

ANNEX 25

PUBLIC REDACTED

From: Trial Chamber VI Communications
Sent: 16 November 2022 11:35
To: Chamber Decisions Communication
Subject: FW: guidance on items recognised as formally submitted

From: Trial Chamber VI Communications
Sent: 11 November 2022 12:32
To: Associate Legal Officer-Court Officer [REDACTED] D33 Said Defence Team
[REDACTED] OTP CAR IIA Communications [REDACTED] Said
LRV Team OPCV [REDACTED]
Cc: Trial Chamber VI Communications [REDACTED]
Subject: guidance on items recognised as formally submitted

Dear colleagues in the Registry,
Dear parties and participants,

Many thanks for your email.

The Chamber hereby clarifies that a recognition of an item as formally submitted is applicable to all different redacted versions of this item (R01, R02, etc.), as well as the unredacted original, if available.

Accordingly, the Registry is to reflect the status as 'formally submitted' in the metadata of all the versions of an item.

Further, in order to help the Registry with this task, the parties are hereby instructed to indicate all available versions of an item when making their submissions on items they wish to be recognised as formally submitted (procedure in accordance with ICC-01/14-01/21-251, para. 21) from this time forward.

Kind regards,

Trial Chamber VI

From: [REDACTED]
Sent: 03 November 2022 17:17
To: Trial Chamber VI Communications [REDACTED]
Cc: D33 Said Defence Team [REDACTED] Said LRV Team OPCV [REDACTED]
[REDACTED] OTP CAR IIA Communications [REDACTED] Associate Legal Officer-Court Officer
[REDACTED]
Subject: RE: SAID - Decision on Submitted Materials for P-0547

Dear Trial Chamber VI,

As CMS is about to implement the Chamber's first Decision on items formally submitted for P-0547, it is noted that some items submitted by the parties to the Chamber and recognised as formally submitted are redacted versions or original documents (OTP items [CAR-OTP-2018-0420-R01](#) for example).

Before implementing the decision in NUIX, I noted that TCVI *Directions on the Conduct of Proceedings* (ICC-01/14-01/21-251, paras. 22-24) do not seem to expressly instruct the Registry to reflect in the Ecourt metadata its Decision on unredacted or lesser redacted versions of those recognised items.

CMS notes that in the *Yekatom Ngaissona* case, Trial Chamber V's *Initial Directions on the Conduct of the Proceedings*, determined that:

"(...) when a redacted item is recognised as formally submitted, a subsequent unredacted or lesser redacted version of this material is automatically to be considered as formally submitted, subject to any further objections". (ICC-01/14-01/18-631, par. 65)

Consequently, I am hereby kindly seeking the Chamber's guidance and further instructions to implement its Decision (and the upcoming one potentially). Should the Registry CMS also reflect the Chamber's decision in eCourt for unredacted or lesser redacted versions of items recognised as formally submitted ?

If so, could the Registry be in receipt of the list of ERNs corresponding to the unredacted or lesser redacted versions of items subject to the parties requests and recognised as formally submitted by the Chamber's decisions so to allow the Registry CMS to implement the decisions faster and to accurately reflect the relevant metadata in NUIX?

We remain at the Chamber's disposal should it needs further clarifications,

Thank you very much,

Best regards,

██████████

From: Trial Chamber VI Communications ██████████
Sent: 31 October 2022 14:49
To: FS Items Communication ██████████
Cc: OTP CAR IIA Communications ██████████ D33 Said Defence Team
██████████ Said LRV Team OPCV ██████████; Trial Chamber VI
Communications ██████████; Associate Legal Officer-Court Officer
██████████
Subject: SAID - Decision on Submitted Materials for P-0547

Dear Parties, participants and the Registry,

On 10 October 2022, the Prosecution requested that the Chamber recognise 25 items as formally submitted (Emails from the Prosecution, dated 10 October 2022, at 14:58 and 17:52 respectively).

