

Annex 6

Public Redacted

From: Trial Chamber VI Communications
Sent: 14 October 2024 11:31
To: Makwaia, Holo; Trial Chamber VI Communications; OTP CAR IIA Communications; D33 Said Defence Team; Said LRV Team OPCV
Cc: Associate Legal Officer-Court Officer; Trial Chamber VI Communications; Chamber Decisions Communication; [REDACTED]
Subject: Email Decision regarding Defence Request (ICC-01/14-01/21-875-Conf)

[ICC] RESTRICTED

Dear Parties and participants,

The Chamber has considered the Defence's request (ICC-01/14-01/21-875-Conf) and the Prosecution's response thereto (Prosecution email of 14 October 2024, at 09h15).

First, the Chamber notes, as it has previously stated, that the purpose of witness preparation is to help ensure that the witness gives relevant, accurate and structured testimony and for the calling party to assess and clarify the witness's evidence in order to facilitate the focussed, efficient and effective questioning of the witness during the proceedings. Witness preparation should be focussed on determining whether there are any corrections or clarifications to the witness's prior recorded testimony and not to be conducted for the purpose of seeking new evidence or continuing the calling party's investigations. In this regard, the Chamber further recalls that paragraph 24 of the witness preparation protocol provides that the calling party can "show the witness potential exhibits, regardless of whether or not the witness has previously seen them, and ask him or her to comment on them for the purpose of ascertaining whether the witness can usefully comment on them during testimony. This paragraph was unaffected by the Chamber's directions of 29 January 2024. In those directions the Chamber stated the following: '[i]f the calling party wishes to show or discuss new exhibits to the witness which the witness has not seen before, then the Chamber encourages the calling party to do so in the courtroom during the questioning of the witness'.

In this regard, the Chamber notes that, contrary to the Defence's submission, the calling party is not barred from showing a witness new items, but rather they are encouraged to do so in the courtroom to the extent possible. In the present circumstances, the Chamber notes that although the witness has not previously seen the three photographs shown, said photographs are of the OCRB and P-2239 was detained at the OCRB. The Chamber finds that in those circumstances it is permissible for the Prosecution to show those photographs to the witness in order to determine whether he can usefully comment on them. The Chamber also notes that the witness's comments in response are limited in nature. In this regard, the Chamber finds that the Prosecution has not acted impermissibly and indeed there is no prejudice to the Defence as the parties can question the witness on the comments he made regarding the photographs during their examination.

Accordingly, this aspect of the Defence's request is rejected.

Turning to the comments P-2239 made during his preparation session in relation to the amendments he made in 2023 to his prior recorded testimony in the context of the rule 68(2)(b) certification procedure, at the outset, the Chamber notes that the amendments made in 2023 are not themselves

contained in the log. However, the Chamber considers, in line with its previous ruling in respect of P-0529, that the Prosecution must also address, in court, any clarifications that formed the basis of the Chamber's decision (filing #833) to have P-2239's prior recorded testimony introduced under rule 68(3) instead of rule 68(2)(b) of the Rules. The Chamber recalls that, in that decision, it observed that the amendments P-2239 made to paragraphs 44 and 46 of his prior recorded testimony substantially changed P-2239's testimony, particularly his explicit mentioning of the accused. Therefore, the Chamber finds that the Prosecution must address any such topics during its direct examination of the witness. Practically speaking, the Chamber finds that it would assist the witness if the Prosecution puts the relevant paragraphs of his statement to the witness and ask him whether he wishes to comment on those paragraphs. This should be done in a non-leading manner.

Accordingly, in light of the foregoing, the annex to the witness preparation log can be introduced with the witness's statement pursuant to rule 68(3), however, the Prosecution must examine the witness on the amendments he made during the declaration process in 2023.

Kind Regards,
Trial Chamber VI

From: Makwaia, Holo [REDACTED]
Sent: Monday, October 14, 2024 9:15 AM
To: Trial Chamber VI Communications [REDACTED] OTP CAR IIA
 Communications [REDACTED] D33 Said Defence Team
 [REDACTED] Said LRV Team OPCV [REDACTED]
Cc: Associate Legal Officer-Court Officer [REDACTED]; Trial
 Chamber VI Communications <[REDACTED]>; Chamber Decisions
 Communication [REDACTED]
 [REDACTED]
Subject: RE: Shortening of deadline for responses to ICC-01/14-01/21-875-Conf

[ICC] RESTRICTED

Dear Trial Chamber VI,

The Prosecution respectfully informs the Chamber that, it intends to ask supplementary questions that resulted in witness P-2239 being converted from a Rule 68(2) witness to appear under Rule 68(3) in line with the Chambers previous rulings on this matter. Additionally, the Prosecution submits that it is allowed to show witnesses during the preparation sessions potential exhibits, and prior statements or corrections made by the witness. Thus, the Defence objections to the usage of photographs and his prior statements should be dismissed.

