

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **9 June 2016**

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 Prosecutor's application to introduce prior recorded testimony
under Rules 68(2)(b) and 68(3)**

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Eric MacDonald

Counsel for Mr Laurent Gbagbo

Mr Emmanuel Altit
Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Mr Geert-Jan Alexander Knoops
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Legal Representatives of Victims

Paolina Massidda

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Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Others

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 68 and 111 of the Rules of Procedure and Evidence (“Rules”), issues this decision on the “Prosecution’s application to conditionally admit the prior recorded statements and related documents of P-0588, P-0589 and P-0590 under Rule 68(2)(b) and the prior recorded statements and related documents of P-0169, P-0217, P-0230, P-0555, P-0573, P-0587, P-0112 and P-0344 under rule 68(3)” (“Application”).¹

1. By way of the Application, the Prosecutor seeks the introduction of prior recorded statements made by witnesses and recorded pursuant to Rule 111 of the Rules, together with annexes that form integral parts of the statements. In particular, the Prosecutor requests the introduction of written statements of Witnesses P-0588, P-0589 and P-0590 under Rule 68(2)(b) of the Rules and of written statements of Witnesses P-0112, P-0169, P-0217, P-0230, P-0344, P-0555, P-0573 and P-0587 under Rule 68(3) of the Rules. The specific documents are identified in Annex 1 to the Application.²
2. All of the witnesses concerned are relied upon by the Prosecutor, also or exclusively, with respect to the charged crimes that are alleged to have taken place between 16 and 19 December 2010 in Abidjan, during and after the pro-Ouattara march heading to the headquarters of the *Radiodiffusion-Télévision Ivoirienne* (RTI).³ Annexed to the Application is a table of all “crime base witnesses” relied upon for these facts (also referred to as “Incident 1” or “RTI march”).⁴
3. Notably, the Prosecutor requests the “conditional admission” into evidence of the statements of the concerned witnesses. This is explained by the fact that the

¹ ICC-02/11-01/15-487-Conf and confidential annexes 1-3. A public redacted version is available, see ICC-02/11-01/15-487-Red.

² ICC-02/11-01/15-487-Conf-Anx1.

³ Application, para. 1.

⁴ ICC-02/11-01/15-487-Conf-Anx2; see also Application, para. 3.

witnesses still need either to provide a declaration under the terms of Rule 68(2)(b), or to appear before the Chamber and not oppose to the introduction of their prior statements as required by Rule 68(3) of the Rules.⁵

4. The common legal representative of the participating victims responded to the Application on 28 April 2016, submitting that it should be granted.⁶ The Defence teams of both accused submitted two responses each, on 2⁷ and 6⁸ May 2016, as a consequence of the divergent time limits ordered by the Chamber in the Directions on the Conduct of Proceedings for responses to Rule 68(2) and Rule 68(3) applications.⁹ Both Defence teams object to the Application in its entirety.
5. Notwithstanding, the Chamber notes that it is not disputed between the parties, and is indeed the established practice of the Court,¹⁰ that statements recorded pursuant to Rule 111 of the Rules constitute prior recorded testimony for the purposes of Rule 68 of the Rules. In the following sections, the Chamber will address in turn: (i) the procedural objections by the Defence of Charles Blé Goudé to what it terms the inappropriate use of Rule 68 of the Rules by the Prosecutor in the present instance; (ii) the requested introduction of prior recorded testimony under Rule 68(2)(b) of the Rules; and (iii) the requested introduction of prior recorded testimony under Rule 68(3) of the Rules.

I. Procedural objections of the Defence of Charles Blé Goudé

6. First, the Defence of Charles Blé Goudé argues that by requiring Rule 68 applications to identify precisely which passages the party wishes to submit as evidence, the

⁵ Application, para. 2.

⁶ ICC-02/11-01/15-491-Conf. A public redacted version is available, see ICC-02/11-01/15-491-Red.

