

ANNEX 8

Public Redacted

Version

From: Trial Chamber V Communications
Sent: 15 May 2023 17:30
To: OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; 'V44 LRV Team'; V45 LRV Team
Cc: Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber V Communications
Subject: Order regarding Filing ICC-01/14-01/18-1859-Conf

[ICC] RESTRICTED

Dear Counsel,

The Single Judge takes note of the Prosecution's cooperation request (ICC-01/14-01/18-1859-Conf) (the 'Request'), as well as the emails below.

Having reviewed the Request, the Single Judge is of the view that the Chamber would be further assisted by obtaining the respective requests for assistance sent by the Prosecution to [REDACTED] as well as the latter's responses thereto (see ICC-01/14-01/18-1859-Conf, para. 10). The Prosecution is thus instructed to file the additional documentation on the record on an *ex parte* basis, latest by tomorrow at 16:00.

The Prosecution is further instructed to file a confidential redacted version thereof, applying redactions as necessary, by the same deadline.

In light of the above, the deadline for the participants to respond to the Request is suspended until the additional documentation in question has been notified.

Kind regards,

TC V

From: Dimitri, Mylene [REDACTED]
Sent: 11 May 2023 15:01
To: OTP CAR IIB [REDACTED] Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team [REDACTED] V44 LRV Team [REDACTED] V44 LRV Team OPCV [REDACTED] V45 LRV Team [REDACTED]
Subject: Re: Yekatom Defence requests in relation to filing 1859-Conf

[ICC] RESTRICTED

Dear Trial Chamber V,

The Yekatom Defence respectfully reiterates its request for disclosure of the sought RFA and response.

The Defence notes that whereas the Prosecution has previously informed the Defence that [REDACTED] 'effectively declined' the Prosecution's July 2018 cooperation request, no such submission is made to the Chamber below. In the same vein,

the Defence has learned for the first time of ‘confidential communications’, which was not mentioned in by the Prosecution *inter partes*.

The lack of clarity in this regard demonstrates the risk inherent in simply relying on the Prosecution’s subjective interpretation of the nature of the Prosecution’s interactions with [REDACTED] in respect of its efforts to obtain information from them. More broadly, it is contrary to basic fairness in adversarial proceedings to allow the Prosecution, as the moving party, to withhold documentary material that is clearly relevant to the determination of this litigation, unless there is a specific legal basis to do so. The Prosecution’s unilateral determination that the information is ‘not necessary’, or that the Defence had ‘sufficient information’ in the form of the Prosecution’s own subjective interpretation of the sought material, is not one of them.

There are procedures that apply to the present circumstances; there is no reason to deviate from them here. The Prosecution does not appear to dispute that the RFA and response are material to defence preparation pursuant to Rule 77. Moreover, if there is confidential information in these documents, the Prosecution is free to redact it in accordance with the established redaction protocol. To allow the Prosecution to withhold this information in such circumstances is procedurally unsound and contrary to the fair trial principle of audi alteram partem, and would set an undesirable precedent.

The Prosecution’s reliance on the previous filing ICC-01/14-01/18-1531-Conf-Red is entirely misplaced. In that litigation, the Defence had been expressly and directly informed that the sought cooperation would not be possible without a court order (see, ICC-01/14-01/18-1492-Red, para. 52), and as such there was little, if any, ambiguity as to whether the intervention of the Chamber was ‘necessary’; no such claim is made by the Prosecution as regards its cooperation requests with [REDACTED]. The *ex parte* status of that litigation was justified *inter alia* by the need to protect ongoing Defence investigations, as argued by the Defence (see, ICC-01/14-01/18-1492-Red, para. 67). Again, no such claim is made by the Prosecution here; and moreover, if that were the case, the Prosecution is free to seek to redact that information pursuant to the categories expressly envisioned in the applicable redaction protocol for that purpose. With respect, the Prosecution’s attempts to disregard the applicable procedural safeguards should be disallowed.

Kind regards,
Mylène Dimitri

From: OTP CAR IIB [REDACTED]

Sent: 11 May 2023 10:55

To: [REDACTED] Trial Chamber V Communications

[REDACTED]

Cc: OTP CAR IIB [REDACTED]; D29 Yekatom Defence Team [REDACTED]; D30

Ngaissona Defence Team [REDACTED]; V44 LRV Team [REDACTED]; V44

LRV Team OPCV [REDACTED]; V45 LRV Team [REDACTED]

Subject: RE: Yekatom Defence requests in relation to filing 1859-Conf

[ICC] RESTRICTED

Dear Trial Chamber,

First, the Prosecution considers that in the context of *inter partes* communications, the Defence has at its disposal sufficient information to assess whether the requirements for judicial intervention to seek the cooperation of [REDACTED] are made out. To be clear, the Prosecution has advised the Defence of substantial information regarding the efforts and processes pursued to obtain material relevant to [REDACTED] going back to 2015.

This includes a 2015 request:

- For “the transmission of copies of the following documents:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- To authorise members of the OTP in Bangui to speak to [REDACTED] to discuss the types of information regarding [REDACTED] held by [REDACTED] and the format in which such data and information is held.”

In July 2018, the Prosecution further requested:

- [REDACTED]

As noted, on 12 March 2019, [REDACTED] responded without providing the requested information, instead, it provided the Director of the former Judicial Cooperation and Complementarity Division of the OTP with links to the following publicly available information, which we provide here below:

[REDACTED]

We do not believe that any further disclosure is necessary for the Defence to respond effectively. The Prosecution considers that, because of the nature of its interaction with [REDACTED] including confidential communications exchanged

Any confidentiality concerns should be alleviated by the fact that investigations in CAR have been formally concluded by the Prosecutor on [16 December 2022](#), and that redaction might be applied on names and contact of individuals not related to the current proceedings if really necessary. Moreover, to date the Prosecution disclosed dozens of its Request for Assistance which demonstrate that such type of documents are not irreversibly confidential (*see as an example an RFA sent to [REDACTED] to [REDACTED] to [REDACTED] or to [REDACTED]*

Should the Chamber grants the request and order the Prosecution to provide the documents sent to [REDACTED] (and received), the Defence also respectfully requests a suspension of the deadline to respond to the Prosecution's Request until the documents have been disclosed.

Kind regards,

[REDACTED]
Legal Consultant
Yekatom Defence

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