

ANNEX 1
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Version

From: Trial Chamber V Communications
Sent: 16 March 2023 09:51
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 Chamber Decisions Communication; Trial Chamber V Communications
Cc:
Subject: Decision on Submitted Materials for P-1077

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Counsel, dear colleagues from the Registry,

The Chamber takes note of the email on the submission of evidence following the examination of P-1077 by the Prosecution (*see below* email from the Prosecution, 31 August 2022, at 18:25), and the objections thereto by the Ngaïssona Defence (*see below* email from the Ngaïssona Defence, 1 September 2022, at 18:49).

At the outset, the Chamber notes that item CAR-OTP-2100-2410, of which the Prosecution submits several pages, has already been recognised as submitted in its entirety (*see* ICC-01/14-01/18-1359), and that items CAR-OTP-2099-1360 and CAR-OTP-2107-1600 have also already been recognised as submitted in relation to P-0888 (email from the Chamber, 31 October 2022, at 14:36). The Chamber therefore need not rule on these items again.

With regard to item CAR-OTP-2005-0323, the Chamber notes the Ngaïssona Defence's objections that the item was not presented to the witness but 'simply referred to in passing for the record', and that it constitutes 'a lengthy excel sheet listing 1117 incidents that would have allegedly taken place in the CAR between September 2012 and September 2014'. In light of its nature and scope, compared to the extent to which it was used during P-1077's questioning (*see* T-150-CONF-ENG, p. 30, line 7 to p. 31, line 20), the Chamber is of the view that it would be more appropriate to seek its 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 this item by email through P-1077.

With regard to item CAR-OTP-2103-7208, the Chamber notes the Ngaïssona Defence's objections concerning the alleged prejudice caused by its submission, and recalls that it will assess the alleged prejudice in the context of its judgment deliberation. Furthermore, the Chamber notes the Ngaïssona Defence's submission that the item was not included in the Prosecution's List of Evidence and that the Prosecution 'should not be allowed to bypass the Trial Chamber's instructions on incriminatory evidence by mere virtue of the fact that the Defence made use of the item during its questioning of P-1077'. In this regard, the Chamber stresses that the item was not used by the Prosecution during its examination in chief, but by the Ngaïssona Defence during its own examination of the witness, after including it in its list of materials (*see* T-150-CONF-ENG, p. 42, line 20 to p. 45, line 7). Given this specific circumstance, the Chamber sees no reason why the Prosecution should be barred from requesting its submission in this context. The Chamber therefore considers it appropriate to recognise this item as submitted.

With regard to item CAR-OTP-2127-6169, the Chamber notes the Ngaïssona Defence's objections that it constitutes notes of a Prosecution's unfinished interview with P-1521 and is thus testimonial in nature. Given the nature of the item, the Chamber rejects the Prosecution's request to formally submit this item.

In light of the above, and in the absence of any procedural bars, the Chamber recognises as formally submitted the following items:

Doc ID	Title	Type
CAR-OTP-2101-0217	BUDGET PROVISIONNEL DES COORDONATEURS ET COM-ZONES PROVENCIAUX VENUS	Financial document - Other

	A BANGUI POUR LA RESTRUCTURATION DU BUREAU DE LA COORDINATION NATIONALE DU MOUVEMENT DES GROUPES D'AUTO DEFENCES RESISTANTS PATRIOTES ANTI BALAKA	
CAR-OTP-2100-1955	Annex C / Liste des milices anti-balaka	List / table
CAR-OTP-2100-1986	Annex E / Doléances	Correspondence - Letter
CAR-OTP-2001-5677	Bulletin de Renseignement Spécial / Situation sécuritaire à la date du 28 juillet 2014	Memo
CAR-OTP-2103-7208	Facebook Messenger Messages (Warrant Return)- 09_12_2014 20_08_532	Communication - E-message

In addition, the Chamber confirms that the requirements of Rule 68(3) of the Rules have been met for the following items:

Doc ID	Title	Type
CAR-OTP-2107-3366	Transcription de déposition / CAR-OTP-P-1077 Interviews Day 1/4 / CAR-OTP-2083-0126 - Track 1	ICC Statement - ICC transcribed statement
CAR-OTP-2083-0132	Annex C / Carte d'Identification 0000CNO	Identifying document
CAR-OTP-2107-3396	Transcription de déposition / CAR-OTP-P-1077 Interviews Day 2/4 / CAR-OTP-2083-0127 - Track 1	ICC Statement - ICC transcribed statement
CAR-OTP-2030-2280	Dit land bevindt zich op de rand van genocide (en nee, het i.mp4	Audio / Video Material
CAR-OTP-2107-7027	Traduction / Transcription de document audio/vidéo / Dit land bevindt zich op de rand van genocide (en nee, het i.mp4	Translation - FRA
CAR-OTP-2107-3636	Transcription de déposition / CAR-OTP-P-1077 Interviews Day 4/4 / CAR-OTP-2083-0129 - Track 3	ICC Statement - ICC transcribed statement
CAR-OTP-2001-4257	Christian militias invade second city in C. Africa	Media / press article
CAR-OTP-2107-3428	Transcription de déposition / CAR-OTP-P-1077 Interviews Day 2/4 / CAR-OTP-2083-0127 - Track 2	ICC Statement - ICC transcribed statement
CAR-OTP-2107-3500	Transcription de déposition / CAR-OTP-P-1077 Interviews Day 3/4 / CAR-OTP-2083-0128 - Track 1	ICC Statement - ICC transcribed statement

CAR-OTP-2107-3554	Transcription de déposition / CAR-OTP-P-1077 Interviews Day 3/4 / CAR-OTP-2083-0128 - Track 3	ICC Statement - ICC transcribed statement
CAR-OTP-2107-3584	Transcription de déposition / CAR-OTP-P-1077 Interviews Day 4/4 / CAR-OTP-2083-0129 - Track 1	ICC Statement - ICC transcribed statement
CAR-OTP-2107-3483	Transcription de déposition / CAR-OTP-P-1077 Interviews Day 2/4 / CAR-OTP-2083-0127 - Track 4	ICC Statement - ICC transcribed statement
CAR-OTP-2003-1654 (at page 1736)		Dossier
CAR-OTP-2107-3394	Transcription de déposition / CAR-OTP-P-1077 Interviews Day 1/4 / CAR-OTP-2083-0126 - Track 2	ICC Statement - ICC transcribed statement
CAR-OTP-2107-3454	Transcription de déposition / CAR-OTP-P-1077 Interviews Day 2/4 / CAR-OTP-2083-0127 - Track 3	ICC Statement - ICC transcribed statement
CAR-OTP-2107-3530	Transcription de déposition / CAR-OTP-P-1077 Interviews Day 3/4 / CAR-OTP-2083-0128 - Track 2	ICC Statement - ICC transcribed statement
CAR-OTP-2107-3610	Transcription de déposition / CAR-OTP-P-1077 Interviews Day 4/4 / CAR-OTP-2083-0129 - Track 2	ICC Statement - ICC transcribed statement
CAR-OTP-2107-3666	Transcription de déposition / CAR-OTP-P-1077 Interviews Day 4/4 / CAR-OTP-2083-0129 - Track 4	ICC Statement - ICC transcribed statement
CAR-OTP-2020-0413	MAISON CENTRALE DE NGARAGBA / No.24/MJCRJDH/DGSP/DAP/ MCN. 15	List / table
CAR-OTP-2030-0248	DECLARATION	Media / press article
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
CAR-OTP-2066-1601 (at pages 1655-1657)	Facebook Business Record	Report
CAR-OTP-2083-0130	Annex A	Satellite images and related reports
CAR-OTP-2083-0131	Annex B	Satellite images and related reports
CAR-OTP-2107-6899	Transcription de document audio/vidéo / Dit land bevindt zich op de rand van genocide (en nee, het i.mp4	Transcript

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: 01 September 2022 18:49
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-1077

Dear Trial Chamber V,

The Defence for Mr Ngaissona objects to the submission of the following items: CAR-OTP-2005-0323; CAR-OTP-2103-7208 and CAR-OTP-2127-6169-R01.

