

ANNEX 1
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Version

From: Trial Chamber V Communications
Sent: 28 February 2023 09:47
To: OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaïssona Defence Team; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; Associate Legal Officer-Court Officer
Cc: Chamber Decisions Communication; Trial Chamber V Communications
Subject: Decision on Submitted Materials for P-1719
Attachments: Ngaïssona Defence Submission of Evidence following P-1719's testimony

Dear Counsel, dear colleagues from the Registry,

The Chamber takes note of the emails on the submission of evidence following the examination of P-1719 by the Ngaïssona Defence (*see* email attached) and the Prosecution, as well as the response by the Ngaïssona Defence thereto (*see* emails below).

At the outset, the Chamber notes that items CAR-OTP-2059-0026, CAR-OTP-2124-0509, CAR-OTP-2124-0909, CAR-OTP-2124-0949, CAR-OTP-2124-0960, CAR-OTP-2124-1025 and CAR-OTP-2101-9735 have already been recognised as formally submitted by the Chamber. It recalls that therefore it need not rule on the abovementioned items again.

As concerns items **CAR-OTP-2101-6428**, **CAR-OTP-2101-9117**, **CAR-OTP-2100-8499**, **CAR-OTP-2102-9529** and **CAR-OTP-2101-9451**, consisting of five Facebook conversation chains, the Chamber notes the Ngaïssona Defence's objections to the submission of (i) those pages on which the witness did not specifically give evidence during his testimony for the first three items and of (ii) the latter three items due to the fact they were not shown to the witness. In light of their nature and scope, compared to the extent to which they were used during P-1719's questioning, the Chamber is of the view that it would be more appropriate to seek their formal submission through a bar table application. Therefore, without prejudice to its ruling on any bar table request, the Chamber rejects the Prosecution's request to formally submit these items by email through P-1719.

With regard to items **CAR-OTP-2025-0650**, **CAR-OTP-2046-0701** and **CAR-OTP-2116-1103**, the Chamber notes the Ngaïssona Defence's objections to their submission on the basis that 'when reference was made to CDR documents during the cross-examination, [...] P-1719 commented on the interpretation of those CDR by the Defence and not on the documents themselves'. The Chamber notes that the first two items consist of the call data records of P-1719 during a concrete period of time and that item CAR-OTP-2116-1103 is, according to the Ngaïssona Defence, an extraction report that shows that no phone contact was made between an individual's phone number (as provided by P-1719) and 'the Cameroonian numbers of Mr Ngaïssona' during the latter's time in Cameroon (*see* T-143, p. 39, line 21 to p. 40, line 11). The Chamber is of the view that, in light of the nature and scope of these items, compared to the extent to which they were used during the witness's questioning, it would also be more appropriate to seek their formal submission through a bar table application. Therefore, without prejudice to its ruling on any bar table request, the Chamber rejects the Prosecution's request to formally submit these items by email through P-1719.

With regard to items **CAR-OTP-2063-0127** and **CAR-OTP-2130-0046**, consisting of investigation reports containing additional information provided by P-1719 after his interview with the Prosecution, the Chamber notes that the Ngaïssona Defence objects to their submission arguing that they amount to 'an addendum to P-1719's statement' and thus 'fit within the definition of "prior recorded statements"'. The Chamber, however, notes that these items essentially contain a list of individuals and their phone numbers, and does not consider them to be of testimonial nature. It further notes that the witness discussed the content of both of these items during his testimony (*see* T-142, p. 67, line 23 to p. 68, line 15, where the witness indicated that 'the numbers and the names on the list is something that I recognise'; T-144, p. 6, line 16 to p. 7, line 12, where the witness confirmed one phone number contained therein). The Chamber therefore grants the Prosecution's request to consider CAR-OTP-2063-0127 and CAR-OTP-2130-0046 as formally submitted.

In light of the above, the Chamber recognises as formally submitted the following items:

Doc ID	Title	Type
CAR-OTP-2059-0016	N/A	List / table
CAR-OTP-2063-0127	INVESTIGATION REPORT	ICC Investigation notes / report / correspondence
CAR-OTP-2117-0486	NOTE CIRCULAIRE	Internal guidelines / instruction / orders
CAR-D30-0005-0006	Contrat de bail	Contract / Agreement
CAR-D30-0006-0060	WhatsApp finally adds voice calls	Media / press article
CAR-OTP-2130-0046	INVESTIGATION REPORT / Additional Information regarding CAR-OTP-P-1719	ICC Investigation notes / report / correspondence
CAR-D30-0005-0016	Screenshot Facebook account [REDACTED]	Photograph/s
CAR-D30-0004-0199	Letter dated 25 June 2021 from the Panel of Experts on CAR S/2021/569	Report
CAR-D30-0005-0010	Screenshot Facebook account [REDACTED]	Photograph/s
CAR-D30-0005-0011	Screenshot Facebook account [REDACTED]	Photograph/s
CAR-OTP-2098-0312	PASSEPORT [REDACTED]	Identifying document

The Registry is directed to proceed in accordance with paragraph 63(v) of the Initial Directions, ICC-01/14-01/18-631.

