

**ANNEX 38**  
**Public Redacted**  
**Version**

**From:** Trial Chamber V Communications  
**Sent:** 16 December 2022 10:11  
**To:** Dimitri, Mylene; D29 Yekatom Defence Team; Office of the Director DJSS;  
**Cc:** D30 Ngaissona Defence Team; OTP CAR IIB; V44 LRV Team OPCV; V44 LRV Team;  
 V45 LRV Team; Trial Chamber V Communications; Chamber Decisions  
 Communication; Associate Legal Officer-Court Officer  
**Subject:** Decision on the Yekatom Defence Request for Report of Communications with the  
 following

Dear Counsel, dear colleagues of the Registry,

The Chamber takes note of the Yekatom Defence's request below (email from the Yekatom Defence to the Chamber and the Registry, 12 December 2022, at 15:06; confidential redacted version in email from the Yekatom Defence, 12 December 2022, at 15:19).

The Chamber has no reason to believe that any problems have been encountered with regard to the implementation of the cooperation order, nor that cooperation requests by the Prosecution are being prioritised. However, noting that almost five months have passed since the Chamber issued its decision, it instructs the Registry to confirm that the cooperation order is being implemented and to indicate whether any problem have been reported by the Registry is instructed to provide its report by 11 January 2023.

Moreover, due to the nature and content of the communication below, the Chamber grants the Yekatom Defence's request not to share the *ex parte* version of the request below with the rest of participants nor to release it publicly in the Registry Reports on Email Decisions (see email from the Yekatom Defence to the Chamber and the Registry, 12 December 2022, at 15:41).

Kind regards,

TC V

---

**From:** Dimitri, Mylene  
**Sent:** 12 December 2022 15:19  
**To:** Trial Chamber V Communications  
**Cc:** Office of the Director DJSS  
 D29 Yekatom Defence Team  
 D30 Ngaissona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; OTP CAR IIB  
**Subject:** Confidential Redacted version of the Yekatom "Ex parte request for report of communications with the following

Dear Trial Chamber V,

The Defence for Mr. Yekatom regrets to inform the Chamber that while it has been over four months since it issued its Decision on the Yekatom Defence Request for Cooperation, the sought materials still have not been provided to the Defence, and there is no indication as to when this might happen.

During this time, the Defence has attempted to obtain updates on the progress of its request through the Counsel Support Section which is the channel of communication between the Defence and the Division of External Operations.

The Defence is grateful for the Counsel Support Section's follow-up with their colleagues of the Division of External Operations; however it remains concerned regarding the apparent impasse.

The last update provided to the Defence from the [REDACTED] was on 8 November 2022, and advised that [REDACTED] had been served a Court order by the [REDACTED]. Subsequent questions from the Defence as to a possible timeline on the execution of the order, and whether provision of the material on a rolling basis were possible, were communicated [REDACTED] which (to the best of the Defence's knowledge) is yet to respond.

Furthermore, while the Defence is cognisant that the execution of such requests cannot occur overnight, it is nonetheless concerned by the fact the Prosecution has been provided with records of [REDACTED] that postdate the Decision. For instance, according to their metadata, CAR-OTP-00000025, CAR-OTP-00000026, CAR-OTP-00000027 and CAR-OTP-00000028 all appear to have been generated [REDACTED] on 20 August 2022 and communicated [REDACTED] on 26 August 2022. [REDACTED]. While the Defence is not aware of the specific date(s) of the Prosecution request(s) for assistance further to which these business records were generated and provided, the timing of these responses at the very least gives rise to the suggestion of potentially differing prioritisation of Parties' requests [REDACTED].

As the Chamber is aware, in paragraph 11 of the Decision the Registry was instructed to 'emphasise in the cooperation request the importance of its prompt execution and to indicate [REDACTED] that, in the event they identify problems which may impede or prevent its execution, they shall consult with the Court without delay to resolve the matter'. Accordingly, the Defence has suggested to the Registry that it report to the Chamber that the Decision does not appear to have been complied with, at the very least, with respect to the direction that the cooperation request be executed promptly, and with the direction that [REDACTED] consult the Court 'without delay' should they encounter any obstacles to its execution. The Defence respectfully submits that such information is crucial for the Chamber to be able to exercise its duty to "take every measure within its capacity to enforce its order in the event of non-compliance" (ICTR Appeals Chamber, Prosecutor v. Bagosora et al., Judgement, para. 533, on the similar issue of a subpoena).

The Defence respectfully reiterates the pressing nature of this matter. [REDACTED]. Moreover, the delay in receiving the requested material severely bottlenecks several investigative avenues that depend on the contents provided. [REDACTED].

Further, the ongoing delay in the execution of the Decision may prejudice the expeditious conduct of the proceedings. Analysis of any material eventually received will necessarily take time, especially given the limited resources of the Defence (relative to those of the Prosecution), which are already stretched in the context of the day-to-day work that trial proceedings entail.

Given the above, the Defence respectfully requests that the Chamber order the Registry to provide a full and detailed (ex parte Yekatom Defence only) report of its communications with [REDACTED] further to the Decision, so as to allow the Chamber to take any further appropriate measures to ensure the prompt execution of the Request and by extension, the expeditiousness of the proceedings. This report should also include information as to whether the Prosecution requests are in fact being prioritised over those of the Defence, as the above potentially appears to suggest.

This email is sent on an ex parte basis due to the references to Defence strategies. A redacted version is being sent simultaneously.

Kind Regards,  
Mylène Dimitri

---

This message contains information that may be privileged or confidential and is the property of the International Criminal Court. It is intended only for the person to whom it is addressed. If you are not the intended recipient, you are not authorized by the owner of the information to read, print, retain copy, disseminate, distribute, or use this message or any part hereof. If you receive this message in error, please

notify the sender immediately and delete this message and all copies hereof.

Les informations contenues dans ce message peuvent être confidentielles ou soumises au secret professionnel et elles sont la propriété de la Cour pénale internationale. Ce message n'est destiné qu'à la personne à laquelle il est adressé. Si vous n'êtes pas le destinataire voulu, le propriétaire des informations ne vous autorise pas à lire, imprimer, copier, diffuser, distribuer ou utiliser ce message, pas même en partie. Si vous avez reçu ce message par erreur, veuillez prévenir l'expéditeur immédiatement et effacer ce message et toutes les copies qui en auraient été faites.