

ANNEX 21
PUBLIC
REDACTED

From: Trial Chamber V Communications
Sent: 30 May 2022 08:53
To: Dimitri, Mylene; Vanderpuye, Kweku; [REDACTED]
Cc: OTP CAR IIB Case Management; OTP CAR IIB Managers; D30 Ngaissona Defence Team; D29 Yekatom Defence Team; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber V Communications
Subject: Decision on the 'Yekatom Defence Request for leave to add 12 items to its list of material for P-2475'

Dear counsel,

The Single Judge notes the 'Yekatom Defence Request for leave to add 12 items to its list of material for P-2475' (the 'Request'), the Prosecution's response, and the Yekatom Defence's reply thereto (*see, respectively*, emails from the Yekatom Defence, 27 May 2022, at 18:22 and 29 May 2022, at 13:05; email from the Prosecution, 27 May 2022, at 19:34).

Having reviewed the items in question, the Single Judge notes that they consist mostly of pictures and some documents relating to the identity [REDACTED] of certain individuals, which the Yekatom Defence indicates have been identified by P-2475 as [REDACTED] during his testimony, and thus arise directly from the examination of the witness by the calling party. Furthermore, and noting the early notice of the Request, the Single Judge does not find any prejudice caused to the Prosecution by adding these items to the Yekatom Defence's list of material.

Giving the circumstances at hand, the Single Judge is of the view that the Yekatom Defence has shown good cause and that the addition of the 12 items to its list of material is in the interests of justice. The Request is therefore granted.

Kind regards,

TC V

From: Dimitri, Mylene [REDACTED]
Sent: 29 May 2022 13:05
To: Vanderpuye, Kweku [REDACTED] Trial Chamber V Communications [REDACTED]
Cc: OTP CAR IIB Case Management [REDACTED]; OTP CAR IIB Managers [REDACTED]; D30 Ngaissona Defence Team [REDACTED]; D29 Yekatom Defence Team [REDACTED]; V44 LRV Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V45 LRV Team [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]
Subject: Re: Yekatom Defence Request for leave to add 12 items to its list of material for P-2475

Dear Trial Chamber V,

The Yekatom Defence respectfully submits that the Prosecution response should be dismissed.

The Prosecution's reliance on the fact that its intention to call P-2475 was communicated two years ago is misplaced. Defence investigations are prioritised according to the anticipated order of witnesses' appearance as communicated by the Prosecution. Following the Prosecution's decision to significantly advance P-2475's testimony, the Defence has duly redirected and mobilised its limited resources towards ensuring its preparedness for his appearance, and has been working hard to this end. It is respectfully submitted that the

delay in obtaining and disclosing these items should be assessed against the prevailing exceptional circumstances in addition to the fact that Defence investigations are constantly ongoing and are directly affected as the evidence is presented.

The Defence strongly refutes any suggestion that the late addition of these 12 items is the result of strategy on its part. It is unclear as to what the Defence might stand to gain strategically by disclosing these items on Friday evening, thereby leaving over 48 hours for the Prosecution to assess and review 17 pages of material consisting overwhelmingly of images, especially given that the Prosecution is yet to conclude its examination of P-2475. In any event, the sought addition does not prejudice the Prosecution, nor does the Prosecution even attempt to argue as much in its response.

More broadly, the sought items are in the interests of justice, as they go directly to the material issue of the age(s) of individuals identified as [REDACTED] by P-2475. In this regard, the Defence expresses its concern that the Prosecution, who bears the burden of proof, seeks to impede the Defence's reliance on these items while arguing no prejudice whatsoever, especially given its statutory duty to assist the Chamber in establishing the truth.

The Defence therefore respectfully reiterates its request that the sought leave be granted.