Kind regards, TC V

From: [REDACTED]
Sent: 20 July 2022 19:24
To: Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED] D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V44 LRV Team [REDACTED]; V45 LRV Team [REDACTED] OTP CAR IIB Case Management [REDACTED] OTP CAR IIB Operations [REDACTED] Associate Legal Officer-Court Officer [REDACTED]
Subject: RE: Prosecution Submission of evidence following the examination of P-1719

Dear Trial Chamber V,

The Defence for Mr Ngaissona ('the Defence') respectfully opposes the Prosecution's request to add into evidence the below mentioned documents following P-1719's testimony (Prosecution Submission of evidence following the examination of P-1719, 15 July 2022, at 22:06).

First, the Defence opposes the wholesale submission of the Facebook conversations referred to in the Prosecution's first list (**Items #1, #6 and #8 on the first list**). The Defence would not oppose the submission of pages containing messages on which Witness P-1719 specifically gave evidence during his oral testimony; however, the *prima facie* relevance and reliability of the messages upon which the witness was not given an opportunity to comment have not been established by the Prosecution. In this regard, the Defence incorporates by reference its previous objections to the formal submissions of entire Facebook conversations in relation to Witness P-2841 (see email dated 19 May 2021, 10:55 and email from the Defence team of Mr Yekatom dated 18 May at 20:25).

Second, the Defence equally objects to the submission of the Facebook conversations referred to in the second list (**Items #3 and #4 on the second list**) as they were not shown to the witness since he was not privy to the conversation nor was he mentioned therein (see ICC-01/14-01/18-T-023-ENG RT 29-03-2021 T, p.89 l.5-12). Item #3 was simply used for the Chamber's reference when the Defence suggested that Mr Levy Yakété was not managing the Facebook account "APCS FROCCA" (ICC-01/14-01/18-T-144-CONF-ENG RT, pp. 38-39) and Item #4 was used to put to the witness a date on which [REDACTED] phone number may have come into service (ICC-01/14-01/18-T-144-CONF-ENG RT, pp. 8-9).

Third, the Defence opposes the submission of **Item #7 on the first list**, namely CAR-OTP-2101-9451, as it lays out a Facebook conversation to which the witness does not take part and in which he is not mentioned. The Presiding Judge sustained the Defence's objection to the presentation of such document to the witness (ICC-01/14-01/18-T-142-CONF-ENG ET 12-07-2022 31/69 RH T). Therefore, the document was never used during the hearing.

Fourth, the Defence objects to the submission of CAR-OTP-2063-0127-R01 (**Item #5 on the first list**) and CAR-OTP-2130-0046 (**Item #6 on the second list**) as they are both testimonial in nature since both items are investigation reports following two meetings with witness P-1719, on [REDACTED] 2017 and [REDACTED] 2017. The documents summarise the content of meetings with P-1719 during which he provided a list of phone numbers and made substantive observations regarding the owners of the numbers, their respective role within the Anti-Balaka, and their relationships with certain individuals such as with Mr Ngaissona. As mentioned by the investigators, "P-1719 gave phone numbers [...] which were not included in his statement'. As such, these particular investigation reports amount, in effect, to an *addendum* to P-1719's statement. Therefore, the Defence submits that these items fit within the definition of 'prior recorded statements' (see ICC-02/04-01/15-795, paras 19-20), and their submission would amount to a violation of Rule 68 of the Rules of Procedure and Evidence.

Finally, the Defence opposes to the submission of the CDR documents, namely CAR-OTP-2025-0650, CAR-OTP-2046-0701, and CAR-OTP-2116-1103 (**Items #1, #2 and #5 on the second list**). As CDR documents are technical and not self-explanatory, when reference was made to CDR documents during the cross-examination, Witness P-1719 commented on the interpretation of those CDR by the Defence and not on the documents themselves. Therefore, the submission of CDR documents in their entirety through witness P-1719 is not appropriate (see the Chamber's Decision on Submitted Materials for P-0876, 25 May 2022, at 09:33).

