

ANNEX 22

Public Redacted

Version

From: Trial Chamber V Communications
Sent: 24 September 2024 10:08
To: OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; 'V44 LRV Team'; V44 LRV Team OPCV; V45 LRV Team; VWS Legal
Cc: Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber V Communications
Subject: Decision on the Yekatom Defence Request to Access Unpixellated and Clear Voice Audio-Visual Recordings of Hearings

[ICC] RESTRICTED

Dear Counsel, dear colleagues of the Registry,

The Single Judge takes note of the Yekatom Defence's request, as well as the Prosecution's and the Ngaissona Defence's positions on the matter.

Having examined the proposed conditions detailed by the Registry, as well as its practice in past cases, the Single Judge is not convinced that the provision of the requested material to the Yekatom Defence is appropriate in the circumstances. In particular, the Single Judge is of the view that, in light of the existing risks to the witnesses' safety, it is disproportionate for this material to be further disseminated. He further notes that the Yekatom Defence has in its possession the transcripts of the witnesses' testimony, and that it already had the opportunity to assess their demeanour in court during their examination. The request is therefore rejected (*see also* Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Single Judge decision on Defence request for access to a photograph of each witness during testimony, 26 May 2021, at 08:15, ICC-01/12-01/18-1660-Anx50-Red).

Kind regards, TC V

From: [REDACTED]
Sent: Friday, September 20, 2024 7:24 PM
To: Dimitri, Mylene [REDACTED] Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED] Chamber Decisions Communication [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]; VWS Legal [REDACTED] OTP CAR IIB <[REDACTED]> D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED] V44 LRV Team [REDACTED] V45 LRV Team [REDACTED]
Subject: Re: Decision on the Yekatom Defence Request for access to recordings of in-court testimonies

[ICC] RESTRICTED

[ICC] RESTRICTED

Dear Trial Chamber,

In the interests of clarity, I am writing on behalf of Counsel to note that the Ngaissona Defence defers to the Chamber in relation to the Yekatom Defence request.

Kind regards,

From: Dimitri, Mylene
Sent: Friday, September 20, 2024 6:02 PM

To: Trial Chamber V Communications

Cc: D29 Yekatom Defence Team; Chamber Decisions Communication
 Associate Legal Officer-Court Officer
 ; VWS Legal; OTP CAR IIB; D30
 Ngaissona Defence Team; V44 LRV Team OPCV
 V44 LRV Team; V45 LRV Team

Subject: RE: Decision on the Yekatom Defence Request for access to recordings of in-court testimonies

[ICC] RESTRICTED

Dear Trial Chamber V,

We would like to extend our thanks to the CMS representative for the clear and detailed explanation regarding the conditions for accessing the unpixelated and clear voice audio-visual recordings of the in-court testimony.

We fully undertake to comply with all outlined conditions and would like to reassure the Chamber that, as counsel, we are bound by a strict code of conduct, oath, and confidentiality protocol. These obligations ensure that we handle all sensitive material with the utmost care and discretion.

Kind regards,
 Mylène Dimitri

From:
Sent: Friday, September 20, 2024 3:22 PM

To: Trial Chamber V Communications

Cc: D29 Yekatom Defence Team; Chamber Decisions Communication
 Associate Legal Officer-Court Officer
 ; VWS Legal; OTP CAR IIB; D30
 Ngaissona Defence Team; V44 LRV Team OPCV
 V44 LRV Team; V45 LRV Team

Subject: RE: Decision on the Yekatom Defence Request for access to recordings of in-court testimonies

[ICC] RESTRICTED

[ICC] RESTRICTED

Dear Trial Chamber V,

On behalf of the Registry, CMS provides the following observations on the access to unpixelated and clear voice audio visual-recordings of in-court testimony:

The proposed logistics of arranging such access in order to mitigate security concerns:

Upon Chamber's authorization, the Registry will proceed to upload the files of the requested in-court testimony using an encrypted file sharing. The contents in the will expire after 30 days from the date of the transmission, the will be transmitted to the Defence via Counsel Support Section. The Defence would need to adhere to the following instructions:

- Only view such in-court testimonies on the official computers situated in the Defence's office in HQ;
- Remote work on those videos-recordings is not allowed;
- Downloading the video-recordings on USB sticks or any other external electronic device is forbidden;
- Screenshots of the videos are not allowed;
- The use of mobile phones or any other recording device while consulting the video recordings is not allowed;
- The video-recordings can only be consulted at a closed office assigned to the Defence at the HQ and the entry of any non-team member when consulting the video recordings is not allowed.
- VWU recommends to keep a logbook of those viewing the video of testimony and to ensure that there are no cameras, or recording devices in the viewing room.