On the same day, the Defence requested that the Chamber recognise 16 items as formally submitted (Email from the Defence, dated 10 October 2022, at 15:05).

On 13 October 2022, the Prosecution submitted a response to the Email from the Defence (Email Response from the Prosecution, dated 13 October 2022, at 18:00). Therein it objects to items 1, 3-5 and 6 of the Defence's list.

On 14 October 2022, the Defence replied to the Prosecution Response (Email Reply from the Defence, dated 14 October 2022, at 13:47).

Items Requested by the Prosecution

As a preliminary matter, the Chamber observes that the Prosecution's table contains an error. In relation to item 19 (CAR-OTP-2033-7554), the Chamber notes that the Prosecution lists CAR-REG-0002-0001 as the annotated version of item 19. However, upon review of CAR-REG-0002-0001, the Chamber notes that this is actually the annotated version of item 22.

With regard to the items submitted by the Prosecution, the Chamber notes that all items were discussed in one form or another during the witness's testimony. Similarly, the Chamber observes that the Defence does not oppose any of

the items requested by the Prosecution to be submitted. Accordingly, the Chamber recognises all items in the Prosecution's email dated 10 October 2022 at 17:52 as formally submitted.

Furthermore, the Chamber notes that, in respect of item 17 (CAR-OTP-2033-6907), the Prosecution has not sought formal submission of the annotated version of this item (CAR-REG-0002-0011). The Chamber finds that the Prosecution's approach is inconsistent in this regard, requesting recognition of the annotated versions for some items but not all. Pursuant to its powers under article 69(3) of the Statute, the Chamber finds that, for completeness of the record, this annotated version should also be recognised as formally submitted.

Items Requested by the Defence

First, the Chamber observes that a number of items submitted by the Defence have also sought to be submitted by the Prosecution. Specifically, items 2, 11, 12 and 13 on the Defence's list. The Chamber notes that once an item has been recognised as formally submitted, it will not rule on this item again.

Second, the Chamber observes that the Prosecution does not object to items 2, 7-16 on the Defence's List. The Chamber notes that all of these items were discussed in one form or another during the witness's testimony. Accordingly, the Chamber recognises items 7-10, 14-16 on the Defence's List (as noted above, items 2, 11, 12 and 13 appear on the Prosecution's List and have already been deemed formally submitted).

The Chamber will now turn to the items sought by the Defence for formal submission which are objected to by the Prosecution.

Items 1, 3-5 on the Defence's List

The Prosecution objects to items 1, 3-5 (CAR-OTP-2018-0389-R03, CAR-OTP-2025-0566-R02, CAR-OTP-2078-0292-R02 and CAR-OTP-2084-0036-R02) on the basis that they are the witness's 'statements and their translations, the introduction of which is only allowed when the conditions for the introduction of the prior recorded testimony specifically provided for in the Court's applicable law are met'. In this regard, the Prosecution avers that should the Defence wish to introduce these items it 'must do so through a formal submission under rule 68 of the Rules of Procedure and Evidence setting out specifically how each legal requirement is satisfied for these items. In so far as these documents were used by the Defence to impeach Witness P-0547's testimony, it is sufficient and appropriate by looking at the relevant transcripts of P-0547's testimony rather than his statements, as these transcripts record how and which specific parts of the statements were cited and referred to by the Defence to Witness P-0547'.

In response, the Defence submits that: (i) contrary to the Prosecution's submissions, it does not seek the entirety of all of P-0547's statements, but rather only to the specific paragraphs referred to during his cross examination by the Defence; (ii) the Defence seeks the formal submission of both the French and English versions of the relevant parts of the statements to ensure that all official translations are available on the case record; and (iii) it is necessary for completeness of the case record that where a party uses a prior statement with a witness to either confront him or refresh his memory that those paragraphs used are submitted on the case record.