The Defence for Mr Ngaissona also makes observations on the following documents:

First, documents CAR-OTP-2059-0016 and CAR-OTP-2062-0086 (respectively **Items #2 and #3 on the first list**) are not dated, and do not provide any dates on which the phone numbers came into service. Moreover, the witness testified to the fact that he is not the primary source of Item #3 and that he obtained it from an individual whose name he cannot remember (ICC-01/14-01/18-T-142-CONF-ENG ET 12-07-2022 1/69 RH T, p. 66, l.20 – p. 67, l. 4). Therefore, Item #3 cannot be authenticated. In any event, the Defence has already made submissions on the relevance and probative value of CDRs attributions and the CDRs themselves in its Response to the Prosecution's CDR Bar Table Motion (ICC-01/14-01/18-1409-Conf 13-05-2022). The Defence hereby incorporates by reference these submissions and respectfully requests that they be taken into consideration by the Chamber in its assessment of the evidence.

Second, document CAR-OTP-2062-0088 (**Item #4 on the first list**) contains a list of individuals who attended the [REDACTED] that was not drawn up by the witness himself, as noted by the Presiding Judge (ICC-01/14-01/18-T-144-CONF-ENG RT, p.98, l.3-7). Also, in addition to the [REDACTED] attendance sheet, the document seems to compile unrelated and undated lists of attendance to other meetings. Indeed, page 0091 seems to exhibit a list of attendance to a different and undated meeting from the [REDACTED] as well as a list of groceries, and page 0097 seems to be

part of a different list of attendance to a different and undated meeting from the [REDACTED] as the first row corresponds to entry number 105, thus suggesting that 104 previous entries are missing. As such, the Defence respectfully submits that this Item is not one coherent document and is therefore severable into several documents. Consequently, while the Defence does not object to the submission of the specific pages upon which the witness testified (the Nairobi Talks attendance sheet), it opposes the submission of all pages that do not have the mention "25/04/2015 FEUILLE DE PRESENCE RESTITUTION [REDACTED]". In any event, since the numbers were collected in 2015, they are not contemporaneous to the charges and the Defence's submissions regarding the relevance and probative value of CDRs attributions and the CDRs themselves in its Response to the Prosecution's CDR Bar Table Motion remain applicable here.

Finally, regarding CAR-OTP-2117-0486 (**Item #9 on the first list**), the Defence respectfully submits that the document is not authentic in light of the following :

- P-1719, [REDACTED] wrongfully identified the mandated person as "Andjilo" (ICC-01/14-01/18-T-144-CONF-ENG RT, p. 105, l. 12-24);
- The header of the document differs from other *Notes circulaires* from the PCUD (ICC-01/14-01/18-T-144-CONF-ENG RT, p. 107);
- The date of creation of the document does not correspond to the period during which Mr Ngaïssona was president of the PCUD (ICC-01/14-01/18-T-144-CONF-ENG RT, p. 105, l. 24 – p.106, l.1);
- The signature at the bottom of the document is indecipherable; and
- The document is riddled with mistakes that should not be present in any *Note circulaire* that is designed to be official: "[...] tout les malfrats qui commettrons des exactions ou utilise des armes pour theoriser la population civile".

Therefore, the Defence submits that the probative value of CAR-OTP-2117-0486 should be evaluated accordingly and respectfully requests the Chamber to take these elements into account when undertaking its holistic assessment of the evidence during the deliberation of the judgment.

Kind regards,

[REDACTED]

On behalf of the Defence Team for Mr Ngaïssona

From: [REDACTED]

Sent: 15 July 2022 22:06

To: Trial Chamber V Communications [REDACTED]

Cc: D29 Yekatom Defence Team [REDACTED] D30 Ngaïssona Defence Team

[REDACTED]; V44 LRV Team OPCV [REDACTED]; V44 LRV Team

[REDACTED] V45 LRV Team [REDACTED] OTP CAR IIB Case Management

[REDACTED] OTP CAR IIB Operations [REDACTED]

[REDACTED] Associate Legal Officer-

Court Officer [REDACTED]

Subject: Prosecution Submission of evidence following the examination of P-1719

Dear Trial Chamber V,

In accordance with paragraph 63(i) of the *Initial Directions on the Conduct of the Proceedings* (ICC-01/14-01/18-631), the Prosecution submits the documents listed below relating to the testimony of witness P-1719.

