

ANNEX 16
PUBLIC

From: Trial Chamber V Communications
Sent: 14 April 2021 13:52
To: Vanderpuye, Kweku; Trial Chamber V Communications; OTP CAR IIB Managers; OTP CAR IIB Case Management; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team
Cc: Chamber Decisions Communication; Associate Legal Officer-Court Officer
Subject: RE: Update - Hard copy binders/digital list of material

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Filings, Yekatom and Ngaissona

Dear Counsel,

The Single Judge will not reconsider his email direction of 30 March 2021 for the Prosecution to provide two hard-copy binders with the documents contained in the list of items to be used during its questioning of witnesses.

As previously indicated, this direction is based on the experience during the first evidentiary block which has shown that the digital binders/lists of material cannot substitute the hard copy binders in their purpose of enabling the Chamber to efficiently follow the questioning of the parties.

That notwithstanding, the Single Judge is mindful of the Prosecution's submissions on the resource constraints related to the preparation of both eBinders and hard copy binders. In this regard, the Single Judge directs the Prosecution to focus its efforts on providing the list of documents, containing hyperlinks to the relevant material and respecting the requirements in the Initial Directions on the Conduct of the Proceedings (ICC-01/14-01/18-631, 26 August 2020, para. 41).

In addition, the Single Judge encourages the Prosecution to be more selective, to the extent possible, in the compilation of the lists of items and hard copy binders by identifying more narrowly the items intended to actually be used with the relevant witness. Specifically, the print-outs included in the hard copy binders should be limited to the documents intended to be used in court.

Kind regards, TC V

From: Vanderpuye, Kweku [REDACTED]
Sent: 13 April 2021 01:00
To: Trial Chamber V Communications [REDACTED]; OTP CAR IIB Managers [REDACTED]; OTP CAR IIB Case Management [REDACTED]; D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V45 LRV Team [REDACTED]
Cc: Chamber Decisions Communication [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]
Subject: RE: Update - Hard copy binders/digital list of material
Importance: High

Dear Trial Chamber V,

The Prosecution has carefully evaluated how it might discharge the Chamber's Order and is, of course, mindful of the Presiding Judge's express reservation in respect of ICC-01/14-01/18-631, para. 41, as noted below.

There are two important issues of concern: (1) whether the difficulties regarding the eBinder system as expressed by the Chamber (also in successful use in the *Al Hassan* case) are such that they cannot be satisfactorily remedied or

modified. It is not clear from the communication below exactly why the digital binders do not effectively substitute for physical ones; and (2) the resource constraints on the Prosecution's capacity to deliver physical binder sets (even if less one, as originally directed) per the Chamber's stated practice preference in addition to the eBinders. In respect of the production of eBinders and Physical Binders, we consider it important to briefly acquaint the Chamber with the processes involved.

Given the Prosecution's current resource constraints and the unprecedented number of prospective witnesses involved in this case, it is impracticable to produce both eBinders and Physical Binders. Indeed, it is on the basis of the untenable resource demands in producing Physical Binders that eBinders were proposed in both *Al Hassan* and subsequently in these proceedings. However, these proceedings involve substantially more witnesses (150) than in *Al Hassan* (87). And, as noted, the burden on the Trial Team in this case is also heightened because it is markedly smaller than those in *Al Hassan* and in *Ongwen* (which involved *circa* 109 Prosecution witnesses). Both, are also single-Accused cases. It is also worth noting, that the Trial Team also has fewer personnel assigned than those of the *Ntaganda* case (also a single-Accused) as well as the *Gbagbo* case.

The information following, sets out some of the salient details and resource implications involved in creating eBinders and Physical Binders, respectively.

eBinders –

The average time to create an eBinder process takes approximately 2 days in total (for 300-400 ERN documents). There are a number of steps involved:

- i. The Examination List needs to be uploaded from Ringtail and provided to the Information and Evidence Unit ("IEU");
- ii. IEU creates a Records Manager ("RM") link of the corresponding Examination Package for Ecourt;
- iii. IEU further prepares hyperlinks to documents comprising the Examination Package in Ecourt (as opposed to Ringtail), reflecting the most recent redacted or lesser redacted versions of the documents, and an RM link;
- iv. The Examination Package is downloaded to Ecourt, and the corresponding ERNs and Tabs must be double-checked by OTP Trial Support to ensure that the eBinder is accurate and consistent.

