

ANNEX 5

PUBLIC

Pineau, Carine

From: Trial Chamber IX Communications

Sent:

To:

Cc: Trial Chamber IX Communications

Subject: RE: ICC-02/04-01/15, use of rule 68(3) witnesses to maintain efficiency of the proceedings

Follow Up Flag: Follow up

Flag Status: Flagged

Dear Counsel:

In relation to the Defence objections as to moving P-256, P-38 and P-47 up the witness order, it is noted that the Prosecution has only announced an intention to call one or more of these witnesses ahead of the scheduled witness order 'if doing so will avoid wasting court time and therefore maintain the efficiency of the proceedings' (see email exchange below). The Chamber will not entertain any objections to move witnesses up in the order unless they are raised after the calling participant makes a final decision to do so.

The Chamber also will not entertain email objections to hearing P-38 and P-47 via video-link. Absent leave to raise such objections in a different way, these must be raised by way of formal requests.

Best,

on behalf of Trial Chamber IX

From:
Sent: 22 February 2017 16:31

Subject: RE: ICC-02/04-01/15, use of rule 68(3) witnesses to maintain efficiency of the proceedings

Dear Trial Chamber IX, Prosecution and Legal Representatives for Victims,

The Defence notes that these witnesses, in the most recent LoW sent by the Prosecution on 1/2/2017 at 17h07, were scheduled to appear in positions 61-63, *i.e.* presumably testify in late 2017 or early 2018. The Defence understands, and prepares for minor fluctuations in witness orders. The Defence understands that a witness who was scheduled to testify within or around a certain trial block, based on conservative time estimates, might appear a little earlier or later, but not 10-12 month in advance of the expected testimony.

The Defence objects to Witness P-0256 appearing so early. The Defence has been fighting with the Registry to secure funds for expert witnesses, and one of said experts shall be reviewing P-0256's work and advising the Defence on a cross-examination strategy. As the Registrar refused to guarantee such funding in the Defence's last request of 2016, we have again requested the funding in our current request and are meeting the Registry about this issue this week. Frankly put, it would be against the interests of justice, and against the fair function of the trial,

to call this witness before the fifth block in July 2017 so the Defence can properly discuss this witness's materials with an expert in the field of science which P-0256 works.

As for P-0038, the Defence requests that this witness not be allowed to testify at least until the first week of the third trial block in May 2017 to allow the Defence proper time to prepare questions based on his statements and the testimonies of P-0059 and P-0003. In addition, the Defence objects to this witness testifying *via* video-link. This is a key witness for the Prosecution in relation to the intercept evidence, and this witness should be required to be present at the seat of the Court for his testimony.

In relation to P-0047, the Defence empathises with the position of the Common Legal Representative, but requests that this witness also not be called until the beginning of the third trial block. In addition, the Defence objects to this witness testifying *via* video-link. This is a key witness for the Prosecution in relation to Pajule and the veracity of Prosecution's witnesses. His presence at the seat of the Court should be required.

The Defence is mindful of the Chamber's duty to ensure both an expeditious and fair trial, and argues that the Prosecution's proposal, as written, violates the Accused's right to a fair trial and his ability, through Counsel, to examine properly the above witnesses. The Defence offers its suggestions to aid the Chamber's decision and to help it conduct both an expeditious and fair trial.

Sincerest regards,


Associate Counsel

From: 
Sent: 10 February 2017 11:52


Subject: ICC-02/04-01/15, use of rule 68(3) witnesses to maintain efficiency of the proceedings

Dear Trial Chamber IX, parties, and participants,

The Prosecution is mindful of the need to make efficient use of allotted court time and in particular to avoid wasting court time at the end of witness blocks. To that end, the Prosecution proposes to prepare a small number of rule 68(3) witnesses to testify on relatively short notice if necessary.

The witnesses we currently have in mind are P-0038, P-0047, and P-0256, all of whose statements the Trial Chamber has already accepted pursuant to, and subject to compliance with, rule 68(3) – *see* ICC-2/04-01/15-596-Conf., p. 111.

- Witness P-0256 is an OTP staff member who could ordinarily testify on one or two days' notice. The Prosecution estimates 30 minutes of examination by the calling party.
- Witnesses P-0038 is based in Kampala and should ordinarily be available to testify (via videolink) with one or two days' notice. The Prosecution estimates 30 minutes of examination by the calling party.
- Witness P-0047 is based in northern Uganda and should ordinarily be available to testify (via videolink) with a few days' notice, less than would be required for a witness traveling to The Hague. The Prosecution estimates 1 hour of examination by the calling party.

The Prosecution understands that the Defence will need adequate notice to prepare for its examination of any of these witnesses, and the Registry will need a certain amount of time to prepare for videolink testimony. The purpose of this email, therefore, is to alert the Defence, as well as the Chamber, the Registry, and the participants,

as early as possible to our intention to call one or more of these witnesses ahead of his or her scheduled witness order if doing so will avoid wasting court time and therefore maintain the efficiency of the proceedings.

Should the Defence, the Chamber, the Registry, or any of the participants have concerns with or objections to this proposed approach, the Prosecution invites comment now so that it can plan for these witnesses accordingly.

Best regards,



[Redacted]
Trial Lawyer
Office of the Prosecutor
International Criminal Court
[Redacted] CM, The Hague, The Netherlands

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