The Registry's past practice

The current and past practices across cases is, upon request, where in-court protective measures in the form of facial distortion and/or voice distortion were granted and upon Chamber's authorization, unpixelated and clear voice video-recording of in-court testimony (including any private or closed sessions) is consulted by the Defence under the supervision of the Registry at a Counsel Support Section's office on a PC assigned to the Registry-CSS where the necessary software has been previously installed.

Mobile phones are not allowed during the consultation and the Defence takes notes of the parts that are of importance for their work.

Kind regards,

██████████ on behalf of Court Management Section

From: ██████████

Sent: Thursday, September 19, 2024 9:40 AM

To: Trial Chamber V Communications ██████████

Cc: D29 Yekatom Defence Team ██████████; Chamber Decisions Communication ██████████; Associate Legal Officer-Court Officer ██████████

██████████ VWS Legal ██████████; OTP CAR IIB ██████████; D30 Ngaissona Defence Team ██████████; V44 LRV Team OPCV ██████████

██████████; V44 LRV Team ██████████; V45 LRV Team ██████████

Subject: RE: Decision on the Yekatom Defence Request for access to recordings of in-court testimonies

[ICC] RESTRICTED

Dear Trial Chamber V,

Dear all,

Pursuant to the Single Judge's instruction below, the Yekatom Defence hereby shares its below request with all parties and participants.

Kind regards,

██████████
Yekatom Defence

From: Trial Chamber V Communications ██████████

Sent: Wednesday, September 18, 2024 5:56 PM

To: D29 Yekatom Defence Team ██████████ Associate Legal Officer-Court Officer ██████████ >; VWS Legal ██████████

Cc: Trial Chamber V Communications ██████████ Chamber Decisions Communication

< [REDACTED]

Subject: Decision on the Yekatom Defence Request for access to recordings of in-court testimonies

[ICC] RESTRICTED

Dear all,

The Single Judge takes note of the Yekatom Defence's request below.

He orders the Registry to provide observations thereon by 20 September 2024. These observations should discuss the logistics of arranging such access (including whether Registry staff would be present), any potential security concerns and proposals to address them, and clarify the Registry's past practice in this regard.

Finally, the Single Judge is not persuaded that this request warrants to be treated *ex parte* and will issue his decision as confidential. The Single Judge therefore instructs the Yekatom Defence to share its below request with all participants, or, if deemed necessary, provide a redacted version thereof, by tomorrow, 19 September 2024.

Kind regards, TC V

From: [REDACTED]**Sent:** Tuesday, September 17, 2024 5:24 PM**To:** Trial Chamber V Communications [REDACTED] >**Cc:** D29 Yekatom Defence Team [REDACTED] Associate Legal Officer-Court Officer

< [REDACTED]

Subject: [Yekatom] Request for access to recordings of in-court testimonies

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[ICC] RESTRICTED

Dear Trial Chamber V,

The Yekatom Defence respectfully requests access, on the Court's premises, to a limited number of recordings (approximately 10) of protected witnesses' in-court testimonies without face or voice distortion.

We have already discussed this request to CMS, who indicated they could facilitate and organize this access. We will provide them with a detailed list of the recordings, which can be supplied upon request. Viewing the witness testimonies without face and voice distortion is crucial for the preparation of our final trial brief and closing arguments as their demeanour is a key factor we wish to address.

We believe our submissions should not be limited to the content of the transcripts alone. The manner in which the testimony was delivered, as well as the witnesses' demeanour, are important elements of credibility, which we aim to highlight to the Chamber with specific timestamp references.

The Defence recalls that Chambers have found in the past that the witness's demeanour was a factor taken into account to assess their evidence (see *Prosecutor v. Ongwen*, Trial Judgement, ICC-02/04-01/15/17-92-Red, para. 259 : Further factors which might also have an influence on the Chamber's assessment of evidence given by witnesses who testified live are its immediate impression of the witness during their testimony, the witness's demeanour and bearing when testifying in court, willingness to respond to questions and spontaneity when responding). As of right now, the Defence is unable to provide any substantial submissions on the witness's demeanour of witnesses which benefited from face and voice distortion; the present request aim to provide the Chamber with the Defence's arguments as regard to those witnesses for its deliberation.