- i. Documents discussed with the witness during the course of his examination by the Prosecution :

Count	Doc ID	WIT - Used through	Type	EVD - Date used
1	CAR-OTP-2101-6428	CAR-OTP-P-1719	Communication - E-message	29/06/2022
2	CAR-OTP-2059-0016	CAR-OTP-P-1719	List / table	12/07/2022
3	CAR-OTP-2062-0086	CAR-OTP-P-1719	List / table	12/07/2022
4	CAR-OTP-2062-0088	CAR-OTP-P-1719	List / table	12/07/2022
5	CAR-OTP-2063-0127-R02	CAR-OTP-P-1719	ICC Investigation notes / report / correspondence	12/07/2022
6	CAR-OTP-2101-9117	CAR-OTP-P-1719	Communication - E-message	12/07/2022
7	CAR-OTP-2101-9451	CAR-OTP-P-1719	Communication - E-message	12/07/2022
8	CAR-OTP-2101-9735	CAR-OTP-P-1719	Communication - E-message	12/07/2022
9	CAR-OTP-2117-0486	CAR-OTP-P-1719	Internal guidelines / instruction / orders	12/07/2022

- ii. The Prosecution seeks to submit the following items used during the course of NGAISSONA's cross-examination of witness P-1719, to the extent that these items are not submitted by the NGAISSONA Defence :

Count	Doc ID	WIT - Used through	Type	EVD - Date used
1	CAR-OTP-2025-0650	CAR-OTP-P-1719	Call Data Records (CDR)	13/07/2022
2	CAR-OTP-2046-0701	CAR-OTP-P-1719	Call Data Records (CDR)	13/07/2022
3	CAR-OTP-2100-8499	CAR-OTP-P-1719	Communication - E-message	14/07/2022
4	CAR-OTP-2102-9529	CAR-OTP-P-1719	Communication - E-message	14/07/2022
5	CAR-OTP-2116-1103	CAR-OTP-P-1719	Call Data Records (CDR)	14/07/2022
6	CAR-OTP-2130-0046	CAR-OTP-P-1719	ICC Investigation notes / report / correspondence	13/07/2022

Kind regards,

On behalf of OTP Trial Team

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From: [REDACTED]
Sent: 15 July 2022 16:44
To: Trial Chamber V Communications
Cc: Associate Legal Officer-Court Officer; D30 Ngaïssona Defence Team; D29 Yekatom Defence Team; OTP CAR IIB Case Management; OTP CAR IIB Managers; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team
Subject: Ngaïssona Defence Submission of Evidence following P-1719's testimony

Dear Trial Chamber V,

Pursuant to paragraph 63(i) of the *Initial Directions of the Conduct of the Proceedings* (ICC-01/14-01/18-631), the Defence for Mr. Ngaïssona requests the submission of the following items used during P-1719's questioning by the non-calling party :

Count	Document ID	Title	Document Type	Confidentiality Level
1	CAR-D30-0004-0199	Letter dated 25 June 2021 from the Panel of Experts on CAR S/2021/569	Report	Public
2	CAR-D30-0005-0006	Contrat de bail	Contract / Agreement	Confidential
3	CAR-D30-0005-0010	Screenshot Facebook account [REDACTED]	Photograph/s	Public
4	CAR-D30-0005-0011	Screenshot Facebook account [REDACTED]	Photograph/s	Public
5	CAR-D30-0005-0016	Screenshot Facebook account [REDACTED]	Photograph/s	Confidential
6	CAR-D30-0006-0060	WhatsApp finally adds voice calls	Media / press article	Public
7	CAR-OTP-2059-0026	DECLARATION DU GROUPE D'AUTO-DEFENSE ANTI-BALAKA, SUITE A LA REUNION DE RESTITUTION DES NEGOCIATIONS DE PAIX DE NAIROBI N° 009/CG/CNO/SG/.	Media / press article	Public
8	CAR-OTP-2098-0312	PASSEPORT [REDACTED]	Identifying document	Confidential
9	CAR-OTP-2124-0509	BILLET RETOUR	Communication - E-mail	Confidential
10	CAR-OTP-2124-0909	Agenda/ordre du jour/orden del dia meeting no. 35 OC FCWC	Communication - E-mail	Confidential
11	CAR-OTP-2124-0949	NGAISSONA/EDOUARD PATRICE MR 07DEC2013 DLA CDG	Communication - E-mail	Confidential
12	CAR-OTP-2124-0960	NOTE OF EXPENSES	Financial document - Invoice	Confidential
13	CAR-OTP-2124-1025	[No Subject]	Communication - E-mail	Confidential

Respectfully yours,

[REDACTED]

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