

ANNEX 18
PUBLIC

From: Trial Chamber V Communications
Sent: 23 April 2021 14:55
To: [REDACTED]
Cc: [REDACTED] OTP CAR IIB Managers; OTP CAR IIB Case Management; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; Trial Chamber V Communications; Chamber Decisions Communication; Associate Legal Officer-Court Officer
Subject: RE: Statement reading

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Yekatom and Ngaissona

Dear all,

The Single Judge is mindful of the difficulties of witness familiarisation under the Coronavirus Pandemic. However, the Single Judge notes that the purpose of paragraphs 85-86 of the Familiarisation Protocol (ICC-01/14-01/18-677-Anx1) (the 'Protocol') is to ensure that the reading of the statements takes place under the oversight of VWU.

Against this background, the Single Judge considers that VWU should, in the present circumstances, ensure that the reading of the statements takes place under conditions comparable to those envisaged in the Protocol. In particular, it should be ensured that (i) VWU staff is at a minimum remotely present during the reading and (ii) the documents are not transferred to the witness, but rather only temporarily shown for the duration of the reading of the statements. Accordingly, VWU is directed to explore and adopt an approach in line with these requirements, for example by following the suggestion made by the Yekatom Defence below.

In addition, the Single Judge takes note of the VWU's sub-request 'to send [to P-2012] the 730 images, photographs and maps provided by the witness to the Office of the Prosecutor (his own material) electronically today as the display of such amount of documents [to P-2012] by videoconferencing would be extremely time consuming' (the 'Sub-Request').

Under the current circumstances, noting that P-2012's testimony is due to commence on Monday, 26 April 2021, and that the Sub-Request concerns a large volume of images, photographs and maps (as opposed to statements or transcripts), the Single Judge on an exceptional basis grants the Sub-Request.

Kind regards, TC V

From: [REDACTED]
Sent: 23 April 2021 10:21
To: Trial Chamber V Communications [REDACTED]
Cc: [REDACTED]
Subject: RE: Statement reading

Dear colleagues,

Without prejudice of the Chamber decision on the below Defence request, the VWSU in order to avoid any delay in the upcoming witnesses appearance as organised the statement reading of CAR-2012 (already started) and CAR-1577 (will start on Monday) in a controlled environment. However the VWU kindly requests authorization to send the 730 images, photographs and maps provided by the witness to the Office of the Prosecutor (his own material) electronically today as the display of such amount of documents by videoconferencing would be extremely time consuming.

Kind regards,

From: Dimitri, Mylene [REDACTED]
Sent: 21 April 2021 16:43
To: [REDACTED] Trial Chamber V Communications
 [REDACTED]
Cc: [REDACTED]
 [REDACTED] OTP CAR IIB Managers [REDACTED]; D29 Yekatom
 Defence Team [REDACTED]; OTP CAR IIB Case Management
 [REDACTED]; D30 Ngaissona Defence Team
 <[REDACTED]>; V44 LRV Team OPCV [REDACTED]; V45 LRV Team
 [REDACTED] V44 LRV Team OPCV [REDACTED]
Subject: RE: Statement reading

Dear [REDACTED]
 Thank you for your email.

Dear Trial Chamber V,

Please be aware that the Yekatom Defence respectfully opposes the proposed deviation from the Familiarisation Protocol.

It is the Defence's position that the statement-reading procedure as set out in the Familiarisation Protocol is aimed at allowing the witness to familiarise her-/himself with their statement and relevant documents in a controlled environment. In this regard, the Defence notes that the Protocol envisages that the procedure takes place on the premises of the VWU; that the statement/documents remain on the premises until the completion of the witnesses' testimony; and that the dates of when the statement/documents were made available to the witness are recorded by VWU (Protocol, paras 86-88).

The proposed approach of electronically transferring these documents to the witness, who presumably would then be free to download and consult the documents whenever he/she might wish to do so, would result in the VWU relinquishing the envisaged control of the statement-reading process. Concretely, the proposed approach does not appear to have in place any safeguards that would i) ensure that the witness could not attempt to memorise their statements/documents prior to testifying; or ii) prevent the witness from consulting their statement/documents during breaks in their testimony.

The Defence is of course mindful of the prevailing conditions and limitations arising from the COVID-19 pandemic. As such, it respectfully suggests that, where applicable, the statement-reading process take place via web conference software, and specifically the screen-sharing function, so as to ensure that control over the procedure is retained by VWU in accordance with the familiarisation protocol.

Kind regards,

Mylène Dimitri

From: [REDACTED]
Sent: 21 April 2021 15:08
To: Trial Chamber V Communications; OTP CAR IIB Managers; OTP CAR IIB Case Management; D29 Yekatom
 Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V44 LRV Team OPCV; V45 LRV Team
Cc: [REDACTED]
Subject: Statement reading

Dear colleagues,

Dear counsels,

By way of this e-mail the VWU would like to inform the Chamber, the parties and participants of a slight deviation regarding the familiarisation Protocol applicable in the case that has been rendered necessary by the current Covid-19 crisis and travel restrictions/quarantine requirements.

In accordance with the Familiarisation Protocol paragraphs 85 onwards, statements reading is in principle conducted at the Seat of the Court (within the VWU premises) and/or in a controlled environment. However, in exceptional circumstances and in agreement with the party calling, statements and related documents can be electronically provided in a secured manner to witnesses testifying via video link (using a non-transferable). This option is rarely used but can be considered due to the current pandemic circumstances and in order to avoid extended staff mission (already prolonged due to quarantine requirements) as well as health hazard exposure. The profile of the witnesses is also duly considered before such option is implemented.

This system has been used for witnesses CAR-0287 [REDACTED] CAR-2193 (expert) and for the preparation of CAR-2926 (expert) in block 1 – moved to block 2. The VWU is also considering using such methodology for witness CAR-1577 [REDACTED] CAR-2012 (International civil servant). At the moment this option is not considered for any other witnesses of the second block.

We hope that this is agreeable to all and would be grateful if the Chamber could confirm its approval. We do apologize for the late notice in relation to the three witnesses for whom the statements reading and electronic transmission already took place.

Kind regards,

[REDACTED]

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