Please rest assured that the videos will remain on the Court's premises and will be handled with the utmost care and confidentiality. As such the Defence undertake to :

- Only view such in-court testimonies on the official computers situated in the Defence's office in HQ;
- Not allow any remote work on those videos;
- Not allow any download of the videos on a USB stick or similar devices;
- Not take any screenshot of the videos;
- Follow any other security measures suggested by CMS.

This request is made *ex parte* because it relates to the Defence's internal organisation.

We thank you for your consideration of this request and remain available to provide any further information the Chamber may require.

Kind regards,



Legal intern – Yekatom Defence

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From: OTP CAR IIB
Sent: 19 September 2024 10:33
To: [REDACTED]; Trial Chamber V Communications
Cc: D29 Yekatom Defence Team; Chamber Decisions Communication; Associate Legal Officer-Court Officer; VWS Legal; OTP CAR IIB; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team
Subject: RE: Decision on the Yekatom Defence Request for access to recordings of in-court testimonies

[ICC] RESTRICTED

Dear Trial Chamber V,
 Dear Counsel,

Although the Request lacks justification given the Defence's presence in the Courtroom, allowing them to see and hear the witnesses to the same extent as the Judges and the other Parties and Participants, the Prosecution takes no position on it; provided that stringent conditions of confidentiality are not only specifically required and undertaken, but duly observed. Thank you.

Kind regards,

On behalf of the Prosecution

From: [REDACTED]
Sent: Thursday, September 19, 2024 9:40 AM
To: Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED] Chamber Decisions Communication [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]; VWS Legal [REDACTED]; OTP CAR IIB [REDACTED]; D30 Ngaissona Defence Team [REDACTED] V44 LRV Team OPCV [REDACTED] V44 LRV Team [REDACTED]; V45 LRV Team [REDACTED]
Subject: RE: Decision on the Yekatom Defence Request for access to recordings of in-court testimonies

[ICC] RESTRICTED

Dear Trial Chamber V,
 Dear all,

Pursuant to the Single Judge's instruction below, the Yekatom Defence hereby shares its below request with all parties and participants.

Kind regards,

[REDACTED]
 Yekatom Defence

From: Trial Chamber V Communications [REDACTED]
Sent: Wednesday, September 18, 2024 5:56 PM
To: D29 Yekatom Defence Team [REDACTED]; Associate Legal Officer-Court Officer

VWS Legal

Cc: Trial Chamber V Communications; Chamber Decisions Communication**Subject:** Decision on the Yekatom Defence Request for access to recordings of in-court testimonies

[ICC] RESTRICTED

Dear all,

The Single Judge takes note of the Yekatom Defence's request below.

He orders the Registry to provide observations thereon by 20 September 2024. These observations should discuss the logistics of arranging such access (including whether Registry staff would be present), any potential security concerns and proposals to address them, and clarify the Registry's past practice in this regard.

Finally, the Single Judge is not persuaded that this request warrants to be treated *ex parte* and will issue his decision as confidential. The Single Judge therefore instructs the Yekatom Defence to share its below request with all participants, or, if deemed necessary, provide a redacted version thereof, by tomorrow, 19 September 2024.

Kind regards, TC V

From:**Sent:** Tuesday, September 17, 2024 5:24 PM**To:** Trial Chamber V Communications**Cc:** D29 Yekatom Defence Team; Associate Legal Officer-Court Officer**Subject:** [Yekatom] Request for access to recordings of in-court testimonies

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[ICC] RESTRICTED

Dear Trial Chamber V,

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We have already discussed this request to CMS, who indicated they could facilitate and organize this access. We will provide them with a detailed list of the recordings, which can be supplied upon request. Viewing the witness testimonies without face and voice distortion is crucial for the preparation of our final trial brief and closing arguments as their demeanour is a key factor we wish to address.

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benefited from face and voice distortion; the present request aim to provide the Chamber with the Defence's arguments as regard to those witnesses for its deliberation.

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- Not take any screenshot of the videos;
- Follow any other security measures suggested by CMS.

This request is made *ex parte* because it relates to the Defence's internal organisation.

We thank you for your consideration of this request and remain available to provide any further information the Chamber may require.

Kind regards,



Legal intern – Yekatom Defence

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