⁷ ICC-02/11-01/15-495-Conf (“First Gbagbo Defence Response”); ICC-02/11-01/15-496-Conf (“First Blé Goudé Defence Response”).

⁸ ICC-02/11-01/15-502-Conf (“Second Gbagbo Defence Response”); ICC-02/11-01/15-504-Conf (“Second Blé Goudé Defence Response”).

⁹ ICC-02/11-01/15-498-AnxA, paras 49-50 (“Directions on the Conduct of Proceedings”).

¹⁰ See, for an overview of the practice, Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba et al.*, “Decision on Prosecution Rule 68(2) and (3) Requests”, 12 November 2015, ICC-01/05-01/13-1478-Red-Corr, paras 29-31.

Directions on the Conduct of Proceedings “preclude the attempt to introduce an entire statement into evidence under Rule 68”, which is what the Prosecutor seeks to achieve by way of the Application.¹¹

7. While the Directions on the Conduct of Proceedings allow for the partial introduction of prior recorded testimony (the rest of the testimony to be provided orally),¹² neither the text of the aforesaid directions nor Rule 68(3) of the Rules provide a basis to preclude the parties from requesting the introduction of prior recorded testimony in its entirety. In fact, any such interpretation of the Directions on the Conduct of Proceedings would be contrary to Rule 68 of the Rules and therefore impermissible. This objection of the Defence is therefore unfounded.
8. Second, the Defence of Charles Blé Goudé states that the Prosecutor has “erroneously attached all annexes referred to in each of the 8 statements”, as the Directions on the Conduct of Proceedings “in no way allow the party to circumvent the rule that documents should only be admitted through a witness who can testify as to its authenticity, relevance and probative value”.¹³ The Defence of Charles Blé Goudé then identifies the annexes to the statements of five witnesses for which it alleges that they cannot be introduced “through” the witnesses to whose statements they are annexed.¹⁴
9. First, it must be stated, in general, that a rule that documents can only be submitted “through a witness” has no basis in the Statute or the Rules and does not form part of the Court’s applicable law. In any case, the Chamber notes that the annexes in question are referred to in the witness statements themselves and therefore need to be joined in order to allow the Chamber and the parties to properly appreciate the content of the witness statements. As regards the disputed documents annexed, the

¹¹ First Blé Goudé Response, paras 10 and 12.

¹² Directions on the Conduct of Proceedings, paras 48-51.

¹³ First Blé Goudé Response, paras 10 and 13.

¹⁴ *Ibid.*, paras 14-21.

Chamber notes that as per the Directions on the Conduct of Proceedings, documentary evidence can be submitted by way of direct application to the Chamber, and not only during the course of witness examination.¹⁵ Therefore, there is no risk that the Prosecutor would use the relatively more stringent procedure of Rule 68(3) of the Rules instead of the relatively less stringent procedure for introduction of documentary evidence other than through a witness. In case of introduction of written statements under Rule 68 of the Rules, any documentary evidence annexed is also to be considered submitted. The Chamber will then consider, in the appropriate context, the witness statement and its annexes, and determine their relevance and probative value.

II. Introduction of prior recorded testimony under Rule 68(2)(b) of the Rules

10. 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. Rule 68(2)(b)(i) of the Rules provides examples of factors that the Chamber may take into account for its determination. 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.
11. Contrary to the argument of the Defence of Laurent Gbagbo,¹⁶ Rule 68(2)(b) of the Rules does not require the applicant, in this case the Prosecutor, to show that the witness is not available for a legitimate reason. The essence of Rule 68(2)(b) of the Rules is to allow for streamlining of the evidentiary proceedings by not calling some

¹⁵ Directions on the Conduct of Proceedings, para. 43.

¹⁶ Second Gbagbo Response, paras 27-28.

witnesses in person, even if they are available. For unavailable witnesses, Rule 68(2)(c) of the Rules provides for introduction of prior recorded testimony under comparatively easier conditions.

