

ANNEX 4

PUBLIC

From: Trial Chamber V Communications
Sent: 04 November 2021 16:41
To: Trial Chamber V Communications; Vanderpuye, Kweku; [REDACTED]
Cc: D29 Yekatom Defence Team; D30 Ngaïssona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; OTP CAR IIB Case Management; OTP CAR IIB Operations; [REDACTED] Associate Legal Officer-Court Officer; Chamber Decisions Communication
Subject: RE: OTP Request to add to List of Exhibits of P-2843
Attachments: RE: The Prosecutor v. Alfred Yekatom & Patrice-Edouard Ngaïssona: ICC-01/14-01/18-1164-Conf - Prosecution's Request for Leave to Add Four Items to the List of Evidence

Dear Counsel,

The Single Judge takes note of the 'Prosecution's Request for Leave to Add Four Items to the List of Evidence' (ICC-01/14-01/18-1164-Conf) and the Ngaïssona Defence's response thereto (see email attached).

Should the other participants wish to make further submissions in this regard, they may do so at the beginning of tomorrow's hearing.

Kind regards, TC V

From: Trial Chamber V Communications [REDACTED]
Sent: 03 November 2021 14:52
To: Vanderpuye, Kweku [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] Associate Legal Officer-Court Officer [REDACTED]; Chamber Decisions Communication [REDACTED] Trial Chamber V Communications [REDACTED]
Subject: RE: OTP Request to add to List of Exhibits of P-2843

Dear Counsel,

The Single Judge takes note of the below emails regarding the Prosecution's request to add four items to its list of materials for the examination of P-2843.

The Single Judge notes, as also highlighted by the Ngaïssona Defence, that these four items are not included in the Prosecution's List of Evidence.

In this regard, the Single Judge recalls that he had previously instructed the Prosecution to thoroughly review its List of Evidence for completeness and indicated that '[h]e expects that, going forward, all documents to be relied upon during the hearings are included in the List of Evidence and that any additions thereto are sought on an exceptional basis and in a timely manner in advance of the hearing to avoid wasting valuable court time'.

Accordingly, the Single Judge instructs the Prosecution to submit a request to add the items in question to its List of Evidence, should this be its intended course of action.

Kind regards, TC V

From: Vanderpuye, Kweku [REDACTED]
Sent: 02 November 2021 19:39
To: [REDACTED]
 [REDACTED] 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]
Subject: RE: OTP Request to add to List of Exhibits of P-2843

Dear Trial Chamber V,

Dear All,

The Prosecution does not seek to belabour this issue. However, we underscore that the material at issue is limited in volume and scope and further disclosed some months ago, save the publicly leaked document, which has been readily available from even a basic Google search under the witness's name. Undoubtedly, the Defence would have done so in preparing their respective examinations - particularly given the concerted previous efforts to preclude his appearance altogether.

Although the material disclosed under rule 77 was not designated as 'INCRIM' per the Court's practice, the rule itself expressly encompasses the same (*i.e.*, 'intended for use by the Prosecutor as evidence for the purposes of ... trial'). To suggest that, failing the additional designation here causes undue prejudice given the period of disclosure, is at best untenable. Moreover, in view of the circumstances attendant to this particular witness and the restrictions on the Prosecution's investigative activities, it cannot reasonably be expected to divine what material may be necessary to elicit his complete and truthful testimony concerning the matters at issue.

The Defence is not disadvantaged. If anything, it has always been better disposed to engage the witness in advance of his testimony than the Prosecution has, given (a) [REDACTED] and (b) that there has never been any *legal* impediment to the Defence investigating directly with the witness what he may know. As noted, the Defence's tactical decision to avoid engaging the witness, belies the claim now advanced.

The Prosecution remains at the Chamber's disposal, should it require further information or explanation. Thank you.

Kind regards,

Kweku Vanderpuye

From: [REDACTED]
Sent: 02 November 2021 19:11
To: [REDACTED] 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];

Subject: RE: OTP Request to add to List of Exhibits of P-2843

Dear Trial Chamber V,
Dear All,

The Defence for Mr Yekatom ('Defence') respectfully supports the Ngaissona Defence submissions.