Kind Regards,
Mylène Dimitri

From: Vanderpuye, Kweku [REDACTED]
Sent: 27 May 2022 19:34
To: [REDACTED] Trial Chamber V Communications [REDACTED]
Cc: OTP CAR IIB Case Management [REDACTED]; OTP CAR IIB Managers [REDACTED]; D30 Ngaissona Defence Team <[REDACTED]> D29 Yekatom Defence Team [REDACTED]; V44 LRV Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V45 LRV Team [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]
Subject: RE: Yekatom Defence Request for leave to add 12 items to its list of material for P-2475

Dear Trial Chamber V,

Dear Counsel,

The Prosecution opposes the Yekatom Defence's request below. Although the testimony of P-2475 was indeed advanced, the Prosecution's intention to call the witness in this trial was definitively communicated to the Defence nearly two years ago.

The Defence's investigation regarding this specific individual presumably commenced long ago, particularly given the nature and scope of the evidence contained in his Statement. While the Defence asserts "good cause" with regard to undertaking "last-minute" investigations, the request provides no indication as when Defence investigations began in the first place, or their scope.

Absent this information – even in the most cursory form – the claim that there is 'good cause' is merely conclusory. It is unsupported by any demonstrable *fact*. The deficiency further deprives the Chamber of any ability to independently assess the merits of the request. For instance, the Defence proffers no reason as to why the documents sought to be added could not have been identified, anticipated, or obtained before now; and if available sooner, why they were not added to the Defence's list of materials more timely. The Chamber must bear in mind that the Accused himself is a source of information on which the Defence may rely to inform their investigations. The claim that the witness did not mention a particular name or another, cannot reasonably determine the scope of the Defence's investigation in the circumstances.

Whether the Defence's failure to investigate matters which the proposed documents cover was strategic, inadvertent, or indeed genuinely unanticipated remains thoroughly unclear in the request. And for that reason, the requirements of regulation 35 have not been met *prima facie*. The Chamber should therefore reject the request.

Kind regards,

Kweku Vanderpuye

From: [REDACTED]
Sent: 27 May 2022 18:22
To: Trial Chamber V Communications [REDACTED]
Cc: OTP CAR IIB Case Management [REDACTED] OTP CAR IIB Managers [REDACTED]
 [REDACTED] D30 Ngaissona Defence Team [REDACTED]; D29 Yekatom Defence Team [REDACTED] V44 LRV Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V45 LRV Team [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]
Subject: Yekatom Defence Request for leave to add 12 items to its list of material for P-2475

Dear Trial Chamber V,

The Yekatom Defence respectfully requests leave to add 12 items to its list of material to be used with P-2475. The Defence attaches a courtesy copy of the proposed updated list of material, in which the 12 items appear in red (with hyperlinks); the e-binder will be updated should leave be granted.

The Defence respectfully submits that there is good cause for the late addition of the items.

Items 101 and 103-112 were obtained further to last-minute Defence investigations in preparation for P-2475's testimony. In this regard, the Defence respectfully recalls that P-2475's testimony was significantly advanced in the schedule 'due to unforeseen circumstances' (see, Trial Chamber V Email Decision of 22 April 2022 at 15.06); and further, that in the context of discussions regarding this issue, the Defence raised the possibility that last-minute investigations following the witness's examination by the Prosecution might be necessary (see, email from Yekatom Defence dated 21 April 2022 at 18.05). In this regard, the Defence has endeavoured to disclose these newly obtained items and seek leave for their addition before the weekend, so as to allow the Chamber, Parties and Participants sufficient time to assess them prior to the conclusion of the Prosecution's examination of P-2475 and the commencement of his cross-examination. Further, the documents comprise a combined total of 17 pages, much of which is constituted of images as opposed to text, which further reduces any prejudice that might be occasioned by their sought addition to the list of material.

Item 102 is added following evidence elicited during the Prosecution's examination of P-2475 – specifically, the fact that P-2475 identified an individual a [REDACTED] (see e.g., T-130, pp 6-7); the Defence notes that [REDACTED] was not mentioned in the Prosecution summary of P-2475's expected testimony.

Best regards,

[REDACTED]
 Legal Assistant, Yekatom Defence

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