12. For the purpose of the determination whether the introduction of the prior recorded testimonies of Witnesses P-0588, P-0589 and P-0590 is appropriate, the Prosecutor submits that the witness statements bear sufficient indicia or reliability because they were obtained by her office in the ordinary course of investigations and because the witnesses voluntarily provided their statements in the language they fully speak and understand or were assisted by an interpreter, where necessary.¹⁷ In addition, the Prosecutor states that the statements of the three witnesses do not relate to disputed issues at the core of the case, that they are of cumulative and corroborative nature, and that the interests of justice would be served by their introduction.¹⁸
13. The Defence of Laurent Gbagbo argues that the witness statements pertain to contested facts at the core of the case, and it disagrees with the Prosecutor's interpretation of the events of 16 December 2010 as a peaceful demonstration, putting forward the argument that the events were instead "*une marche insurrectionnelle à laquelle des unités rebelles armées participaient*".¹⁹ Furthermore, the Defence submits that the witness statements are not of corroborative nature, and points to specific facts contained in the statements of each of the three witnesses, which, in its submission, are not or are only imprecisely corroborated by other witnesses.²⁰ The Defence of Laurent Gbagbo further argues that the introduction of the witness statements would not serve the interests of justice, and that the statements do not present sufficient indicia of reliability as they mostly contain hearsay evidence.²¹

¹⁷ Application, para. 22.

¹⁸ *Ibid.*, paras 24, 28 and 32.

¹⁹ Second Gbagbo Defence Response, paras 26, 52.

²⁰ *Ibid.*, paras 42-46.

²¹ *Ibid.*, paras 53-64.

14. Similarly, the Defence of Charles Blé Goudé submits that the written statements of Witnesses P-0588, P-0589 and P-0590 relate to “at least three cardinal issues which are materially in dispute [...]: 1) the pacific nature of the march 2) that the FDS allegedly opened fire at unarmed demonstrators 3) the actions of the FDS resulted in the death of unarmed civilians”.²² It also states that the statements are not corroborative in nature, that they do not relate merely to background information and as such, the interest of justice will not be served by their introduction.²³ The Defence of Charles Blé Goudé further argues that the statements do not have sufficient indicia of reliability, as they “involve hearsay evidence in relation to the 16 December demonstration”.²⁴
15. The Chamber notes, in light of the positions of the parties, that the precise unfolding and proper interpretation of the events which occurred in Abidjan on 16 December 2010 and in the days that followed constitute one of the core, and disputed, issues in the present case. The evidence which can reasonably assist the Chamber in the resolution of this matter therefore relates to issues that are materially in dispute, and not mere background information.
16. This is, in the view of the Chamber, the case with Witnesses P-0588 and P-0589, whose evidence goes beyond the mere facts of their close relatives’ deaths. Witness P-0588 provides evidence based on his personal observation which goes to the events of the morning of 16 December 2010 at the Agripac junction in Abobo PK18.²⁵ There is no other witness on the Prosecutor’s list who was present at the relevant time in this area. Witness P-117, who in the submission of the Prosecutor provides similar evidence,²⁶ was in fact, as can be discerned from her written statement, present at

²² Second Blé Goudé Defence Response, para. 36.

²³ *Ibid.*, paras 42-48.

²⁴ *Ibid.*, para. 49.

²⁵ CIV-OTP-0084-0079 at 0084-0087, paras 23-34.

²⁶ Application, para. 25.

another location several kilometres away.²⁷ The opening statement of the Defence of Laurent Gbagbo indicates that the Anyama-Abobo road, which is where the Agripac junction is located, is a crucial location for the determination whether the RTI march was or was not a civilian demonstration.²⁸ The questioning by the Defence of Charles Blé Goudé of Witness P-547 also demonstrates the significance of Abobo PK18 in this context.²⁹

