

ANNEX 4
Public Redacted
Version

From: Trial Chamber V Communications
Sent: 03 November 2023 16:39
To: OTP CAR IIB; Court Management-Court Records
Cc: D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber V Communications
Subject: Decision on Prosecution request in relation to reclassification of filings concerning testimony of Chamber witness

[ICC] RESTRICTED

Dear counsel,

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

The Single Judge considers that it was clear throughout the Chamber witness's testimony that she indeed testified after having been called as witness by the Chamber (*see*, for example, T-249, p. 3, lines 6-14; T-250, p. 6, line 1 – p. 7, line 12).

In the view of the Single Judge, it is unclear from the below how the fact that the Chamber witness may initially have been on the Prosecution's list of witnesses would (i) undermine the witness's position as Chamber witness; (ii) potentially impact her personal and/or security situation; or (iii) somehow undermine the understanding on which the witness agreed to appear before the Court.

Seeing no other basis for this information to remain confidential, the Single Judge therefore rejects the request.

Kind regards,
 TC V

From: OTP CAR IIB [REDACTED]
Sent: 03 November 2023 15:21
To: Trial Chamber V Communications [REDACTED]; D29 Yekatom Defence Team [REDACTED]; OTP CAR IIB [REDACTED] Court Management-Court Records [REDACTED]
Cc: D30 Ngaissona Defence Team [REDACTED] V44 LRV Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V45 LRV Team [REDACTED]; Associate Legal Officer-Court Officer [REDACTED] Chamber Decisions Communication [REDACTED]
Subject: RE: Order on the Yekatom Defence and the Prosecution Requests for Reclassification
Importance: High

[ICC] RESTRICTED

Dear Trial Chamber V,

Dear All,

Please excuse the late intervention in respect of the referenced instruction. The Prosecution respectfully requests that the Chamber stay the execution of the below reclassification Instruction to CMS, pending our careful review of the subject material.

The reason for this is that, although P-0952 has now testified publicly and it is also clear that she was interviewed by the Prosecution in 2018, we do not believe that it is public information that she was a Prosecution Witness. However, in filing #1739 for instance, there is a clear reference that the witness was included in the Prosecution's List of Witnesses. Making this information and similar information that might be included in other documents public may (a) undermine the Presiding Judge's very express qualification of the terms of her testimony, particularly that she was called specifically as a *Court witness* (ICC-01/14-01/18-T-249, p.3, Ins.16-22); (b) may have an unforeseen impact on her personal circumstances, and potentially security implications; and (c) contradict the basis and understanding on which the witness *agreed* to testify – namely, as a Court witness (she was not under compulsion).

Further to this, in the transcript of P-0952's testimony Defence Counsel referred to the witness as "*formerly a Prosecution witness*" (ICC-01/14-01/18-T-250, p.6, ln.2) in open session. While we may have missed the redaction request at the time, we consider this presents the same problem noted above and should also be redacted from the transcript of the proceeding.

Regrettably, I did not see the Presiding Judge's instruction until now, and would have raised this earlier. We have not yet gone through all of the material to be reclassified. As such we request until CoB Monday 6 November 2023 to do so, and that the Chamber stay the execution of the Instruction accordingly to afford us a reasonable opportunity to present any relevant proposed redactions. Thank you.

Kind regards,

Kweku Vanderpuye



From: Trial Chamber V Communications [REDACTED]
Sent: 01 November 2023 16:41
To: D29 Yekatom Defence Team [REDACTED] OTP CAR IIB [REDACTED]
 Court Management-Court Records [REDACTED]
Cc: D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V45 LRV Team [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]
 Chamber Decisions Communication [REDACTED] Trial Chamber V Communications [REDACTED]
Subject: Order on the Yekatom Defence and the Prosecution Requests for Reclassification

[ICC] RESTRICTED

Dear counsel,
 Dear colleagues from the Registry,

The Single Judge takes note of the emails from the Yekatom Defence and the Prosecution (*see* emails attached).

Concerning the Yekatom Defence's email, and as Chamber witness P-0952 finished testifying in open session, the Single Judge considers it warranted to reclassify transcript ICC-01/14-01/18-T-045 to public.

Furthermore, the Single Judge considers that related decisions and filings, as well as filing ICC-01/14-01/18-2147-Conf, warrant reclassification.

The Single Judge therefore instructs the CMS to reclassify:

- Transcript ICC-01/14-01/18-T-045 to 'public';
- Decision ICC-01/14-01/18-1739-Conf to 'public';
- Decision ICC-01/14-01/18-2093-Conf to 'public';
- Filing ICC-01/14-01/18-1788-Conf to 'public';
- Filing ICC-01/14-01/18-2147-Conf to 'public'; and
- Filing ICC-01/14-01/18-2152-Conf to 'public'.

Kind regards,

TC V