

ANNEX 7

Public Redacted

Version

From: Trial Chamber V Communications
Sent: 10 May 2024 11:31
To: [REDACTED] Trial Chamber V Communications;
 D30NgaissonaDefenceTea [REDACTED]
Cc: Chamber Decisions Communication; D29 Yekatom Defence Team; OTP CAR IIB; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; Associate Legal Officer-Court Officer; VWS Team Tasks; VWS Legal
Subject: Second Order regarding D30-4914's testimony

Dear all,

The Single Judge takes note of the Ngaïssona Defence's request to hear D30-4679 from 20 to 23 May 2024 instead of D30-4914 (see email below). However, he also notes the VWU's indication that D30-4679's appearance on those dates cannot be guaranteed (see email below).

The Single Judge appreciates VWU's readiness to discuss other viable options. Accordingly, he orders the Ngaïssona Defence to liaise with the VWU immediately and inform the Chamber and participants by 13 May 2024 which witness will appear on the abovementioned dates.

Lastly, the Single Judge stresses that although the Chamber is flexible as to the order in which witnesses are called, it does expect that *all* scheduled hearing days are filled.

Kind regards, TC V

From: [REDACTED]
Sent: Friday, May 10, 2024 10:20 AM
To: Trial Chamber V Communications [REDACTED]; D30NgaissonaDefenceTea [REDACTED]
Cc: Chamber Decisions Communication [REDACTED]; D29 Yekatom Defence Team [REDACTED]; OTP CAR IIB [REDACTED]; V44 LRV Team OPCV [REDACTED]; V44 LRV Team [REDACTED]; V45 LRV Team [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]; VWS Team Tasks [REDACTED]; VWS Legal [REDACTED]
Subject: RE: Order regarding D30-4914's testimony

[ICC] RESTRICTED

Dear colleagues,

VWU regrets to inform that VWU can't guarantee the appearance of P-4679 until the 23rd May in the Hague at the earliest and even that isn't guaranteed as some factors are outside VWU's control.

VWU stands ready to discuss with the Defence on how to circumvent any unavoidable gaps in the hearing schedule.

Regards

[REDACTED]

From: [REDACTED]
Sent: Friday, May 10, 2024 9:33 AM
To: Trial Chamber V Communications [REDACTED] D30 Ngaissona Defence Team
 [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED] OTP CAR IIB [REDACTED]
 V44 LRV Team OPCV [REDACTED]; V44 LRV Team [REDACTED]; V45 LRV Team
 [REDACTED] Associate Legal Officer-Court Officer [REDACTED];
 VWS Team Tasks [REDACTED] VWS Legal [REDACTED] Chamber Decisions
 Communication [REDACTED]
Subject: Re: Order regarding D30-4914's testimony

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[ICC] RESTRICTED

Dear Trial Chamber V,

On 8 May 2024, the Defence took note of the Chamber's order to call D30-4914 *via* video link from 20 to 23 May ('the Order'); in particular: the dispositive fact that not doing so would likely cause a gap in the hearing schedule. The Defence respectfully requests reconsideration of the Order on the basis that witness D30-4679 can testify in lieu of D30-4914.

Requests for reconsideration have been granted when the following two conditions are met: "(1) the conditions upon which the decision was grounded have changed, and (2) it is necessary to prevent an injustice" (ICC-01/14-01/18-206, para. 20). Here, these two conditions are met as substantiated below.

The conditions upon which the Order was grounded have changed

The Chamber based the Order on the likelihood that cancelling D30-4914's testimony would result in a gap in the hearing schedule. This conclusion was based on the information provided by the Defence in its update regarding D30-4914 wherein the Defence notified the Chamber that [REDACTED] [REDACTED] for Witness D30-4914 to testify. Instead, [REDACTED] [REDACTED] to another Defence witness, D30-4679. For reasons unknown to the Defence, [REDACTED] [REDACTED] for Witness D30-4679 to be present at the Court premises from 12 to 27 May 2024. At the time of providing its update to the Chamber, the Defence was unable to confirm whether D30-4679 could be an alternative witness. Nevertheless, the Defence wished to provide the Chamber, parties and participants as much notice as possible that D30-4914 would not be able to testify as scheduled.

Following the Order, the Defence contacted D30-4679, who agreed to advance his testimony to the week of 20 to 23 May 2024. Given this change of circumstance, the Defence respectfully requests that the Chamber reconsider the Order and allow D30-4679 to testify as an alternative witness to witness D30-4914. The Chamber issued the Order to avoid a gap in the hearing schedule; this gap can now be completely avoided. Indeed, securing the testimony of D30-4679 during the week of 20 May appears to be a more viable option than for D30-4914. Unlike D30-4914, D30-4679 has been [REDACTED] [REDACTED] to testify during the exact dates of D30-4914's anticipated testimony. In stark contrast, [REDACTED] [REDACTED] have provided no timeline for providing [REDACTED] [REDACTED] to D30-4914, despite the Defence requesting it over two months ago. Additionally, D30-4679 is scheduled next week to [REDACTED] to travel to the Hague, thereby removing all obstacles to his testimony being conducted at the Seat of the Court.