17. Witness P-0589 similarly provides a first-hand account of the events in Williamsville, in particular at the Djeni Kobenan junction.³⁰ While Witnesses P-117³¹ and P-350³² were also in Williamsville at the relevant time, the former does not appear able to provide specific indications of locations where the violence took place and the latter was arrested shortly after 7.30 hours in the morning and taken away, which limits the scope of her evidence.
18. Thus, the Chamber considers that the statements of Witnesses P-0588 and P-0589 are significant for the determination of core issues materially in dispute. Moreover, the witnesses describe the direct perpetrators of the violence that they personally observed. In these circumstances, the Chamber considers that it is appropriate that the witnesses appear before the Chamber to be questioned, at least, by the Defence. Accordingly, the Chamber will consider below whether the statements of Witnesses P-0588 and P-0589 may be more appropriately introduced under Rule 68(3) of the Rules.
19. This leaves the written statement of Witness P-0590 as the sole candidate for introduction under Rule 68(2)(b) of the Rules. The Chamber notes that the statement of this witness is peripheral and of very limited significance. Furthermore, the

²⁷ CIV-OTP-0020-0033 at 0038-0039, paras 29, 35 and 37.

²⁸ ICC-02/11-01/15-T-11-ENG, p. 60, lines 12-15.

²⁹ ICC-02/11-01/15-T-19-CONF-ENG, p. 14, line 16, to p. 18, line 13.

³⁰ CIV-OTP-0084-0105 at 0112-0116, paras 33-48.

³¹ CIV-OTP-0020-0033 at 0040-0043, paras 46-63.

³² CIV-OTP-0048-1675 at 1680-1681, paras 22-24.

statement does not go to the acts and conduct of the accused.³³ The witness was not in Abidjan during the period of the alleged crimes.³⁴ He is able to describe being informed of his brother's death on 16 December 2010, locating his brother's body at the Anyama morgue after the immediate end of the crisis and the injuries that he saw on the body.³⁵ In addition, he provides limited information on the circumstances of his brother's death, none of which is based on personal observation.³⁶

20. While, as stated above, the events of 16 December 2010 are disputed, Witness P-0590 cannot reasonably be said to provide evidence that can assist the Chamber in resolving the central issues of the case. The witness provides information of a single casualty of the events of the day, which will possibly be taken into account in the context of the entirety of the relevant evidence, and is in this sense cumulative and corroborative.
21. The Defence will have proper opportunity to counter the evidence in relation to the RTI march, including by putting questions to witnesses, and to present its own evidence. The absence of opportunity to examine Witness P-0590 will not adversely affect its position. The introduction of the written statement will, however, save court time and spare the witness the burden of appearing. Therefore, the introduction of the written statement of Witness P-0590 is in the interests of justice.
22. 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

³³ This is true regardless of whether a narrower or broader interpretation is given to the expression "acts and conduct of the accused", see Application, para. 14; Second Gbagbo Defence Response, para. 19; Second Blé Goudé Defence Response, para. 22.

³⁴ CIV-OTP-0084-0018 at 0023, para. 21.

³⁵ *Ibid.*, at 0023-0025, paras 20-31.

³⁶ *Ibid.*, at 0029, paras 55-57.

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.

23. In conclusion on this point, the Chamber considers it appropriate to grant the Application with respect to Witness P-0590. The Prosecutor is directed to seek the requisite declaration from the witness and to file that declaration in the record of the case. The Chamber notes, in this regard, that 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 the purposes of this case.³⁷ Upon receipt of the declaration, the witness statement and its annexes shall be considered submitted to the Chamber in their entirety, and the Chamber will address their relevance and probative value in its judgment pursuant to Article 74 of the Statute.

III. Introduction of prior recorded testimony under Rule 68(3) of the Rules

24. 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 lower risk of interfering with the fair trial rights of the accused, because the witness still appears before the Chamber and is available for examination, including by the Defence. As concerns the principle of orality under Article 69(2) of the Statute, which has been emphasised by

³⁷ "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.

the Defence,³⁸ the Chamber notes that this principle is not absolute, and that the Statute explicitly envisages exceptions to be provided by the Rules. It is therefore inappropriate to effectively deprive Rule 68(3) of the Rules of its object and purpose merely by invoking the principle of orality.

