

# **ANNEX 43**

## **PUBLIC**

**From:** Trial Chamber V Communications  
**Sent:** 22 April 2022 15:06  
**To:** Vanderpuye, Kweku; Dimitri, Mylene; 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]  
**Subject:** Decision relating to the Prosecution's anticipated advancement of P-2475's testimony

Dear all,

The Single Judge takes note of the Prosecution's notice that it needs to advance P-2475's testimony to the beginning of Block 13 'due to unforeseen circumstances potentially endangering his availability to testify as scheduled' (see email from the Prosecution, 6 April 2022, at 17:52), the Yekatom Defence's objections thereto (see emails from the Yekatom Defence, 7 April 2022, at 11:59; 14 April 2022, at 15:18; and 21 April 2022, at 18:05), as well as the Prosecution's response to the latest Yekatom Defence email (see email from the Prosecution, 22 April 2022, at 13:20).

As ordered by the Chamber (see First Order, email from the Chamber, 11 April 2022, at 15:48; Second Order, email from the Chamber, 19 April 2022, at 15:39), VWU provided further information regarding the nature of these unforeseen circumstances (First Report, email 14 April 2022, at 11:52; Second Report, email from the VWU, 21 April 2022, at 16:30 [redacted version of the Second Report sent to the participants on 21 April 2022, at 16:35]; correction of the Second Report, see email from the VWU, 22 April 2022, at 10:15 [redacted version of the corrected Second Report sent to the participants on 22 April 2022, at 11:19]).

Following the receipt of the Second Report, the Yekatom Defence submitted that (see email from the Yekatom Defence, 21 April 2022, at 18:05):

1. the Second Report states that the witness i [REDACTED] which was not known to the Defence and is at odds with his statement and associated exhibits and requests 'that the Chamber assess the email report with the aim of determining whether some or all of the redacted information could be lifted and provided to the Defence', in particular in relation to information that could affect the witness's credibility;
2. in light of the heavily redacted First and Second Report, it is unable to determine the appropriateness of the advancement of the testimony and defers to the Chamber;
3. should the Chamber determine that P-2475 must testify during block 13, it requests that P-2475 be called at the end of Block 13.

At the outset, the Single Judge notes that the VWU meanwhile corrected the information pertaining to P-2475's age and notified the participants that the witness [REDACTED] redacted version of the corrected Second Report sent to the participants on 22 April 2022, at 11:19). The alleged issue pertaining to P-2475's age is therefore moot.

Having assessed the information provided in the VWU's Second Report, the Single Judge considers that it contains no information which could impact on the potential credibility of the witness. For the sake of transparency, he informs the Defence that the information provided is limited to [REDACTED]

[REDACTED] Furthermore, the Single Judge identified discrete portions in the Second Report (to be communicated to the VWU separately) which can be unredacted in his view. He instructs the VWU to send the participants a lesser redacted version of the corrected Second Report accordingly or to inform the Chamber should it see any security issues.

Turning to the question whether advancing P-2475's testimony to the beginning of Block 13 is appropriate, the Single Judge considers that in light of the information provided by the VWU and the Prosecution, a risk that the witness might become unavailable indeed exists. At the same time, the Single Judge is also mindful of the Yekatom Defence's concerns regarding its preparation time for this particular witness.

Having balanced the interests at stake, the Single Judge is of the view that it would be appropriate to call the witness at the end of Block 13. The Single Judge appreciates the Yekatom Defence's cooperation and proposal in this regard. Should this not be possible, as indicated by the Prosecution (see email from the Prosecution, 22 April 2022, at 13:20), the witness should be called at the beginning of Block 14.

Going forward, the Single Judge expects the parties to discuss these type of scheduling matters *inter partes* before seizing the Chamber.

Kind regards, TC V

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**From:** Vanderpuye, Kweku [REDACTED]  
**Sent:** 22 April 2022 13:20  
**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] Chamber Decisions Communication [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
**Subject:** RE: Second Chamber's order in relation to the Prosecution's anticipated advancement of P-2475's testimony to the beginning of Block 13  
**Importance:** High

Dear Trial Chamber V,

Dear All,

*First*, noting that the VWS has clarified its error with respect to P-2475's age, the Prosecution trusts that the Defence's concerns set out below are moot.

*Second*, having carefully considered the proposed rescheduling of the 13<sup>th</sup> evidentiary block, the Prosecution is not able to make the proposed changes. The dates of P-0954 prospective testimony are immutable because, *inter alia* [REDACTED] The Registry has thus been timely provided the relevant dates for the *Note Verbale* provided the authorities in the implementation of the Chamber's Order. Relatedly, P-1416 cannot be moved to the beginning of the block, since doing so would result in a gap of four hearing days. This would not have enough time to hear P-2475's testimony after P-0954's testimony is completed.

*Third*, although the Prosecution is sensitive to the Defence's investigations concerning P-2475, we are also aware that these have substantially advanced since P-2475's identity was disclosed to the Defence in September 2019, and a close relative of his was further identified by the Defence as a witness for Yekatom in September 2020. As such, we do not consider that the prospective schedule for Block 13 is in any way prejudicial to the Defence's preparation as it stands, nor that a break is necessary to settle and reassess the full testimony of the witness prior to his cross-examination.

Kind regards,



(24-25 May), to settle and reassess the full testimony and its own examination during the Court holiday (26-29 May) and proceed with its own examination from 30 May.

- (iv) The 26-29 May break would also allow the Defence to proceed with last minute investigations following the witness's evidence elicited during Prosecution's examination.

We hope this proposal, in the event the Chamber determines that P-2475 has to proceed during Block 13, would be agreeable to everyone.

Kind regards,  
Mylène Dimitri

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**From:** [REDACTED]  
**Sent:** 21 avril 2022 16:35  
**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]  
 [REDACTED] Chamber Decisions Communication [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
**Subject:** RE: 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,

While the VWU provides the Chamber with a vulnerability assessment of vulnerable witnesses and recommendation on in-court protective measures based on individual risk assessments prior to testimony, case management information regarding ICCPP participants is confidential and therefore in principle not shared in the course of the judicial proceedings. For this reason the VWU initial report did not contain much details in relation to the incidents having motivated the witness exclusion from the ICCPP. The below additional information is provided at the Chamber's request for the full information of the Judges. The information is based on case management observations and on the preliminary vulnerability assessment carried out by the VWU Psychologist in preparation of the witness' testimony and finalized on 20 April 2022.

The witness is [REDACTED] CAR national.

[REDACTED]

In light of the witness' condition and the related level of risk which, in spite of positive signs, remain unstable, it is highly recommended to proceed with his testimony as soon as possible.

Kind regards,

VWU

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**From:** Trial Chamber V Communications [REDACTED]  
**Sent:** Tuesday, April 19, 2022 3:39 PM  
**To:** [REDACTED] Trial Chamber V Communications [REDACTED]  
**Cc:** D29 Yekatom Defence Team [REDACTED] D30 Ngaissona Defence Team [REDACTED]

[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]  
 [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

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