, the Defence of Charles Blé Goudé submits that the statements of Witnesses P-0471, P-0476 and P-0479 lack sufficient indicia of reliability, because annexes attached to their statements contain inaccurate and/or incorrect information or, in the case of the latter, were not made by the witness.²¹
12. The Defence of Laurent Gbagbo submits that what took place ██████████ of the alleged victims of the events of 3 March 2011 is a contested fact and therefore that the statements under consideration cannot be introduced under Rule 68(2)(b) of the Rules.²² The Defence also points to inconsistencies between the statements of Witness P-0266 and P-0476.²³ In addition, the Defence identifies a series of additional facts which in its submission should be explored with Witnesses P-0266 and P-0476.²⁴

¹⁷ Application, paras 25-27; see also paras 21-23.

¹⁸ Blé Goudé Response, paras 16-22.

¹⁹ *Ibid.*, paras 34-37.

²⁰ *Ibid.*, para. 48; see also para. 64.

²¹ *Ibid.*, paras 54-56.

²² Gbagbo Response, para. 92.

²³ *Ibid.*, para. 101.

²⁴ *Ibid.*, paras 104-106.

13. Witness P-0266 explains in his first statement [REDACTED]
[REDACTED]
[REDACTED].²⁵ In his second statement, the witness explains [REDACTED]
[REDACTED].²⁶
14. Witness P-0426 was at the relevant time [REDACTED].
In his statement the witness confirms, by reference to written records, that he [REDACTED]
[REDACTED].²⁷
15. Witness P-0471 was [REDACTED], who describes in his statement [REDACTED],²⁸ and provides information on [REDACTED].²⁹
16. Witness P-0476 [REDACTED] and describes [REDACTED]
[REDACTED]
shootings in Abobo on 3 March 2011,³⁰ and provides information on the [REDACTED]
[REDACTED].³¹
17. Witness P-0479 was [REDACTED] who describes [REDACTED]
[REDACTED]

²⁵ CIV-OTP-0066-0463 at 0469-0476.

²⁶ CIV-OTP-0068-0099 at 0102-0105.

²⁷ CIV-OTP-0068-0086 at 0091-0093.

²⁸ CIV-OTP-0066-0416 at 0420-0421.

²⁹ *Ibid.*, at 0422-0423.

³⁰ CIV-OTP-0066-0436 at 0440-0443.

³¹ *Ibid.*, at 0443-0447.

examine Witnesses P-0266, P-0426, P-0471, P-0476, P-0479 and P-0543 will not adversely affect its position.

21. The Chamber notes that both Defence teams oppose the introduction of the written statements on the ground that they wish to question the witnesses on topics not covered, or not covered in detail, in the statement.³⁵ However, the Chamber considers, as stated by other Trial Chambers,³⁶ that the crucial question at present is not whether a person shall be called to testify before the Chamber, but whether a testimony which was previously recorded may, in light of its content and significance to the case, be introduced in writing. If this request is rejected, this does not create an obligation for the calling party to actually call the witness. Therefore, it does not follow that a request for introduction of prior recorded testimony under Rule 68(2)(b) of the Rules must be rejected because the witness may have knowledge of facts which are of interest to the Defence but are not reported in the statement taken by the Prosecutor. Indeed, the Defence will, in due course, have a full opportunity to present its case to the Chamber. The Chamber notes that there is a procedure in place for contacting witnesses of another party³⁷ and that introduction of a written statement under Rule 68(2)(b) of the Rules in and of itself does not preclude that the other party subsequently conducts an interview with the witness to cover topics not covered in the statement introduced.³⁸

³⁵ See above, paras 11-12.

³⁶ Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, "Decision on the Prosecution's Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules", 18 November 2016, ICC-02/04-01/15-596-Red, paras 7 and 47.

³⁷ "Decision adopting the 'Protocol on disclosure of the identity of witnesses of other parties and of the LRV in the course of investigations, use of confidential information by the parties and the LRV in the course of investigations, inadvertent disclosure and contacts between a party and witnesses not being called by that party'", 31 August 2015, ICC-02/11-01/15-200 and annex.

³⁸ See also Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, "Decision on the Prosecution's Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules", 18 November 2016, ICC-02/04-01/15-596-Red, paras 47-48, 65, 152.

22. The Chamber also considers that the statements of Witnesses P-0266, P-0426, P-0471, P-0476, P-0479 and P-0543, taken by the Office of the Prosecutor pursuant to Rule 111 of the Rules under all applicable guarantees, including Article 54(1) of the Statute, bears sufficient indicia of reliability. The reasons that the Defence of Charles Blé Goudé identifies for arguing the opposite,³⁹ are in the assessment of the Chamber not issues that affect the statements as such, for the purposes of consideration whether there are indicia of reliability under Rule 68(2)(b)(i) of the Rules, but are rather questions related to the probative value to be attributed to the specific facts addressed by the witnesses, which will occur in due course, should the facts be deemed relevant. The same holds with respect to the alleged inconsistencies between the statements of Witnesses P-0266 and P-0476.⁴⁰

23. In sum, the Chamber concludes that the prior recorded testimony of Witnesses P-0266, P-0426, P-0471, P-0476, P-0479 and P-0543 may be introduced under Rule 68(2)(b) of the Rules.

b) Witnesses P-0580 and P-0582

24. According to the Prosecutor, the statements Witnesses P-0580 and P-0582 [REDACTED] [REDACTED] [REDACTED], and not to disputed issues at the core of the case, and are of corroborative and cumulative nature.⁴¹

25. The Defence of Charles Blé Goudé opposes to the introduction of both statements under Rule 68(2)(b) of the Rules, on the ground that they relate to issues materially in dispute and provide “unique details”, which are not corroborated.⁴² The Defence also argues that the statement of Witness P-0582 lacks sufficient indicia of reliability as it

³⁹ See above, para. 11.

⁴⁰ See above, para. 12.

⁴¹ Application, para. 28; see also paras 21-23.

⁴² Blé Goudé Response, paras 25-29, 38, 49-51.

contains “ [REDACTED] ”.⁴³

26. The Defence of Laurent Gbagbo states that the facts related to the alleged women’s march of 3 March 2011 are contested.⁴⁴ The Defence also states that the links of Witnesses P-0580 and P-0582 with victims associations and non-governmental organisations need to be explored.⁴⁵

27. Witness P-0580, a resident of Abobo, explains in his written statement that on the day of the women’s march he was walking from the *Abobo Gare* roundabout towards the *Banco* roundabout when he saw a tank and a “*cantère*” with armed persons inside pass in the direction of the demonstration.⁴⁶ The witness states that thereafter, he heard shots and then a loud noise.⁴⁷ According to his statement, the witness then

[REDACTED]
[REDACTED].⁴⁸ The witness also [REDACTED]
[REDACTED].⁴⁹

28. The statement of Witness P-0582 relates principally to [REDACTED]
[REDACTED]. The witness explains that [REDACTED]
[REDACTED].⁵⁰ The witness explains that [REDACTED]

[REDACTED].⁵¹ She states that she [REDACTED]
[REDACTED]

⁴³ *Ibid.*, para. 57.

⁴⁴ Gbagbo Response, para. 92.

⁴⁵ Gbagbo Response, para. 107.

⁴⁶ CIV-OTP-0081-0416 at 0422.

⁴⁷ *Id.*

⁴⁸ *Ibid.*, at 0422-0423.

⁴⁹ *Ibid.*, at 0426-0428.

⁵⁰ CIV-OTP-0081-0468 at 0475-0476.

⁵¹ *Ibid.*, at 0476.

