

ANNEX 4
Public Redacted
Version

From: Trial Chamber V Communications
Sent: 09 August 2023 10:35
To: OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; 'V44 LRV Team'; V44 LRV Team OPCV; V45 LRV Team
Cc: Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber V Communications
Subject: Decision on Disclosure of Identities of Victims to be Called by the CLRV

[ICC] RESTRICTED

Dear Counsel,

The Single Judge takes note of the emails below.

At the outset, the Single Judge does not consider that Regulation 24(5) of the Regulations of the Court is applicable in the present context, and in any event decides that, in the interest of the proceedings, he will take into account the latest submissions made by both the Yekatom Defence and the CLRV1.

First, noting the agreement reached by the participants and that the suggested schedule would otherwise not be detrimental to the proceedings, the Single Judge decides that the first victim to be called to testify by the CLRV shall appear no earlier than 18 September 2023. The CLRV are to agree among themselves, in consultation with the VWU, on the order of the witnesses, although the Chamber would prefer to hear the victims to be called by the CLRV1 consecutively. The Single Judge further instructs that the examination of the victims shall conclude by the end of block 25.

Concerning the timing for the disclosure of the victims' identities, the Single Judge notes that, as indicated by the CLRV, the victims agreed that their identities be disclosed to the defence teams once the Chamber authorised them to testify (*see* ICC-01/14-01/18-1969-Conf, paras 38-39; ICC-01/14-01/18-1972-Conf-Exp, paras 39-41). The Chamber further ordered the CLRV to file lesser redacted versions of their respective filings 'as soon as possible', and not by 18 August 2023 at the latest (ICC-01/14-01/18-2016-Conf, p. 22). In this regard, the Single Judge stresses that while the CLRV may liaise with the VWU and request the adoption of any in-court protective measures *as towards the public*, nothing prevents, in the meantime, the disclosure of the victims' identities *to the defence teams*. The Single Judge thus does not consider that the logistical challenges raised by the CLRV1 in obtaining all the relevant information from his clients prevent the CLRV from complying with the Chamber's order.

In light of the above, and to ensure that the defence teams will have sufficient time to prepare, the Single Judge instructs the CLRV to comply with the Chamber's order by 10 August 2023. Furthermore, the Single Judge instructs that any request for in-court protective measures be filed by 18 August 2023.

Lastly, in view of the preparation for the examination of the victims, the Single Judge recalls that the Initial Directions on the Conduct of the Proceedings, and any amendments or additions thereto, shall apply *mutatis mutandis* to the presentation of evidence by the CLRV (*see* Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence), 29 May 2023, ICC-01/14-01/18-1892, para. 28).

Kind regards,

TC V

From: Suprun, Dmytro [REDACTED]
Sent: 08 August 2023 16:43
To: Massidda, Paolina [REDACTED]; Trial Chamber V Communications

[REDACTED]
Cc: OTP CAR IIB [REDACTED]; D29 Yekatom Defence Team [REDACTED]
D30 Ngaissona Defence Team [REDACTED] V44 LRV Team OPCV [REDACTED]
[REDACTED]; V45 LRV Team [REDACTED] V44 LRV Team [REDACTED]
[REDACTED]

Subject: Re: Request regarding Block 25

[ICC] RESTRICTED

Dear Trial Chamber V,

The CLR1 notes first that the Yekatom Defence's email of 8 August 2023 at 10:21 is in fact a reply to his response to the Defence's original request dated 4 August 2023 at 12:42, and thus the Defence was required to seek the leave of the Chamber in accordance with regulation 24(5) of the Regulation of the Court.

On the merits, the CLR1 recalls that contrary to the parties, the presentation of evidence by legal representatives is not automatic but subject to authorisation. The CLR1 could not have reasonably anticipated who amongst his six clients would have been authorised to testify, and any request for protective measures with respect to all six concerned victims would have been deemed by the VWS premature. Upon the issuance of the Chamber's decision on his request, the CLR1 immediately contacted the VWS to be provided with relevant forms to be completed, both to organise the appearance of the concerned victims and to ensure their well-being security and safety during their testimony. In order to collect all relevant information the CLR1 needs to meet again with his clients, also to discuss their current security situation. All these steps take some time and require relevant logistical and security arrangements which, despite the CLR1 all best efforts, cannot be processed with few days, given in particular additional practical challenges the CLR1 is facing. To give but one example, [REDACTED]
[REDACTED]
[REDACTED]

The six concerned victims for whom the CLR1 sought leave to be called indeed consented to the disclosure of their identity to the Defence should they be authorised to testify. However, all of them also expressed serious concerns about their safety on account of their testimony, since all of them reside in the areas [REDACTED]
[REDACTED]

The CLR1 is mindful that the Defence has the right to have sufficient time to prepare. However, he also recalls that the Court has the obligation to protect the security, safety and well-being of the victims and witnesses pursuant to article 68(1) of the Statute. The disclosure of the identities of the victims at this stage and pending putting in place relevant protective measures will seriously jeopardise their safety and security. This is the reason why the CLR1 is unable to proceed with the disclosure at this stage. As previously indicated, the CLR1 will nevertheless do his best to disclose the identities of the concerned victims as soon as possible and endeavour to do so by 18 August 2023.

