

ANNEX 42

Public Redacted

Version

From: Trial Chamber V Communications
Sent: 15 July 2024 09:31
To: OTP CAR IIB; D29 Yekatom Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; D30 Ngaissona Defence Team
Cc: Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber V Communications
Subject: Decision on the Prosecution's Request concerning the Submission of CAR-OTP-00000637

[ICC] RESTRICTED

Dear Counsel,

The Single Judge notes the Prosecution's request below.

The Single Judge considers the Prosecution's arguments speculative and fails to see any prejudice arising from the Chamber's decision not to allow the use of item CAR-OTP-00000637 during D30-4679's testimony. The Prosecution's request is hereby rejected.

Kind regards,
 TC V

From: OTP CAR IIB [REDACTED]
Sent: Friday, July 12, 2024 5:26 PM
To: Trial Chamber V Communications [REDACTED]; OTP CAR IIB [REDACTED]
 D29 Yekatom Defence Team [REDACTED] V44 LRV Team OPCV [REDACTED]
 [REDACTED] V44 LRV Team [REDACTED] V45 LRV Team [REDACTED] D30
 Ngaissona Defence Team [REDACTED]
Cc: Associate Legal Officer-Court Officer [REDACTED] Chamber Decisions
 Communication [REDACTED]
Subject: RE: Decision on the Ngaissona Defence's Notice of Withdrawal of Item CAR-OTP-00000637 from its List of Evidence

[ICC] RESTRICTED

Dear Trial Chamber V,

Dear Counsel,

The Prosecution takes note of the Chamber's Decision and the further explanation provided by the Ngaissona Defence as to its intention, and requests as follows:

To the extent that CAR-OTP-00000637 ("Item") is definitively withdrawn from the Ngaissona Defence's List of Evidence, the Prosecution requests that the Chamber *advance* its determination of the pending submissions of the Item through D30-4720 and D30-4848 in consideration of the attendant arguments. In this way, the Prosecution's prospective cross-examination of D30-4679 as may be appropriately responsive to his direct examination will not be unduly prejudiced, should the Chamber formally recognise either of the prior submissions. Thank you.

Kind regards,

Kweku Vanderpuye



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Court

**Kweku Vanderpuye**

Senior Trial Lawyer
Prosecution Division
International Criminal Court
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From: Trial Chamber V Communications [REDACTED]
Sent: Friday, July 12, 2024 3:47 PM
To: OTP CAR IIB [REDACTED] D29 Yekatom Defence Team [REDACTED]
 V44 LRV Team OPCV [REDACTED] V44 LRV Team [REDACTED] V45 LRV Team
 [REDACTED] D30 Ngaissona Defence Team [REDACTED]
Cc: Associate Legal Officer-Court Office [REDACTED] Chamber Decisions
 Communication [REDACTED]; Trial Chamber V Communications
 [REDACTED]
Subject: Decision on the Ngaissona Defence's Notice of Withdrawal of Item CAR-OTP-00000637 from its List of
 Evidence

Dear Counsel,

The Single Judge takes note of the Ngaissona Defence's withdrawal of item CAR-OTP-00000637 from its List of Evidence and orders it to file an updated list by 15 July 2024. Noting the Defence's prerogative in determining the items on its List of Evidence, the Single Judge considers that no further action is necessary and rejects the below Prosecution's arguments in this regard.

He further clarifies that the Prosecution's requests to recognise the item as submitted in the context of D30-4720 (see email from the Prosecution, 25 April 2024, at 15:48) and D30-4848's (see email from the Prosecution, 9 July 2024, at 12:41) testimonies, which were opposed by the Ngaissona Defence, will be addressed in due course.

Given that the item is no longer featured on the Ngaissona Defence's List of Evidence, and recalling that the Chamber rejected a Prosecution request to include the item on its list of evidence (ICC-01/14-01/18-1908-Conf), the Single Judge will not permit the Prosecution's usage of this item with witness D30-4679.

Kind regards, TC V

From: [REDACTED]
Sent: Thursday, July 11, 2024 9:23 PM
To: OTP CAR IIB [REDACTED] Trial Chamber V
 Communications [REDACTED]; D29 Yekatom Defence Team
 [REDACTED] V44 LRV Team OPCV [REDACTED] V44 LRV Team
 [REDACTED] V45 LRV Team [REDACTED]
Cc: D30 Ngaissona Defence Team [REDACTED]
Subject: Re: D30 Notice of Withdrawal of Evidence from its List of Evidence

[ICC] RESTRICTED

[ICC] RESTRICTED

Dear Trial Chamber V,

The Prosecution misapprehends the nature of the Defence's notice. As was clearly stated in the last paragraph of the below email, the Defence withdrew the item as of today, 11 July 2024. The notice therefore has no effect on whether the item can be submitted through witnesses D30-4720 and D30-4848. The Defence understands that the matter is currently *sub judice*, and for that reason, it did not request retroactive effect of its notice.

