

ANNEX 23

Public

From: Trial Chamber VI Communications
Sent: 23 February 2024 18:28
To: OTP CAR IIA Communications; D33 Said Defence Team; Said LRV Team OPCV
Cc: Trial Chamber VI Communications; Chamber Decisions Communication
Subject: Decision in respect of the Prosecution's request pursuant to rule 68(3) for P-2179 (ICC-01/14-01/21-702)

Dear Parties and participants,

The Chamber has taken note of the Prosecution's request to introduce the annex to P-2179's witness preparation log pursuant to rule 68(3) of the Rules (ICC-01/14-01/21-702) and the Defence's response (ICC-01/14-01/21-704).

The Chamber notes that the Annex contains a number of corrections and clarifications to P-2179's prior recorded testimony, whose introduction via rule 68(3) the Chamber already granted.

The Prosecution submits that the Annex bears sufficient indicia of reliability, is relevant and probative and that its introduction would expedite the proceedings. In addition, the Prosecution submits that, in light of corrections made by the witness, it will not rely on two photographs which were originally shown to P-2179 during his interview.

In its response to the Prosecution's request, the Defence submits that it should be rejected and reiterates its general objections to the introduction of annexes to witnesses' preparation logs. In addition, the Defence specifically notes that there are inconsistencies between what appears in the photographs shown to P-2179 during his interview and during his preparation session. In this regard, the Defence acknowledges that the Prosecution no longer seeks to rely on two photographs but notes that there are other exhibits which also have errors or lack clarity. Specifically, the Defence notes that in respect of CAR-OTP-2075-2005 the witness indicated that he does not know the person in the photo, however, the exhibit is a video. Similarly, the Defence notes that in respect of CAR-OTP-2018-0598 the witness states that he does not recognize the person in the two photos, however, the exhibit appears to contain only one photo. Lastly, the Defence notes that the witness's explanation in respect of CAR-OTP-2069-2079 does not appear to correspond with what appears in the photograph.

For the reasons that follow the Chamber finds that the annex to P-2179's preparation log can be introduced pursuant to rule 68(3) of the Rules. First, the Chamber notes that the corrections and clarifications to P-2179's prior recorded testimony are limited in nature and do not substantively alter the content of P-2179's prior recorded testimony. Second, the Chamber notes that the witness was shown no new exhibits. Last, the Chamber notes that the Defence will be afforded reasonable time to raise relevant issues during its questioning of P-2179. Accordingly, the Chamber authorises the introduction of the annex to P-2179's witness preparation log under rule 68(3) of the Rules.

That notwithstanding, the Chamber agrees with the Defence that there is a lack of clarity regarding some of the comments the witness has made in respect of a number of exhibits in his original statement, specifically in relation to CAR-OTP-2075-2005, CAR-OTP-2018-0598 and CAR-OTP-2069-2079. The Chamber notes that the lack of clarity stems from the prior recorded statement and not the annex to the preparation log and therefore is not a reason to reject the log. However, the Chamber orders the Prosecution to clarify the witness's comments on the aforementioned exhibits with the P-2179 during its examination of him or indicate whether it no longer wishes to rely on these exhibits and the witness's comments thereon.

Kind regards,
Trial Chamber VI