Allowing D30-4679 to testify in lieu of D30-4914 is necessary to prevent an injustice

The Defence understands that the statutory framework does not make a distinction between testimony that is given in-person and testimony that is provided by video-link. However, the Defence's request to reconsider video-link testimony for D30-4914 is not based on the evidentiary weight such testimony would have if conducted in-person. Rather, the Defence makes the request based on its conversations with D30-4914 who has expressed on numerous occasions, including on 8 May 2024, that he cannot testify via video-link in CAR. Doing so, would [REDACTED]. Given this position of the witness, the Defence anticipates that D30-4914 could refuse to testify from CAR, which could lead to his evidence not being placed on the record were the Chamber to not reconsider the Order.

The Defence has provided the Chamber with a solution which would avoid unnecessary delays created by a potentially uncooperating witness. Granting the request to have D30-4679 as an alternative witness will also provide additional time for the [REDACTED] to D30-4914 for his testimony. As it stands, [REDACTED], even were D30-4914 to agree to testify via video-link, he is unable to do so.

There is no prejudice that would result from granting the Defence request

D30-4679 was originally scheduled to testify shortly after D30-4914, therefore this schedule change would not be a significant shift from the present one. Moreover, the Prosecution is well acquainted with this witness. The Prosecution interviewed D30-4679 on 3 November 2020 and again, more recently, on 21 and 25 March 2024 in preparation for its examination. Therefore, no arguments regarding prejudice to the Prosecution's preparation can be made.

Relief Sought

For the reasons elaborated upon above, the Defence respectfully requests the Chamber to reconsider the Order by granting the Defence's request to have D30-4679 testify during the week of 20 May, thereby postponing D30-4914's prospective testimony to a date to be determined in due course.

Kind regards,

[REDACTED]

On behalf of Ngaïssona Defence team

From: Trial Chamber V Communications [REDACTED]

Sent: 08 May 2024 15:27

To: Trial Chamber V Communications [REDACTED]; D30 Ngaïssona Defence Team [REDACTED]

Cc: D29 Yekatom Defence Team [REDACTED] OTP CAR IIB [REDACTED]
V44 LRV Team OPCV [REDACTED]; V44 LRV Team [REDACTED] V45 LRV Team [REDACTED]
[REDACTED] Associate Legal Officer-Court Officer [REDACTED]
VWS Team Tasks [REDACTED]; VWS Legal [REDACTED]; Chamber Decisions Communication [REDACTED]

Subject: Order regarding D30-4914's testimony

Dear counsel,

The Chamber takes note of the Ngaïssona Defence's email below, indicating that D30-4914 whom it intended to call in person at headquarters, is unable to appear on 20-23 May 2024, as scheduled.

The Chamber recalls that in-person and video-link testimony are equal options to give *viva voce* testimony under the statutory framework. Moreover, it recalls that the deference given to the participants with regard to choosing the mode of testimony for their witnesses is subject to countervailing considerations, including the Chamber's overarching obligation to ensure a fair and expeditious trial (see Initial Directions on the Conduct of the Proceedings, ICC-01/14-01/18-631, paras 29-31).

Noting that cancelling D30-4914's testimony would likely result in a gap in the hearing schedule, the Chamber orders that the witness be called via video-link.

Kind regards, TC V

From: [REDACTED]
Sent: Wednesday, May 8, 2024 12:32 PM
To: Trial Chamber V Communications [REDACTED]
Cc: D30 Ngaissona Defence Team [REDACTED] D29 Yekatom Defence Team [REDACTED] OTP CAR IIB [REDACTED] V44 LRV Team OPCV [REDACTED] V44 LRV Team [REDACTED] V45 LRV Team [REDACTED] Associate Legal Officer-Court Officer [REDACTED]; VWS Team Tasks [REDACTED]
Subject: Update regarding D30-4914

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[ICC] RESTRICTED

Dear Trial Chamber,

Unfortunately, the Ngaissona defence has just been informed that it will not be possible to bring witness D30-4914 the week of 20 May as scheduled.

On 7 March 2024, the Defence duly requested the assistance of [REDACTED] for D30-4914 to travel to the Hague. After several follow-ups, the Defence was informed late last week that receipt of [REDACTED] was imminent and would be received on time.

However, yesterday afternoon, [REDACTED] conveyed that while [REDACTED] had been received, it was for the wrong witness. Today, [REDACTED] followed up to confirm that we would not be receiving [REDACTED] this week, thereby making the travel of the witness impossible. Even after inquiry, it remains unclear why the wrong witness was prioritised over D30-4914.

The Defence is currently assessing its options, which are unfortunately limited given the last-minute change, the small number of remaining witnesses and their respective prior commitments. We want to reassure the Chamber that we will endeavour to find a solution, but unfortunately, we are not in a position to confirm whether we will be able to fill the week of 20 May.

We will keep the Chamber, parties and participants informed of any developments as soon as possible.

Kind regards,
[REDACTED] on behalf of Ngaissona Defence team

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