- With respect to CAR-OTP-2005-0323, the document was not presented to the witness, but simply referred to in passing, for the record. The witness never saw it, nor attested to the correctness of its content, nor discussed it. To the contrary, when told about a specific incident indicated in the document, namely a Seleka attack on a MSF hospital in Carnot, the witness could not recall it (ICC-01/14-01/18-T-150-ENG, page 38). Further, despite the Defence having made limited use of it, the Prosecution seeks submission of the entire document, which is a lengthy excel sheet listing 1117 incidents that would have allegedly taken place in the CAR between September 2012 and September 2014. In light of the nature and scope of the item, compared to the extent to which it was used during P-1077's questioning, the Prosecution should seek formal submission of the item through a bar table application (see similarly "Decision on Submitted Materials for P-2841", 2 July 2021; "Decision on Submitted Materials for P-2027", 19 July 2021; "Decision on submitted materials for P-0884", 21 October 2021).
- The prejudice of the submission by the Prosecution of CAR-OTP-2103-7208 outweighs its probative value. The Prosecution's email submitting the item has not indicated any probative value of the item. The Defence recalls that the item is not on the Prosecution's List of Evidence and that it was disclosed to the Defence a mere three days before the beginning of the witness' testimony, with the label "other". Pursuant to the Decision Setting the Commencement Date of the Trial, the Prosecution should have disclosed all incriminating material it intended to rely on at trial by 9 November 2020. In order to rely on material disclosed after that date, the Prosecution should seek the Chamber's leave to do so (ICC-01/14-01/18-589, paras 8, 10). This has not occurred. The Prosecution should not be allowed to bypass the Trial Chamber's instructions on incriminatory evidence by mere virtue of the fact that the Defence made use of the item during its questioning of P-1077 and especially over the objection of the Defence.
- As to CAR-OTP-2127-6169-R01, the Defence objects to the submission of the item, which consists of notes of a Prosecution's unfinished interview with P-1521, as '[e]vidence which is testimonial in nature is [...] inadmissible [...] when not elicited orally or when the conditions for the introduction of the prior recorded testimony specifically provided for in the Court's applicable law are not met' (ICC-01/14-01/18-631, para. 56).

Further and while it does not object to their submission, the Defence wishes to make remarks for the record concerning the relevance and probative value of a number of items, so that the Chamber may take them into

account during its assessment of the evidence at the time of the deliberation of the judgment (ICC-01/14-01/18-631, para. 53).

- CAR-OTP-2100-2410 consists of a book [REDACTED]. The item should be attributed limited probative value, given that [REDACTED] as well as information obtained from the media (CAR-OTP-2100-2386-R02, at 2404).
- CAR-OTP-2100-1955 consists of a list of Anti-Balaka elements in Berberati. The list should be attributed limited probative value, given that there is no clarity as to its author(s) and/or indicia of authenticity. The person who provided such list is a withdrawn Prosecution witness (P-2327), who will therefore not appear before the Court to contextualise the document, for instance by providing evidence as to who prepared the list and as to how the information presented therein was obtained.
- CAR-OTP-2101-0217 consists of a document that purports to be emanating from the “Bureau executif des Com-zones” of the “Patriote Anti Balaka Combattant”. This document has limited probative value, given that its source is unclear and it is not dated nor signed. The person who provided this document (P-2352) is also a withdrawn Prosecution witness and will therefore not appear before the Court to provide contextualisation of the document, including circumstances surrounding its drafting.

Lastly, with respect to the items submitted under Rule 68(3), the Defence recalls for the record that the Chamber has only granted the submission of page 1736 for item CAR-OTP-2003-1654 and of pages 1655, 1656 and 1657 for item CAR-OTP-2066-1601.

Kind regards,

[REDACTED]
On behalf of the Ngaissona Defence

From: [REDACTED]
Sent: 31 August 2022 18:25
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: Prosecution Submission of evidence following the examination of P-1077

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 requests that the following items be recognised as formally submitted:

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

Count	Doc ID	WIT-Used through	Document Type	EVD - Date	EVD – Participant Tendering	Request Submission
1.	CAR-OTP-2099-1360	P-1077	Audio / Video Material	29/08/22	OTP	Yes

2.	CAR-OTP-2100-2410	P-1077	Book	29/08/22	OTP	Yes- for pages 2410, 2471, 2474, 2475
3.	CAR-OTP-2100-1986	P-1077	Correspondence - Letter	29/08/22	OTP	Yes
4.	CAR-OTP-2101-0217	P-1077	Financial document - Other	29/08/22	OTP	Yes
5.	CAR-OTP-2100-1955	P-1077	List / table	29/08/22	OTP	Yes
6.	CAR-OTP-2107-1600	P-1077	Transcript	29/08/22	OTP	Yes

