

ANNEX 14

PUBLIC

From: Trial Chamber V Communications
Sent: 07 July 2021 17:05
To: Vanderpuye, Kweku; Trial Chamber V Communications; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team
Cc: OTP CAR IIB Operations; OTP CAR IIB Case Management; [REDACTED]
 [REDACTED] Associate Legal Officer-Court Officer; Chamber Decisions Communication
Subject: RE: Request to modify Initial Directions

Dear Counsel,

The Presiding Judge takes note of the Prosecution's request below.

The Presiding Judge stresses that, as a general rule, redactions to the transcripts should be requested and applied during the hearings. These redactions should subsequently be narrowed down or lifted, rather than additional redactions being applied. The Presiding Judge will not amend this overall system, as set out in the Initial Directions, paras 71-72.

However, the Presiding Judge acknowledges that exceptions might be warranted where specific circumstances so require. Should there be an oversight in terms of redactions in the edited transcript, which puts a witness at risk, the Prosecution is directed to seize the Chamber with a redaction request promptly, and in any case before the Registry's deadline to publish the redacted version expires (Initial Directions, para. 71).

The Prosecution is directed to copy the Court Officer and the participants in such requests, who may object within 2 working hours. In the absence of any objection, the redaction is presumed to have been approved and can be applied by the Registry. The Registry may then proceed with publishing the public redacted transcript as directed in the Initial Directions, para. 71. In case of disagreement, the Presiding Judge will rule on the request for additional redactions.

The Presiding Judge expects that such requests for additional redactions will be submitted only exceptionally and not delay the publication of the public redacted transcripts. This direction may be modified, should it prove inefficient or burdensome in practice.

Kind regards, TC V

From: Vanderpuye, Kweku [REDACTED]
Sent: 26 June 2021 11:22
To: Trial Chamber V Communications [REDACTED] D29 Yekatom Defence Team
 [REDACTED] D30 Ngaissona Defence Team
 [REDACTED] V44 LRV Team OPCV [REDACTED] V44 LRV Team
 [REDACTED] V45 LRV Team [REDACTED]
Cc: OTP CAR IIB Operations [REDACTED] OTP CAR IIB Case Management
 [REDACTED]; [REDACTED]
 [REDACTED]
Subject: Request to modify Initial Directions

Dear Trial Chamber V,

Dear All,

Pursuant to rule 134(3) of the Rules of Procedure and Evidence (“Rules”), the Prosecution request the Chamber to modify the “Initial Directions on the Conduct of the Proceedings” (ICC-01/14-01/18-631, paras. 71 and 72), such that redacted versions of trial transcripts are only made public *after* the Calling Party has reviewed them. Doing so would substantially mitigate the risks of disseminating potentially identifying witnesses through inadvertence or error, proportionately securing the Court’s obligations under article 68. The requested modification is marginal, and justified in the circumstances. As observed in the *Gbagbo* and *Ble Goude* case, directions on the conduct of proceedings “are subject to modification, including in light of actual developments. Such developments are inherent in the nature of a trial and, as such, not predictable in advance” (ICC-02/11-01/15-498, para. 10).

Several factors warrant affording the Calling Party a meaningful and sufficient opportunity to review redacted transcripts before their wide public dissemination through the Court’s website.

First, there may be disparities in the French and English language transcripts. Information that should have been redacted in one language may not have been faithfully transposed to the other. In these instances, publication of the transcripts on the website before the Calling Party reviews and addresses them risks inadvertent disclosure of confidential/identifying information.

Second, the Parties and Participants may have failed to timely request in-Court redactions. Although not in compliance with the Chamber’s direction, witness’s should not be placed at risk on account of a mere oversight or otherwise remediable procedural irregularity. Article 68 obligations should supersede good faith missteps. This best ensures the protection and safety of witnesses. Additionally, authorised redactions during the proceedings may not address all of the identifying information in the testimony or may be applied disparately, pending the finalisation of the transcripts. The Calling Party should thus be afforded a sufficient opportunity to vet redacted transcripts in advance, to minimise the risk of compromising witnesses’ identities which can otherwise be discerned or pieced together from residual information left in the transcripts in error.

Third, the Prosecution is mindful of, and appreciates, the Registry’s diligence in ensuring the accuracy of redacted transcripts. Nevertheless, the Calling Party is best placed to review the transcripts of its witnesses’ testimony to determine whether additional redactions are necessary to safeguard the witness’s security. Once published, transcripts can be downloaded, and cannot be recalled. Members of the public having done so will have ample time to compare any subsequently withdrawn transcript against its greater-redacted replacement, underscoring sensitive identifying information. For example, the Prosecution proposed additional redactions for P-2673’s public redacted transcripts on 25 June 2021 due to the appearance of very clearly identifying information. However, these transcripts had already been made public on 3 June 2021. The consequences of the delay in removing them from the Court’s website remain to be seen. But, modifying the Initial Directions would clearly reduce any such risks.

Fourth, the publicity of proceedings is in not affected by temporarily delaying the publication of the redacted transcripts until there review by the Calling Party. Additionally, as the proceedings are broadcast and the public gallery remains unrestricted, the statutory requirements are effectively met. The countervailing interest under article 68 and the Court’s ability to protect witnesses in CAR, justify the requested modification.

Given the narrow issue addressed above, the Prosecution has submitted the Request via email. Thank you for your consideration.

Kind regards,

Kweku Vanderpuye



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