██████████^{.52} The witness explains that when she arrived at Samaké, she heard a very strong sound.⁵³ She states that when she arrived home, ██████████
██████████^{.54}
The witness states that ██████████
██████████^{.55} The witness also ██████████
██████████^{.56}

29. The Chamber notes that Witnesses P-0580 and P-0582 provide evidence of the events which took place in Abobo on 3 March 2011, on and near the location of the women’s march. These are facts which are materially in dispute and relate to the core of the charges. Considering the locations where the witnesses were situated at the time when the facts allegedly took place, and their personal observations as related in their statements, the statements of Witnesses P-0580 and P-0582 are also not of a peripheral nature. In these circumstances, the Chamber is of the view that the Application cannot be granted under Rule 68(2)(b) of the Rules and may, as explained below,⁵⁷ be more appropriately introduced under Rule 68(3) of the Rules.

c) Witnesses P-0129, P-0294, P-0360 and P-0489

30. In the submission of the Prosecutor, the evidence provided in the statements of Witnesses P-0129, P-0294, P-0360 and P-0489, relating to the shelling of Abobo on 17 March 2011, “does not relate to the acts and conduct of the Accused, and the shelling

⁵² *Ibid.*, at 0477.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Ibid.*, at 0478-0487.

⁵⁷ See paras 89-93.

of Abobo cannot reasonably be in dispute”.⁵⁸ The Prosecutor also states that these four witnesses corroborate each other and other witnesses.⁵⁹

31. The Defence of Charles Blé Goudé objects to the introduction under Rule 68(2)(b) of the Rules of the statements of Witnesses P-0129, P-0360 and P-0489, submitting that they relate to issues materially in dispute,⁶⁰ that there are “contradictions and discrepancies” among them and vis-à-vis other evidence,⁶¹ and that they do not merely relate to background information but “seem to give precise details relating to the 4th incident”.⁶² The Defence also argues that the statement of Witness P-0489 lacks sufficient indicia of reliability because “there are instances where the witness relies on anonymous hearsay” and because she [REDACTED]
[REDACTED]
[REDACTED].⁶³

32. The Defence of Laurent Gbagbo submits that it contests the shelling of Abobo on 17 March 2011.⁶⁴ It also states that it is important that the Defence can revisit Witness P-0129’s reference to [REDACTED]
[REDACTED], and ask questions to Witnesses P-0294 and P-0360 related to the presence of rebels in Abobo on the locations of the alleged shelling, as well as about the presence of the *Forces républicaines de Côte d’Ivoire* (FRCI) to Witness P-0360.⁶⁵

33. Witness P-0129 states in his written statement that he was [REDACTED]
[REDACTED] at Abobo SOS on 17 March 2011 when a shell fell.⁶⁶ The witness

⁵⁸ Application, para. 26; see also paras 21-23.

⁵⁹ *Ibid.*, para. 27.

⁶⁰ Blé Goudé Response, paras 23-24, 30-31.

⁶¹ *Ibid.*, paras 39-42.

⁶² *Ibid.*, para. 47.

⁶³ *Ibid.*, para. 53, 58.

⁶⁴ Gbagbo Defence, para. 93.

⁶⁵ *Ibid.*, paras 107-109.

⁶⁶ CIV-OTP-0071-2186 at 2191-2192.

describes [REDACTED]

[REDACTED].⁶⁷

34. Witness P-0294 describes in his first statement given to OTP investigators how he

[REDACTED] at the Siaka Koné

market.⁶⁸ He explains that when he arrived on location he saw blood and human

flesh but the bodies had already been removed.⁶⁹ The witness also states [REDACTED]

[REDACTED].⁷⁰ The second statement of the witness is a record of the witness showing

to OTP investigators the locations [REDACTED].⁷¹

35. Witness P-0360 describes in his first statement that one day in March 2011 several

shells landed in his neighbourhood, Abobo SOS village.⁷² He states that a shell [REDACTED]

[REDACTED].⁷³ He describes that [REDACTED]

[REDACTED].⁷⁴ The second statement of the witness is a record of the witness

providing to the Prosecutor [REDACTED]

[REDACTED].⁷⁵

36. The statement of Witness P-0489 relates to the shell which, the witness states, [REDACTED]

⁶⁷ *Ibid.*, at 2192.

⁶⁸ CIV-OTP-0041-0388 at 0392.

⁶⁹ *Id.*

⁷⁰ *Ibid.*, at 0393.

⁷¹ CIV-OTP-0046-1220.

⁷² CIV-OTP-0046-1203 at 1208.

⁷³ *Id.*

⁷⁴ *Ibid.*, at 1209-1209; CIV-OTP-0046-1213.

⁷⁵ CIV-OTP-0089-0557, see also annexes.

██████⁷⁶ The witness states that three shells fell on Abobo SOS that day, and provides some information as to the casualties.⁷⁷

37. The Chamber notes the Defence submissions indicating that the alleged shelling of urban areas in Abobo on 17 March 2011 from Camp Commando is materially in dispute. However, the Chamber also observes that the statements are limited in the sense that they relate only to the destruction caused and the casualties of the alleged shelling, and not to its authors or causes. Hence, albeit a factor under Rule 68(2)(b)(i) of the Rules, the Chamber does not consider that the fact that the statements under consideration relate, to a limited extent, to facts materially in dispute, precludes their introduction pursuant to this provision.
38. The Chamber takes this view in particular in light of its assessment of the other relevant factors, which are also listed in Rule 68(2)(b)(i) of the Rules. Indeed, the Chamber is of the view that the statements are corroborative, within the meaning of that provision, as other witnesses have given and are expected to give evidence relevant to the alleged shelling of Abobo of 17 March 2011.
39. Moreover, the Defence has had and will have full opportunity to counter the evidence brought by the Prosecutor in relation to the alleged shelling of Abobo, including by putting questions to witnesses who have testified or will testify *viva voce*, and to present its own evidence. The absence of opportunity to examine Witnesses P-0129, P-0294, P-0360 and P-0489 does not adversely affect its position. In relation to the submission of the Defence of Laurent Gbagbo that it would wish to question some of the witnesses on topics going beyond their statements, the Chamber recalls that this is not, in and of itself, a decisive consideration when

⁷⁶ CIV-OTP-0071-2199 at 2203.

⁷⁷ *Ibid.*, 2204.

determining whether a prior statement may be introduced under Rule 68(2)(b) of the Rules.⁷⁸

40. The Chamber also considers that the statements of Witnesses P-0129, P-0294, P-0360 and P-0489, taken by the Office of the Prosecutor pursuant to Rule 111 of the Rules under all applicable guarantees, including Article 54(1) of the Statute, bear sufficient indicia of reliability. The circumstance with respect to Witness P-489 identified by the Defence of Charles Blé Goudé⁷⁹ is, in the assessment of the Chamber, not such that would indicate that the witness is not reliable, for the limited purposes of a determination under Rule 68(2)(b)(i) of the Rules.
41. Therefore, the Chamber concludes that the prior recorded testimony of Witnesses P-0129, P-0294, P-0360 and P-0489 may be introduced under Rule 68(2)(b) of the Rules.

d) Witness P-0573

42. The Chamber notes that it has previously found that the statement of Witness P-0573 was in principle suitable for introduction under Rule 68(3) of the Rules.⁸⁰ The Defence of Laurent Gbagbo argues that the present request is in fact a request for reconsideration, for which the Prosecutor should demonstrate a change of circumstances, something which she failed to do.⁸¹ The Chamber, however, is not of the view that a finding, in principle, that a witness statement would be suitable for introduction under Rule 68(3) of the Rules precludes as a matter of law that the same statement be subsequently considered for introduction under Rule 68(2)(b) of the Rules. In these circumstances, the Chamber proceeds to addressing the merits of the Prosecutor's request in respect of Witness P-0573.

⁷⁸ See above, para. 21.

⁷⁹ See above, para. 31.

⁸⁰ Decision of 9 June 2016, p. 18.

⁸¹ Gbagbo Response, para. 115.

