

ANNEX 1

Public Redacted

Version

From: Trial Chamber V Communications
Sent: 28 May 2024 11:02
To: OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; 'V44 LRV Team'; V44 LRV Team OPCV; V45 LRV Team
Cc: Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber V Communications
Subject: Decision on Submitted Materials for D29-6036
Attachments: Yekatom Defence Submission of evidence following the examination of CAR-D29-P-6036

[ICC] RESTRICTED

Dear Counsel,
 Dear colleagues from the Registry,

The Chamber takes note of the emails on the submission of evidence following the examination of D29-6036 by the Yekatom Defence and the Prosecution, and the Yekatom Defence's objections thereto (*see attached and below*, emails from the Yekatom Defence, 24 January 2024, at 11:19 and 29 January 2024, at 19:29; email from the Prosecution, 24 January 2024, at 18:08).

At the outset, the Chamber notes that CAR-OTP-00025616 and CAR-D29-0010-0194 are already recognised as formally submitted. It therefore need not rule on them again.

The Chamber also notes that **CAR-V45-00000011** and **CAR-D29-0009-0245** have been recognised as submitted pursuant to Rule 68(2)(b) of the Rules in its decision ICC-01/14-01/18-2424-Conf, concerning D29-6033 and D29-6027, respectively. However, such recognition is conditional on the declaration being provided under Rule 68(2)(b)(ii) and (iii), and the Chamber notes that such declaration has not yet been received. In the interest of efficiency and noting that the items have been used and discussed with D29-6036, the Chamber considers it appropriate to recognise these items as formally submitted in the present decision.

The Chamber further notes that the Yekatom Defence objects to the submission of **CAR-OTP-00025601**, on the basis that it was not presented to the witness in its entirety and he therefore did not comment on it. The Chamber observes that the item consists of a picture included in CAR-OTP-00025616, which was shown to the witness during his examination by the Prosecution. However, **CAR-OTP-00025601** itself was not shown to the witness and he also did not comment on it. The Chamber therefore rejects the submission of **CAR-OTP-00025601**.

Lastly, the Chamber takes note of the CLRV1's argument – in the context of the submission of evidence following the examination of V45-0002 – that **CAR-D29-0016-0157** should be submitted from the bar table, as it contains 'Facebook conversations or snapshots taken from various Facebook accounts' (*see* email from the CLRV1, 3 October 2023, at 17:55). The Chamber observes that **CAR-D29-0016-0157** was used and discussed with D29-6036 (*see* T-259-CONF-ENG, p. 11, line 22 to p. 12, line 1). Furthermore, and contrary to the CLRV1's assertion, the fact that it consists of a snapshot taken from a Facebook account does not *per se* mean that it 'should be submitted from the bar table' (*see also* Decision on Submitted Materials for P-2018, email from the Chamber, 12 October 2023, at 15:03). Accordingly, and in the absence of any procedural bars, the Chamber recognises **CAR-D29-0016-0157** as formally submitted through D29-6036.

In light of the above, and in the absence of any procedural bars, the Chamber recognises as formally submitted the following items:

Count	Doc ID	Title	Type
1.	CAR-D29-0016-0172	Screenshot Facebook - [REDACTED]	Communication - E-message
2.	CAR-D29-0019-8020	[REDACTED] - pages 68 - 125	Communication - E-message
3.	CAR-D29-0009-0245	Annexe 1 de CAR-D29-0009-0239	Identifying document
4.	CAR-V45-00000011	Photo of [REDACTED]	Photograph
5.	CAR-D29-0016-0157	Screenshot Facebook - [REDACTED]	Communication - E-message

The Registry is directed to proceed in accordance with paragraph 63(v) of the Initial Directions, ICC-01/14-01/18-631.

Kind regards,

TC V

From: [REDACTED]
Sent: Monday, January 29, 2024 7:29 PM
To: Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED]
[REDACTED] D30 Ngaissona Defence Team [REDACTED] OTP
CAR IIB [REDACTED] V44 LRV Team OPCV [REDACTED] V44 LRV Team
[REDACTED]; V45 LRV Team [REDACTED]
[REDACTED] Associate Legal Officer-Court Officer [REDACTED]
[REDACTED]
Subject: RE: Prosecution Submission of evidence following the cross-examination of D29-6036

[ICC] RESTRICTED

Dear Trial Chamber V,

Concerning item 1, the Defence does not formally oppose the submission of the item as it already constitutes part of the Defence 68(2) request of P-6016's prior recorded testimony (ICC-01/14-01/18-2213-Conf, para. 64; see also CAR-D29-0009-0538 at 0542). However as a procedural matter, the Defence raises that the OTP never shown the photograph to the witness during its examination and the witness never commented on it; therefore the conditions for its formal submission through this witness' examination are not met and should be procedurally barred.

