

ANNEX 5

PUBLIC

From: Trial Chamber V Communications
Sent: 17 February 2022 14:56
To: Dimitri, Mylene; Vanderpuye, Kweku; Trial Chamber V Communications; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V45 LRV Team; V44 LRV Team; VWS Legal
Cc: OTP CAR IIB Managers; OTP CAR IIB Case Management; Associate Legal Officer-Court Officer; Chamber Decisions Communication
Subject: RE: P-2582

Dear Counsel, dear colleagues from the Registry,

In light of the circumstances at hand, the Single Judge considers that the Chamber would indeed be assisted by receiving concrete information on P-2582. Accordingly, the VWU is ordered to provide all currently available information in this regard by 24 February 2022.

The Single Judge is grateful to the Yekatom Defence for bringing the positive news, if true, that witness P-2196 is in fact alive to the Chamber's attention. Noting that this information contradicts the Prosecution's submissions in this regard (see for example email from the Prosecution on 28 September 2021, at 22:09), the Single Judge instructs the Prosecution to update the Chamber on this witness by the same deadline.

Kind regards, TC V

From: Dimitri, Mylene
Sent: 16 February 2022 16:36
To: Vanderpuye, Kweku; Trial Chamber V Communications; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V45 LRV Team; V44 LRV Team
Cc: OTP CAR IIB Managers; OTP CAR IIB Case Management
Subject: RE: P-2582

Dear Trial Chamber V,
 Dear all,

The Yekatom Defence notes the Prosecution's notification of its intention to reschedule the testimony of P-2582.

In light of this notification, the Defence respectfully requests that the Chamber order the Registry to provide further information regarding P-2582 in order to determine whether the proposed rescheduling is justifiable in the circumstances.

The Defence here emphasises that it does not intend to call into question the veracity of the information provided by VWS and the Prosecution, or however, it is respectfully submitted that orders for further information are warranted for the following reasons.

First, the proposed rescheduling will substantially impact Defence preparations. P-2582 is a key Prosecution witness under *inter alia* Count 29; her anticipated evidence is strongly disputed, and contains extensive, prejudicial allegations against Mr Yekatom.

In the Prosecution's most recent 'Anticipated Upcoming Witness Order' (see, Email from Prosecution of 1 February 2022, at 14.24), P-2582 was listed at number 75; should P-2582 appear at the beginning of Block 11, she would testify at number 32 in the list – an advance in the order of over forty places. Given the current pace of proceedings, this represents a substantial difference in time.

Further, as the Chamber is aware, P-2582 was subject to delayed disclosure orders (ICC-01/14-01/18-648-Conf). In granting those orders, the Chamber expressly noted the Defence's request that the Prosecution call P-2582 near the end of its case, and 'strongly encourage[d] the Prosecution to make its best efforts to accommodate the Yekatom Defence's proposal to mitigate the potential prejudice caused' by the delayed disclosure orders.

As a result of these circumstances, Defence preparations and investigations in relation to P-2582 are ongoing, and are anticipated to remain ongoing at the commencement of Block 11. The proposed rescheduling will therefore likely impact the Defence's ability to effectively cross-examine P-2582 during Block 11 and by extension, Mr Yekatom's right to adequate time for defence preparation, and his right to examine witnesses brought against him. The proposed rescheduling could also potentially impact the expeditiousness of these proceedings as a whole in the event that P-2582 [REDACTED] and defence investigations result in additional material or issues for Defence examination being discovered, after her testimony in Block 11, warranting a request for her recall.

Second, in these proceedings to date, witnesses' unwillingness or failure to appear for testimony has been 'justified' [REDACTED] that, upon examination, appears to have been unreliable. The Chamber will recall having been informed by the Prosecution that witness P-2196 was unable to testify during Block 6 as he had passed away (see, Email from Prosecution of 29 September 2021, at 22.09). Following this notification, the Defence conducted its own inquiries into the alleged death of P-2196 and was informed that he was in fact alive; this information was then passed on the Prosecution who subsequently confirmed its belief, based on its own further verifications, that the witness was indeed alive.

In the circumstances therefore, it is respectfully submitted that the requested orders are warranted, given the likely impact that the proposed rescheduling will have on Defence preparations and by extension, Mr Yekatom's fair trial rights.

Kind regards,
Mylène Dimitri

From: Vanderpuye, Kweku [REDACTED]
Sent: 15 février 2022 11:16
To: Trial Chamber V Communications [REDACTED]; D29 Yekatom Defence Team
 [REDACTED]; D30 Ngaissona Defence Team
 [REDACTED]; V44 LRV Team OPCV [REDACTED] V45 LRV Team
 [REDACTED]; V44 LRV Team [REDACTED]
Cc: OTP CAR IIB Managers [REDACTED]; OTP CAR IIB Case Management
 [REDACTED]
Subject: P-2582
Importance: High

Dear Trial Chamber,

Dear All,

Please be advised that the Prosecution intends to call P-2582 out of turn (so to speak) at the beginning of Block 11.

VWS has informed the Prosecution that the witness [REDACTED] as soon as practicable. We want to ensure that the Parties are on notice as early as possible.

The Schedule for Block 11 will be timely provided. If, in the interim, the Parties and Participants could provide their respective examination time estimates for P-2582, that would be very helpful. Thank you.

Kind regards,

Kweku Vanderpuye



Cour
Pénale
Internationale
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