43. The Prosecutor submits that Witness P-0573's statement relates to [REDACTED] [REDACTED] the CHU Cocody and that the witness "cannot reasonably be said to provide evidence that can assist the Chamber in resolving the central issues of the case".⁸²
44. The Defence of Charles Blé Goudé, on the contrary, argues that "[t]he conduct of the staff at CHU Cocody on [16 December 2010] as well as the presence of any persons disturbing the peace at the hospital are materially in dispute".⁸³ The Defence also states that it would wish to question this witness more broadly with respect to the events of 16 December 2010.⁸⁴
45. The Defence of Laurent Gbagbo argues that Witness P-0573 is in unique position to give details about victims of the crisis.⁸⁵
46. The Chamber notes that Witness P-0573 was [REDACTED] CHU Cocody and describes how the hospital failed to provide treatments to wounded participants in the RTI march of 16 December 2010, and the reasons for this failure.⁸⁶
47. While there is a link between the evidence of this witness, and the contested facts in relation to the charges, in particular as concerns the events of 16 December 2010, that link is not direct. The witness does not relate any facts which immediately underlie the charges, but rather provides peripheral, contextual evidence as to how the alleged events of 16 December 2010 impacted on the work of CHU Cocody.
48. The Defence has had and will have proper opportunity to counter the evidence brought by the Prosecutor in relation to the events of 16-19 December 2010 in Abidjan, including by putting questions to witnesses who have testified or will

⁸² Application, para. 30; see also paras 21-23.

⁸³ Blé Goudé Response, para. 32, see also para. 63.

⁸⁴ *Ibid.*, para. 33.

⁸⁵ Gbagbo Response, para. 110.

⁸⁶ CIV-OTP-0069-0221 at 0235-0239.

testify *viva voce*, and to present its own evidence. The absence of opportunity to examine Witness P-0573 will not adversely affect its position. In relation to the submissions of both Defence teams to the effect that they would wish to question the witness on topics going beyond the statement,⁸⁷ the Chamber recalls that this is not, in and of itself, a decisive consideration when determining whether a prior statement may be introduced under Rule 68(2)(b) of the Rules.⁸⁸

49. The Chamber also considers that the statement of Witness P-0573, taken by the Office of the Prosecutor pursuant to Rule 111 of the Rules under all applicable guarantees, including Article 54(1) of the Statute, bears sufficient indicia of reliability.
50. In sum, the Chamber concludes that the prior recorded testimony of Witness P-0573 may be introduced under Rule 68(2)(b) of the Rules.

e) Witness P-0380

51. In the submission of the Prosecutor, the introduction under Rule 68(2)(b) of the Rules of the statement of Witness P-0380 is appropriate because it relates to [REDACTED] [REDACTED] in the office of the Chief of Staff of the Armed Forces and is limited to the chain of custody and other information related to documents collected by the Prosecutor from the General Staff in August 2013.⁸⁹
52. The Defence of Charles Blé Goudé argues that the statement does not display sufficient indicia of reliability as it differs from that of Witness P-0381 in respect of the dates of particular document reviews conducted by the Office of the Prosecutor, and as “the investigators seem to have corrected P-0380 in relation to answers he gave about [REDACTED]”.⁹⁰

⁸⁷ See above, paras 44 and 45.

⁸⁸ See above, para. 21.

⁸⁹ Application, para. 31; see also paras 21-23.

⁹⁰ Blé Goudé Response, para. 59.

53. The Defence of Laurent Gbagbo submits that it contests the manner in which the Prosecutor obtained evidence from the Ivorian authorities, and that Witness P-0380 should testify *viva voce* so that any relevant questions additional to what is in the statement can be asked, in particular as concerns [REDACTED] or the actions of the OTP investigators during their missions to collect documents.⁹¹
54. Witness P-0380's statement relates to [REDACTED] at the General Staff. The witness describes [REDACTED]
[REDACTED].⁹²
55. The Chamber considers that the statement of Witness P-0380 does not relate to facts materially in dispute but in fact provides background information in respect of certain documentary evidence presented by the Prosecutor. Although the Defence of Laurent Gbagbo contests the manner in which the Prosecutor obtained evidence from Ivorian authorities, this factual dispute goes far beyond the scope of the statement of Witness P-0380. Accordingly, the Chamber does not consider that the statement of the witness is of such significance that would prevent the use of the procedure envisaged in Rule 68(2)(b) of the Rules.
56. The Chamber is also of the view that the Defence ability to counter the evidence presented by the Prosecutor is not adversely affected if it is not able to examine Witness P-0380.
57. The Chamber also considers that the statement of Witness P-0380, taken by the Office of the Prosecutor pursuant to Rule 111 of the Rules under all applicable guarantees, including Article 54(1) of the Statute, bears sufficient indicia of reliability. In relation to the argument raised by the Defence of Charles Blé Goudé,⁹³ the Chamber finds that the matter of the date of review of another archive, where Witness P-0380 was not

⁹¹ Gbagbo Response, para. 94; see also para. 111.

⁹² CIV-OTP-0049-2801.

⁹³ See above, para. 52.

involved, is not a significant aspect of his statement and any apparent inconsistency between the witness's statement and other evidence cannot support a finding that the witness statement lacks sufficient indicia of reliability, for the purpose of Rule 68(2)(b)(i) of the Rules. Neither is the fact that the investigators suggested to the witness [REDACTED] relevant under said provision, as the statement properly records the witness's evidence in this regard.⁹⁴ Indeed, the arguments as to the reliability of the witness, which may be relevant to the Chamber's ultimate determination of the probative value to be accorded to his evidence, are duly noted and will be considered at the appropriate time. They do not, however, preclude the introduction of the statement under Rule 68(2)(b) of the Rules.

58. Accordingly, the Chamber concludes that the prior recorded testimony of Witness P-0380 may be introduced under Rule 68(2)(b) of the Rules.

f) Witness P-0594

59. The Prosecutor submits that the statement of Witness P-0594 relates to [REDACTED] [REDACTED] during the post-electoral crisis of 2010-2011 and, while it is relevant to the charges, does not relate to disputed issues at the core of the case.⁹⁵

60. The Defence of Charles Blé Goudé states that its rights would be adversely affected if it were not given an opportunity to examine Witness P-0594, in particular since "there are a number of inconsistencies" between the statement of the witness and other evidence and because the Defence "needs to obtain further details as to the [REDACTED]".⁹⁶

⁹⁴ See *id.*

⁹⁵ Application, para. 32; see also paras 21-23.

⁹⁶ Blé Goudé Response, para. 14.

61. The Defence of Laurent Gbagbo states that the witness needs to be questioned by the Defence on the presence of the FRCI in Abobo.⁹⁷
62. Witness P-0594 was [REDACTED] during the relevant time, and his statement relates to [REDACTED].⁹⁸ In particular, the witness provides information on [REDACTED].⁹⁹ The statement also discusses documentation and photographs relating to [REDACTED].¹⁰⁰
63. The Chamber finds that the statement of Witness P-0594 does not relate to issues which are materially in dispute. The Chamber also does not believe that the inconsistencies alleged by the Defence of Charles Blé Goudé or the area that the Defence has identified as requiring further exploration¹⁰¹ relate to facts of such significance that would require that the witness be heard *viva voce*.
64. The Chamber is also of the view that the Defence ability to counter the evidence presented by the Prosecutor is not adversely affected if it is not able to examine Witness P-0594. In relation to the submissions of the Defence of Laurent Gbagbo to the effect that it would wish to question the witness on topics going beyond the statement,¹⁰² the Chamber recalls that this is not, in and of itself, a decisive consideration when determining whether a prior statement may be introduced under Rule 68(2)(b) of the Rules.¹⁰³
65. The Chamber also considers that the statement of Witnesses P-0594, taken by the Office of the Prosecutor pursuant to Rule 111 of the Rules under all applicable guarantees, including Article 54(1) of the Statute, bears sufficient indicia of reliability.

⁹⁷ Gbagbo Response, para. 112.