Kind regards,
Dmytro Suprun

От: Massidda, Paolina [REDACTED]
Отправлено: Tuesday, August 8, 2023 2:24:57 PM
Кому: Trial Chamber V Communications [REDACTED]
Копия: OTP CAR IIB [REDACTED] D29 Yekatom Defence Team [REDACTED]
[REDACTED]; D30 Ngaissona Defence Team [REDACTED]
[REDACTED]; V44 LRV Team OPCV [REDACTED]; V45 LRV Team [REDACTED]
[REDACTED]; V44 LRV Team [REDACTED]; Suprun, Dmytro [REDACTED]
[REDACTED]
Тема: RE: Request regarding Block 25

[ICC] RESTRICTED

Dear All,

Ms Massidda wishes to inform the Chamber that [REDACTED]

Therefore, he will be able to respond to the Yekatom Defence's arguments by tomorrow morning.

Kind regards,

Paolina Massidda

From: [REDACTED]

Sent: 08 August 2023 10:21

To: Trial Chamber V Communications [REDACTED]

Cc: OTP CAR IIB [REDACTED]; D29 Yekatom Defence Team [REDACTED]

D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED]

[REDACTED] V45 LRV Team [REDACTED]; V44 LRV Team [REDACTED] Suprun,

Dmytro [REDACTED]

Subject: Re: Request regarding Block 25

[ICC] RESTRICTED

Dear Trial Chamber V,


The Defence for Mr Yekatom takes note of the CLR1's email of 4 August, at 14:37 in which it was stated that he was yet to request [REDACTED] of a/20722/21 and a/65991/19 ('CLR1 Witnesses') to VWS; that he intended to make the request in question at some point in the week of 7 August; that he accordingly 'was in no position to disclose the identities of [the CLR1 Witnesses] immediately and pending the implementation of the relevant protective measures'; and that he endeavoured to disclose their identities 'as soon as possible and no later than on 18 August 2023'.











First, while the Defence concedes that the Chamber did not set a specific deadline for the disclosure of the identities of the CLR1 Witnesses in its 3 August Decision (ICC-01/14-01/18-2016-Conf, 'Decision'), it submits that the CLR1's suggested delay of disclosure by up to 15 days following the Decision appears to be excessive when compared to at least two previous cases before the Court. Namely, in *Ntaganda* and *Al Hassan*, the LRVs were ordered to disclose the identities of their witnesses within five days of their respective Trial Chambers' decisions authorising these witnesses to testify (see, ICC-01/04-02/06-1780, paras 50-51; and ICC-01/12-01/18-2063-Red, para. 41).

The Defence notes that the CLR1 has not explained why he is unable to provide the identities of the CLR1 Witnesses to the Defence, pending the implementation of protective measures. This, especially in light of his previous submission that the CLR1 Witnesses had already provided consent for the disclosure of their identities on the condition, since established, that the Chamber authorise their testimony (ICC-01/14-01/18-1969-Conf-Corr, para. 38), which submission gave rise to the reasonable expectation that this information would be disclosed immediately upon said authorisation being granted. Nor has the CLR1 explained why sufficient preliminary steps were not taken while the Decision was pending, to ensure that disclosure of this information could be conducted in a timely manner. In any event, in his request for leave to present evidence, the CLR1 omitted to mention the fact that he would require up to an additional 15 days after the issuance of the Decision to disclose to the Defence the identities of the witnesses he intended to call, despite the clear impact that this lengthy delay would have on Defence preparations.

The Defence further notes that in the Decision, in finding that hearing the evidence of the CLR1 Witnesses would not be inconsistent with or prejudicial to the rights of Mr Yekatom, the Chamber twice cited the fact that the Defence would have the opportunity to 'fully examine the witnesses in Court' (paras 27-28). The ongoing delays in disclosure of the identities of the CLR1 Witnesses inevitably risks prejudicing Mr Yekatom's ability to 'fully examine' these individuals, given that meaningful examination of witnesses necessarily requires adequate time for defence investigations. While the Defence will do its utmost to prepare for the appearances of the CLR1 Witnesses as scheduled, it thus nonetheless here expresses its serious concerns that this additional and unforeseen delay in receiving the identities of the CLR1 Witnesses will further impact Defence preparations for the CLR1's presentation of evidence, as well as ongoing preparations for the Defence case; and by extension, potentially prejudice Mr Yekatom's fundamental rights.

