

# Annex 5

## Public Redacted

**From:** Trial Chamber VI Communications  
**Sent:** 23 April 2024 16:04  
**To:** D33 Said Defence Team; OTP CAR IIA Communications; Said LRV Team OPCV  
**Cc:** Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber VI Communications  
**Subject:** RE: Ecriture ICC-01/14-01/21-742-Conf/demande d'accès

[ICC] RESTRICTED

Dear parties and participants,

The Chamber has considered the Defence's request to be given access to (i) the *Annex to Registry's Report on the Conduct of the Certification Process pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence* (ICC-01/14-01/21-742-Conf-Exp-Anx) as well as to (ii) *Annex I to the Registry submission of the declarations made by witnesses CAR-OTP-P-0270 and CAR-OTP-P-0272 pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence* (ICC-01/05-01/13/1224-Conf-AnxI) in the *Bemba et al.* case, which is referenced in footnote 11 of the Registry's Report on the Conduct of the Certification Process pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence (ICC-01/14-01/21-742-Conf).

In relation to the former, the Chamber notes that the Registry justifies the *ex parte* classification of the Annex on the ground that it "refers to *ex parte* confidential internal communications with, inter alia, unredacted evidence not released to the participants". As regards the email communications between the Registry and the Prosecution, the Chamber finds that they do not contain any confidential information that cannot be shared with the Defence. Concerning the two reports of the read-back sessions emanating from the Prosecution, the Chamber notes that the Prosecution did in fact disclose the reports of P-2239 and P-2337 to the Defence (see P-2239: CAR-OTP-00001495-R01, P-2337: CAR-OTP-00001522-R01) albeit with redactions to the signature of the Prosecution investigator and the name of the Prosecution interpreter. These are standard redactions and the Defence has no need for the redacted information in the present context. Accordingly, the Chamber instructs the Registry to create a version of ICC-01/14-01/21-742-Conf-Exp-Anx which contains the redacted versions of the Prosecution documents entitled 'Réunion avec le Bureau du Procureur relevant de la règle 68-2-b du Règlement de procédure et de preuve' and classify it as confidential.

In relation to the reference to filing ICC-01/05-01/13/1224-Conf-AnxI, the Chamber notes that this is a confidential record in another case file. The confidential *ex parte* classification was justified by the Registry on the grounds that the documents contain information pertaining to the witnesses' identities, to the interpreters' identity (where applicable) and to internal notes made by the Prosecution staff. [#1224-Conf, para. 8]. However, on 23 October 2015 Trial Chamber VII cancelled the *ex parte* nature of the Annex at the Registry's request.

Since the *Bemba et al.* case is not before another Chamber, it falls to this Chamber to decide on possible variations of the protective measures relating to this document by virtue of regulation 42(3) of the Regulations of the Court. The Chamber finds that ICC-01/05-01/13/1224-Conf-AnxI contains the names of a witness, lawyers, Registry and Prosecution staff members and possibly other information that may need to be redacted from the Defence in this case. It accordingly instructs the Registry and the Prosecution to liaise to produce a confidential redacted version of said document. The Registry must then file the confidential redacted version in the current case record as a second annex to the Registry's Report on the

Conduct of the Certification Process pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence pursuant to regulation 23(3) of the Regulations of the Court, since the record in question is not available to the Defence in a version to which it can be given access.

The deadline for the Defence to file any responses to the Registry's Report will start running as of when the abovementioned materials have been made available to it.

Kind regards,  
Trial Chamber VI

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**From:** Jacobs, Dov [REDACTED]  
**Sent:** Friday, April 19, 2024 2:02 PM  
**To:** Trial Chamber VI Communications [REDACTED]  
**Cc:** Said LRV Team OPCV [REDACTED] OTP CAR IIA Communications [REDACTED]  
 [REDACTED] D33 Said Defence Team [REDACTED] Naouri, Jennifer <[REDACTED]> Associate Legal Officer-Court Officer [REDACTED]  
 [REDACTED] Trial Chamber VI Legal Team [REDACTED]  
**Subject:** Ecriture ICC-01/14-01/21-742-Conf/demande d'accès

[ICC] RESTRICTED

Chère Chambre de première instance VI,

La Défense a pris note du "Registry's Report on the Conduct of the Certification Process pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence" déposé par le Greffe le 12 avril 2024 (ICC-01/14-01/21-742-Conf).

Après analyse, la Défense relève que :

1) Le Greffe renvoie, en note de bas de page 11, à une écriture confidentielle dans une autre affaire à laquelle la Défense n'a pas accès: "Registry, Annex I to the "Registry submission of the declarations made by witnesses CAR-OTP-P-0270 and CAR-OTP-P-0272 pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence", 9 September 2015, ICC- 01/05-01/13-1224-Conf-AnxI, at page 5. See OTP document filed as an annex to the Registry submission, with amendments to a prior-recorded testimony in presence of the OTP".

2) Le Greffe s'appuie sur une annexe ex parte qui porterait sur les échanges entre l'Accusation et le Greffe au moment de l'établissement des attestations en vertu de la Règle 68(2)(b).

Afin que la Défense puisse exercer pleinement son droit de réponse, elle doit disposer de tous les éléments utiles.

En particulier, La Défense doit pouvoir vérifier toutes les jurisprudences utilisées par le Greffe, et donc avoir accès à l'écriture ICC-01/05-01/13-1224-Conf-AnxI, ne serait-ce qu'en version expurgée, pour pouvoir l'analyser.

Par ailleurs, la nature des contacts entre le Greffe et l'Accusation est au coeur de la question discutée devant les Juges et ces éléments d'informations impacteront nécessairement la valeur probante des déclarations 68(2)(b). En ce sens, la Chambre, dans son ordonnance du 2 avril 2024 ordonnait que le Greffe fournisse toutes les informations utiles sur « the nature and scope of any interaction between the Prosecution staff members and the Witnessing Officers » et précisait: « To the extent that there are supporting documents, these should be attached to the report » (ICC-01/14-01/21-734, par. 18). La Défense ne peut donc être

gardée dans le noir et doit donc pouvoir prendre connaissance de l'annexe au rapport du Greffe afin de pouvoir présenter tout élément de réponse ou observations utiles à la Chambre dans les meilleurs délais.

Par conséquent, la Défense demande respectueusement à la Chambre d'ordonner au Greffe de:

- 1) Donner accès à la Défense, même en version expurgée, à l'écriture ICC-01/05-01/13-1224-Conf-AnxI.
- 2) Donner accès à la Défense de l'annexe jointe au rapport du 12 avril 2024.

Bien à vous,

Dov Jacobs

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