⁹⁸ CIV-OTP-0083-0035 at 0040-0042.

⁹⁹ *Ibid.*, at 0043.

¹⁰⁰ *Ibid.*, at 0047-0050.

¹⁰¹ See above, para. 60.

¹⁰² See above, para. 61.

¹⁰³ See above, para. 21.

66. In sum, the Chamber concludes that the prior recorded testimony of Witness P-0594 may be introduced under Rule 68(2)(b) of the Rules.

g) Witness P-0088

67. The Prosecutor argues that the statement of Witness P-0088, [REDACTED], authenticates the [REDACTED], but is otherwise “repetitive, cumulative and corroborative” of the evidence of Witness P-0087.¹⁰⁴ The Prosecutor “does not rely on certain excerpts of Witness P-0088’s statement, as they relate to the acts and conduct of Mr Blé Goudé”.¹⁰⁵

68. The Defence of Charles Blé Goudé argues that certain excerpts of Witness P-0088’s statement which relate to the acts and conduct of Charles Blé Goudé have not been excluded from the Application.¹⁰⁶ According to the Defence, the statement of Witness P-88 also relates to [REDACTED], which are not addressed in the statement of Witness P-0087, and is therefore not corroborative.¹⁰⁷ In the submission of the Defence, the statement also does not have sufficient indicia of reliability as the witness [REDACTED].¹⁰⁸

69. The Defence of Laurent Gbagbo submits that the statement of Witness P-0088 goes to the acts and conduct of the accused Charles Blé Goudé and that the proposal of the Prosecutor to exclude portions of the statement from introduction under Rule 68(2)(b) of the Rules is not appropriate as the statement must be seen as an indivisible whole.¹⁰⁹

¹⁰⁴ Application, para. 33; see also paras 21-23.

¹⁰⁵ *Ibid.*, para. 35.

¹⁰⁶ Blé Goudé Response, para. 12 see in particular footnote 10.

¹⁰⁷ *Ibid.*, paras 43-45.

¹⁰⁸ *Ibid.*, para. 60.

¹⁰⁹ Gbagbo Response, para. 90.

70. The written statement of Witness P-088 relates to the witness's visit to Abidjan in March-April 2011, together with Witness P-0087, [REDACTED].¹¹⁰ The witness explains that [REDACTED], and describes [REDACTED].¹¹¹ Then, the statement discusses [REDACTED].¹¹² and separately provides a chronology of the events observed by the witness during his stay in Abidjan.¹¹³ The statement also includes information on [REDACTED].¹¹⁴

71. In the assessment of the Chamber, the statement of Witness P-0088 goes to the acts and conduct of the accused Charles Blé Goudé. While the Prosecutor has sought to remedy this problem by excluding certain passages from the request for introduction under Rule 68(2)(b) of the Rules, this approach is not appropriate in the case at hand.¹¹⁵ For example, in the section where the witness describes a rally organised by Charles Blé Goudé in Yopougon and [REDACTED],¹¹⁶ the Prosecutor excludes only paragraph 55, describing the arrival of Charles Blé Goudé at the rally, and specifies that "in relation to paragraph 51, the Prosecution does not rely on the asserted fact that Charles Blé Goudé had organised the rally in question". However, the witness also states that Charles Blé Goudé organised the rally, that he was present at the rally

¹¹⁰ CIV-OTP-0021-0845 at 0847-0849.

¹¹¹ *Ibid.*, at 0849-0852.

¹¹² *Ibid.*, at 0853-0856.

¹¹³ *Ibid.*, at 0856-0860.

¹¹⁴ *Ibid.*, at 0854-0855.

¹¹⁵ See, "Decision on the 'Prosecution's application to conditionally admit the prior recorded statements and related documents of Witnesses P-0108, P-0433, P-0436, P-0402, P-0438, P-0459 and P-0109 under rule 68(3) and for testimony by means of video-link technology for Witnesses P-0436, P-0402, P-0438, P-0459 and P-0109 under rule 67(1)'" ("Decision of 7 April 2017"), 7 April 2017, ICC-02/11-01/15-870, para 14.

¹¹⁶ CIV-OTP-0021-0845 at 0853-0854.

and refers to there being a “main speech”, followed by a “walkabout in the crowd”. Therefore, the Chamber considers the entire description of the rally (paragraphs 50-58) to go to proof of acts and conduct of the accused within the meaning of Rule 68(2)(b)(i) of the Rules. Equally unconvincing is the suggested exclusion of paragraph 63 of the statement, whereas the entire section (paragraphs 61-64) discusses a [REDACTED], and the rally conducted by the latter on 26 March 2011.¹¹⁷

72. Indeed, the Chamber is of the view that with respect to the evidence of Witness P-0088, the prohibition of introduction of statements which go to proof of acts and conduct of the accused under Rule 68(2)(b) of the Rules cannot satisfactorily be respected by way of partial introduction of the statement. The witness’s observation of the acts and conduct of the accused Charles Blé Goudé is at the core of the statement and inseparable. For this reason, the request to introduce the statement under Rule 68(2)(b) of the Rules is rejected. The Chamber has also considered whether the statement could be introduced under Rule 68(3) of the Rules, but takes the view that this is not appropriate, as indicated below.¹¹⁸ The Application with respect to Witness P-0088 is therefore rejected.

h) Conclusion

73. As explained above, the statements of Witnesses P-0129, P-0266, P-0294, P-.360, P-0380, P-0426, P-0471, P-0476, P-0479, P-0489, P-0543, P-0573 and P-0594 may be introduced under Rule 68(2)(b) of the Rules. The Prosecutor is directed to seek the requisite declaration from each witness and to submit that declaration to the Chamber. The Chamber notes, in this regard, that the Registry legal counsel, or any appropriate person delegated by him, has been designated to be the person authorised to witness declarations made pursuant to Rule 68(2)(b) of the Rules for

¹¹⁷ *Ibid.*, at 0854-0855.

¹¹⁸ See para. 80.

the purposes of this case.¹¹⁹ Upon receipt of the declaration, the witness statements shall be considered submitted to the Chamber in their entirety.

74. In line with the Chamber's previously explained approach,¹²⁰ if the written statements are ultimately introduced under Rule 68(2)(b) of the Rules, the annexes and associated documents, as specified in annex 1 to the Application, shall also be considered submitted.
75. The Chamber notes that the Defence raised, in a filing of 3 October 2016, procedural concerns following the filing of declarations by to Witnesses P-0428 and P-0590, whose statements were previously deemed appropriate for introduction under Rule 68(2)(b) of the Rules.¹²¹ The Chamber clarifies that it is, indeed, for the Prosecutor to submit the declarations¹²² and notes that the Prosecutor "formally request[s] that Witness P-0428's statement, the accompanying certification documents and Registry's Addendum be submitted in the record of the case".¹²³ Nevertheless, due to the nature of the declarations and in the interest of a full and consistent evidentiary record, the Chamber instructs the parties to make declarations under Rule 68(2)(b)(ii) and (iii) of the Rules available on E-court. The Chamber also notes the Defence argument that the declaration made by Witness P-0428 introduced impermissible changes to the original statement in violation of Rule 68(2)(b)(ii) of the Rules.¹²⁴ It is clear from the relevant document subsequently filed, however, that the change in

¹¹⁹ "Decision on the Prosecution's request to designate a person authorised to witness a declaration under Rule 68(2)(b) of the Rules", 21 October 2015, ICC-02/11-01/15-303.

¹²⁰ Decision of 9 June 2016, para. 9; "Decision on the 'Prosecution's application submitting material in written form in relation to Witnesses P-0414, P-0428, P-0501, P-0549 and P-0550'", 19 July 2016, ICC-02/11-01/15-629-Conf, para. 28 ("Decision of 19 July 2016"). A public redacted version is available, see ICC-02/11-01/15-629-Red.