Similarly, the Defence opposes the submission of item 2 as the document was never presented to the witness in its entirety and he never commented on it.

The Defence also opposes the formal submission of item 3. The Defence reiterates its observations raised during the witness' testimony regarding the way the photo-board is organised and was shown to P-6036 [T-261-CONF-FRA, 15:49:27] in addition to the below observations.

The primary goal of the use of a photo-board is for a witness to identify one individual, generally a suspect. According to international best practices, only one suspect should be on a photo board or a line-up (STL, *Prosecutor v. Ayyash*, Judgement, para. 5020).

In the present case, the fact that the photo-board contains four pictures of the targeted individual, instead of one, naturally impacts the fairness of the process. It could not be reasonably expected from a witness to identify the targeted individual on several photographs since the witness himself could not anticipated [REDACTED] to appear on more than one photograph.

When putting this so-called photo-board to the witness the Prosecution did not explain that there were X numbers of photographs where [REDACTED] had been identified and X number of photographs with an unidentified individual. Without such explanation the photo-board could only remain a tool which would confuse the witness. Therefore, the way in which the Prosecution elicited the witness' answer was not in all fairness to the latter.

Thus the photo-montage made by the OTP displaying four photographs out of five of the same individual is clearly misleading and not fair to the witness; the Defence therefore requests the Chamber to reject its formal submission into evidence.

Kind regards,

[REDACTED] – Yekatom Defence

De : OTP CAR IIB [REDACTED]

Envoyé : mercredi 24 janvier 2024 18:08

À : Trial Chamber V Communications [REDACTED]

Cc : D29 Yekatom Defence Team [REDACTED]

[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]
[REDACTED] OTP CAR IIB [REDACTED]

Objet : Prosecution Submission of evidence following the cross-examination of D29-6036

[ICC] RESTRICTED

Dear Trial Chamber V,

In accordance with paragraph 63(i) of the *Initial Directions on the Conduct of the Proceedings* (ICC-01/14-01/18-631), the Prosecution submits the documents listed below relating to the testimony of witness CAR-D29-P-6036. The submitted documents were discussed with the witness during the course of his cross-examination. The Prosecution, therefore, requests that they be recognised as formally submitted.

(i) Documents discussed with CAR-D29-P-6036 during the course of his cross-examination:

Count	Doc ID	WIT - Used Through	Type	EVD - Date Used	Participant	Request Submission
1	CAR-D29-0010-0194	CAR-D29-P-6036	Photograph	22/01/2024	OTP	Yes
2	CAR-OTP-00025601	CAR-D29-P-6036	Photograph	22/01/2024	OTP	yes
3	CAR-OTP-00025616	CAR-D29-P-6036	Photo board	22/01/2024	OTP	Yes

Kind regards,

On behalf of OTP Trial Team

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From: [REDACTED]
Sent: 24 January 2024 11:19
To: Trial Chamber V Communications
Cc: D29 Yekatom Defence Team; OTP CAR IIB; D30 Ngaissona Defence Team; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; Associate Legal Officer-Court Officer
Subject: Yekatom Defence Submission of evidence following the examination of CAR-D29-P-6036

Dear Trial Chamber V,

In accordance with paragraph 63(i) of the Initial Directions of the Conduct of the Proceedings (ICC-01/14-01/18-631), the Defence for Mr Yekatom respectfully seeks the formal submission of the following documents used during the examination of witness CAR-D29-P-6036.

Count	Document ID	Title	Document Type	Confidentiality Level	EVD - Date Used	WIT – Used Through	WIT – Used By
1	CAR-V45-00000011	Photo of [REDACTED]	Photograph	Confidential	17-01-2024	CAR-D29-P-6036	D29
2	CAR-D29-0016-0157	Screenshot Facebook - [REDACTED]	Communication - E-message	Public	17-01-2024	CAR-D29-P-6036	D29
3	CAR-D29-0009-0245	Annexe 1 de CAR-D29-0009-0239	Identifying document	Confidential	17-01-2024	CAR-D29-P-6036	D29
4	CAR-D29-0016-0172	Screenshot Facebook - [REDACTED]	Communication - E-message	Public	18-01-2024	CAR-D29-P-6036	D29
5	CAR-D29-0019-8020-R01	[REDACTED] - pages 68 - 125	Communication - E-message	Confidential	18-01-2024	CAR-D29-P-6036	D29

Best regards,

[REDACTED]
Yekatom Defence

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