Physical Binders –

The average time to create a Physical Binder is approximately 2.5 days (for 100 ERN documents). Per ERN document therefore, it requires more than triple the amount of time. This is due in large part to the actual printing time and physical quality controls which, by comparison, are largely automated in the case of producing eBinders. Thus, there are several additional steps and constraints involved:

- i. Batch printing facility is only partially available. Selected pages to be printed within lengthy documents cannot be batch-printed and must be prepared and assembled manually;
- ii. All printed documents must be double checked to ensure their completeness and accuracy. The printed documents must not only be cross-checked to conform exactly to the content of the eBinders, but also to ensure that they conform to the specific Tab order.

The creation of Physical Binders, particularly on a mass scale, is a highly labour-intensive manual process because it is inherently susceptible to various production issues, such as printing errors and technical problems and constraints affecting printers as well as in relation to the database interface. The latter is prone to crash when other applications are also used. Thus, the Team's Trial Support Assistant cannot efficiently perform other important tasks during the printing and binder production process. Notably, creating a template binder from which other copies can be made is to no advantage, since all of the same checks and verifications would have to be made. To be clear, there is no dedicated OTP printing unit. The exercise would therefore necessarily require diverting the Case Manager and Trial Lawyers involved in other critical trial functions, in a Team that is already relatively short-handed.

As noted previously, the Office of the Prosecutor currently has five cases before the various Chambers of the Court. There are simply not sufficient resources available to accommodate the practice preferences of each. The production of Physical Binders in addition to eBinders — which is already a substantial burden — is unfortunately,

not sustainable in the particular circumstances of this case, given the limited resources at the disposal of the Trial Team.

We recognise, of course, the benefit to the Chamber of having binders of material to facilitate its preparation and the conduct of the proceedings, and we are endeavouring and intend to do our utmost to advance that objective. As such, it would be helpful to know the specific deficiencies which underlie the Chamber's concerns regarding the eBinder system, such that we might undertake to effectively address/remedy them as expeditiously as possible before the second evidentiary block commences. Alternatively, it may be feasible to produce Physical Binders limitedly and exceptionally (see e.g., ICTY Manual on Developed Practices, pg. 93, para. 81 https://www.icty.org/x/file/Legal%20Library/Practice_Directions/it-239-rev2-practice-direction-on-ecourt-en.pdf ; and ICTY Practice Direction on the Application of an Electronic Court Management System, articles 3, 6, and 9 (para. 22) https://www.icty.org/x/file/Legal%20Library/Practice_Directions/it-239-rev2-practice-direction-on-ecourt-en.pdf). In special circumstances, the Chamber may thus identify in advance the necessity of Physical Binders for particular witnesses as may be gleaned from the Witness List, which would then substantially facilitate the Team's ability to accommodate the interests underpinning the Chamber's practice preferences, while mitigating the associated burdens.

The Prosecution very much appreciates the Chamber's consideration of the above, and its understanding in our efforts to address this important issue meaningfully.

Kind regards,

Kweku Vanderpuye

From: Trial Chamber V Communications [REDACTED]
Sent: 30 March 2021 16:48
To: OTP CAR IIB Managers [REDACTED]; OTP CAR IIB Case Management [REDACTED]; D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V45 LRV Team [REDACTED]
Cc: Trial Chamber V Communications [REDACTED]; Chamber Decisions Communication [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]
Subject: FW: Update - Hard copy binders/digital list of material

Dear counsel,

While the digital binders/lists of material are much appreciated by the Chamber, the experience during the 1st evidentiary block has shown that these lists can unfortunately not substitute the hard copy binders.

Accordingly, the Presiding Judge orders the Prosecution to additionally provide two hard copy binders for the benefit of the Chamber (see ICC-01/14-01/18-631, para. 43) as of the 2nd evidentiary block.

Kind regards, TC V

From: Trial Chamber V Communications <[REDACTED]>
Sent: 05 March 2021 18:59
To: [REDACTED] Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V44 LRV Team [REDACTED]; V45 LRV Team [REDACTED]; OTP CAR IIB Case Management [REDACTED]; OTP CAR IIB Operations [REDACTED]; Chamber [REDACTED]

Decisions Communication [REDACTED]

Subject: RE: ICC-01/14-01/18 - Substitution of Hard Copy Binders

Dear counsel,

The Presiding Judge has considered the proposals made by the Prosecution regarding the substitution of hard-copy binders (as per the Initial Directions on the Conduct of the Proceedings, ICC-01/14-01/18-631, para. 43) with 'electronic binders'.

The Presiding Judge considers that the creation of electronic binders in Ecourt (organised per witness) and adding a 'Court Binder' meta-data field appear to be a suitable option.

