

Annex 15

From: Trial Chamber V Communications <[REDACTED]>
Sent: 06 November 2020 19:43
To: [REDACTED]; VWS Legal <[REDACTED]>; Trial Chamber V Communications <[REDACTED]>
[REDACTED] D30 Ngaissona Defence Team
[REDACTED]; V44 LRV Team [REDACTED]; V44LRVTeam-OPCV <[REDACTED]>; V45 LRV Team <[REDACTED]>
Cc: OTP CAR IIB Operations <[REDACTED]>; [REDACTED]
<[REDACTED]>
Subject: Decision on Prosecution's Request to Delay Disclosure of the identity and materials related to Prosecution Witnesses P-2582, P-2620 and P-2671 pursuant to Rule 81(4) of the Rules of Procedure and Evidence

Dear all,

The Single Judge takes note of the Prosecution's Request 'under Rule 81(4) of the Rules of Procedure of Evidence to delay the disclosure of the identity and witness materials related to Prosecution Witnesses P-2582, P-2620 and P-2671' (email on 5 November, at 09:27), as well as the responses by the CLRV (email on 5 November, at 11:35), the Ngaissona Defence (email on 6 November, at 12:46) and the Yekatom Defence (email on 6 November 2020, at 15:37).

The Single Judge recalls the Chamber's findings in Decision ICC-01/14-01/18-648-Conf-Red with regard to the existence of an objectively justifiable risk to the safety of the witnesses (see Decision ICC-01/14-01/18-648-Conf-Red, para. 35) and considers that this risk persists. Notably, the Chamber noted: 'the high risk of physical harm [...] witnesses [P-2582 and P2620] face once their identities are disclosed, as they provide crime-base evidence against Mr Yekatom and both reside in areas accessible to Anti-Balaka elements. The Chamber further notes that since the [REDACTED] for P-2582 and P-2620 [REDACTED]. As to P-2671, the Chamber notes that disclosing the witness's statement would compromise [REDACTED]' (see Decision ICC-01/14-01/18-648-Conf-Red, para. 34).

Taking note of the Victims and Witnesses Unit's Second Report regarding the Progress on the Implementation of Protective Measures for P-2582 and P-2620 (ICC-01/14-01/18-693-Conf-Exp), the Single Judge considers that delayed disclosure remains necessary and is the least restrictive measure available to address the risks faced by these witnesses.

Having considered the submissions by the Prosecution and Defence, the Single Judge further considers that delayed disclosure is not prejudicial to or inconsistent with the rights of the accused and a fair and expeditious trial. First, the

Single notes that the delayed disclosure is temporary since the relevant materials will be disclosed once the VWU fully implements protective measures. Second, the Defence has already been provided with the evidence of seven other witnesses expected to testify about recruitment and use of child soldiers, as acknowledged by the Yekatom Defence in its response. Third, the Single Judge considers that in this instance, delayed disclosure adequately balances the interests of protecting these witnesses' safety and the rights of the accused.

Accordingly, the Single Judge grants the Prosecution's Request pursuant to Rule 81(4) of the Rules of Procedure and Evidence for delayed disclosure of the identities and material related to P-2582, P-2620 and P-2671 [REDACTED]

Nonetheless, the Single Judge recalls the Chamber's instruction to the parties to engage in *inter partes* consultations on this matter and strongly encourages the Prosecution to make its best efforts to accommodate the Yekatom Defence's previous proposal to mitigate the potential prejudice caused by scheduling the witnesses' testimonies near the end of its case (*see* Decision ICC-01/14-01/18-648-Conf-Red, para. 38).

Lastly, in order to monitor the situation, the VWU is ordered to report on the progress of implementing protective measures for witnesses P-2582 and P-2620, by 4 December 2020.

Kind regards, TC V

From: Dimitri, Mylene <[REDACTED]>

Sent: 06 November 2020 15:37

To: Trial Chamber V Communications <[REDACTED]>

Cc: OTP CAR IIB Operations <[REDACTED]>; [REDACTED]; [REDACTED]; D29 Yekatom Defence Team <[REDACTED]>; V44LRVTeam-OPCV <[REDACTED]>; VWS Legal <[REDACTED]>; V44 LRV Team <[REDACTED]>; D30 Ngaissona Defence Team <[REDACTED]>; V45 LRV Team <[REDACTED]>

Subject: RE: Prosecution's Request to Delay Disclosure of the identity and materials related to Prosecution Witnesses P-2582, P-2620 and P-2671 pursuant to Rule 81(4) of the Rules of Procedure and Evidence

Dear Trial Chamber V,
Dear Prosecution,

The Defence for Mr. Yekatom opposes the Prosecution's request. It requests the Chamber to order the Prosecution either disclose the identity of the witnesses and their un-redacted statements by 9 November 2020, or withdraw these witnesses.

The Defence neither questions the objective safety risk faced by these individuals nor criticises the delay in the implementation of the protective measures. It simply argues that by this point, withholding the information any further is disproportionately and impermissibly prejudicial to the rights of Mr. Yekatom. Since the delay sought is effectively indefinite, the prejudice cannot be mitigated or diminished except by excluding their evidence altogether.

