

ANNEX 34

PUBLIC REDACTED

From: Trial Chamber VI Communications
Sent: 01 December 2022 10:11
To: [REDACTED]
Cc: OTP CAR IIA Communications; D33 Said Defence Team; Said LRV Team OPCV; Trial Chamber VI Communications; [REDACTED] Chamber Decisions Communication
Subject: RE: SAID : CMS Request for guidance on implementation of Rule 68-3 Decisions

Dear parties and participants,
Dear colleagues in the Registry,

[REDACTED] many thanks for your email.

The Chamber hereby provides the following guidance to the Registry and the parties and participants.

First, in the case of a rule 68(3) witness, the Chamber considers an item which has been the subject of a successful rule 68(3) request is deemed formally submitted once the witness confirms in court that he or she does not object to the submission of their prior recorded testimony and associated material, and the parties and participants have been able to examine the witness. Accordingly, the Court Officer should have regard to the earlier rule 68(3) decision(s) when updating the relevant metadata on Nuix after the witness has finished testifying.

To the extent that there are several versions of a particular item which has been deemed formally submitted in a rule 68(3) decision, the burden is on the party creating the redacted version to liaise with the Court Officer to ensure that the relevant metadata for all versions in Nuix is kept up to date. As noted in its previous email guidance, the Chamber recognises all redacted versions of a particular document as formally submitted (see Email dated 11 November 2022, at 12:32). Accordingly, after the Chamber has confirmed that the conditions of rule 68(3) of the Rules have been complied with, the submitting party must provide the Court Officer with a complete list of all versions of the items and update this list as and when new versions are uploaded in Nuix.

The email submission procedure as set out in the Directions on the Conduct of Proceedings (ICC-01/14-01/21-251, para. 22) which takes place after a witness finishes testifying is only for new items used with a witness during the course of his or her testimony. As a result, the requesting party should not note items which were already the subject of an earlier, successful rule 68(3) request.

Kind regards,
Trial Chamber VI

From: [REDACTED]
Sent: 25 November 2022 16:54
To: Trial Chamber VI Communications [REDACTED]
[REDACTED]
Cc: [REDACTED]
Subject: SAID : CMS Request for guidance on implementation of Rule 68-3 Decisions

Dear [REDACTED]
Dear Trial Chamber VI colleagues,

I am hereby kindly seeking your guidance regarding implementation of the Chamber's Decisions on the Prosecution's Requests under Rule 68(3) to Introduce the Prior Recorded Testimony of witnesses (ICC-01/14-01/21-499-Conf, 11-10-2022 ; ICC-01/14-01/21-507-Conf - 20-10-2022 ; ICC-01/14-01/21-519-Conf - 28-10-2022).

In order to update the metadata of rule 68-3 witnesses statements and associated materials (at least for witnesses who already testified before the Court) I liaised with the Prosecution team to receive their lists of ERNs (listed in their respective annexes of the requests) so to accurately and efficiently update the fields in NUIX.

After liaising with the Prosecution team, it appeared that our interpretation of the formal submission process of rule 68-3 materials diverged.

The Prosecution team understood that :

“the materials related to listed witnesses where the Chamber has decided that they can be heard pursuant to rule 68(3) will follow the procedure of submission after they have testified. The lists submitted previously by the Prosecution in its Annexes to rule 68(3) requests will often not be completely identical. For example, lesser redacted versions or additional items such as Annexes to preparation logs may be included. Therefore, the lists submitted after testimony will be more accurate and complete. We can of course send the ERN lists noted in the Annexes to our previous requests but these will be superseded by the lists submitted after testimony”

On the other hand, I understood that all materials listed in the Prosecution annexes of their requests were to be considered as formally submitted (FS) as soon as rule 68-3 requirements were filled, i.e. after the witness has testified in court.

Both interpretations impact the implementation process since the lists of ERNs considered as formally submitted could then be different as a result (if less items for example are requested by email to be considered as FS by the Prosecution after the witness has testified).

I have informed the Prosecution that I would seek the Chamber’s guidance and would keep them informed.

I remain available should the Chamber needs further information,

Kind regards,

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