For transparency and to properly record the content of these electronic binders, the Presiding Judge further instructs the Prosecution to send per email a document listing the material contained in the relevant electronic witness binder on Ecourt to the Chamber and participants, as part of its communication pursuant to ICC-01/14-01/18-631, para. 41. This document can either be provided in form of an Ecourt Report or a List of Documents PDF as proposed in the Prosecution's first email, as long as it contains (i) hyperlinks to the relevant material and (ii) information on the following: tab, document ID, title/description, type, relevant passages to be used, intention to tender as evidence, information on Rule 68(3).

The Presiding Judge reserves his right to amend this direction, should the suggested system prove inconvenient in practice.

Kind regards, TC V

From: [REDACTED]
Sent: 03 March 2021 19:29
To: Trial Chamber V Communications <[REDACTED]>
Cc: D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team <[REDACTED]>; V44 LRV Team OPCV <[REDACTED]>; V44 LRV Team <[REDACTED]>; V45 LRV Team <[REDACTED]>; OTP CAR IIB Case Management <[REDACTED]>; OTP CAR IIB Operations <[REDACTED]>
Subject: RE: ICC-01/14-01/18 - Substitution of Hard Copy Binders

Dear Trial Chamber V,

Dear All,

In addition to providing the hyperlinked lists of documents mentioned in the e-mail below, the Prosecution proposes to also create electronic binders in eCourt (per trial witness), or to provide additional 'Court Binder' (CB) meta-data. The Prosecution understands that the creation of a significant number of binders may create technical complications. A solution thereto would consist in adding 'Court Binder' (CB) meta-data to the group of documents that the party or participant intends to use with a particular trial witness.

Both solutions allow the eCourt users to select automatically (in one effort) the group of documents intended to be used with a particular trial witness (i.e., either by selecting the binder concerned, or by searching on the new 'Court Binder' meta-data field). Subsequently, and once selected, the eCourt user could:

- **Batch print** all the documents (i.e. in one effort);
- Create **hyperlinked reports**, which can be sorted on any of the available meta-data fields, including on the doc ID (or ERN number) or on the 'tab-number' (through a newly created, temporary, meta-data field); and
- **Update the group** of documents with particular meta-data in one effort (through the **mass-add** function), for example to create sub-binders, to create new binders, or to attach particular decisions.

Below we have added some print-screens to illustrate the proposal. It should be noted however that not all eCourt users have the same functionality of eCourt (in respect of the stored lists, the batch print, and the mass add functions for example).

We remain of course at the Chamber’s disposal for any further clarifications.

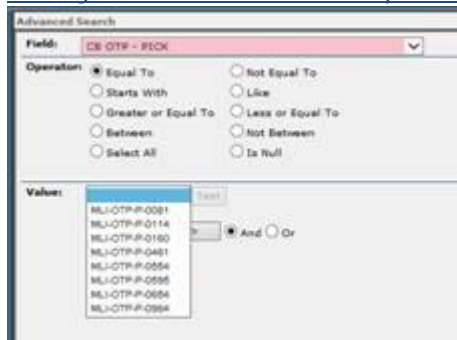
Kind regards,

On behalf of Kweku Vanderpuye

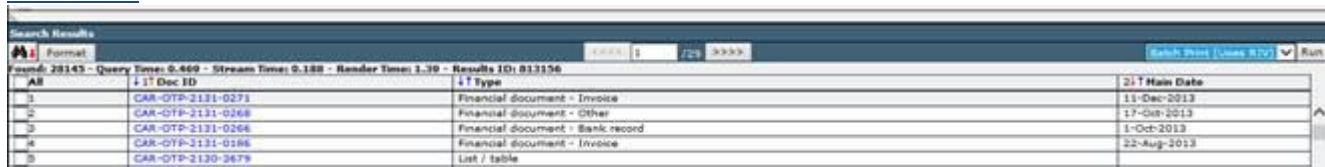
Stored lists:



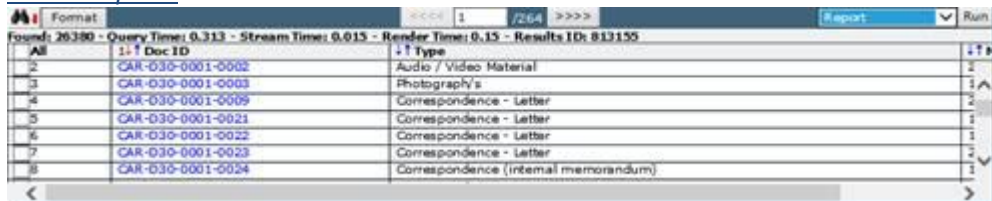
Adding Court Binder meta-data per witness



Batch Print:



Create reports:



Example of the tab order:

