

ANNEX 18

Public Redacted

Version

From: Trial Chamber V Communications
Sent: 28 May 2024 16:04
To: Trial Chamber V Communications; D30 Ngaissona Defence Team
Cc: D29 Yekatom Defence Team; OTP CAR IIB; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; Associate Legal Officer-Court Officer; Chamber Decisions Communication; VWS Legal; Chamber Decisions Communication
Subject: Order to the Registry to provide a report on its efforts to secure the attendance of all remaining Defence witnesses

Dear all,

The Single Judge notes the updates provided by the Ngaissona Defence below, indicating that D30-4914 is again not able to testify as scheduled and that further cancellations during block 33 are conceivable.

In light of this information, the Single Judges orders the Registry to provide a report, by 30 May 2024, detailing (i) its past and ongoing efforts in securing the attendance of all remaining witnesses (see the respective witness orders in the email from the Ngaissona Defence, 1 May 2024, at 14:25 and the email from the Yekatom Defence, 1 May 2024, at 09:52, as well as witness D30-4848) and (ii) its realistic estimate on which dates their testimonies can be arranged.

This report should also include answers with regard to the following questions:

- **D30-4914:** the reasons why the authorisation required for this witness was not issued on time and arranged for the wrong witness, as well as a concrete indication on which date this authorisation will be obtained
- **D30-4679:** concrete indication on which date the authorisation will be obtained and realistic estimate as to whether the witness can testify during block 33, as scheduled
- **D29-4011:** information regarding the witness's fitness to testify and realistic estimate as to whether her testimony can be arranged before the summer recess
- **D30-4848:** reasons why the witness's testimony cannot be arranged before 27 June 2024

Based on this report, the Single Judge will consider any further steps required to expedite the proceedings and conclude the case.

The Registry may provide its reports on an *ex parte* basis, should it deem this necessary, but shall provide a redacted version available to the participants at the same time.

In addition, the Defence teams are ordered to explain by the same deadline why no viable contingency witness is available, despite the Chamber's clear orders in that regard.

Kind regards, TC V

From: [REDACTED]
Sent: Monday, May 27, 2024 5:12 PM
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]
 Chamber Decisions Communication [REDACTED] VWS Legal [REDACTED]
 [REDACTED]
Subject: Re: Decision regarding the witness order for block 33

[ICC] RESTRICTED

Dear Trial Chamber,
Dear Parties and Participants,

The Ngaïssona defence was informed earlier this afternoon by CSS that the authorisation for witness D30-4914 cannot be obtained for the next two weeks, despite the authorisation request having been sent nearly 3 months ago.

The Defence is exploring all avenues to minimize the inconvenience caused by the CAR authorities' failure to cooperate. In this regard, please note the following:

1. We were informed by CSS today that there is no information available regarding the authorisation for witness D30-4679, despite the authorisation letter having been sent on 12 April 2024.
2. The Defence has planned to bring witness D30-4496 to Bangui from Bossangoa for an essential interview on 31 May. In the event that the Defence decides to go ahead with her testimony, we could do the handover to VWS in the immediate aftermath of the interview, which would potentially allow to anticipate her appearance by one day, on 6 June instead of 7. We will only be in a position to inform the Chamber of a potential anticipation of her testimony on 31 May, after the interview.
3. The dates for D30-4608 are locked in due to the multiple work commitments of the witness.
4. After consultation with VWS, Witness D30-4848 cannot testify before 27 June. The Defence is intending to call him the first week of July.
5. After consultation with the Yekatom team, they unfortunately are unable to bring witnesses next week.
6. The Ngaïssona Defence teams is confident that all its witnesses will be heard before the summer recess, provided that necessary authorisations are issued promptly.

In light of the above, the Defence reiterates its requests from last Friday (email sent at 11h35) to (1) order the CAR authorities to issue the required authorisation to the Ngaïssona defence witnesses; and to (2) order VWS to explore the possibility of proceeding with the testimony of the witness without an authorisation from the CAR authorities.

In addition, the Defence respectfully requests the Chamber to (3) order the Judicial Cooperation Section of the Registry to submit a full report of their interactions with the CAR authorities in trying to secure the authorisations for witness D30-4914. Such report could be filed ex parte should the Registry believe that the Defence should not be made aware of it in whole or in part.

Thank you and kind regards,

[REDACTED] on behalf of Ngaïssona defence team

From: [REDACTED]

Sent: 24 May 2024 11:34

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

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];
 Chamber Decisions Communication [REDACTED]; VWS Legal [REDACTED]
 [REDACTED]

Subject: Re: Decision regarding the witness order for block 33

Dear Trial Chamber,
 Dear parties and participants,

The Ngaïssona defence takes note of the Chamber's order sent yesterday, and takes this opportunity to update the Chamber on recent developments.