The two statements of P-2620 each contain 16 and 28 entirely redacted paragraphs. It is not possible to draw any usable inference from the available text either. The location of alleged bases under Mr. Yekatom's control, barricades and camps, are redacted ([CAR-OTP-2121-2567-R01](#), paras. 20, 39 and 40) & ([CAR-OTP-2123-0057-R01](#), paras. 22-23).

Likewise, the statement of P-2582 contains a total of 57 paragraphs entirely redacted. Redactions are also applied over the statement of P-2582 concealing the date and location of what appears to be an attack by Mr. Yekatom's group, the locations of the camps or bases as well as the number of the Anti-Balaka elements stationed therein, the locations where people allegedly fled, the whereabouts of houses that are allegedly burnt down by the Anti-Balaka, the identifying information of the three mosques that are claimed to be destroyed by the Anti-Balaka elements, the villages reached by Mr. Yekatom's group, and the locations where Muslims were allegedly killed by Mr. Yekatom, the ERN of the videos and photographs shown to the witness, as well as the comments thereof ([CAR-OTP-2117-0605-R01](#), paras. 30, 42, 45, 49, 50, 56, 64, 65, 67, 68, 71, 73, 107, 109-120, 124, and 125-138).

Mr. Yekatom must have adequate time and facilities for the preparation of his defence on each of those material facts and alleged crimes.

On one hand, as previously noted, the Defence "cannot carry out any meaningful investigation or otherwise review its evidence collection to prepare for the defence against Witnesses P-2620 and P-2582" due to the extraordinarily heavy redactions applied on the statements (ICC-01/14-01/18-660-Conf, paras 12-18).

On the other hand, the Prosecution received lead information about those two witnesses over a year ago (ICC-01/14-01/18-518-Conf, para 23) and appears to be pursuing some of the investigative leads provided in the statements that are redacted from the Defence. It not only gives the Prosecution an unfair comparative advantage but also hinders the Defence's ability to analyse the latest Prosecution interview records (see *Katanga & Ngudjolo*, [ICC-01/04-01/07-1179-tENG](#), para 33).

For example, in her interview in March 2020, Witness P-1839 was questioned about Anti-Balaka's COPIANDA base in Kapou (CAR-OTP-2122-6977-R01 at 6998-6999; CAR-OTP-2122-7001-R01 at 7002-7004) and LONGO base (CAR-OTP-2122-7052-R01 at 7053), both purportedly under Mr. Yekatom's control, and about an alleged [REDACTED] or other Anti-Balaka members (CAR-OTP-2122-6665-R01 at 6667-7778). These bases do not seem to be mentioned by any other individuals interviewed by the Prosecution. Nor did the Prosecution ever focus its interviews [REDACTED] [REDACTED] having a [REDACTED] among the anti-BALAKA. Whereas P-2620 states that "RAMBO" visited a series of Anti-Balaka bases, barricades and camps at undisclosed locations and [REDACTED] [REDACTED] (see ICC-01/14-01/18-660-Conf, para 12, referring to CAR-OTP-2121-2567-R01, paras. 20, 21, 39, 40 and CAR-OTP-2123-0057-R01, paras. 22-23), it is not unreasonable to deduce that the Prosecution was following up on this lead when questioning P-1839 subsequently.

In its previous consultation with the Prosecution, bearing in mind the Chamber's consideration that to mitigate the prejudice the Defence should have access to the substance of the statements (ICC-01/14-01/18-648-Conf-Red, para. 36), the Defence inquired about these specific locations and the substance of the information contained in the high number of paragraphs that were entirely redacted and was informed by the Prosecution that the maintenance of their redactions are necessary. To further delay the disclosure "is likely to lead to significant preparation difficulties for the defence if they are only able to commence substantive research into his evidence so close to the trial date" (*Bemba*, [ICC-01/04-01/08-767-Red2](#), para. 27) or even after the trial starts.

On the inequitable impediment on Mr. Yekatom's ability to prepare for his defence alone, the Prosecution's request should be rejected.

Lastly, the Defence notes the Prosecution intends to use the evidence of these individuals for the recruitment and use of child soldiers (ICC-01/14-01/18-518-Conf, para. 33). Since there are already five [REDACTED] (P-2233, P-2475, P-2476, P-2511, P-2442), two [REDACTED] (P-1974, P-2018) and two [REDACTED] (P-2082, P-2083) to testify about this issue, the benefit of introducing the requested individuals' evidence despite delayed disclosure would be significantly outweighed by the prejudice caused to Mr. Yekatom.

The Defence therefore respectfully requests the Chamber to reject the Prosecution's request.