Advanced Search

Field: Attachment - YES/NO
Source - YES/NO

Operator: -----EXTRA FIELDS-----

Application reference - TEXT
 Basis of Confidentiality - PICK
 CB D28 - PICK
 CB D28 - 01 - NUMB
 CB D28 - 02 - NUMB
 CB D28 - 03 - NUMB
 CB D28 - 04 - NUMB
 CB D28 - 05 - NUMB
 CB D28 - 06 - NUMB
 CB D28 - 07 - NUMB
 CB D28 - 08 - NUMB
 CB D28 - 09 - NUMB
 CB D28 - 10 - NUMB
 CB OTP - PICK
 CB OTP - 01 - NUMB
 CB OTP - 02 - NUMB
 CB OTP - 03 - NUMB
 CB OTP - 04 - NUMB
 CB OTP - 05 - NUMB
 CB OTP - 06 - NUMB
 CB OTP - 07 - NUMB
 CB OTP - 08 - NUMB
 CB OTP - 09 - NUMB
 CB OTP - 10 - NUMB
 Chain of Custody - TEXT

Value:

Mass add function:

Mass ADD - Internet Explorer

Mass ADD Help

Overview

Mass Add or Mass Delete allow you to add/delete field values from those documents or add/delete those documents to or from selected Issues, Stored Lists, Unlocked Productions or Chronologies.

The interface is made up of 2 frames

- A narrow frame on the left used for selecting from a list of options
- A wide frame on the right used for running a particular Mass Add or Delete

Narrow Frame Options

Checked or All Documents

Choose whether to perform an action on only the documents that have been checked or on all documents returned by your query.

- Click the Checked radio button to select only checked documents
- Click the All radio button to select all documents returned by your query

Note: This option is only available if you have checked documents in

Issue	Document	Type	Issue Date
✓	CAK-OTP-2131-0271	Financial document - Invoice	11-Nov-2013
✓	CAK-OTP-2131-0280	Financial document - Other	17-Oct-2013
✓	CAK-OTP-2131-0246	Financial document - Bank record	1-Oct-2013
✓	CAK-OTP-2131-0186	Financial document - Invoice	22-Aug-2013
✓	CAK-OTP-2130-2670	List / table	

From [REDACTED]
 Sent: mercredi 3 mars 2021 13:28
 To: Trial Chamber V Communications [REDACTED]
 Cc: 'D29 Yekatom Defence Team' [REDACTED]; 'D30 Ngaissona Defence Team' [REDACTED]; V44 LRV Team OPCV [REDACTED]; 'V44 LRV Team' [REDACTED]; V45 LRV Team [REDACTED] OTP CAR IIB Case Management [REDACTED]; OTP CAR IIB Operations [REDACTED] >
 Subject: ICC-01/14-01/18 - Substitution of Hard Copy Binders

Dear Trial Chamber V,

Dear All,

Further to our remark on 16 February 2021 at the commencement of trial concerning the requirement of the Initial Directions on the Conduct of Proceedings ((ICC-01/14-01/18-631, para. 43) to provide hard-copy binders containing documents intended to be used with trial witnesses (see ICC-01/14-01/18-T-014-ENG ET, Ins. 4-12), the Prosecution requests the Chamber's authorisation to instead provide hyperlinked lists of documents, given the particular circumstances of this case and the serious and burdensome resource implications of proceeding otherwise. Two model Lists of Documents are attached for the Chamber's consideration.

We understand that certain difficulties arose in the Al Hassan case, and a solution was reached by organising electronic binders in eCourt. Here, we propose a hyperlinked List of Documents. While it does not have the advantage of being able to print off all the documents in such a list in one go (or 'batch printing' as can be done with an eCourt binder), it has the benefit of simplicity, and a far more straightforward and familiar means of use. The

Prosecution estimates that proceeding in the manner proposed would preserve limited resources which might otherwise be required to (re)produce and assemble in excess of 3-400 binders during the course of trial.

The hyperlinking of material in eCourt is an established standard regarding a variety of major instruments, including DCCs, Pre-Confirmation Briefs, Trial Briefs, Appeals, etc. It has been used effectively and reliably over many cases and many years. Thus, we consider this mechanism ideally fit for purpose in this circumstance, and it can reliably obviate the need to produce physical binders, barring exceptional circumstances, while fully accommodating the Chamber's and the Parties' and Participant's ability fully to access listed documents in eCourt during the trial proceedings easily and contemporaneously.

While the attached examples are in a form nearly identical to that used before Trial Chamber VII, should the Chamber consider that certain format changes may be more helpful in this case, we believe that these may be readily implemented.

The Chamber's consideration is very much appreciated. Thank you.

Kind regards,

On behalf of Kweku Vanderpuye