25. In any case, the decision to allow the introduction of prior recorded testimony under Rule 68(3) of the Rules is within the powers of the Trial Chamber. While the Chamber needs to ensure that the proceedings do not unduly infringe on the abovementioned statutorily protected interests, a decision authorising the introduction of testimonial evidence via Rule 68 of the Rules instead of *viva voce* will be based on the criterion of good trial management, which includes considerations of expeditiousness and streamlining the presentation of evidence. This criterion will be applied on a case-by-case basis, taking into consideration the importance of the evidence for the case, the volume and detail of the evidence, among other factors. It is the duty of the Chamber to ensure that the trial unfolds in a focused and expeditious manner, while respecting the procedural rights of the parties and participants. Rule 68(3) of the Rules must be understood as a tool in the exercise of this duty.
26. Having made these preliminary remarks, the Chamber turns to the analysis of the witness statements which are being considered for introduction under Rule 68(3) of the Rules. These are first the eight statements proposed by the Prosecutor. Second, the present analysis under Rule 68(3) of the Rules extends to the possibility of introduction of written statements of Witnesses P-0588 and P-0589, which, as noted above, were proposed for introduction under Rule 68(2)(b) of the Rules, but cannot be accepted under that specific provision. The Chamber notes that, by the terms of Rule 68 of the Rules, it may *proprio motu* order the introduction of prior recorded testimony, provided that the parties are heard on the matter. In the present instance, the submissions received with respect to Witnesses P-0588 and P-0589 by the parties,

³⁸ First Gbagbo Defence Response, para. 6; First Blé Goudé Defence Response, para. 1.

albeit under another legal heading,³⁹ are sufficient, also in light of other submissions made simultaneously with respect to introduction of prior recorded testimony under Rule 68(3) of the Rules.

27. The Prosecutor submits that the witness statements concerned bear sufficient indicia of reliability as they were obtained by her office in the ordinary course of investigations and as the witnesses voluntarily provided their statement in the language they fully speak and understand or assisted by an interpreter, where necessary.⁴⁰ The Application then describes briefly the evidence provided by the eight witnesses in their statements.⁴¹ While requesting the introduction of written statements, the Prosecutor nevertheless anticipates conducting “brief supplementary” examination, with the exception of Witnesses P-0112 and P-0344, who are victims of sexual violence, for whom the Prosecutor proposes “extended supplemental examination of up to an hour” in order to put the witness “at ease” prior to examination by the Defence.⁴²
28. The Defence of Laurent Gbagbo opposes the introduction of the written statements under Rule 68(3) of the Rules. It argues that these do not pertain to uncontested facts,⁴³ are not of corroborative nature⁴⁴ and pertain to central questions of the case.⁴⁵ It further argues that the introduction of statements under Rule 68(3) of the Rules will not result in shorter examination of the witness in court, but will in fact prolong it.⁴⁶
29. The Defence of Charles Blé Goudé equally submits that the material which the Prosecutor seeks to submit in writing concerns core issues in the case which are

³⁹ See above, paras 12-14.

⁴⁰ Application, para. 38; see also para. 22.

⁴¹ *Ibid.*, paras 41-65.

⁴² *Ibid.*, paras 40, 59, 62.

⁴³ First Gbagbo Defence Response, para 26-37; cf. above, para. 13.

⁴⁴ *Ibid.*, paras 38-48.

⁴⁵ *Ibid.*, paras 49-62.

