

ANNEX 11

Public Redacted

Version

From: Trial Chamber V Communications
Sent: 17 May 2023 11:13
To: Vanderpuye, Kweku; OTP CAR IIB
Cc: [REDACTED]; Associate Legal Officer-Court Officer; Chamber Decisions Communication; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; Trial Chamber V Communications
Subject: Decision on Prosecution request regarding certification P-2467

[ICC] RESTRICTED

Dear Counsel,

The Single Judge takes note of the Prosecution's email below, as well as of the responses thereto by the other participants.

The Single Judge does not see any impediment to a declaration under Rule 68(2)(b)(ii) of the Rules of Procedure and Evidence being obtained while a request for introduction of the underlying prior recorded testimony under Rule 68(2)(b) is still pending (*see also* Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Decision concerning the Prosecutor's request for introduction of two witness statements under rule 68 (2) (b) of the Rules of Procedure and Evidence, 2 October 2017, ICC-01/05-01/13-2234, para. 8; Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoula Aziz Ag Mohamed Ag Mahmoud*, Decision on the Defence's request for variation of the time limit related to the accompanying declarations of Rule 68(2)(b) witnesses and the introduction into evidence of the prior recorded testimony of D-0002 and D-0146 pursuant to Rule 68(2)(c) of the Rules, 16 December 2022, ICC-01/12-01/18-2445-Red, para. 11).

The Single Judge further recalls that the Chamber already designated the Registry Senior Legal Advisor, or anyone delegated by him, to witness declarations under Rule 68(2)(b) of the Rules for purposes of the present case (*see* Decision on the Prosecution's Request to Designate a Person Authorised to Witness a Declaration under Rule 68(2)(b) of the Rules of Procedure and Evidence, 6 May 2020, ICC-01/14-01/18-508).

Kind regards,
 TC V

From: [REDACTED]
Sent: 17 May 2023 10:45
To: Trial Chamber V Communications [REDACTED]
Cc: [REDACTED] Associate Legal Officer-Court Officer [REDACTED]
 [REDACTED]; Chamber Decisions Communication [REDACTED]
 Vanderpuye, Kweku [REDACTED]; OTP CAR IIB [REDACTED] D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team [REDACTED]
 [REDACTED] V44 LRV Team [REDACTED] V44 LRV Team OPCV [REDACTED]
 [REDACTED]; V45 LRV Team [REDACTED]
Subject: RE: Order setting deadline to provide views on Prosecution email regarding certification P-2467

[ICC] RESTRICTED

Dear Trial Chamber V,
Dear All,

The Defence for Mr Yekatom defers to the Chamber's discretion on the below Prosecution request concerning the prospective certification of P-2467's Prior Statement under rule 68(2)(b).

Kind regards,

[REDACTED]
Legal Consultant – Yekatom Defence

From: [REDACTED]
Sent: Wednesday, May 17, 2023 10:10 AM
To: Paolina Massidda [REDACTED]; Trial Chamber V Communications
 [REDACTED]
Cc: [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]
 [REDACTED] Chamber Decisions Communication [REDACTED];
 Vanderpuye, Kweku [REDACTED] 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: Order setting deadline to provide views on Prosecution email regarding certification P-2467

Dear Trial Chamber V,
Dear All,

The Defence for Mr Ngaissona defers to the Chamber's discretion on the below Prosecution request.

Kind regards,

[REDACTED]
Legal Assistant, Defence for Mr Ngaissona

From: Massidda, Paolina [REDACTED]
Sent: 17 May 2023 09:13
To: Trial Chamber V Communications [REDACTED]
Cc: [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]
 [REDACTED]; Chamber Decisions Communication [REDACTED]
 Vanderpuye, Kweku [REDACTED]; 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: Order setting deadline to provide views on Prosecution email regarding certification P-2467

[ICC] RESTRICTED

Dear All,
 The Common legal Representatives of the Victims support the Prosecution's request.
 Kind regards,
 Paolina Massidda and Dmytro Suprun

From: Trial Chamber V Communications [REDACTED]
Sent: 17 May 2023 08:58
To: Vanderpuye, Kweku [REDACTED]; Trial Chamber V Communications
[REDACTED] 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]
Cc: [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]
[REDACTED]; Chamber Decisions Communication [REDACTED]
Subject: Order setting deadline to provide views on Prosecution email regarding certification P-2467

[ICC] RESTRICTED

Dear counsel,

The Single Judge takes note of the Prosecution's email below and, in light of the timing considerations involved, instructs the participants to provide their views, if any, no later than today, 17 May 2023, at 11:00.

Kind regards,
TC V

From: Vanderpuye, Kweku [REDACTED]
Sent: 16 May 2023 19:09
To: Trial Chamber V Communications [REDACTED]; 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]
Cc: [REDACTED]
Subject: OTP Certification P-2467
Importance: High

[ICC] RESTRICTED

Dear Trial Chamber V

Dear Counsel,

Below please see our earlier communication to the Trial Chamber concerning the prospective certification of P-2467's Prior Statement under rule 68(2)(b). As the witness is currently available to certify his Statement here at the seat of the Court we are seeking to have that done, as it would be highly cost efficient.

We believe that there is no legal impediment in doing so in advance of the Chamber's ruling on the pending application. However, we are informed by the Registry that they require the Chamber's further permission to engage the process. Note that the Chamber directed the Registry Legal Office to designate a person for this purpose already in May 2020 (*see* ICC-01/14-01/18-508).

The Prosecution would very much appreciate the Chamber's prompt intervention to ensure that the Registry can go forward with the certification as proposed, *this week*. Thank you for your consideration.

Kind regards,

Kweku Vanderpuye

From: Vanderpuye, Kweku

Sent: 16 May 2023 16:31

To: Trial Chamber V Communications [REDACTED]; [REDACTED]

Subject: OTP Certification P-2467

Importance: High

Dear [REDACTED]

We have a pending rule 68(2) application regarding [REDACTED]. We have been in contact with the witness [REDACTED]. He is presently in France, and able to travel to The Hague this week to certify his statement. We have engaged the Registry, who insists that we seek some clarification from the Chamber.

I believe there is nothing that prevents them from certifying the Statement in advance of the Chamber's ruling – as it merely devolves on a question of expense and resources. If, at the end of the day, the Chamber does not authorise the submission of the statement under the rule, the fact that it is certified changes nothing. On the other hand, if the submission is authorised, then certifying it ahead of time will save the Court and Registry substantial time and money and avoid having to travel to another country potentially to conduct a certification process.

The short of it is, I would like to know whether the Trial Chamber has any concerns about our proceeding to engage the Registry to certify the witness's statement presently. If you can let me know as soon as possible that would be good. We are in the process of working out the logistics for him to travel up here from France. Thanks.

Kind regards,

Kweku



Cour
Pénale
Internationale
International
Criminal
Court



Kweku Vanderpuye

Senior Trial Lawyer
Prosecution Division
International Criminal Court
Oude Waalsdorperweg 10
2597 AK The Hague, The Netherlands

[REDACTED]
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