In addition, the Defence respectfully submits that the Request is insufficiently detailed as regards 'the intended purpose of the Prosecution's requested reliance on such material, and its prospective significance in light of the charges brought against the accused and the rest of the available evidence' (see, ICC-01/14-01/18-989-Conf, para. 5) such that the Defence is not in a position to determine the extent to which the sought amendments might cause undue prejudice. Notwithstanding the fact that it is 'difficult to anticipate' what evidence the witness might provide as regards these documents, the Prosecution necessarily has an idea as to their intended purpose and prospective significance going beyond the fact that they 'may prove useful to his examination, including to refreshing recollection'; the Request would not have been made otherwise. The Prosecution's failure to provide the Defence with this information should militate against the granting of the request.

As regards the Prosecution's failure to provide even the most cursory explanation for their addition at this late stage, the Defence notes especially that the documents (with the exception of the previously undisclosed document CAR-OTP-2130-1031) had been disclosed under Rule 77. It thus appears that the request is motivated by a late change in the Prosecution case as regards the purpose and significance of these documents and the anticipated evidence of this witness, which is fundamentally opposed to the very purpose of the final deadline for the List of Evidence - itself further cause to deny the Request.

Best regards,

Legal Assistant, Yekatom Defence

From: [REDACTED]
Sent: 02 November 2021 17:26
To: [REDACTED] 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]
Subject: RE: OTP Request to add to List of Exhibits of P-2843

Dear Trial Chamber V,
Dear All,

The Defence for Mr Ngaissona objects to the late addition of the four documents to the Prosecution's list of material for witness P-2843.

These four documents are not included in the Prosecution's list of evidence (LoE), nor did Prosecution seek to have them added to its LoE. CAR-OTP-2130-1031 has yet been disclosed to the Defence, despite it having been leaked, it seems, in [REDACTED]

As held by the Chamber, "it must be determined in the concrete circumstances whether reliance by the Prosecution on items additional to those included in the initial list of evidence causes undue prejudice to the procedural rights of the Defence. Factors to be

considered in this determination include, *inter alia*, the extent to which the requested addition is opposed by the Defence, the time when the addition was sought, the nature and amount of the material concerned, the intended purpose of the Prosecution's requested reliance on such material, and its prospective significance in light of the charges brought against the accused and the rest of the available evidence." (ICC-01/14-01/18-989-Conf, para. 5)

First, the timing of the request at such a late stage to both the LoE and the Prosecution's examination list – a mere two and a half days before the start of the witness testimony – is prejudicial to the Defence, especially given the Prosecution has not substantiated the "intended purpose of [its] (...) reliance on such material", nor "its prospective significance in light of the charges", as held by the Chamber. Rather, apart from the brief comment in its email that CAR-OTP-2133-7314 would be used for the phone attribution, the Prosecution merely makes general statements about the alleged relevance of the documents (ie. "the material below may prove useful to his examination").

Second, the Prosecution could have sought their addition to the List of Evidence at any moment since the 9 November 2020 deadline, and in particular, when the documents were first disclosed to the Defence, in February, June and July 2021 respectively, and again, when the Prosecution filed its examination list for P-2843. As it concerns the document which the Prosecution has not yet disclosed (CAR-OTP-2130-1031), it appears this document was published online in [REDACTED]. The Prosecution provides no information as to why this document was not previously disclosed to the Defence, let alone to support the absence of a prior request to amend its LoE to include this document. The Prosecution provides no information to explain how it came into possession of this document, and at which stage. There is no reason which would justify its late disclosure and reliance at trial for Witness P-2843.

Third, the Defence recalls the Chamber's recent specific instructions to the Prosecution, that it "thoroughly review its List of Evidence for completeness" and that "going forward, all documents to be relied upon during the hearings are included in the List of Evidence and that any additions thereto are sought on an exceptional basis and in a timely manner in advance of the hearing" (email from the Trial Chamber V, 9 September 2021, 10:00).

For these reasons, the Defence for Mr Ngaïssona respectfully requests the Chamber to reject the Prosecution's request.

Kind regards,

[REDACTED]

Legal Assistant, Defence for Mr Ngaïssona

From: [REDACTED]
Sent: 02 November 2021 14:16
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]
Subject: RE: OTP Request to add to List of Exhibits of P-2843

Dear Trial Chamber,
 Dear All,

Please note that the list of Exhibits is related to the upcoming witness P-2843

The Prosecution seeks the addition of the following documents to its Examination List. With the exception of CAR-OTP-2130-1031 (a publicly leaked document concerning [REDACTED] [REDACTED] (a courtesy copy is attached) which remains available on the internet), all have been previously disclosed by the Prosecution, albeit characterised under rule 77.

