

Annex 16

Public Redacted

From: Trial Chamber X Communications
Sent: 28 May 2020 13:38
To: [REDACTED]; Duterte, Gilles [REDACTED]
Cc: [REDACTED] Taylor, Melinda; Trial Chamber X Communications; Doumbia, Seydou; Kassongo, Mayombo; [REDACTED] Nsita Luvengika, Fidel
Subject: RE: Evidence relevant to rule 68(3) applications
Follow Up Flag: Follow up
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Dear Counsel,

In order to simplify the submission of applications seeking the Chamber's authorisation to introduce any prior recorded testimony pursuant to Rule 68(3), the Single Judge grants the Prosecution's request to identify each item of evidence relevant to its Rule 68(3) applications by reference to the ERN of the relevant documents and materials – with a hyperlink to its location in eCourt – instead of annexing the said documents and materials to the applications. The other requirements for filing Rule 68(3) applications pursuant to paragraph 63 of decision ICC-01/12-01/18-789-AnxA remain applicable.

Best regards,

[REDACTED]
 On behalf of the Single Judge of Trial Chamber X

From: [REDACTED]
Sent: 27 May 2020 18:07
To: Trial Chamber X Communications; Taylor, Melinda
Cc: Duterte, Gilles; [REDACTED]
Subject: RE: Evidence relevant to rule 68(3) applications

Dear Trial Chamber X, Dear Ms Taylor,

Each rule 68(3) application will provide the page and/or paragraph numbers (or other similar reference) for the portions of the prior recorded testimony that the Prosecution seeks to introduce into evidence. For materials associated with the prior recorded testimony (such as videos commented upon in the prior recorded testimony), the Prosecution will likewise identify the portions of the materials that it seeks to introduce by providing page and/or paragraph numbers (or timestamps, as the case may be), as well as the passages of the prior recorded testimony in which the associated material is mentioned.

For witnesses with just one (or very few) items of evidence, this information will be provided in the cover filing. For the majority of witnesses, however, for which more than one (or more than just very few) items of evidence are relevant, the Prosecution will attach a chart to its applications listing each item of evidence, and indicating the passages thereof that it seeks to introduce, and the passages of the prior recorded testimony to which the associated materials relate.

The Prosecution notes that annexing materials such as videos and materials used by the experts on technical matters (such as geolocation) to its rule 68(3) applications would require saving the evidence on CDs and hand-delivery to CMS, whereas relying on hyperlinks makes the same evidence (easily identifiable in the cover filings or

the charts) accessible by clicking on a hyperlink that launches each item of evidence in eCourt. As for printable items, such as witness statements, clicking on a hyperlink would open the item in the same way that clicking on a record in Records Manager.

The Prosecution acknowledges, of course, that the Defence may access evidence in slightly different ways than the Prosecution, but it submits that overall the Prosecution's proposal will simplify and expedite the proceedings. The Prosecution undertakes to consult with the Defence regarding access to evidence for any applications that, once filed, appear to pose particular challenges that cannot be overcome with reasonable diligence.

Kind regards,

[REDACTED]
Trial Lawyer
OTP

From: Taylor, Melinda
Sent: 27 May 2020 17:18
To: [REDACTED] Trial Chamber X Communications
Cc: Dutertre, Gilles; [REDACTED]
[REDACTED]
Subject: RE: Evidence relevant to rule 68(3) applications

Dear Trial Chamber X, Dear Prosecution,

The Defence respectfully notes that the decision on the conduct of the proceedings included the following instruction:

63. Within 20 days of the provision of these details, the Prosecution shall file a first batch of motivated applications seeking the Chamber's authorisation to introduce any prior recorded testimony pursuant to Rule 68(3) of the Rules for witnesses expected to be called before the end of the year 2020. These applications shall be filed together with:

- i. [REDACTED] copies of the previously recorded testimony, [REDACTED]
[REDACTED], without which the passages would not be understandable, if this material is available to the Prosecution; and
- iii. a specification as to whether the Prosecution seeks to ask questions to the witness, the specific time sought for such examination, and an indication of the topics to be addressed orally with the witness.

We would therefore be grateful if the Prosecution could clarify how their proposed course of action would address this point.

We also note that the advantages of the system proposed by the Prosecution are somewhat diminished by the fact that the Defence is working primarily in a virtual environment, where accessing evidence through citrix is more complicated than doing so in the office.

Thank you in advance.

Kind regards,

Al Hassan Defence

From: [REDACTED]
 Sent: 27 May 2020 17:02
 To: Trial Chamber X Communications
 Cc: Dutertre, Gilles; [REDACTED]; Taylor, Melinda; [REDACTED]
 Subject: Evidence relevant to rule 68(3) applications

Dear Trial Chamber X,

As announced in annex B to the “Dépôt de la Liste des témoins de l’Accusation, des résumés desdits témoins et de la Liste provisoire des éléments de preuve à charge” (filing 740-Conf-AnxB), the Prosecution intends to file rule 68(3) applications for over 20 witnesses by 1 June 2020. The evidence the Prosecution seeks to introduce under rule 68(3) is voluminous and includes various types of materials including videos.

Instead of annexing copies of the evidence to each rule 68(3) application, the Prosecution proposes to identify each item of evidence by ERN and hyperlink it to its location in eCourt. The ERN of each item listed in the Prosecution’s applications will serve as a record of the Prosecution’s request to introduce it under rule 68(3). Each item of evidence will be easily accessible by clicking on the hyperlink.

Using hyperlinks instead of annexing the evidence to each application will simplify proceedings, including in that it will make it unnecessary for CMS to affix a registration number to each item of evidence. No prejudice will be caused to the Accused because the evidence will be accessible through eCourt with all its corresponding metadata.

The Prosecution notes that a similar course was selected in *Gbagbo and Ble Goude* (ICC-02/11-01/15-573-Red, para. 43), where Trial Chamber I stated:

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

Should the Chamber wish the Prosecution to proceed otherwise, we would be grateful for directions as soon as possible.

Kind regards,

[REDACTED]
 Trial Lawyer
 OTP

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