

ANNEX 51

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Version

From: Trial Chamber V Communications
Sent: 24 October 2022 09:01
To: OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team
Cc: Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber V Communications
Subject: Clarification concerning ICC-01/14-01/18-1626-Conf - Re. P-1839

Dear Counsel,

In light of the information provided below, and with reference to Decision ICC-01/14-01/18-1626-Conf, para. 14, p. 8, the Single Judge clarifies that it is sufficient for the Prosecution to review the 'Possibly Relevant Items' (as described below) to ensure that the Defence has been provided with all disclosable material.

Further, it reminds the Prosecution that it should provide the Defence with 'all documents regarding the former's obtaining and extracting of information and/or material from P-1839's Facebook account'.

Kind regards, TC V

From: OTP CAR IIB [REDACTED]
Sent: 22 October 2022 12:04
To: Trial Chamber V Communications [REDACTED] D29 Yekatom Defence Team
[REDACTED]; D30 Ngaissona Defence Team
[REDACTED] V44 LRV Team OPCV [REDACTED]; V44 LRV Team
[REDACTED]; V45 LRV Team [REDACTED]; Associate Legal Officer-Court Officer
[REDACTED]
Cc: OTP CAR IIB [REDACTED]
Subject: ICC-01/14-01/18-1626-Conf - Re. P-1839
Importance: High

Dear Trial Chamber,

Dear All,

The Prosecution seeks clarification with respect to the Single Judge's 20 October 2022 order "to review the *contents* of P-1839's Facebook account and provide the Defence with all disclosable documents, including those regarding the Prosecution's obtaining and extracting of information and/or material from [the account] ... by 24 October 2022" (ICC-01/14-01/18-1626-Conf, p. 8). Although the Prosecution considers that the Order does not contemplate a re-review of the entirety of P-1839's Facebook account, but instead the possibly 'relevant' information extracted from it which the Prosecution subsequently assessed as not disclosable, we consider that a clarification is necessary.

To be sure, a complete *re-review* of the contents of P-1839's entire Facebook profile cannot be achieved in a handful of days. P-1839's Facebook account covers an extended period. The review conducted on records responsive to an extensive keyword-based extraction (comprising 91 terms), involved over 187GB of data comprising around 194,000 discrete data files ("Extracted Data"). This manual review took several months to complete. As such, we do not believe the Order intends a re-review on this scale, nor that it is necessary given the propriety of the underlying review procedure documented in the investigation report CAR-OTP-2122-6129, disclosed on 7 October 2020.

We have consulted extensively with members of our Forensic Science Section ("FSS") involved in obtaining the Extracted Material, and have been informed that the process used a software tool that is no longer supported. Thus,

the Extracted Material is in a different format than that of data for Facebook accounts acquired after P-1839's. To review the contents of the account efficiently requires the conversion the data to a new format which, although an entirely automated process, will take several days to run – given system processing speeds and barring crashes, or other likely technical challenges.

As noted, the Extracted Material was initially reviewed to identify information of possible relevance to the case to be further assessed for *disclosure* purposes ("Possibly Relevant Items"). About 308 items were assessed as such, registered in Ringtail, and then reviewed for disclosure. Of the 308 Possibly Relevant Items, 161 were assessed as 'material' in that they fell into an appropriate disclosure category (i.e., Rule 77, INCRIM, or PEXO) and disclosed to the Defence in October and November 2020.

The Prosecution is presently re-reviewing the 147 undisclosed Relevant Items, pending the Chamber's clarification. We will inform the Parties and Participants by Monday if there are additional documents material to the preparation of the Defence or "*significantly* helpful to an understanding of *important* inculpatory or exculpatory evidence" (ICC-01/14-01/18-1626-Conf, para. 10).

Should the Chamber clarify that the order intends that the Prosecution undertake the re-review the entirety of P-1839's Facebook account, this would require a significant extension of time, as the duration of the file conversion process is unclear given the volume of the data-set - 187GB comprising about 200,000 individual files, to be followed by a time-consuming and resource intensive assessment.

We await the Chamber's further clarification and guidance. Thank you.

Kind regards,

Kweku Vanderpuye