The Chamber finds that the items submitted by the Defence constitute prior recorded testimony within the meaning of rule 68 of the Rules of Procedure and Evidence (the 'Rules'). Accordingly, in accordance with the jurisprudence from the Court (*see, for example, ICC-01/05-01/13-2275-Red, para. 581*), in order to be deemed formally submitted the requesting party must ensure that the requirements of one of the sub-rules of rule 68 of the Rules are satisfied. In this regard, although the witness did provide oral comment on the paragraphs put to him by the Defence, the requirements of rule 68, in particular rule 68(3), have not been satisfied. Accordingly, the Chamber rejects the Defence's request to have CAR-OTP-2018-0389-R03, CAR-OTP-2025-0566-R02, CAR-OTP-2078-0292-R02 and CAR-OTP-2084-0036-R02 recognised as formally submitted.

That notwithstanding, as noted by the Prosecution, when these documents were used with the witness the relevant portions were referred to and read into the record – as required by paragraphs 19 and 21 of the Additional Directions on the Conduct of Proceedings (#479). In this respect, the Chamber notes that the transcripts of P-0547's testimony in court contain the relevant information sought to be introduced by the Defence. Therefore, the Chamber notes that the relevant sections are already on the record, which the Chamber will have regard to in its assessment of the evidence for the purposes of its judgment pursuant to article 74 of the Statute. To the extent that other portions of a

witness' statement may need to be consulted in order to have a full understanding of the passage that was read into the record, the Chamber considers that it is not necessary to formally submit the entire statement for this purpose.

In future, the Chamber instructs the parties to not seek submission of items constituting prior recorded testimony through the formal submission of evidence procedure.

Item 6 on the Defence's List

The Prosecution objects to the [REDACTED] which is item 6 on the Defence's list. The Prosecution submits that it 'would not oppose the submission of those pages containing [REDACTED] on which Witness P-0547 specifically gave evidence during oral testimony' but objects to the submission 'of [REDACTED] upon which Witness P-0547 was not given an opportunity comment', averring that the Defence has not established the 'prima facie relevance and reliability' of [REDACTED].

The Defence, in response, submits that [REDACTED] have sufficient indicia of reliability as they are the result of a cooperation request by the Prosecution and the witness confirmed in court that they were [REDACTED]. Furthermore, the Defence submits that the document consists of an unbroken [REDACTED] and it would have been inefficient for the Defence to discuss [REDACTED] with the witness. Furthermore, the Defence submits that [REDACTED] are relevant to P-0547's credibility and the role and function of the Anti-Balaka during the charged period.

The Chamber rejects the Prosecution's submissions. Indeed the Chamber notes that the Prosecution seeks submission of an item (CAR-OTP-2118-3740) which the witness did not comment on in its entirety (only one specific page). Furthermore, the Chamber finds, pursuant to its powers under article 69(3) of the Statute, that the entirety of a document put to a witness shall be deemed formally submitted not merely the sections commented on by the witness during his or testimony. In any event, the Chamber notes that the Registry indicates in the eCourt metadata which specific pages were used in court.

Accordingly, the Chamber recognises item 6 of the Defence's List (CAR-OTP-2101-7868) as formally submitted.

Conclusion

In short, the Chamber recognises all items requested by the Prosecution and all items requested by the Defence, with the exception of Items 1, 3-5 (CAR-OTP-2018-0389-R03, CAR-OTP-2025-0566-R02, CAR-OTP-2078-0292-R02 and CAR-OTP-2084-0036-R02) on the Defence's List, as formally submitted.

In addition, the Chamber also recognises the annotated version of item 17 on the Prosecution's list of requested items (namely, CAR-REG-0002-0011) as formally submitted.

As a final administrative matter, the Chamber instructs the Defence that when sending its list of items it wishes to have recognised as formally submitted, that the relevant ERN numbers are hyperlinked to Nuix.

Kind regards,
Trial Chamber VI