¹²¹ ICC-02/11-01/15-702-Conf and the Prosecutor's response, ICC-02/11-01/15-728-Conf; see also ICC-02/11-01/15-702-Conf and annexes, and ICC-02/11-01/15-723-Conf and annex.

¹²² ICC-02/11-01/15-702-Conf, para. 17; ICC-02/11-01/15-728-Conf, para. 4.

¹²³ ICC-02/11-01/15-728-Conf, para. 4.

¹²⁴ ICC-02/11-01/15-702-Conf, paras 19-27.

question concerns the correction of an obvious clerical mistake.¹²⁵ For this reason, no intervention of the Chamber is necessary.

II. Request for introduction of prior recorded testimony under Rule 68(3) of the Rules

76. Rule 68(3) of the Rules posits the following conditions for the introduction of prior recorded testimony: (i) that the witness is present before the Trial Chamber; (ii) that the witness does not object to the introduction of the prior recorded testimony; and (iii) that the Prosecutor, the Defence and the Chamber have the opportunity to examine the witness during the proceedings. As always under Rule 68 of the Rules, the Chamber must also be attentive to the requirement that the introduction of prior recorded testimony must not be prejudicial to or inconsistent with the rights of the accused. In this regard, the Chamber considers that introduction of prior recorded testimony under Rule 68(3) of the Rules typically carries a low risk of interfering with the fair trial rights of the accused, because the witness still appears before the Chamber and is available for examination, including by the Defence. The Chamber also notes that in its judgment on the appeal by the Defence of Laurent Gbagbo and the Defence of Charles Blé Goudé against the Decision of 9 June 2016, the Appeals Chamber held that “[i]t is also not surprising to conclude that expeditiousness is a factor relevant to the implementation of rule 68 (3) of the Rules, since its use in principle aims at reducing the amount of time devoted to hearing oral testimony in court”.¹²⁶
77. The Chamber notes that the Prosecutor has systematically excluded from the Application “those excerpts of the 68(3) Witnesses’ statements that are evidence of acts and conduct of the Accused and/or offer opinions on the Accused”.¹²⁷ The

¹²⁵ ICC-02/11-01/15-723-Conf-Anx.

¹²⁶ Appeals Chamber Judgment, para. 61.

¹²⁷ Application, para. 41.

Prosecutor “acknowledges that whether the evidence pertains to the acts and conduct of the accused is not a formal consideration under rule 68(3), as it is under rule 68(2)(b)”, but states that she has “decided in this instance, out of an abundance of caution, not to seek introduction of such evidence”.¹²⁸ The Prosecutor continues by clarifying that “[w]here the Prosecution wishes to rely on such evidence, it intends to lead it by way of limited supplementary examination within the projected time estimate”.¹²⁹ The Prosecutor proceeded analogously also with respect to the statement of Witness P-0088, the introduction of which under Rule 68(3) of the Rules is considered at this juncture in light of the Chamber’s conclusion that it is not suitable for introduction under Rule 68(2)(b) of the Rules.¹³⁰

78. In its latest decision under Rule 68(3) of the Rules, the Chamber held the following with respect to this proposed practice:

The Chamber notes that Rule 68(3) of the Rules does not preclude the introduction of prior recorded testimony if it goes to the acts and conduct of the accused (cf. Rule 68(2)(b)) or if it “offers opinion evidence”. In any case, there are some practical concerns with the approach proposed by the Prosecutor, highlighted also in the Defence responses to the Amendments. 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. Moreover, the Defence of Charles Blé Goudé argues that the criterion identified by the Prosecutor has been inadequately applied as there are additional portions of one witness statement that go to the acts and conduct of the accused. The Chamber wishes to avoid unnecessary litigation in court on these issues, as this can only lead to complicate the proceedings and convolute the record of the testimony of the witnesses.¹³¹

79. Also in this instance, the Defence of Charles Blé Goudé submits that certain other passages, in particular in the statements of Witnesses P-0164, P-0184, P-0185, P-0226

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ See above, paras 67-72.

¹³¹ Decision of 7 April 2017, para. 14 .

and P-0316, should be excluded from the Application on the ground that they relate to the acts and conduct of the accused.¹³²

80. While recalling that the fact that prior recorded testimony does not go to proof of the acts and conduct of the accused is a factor, not a requirement, for consideration of its introduction under Rule 68(3) of the Rules, the Chamber cannot but take note of the fact that in the application of this criterion proposed by the Prosecutor several large and important portions of each of the statements of Witnesses P-0087, P-0088, P-0164, P-0185, P-0226, P-0239 and P-0316 would need to be excluded. In these circumstances, there are practical concerns with respect to the introduction of the statements of these witnesses under Rule 68(3) of the Rules, as identified in the Decision of 7 April 2017. In light of this, the Chamber does not consider it appropriate to proceed in line with Rule 68(3) of the Rules. In this part, the Application is rejected.

81. In the assessment of the Chamber, such concerns do not exist with respect to Witnesses P-0054, P-0105, P-0172, P-0184, P-0293, P-0297, P-0407, P-0554, P-0568, as well as P-0582, because the Prosecutor only excludes limited, discrete portions of the statements. The Chamber therefore proceeds hereunder with the analysis of the statements of these witnesses under the requirements of Rule 68(3) of the Rules.

a) Witnesses P-0114, P-0172, P-0184, P-0237, P-0580, P-0582

82. The Prosecutor states in the Application that the statements of Witnesses P-0114, P-0172, P-0184 and P-0237 relate in great part to the events of 3 March 2011, to which the witnesses all testify from their own personal perspective, without having “insider knowledge”.¹³³

¹³² Blé Goudé Response, paras 80, 95, 105.

¹³³ Application, para. 43.

83. The Defence of Charles Blé Goudé opposes the introduction of the statements of Witnesses P-0114, P-0172 and P-0184 under Rule 68(3) of the Rules, arguing that they relate to “core issues of the case that are materially in dispute”, in particular “the organisation of the women’s march, the sequence of events, and the occurrence of shootings”.¹³⁴ The Defence notes also that some of this evidence is not corroborated,¹³⁵ and identifies issues with the reliability of the statement of Witnesses P-0114 and P-0237.¹³⁶

84. The Defence of Laurent Gbagbo submits generically that the statements relate to contested facts at the core of the charges, and that the Prosecutor does not even state that they are of corroborative nature.¹³⁷ The Defence also underlines the importance of Witness P-0184, due to her political and other social engagement.¹³⁸

85. Witness P-0114 describes in his written statement [REDACTED]
[REDACTED]
[REDACTED].¹³⁹ The witness also explains [REDACTED]
[REDACTED].¹⁴⁰

86. The statement of Witness P-0172 relates primarily to how the witness participated in the march of 16 December 2010 by marching from Banco to the Macaci junction on the Abobo-Adjamé highway, where fire was opened on the demonstrators by a group of uniformed men including the police, wounding four demonstrators;¹⁴¹ and to how the witness [REDACTED] the women’s march of 3 March 2011, whereupon the witness went to location and saw

¹³⁴ Blé Goudé Response, para. 72; see also paras 73-75.

¹³⁵ *Ibid.*, paras 76-79.

¹³⁶ *Ibid.*, para. 81.

¹³⁷ Gbagbo Response, paras 134-136.

¹³⁸ *Ibid.*, para. 146.

¹³⁹ CIV-OTP-0076-0951 at 0956-0957.

¹⁴⁰ *Ibid.*, at 0957-0961.

