

ANNEX 8
Public
Redacted Version

From: Trial Chamber V Communications
Sent: 16 February 2024 09:22
To: OTP CAR IIB; D30 Ngaissona Defence Team
Cc: [REDACTED] D29 Yekatom 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 to obtain documents from witness D30-4756

[ICC] RESTRICTED

Dear Counsel,

The Chamber takes note of the Prosecution's below request, the Ngaissona Defence's response thereto, requesting the Chamber to reject the request, and the reply from the Prosecution.

The Chamber first notes that it has been its practice to grant the calling party first access to any such additional documents which a witness has, on their own volition, brought for use during their testimony (*see, for example*, email from the Chamber, 23 June 2022, at 12:03).

The Chamber further notes that at this stage, pending its review of the documents, the Ngaissona Defence is 'unsure' as to whether they 'are relevant, or suitable for use in court' (*see* email from the Ngaissona Defence, 14 February 2024, at 17:00).

The Chamber considers that once the Ngaissona Defence has ascertained whether it will present the additional documents to the Chamber as evidence, it is required to comply with Rule 78 of the Rules of Evidence and Procedure and should thereafter disclose any materials to the other participants.

Accordingly, the Chamber rejects the Prosecution's request.

Kind regards, TC V

From: OTP CAR IIB [REDACTED]
Sent: 15 February 2024 16:03
To: Trial Chamber V Communications [REDACTED]
Cc: [REDACTED]; D29 Yekatom 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]; D30 Ngaissona Defence Team [REDACTED]; OTP CAR IIB [REDACTED]
Subject: RE: Request to obtain documents from witness D30-4756

[ICC] RESTRICTED

Dear Trial Chamber,

First, the witness is under VWS custody and as such the Defence has no right of access to her or any documents she may bring for her testimony beyond what may be authorized by the Chamber.

Second, the Accused's right against self-incrimination does not extend to a Defence witness before the Court. If there is a Rule 74 issue regarding the witness then this can be addressed during the witness' testimony in accordance with the Rule and is in any event not a bar to the disclosure of the documents to the Prosecution.

Third, disclosing the said documents *ex-parte* only to the Defence is to no avail given that the Prosecution will nevertheless inquire about them during its questioning of the witness and the witness will have to respond fully and truthfully. Transmitting the documents to the Prosecution will thus save valuable court time.

Last, It is incumbent upon the Defence to raise legitimate legal reasons – such as the existence of a privilege -- for which the documents should not be disclosed to the Prosecution.

Best regards,
On behalf of OTP Trial Team

De : [REDACTED]
Envoyé : jeudi 15 février 2024 13:16
À : OTP CAR IIB [REDACTED] Trial Chamber V Communications [REDACTED]
Cc : [REDACTED]
 [REDACTED] >; D29 Yekatom 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]; D30 Ngaissona Defence Team
 [REDACTED]
Objet : Re: Request to obtain documents from witness D30-4756

[ICC] RESTRICTED

[ICC] RESTRICTED

Dear Trial Chamber,

The Ngaissona defence strongly opposes the Prosecution request below.

First, while the witness is currently in VWS' custody, she remains a Defence witness. The Defence must be in a position to make a determination on the evidence it ultimately wants to present to the Chamber.

Second, the present situation does not enlarge the scope of the Defence's disclosure obligations under Rule 78. The Defence is only obliged to disclose material that it intends to use in the course of the proceedings. At this stage, the Defence is not in a position to determine whether this will be the case for the additional documents.

Third, the Prosecution's suggestion runs counter to the right against self-incrimination. Should it happen that the material is prejudicial to the Defence, the Defence must be preserved the right not to disclose or use it. Disclosing it to the parties and participants must be subject to the Defence's own assessment that the rights on Mr Ngaissona will not be prejudiced by such disclosure.

For these reasons, we kindly ask that the Chamber denies the Prosecution request.

