

From: Trial Chamber V Communications
Sent: 25 February 2021 15:41
To: Vanderpuye, Kweku; Trial Chamber V Communications; [REDACTED]
Cc: D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; OTP CAR IIB Case Management; OTP CAR IIB Operations; OTP CAR IIB Managers; Chamber Decisions Communication
Subject: RE: Prosecution anticipated witness order for the First Block
Follow Up Flag: Follow up
Flag Status: Flagged

Dear Counsel,

The Single Judge takes note of the below Prosecution email, raising two specific issues concerning the testimony of P-1577.

As regards the first issue, the Single Judge considers it sufficient to confirm that the Prosecution's request [REDACTED] for P-1577 (ICC-01/14-01/18-843-Conf) is pending before the Chamber. The Chamber will render its decision in due course.

Turning to the second issue, the Single Judges recalls that the Chamber rejected the Prosecution's request for witness preparation (ICC-01/14-01/18-677). The Single Judge notes that paragraph 79 of the Witness Familiarisation Protocol (ICC-01/14-01/18-677-Anx1) provides that '[o]nce the witness arrived at the location of testimony, the entity calling the witness makes all previous statements available to the VWU. The calling party will also provide VWU with any document or information generated or provided by the witness when giving any of his/her previous statements'. Paragraph 80 of the Witness Familiarisation Protocol provides: 'The VWU should provide the following documents to the witness to refresh his/her memory: (i) a copy of all the statements the witness has previously given. The term statement includes any signed statement and recorded interview (audio, video or both) and, (ii) any document or information generated or provided by the witness when giving any of his/her previous statements.'

In light of these provisions, the Single Judge is of the view that the annexes of [REDACTED] can most adequately be provided to the witness in the context of the witness familiarisation process conducted by the VWU.

Kind regards,
 TC V

From: Vanderpuye, Kweku [REDACTED]
Sent: 23 February 2021 17:26
To: Trial Chamber V Communications [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
Subject: RE: Prosecution anticipated witness order for the First Block

Dear Trial Chamber V,

Further to the scheduling of P-1577, the Prosecution would like to raise two specific issues.

First, as alluded to previously and just alert the Chamber, the scheduling of the prospective testimony of P-1577 is contingent on [REDACTED]

Second, as the witness's anticipated evidence involves a substantial number of [REDACTED], the Prosecution would like to provide him with the annexes of the [REDACTED] he provided in the context of his statement, and particularly those about which he will be asked to comment. As the Chamber is aware, the witness [REDACTED], and likely [REDACTED]. Because the [REDACTED] come from the witness himself – which we do not believe is contested – there is no issue of suggestibility. And, the Prosecution considers that it may be in the interests of the efficient conduct of his testimony that he be acquainted with the relatively [REDACTED] about which he may be questioned beforehand. As it is presently unclear whether the Familiarisation Protocol is/will be modified in the same way as was done in the *Ongwen* proceedings – namely, effectively prohibiting the calling party from having any substantive contact with witnesses less than 'one-month' before their scheduled testimony (see ICC-02/04-01/15-876-Anx1, 2 May 2017), the Prosecution seeks the Chamber's considered guidance on the propriety of providing the proposed annex(es) of [REDACTED] in this circumstance.

Thank you for your consideration.

Kind regards,

Kweku Vanderpuye

From: Trial Chamber V Communications [REDACTED]

Sent: 19 February 2021 16:09

To: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Subject: RE: Prosecution anticipated witness order for the First Block

Dear Counsel,

Noting the participants' agreement on this matter, the Single Judge authorises the Prosecution to exceptionally call P-1577 within less than 45 days of the filing of its Rule 68(3) application.

Kind regards, TC V

From: [REDACTED]

Sent: 19 February 2021 11:24

To: Trial Chamber V Communications [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Subject: RE: Prosecution anticipated witness order for the First Block

Dear Trial Chamber V,
Dear All,

In respect of the first block of witnesses, the Prosecution would like to bring the following to the Chamber's attention. For the first witness, P-2682, the Prosecution has indicated her anticipated testimony (examination-in-chief) to take 4 hours. The Defence for Mr Yekatom has assessed their examination to take 4.5 hours, and the legal representatives to take 30-45 minutes. The Defence for Mr Ngaissona has not provided any estimate.

Taking into account the Court's sitting hours (4,5 hours per day), and the fact that it can be expected that some time in Court will be used to address issues in addition to the witness' testimony (such as procedural matters and formalities), it is likely that P-2682 will testify on 15, 16 and 18 March 2021. In theory, P-1577 could thus start his testimony on 18 or 19 March 2021.

Doing so would allow the Prosecution to keep the proposed witness order intact, which would be beneficial to the preparation of the Parties and Participants and presentation of the case. However, as the Prosecution's Rule 68(3) application for P-1577 had to be refiled due to a clerical error (ICC-01/14-01/18-871-Conf), its 3 February notification date would preclude his testimony until 22 March, as testifying on 18 March would otherwise occur within 43 days of the application [REDACTED].

Accordingly, the Prosecution seeks the Chamber's guidance: namely, whether it should re-arrange the witness order (with P-2193 or P-2926 possibly testifying earlier than scheduled), or whether the Chamber would consider authorising the Prosecution to exceptionally call P-1577 within less than 45 days of the filing of its Rule 68(3) application.

The Prosecution has sought the Parties and Participants' views, and they do not oppose calling P-1577 a few days earlier.

Alternatively, P-1577 could start his evidence on Monday, 22 March regardless of the duration of P-2682's testimony. The Prosecution believes keeping the current order will be the least prejudicial to the Defence. For the sake of completeness, the Prosecution also informs the Chamber that the estimated time of examination for P-1577 has been assessed at 5 hours for the Prosecution, 30-45 minutes for each of the participants, and 45 minutes for Defence for Mr Yekatom.

Kind regards,

[REDACTED]

OTP Case Manager

From: [REDACTED]

Sent: lundi 15 février 2021 18:07

To: Trial Chamber V Communications [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Subject: Prosecution anticipated witness order for the First Block

Dear Trial Chamber V,

Dear All,

Pursuant to the Initial Directions on the Conduct of the Proceedings (ICC-01/14-01/18-631, para. 28), the Prosecution considers that there will be a change in the anticipated witness order for the First Block and notifies the Parties and Participants accordingly.

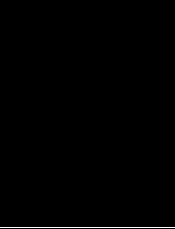
The Chart below indicates the expected change and related contingencies.

The Prosecution notes that, should P-2625 be unavailable to testify on time notwithstanding the Chamber's 8 January 2021 Decision (ICC-01/14-01/18-804-Conf), the Prosecution intends to proceed with P-1847 in his place.

Please let us know if there are any questions or concerns. Thank you.

Kind regards,

On behalf of
Kweku Vanderpuye

Order in ICC-01/14-01/18-724-Conf-AnxB			Current anticipated order of Block 1 witnesses
			1. P-2682
			2. P-1577
			3. P-2193
			4. P-2926
			5. P-2625 (if available)
			6. P-0287 (shifted down)