

ANNEX 46
Public Redacted
Version

From: Trial Chamber V Communications
Sent: 25 January 2024 09:14
To: D29 Yekatom Defence Team; V45 LRV Team
Cc: D30 Ngaissona Defence Team; OTP CAR IIB; V44 LRV Team; V44 LRV Team OPCV; Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber V Communications
Subject: RE: Yekatom Defence objection to the use of materials in CLRV1 Examination list of CAR-D29-P-6025

[ICC] RESTRICTED

Dear Counsel,
 dear colleagues of the Registry,

The Chamber takes note of the objections raised by the Yekatom Defence against the use of eight documents included on the CLRV1's List of Material in relation to their examination of D29-6025, as well as of the CLRV1's response thereto (*see, respectively*, email from the Yekatom Defence, 24 January 2024, at 20:00; email from the CLRV1, 24 January 2024, at 20:32).

Having considered the arguments as well as the documents, the Chamber orders the CLRV1 to conduct its examination of D29-6025 without showing him the documents in question.

First, the Chamber considers that the witness is unlikely to be able to provide any meaningful comment on the substance of the documents. He was not involved in their production, is not mentioned therein, and was also not otherwise in a position at the relevant time which would enable him to comment meaningfully on birth certificates or baptism cards of V45-0001 and his relatives. Similarly, the Chamber is not persuaded that the witness will be in a position to meaningfully comment on school records that are not related to his role as [REDACTED]. Therefore, showing the documents to the witness is highly unlikely to advance the questioning by the CLRV1 in any way.

Second, and bearing in mind the witness's testimony so far, the Chamber is of the view that the CLRV1 may draw information from the documents and use such information in its questioning of the witness, without having to actually show the documents to him.

Third, the Chamber underlines that this discussion is separate from the question whether, and if so, in which context, the Chamber may consider any request for submission of these documents. Only if and when any or all of the documents are recognised as submitted before the Chamber, will it consider their reliability and probative value.

In light of the above, the CLRV1 is instructed not to use any of the documents at issue in its questioning of this witness.

Kind regards, TC V

From: Suprun, Dmytro [REDACTED]
Sent: Wednesday, January 24, 2024 8:32 PM
To: [REDACTED]; Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED] D30 Ngaissona Defence Team [REDACTED]; OTP CAR IIB [REDACTED]; V44 LRV Team [REDACTED]; V44 LRV Team OPCV [REDACTED] V45 LRV Team [REDACTED]

██████████ Associate Legal Officer-Court Officer ██████████

Subject: RE: Yekatom Defence objection to the use of materials in CLR1 Examination list of CAR-D29-P-6025

[ICC] RESTRICTED

Dear Trial Chamber V,

The CLR1 herewith responds to the Yekatom Defence's objection against the use of documents contained in the "CRL1 List of Documents for Examination of CAR-D29-P-6025".

The CLR1 should be able to use these documents to properly test P-6025's testimony pertaining to P-0001. Given the content of his evidence and his personal background, P-6025 will be in a position to meaningfully comment on the listed documents.

In particular, P-6025 testified that:

Witness P-0001's parents are ██████████
 Witness P-0001 was born in ██████████
 He first met P-0001 in ██████████ in ██████████ when he deemed P-0001 to be about ██████████
 He only knew Witness P-0001 as ██████████ and not ██████████
 He was Witness P-0001's ██████████, and at ██████████;
 Witness P-0001 was registered at ██████████

The items contained in the CLR1 Examination List respectively contain the following information:

CAR-V45-0000006 shows that Witness P-0001's name is ██████████, born ██████████, and the names of his parents are ██████████;

CAR-V45-0000012 shows that Witness P-0001's name is ██████████, born ██████████ and baptized in ██████████

CAR-V45-0000013 shows that Witness P-0001's name is ██████████, born ██████████ residing in ██████████ and the name of his mother is ██████████;

CAR-V45-0000020 and CAR-V45-0000021 show that ██████████, born ██████████, attended the ██████████

CAR-V45-0000022 shows that Witness P-0001 is registered at ██████████

Cumulatively, these Items show that at least ██████████, Witness P-0001 did not live ██████████ and did not attend the ██████████

Upon being presented with items CAR-V45-0000020, CAR-V45-0000021 and CAR-V45-0000022, Witness P-6025 will be well-equipped to offer insights into the accuracy of the information contained in items CAR-D29-0013-0265 and CAR-D29-0013-0252, respectively.

As the calling participant for Witness P-0001, the CLR1 holds the exclusive responsibility to thoroughly examine Witness P-6025's testimony concerning his client. To ensure procedural fairness, the CLR1 should have the opportunity to effectively question Witness P-6025 and also confront him with pertinent documentary evidence. It is noteworthy that during the cross-examination of Witness P-0001, the Defence was able to use all relevant documents, despite obtaining and disclosing them shortly before Witness P-0001's testimony commenced, thus highlighting the feasibility of such practices. Imposing restrictions on the CLR1's ability to appropriately scrutinize Witness P-6025's testimony, including the use of pertinent documents, jeopardizes the fundamental principles of an adversarial process, thereby compromising the overall fairness and integrity of the proceedings. After the completion of Witness P-6025's testimony, the Defence will be afforded the chance to provide insights on the CLR1's request for the formal submission of the used items.