¹⁴¹ CIV-OTP-0028-0550 at 0556-0557.

six dead bodies, [REDACTED]

[REDACTED].¹⁴² In addition, the witness provides limited information on other events in Abobo during the crisis, including the shelling of Siaka Koné market.¹⁴³

87. Witness P-0184 provides general information on the situation in Abobo during the crisis, including on the time of the electoral campaign and the vote,¹⁴⁴ on the march of 16 December 2010,¹⁴⁵ on the women's march of 3 March 2011 [REDACTED];¹⁴⁶ and on the shelling of Siaka Koné market on 17 March 2011.¹⁴⁷

88. Witness P-0237 states in his statement that [REDACTED] the women's march.¹⁴⁸ He does not appear to have been on location at the women's march [REDACTED]. In addition, his witness statement discusses a video and a number of photographs shown to the witness by OTP investigators,¹⁴⁹ and [REDACTED].¹⁵⁰

89. These witness statements, as well as the statements of Witnesses P-0580 and P-0582,¹⁵¹ relate to the events of 3 March 2011, which are crucial, in part, to the charges against both accused and disputed between the Prosecutor and the Defence teams. However, the evidence of each of the six witnesses is limited to the facts that the witnesses personally observed on the ground. These facts consist mostly of the

¹⁴² *Ibid.*, 0557-0563.

¹⁴³ *Ibid.*, 0565-0566.

¹⁴⁴ CIV-OTP-0032-0011 at 0017-0020.

¹⁴⁵ *Ibid.*, 0021-0023.

¹⁴⁶ *Ibid.*, 0024-0029.

¹⁴⁷ *Ibid.*, 0030-0032.

¹⁴⁸ CIV-OTP-0081-0380 at 0386.

¹⁴⁹ *Ibid.*, 0387-0390.

¹⁵⁰ *Ibid.*, 0383-0385.

¹⁵¹ See above, paras 27-28.

consequences of the alleged opening of fire upon demonstrators. The witnesses do not appear to possess knowledge which would enable the Chamber to determine responsibility for the alleged attack, with the exception of basic descriptions of the vehicles and weapons involved. The Chamber notes that the statement of Witness P-0172 also contains evidence related to the witness's participation in the march on the RTI on 16 December 2010, but similarly considers that the evidence of the witness, while relevant, is limited in the sense as just explained. Such limitation in scope of the witness statements under consideration is, in the assessment of the Chamber, an important factor militating in favour of their introduction under Rule 68(3) of the Rules.

90. Nevertheless, the Chamber considers that it is desirable that Witness P-0184 give the entirety of her evidence *viva voce*. The Chamber takes this decision in the exercise of its discretion under Rule 68(3) of the Rules, bearing in mind the position of the witness and as it appears from her statement, the witness's ability to observe comprehensively the situation in Abobo in the entire time period relevant for the charges and that the Chamber would benefit from the entirety of her evidence being provided orally before it. The requested introduction under Rule 68(3) of the Rules of the statement of Witness P-0184 is therefore rejected.
91. Conversely, the content of the written statements of Witnesses P-0114, P-0172, P-0237, P-0580 and P-0582 is not such that would make inappropriate the use of the procedure of Rule 68(3) of the Rules and warrant that the witnesses give the entirety of their evidence live in court.
92. The Defence teams will be given the opportunity to question the witnesses on all relevant matters arising from the statement. The Chamber considers that this opportunity to examine the witnesses is a sufficient counter-balancing factor to the relative importance of the witnesses.

93. Accordingly, the Chamber concludes that the prior recorded testimony of Witnesses P-0114, P-0172, P-0237, P-580 and P-0582 may be introduced under Rule 68(3) of the Rules.

b) Witnesses P-0105, P-0293, P-0297, P-0362, P-0363 and P-0364

94. The Prosecutor requests the introduction under Rule 68(3) of the Rules of the prior recorded testimony of Witnesses P-0105, P-0293, P-0362, P-0363 and P-0364 on the ground that testify to the events of 17 March 2011 from their own personal perspective.¹⁵² As to Witness P-0297, the Prosecutor states that he “was not a direct witness to the shelling of Abobo, but merely confirms [REDACTED] [REDACTED]”.¹⁵³ In any case, the Prosecutor contends that none of these witnesses have “insider knowledge related to the planning of the shelling in Abobo”.¹⁵⁴

95. The Defence of Charles Blé Goudé submits that the statements of these witnesses relate to core issues of the case which are materially in dispute¹⁵⁵ and contain uncorroborated information.¹⁵⁶

96. The Defence of Laurent Gbagbo submits generically that the statements relate to contested facts at the core of the charges, and that the Prosecutor does not even state that they are of corroborative nature.¹⁵⁷

97. Witness P-0105 explains in her statement how she was wounded when a shell fell at [REDACTED] at “Chaka Koné” market on 17 March 2011.¹⁵⁸ In addition, the witness

¹⁵² Application, para. 44.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ Blé Goudé Response, paras 84-88.

¹⁵⁶ *Ibid.*, paras 89-91.

¹⁵⁷ Gbagbo Response, paras 134-136.

¹⁵⁸ CIV-OTP-0019-0245 at 0248-0250.

states that on 8 March 2011 she learnt of the firing by a tank at a women's march, went to the location and saw the bodies of six women allegedly killed.¹⁵⁹

98. Witness P-0293 states in his first statement that he was [REDACTED]
[REDACTED]
[REDACTED].¹⁶⁰ The witness explains the circumstances when the shell fell on the market, and states that there were 14 dead in total.¹⁶¹ The witness also states that he was present when a tank opened fire at the women's march of 3 March 2011.¹⁶² The witness's second statement is a record of the witness [REDACTED]

[REDACTED].¹⁶³

99. Witness P-0297 states in his first statement that he is [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].¹⁶⁴ The witness clarified that he was not present when [REDACTED]
[REDACTED].¹⁶⁵ The second statement of the witness is a record of the witness showing to the OTP investigators [REDACTED].¹⁶⁶

100. Witness P-0362 states that he was present at [REDACTED] just next to Siaka Koné market when he heard a loud noise.¹⁶⁷ He goes on to explain how thereafter he saw

¹⁵⁹ *Ibid.*, at 0250.

¹⁶⁰ CIV-OTP-0041-0328 at 0332.

¹⁶¹ *Ibid.*, 0334-0336, 0339-0340.

¹⁶² *Ibid.*, 0340-0341.

¹⁶³ CIV-OTP-0046-1228.

¹⁶⁴ CIV-OTP-0041-0412 at 0416-0417.

¹⁶⁵ *Id.*

¹⁶⁶ CIV-OTP-0046-1236.

¹⁶⁷ CIV-OTP-0046-1271 at 1274-1276.

blood everywhere, wounded people, and people lying on the floor.¹⁶⁸ According to the witness, two people died immediately at the location where he was present, and in total some 17 lost their lives.¹⁶⁹

101. The statement of Witness P-0363 relates to the falling of three shells on witness's neighbourhood, Abobo SOS, on 17 March 2011.¹⁷⁰ The witness describes the locations where the shells fell, as well as the consequences, including human injuries and deaths.¹⁷¹ In addition, the witness states that on the day of the march on the RTI, he went to the paved road at *Avocatier Eau Glacier* to see the demonstrators and that police opened fire on the group of people including the witness.¹⁷²
102. The first statement of Witness P-0364 is a record of the witness providing to OTP investigators several photographs taken the day shells fell on the witness's neighbourhood, SOS, [REDACTED].¹⁷³ The second statement then provides a narrative of the events observed by the witness when shells fell on the neighbourhood on 17 March 2011.¹⁷⁴ The witness also states that she was participating in the women's march when she saw a tank pass by and thereafter heard a loud noise, after which she fled.¹⁷⁵
103. While the shelling of Abobo on 17 March 2011 is a core fact of the case disputed among the parties, the Chamber notes that the evidence of the witnesses under consideration is limited to the fact that shells landed and the consequences of the alleged shelling. Such limitation in scope of the witness statements under consideration is, in the assessment of the Chamber, an important factor militating in favour of their introduction under Rule 68(3) of the Rules. Indeed, the Chamber

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ CIV-OTP-0046-0275 at 0279-0282.

¹⁷¹ *Id.*

¹⁷² *Ibid.*, at 0284.