Kind regards,

From: OTP CAR IIB [REDACTED]
Sent: 15 February 2024 12:57
To: OTP CAR IIB [REDACTED] Trial Chamber V Communications <[REDACTED]>
Cc: [REDACTED]
 [REDACTED] D29 Yekatom 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]; D30 Ngaissona Defence Team
 [REDACTED]
Subject: RE: Request to obtain documents from witness D30-4756

[ICC] RESTRICTED

[ICC] RESTRICTED

Dear Trial Chamber V,

The Prosecution understands from the Order below that the documents that D30-4756 “would like [the Ngaissona Defence] to use during next week’s hearings” will be provided to the Prosecution timely and directly through VWS. Based on the witness’s request that they be used by the Ngaissona Defence during her examination, they are at least relevant to her frame of mind and potential bias. The disclosure of the documents should not be subject to the Defence’s vetting – but, as she is in now in the hands and under the control of the Court - the Prosecution considers that the Registry (through VWU) should determine and make available to the Parties and Participants any material potentially bearing on the witness’s examination. Thank you.

Kind regards,

On behalf of OTP Trial Team

De : OTP CAR IIB [REDACTED]
Envoyé : jeudi 15 février 2024 12:57
À : Trial Chamber V Communications [REDACTED]
Cc : [REDACTED]
 [REDACTED] OTP CAR IIB [REDACTED] D29 Yekatom 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]; D30 Ngaissona Defence Team

Objet : RE: Request to obtain documents from witness D30-4756

[ICC] RESTRICTED

Dear Trial Chamber V,

The Prosecution understands from the Order below that the documents that D30-4756 “would like [the Ngaissona Defence] to use during next week’s hearings” will be provided to the Prosecution timely and directly through VWS. Based on the witness’s request that they be used by the Ngaissona Defence during her examination, they are at least relevant to her frame of mind and potential bias. The disclosure of the documents should not be subject to the Defence’s vetting – but, as she is in now in the hands and under the control of the Court, the Prosecution considers that the Registry – through VWS should determine and make available to the Parties and Participants any material potentially bearing on the witness’s examination. Thank you.

Kind regards,

On behalf of OTP Trial Team

De : Trial Chamber V Communications [REDACTED]

Envoyé : jeudi 15 février 2024 12:13

À : D30 Ngaissona Defence Team [REDACTED]

[REDACTED]; OTP CAR IIB [REDACTED]; D29 Yekatom 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]

Objet : RE: Request to obtain documents from witness D30-4756

[ICC] RESTRICTED

Dear Counsel,

The Single Judge takes note of the below information pertaining to D30-4756.

The Single Judge observes that D30-4756’s testimony is due to commence on 19 February 2024, the witness is currently in the Netherlands and the process of witness familiarisation has already commenced (*see* Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial, ICC-01/14-01/18-677-Anx1, paras 26-30).

Accordingly, the Single Judge instructs the VWU to liaise with the Ngaissona Defence to facilitate the sharing of copies of the documents through appropriate and secure means *as soon as possible*.

Kind regards, TC V

From: [REDACTED]

Sent: Wednesday, February 14, 2024 5:00 PM

To: Trial Chamber V Communications [REDACTED]

Cc: Associate Legal Officer-Court Officer [REDACTED]; D30 Ngaissona Defence Team

<[REDACTED]>

Subject: Request to obtain documents from witness D30-4756

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[ICC] RESTRICTED

Dear Trial Chamber,

As you are aware, we have just been informed that witness D30-4756 brought documents that she would like us to use during next week's hearings.

WWS declined to hand over the documents to us, or to tell us the content of the documents without express permission from the Chamber.

At this stage, we are of course unsure whether the documents are relevant, or suitable for use in court. In order to assess their added value to the proceedings, we kindly seek the Chamber's permission for WWS to hand them over to the Ngaissona Defence.

Thank you and kind regards,

[REDACTED]

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