Of course, is difficult to anticipate what this Witness may commit to say in the circumstances of his calling. However, we consider that the material below may prove useful to his examination, including to refreshing recollection, and may further assist and advance the Chamber's evaluation of his evidence and determination of the truth.

The Prosecution remains at the disposal of the Chamber should it require any further information or explanation. Thank you.

- CAR-OTP-2130-5493 [CAF Directory for the phone attribution which is also publicly available at <https://docplayer.net/51470676-Caf-standing-committees-2015.html> : Trial Rule 77 package 55, 30 July 2021
- CAR-OTP-2133-7314 [REDACTED] for the phone attribution]- Trial Rule 77 package 49, 04 June 2021
- CAR-OTP-2130-3372: Pre-Trial Rule 77 package 28, 10 February 2021

Kind regards,

On behalf of OTP Trial Team

From: [REDACTED]
Sent: 02 November 2021 14:05
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]
Subject: OTP Request to add to List of Exhibits

Dear Trial Chamber,

Dear All,

The Prosecution seeks the addition of the following documents to its Examination List. With the exception of CAR-OTP-2130-1031 (a publicly leaked document concerning [REDACTED] a courtesy copy is attached) which remains available on the internet), all have been previously disclosed by the Prosecution, albeit characterised under rule 77.

Of course, is difficult to anticipate what this Witness may commit to say in the circumstances of his calling. However, we consider that the material below may prove useful to his examination, including to refreshing recollection, and may further assist and advance the Chamber's evaluation of his evidence and determination of the truth.

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- CAR-OTP-2130-5493 [CAF Directory for the phone attribution which is also publicly available at <https://docplayer.net/51470676-Caf-standing-committees-2015.html> : Trial Rule 77 package 55, 30 July 2021
- CAR-OTP-2133-7314 [REDACTED] – for the phone attribution]- Trial Rule 77 package 49, 04 June 2021
- EMAIL – where he talks about going to Cameroon to discuss the situation in the country that he cannot talk about over the phone. CAR-OTP-2130-3372: Pre-Trial Rule 77 package 28, 10 February 2021

Kind regards,

On behalf of OTP Trial Team

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From:
Sent:
To:

04 November 2021 16:22

Court Management-Court Records;

Cc:

Subject:

RE: The Prosecutor v. Alfred Yekatom & Patrice-Edouard Ngaïssona:
ICC-01/14-01/18-1164-Conf - Prosecution's Request for Leave to Add Four Items to
the List of Evidence

Dear Trial Chamber V,

[REDACTED]

Subject: The Prosecutor v. Alfred Yekatom & Patrice-Edouard Ngaïssona: ICC-01/14-01/18-1164-Conf - Prosecution's Request for Leave to Add Four Items to the List of Evidence

<https://edms.icc.int/RMWebdrawer/Record/2824880>

The purpose of this email is to inform you that the document mentioned below has been registered in ICC-01/14-01/18.

Le but de ce courriel est de vous informer que le document mentionné ci-dessous a été enregistré dans ICC-01/14-01/18.

Prosecution's Request for Leave to Add Four Items to the List of Evidence

Submitted by the Office of the Prosecutor / Déposé par le Bureau du Procureur

Reception Date/hour / Reçu le date/heure : 04/11/2021 12:03:48

Registration Date / Enregistré le : 04/11/2021

Notification Date / Notifié le : 04/11/2021

.....
*This constitutes the official notification form foreseen in Regulation 31 of the Regulations of the Court.
La présente tient lieu de formulaire de notification tel que prévu à la norme 31 du Règlement de la Cour.*

*Only documents satisfying the requirements set by Regulations 23, 26 and 36 of the Regulations of the Court will be registered in the relevant record.
Seuls les documents répondant aux critères énoncés aux normes 23, 26 et 36 du Règlement de la Cour sont enregistrés dans le dossier correspondant.*

*The Court Management Section shall not have any input into formatting, editing and any other alterations to documents received for registration.
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