Kind regards,
Mylène Dimitri

From: [REDACTED] >
Sent: 06 November 2020 12:46
To: Trial Chamber V Communications [REDACTED]
[REDACTED]; OTP CAR IIB Operations [REDACTED] > [REDACTED]
[REDACTED]
Cc: D29 Yekatom Defence Team <[REDACTED]>; D30 Ngaïssona Defence Team
<[REDACTED]>; V44 LRV Team <[REDACTED]>; V44LRVTeam-OPCV
<[REDACTED]>; V45 LRV Team <[REDACTED]>
[REDACTED]; VWS Legal <[REDACTED]>
Subject: Re: Request for clarification of the Chamber's 11 September 2020 Decision-ICC-01/14-01/18-648-Conf-Exp

Dear Trial Chamber V,
Dear Counsel,

The Defence for Mr Ngaïssona hereby provides its response to the Prosecution's request to delay the disclosure of the identity and witness materials related to Prosecution Witnesses P-2582, P-2620 and P-2671.

First, the Defence submits that the present request is made at the eleventh hour, just a few days before the Prosecution's disclosure deadline. The Victims and Witnesses Unit made its submissions regarding the assessments of the aforementioned witnesses more than two weeks ago, thereby providing ample time for the Prosecution to make its request for clarification to the Chamber, and which would have not put the Chamber in a position to significantly reduce the deadline to respond.

Second, the Defence for Mr Ngaïssona submits that the evidence of three aforementioned witnesses relates to the charge of conscripting or enlisting children under the age of fifteen years, with which Mr Ngaïssona is not charged. Therefore, the Defence defers and supports the Yekatom Defence's position on this issue.

Kind regards,

[REDACTED]
On behalf of the Defence for Patrice-Edouard Ngaïssona

From: Massidda, Paolina [REDACTED]
Sent: 05 November 2020 11:35
To: Trial Chamber V Communications <[REDACTED]>
Cc: OTP CAR IIB Operations <[REDACTED]>; D29 Yekatom Defence Team <[REDACTED]>; D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team [REDACTED]; V44LRVTeam-OPCV [REDACTED]; V45 LRV Team [REDACTED] VWS Legal <[REDACTED]>; [REDACTED]
Subject: RE: Prosecution's Request to Delay Disclosure of the identity and materials related to Prosecution Witnesses P-2582, P-2620 and P-2671 pursuant to Rule 81(4) of the Rules of Procedure and Evidence

Dear All,
The Common Legal Representatives do not oppose the Prosecution's request.
Kind regards,
Paolina Massidda and Dmytro Suprun

From: [REDACTED]
Sent: 05 November 2020 09:27
To: VWS Legal; Trial Chamber V Communications; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team; V44LRVTeam-OPCV; V45 LRV Team
Cc: OTP CAR IIB Operations; [REDACTED]
Subject: Prosecution's Request to Delay Disclosure of the identity and materials related to Prosecution Witnesses P-2582, P-2620 and P-2671 pursuant to Rule 81(4) of the Rules of Procedure and Evidence

Dear Trial Chamber V,
Dear Counsel,

The Prosecution requests the Trial Chamber's authorisation under Rule 81(4) of the Rules of Procedure of Evidence to delay the disclosure of the identity and witness materials related to Prosecution Witnesses P-2582, P-2620 and P-2671. Under the circumstances described below, delayed disclosure is justified in accordance with article 68 to protect the safety of the witnesses.

As highlighted in the Prosecution's previous filing (ICC-01/14-01/18-628-Conf-Red), P-2582 and P-2620 are former child soldiers directly implicating YEKATOM in the commission of crimes and, therefore, are in a particularly high risk category. They are likely to be a target of reprisals by sympathisers or associates of the Accused. Furthermore, both witnesses reside in areas accessible to Anti-Balaka elements.

The VWS' Second Report regarding the progress on the implementation of protective measures for P-2582 and P-2620 (ICC-01/14-01/18-693-Conf-Red) indicates that [REDACTED] due to the COVID-19 restrictions.

The Chamber in its 11 September 2020 Decision (ICC-01/14-01/18-648-Conf-Red), held that “there exists an objective risk to these individuals’ safety and that, at this point in time and under the circumstances, delayed disclosure of the witnesses’ identities and complete statements is absolutely necessary.” The objective risk found by the Chamber in only September of this year warranting the delayed disclosure of P-2582’s, P-2620’s, and P-2671’s identities continues to prevail. Given their particularly high risk profiles, and the VWS’s delay in implementing protection measures, delayed disclosure of P-2582’s, P-2620’s, and P-2671’s identities and witness materials is justified under the circumstances.

The Accused will not be unduly prejudiced by the delayed disclosure. First, the delayed disclosure is temporary since the witnesses’ identities and related materials will be disclosed once [REDACTED]. Second, the Prosecution has disclosed redacted versions of P-2582, P-2620 and P-2671’s statements (ICC-01/14-01/18-0644). Finally, delayed disclosure will best balance the interests in protecting the safety of witnesses and the fairness and expeditiousness of the proceedings. The obligation to provide the names of Prosecution witnesses sufficiently in advance of trial to enable the adequate preparation of the Defence is subject to the need for the protection and privacy of victims and witnesses.

The Prosecution therefore seeks the Chamber’s leave to disclose the identities and statements of P-2582, P-2620, and P-2671 once the VWS has fully implemented the protection measures for P-2582 and P-2620.

Kind regards,

On behalf of
Kweku Vanderpuye