The Prosecution cannot reasonably argue that the Defence has no discretion to reduce its LoE, given it is the Defence's prerogative to organize its case as it sees fit. The Prosecution has no valid argument for using Defence's LoE as a vehicle to meet its evidentiary burden. Since the Defence has no intention of submitting this document, and never had such an intention, it should be duly reflected in its LoE.

Lastly, the Defence did not make any formal requests through its email, but rather put the Chamber and parties on notice as to a change in its LoE. It did not find this courtesy was necessary to do *via* formal filing.

Kind Regards,

[REDACTED]

On behalf of the Ngaïssona Defence

From: OTP CAR IIB [REDACTED]
Sent: Thursday, July 11, 2024 6:02 PM
To: [REDACTED]; Trial Chamber V Communications
 [REDACTED]; D29 Yekatom Defence Team [REDACTED]; OTP
 CAR IIB [REDACTED] V44 LRV Team OPCV [REDACTED]; V44 LRV Team
 [REDACTED]; V45 LRV Team [REDACTED]
Cc: D30 Ngaïssona Defence Team [REDACTED]
Subject: RE: D30 Notice of Withdrawal of Evidence from its List of Evidence

[ICC] RESTRICTED

[ICC] RESTRICTED

Dear Trial Chamber V,

Dear Counsel,

The Prosecution objects to the Ngaïssona Defence's request in both form and substance.

Should the Chamber be inclined to entertain it at all, the Request should be filed formally in the record of the case. The document at issue is already part of the trial record. It has been used in respect of several witnesses [e.g., D30-4720 and D30-4848; will be used prospectively with D30-4679; and is the subject of Prosecution submission requests that are *sub judice*.

As and when the Request is formally filed, the Prosecution will substantiate the reasons for which it should be roundly rejected – if ever a further explanation is warranted as to why the Defence's attempt to withdraw a document on its List of Evidence is wholly ineffective to remove it from the record of the case, much less *ex post facto* its proper use and submission before the Court. Thank you.

Kind regards,

On behalf of OTP Trial Team

From: [REDACTED]
Sent: jeudi 11 juillet 2024 15:34
To: Trial Chamber V Communications [REDACTED] D29 Yekatom Defence Team
 [REDACTED] OTP CAR IIB [REDACTED] V44 LRV Team OPCV
 [REDACTED] V44 LRV Team [REDACTED]; V45 LRV Team [REDACTED]
 [REDACTED] >
Cc: D30 Ngaïssona Defence Team [REDACTED]
Subject: D30 Notice of Withdrawal of Evidence from its List of Evidence
Importance: High

[ICC] RESTRICTED

Dear Trial Chamber V,
 Dear Parties and Participants,

The Defence for Mr Ngaïssona (the "Defence") hereby exercises its discretion to organise its presentation of evidence (ICC-01/14-01/18-685, para. 23; ICC-01/14-01/18-882-Conf, para 7; ICC-01/14-01/18-1831-Conf, para. 7) and notifies the Chamber, the parties and participants that it withdraws item CAR-OTP-00000637 from its List of Evidence ("LoE").

The Defence inadvertently added the item to its LoE on 17 November 2023. This regretful oversight is reflected in the Defence's consistent and strong objections to the Prosecution's continued attempts to submit and rely on the item:

- i. the Defence's objections to the Prosecution's request to add it to its List of Evidence, raising the numerous and severe irregularities surrounding the collection and handling of the item and the item from which it was allegedly extracted (see ICC-01/14-01/18-1748-Conf; ICC-01/14-01/18-1794-Conf; ICC-01/14-01/18-1807-Conf);
- ii. the Defence's objection to the Prosecution's reliance on the item during hearings (email dated 5 July 2024, at 14:44; ICC-01/14-01/18-T-298-CONF-ENG ET, page 32, lines 4 to 11); and
- iii. the Defence's objections to its submission through defence witnesses (see email dated 30 April 2024, at 15:49; ICC-01/14-01/18-T-298-CONF-ENG ET, page 32, lines 4 to 11).

Given that the Defence never intended to rely on the item at trial and never intended to request its submission into evidence during its presentation of evidence- whether through a witness or a bar table application -, it sees no reason to maintain the item on its List of Evidence.

Through the present notice, the Defence withdraws item CAR-OTP-00000637 from its LoE as of 11 July 2024. The withdrawal will be reflected in the Defence's updated LoE, which will be filed shortly

Kind regards,

On behalf of the Defence Team for Mr Ngaïssona

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