

**ANNEX 37**  
**PUBLIC**

**From:** Trial Chamber V Communications  
**Sent:** 04 June 2021 16:33  
**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; Chamber Decisions Communication; Associate Legal Officer-Court Officer; Trial Chamber V Communications  
**Subject:** RE: 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 and the Prosecution on 27 May 2021, at 17:44, in relation to the 'TC V Decision on VWU's request regarding implementation of Decision ICC-01/14-01/18-981-Conf-Red' (see below email from the Chamber, 24 May 2021, at 08:22).

In its email, the VWU informs the Chamber that it has shared the draft statement intended to certify the witness's willingness to testify before the Court (the 'Draft Statement') with the Prosecution, as authorised by the Chamber. It also informs the Chamber about 'some enquiries [made] to relevant partners' to 'secure a meeting location'.

Further, the VWU requests the Chamber's leave to (i) 'engage with [REDACTED] in order to seek their advice on the way the CAR authorities could be supported and/or alternatively on the ability of [REDACTED] to implement additional mitigating measures for the benefit of the witness' (the 'First Request'); (ii) specify in the Draft Statement 'the measures proposed by the CAR authorities to mitigate the risk to the witness[s] security as well as any other measures that could be put in place to mitigate the risk to the witness', including those measures that could be potentially implemented by [REDACTED] (the 'Second Request'); and (iii) have 'a representative of the OTP introduce the VWU staff and [...] be present during the meeting and presentation of the draft statement' (the 'Third Request').

In addition, the VWU indicates that while it 'will make all possible efforts to comply with the [...] deadline' set by the Chamber on 8 June 2021 for the VWU to report on the implementation of Decision ICC-01/14-01/18-981-Conf-Red (the 'Deadline'), it 'wish[es] already to inform the Chamber that the extremely challenging working conditions in Bangui might have an impact on [its] ability to perform the above tasks and gather relevant information in due time'.

With regard to the First Request, the Chamber notes the VWU's observations that additional protective and security measures for the witness could potentially be implemented. Accordingly, and mindful of its obligation under Article 68(1) of the Statute, the Chamber grants the First Request.

With regard to the Second Request, and in line with the instructions provided to the VWU in Decision ICC-01/14-01/18-981-Conf-Red (see para. 10, p. 6), the Chamber considers it appropriate to provide the witness with all relevant and available information concerning his security situation. Accordingly, it grants the Second Request.

With regard to the Third Request, the Chamber recalls that it instructed the VWU, 'as the *neutral entity*, to fully inform the witness about the limitations regarding his protection and the associated risks of his testimony before the Court' (see Decision, ICC-01/14-01/18-981-Conf-Red, para. 10, emphasis added). In view of P-0306's present circumstances, the Chamber is of the view that the VWU is the most suitable entity to meet with the witness. In addition, and noting that the VWU is setting up the meeting and amending the Draft Statement in close consultation with the Prosecution, the Chamber does not consider the latter's presence necessary or appropriate. Consequently, the Chamber rejects the Third Request.

As regards the logistics of the meeting between the VWU and the witness, the Chamber considers that it does not need to be involved and trusts that the VWU will determine the safest location for this meeting to take place.

In relation to the Deadline, the Chamber notes that it has set previous deadlines concerning this witness based on the information provided by the Prosecution that this witness would be called as the 17<sup>th</sup> witness (*see* ICC-01/14-01/18-724-Conf-AnxB, p. 2). In light of the numerous changes to the schedule so far and in order to assess the appropriate timeline for the meeting between the VWU and the witness, the Chamber considers that it would be assisted by an update from the Prosecution on the order of the witness's prospective appearance. The Chamber therefore instructs the Prosecution to provide an update in this regard.

Finally, the Chamber notes with dismay that the VWU has, once again, failed to follow the Chamber's repeated and clear instructions to make as much information as possible about this witness available to all participants for the sake of transparency of the proceedings. Going forward, the Chamber expects the VWU to share its submissions concerning P-0306 with all participants, which may be done either by (i) phrasing 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.

Kind regards, TC V

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

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 prior 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