

ANNEX 27
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Version

From: Trial Chamber V Communications
Sent: 02 December 2022 17:08
To: [REDACTED] VWS Legal; [REDACTED]
Cc: OTP CAR IIB; 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 the Ngaissona Defence Request following the Chamber's Decision on the VWU clarification request concerning application of the Witness Familiarisation Protocol to P-2625

Dear counsel,

The Chamber takes note of the Ngaissona Defence's email below.

The Chamber recalls that it previously indicated (*see* email decision below) that 'it trusts that the contact between the Prosecution and the witness will be *strictly limited* to matters concerning the scheduling of his upcoming testimony' (emphasis added). The Chamber further stated that the Prosecution should contact the witness for this purpose only 'until he is transferred to the VWU prior to his upcoming testimony, and proceed thereafter in accordance with the Witness Familiarisation Protocol'.

The Chamber considers these instructions sufficiently clear and trusts that the Prosecution will comply with them, as well as with its duties under the legal framework and applicable procedures.

Kind regards, TC V

From: [REDACTED]
Sent: 24 November 2022 12:13
To: Trial Chamber V Communications [REDACTED] VWS Legal [REDACTED]
Cc: OTP CAR IIB [REDACTED] D29 Yekatom Defence Team [REDACTED]
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: Decision on the VWU clarification request concerning application of the Witness Familiarisation Protocol to P-2625

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Dear Trial Chamber V,
Dear All,

The Defence for Mr Ngaissona takes note of the Chamber's decision on the VWU's request for guidance of 22 November, which we have duly received.

As noted by VWU, the witness is in an atypical situation, as he was already sworn in. Thus, to preserve the integrity of the proceedings, if during discussions between the Prosecution and Witness P-2625 about scheduling, other topics were to be raised unexpectedly, we kindly request that such exchanges be recorded and disclosed immediately to the Defence. We also kindly request that the Witness be informed prior to those interactions that the scope of discussions with the Prosecution are to be strictly limited to scheduling matters.

Respectfully,

[REDACTED]

Defence for Mr Ngaïssona

From: Trial Chamber V Communications [REDACTED]

Sent: 24 November 2022 09:15

To: VWS Legal [REDACTED] >

Cc: OTP CAR IIB [REDACTED]; D29 Yekatom Defence Team [REDACTED]

D30 Ngaïssona 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: Decision on the VWU clarification request concerning application of the Witness Familiarisation Protocol to P-2625

Dear colleagues from the VWU,

The Chamber takes note of the VWU's request for guidance 'as to the need to lift any prohibition of contact between the Prosecution in order to allow the calling party to have limited communication with the witness [P-2625] until he would be handed over to the VWU before his voluntary appearance before the Court' (see email from the VWU to the Chamber and the Prosecution, 22 November 2022, at 14:49).

At the outset, the Chamber recalls that on 17 October 2022, P-2625 appeared before the Chamber for the purpose of administering the solemn undertaking. During this appearance, the Presiding Judge indicated that the witness's testimony would take place at a later stage, and that the Prosecution should take into consideration the witness's preference to testify 'early next year' (see T-165-CONF-ENG, p. 3, line 23 to p. 4, line 20).

The Chamber notes the VWU's submissions regarding 'the primary responsibility of the calling party with regard to witness case management', and that P-2625 'was never properly handed over to the VWS nor familiarised (neither was he given access to his statement)'. It further notes that, pursuant to paragraph 26 of the Witness Familiarisation Protocol, 'once the process of witness familiarisation has commenced, any further meeting between the entity calling the witness and witnesses outside of Court is prohibited'.

Under these circumstances, the Chamber considers that the Prosecution, as the calling party, continues to remain responsible for P-2625. In any event, it trusts that the contact between the Prosecution and the witness will be strictly limited to matters concerning the scheduling of his upcoming testimony. The Prosecution may thus contact the witness for this purpose until he is transferred to the VWU prior to his upcoming testimony, and proceed thereafter in accordance with the Witness Familiarisation Protocol.

The Chamber further instructs the VWU to share its email (with redactions if needed) with the rest of the participants.

Kind regards, TC V

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