

ANNEX 42

Public Redacted

Version

From: Trial Chamber V Communications
Sent: 14 October 2022 10:11
To: [REDACTED] OTP CAR IIB; Trial Chamber V Communications
Cc: D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; Chamber Decisions Communication; Associate Legal Officer-Court Officer
Subject: Decision on the Ngaissona Defence's Request to preclude the Prosecution from Filing Further Requests to Add Items to its List of Evidence and Further Directions to the Prosecution

Dear Counsel,

The Chamber recalls that a truth-finding function is assigned to it and it would be unreasonable for it to determine that evidence with prospective significance could not, under any circumstances, be requested for addition to the List of Evidence by the Prosecution if not included in the List of Evidence by the final disclosure deadline (*see for example*, Decision ICC-01/14-01/18-1597-Conf). Moreover, while standing by its previous direction that investigations in this case should be concluded at this stage, it notes that it is not in a position to give the same directions in relation to the *Mokom* case, which is presently still at the pre-confirmation stage and before Pre-Trial Chamber II.

Consequently, the Chamber will not preclude the Prosecution from filing further requests to add items to the List of Evidence, nor will it impose a strict deadline for such requests. The Ngaissona Defence's request and alternative request are therefore rejected.

Nonetheless, the Chamber will continue to individually assess each item requested for addition to the List of Evidence and balance its prospective significance against any prejudice caused to the accused by this addition, as it has done in the past. In this regard, it also recalls, for instance, that in its latest decision (Decision ICC-01/14-01/18-1597-Conf), it granted the addition of only 65 out of 103 items requested, some of which only partially.

Turning to the information provided by the Prosecution below, the Chamber is of the view that the indication that 'it will very likely file additional requests to add materials to its List of Evidence' is vague and unhelpful. The Prosecution is therefore instructed to provide, by 25 October 2022, a plan listing all further requests to add items to the List of Evidence that it currently foresees. With regard to the items already in its possession, this plan should include information about (i) the number and volume of items potentially subject to further requests, (ii) the overall nature of these items, and (iii) the approximate timing of the requests. As regards items not yet collected, the Prosecution shall, to the extent possible, give an estimate of how many items considered for the addition to the List of Evidence in this case are yet to be collected/received.

The Chamber emphasises that the purpose of these directions is to give the Chamber and the Defence teams an idea of the number of requests and items to be expected. In the Chamber's view, this information will assist the Defence in its preparation and allocation of work, and limit and/or mitigate any potential prejudice caused to the Defence by any addition to the List of Evidence.

Kind regards, TC V

From: [REDACTED]
Sent: 12 October 2022 17:19
To: OTP CAR IIB [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]

Subject: Re: Prosecution's provision of information pursuant to the Single Judge's instruction in its Decision on the Prosecution Request to Add 103 Items to its List of Evidence (ICC-01/14-01/18-1597-Conf, page 10)

Dear Trial Chamber,

The Ngaissona Defence notes with concern the Prosecution's notice that it will 'very likely' file an unspecified number of requests to add items to its List of Evidence. The Chamber rightly noted in its Decision of 6 October, that investigations should largely be completed at the stage of the confirmation of charges hearing, and added that it trusted that the Prosecution had fully completed its investigations *in this case* (para. 23 of the Decision).

The Prosecution now seemingly uses its investigations in *the case of Maxime Mokom* as a justification to bring new items in the case against Mr Ngaïssona. This is not acceptable. The vast majority of witnesses relevant to the charges against Mr Ngaïssona have already testified, while we have now reached the half point of the Prosecution case. The prejudice of *repeatedly* adding new items to the List of Evidence cannot be underestimated.

We are now nearly 2 years after the 'deadline' of 9 November 2020 (ICC-01/14-01/18-589), and 9 requests to add items later (ICC-01/14-01/18-958-Conf; ICC-01/14-01/18-1042-Conf; Email sent by the Prosecution, 28 September 2021 at 17:37; ICC-01/14-01/18-1144-Conf; ICC-01/14-01/18-1164-Conf; ICC-01/14-01/18-1212-Conf; ICC-01/14-01/18-1285-Conf; ICC-01/14-01/18-1330-Conf; ICC-01/14-01/18-1394-Conf). To add insult to injury, the Prosecution now only indicates its 'likely intention' to file more requests, but needs to 2 more weeks to inform us on the 'timing' of such requests, leaving entirely unanswered the issue of *when* these requests will in fact be filed.

For these reasons, the Ngaïssona defence respectfully requests that the Prosecution be precluded from adding items stemming from its investigations in the Mokom case. Alternatively, we request that the Chamber impose a hard deadline of 2 weeks from today to file future request(s), while no further request should be entertained.

Thank you and kind regards,

[REDACTED], on behalf of the Ngaïssona Defence team

From: OTP CAR IIB [REDACTED]

Sent: 11 October 2022 13:59

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 [REDACTED]

Subject: Prosecution's provision of information pursuant to the Single Judge's instruction in its Decision on the Prosecution Request to Add 103 Items to its List of Evidence (ICC-01/14-01/18-1597-Conf, page 10)

Dear Trial Chamber V,

Pursuant to the Single Judge's instruction in its "Decision on the Prosecution Request to Add 103 Items to its List of Evidence" (ICC-01/14-01/18-1597-Conf, page 10), the Office of the Prosecutor ("Prosecution") hereby informs the Chamber and the participants that it will very likely file additional requests to add materials to its List of Evidence. The Prosecution is in the process of identifying and analysing materials, including but not limited to Facebook materials and other items being collected during the investigation of the MOKOM case, to determine whether they individually meet the requisite legal threshold to be added to its List of Evidence.

The Prosecution should be in position, within two weeks, to provide the Chamber and the participants with a reasonable timeline to file further requests.

Kind regards,

On behalf of OTP Trial Team

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