

ANNEX 40

PUBLIC

From: Trial Chamber V Communications
Sent: 19 April 2022 15:39
To: [REDACTED] Trial Chamber V Communications
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; Associate Legal Officer-Court Officer; [REDACTED] Chamber Decisions Communication; [REDACTED]; Dimitri, Mylene; [REDACTED]
Subject: Second Chamber's order in relation to the Prosecution's anticipated advancement of P-2475's testimony to the beginning of Block 13

Dear colleagues of the VWU,

As previously ordered (see email order 11 April 2022, at 15:48), the Chamber wishes to receive *all* currently available information on this matter. The Single Judge however understands from your email that only a part of this information has in fact been provided to the Chamber. VWU is therefore instructed to provide further details by 21 April 2022.

As previously instructed, the VWU should phrase its email in a way that can be shared with all participants, or alternatively, to provide two versions of the information, one to the Chamber and one confidential redacted version available to all participants, applying redactions as needed.

Kind regards, TC V

From: [REDACTED]
Sent: 14 April 2022 15:18
To: [REDACTED] Trial Chamber V Communications
Cc: D29 Yekatom Defence Team [REDACTED] D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED] V44 LRV Team [REDACTED]; V45 LRV Team [REDACTED]; OTP CAR IIB Case Management [REDACTED]; OTP CAR IIB Operations [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]; Chamber Decisions Communication [REDACTED]; [REDACTED]; [REDACTED]; Dimitri, Mylene [REDACTED]
Subject: RE: Chamber's order in relation to the Prosecution's anticipated advancement of P-2475's testimony to the beginning of Block 13

Dear Trial Chamber V,
 Dear all,

The Yekatom Defence takes note of the VWU's email below. We understand that P-2475's [REDACTED]
 [REDACTED]
 [REDACTED]

However, the Defence fails to understand why this new situation constitutes 'unforeseen circumstances potentially endangering his availability to testify as scheduled' to quote the original Prosecution's email. Indeed many witnesses who are not [REDACTED] have testified before the Chamber and it does not preclude a willing witness to appear in Court.

Kind regards,

From: Trial Chamber V Communications [REDACTED]
Sent: 11 April 2022 15:48
To: Dimitri, Mylene [REDACTED]; Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team [REDACTED] V44 LRV Team OPCV [REDACTED] V44 LRV Team [REDACTED]; V45 LRV Team [REDACTED]; OTP CAR IIB Case Management [REDACTED] OTP CAR IIB Operations [REDACTED]; Associate Legal Officer-Court Officer [REDACTED] [REDACTED]; Chamber Decisions Communication [REDACTED] [REDACTED] VWS Legal [REDACTED]
Subject: Chamber's order in relation to the Prosecution's anticipated advancement of P-2475's testimony to the beginning of Block 13

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 further information on P-2475's status, in particular regarding the purported 'unforeseen circumstances potentially endangering his availability to testify as scheduled'. Accordingly, the VWU is ordered to provide all currently available information in this regard by 14 April 2022.

The VWU is further instructed to phrase its email in a way that can be shared with all participants, or alternatively, to provide a confidential redacted version of its email, bearing in mind the Defence's email below.

Kind regards, TC V

From: Dimitri, Mylene [REDACTED]
Sent: 07 April 2022 11:59
To: [REDACTED] Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED] D30 Ngaissona Defence Team [REDACTED] V44 LRV Team OPCV [REDACTED] V44 LRV Team [REDACTED]; V45 LRV Team [REDACTED]; OTP CAR IIB Case Management [REDACTED] OTP CAR IIB Operations [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]
Subject: RE: Advancement of P-2475's testimony to the beginning of Block 13

Dear Trial Chamber V,
 Dear all,

The Yekatom Defence notes the Prosecution's notification of its intention to reschedule the testimony of P-2475.

In light of this notification, the Defence respectfully requests that the Chamber order the Registry to provide further information regarding P-2475's cited unforeseen circumstances potentially endangering his availability to testify as scheduled as well as his possible unavailability if postponed at a later date. The sought report would enable the Defence to make an informed decision.

Since P-2475 is a witness testifying mainly if not exclusively against Mr. Yekatom, the Prosecution approached the Defence a few days ago to discuss his possible rescheduling. At first, the Prosecution's information was to the effect that the witness had to come during Block 12, to avoid a possible unavailability to testify at all at any point past that Block.

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

First, the proposed rescheduling will impact Defence preparations. P-2475 is a key Prosecution witness under *inter alia* Counts 2,3 and 29; his 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 2 March 2022, at 09.52), P-2475 was listed at number 70; should P-2475 appear at the beginning of Block 13, he would testify at number 36 in the list – an advance in the order of over thirty places. Given the current pace of proceedings, this represents a substantial difference in time.

As a result of these circumstances, Defence preparations and investigations in relation to P-2475 are ongoing, and are anticipated to remain ongoing at the commencement of Block 13.

Second, despite the above, the Defence indicated to the Prosecution that if there was any risk to end up with an unavailable witness the Defence would make itself ready to examine P-2475 for Block 12. The Defence is not willing to take any chance of waiving its right to examine this witness as the Defence will object any rule 68 application.

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. The Defence wants to ensure through the report that it any advancement is necessary and that a postponement, if any, will not impact the Registry's ability to guarantee the appearance of P-2475 for his examination.

Kind regards,
Mylène Dimitri

From: [REDACTED]
Sent: 6 avril 2022 17:52
To: Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED] D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED] V44 LRV Team [REDACTED] V45 LRV Team [REDACTED]; OTP CAR IIB Case Management [REDACTED]; OTP CAR IIB Operations [REDACTED] Associate Legal Officer-Court Officer [REDACTED]
Subject: Advancement of P-2475's testimony to the beginning of Block 13

Dear Counsel,

Dear All,

The Prosecution requires the advancement of P-2475's testimony to the beginning of Block 13 (starting Monday, 16 May) due to unforeseen circumstances potentially endangering his availability to testify as scheduled. We recognise the inconvenience to the Parties and Participants, but consider that the circumstances warrant this measure. If the

Parties and Participants are not in a position to proceed with the testimony of the witness on that date, there is a risk that the witness may become unavailable.

P-2475

Thereafter, his availability as a witness can no longer be assured. Due to these circumstances, it is necessary to advance P-2475's testimony to the earliest possible date, while VWS are still in a position to facilitate it and ensure the witness's appearance before the Court. Please note that P-2475 is scheduled to testify *viva voce* from HQ.

The Prosecution would appreciate if the Parties and Participants could provide their response to the above proposal, as well as estimates of the hours needed for P-2475's questioning, as soon as possible.

Kind regards,

On behalf of OTP Trial Team

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