

ANNEX 25

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Version

From: Trial Chamber V Communications
Sent: 14 June 2024 11:31
To: D29 Yekatom Defence Team; D30 Ngaissona Defence Team; OTP CAR IIB; V44 LRV Team OPCV; V45 LRV Team; V44 LRV Team; OTR Counsel Support Section; VWS Legal
Cc: Associate Legal Officer-Court Officer; Trial Chamber V Communications; Chamber Decisions Communication
Subject: Decision on the Yekatom Defence Request for Deviation of the Familiarisation Protocol for D29-5012

[ICC] RESTRICTED

Dear all,

The Single Judge takes note of the Yekatom Defence request below, as well as the Registry's observations thereon (see email from the Registry, 13 June 2024, at 17:31) and the Prosecution's response (see email from the Prosecution, 13 June 2024, at 17:02).

In light of the circumstances, and noting the absence of objections by the Prosecution, the Single Judge authorises a discrete deviation from the 'Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial' (ICC-01/14-01/18-677-Anx1) in order to allow the Yekatom Defence to conduct an interview with D29-5012 ahead of his testimony, currently scheduled on 1 and 2 July 2024.

The Single Judge trusts that the Yekatom Defence and the Registry will liaise so as to ensure that D29-5012's testimony can take place as scheduled.

Kind regards,
 TC V

From: Dimitri, Mylene [REDACTED]
Sent: Thursday, June 13, 2024 12:50 PM
To: Trial Chamber V Communications [REDACTED]
Cc: OTP CAR IIB [REDACTED]; D29 Yekatom Defence Team [REDACTED]
 D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED]
 [REDACTED] V45 LRV Team [REDACTED] OTR Counsel Support Section
 [REDACTED]; VWS Legal [REDACTED]
Subject: Yekatom Defence request for a limited deviation of the Protocol - D29-P-5012

Dear Trial Chamber V,

The Yekatom Defence respectfully requests a deviation from the Familiarisation Protocol with respect to D29-P-5012 in order to allow the Defence to conduct a comprehensive interview with him prior to its decision to call him.

As the Chamber is aware, the Yekatom Defence has been trying to organise a mission to conduct an in-depth interview with Defence witness D29-P-5012 since last October 2023. As previously set out, due to various security and logistical issues, this interview must be conducted in person. Despite our efforts, we have faced numerous obstacles beyond our control – namely, the last-minute cancellation of [REDACTED] due to TCV-P-0952 rescheduling or lack of authorisation from these states and we are still waiting for confirmation that we can meet witness D29-P-5012, this time in the Host State.

The Defence is still awaiting confirmation that the witness can travel to the Hague to be interviewed. On May 21, CSS informed us that there was a 10-day silence period from the Host State authorities during which his visa application, organised through CSS, would be assessed. This period has now long passed, and we still have no concrete developments regarding the status of this visa request.

Had we known that [REDACTED] and the Host State would present issues when we initially encountered problems with [REDACTED], we would have organized ourselves differently. This is why, as early as February 23, 2024, we sought CSS's advice and were told, "Looking for other specific locations for this witness interview is the sole prerogative of counsel. We remain available to provide all assistance once a decision is made." When submitting these mission requests or visa applications through CSS, we were not informed that certain countries, such as the Host State or [REDACTED], would be more complicated. The Defence also notes that as early as February 26 2024, it had suggested to CSS that D29-P-5012 be brought to The Hague to be interviewed, which suggestion was not agreed to by CSS at that stage.

Given the Defence's insistence towards the Registry in order to avoid any delay in the proceedings, CSS has now proposed a different avenue. Unlike the prosecution who benefits from an agreement with the Host State to bring witnesses over in order to conduct an interview which was the case with P-1839, CSS informed us that they do not have similar agreement in place for the Defence. Therefore, CSS informed us that VWU is now requesting a witness visa, which implies a deviation from the protocol. CSS required that we seek leave from the Chamber to deviate from the Protocol in place as the only viable option at the moment to facilitate an in-depth interview by the Yekatom Defence with the witness is through VWU requiring a visa for the witness from the Host State. Paragraph 8 of the "Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial" ICC-01/14-01/18-677-Anx1 ("the Protocol") states that "The witness is in the care of the VWU from the moment he or she leaves his/her residence, and while he or she provides testimony before the Court, undergoes the 'cooling down' period where necessary and returns safely to his/her residence."

The Defence therefore respectfully requests the Chamber to authorise a limited deviation from the Protocol by having VWU hand over the witness back to the calling party, the Yekatom Defence, upon arrival in the Host State on 22 June 2024. Once the Defence concludes its in-depth interview, and post-interview follow-up, the witness will be handed over to VWU. Notwithstanding any unforeseen obstacles, the Defence expects to complete its standard post-interview assessment by 27 June in order for the witness to testify in July 2024.

Kind regards,

Mylène Dimitri

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