- ii. 26 items submitted under Rule 68(3) at the start of P-1077's testimony (ICC-01/14-01/18-1457-Conf, paras. 21-28; ICC-01/14-01/18-T-149 ENG RT, p. 10):

Count	Doc ID	WIT-Used through	Document Type	EVD - Date	EVD – Participant Tendering	Request Submission
1.	CAR-OTP-2030-2280	P-1077	Audio / Video Material	29/08/22	OTP	Yes
2.	CAR-OTP-2003-1654	P-1077	Dossier	29/08/22	OTP	Yes
3.	CAR-OTP-2107-3366	P-1077	ICC Statement - ICC transcribed statement	29/08/22	OTP	Yes
4.	CAR-OTP-2107-3394	P-1077	ICC Statement - ICC transcribed statement	29/08/22	OTP	Yes
5.	CAR-OTP-2107-3396	P-1077	ICC Statement - ICC transcribed statement	29/08/22	OTP	Yes
6.	CAR-OTP-2107-3428	P-1077	ICC Statement - ICC transcribed statement	29/08/22	OTP	Yes
7.	CAR-OTP-2107-3454	P-1077	ICC Statement - ICC transcribed statement	29/08/22	OTP	Yes
8.	CAR-OTP-2107-3483	P-1077	ICC Statement - ICC transcribed statement	29/08/22	OTP	Yes
9.	CAR-OTP-2107-3500	P-1077	ICC Statement - ICC transcribed statement	29/08/22	OTP	Yes
10.	CAR-OTP-2107-3530	P-1077	ICC Statement - ICC transcribed statement	29/08/22	OTP	Yes
11.	CAR-OTP-2107-3554	P-1077	ICC Statement - ICC transcribed statement	29/08/22	OTP	Yes
12.	CAR-OTP-2107-3584	P-1077	ICC Statement - ICC transcribed statement	29/08/22	OTP	Yes
13.	CAR-OTP-2107-3610	P-1077	ICC Statement - ICC transcribed statement	29/08/22	OTP	Yes

14.	CAR-OTP-2107-3636	P-1077	ICC Statement - ICC transcribed statement	29/08/22	OTP	Yes
15.	CAR-OTP-2107-3666	P-1077	ICC Statement - ICC transcribed statement	29/08/22	OTP	Yes
16.	CAR-OTP-2083-0132	P-1077	Identifying document	29/08/22	OTP	Yes
17.	CAR-OTP-2020-0413	P-1077	List / table	29/08/22	OTP	Yes
18.	CAR-OTP-2030-0445	P-1077	List / table	29/08/22	OTP	Yes
19.	CAR-OTP-2001-4257	P-1077	Media / press article	29/08/22	OTP	Yes
20.	CAR-OTP-2030-0248	P-1077	Media / press article	29/08/22	OTP	Yes
21.	CAR-OTP-2059-0026	P-1077	Media / press article	29/08/22	OTP	Yes
22.	CAR-OTP-2066-1601	P-1077	Report	29/08/22	OTP	Yes
23.	CAR-OTP-2083-0130	P-1077	Satellite images and related reports	29/08/22	OTP	Yes
24.	CAR-OTP-2083-0131	P-1077	Satellite images and related reports	29/08/22	OTP	Yes
25.	CAR-OTP-2107-6899	P-1077	Transcript	29/08/22	OTP	Yes
26.	CAR-OTP-2107-7027	P-1077	Translation - FRA	29/08/22	OTP	Yes

- iii. The Prosecution also seeks to submit the following items used during the course of NGAISSONA's cross-examination of witness P-1077, to the extent these items are not submitted by the NGAISSONA Defence:

Count	Doc ID	WIT-Used through	Document Type	EVD - Date	EVD – Participant Tendering	Request Submission
1.	CAR-OTP-2001-5677	CAR-OTP-P-1077	Report	30/08/22	OTP	Yes
2.	CAR-OTP-2005-0323	CAR-OTP-P-1077	List / table	30/08/22	OTP	Yes
3.	CAR-OTP-2103-7208	CAR-OTP-P-1077	Communication - E-message	30/08/22	OTP	Yes

4.	CAR-OTP-2127-6169-R01	CAR-OTP-P-1077	ICC Investigation notes / report / correspondence	30/08/22	OTP	Yes
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Kind regards,

On behalf of OTP Trial Team

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