

**ANNEX 47**  
**Public Redacted**  
**Version**

**From:** Trial Chamber V Communications  
**Sent:** 30 October 2023 08:56  
**To:** D29 Yekatom Defence Team; Office of the Director DJSS; Associate Legal Officer-Court Officer; [REDACTED]  
**Cc:** OTP CAR IIB; D30 Ngaissona Defence Team; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; Chamber Decisions Communication; Trial Chamber V Communications  
**Subject:** Decision on Yekatom Defence Request Regarding Certification of Witness Statements

[ICC] RESTRICTED

Dear Counsel,

Dear colleagues from the Registry.

The Single Judge takes note of the Yekatom Defence's email below.

The Single Judge reiterates that he does not see any impediment to a declaration under Rule 68(2)(b)(ii) of the Rules of Procedure and Evidence (the 'Rules') being obtained while a request for introduction of the underlying prior recorded testimony under Rule 68(2)(b) of the Rules is still pending (see Decision on Prosecution request regarding certification P-2467, email from the Chamber, 17 May 2023, at 11:13, with further references).

The Single Judge is of the view that similar considerations apply in the current circumstances. Even though the Yekatom Defence has not yet filed applications to introduce the prior recorded testimony concerned pursuant to Rule 68(2)(b) of the Rules, it clearly intends to do so.

Further, the Single Judge notes that it appears from the below that a number of different sections, including from the Registry, have already engaged in organising the process of certification. Preventing this process from taking place as planned and agreed upon by various sections and stakeholders obviously runs counter to judicial economy. Finally, the Single Judge recalls that the Chamber already designated the Registry Senior Legal Advisor, or anyone delegated by him, to witness declarations under Rule 68(2)(b) of the Rules for purposes of the present case (see Decision on the Prosecution's Request to Designate a Person Authorised to Witness a Declaration under Rule 68(2)(b) of the Rules of Procedure and Evidence, 6 May 2020, ICC-01/14-01/18-508).

Kind regards,  
 TC V

**From:** [REDACTED]

**Sent:** 27 October 2023 19:38

**To:** Trial Chamber V Communications [REDACTED]

**Cc:** D29 Yekatom Defence Team [REDACTED] D30 Ngaissona Defence Team

[REDACTED]; OTP CAR IIB [REDACTED]; V45 LRV Team

[REDACTED]; V44 LRV Team OPCV [REDACTED]; V44 LRV Team

[REDACTED] Associate Legal Officer-Court Officer [REDACTED]

Office of the Director DJSS [REDACTED]

[REDACTED]; [REDACTED]

**Subject:** [Yekatom] Urgent request for witness certification

[ICC] RESTRICTED

Dear Trial Chamber V,

The Yekatom Defence hereby requests to exceptionally proceed with the certification of 68(2) statements of its witnesses prior to its submission of their formal submission on 17 November 2023 or the Trial Chamber's decision.

The Defence has contacted the Registrar on 18 September 2023 (*See attached letter ARY-2023-0281*) with the purpose of requesting the beginning of witness certification procedure for defence witnesses who will testify under Rule 68(2) of the Rules of Procedures and Evidence. After following up on the request on 10 October 2023, the Defence received an invitation to meet with the Registry on 24 October 2023 to organize and clarify the certification process. The meeting was held by Ms Charlotte Dahuron who explained that the Registry had delegated CMS for this purpose. Practical modalities for the certification process were explained and dates for first certifications were agreed upon.

In the following days, the Defence communicated with the Registry to confirm the availability of the field office, CSS to confirm the availability of LSS's Sango interpreter, and VWU to organise the transport of the witnesses. In addition, the Defence started to contact witnesses and appointments were made for their travel to Bangui in order to proceed with their certification. Every concerned section was onboard and everything was ready to start on Monday 30 October.

However, we have been informed today by another representative of CMS that the Chamber's further permission to engage in the process is required.

The Defence believes that there is no legal impediment to doing so in advance of the Defence's application for 68(2). In addition, the Defence believes that there is nothing preventing the Registry from certifying statements in advance of the Defence's applications or the Chamber's ruling - as it merely devolves on a question of expenses and resources. If, at the end of the day, the Chamber does not authorise the submission of the statement under the Rule, the fact that it is certified changes nothing. On the other hand, if the submission is authorised, then certifying it ahead of time will save the Court and Registry substantial time and money and avoid having to travel to another country potentially to conduct a certification process.

In addition, the Defence submits that the current situation warrants an exception in the procedure to initiate the certification process prior to the submission of its formal applications or the Chamber's decisions. Indeed, the Defence has organised missions for two team members which will end respectively on 31 October and 6 November 2023. It is therefore extremely important that the first witness, P-6027 who is a highly vulnerable witness and acquainted with [REDACTED], proceed with his certification on Monday 30 October 2023 and the remaining proceed while Ms Guissé is still in Bangui. By postponing this process, additional mission requests, expenses, time and resources will be required in a period where the Defence will be fully engaged in the presentation of its case. It is the Defence's position that a practical and expeditious solution would be to proceed with the certification starting on Monday 30 October 2023. We intend for Ms Guissé to accompany a number of witnesses, in addition to P-6027, to the field office to proceed with their certification.

It is worth noting that the Prosecutor is currently facing challenges in certifying certain witnesses due to loss of contact, highlighting the urgency of our approach and justifying not to postpone it at a later stage, particularly in a country where the security situation is unstable.

Delaying the certification until the end of the Defence case would consume valuable time and energy that ought to be allocated elsewhere during this crucial stage of the trial for the Defence and would necessarily mean additional mission requests and consequently additional costs.

The Defence would very much appreciate the Chamber's urgent intervention to ensure that the Registry can go forward with the certification as proposed on Monday.

Thank you for your consideration.

Kind regards,

[REDACTED]  
Yekatom Defence

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