

Annex 10

Public Redacted

From: Trial Chamber VI Communications
Sent: 02 May 2024 10:36
To: OTP CAR IIA Communications; D33 Said Defence Team; Said LRV Team
 OPCV
Cc: Chamber Decisions Communication; Pineau, Carine; Trial Chamber VI
 Communications
Subject: RE: Decision in respect of ICC-01/14-01/21-688 (P-0662)

[ICC] RESTRICTED

Dear Parties and participants,

The subject line of the below decision bears the incorrect witness code, it should read P-0622 (not P-0662).

Apologies for any confusion.

Kind regards,
 Trial Chamber VI

From: Trial Chamber VI Communications [REDACTED]
Sent: Wednesday, May 1, 2024 6:04 PM
To: OTP CAR IIA Communications <[REDACTED]>; D33 Said Defence Team
 [REDACTED]; Said LRV Team OPCV [REDACTED]
Cc: Trial Chamber VI Communications [REDACTED] Chamber
 Decisions Communication [REDACTED]
 <[REDACTED]>
Subject: Decision in respect of ICC-01/14-01/21-688 (P-0662)

Dear Parties and participants,

The Chamber has taken note of the Prosecution's request pursuant to rule 68(3) to introduce the annex to P-0622's witness preparation log (ICC-01/14-01/21-688) and the Defence's response thereto (ICC-01/14-01/21-690).

In support of the request, the Prosecution submits that the annex bears sufficient indicia of reliability, is relevant and probative and that its introduction would expedite the proceedings.

The Defence submits that the Prosecution's request should be rejected. First, the Defence submits that the existence of corrections and additions casts doubt on the reliability of the prior recorded testimony and this means that the only way of proceeding is to discuss these with the witness in the hearing. In this regard, the Defence notes that there is no control over the manner in which the annex is prepared and there is no verbatim transcript, so there is no way one would know what questions were asked and the manner of such questioning. Furthermore, the Defence notes that the use of rule 68(3) reduces the level of judicial control over the process and that it is for the Prosecution to clarify contradictions between a previous statement and the preparation log so that the Defence can

respond in full knowledge of the facts presented. Last, the Defence avers that the fact that the witness will be available for cross examination cannot be used to justify the introduction of the annex because it would transform rule 68(3) into the automatic introduction of all witness preparation logs, which is not the intention of the drafters of rule 68(3).

At the outset, the Chamber recalls its prior rulings whereby it only requires the parties to make a request pursuant to rule 68(3) of the Rules if the annex to the witness preparation log contains additional information that was not included in the prior recorded testimony previously ruled on by the Chamber, or when certain corrections or clarifications change the substance of the testimony. When the witness only makes minor corrections or clarifications to his or her prior recorded testimony during the witness preparation session, there is no need to make a request pursuant to rule 68(3) of the Rules. Moreover, not every bit of new information that is provided during a witness preparation session necessitates a rule 68(3) request. This is only required when the new information changes the substance of the prior recorded testimony.

In this particular instance, the Chamber finds that the annex does not contain any new information which changes the substance of P-0622's prior recorded testimony and any clarifications provided are minor in nature. Under these circumstances, the corrections and clarifications provided by P-0622 does not rise to the level so as to render the annex to his witness preparation log a new witness statement. Accordingly, there was thus no need for the Prosecution to make a request pursuant to rule 68(3) of the Rules.

In terms of procedure, the Chamber finds that the Prosecution merely needs to confirm with the witness that he made such clarifications and seek the annex's introduction as part of the original prior recorded testimony.

Kind regards,
Trial Chamber VI