⁴⁶ *Ibid.*, paras 63-66.

materially in dispute, which in its view are the issues “whether [...] the march on the RTI was armed” and “the nexus between the alleged acts of violence and Mr. Blé Goudé”.⁴⁷ Furthermore, the Defence of Charles Blé Goudé argues that the introduction of the written statements will be prejudicial, assuming that it will have limited time available to question the witness.⁴⁸ The Defence also expresses scepticism as to the ability of the Prosecutor to limit supplementary examination to a short amount of time, and warns that expansive supplementary examination would defeat the purpose of Rule 68(3) of the Rules.⁴⁹

30. The written statement of Witness P-0112 is a narrative of the witness’s participation in the RTI march, from central Abobo towards Williamsville and Camp Agban, including a description of the use of violence by units of the *Forces de Défense et de Sécurité* (“FDS”).⁵⁰ The witness then describes her arrest and rape by the police.⁵¹ The witness also provides an account of her participation at the women’s march of 3 March 2011 in Abobo, including the arrival of a military convoy, and how she, present at the Abobo city hall, heard shots from the direction of the *Banco* roundabout.⁵²
31. The written statement of Witness P-0169 states what the witness came to know [REDACTED] during the relevant period,⁵³ as well as the evidence of the witness’s participation at the RTI march, in particular that the witness was present at the seat of the *Parti Démocratique de Côte d’Ivoire* (PDCI) in Cocody and was prevented from leaving by the militia and mercenaries surrounding the location.⁵⁴

⁴⁷ First Blé Goudé Defence Response, paras 23-25.

⁴⁸ *Ibid.*, para. 27.

⁴⁹ *Ibid.*, para. 28.

⁵⁰ CIV-OTP-0019-0306 at 0311-0312, paras 17-26.

⁵¹ *Ibid.*, at 0312-0316, paras 27-51.

⁵² *Ibid.*, at 0320-0321, paras 69-73.

⁵³ CIV-OTP-0029-0323 at 0328-0333, paras 27-59.

⁵⁴ *Ibid.*, at 0332-0333, para. 55.

32. Witness P-0217 provides a detailed account of his participation in the RTI march, *i.e.* the route that he took from Abobo, before eventually being blocked near the “BMW” junction.⁵⁵ The witness also ██████████ the women’s march on 3 March 2011 and provides evidence of that event.⁵⁶
33. The written statement of Witness P-0230 indicates that the witness was ██████████ ██████████ of the RTI march on 16 December 2010, and was ██████████ ██████████ at 7.00 hours in Adjamé and proceeded to the seat of the *Rassemblement des Républicains de Côte d’Ivoire* (RDR) on *Rue Lepic* in Cocody.⁵⁷ He then describes the violence exercised against the demonstrators by the “*forces de Gbagbo*.”⁵⁸
34. Witness P-0344 made a written statement relaying her participation in the RTI march on 16 December 2010, in particular how her group of demonstrators was intercepted by armed men in uniform near *FILTISAC*, where the witness was then taken aside and raped.⁵⁹
35. The written statement of Witness P-0555 goes to the witness’s arrest on 16 December 2010 in the context of the RTI march at the “*Madame Thérèse*” junction in Cocody and his subsequent detention at three locations.⁶⁰
36. Witness P-0573 was ██████████ ██████████ of *Centre Hospitalier Universitaire* (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.⁶¹
37. Finally, the witness statement of Witness P-0587 is an account of the witness’ participation in the RTI march from the direction of Adjamé, and in particular of how “*corps habillés*” opened fire on a mass of demonstrators on the way in Cocody.⁶²

⁵⁵ CIV-OTP-0040-0372 at 0385-0389, paras 64-87.

⁵⁶ *Ibid.*, at 0394-0399, paras 108-134.

⁵⁷ CIV-OTP-0044-2628 at 2639-2640, paras 39-42.

⁵⁸ *Ibid.*, at 2640-2643, paras 43-47; at 2649, para. 59.

⁵⁹ CIV-OTP-0044-2614 at 2617-2621, paras 13-24.

⁶⁰ CIV-OTP-0077-0128 at 0134-0146, paras 24-103.

⁶¹ CIV-OTP-0069-0221 at 0235-0239, paras 54-71.