After following up again with the Counsel Support Section yesterday and today, the Defence was informed this morning that the authorisation letter for witness D30-4914 would not be ready today, and that there was no further information as to when the letter would be issued.

The Defence is very concerned by what seems to be a deliberate attempt by the CAR authorities to impede the work of the Ngaïssona defence team. The authorisation letter was sent over 2 ½ months ago, and the Defence diligently and repeatedly followed up on its execution. At this stage, the absence of response from the CAR authorities amounts to constructive denial of the request.

This is symptomatic of our team's previous interactions with the CAR authorities, and in particular with the CAR Focal Point, whereby our successive requests for cooperation have remained either unanswered or unsuccessful after delays of several months or even years. The cumulative effect of the repeated failures of the CAR authorities to cooperate with the Defence causes prejudice to Mr Ngaïssona and endangers the presentation of our defence case. Witness D30-4914 is of crucial importance to the defence of our client, and failure to secure his evidence will cause irreparable prejudice.

We respectfully suggest that urgent intervention by the Chamber is warranted, through the issuance of an order to the CAR authorities to issue the requested authorisation for witness D30-4914. Failing this, we request that the Chamber order VWS to explore the possibility of proceeding with the testimony of the witness without an authorisation from the CAR authorities.

Kind regards,

[REDACTED], on behalf of Ngaïssona defence team

From: Trial Chamber V Communications [REDACTED]
Sent: 23 May 2024 15:37
To: 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]
 Chamber Decisions Communication [REDACTED]; VWS Legal [REDACTED]
 [REDACTED]
Subject: Decision regarding the witness order for block 33

[ICC] RESTRICTED

Dear Counsel,

The Single Judge takes note of the Ngaissona Defence's unfortunate update regarding D30-4914's testimony (*see* email below), who is currently scheduled to testify from 3-6 June 2024. However, the VWU has informed the Single Judge that the witness's testimony can still be arranged via video-link if the required authorisation is obtained by 28 May 2024 (*see* email from the VWU to the Chamber's Legal Officer, 22 May 2024, at 16:59). Accordingly, he instructs the Registry to do everything within its powers in order to secure the witness's appearance on the abovementioned dates.

In parallel, and to ensure that the scheduled hearing days are definitely used, the Single Judge orders the Ngaissona Defence to immediately liaise with the VWU to identify other available witnesses and inform the Chamber and participants by **28 May 2024** whether D30-4914 or another witness will testify on the abovementioned dates. In this context, the Single Judge stresses, again, that the Chamber cannot, and will not postpone testimonies indefinitely.

Kind regards, TC V

From: [REDACTED]
Sent: Wednesday, May 22, 2024 10:45 AM
To: Trial Chamber V Communications [REDACTED]
Cc: D30 Ngaissona Defence Team [REDACTED]
Subject: Ngaissona Defence update on the authorisation regarding CAR-D30-P-4914

[ICC] RESTRICTED

Dear Trial Chamber V,

The Ngaissona Defence hereby wishes to inform the Chamber on the situation regarding the pending authorisation for witness CAR-D30-P-4914.

On 7 March 2024, the Defence forwarded to the Counsel Support Section (CSS) a cooperation request seeking authorisation from the CAR authorities allowing witness CAR-D30-P-4914 to testify before the Chamber. Despite numerous follow-ups with CSS, the said authorisation was never issued on time, leading the Defence to postpone CAR-D30-P-4914's testimony for a later date (i.e. 3-6 June as per the latest provisional block schedule communicated).

On Monday 13 May, after consultations with VWU on the logistics of the witness's appearance, the Defence requested from CSS that the authorisation mentions the new dates of testimony and for it to be issued by Friday, 24 May 2024 at the latest.

Yesterday, the Defence was informed by CSS that, despite following-up on the authorisation request and underlining the urgency of the matter, there are still no updates on when the authorisation will be issued. According to the information we have received, it appears that the Minister responsible to sign the authorisation is out of office, without an indication as to when he will return, while there is no one else who can sign the authorisation on his behalf.

The Defence is aware that his testimony has already been postponed once and mindful of the Chamber's wish to not have any gaps in the trial schedule that could create further delays. Nevertheless, at this stage, the Defence has done everything in its control to receive the authorisation on time. Despite the Defence's diligence, the CAR authorities have been unresponsive, jeopardizing the appearance of witness CAR-D30-P-4914 before the Chamber.

The present email is sent on an *ex parte* basis as it contains information about the appearance of Defence witnesses and State cooperation. Should there be any updates, the Defence will inform the Chamber accordingly.

Kind regards,

[REDACTED]

[REDACTED]

Case Manager – Ngaïssona Defence Team

International Criminal Court (ICC)

Telephone number [REDACTED]

[REDACTED]

www.icc-cpi.int

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