

ANNEX 16
Public Redacted
Version

From: Trial Chamber V Communications
Sent: 23 November 2023 11:38
To: OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; 'V44 LRV Team'; V44 LRV Team OPCV; V45 LRV Team
Cc: Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber V Communications
Subject: Decision on Yekatom Defence Request for Leave to Communicate its List of Materials for its Opening Statement on 23 November 2023

[ICC] RESTRICTED

Dear Counsel,

The Single Judge takes note of the request below, as well as the Prosecution's email from yesterday at 10:47 .

In light of the explanations provided, the Single Judge grants the Yekatom Defence's request to provide the list of materials it intends to use in the course of its opening statement by today, COB. Furthermore, in order to provide sufficient time to the rest of participants and to the Chamber, the Single Judge instructs that objections, if any, be raised by no later than Monday 27 November 2023, at 12:00.

Kind regards,

TC V

From: [REDACTED]
Sent: 22 November 2023 20:15
To: Trial Chamber V Communications [REDACTED]
Cc: OTP CAR IIB [REDACTED]; D29 Yekatom Defence Team [REDACTED]
D30 Ngaissona Defence Team [REDACTED] V44 LRV Team
[REDACTED]; V44 LRV Team OPCV [REDACTED] V45 LRV Team
[REDACTED]
Subject: Defence Request for leave to communicate its list of material to be used for its opening statement on 23 November 2023

[ICC] RESTRICTED

Dear Trial Chamber V,
Dear Parties and Participants,

The Defence sincerely apologises for the delay in communicating the list of material it intends to use in the course of its opening statement, and respectfully requests leave to communicate it tomorrow, 23 November 2023.

The tight and competing deadlines which the Defence is trying to abide by to the best of its ability have proven to be challenging. Indeed, contrary to the Prosecution, the Defence did not benefit from a three months period between the notification of its list of evidence and its opening statement (see the Chamber's Decisions ICC-01/14-01/18-589 and ICC-01/14-01/18-875 in that regard), but merely a little over a week.

The Defence sincerely apologises for not having inquired to the Chamber about how this difference in scheduling impacted the directions found in the Chamber's Initial Directions on the Conduct of the Proceedings (ICC-01/14-01/18-631). Indeed, respecting the eight days deadline for the opening statement meant that the Defence

effectively had one weekend between the moment at which it finalised its final list of evidence – which comprises items obtained, stamped and disclosed on the 17 November 2023 (see of example CAR-D29-0009-0557-R01) – and the day at which it had to communicate the list of material it intends to use in the course of their opening statement.

This timeline was simply not tenable, and the Defence should have informed the Chamber as such ahead of time.

That being said, the Parties and Participants will suffer no prejudice from the late communication as all the material has been formally disclosed, and of the 92 items which are on the provisional list so far compiled, 44 were disclosed by the Prosecution, 14 are Defence material which have already been submitted, 10 are Defence material which have been disclosed and used throughout the proceedings, leaving only 24 items which were disclosed for the purpose of the Defence's List of Evidence. Moreover, the Parties and Participants will be in possession of the list within the five days delay provided for in the Initial Directions and relating to calling a witness.

Furthermore, the Defence cannot underline enough the prospective significance of its opening statement in these proceedings. Having the ability to use the material which it has carefully selected for the purpose of addressing the Chamber is of fundamental importance, which, the Defence believes, outweighs any prejudice, if any, arising from the late communication.

Kindest regards,


Yekatom Defence

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.