¹⁷³ CIV-OTP-0046-1254 at 1257-1258.

¹⁷⁴ CIV-OTP-0071-0437 at 0444-0447.

¹⁷⁵ *Ibid.*, at 0447-0449.

considers that the content of the statements of Witnesses P-0105, P-0293, P-0297, P-0362, P-0363 and P-0364 is not such that would make inappropriate the use of the procedure of Rule 68(3) of the Rules and require the witnesses to give the entirety of their evidence live in court.

104. The Defence teams will be given the opportunity to question the witnesses on all relevant matters arising from the statement. The Chamber considers that this opportunity to examine the witnesses is a sufficient counter-balancing factor to the relative importance of the witnesses.
105. Accordingly, the Chamber concludes that the prior recorded testimony of Witnesses P-0105, P-0293, P-0297, P-0362, P-0363 and P-0364 may be introduced under Rule 68(3) of the Rules.

c) Witnesses P-0407, P-0554, P-0567 and P-0568

106. According to the Prosecutor, the statements of Witnesses P-0407, P-0554, P-0567 and P-0568, which “relate in great part to the events of 12 April 2011” contain testimony of the witnesses from their own personal perspective, as none of them have “insider knowledge related to the planning of the attack on Yopougon”.¹⁷⁶
107. The Defence of Charles Blé Goudé opposes the Application in respect of Witnesses P-0407, P-0554 and P-0567 on the ground that their statements “relate to central issues in the case that are materially in dispute, or are otherwise uncorroborated”.¹⁷⁷ Furthermore, the Defence objects to the introduction of the written statement of Witness P-0407 which, it says, “gives rise to serious concerns regarding material interpretation errors”.¹⁷⁸ As to Witness P-0568, the Defence states that he, as a result of his function [REDACTED], “had access to certain

¹⁷⁶ Application, para. 45.

¹⁷⁷ Blé Goudé Response, para. 94.

¹⁷⁸ *Ibid.*, para. 96.

information that went beyond his personal experience” and should therefore be heard live with respect to such information.¹⁷⁹

108. The Defence of Laurent Gbagbo submits generically that the statements relate to contested facts at the core of the charges, and that the Prosecutor does not even state that they are of corroborative nature.¹⁸⁰ The Defence also states that Witness P-0568 is of particular importance due to his position.¹⁸¹

109. The statement of Witness P-0407 primarily relates to the attack on Doukouré on 12 April 2011.¹⁸² [REDACTED]

[REDACTED].¹⁸³

110. Witness P-0554 states that [REDACTED]
[REDACTED].¹⁸⁴

111. Witness P-0567 primarily describes in her statement the attack on Mami Fatai on 11 and 12 April 2011. She states that after hearing gunshots during the night, she saw and counted 18 bodies in the neighbourhood in the morning of 12 April 2011.¹⁸⁵ She states that later, the attack continued and [REDACTED]

[REDACTED].¹⁸⁶

112. Witness P-0568 explains in his statement that he is the [REDACTED]
[REDACTED].¹⁸⁷ He states that he heard gunshots and saw an armed man in the neighbourhood just after 23.45 hours on 11 April 2011.¹⁸⁸ The witness also states that

¹⁷⁹ *Ibid.*, para. 97.

¹⁸⁰ Gbagbo Response, paras 134-136.

¹⁸¹ *Ibid.*, para. 147.

¹⁸² CIV-OTP-0071-2215 at 2222-2226.

¹⁸³ *Ibid.*, 2226-2230.

¹⁸⁴ CIV-OTP-0077-0153 at 0161-0165.

¹⁸⁵ CIV-OTP-0069-0051 at 0056-0057.

¹⁸⁶ *Ibid.*, 0058-0061.

¹⁸⁷ CIV-OTP-0069-0069 at 0073.

¹⁸⁸ *Ibid.*, at 0077.

the following morning, [REDACTED]

[REDACTED].¹⁸⁹

113. The Chamber takes note of the fact that the events on or around 12 April 2011 in Yopougon, as charged, are disputed among the parties. However, the witness statements under consideration relate the personal experience of individual witnesses, without providing comprehensive evidence on conduct of the alleged attack in Yopougon. Regardless of the position of Witness P-0568,¹⁹⁰ the Chamber considers that the same is to be said about his statement.
114. Such limitation in scope of the witness statements under consideration is, in the assessment of the Chamber, an important factor militating in favour of their introduction under Rule 68(3) of the Rules. Indeed, the Chamber considers that the content of the statements of Witnesses P-0407, P-0554, P-0567 and P-0568 is not such that would make inappropriate the use of the procedure of Rule 68(3) of the Rules and require the witnesses to give the entirety of their evidence live in court.
115. The Chamber notes the argument of the Defence of Charles Blé Goudé alleging serious concerns regarding interpretation with respect to the statement of Witness P-407.¹⁹¹ This argument relates to apparent discrepancies between the information given by the witness during the interview, and the information recorded in so-called screening notes during a previous meeting with investigators. In line with the rationale of a previous ruling on a closely related issue,¹⁹² the Chamber does not attribute significance to any such discrepancies. The Chamber also notes that any “concerns” regarding interpretation during the interview which resulted in the

¹⁸⁹ *Ibid.*, at 0078-0079.

¹⁹⁰ See above, paras 107-108.

¹⁹¹ See above, para. 107.

¹⁹² ICC-02/11-01/15-T-110-CONF-ENG, p. 4, line 14, to p. 5, line 7.

statement under consideration are speculative,¹⁹³ as the witness, when explaining apparent discrepancies, asserted interpretation mistakes during a *previous* meeting.

116. The Defence teams will be given the opportunity to question the witnesses on all relevant matters arising from the statement. The Chamber considers that this opportunity to examine the witnesses is a sufficient counter-balancing factor to the relative importance of the witnesses.

117. In sum, the Chamber concludes that the prior recorded testimony of Witnesses P-0407, P-0554, P-0567 and P-0568 may be introduced under Rule 68(3) of the Rules.

d) Witness P-0054

118. The Prosecutor's argument that the introduction under Rule 68(3) of the Rules of the statement of Witness P-0054 is appropriate is focused on the submission that the statement is corroborative of other evidence, in particular as concerns the radio communications within the Republican Guard.¹⁹⁴

119. The Defence of Blé Goudé objects to the introduction of this statement under Rule 68(3) of the Rules on the ground that it relates to core issues materially in dispute.¹⁹⁵

120. The Defence of Laurent Gbagbo submits generically that the statement of Witness P-54 relates to contested facts at the core of the charges, and that it is not corroborative of the testimony of Witness P-0045.¹⁹⁶

121. The statement of Witness P-0054 is a description of the witness's [REDACTED] of the Republican Guard.¹⁹⁷ The witness also describes some orders that he heard on the radio network during the crisis.¹⁹⁸

¹⁹³ See also above, para. 7.

¹⁹⁴ Application, para. 46.

¹⁹⁵ Blé Goudé Response, para. 106.

¹⁹⁶ Gbagbo Response, paras 134-135, 138.

¹⁹⁷ CIV-OTP-0007-0283 at 0287-0292.

122. The Chamber considers that the statement of Witness P-0054 does not immediately relate to core facts of the charges. It mostly provides peripheral information, in particular as concerns communications within the Republican Guard.
123. Therefore, the Chamber considers that the use of Rule 68(3) of the Rules is appropriate with respect to the statement. The Chamber recalls that, as always under Rule 68(3) of the Rules, the Defence teams will be given the opportunity to question the witnesses on all relevant matters arising from the statement.
124. Accordingly, the Chamber concludes that the prior recorded testimony of Witness P-0054 may be introduced under Rule 68(3) of the Rules.

e) Witness P-0521

125. The Prosecutor submits, essentially, that the statement of Witness P-0521 is appropriate for introduction under Rule 68(3) of the Rules because it is “largely corroborative” of the testimony of Witness P-0238.¹⁹⁹
126. The Defence of Charles Blé Goudé includes Witness P-0521 among the witnesses whom it considers to be of utmost importance for the Chamber in evaluating the plausibility of [REDACTED] [REDACTED]²⁰⁰ and also states that he contradicts Witness P-0164 on the subject of alleged recruitment of militias into the FDS.²⁰¹
127. The statement of Witness P-0521 relates to his work [REDACTED] [REDACTED]²⁰² He describes in detail [REDACTED] [REDACTED]²⁰³ His statement

¹⁹⁸ *Ibid.*, at 0293-0294.