38. The Chamber considers that the statements of the ten witnesses under consideration relate to facts which are central to the case, and are materially in dispute. These are mostly related to the events of 16 December 2010, but some of the witnesses also provide evidence in relation to other important facts of the case, such as the women's march in Abobo on 3 March 2011. However, the Chamber considers it necessary to distinguish 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. As concerns particularly the RTI march, all the witnesses testify to the events of 16 December 2010 and the following days from their own personal perspective. None of them have insider or other quality knowledge of the planning and overall conduct of the FDS operation during the events. Therefore, while not individually of great importance, they, together with other evidence which has been or will be submitted by the parties, form a web of evidence which will allow the Chamber to appreciate how the events unfolded on the ground. The same logic applies to the evidence provided by these witnesses in relation to other central issues in the case. In these circumstances, and provided that the Defence is given adequate opportunity to examine the ten witnesses, there is no overriding reason preventing the streamlining of the presentation of evidence by allowing the introduction of the witness statements pursuant to Rule 68(3) of the Rules.

39. The Chamber therefore finds, in principle, that the statements of the ten witnesses are suitable for introduction under Rule 68(3) of the Rules. Introduction can, however, only occur when all of the conditions of the Rule are met. The witnesses will appear before the Chamber, and will be asked whether they object to the introduction of their written statements. If they do not object, their written statements will be considered as submitted.

⁶² CIV-OTP-0084-0043 at 0050-56, paras 32-58.

40. The Prosecutor will be accorded an opportunity to conduct a limited supplementary examination of the witnesses. The Chamber notes the Prosecutor's submission that this examination should not take longer than 30 minutes. The Chamber also notes the Prosecutor's request for extended supplementary examination of Witnesses P-0112 and P-0344, owing to their being victims of sexual violence, in order to put the witnesses at ease prior to examination by the Defence counsel. The Chamber is attentive to its and the Prosecutor's obligations under Article 68(1) of the Statute to protect, *inter alia*, the well-being, dignity and privacy of the victims and witnesses. However, prior to ordering any such measures, the Chamber will obtain the advice of the Victims and Witnesses Unit of the Registry as per general practice.
41. 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.

IV. Conclusion

42. This resolves the Prosecutor's first application under Rule 68 of the Rules. The Chamber understands that there will be more such applications, and, as indicated previously, encourages the use of Rule 68 to streamline the presentation of evidence where possible.⁶³ In due course, the Defence teams will be encouraged to also make use of Rule 68 of the Rules.
43. In order to avoid the unnecessary duplication of documents on the record, the Chamber also clarifies that if prior recorded testimony has been made available to the participants in the proceedings and the Chamber through E-court, the requirement that "[a]ny Rule 68 applications shall be annexed by copies of the

⁶³ Directions on the Conduct of Proceedings, para. 48.

previously recorded testimony”⁶⁴ can be satisfied by specifying in the application the ERN of the relevant documents.

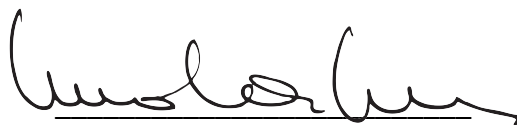
**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY, BY MAJORITY,
JUDGE HENDERSON PARTIALLY DISSENTING,**

DECIDES that the prior recorded statement of Witness P-0590 shall be introduced and considered submitted to the Chamber as evidence, on the condition that a declaration by the witness, as provided for in Rule 68(2)(b) of the Rules, is filed in the record of the case; and

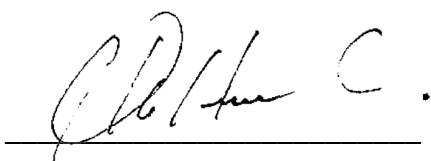
FINDS that the written statements of Witnesses P-0112, P-0169, P-0217, P-0230, P-0344, P-0555, P-0573, P-0587, P-0588 and P-0589 are in principle suitable for introduction under Rule 68(3) of the Rules and directs the parties to prepare accordingly.

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 Carbuca



Judge Geoffrey Henderson

⁶⁴ *Ibid.*, para. 51.

Dated 9 June 2016

At The Hague, The Netherlands