

ANNEX 27
PUBLIC

From: Trial Chamber V Communications
Sent: 24 May 2021 08:22
To: [REDACTED]
Cc: OTP CAR IIB Managers; OTP CAR IIB Case Management; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; Trial Chamber V Communications; Chamber Decisions Communication
Subject: TC V Decision on VWU's requests regarding implementation of Decision ICC-01/14-01/18-981-Conf-Red

Follow Up Flag: Follow up
Flag Status: Flagged

Dear colleagues from the VWU,

The Chamber takes note of the information provided in the VWU's email to the Chamber on 20 May 2021, at 10:06 (the 'Email'), related to the implementation of the Chamber's Decision ICC-01/14-01/18-981-Conf-Exp (confidential *ex parte* version, only available to the Prosecution and the Registry, and confidential redacted version, ICC-01/14-01/18-981-Conf-Red, notified on 4 May 2021) (the 'Decision'). Therein, the Chamber instructed the VWU to '(i) fully inform the witness about the limitations regarding his protection and the associated risks of his testimony before the Court and (ii) report back to the Chamber, by 25 May 2021, whether the witness wishes to proceed with his testimony in light of this information' (the 'Instructions') (see Decision, ICC-01/14-01/18-981-Conf-Red, para. 10, p. 6).

In its Email, the VWU seeks the Chamber's leave to (i) share the Email and the document attached to it – containing a draft statement intended to certify the witness's willingness to testify before the Court (the 'Draft Statement') – only with the Prosecution; and (ii) 'postpone the deadline of 25 of May for the requested submission until such a time the process can be implemented' (the 'Extension Request').

At the outset, the Chamber recalls that it repeatedly directed the VWU to make as much information as possible about this witness available to all participants for the sake of transparency of the proceedings. It instructed the VWU that this may be done either by (i) rephrasing its emails in a way that can be shared with the participants, or (ii) sending an *ex parte* email to the Chamber and the Prosecution, and a redacted version thereof to all participants.

While the Chamber is mindful that the information that can be shared regarding this witness may be scarce, it nonetheless stresses that efforts should be made to keep all participants informed as best as possible. It is also in this spirit that the Chamber issued a confidential redacted version of the Decision. In this regard, the Chamber reminds the VWU that the participants are privy to the Instructions.

The Chamber expects the VWU to adapt its approach in the future in light of the above directions. In this context, the Chamber also reminds the VWU to file confidential redacted versions of its reports ICC-01/14-01/18-773-Conf-Exp and ICC-01/14-01/18-951-Conf-Exp, within one week of notification of the present decision, for the benefit of all participants.

With regard to the VWU's request to share the Draft Statement only with the Prosecution, the Chamber authorises the VWU to share it only with the Prosecution at this point due to the sensitive nature of its content. In this regard, the Chamber observes that part of the content of the Draft Statement is currently only available to the Prosecution and the Registry, and considers that maintaining the *ex parte* nature of this information for the time being is justified.

With regard to the Extension Request, the Chamber notes the VWU's submissions that it is 'in the process of identifying, with the assistance of the Prosecution a [...] location where the notification of the witness could safely take place'. In light of these circumstances, the Chamber considers it appropriate to extend the deadline, initially set on 25 May 2021, to 8 June 2021.

Kind regards, TC V