¹⁹⁹ Application, para. 48.

²⁰⁰ Blé Goudé Response, para. 103.

²⁰¹ *Ibid.*, para. 104.

²⁰² CIV-OTP-0071-2488 at 2492.

²⁰³ *Ibid.*, at 2496-2508.

also relates [REDACTED]

[REDACTED].²⁰⁴

128. The Chamber recognises, in light of the Prosecutor's submissions on fact, that [REDACTED] is a fact of considerable importance for the case. However, considering that the witness does not provide any evidence related to the alleged shelling of Abobo on 17 March 2011, it cannot convincingly be asserted that it relates to core facts which are disputed. Rather, it provides background information and is corroborative of the statements of other witnesses in similar position, such as P-0164, P-0226 and P-0238.
129. Therefore, the Chamber considers that the use of Rule 68(3) of the Rules is appropriate with respect to the statement. The Chamber recalls that, as always under Rule 68(3) of the Rules, the Defence teams will be given the opportunity to question the witnesses on all relevant matters arising from the statement.
130. Accordingly, the Chamber concludes that the prior recorded testimony of Witness P-0521 may be introduced under Rule 68(3) of the Rules.

f) Witness P-0381

131. According to the Prosecutor, "[t]he main utility of [Witness 381's] evidence is to describe [REDACTED], and to provide chain of custody evidence".²⁰⁵
132. The Defence of Charles Blé Goudé "disagrees with the Prosecution's minimalistic appreciation of Witness P-0381's statement", submits that "the most substantial part of Witness P-0381's evidence is on controversial topics, which are unrelated to

²⁰⁴ *Ibid.*, at 2511-2512.

²⁰⁵ Application, para. 48.

object to the introduction of their written statements. If they do not object, their written statements will be considered as submitted.

137. In line with the Chamber's previously explained approach,²¹⁰ if the written statements are ultimately introduced under Rule 68(3) of the Rules, the annexes and associated documents, as specified in annex 3 to the Application, shall also be considered submitted.
138. The Prosecutor will be accorded an opportunity to conduct a limited supplementary examination of the witnesses. The Defence teams will not be constrained to the amount of time used by the Prosecutor for the supplementary examination, and will be granted a reasonable amount of time to examine each witness. Examination of the witnesses by the legal representative of the participating victims shall be subject to the general regime applicable.
139. The Chamber notes that the Defence of Laurent Gbagbo argues that it should be accorded to examine the witnesses whose statements are introduced under Rule 68(3) of the Rules the same amount of time as that used by the investigators for the taking of the statements.²¹¹ However, the Chamber finds no basis to uphold this principle. The amount of time to be accorded to the Defence shall be determined for each witness separately at the appropriate time.

III. Submission of documentary evidence

140. The Chamber notes the submission by the Prosecutor of 33 items of audio-video evidence, together with 44 associated transcripts and their translations into French.²¹²

²¹⁰ Decision of 9 June 2016, para. 9; Decision of 19 July 2016, para. 28.

²¹¹ Gbagbo Response, paras 129-130.

²¹² ICC-02/11-01/15-829-Conf-Anx5.

The Chamber also notes the responses of the Defence of Charles Blé Goudé,²¹³ and the Defence of Laurent Gbagbo.²¹⁴

141. In accordance with the Directions on the Conduct of Proceedings, the items of evidence concerned are considered submitted and, in line with the Chamber's previous decision,²¹⁵ any decision on their admissibility and relevance will be taken in due course. The submissions made by the Defence of Charles Blé Goudé²¹⁶ and the Defence of Laurent Gbagbo²¹⁷ in relation to relevance/probative value and reliability/authenticity of the documents will be taken into account in due course.
142. Accordingly, the Chamber recognises the submission of the documentary evidence pursuant to paragraph 43 of the Directions on the Conduct of Proceedings and directs the Registry to "ensure that the e-court metadata reflects the evidence which has been formally submitted to the Chamber".²¹⁸

IV. Level of confidentiality of submissions

143. Finally, the Chamber notes that the public redacted version of the Application contains systematic redactions to witness codes. The Prosecutor has not explained the reason for these systematic redactions nor is one apparent to the Chamber. Accordingly, the Prosecutor is directed to lift such redactions and file a lesser redacted public version of the Application.
144. As concerns the Prosecutor's supplementary submissions and the responses to the Application by the other parties and participants, the Chamber notes that public

²¹³ Blé Goudé Response, paras 116-141; ICC-02/11-01/15-883-Conf-AnxA.

²¹⁴ Gbagbo Response, paras 152-156.

²¹⁵ "Decision on the submission and admission of evidence", 29 January 2016, ICC-02/11-01/15-405.

²¹⁶ See ICC-02/11-01/15-883-Conf-AnxA.

²¹⁷ Gbagbo Response, para. 155.

²¹⁸ *Ibid.*, p. 10.

redacted versions have to date not been filed. An appropriate time limit for the completion of this exercise is hereby set.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY, BY MAJORITY, JUDGE HENDERSON PARTIALLY DISSENTING,

DECIDES that the prior recorded statements of Witnesses P-0129, P-0266, P-0294, P-0360, P-0380, P-0426, P-0471, P-0476, P-0479, P-0489, P-0543, P-0573 and P-0594 shall be introduced and considered submitted to the Chamber as evidence, on the condition that a declaration by each witness, as provided for in Rule 68(2)(b) of the Rules, is submitted;

FINDS that the written statements of Witnesses P-0054, P-0105, P-0172, P-0237, P-0293, P-0297, P-0362, P-0363, P-0364, P-0381, P-0407, P-0521, P-0554, P-0567, P-0568, P-0580 and P-0582 are in principle suitable for introduction under Rule 68(3) of the Rules and directs the parties to prepare accordingly;

REJECTS the Application as concerns the introduction of prior recorded testimony of Witnesses P-0087, P-0088, P-0164, P-0184, P-0185, P-0226, P-0239 and P-0316;

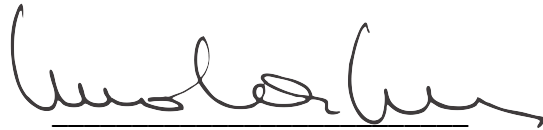
RECOGNISES the submission of the documentary evidence listed in ICC-02/11-01/15-829-Conf-Anx5 and ICC-02/11-01/15-853-Conf-AnxA;

ORDERS the Prosecutor to file a lesser redacted public version of the Application and a public redacted version of document ICC-02/11-01/15-853-Conf by 13 June 2017; and

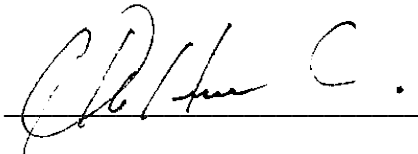
ORDERS the Defence of Laurent Gbagbo, the Defence of Charles Blé Goudé and the common legal representative of the participating victims to file public redacted versions of their respective responses by 20 June 2017.

Judge Henderson will append a partially dissenting opinion in due course.

Done in both English and French, the English version being authoritative.



Judge Cuno Tarfusser, Presiding Judge



Judge Olga Herrera Carbuccia



Judge Geoffrey Henderson

Dated 6 June 2017

At The Hague, The Netherlands