Kind regards,
 Dmytro Suprun

From: [REDACTED]
Sent: 24 January 2024 20:00
To: Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team [REDACTED]; OTP CAR IIB [REDACTED] V44 LRV Team [REDACTED] V44 LRV Team OPCV [REDACTED]; V45 LRV Team [REDACTED] Associate Legal Officer-Court Officer [REDACTED]
Subject: Yekatom Defence objection to the use of materials in CLRV1 Examination list of CAR-D29-P-6025

[ICC] RESTRICTED

Dear Trial Chamber V,

Dear all,

As indicated during today's hearing, the Yekatom Defence objects to the use of the following items as referenced in the CLRV1's List of Material to be used with P-6025: (i) Tab 1 CAR-V45-00000006; (ii) Tab 2 CAR-V45-00000012; (iii) Tab 3 CAR-V45-00000013; (iv) Tab 4 CAR-V45-00000014; (v) Tab 5 CAR-V45-00000015; (vi) Tab 6 CAR-V45-00000020; (vii) Tab 7 CAR-V45-00000021; and (viii) Tab 8 CAR-V45-00000022 ("Eight Items"). These objections are sent by email in order to assist in facilitating the continuation of P-6025's testimony tomorrow.

At the outset, the Defence maintains that should this objection be granted, the CLRV1 will remain in a position to fully examine the witness and put forward the relevant propositions concerning P-0001's identity (or any other aspect relevant to the CLRV1's case).

However, it is submitted that there is no material benefit in the use of the Eight Items with this witness and that further, the use of these documents is significantly prejudicial to the Defence of Mr Yekatom.

First, as with the Trial Chamber's directions concerning the use of similar documents with P-6036 (see T-262-CONF-FRA ET, at [10:21:11]), there is a clear foundation issue with the use of the Eight Items with P-6025. It is evident that P-6025 was not involved in their production nor is he in a position to provide meaningful comments on the substance of the Eight Items.

Second, and more pertinently, core aspects of the purported identifying information contained within the Eight Items are not only inconsistent with identifying information previously led by the CLRV1 with P-0001 but were also strenuously denied by him during his in-court testimony.

In particular, the Trial Chamber will recall that it was P-0001's evidence that:

1. He was born in [REDACTED] (see T-246-CONF-FRA ET, from [9:55:59] to [9:57:01] and from [10:02:51] to [10:03:13] *contra* Tab 6 CAR-V45-00000020 which depicts that he was born in [REDACTED]). At no point during his testimony was P-0001 asked nor did he ever mention that he was born in [REDACTED].
2. He was born on [REDACTED] (see T-245-CONF-FRA, at [9:43:03], from [12:11:26] to [12:12:22], [12:13:45] to [12:14:21] and T-246-CONF-FRA, at [11:41:40], [11:42:59] *contra* Tab 2 CAR-V45-00000012, Tab 3 CAR-V45-00000013, Tab 6 CAR-V45-00000020, and Tab 8 CAR-V45-00000022 which depict that he was born on [REDACTED]. The Chamber will recall that P-0001 vehemently denied that he was born on [REDACTED] when questioned by the Defence (see T-246-CONF-FRA ET, from [11:40:56] to [11:42:59]) and further, that the CLRV1 has previously opposed the submission of CAR-D29-0013-0265 (presently Tab 11 of the CLRV1's List of Items to be used with P-6025) on the basis that the personal information therein was not consistent with birth certificates submitted by the CLRV1 (see email correspondence dated 29 September 2023 at 18:47).
3. He completed his primary education [REDACTED] (T-246-CONF-FRA ET, from [14:11:24] to [14:12:27] *contra* Tab 6 CAR-V45-00000020 and Tab 7 CAR-V45-00000021 which depict that [REDACTED]). The Defence further notes that P-0001 also recognised the name of [REDACTED] (see T-246-CONF-FRA ET, from [14:12:31] to [14:13:08]). At no point did P-0001 testify that [REDACTED] having ample opportunity to do so.

Further compounding the issue is the fact that there is a material inconsistency concerning the date of birth within the Eight Items (i.e. [REDACTED] = CAR-V45-00000012, CAR-V45-00000013, CAR-V45-00000020 and CAR-V45-00000022 c/f [REDACTED] = CAR-V45-00000006).

It is inherently prejudicial for the CLRV1 to put a different place and date of birth to P-6025 – as well as the location of his primary education - when this was not put to P-0001 when he took the stand - noting the fact that it was evident that P-0001's identity was a contentious issue (see email correspondence dated 31 August 2023 whereby the Defence requested photographs of P-0001 on the basis that it was *“unable to accurately confirm the identity of either victim in light of the various contradictory identifying information provided by the CLRV1 in its disclosure thus far. This includes, for example, diverging information with respect to the parent names and date of births which are a contentious issue in these proceedings”*).

Nor did P-0001 – despite the extensive questioning concerning his identification - inform the judges that there were, for example, documents which depicted that he was born on [REDACTED] – instead, he categorically denied this and became visibly upset with the line of questioning. As such, the use of this material raises more questions than answers in particular with regards to the potential conflict between the CLRV1's reliance on identifying information which contradicts his client's sworn testimony and/or the truthfulness of P-0001's testimony under oath before this Chamber.

There is also a reasonable inference to be drawn from the fact that P-0001's place of birth and education has seemingly changed [REDACTED] after the fact. The Chamber will note that P-6025 was called in response to P-0001's testimony that he was born [REDACTED] (see CAR-D29-0009-0280-R01, paras 27-28). Defence investigations were therefore focused on [REDACTED] or this reason and yet now, following fundamental issues concerning P-0001's identity – the information has shifted to [REDACTED], a convenient location which has not been the subject of Defence investigations to date. As noted with P-6036, the use of such items therefore places an additional burden on the Defence in order to follow up with investigations regarding the Eight Items.

In light of these issues, the use of the Eight Items with P-6025 would only serve to complicate matters further and would not actually shed any more light with regard to P-0001's identity which cannot already be ascertained by

putting the proposition to the witness. It would therefore be in the interests of the integrity and efficiency of these proceedings to preclude the use of the Eight Items.

Kind regards,

██████████

Yekatom Defence

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