- On the Defence objection to photographs shown to P-2239 during the prep session: Para 24 of the Required and Permissible Conduct envisaged in the Witness Preparation protocol (ICC-01/04-01/21-251-AnxA) permits the questioning lawyer to show the witness potential exhibits, regardless of whether or not the witness has previously seen them, and ask him to comment on them for the purpose of ascertaining whether the witness can usefully comment on them

during the testimony. The Prosecution has therefore duly complied with the preparation protocol.

Defence objection to P-2339 being shown the corrections he made to his statement during the rule 68(2)(b) certification process in May 2023: Para 20 of the Witness Preparation Protocol also permits the questioning lawyer to review the statements together with the witness and question the witness on inconsistencies in his or her prior statements. Document CAR-OTP-00001495-R01 which contains the corrections P-2239 made in 2023 to his statement during the rule 68(2)(b) certification process, and thus contains inconsistencies to his prior statement, which the Prosecution is permitted to question the witness about, per para 20 of the preparation Protocol.

The Prosecution submits that the Defence's suggestion that a witness may only correct an earlier witness statement in court is further incorrect and wrong in law and principle. Witness P-2239 corrected his statement over a year in advance of any witness preparation. He was not only entitled to make such a correction but obliged to do so. P-2239's witness statement includes a statement of truth, as such he is under an ongoing duty to clarify and correct information. Moreover, paragraph 39 of the Protocol, which allows for "clarifications, changes, or corrections" to previous statements during witness preparation expressly envisions a witness making corrections to a previous statement. The subject matter of the clarification or correction is immaterial.

Respectfully submitted,

Holo Makwaia
Senior Trial Lawyer
Office of the Prosecutor



From: Makwaia, Holo [REDACTED]
Sent: Saturday, October 12, 2024 4:32 PM
To: Trial Chamber VI Communications [REDACTED]; OTP CAR IIA Communications [REDACTED]; D33 Said Defence Team <[REDACTED]> Said LRV Team OPCV <[REDACTED]>
Cc: Associate Legal Officer-Court Office [REDACTED] Trial Chamber VI Communications [REDACTED]; Chamber Decisions Communication [REDACTED]
[REDACTED]
Subject: Re: Shortening of deadline for responses to ICC-01/14-01/21-875-Conf

Dear Trial Chamber VI,

The Prosecution has taken due note of the Chamber's instructions and shall proceed accordingly.

Kind regards,
Holo Makwaia.

From: Trial Chamber VI Communications <[REDACTED]>
Sent: Friday, October 11, 2024 8:42:39 AM
To: OTP CAR IIA Communications [REDACTED] D33 Said Defence Team
 [REDACTED] Said LRV Team OPC [REDACTED]
Cc: Associate Legal Officer-Court Officer [REDACTED]; Trial
 Chamber VI Communications <[REDACTED]> Chamber Decisions
 Communication [REDACTED]
 [REDACTED]
Subject: Shortening of deadline for responses to ICC-01/14-01/21-875-Conf

[ICC] RESTRICTED

Dear Parties and participants,

The Chamber has taken note of the request made by the Defence yesterday afternoon (Requête de la Défense aux fins de rejet de l'introduction du log de préparation de P-2239 sous la Règle 68(3), ICC-01/14-01/21-875-Conf) ('Request') in regard to the witness preparation log for P-2239. In light of the possibility that P-2239 will commence his testimony this coming Monday, 14 October 2024, the Chamber considers it necessary to shorten the deadline for the Prosecution to respond to the Request.

The Chamber therefore instructs the Prosecution to prepare its response, if any, to the Request, which it shall make via an oral submission before the Chamber at the start of the first session on Monday, 14 October 2024, prior to the commencement of P-3112's testimony.

Kind Regards,
Trial Chamber VI