Best regards,


Legal Assistant, Yekatom Defence











From: Massidda, Paolina 
Sent: 06 August 2023 20:45
To: Trial Chamber V Communications 
Cc: OTP CAR IIB ; D29 Yekatom Defence Team 
D30 Ngaissona Defence Team ; V44 LRV Team OPCV 
; V45 LRV Team ; V44 LRV Team  Suprun,
Dmytro 
Subject: RE: Request regarding Block 25

[ICC] RESTRICTED

Dear All,

The CLR2 equally support the Yekatom Defence request that the victims authorized to testify be heard no earlier than 18 September 2023 and share the arguments below made by CLR1.

Kind regards,
Paolina Massidda

From: Suprun, Dmytro 
Sent: 04 August 2023 14:37
To:  Trial Chamber V Communications

Cc: OTP CAR IIB ; D29 Yekatom Defence Team 
D30 Ngaissona Defence Team  V44 LRV Team OPCV 
; V45 LRV Team ; V44 LRV Team 
Subject: RE: Request regarding Block 25

[ICC] RESTRICTED

Dear Trial Chamber V,

The CLR1 supports the Yekatom Defence request that the victims authorized to testify be heard no earlier than 18 September 2023. He posits that this will also provide the Registry with more time to properly make the necessary arrangements for the appearance of the concerned victims.

The CLR1 notes however that the Yekatom Defence is “*expecting to have the identities of the witnesses disclosed to [them] anytime now*”. He recalls in this regard that no specific deadline has been set for the disclosure of the identities of the concerned victims. In the [Decision of 3 August 2023](#) (p. 22), the Chamber instead instructed the CLRV to file a lesser redacted version of Annex A to their respective requests for leave to present evidence “*as soon as possible*”.

The CLR1 takes this opportunity to inform the Chamber that as announced in his email dated 11 July 2023 at 11:41, prior to the disclosure of the identities of the concerned victims, he intends to make a request [REDACTED] the concerned victims to the VWS in order to ensure their security, safety and wellbeing. The relevant request will be made next week, and accordingly the CLR1 is in no position to disclose the identities of the victims immediately and pending the implementation of the relevant protective measures. Nonetheless, he will endeavor to disclose the identities of the concerned victims as soon as possible and no later than on 18 August 2023.

Kind regards,
Dmytro Suprun

From: [REDACTED]
Sent: Friday, August 4, 2023 12:42
To: Trial Chamber V Communications [REDACTED] >
Cc: OTP CAR IIB [REDACTED]; D29 Yekatom Defence Team [REDACTED]
 D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED]
 [REDACTED] V45 LRV Team [REDACTED]; V44 LRV Team [REDACTED]
Subject: Request regarding Block 25

Dear Trial Chamber V,

The Defence for Mr. Yekatom takes note of the Chamber’s “Decision on the Common Legal Representatives of Victims Requests for Leave to Present Evidence and Further Order on the Remainder of the Prosecution Presentation of Evidence” (ICC-01/14-01/18-2016-Conf), partly granting the CLRV’s leave to present evidence and rejecting the Defence’s request to postpone the presentation of evidence by the CLRVs.

The Defence also notes the Presiding Judge indication that the CLRVs presentation of evidence could be scheduled as early as Block 25 (ICC-01/14-01/18-T-239-CONF-ENG, p. 95).

In light of the above, the Defence respectfully requests that victims a/20722/21, a/65991/19 and a/65010/19 be heard no earlier than 18 September 2023.

This proposed schedule would ensure that the Defence would benefit of exactly one month following the complete disclosure of evidence by the CLRVs (currently set on 18 August 2023 by the Further Directions ICC-01/14-01/18-1892) before proceeding with the witnesses’ cross examination, bearing in mind that we are expecting to have the identities of the witnesses disclosed to us anytime now.

The Defence submits that the suggested schedule is not detrimental to the other parties to the proceedings. Indeed, the Ngaissona Defence, the Prosecution and the CLRVs would benefit from this extension to appropriately prepare their cases. Furthermore, this would not affect the expeditiousness of the proceedings as the end date of Block 25 would remain the same.

The Defence believes that scheduling the aforementioned witnesses’ testimonies on the second week of Block 25 is a reasonable compromise between those issues and is in the interest of all parties.

Kind regards,

[REDACTED]
Yekatom Defence

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