

ANNEX 11

Public Redacted

Version

From: Trial Chamber V Communications
Sent: 16 May 2024 09:44
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 Prosecution Request to Add Two Documents to its List of Materials for D30-4504
Attachments: VWU Report D30-4504.pdf

[ICC] RESTRICTED

Dear Counsel,

The Single Judge takes note of the Prosecution's request below, as well as the Ngaissona Defence's objections.

Noting that CAR-OTP-00036442 and CAR-OTP-00036443 (the 'Items') were available in the public domain sufficiently in advance of the testimony of D30-4504, the Single Judge considers that the Prosecution could have included the Items in its initial list of materials, as per the Initial Directions (see ICC-01/14-01/18-631, para. 42). The Single Judge expects the Prosecution to show greater diligence in this regard.

However, having reviewed the Items, the Single Judge observes that they are limited in nature and that the Ngaissona Defence has had sufficient time to review them. He thus considers that the potential prejudice arising from their late addition to the Prosecution's list of materials, if any, is limited.

In light of the above, the Single Judge grants the request.

Moreover, as regards the Prosecution's request to obtain information regarding the circumstances of D30-4504's non-appearance on 7 May 2024, the Single Judge hereby shares with the rest of participants the information that had been provided by the VWU to the Chamber (see email from the VWU to the Chamber's Legal Officer, 14 May 2024, at 16:19).

Kind regards,

TC V

From: [REDACTED]
Sent: Tuesday, May 14, 2024 6:29 PM
To: Trial Chamber V Communications [REDACTED]
Cc: OTP CAR IIB [REDACTED] D29 Yekatom Defence Team [REDACTED]
D30 Ngaissona Defence Team [REDACTED] V44 LRV Team OPCV [REDACTED]
[REDACTED] V44 LRV Team [REDACTED] V45 LRV Team [REDACTED]
Associate Legal Officer-Court Officer [REDACTED]
[REDACTED]
Subject: Re: Prosecution request to seek authorisation to add two documents to the list of exhibits for P-4504's cross

[ICC] RESTRICTED

Dear Trial Chamber V,

The Defence for Mr Ngaïssona (the “Defence”) takes note of the Prosecution’s request to add two items to its List of Materials for the cross-examination of P-4504 (the “Request”) (see email dated 14 May 2024, at 15:01). For reasons elaborated below, the Request should be rejected as it is untimely and unsubstantiated.

First, the Request is untimely. The Chamber repeatedly directed the parties to provide their respective List of Materials within a specific timeframe, and no later than one working day prior to the commencement of a witness’ testimony for the non-calling party (ICC-01/14-01/18-631, para. 42 and ICC-01/14-01/18-T-142, at 09:35:05). P-4504’s testimony started on 6 May 2024 with the Defence’s examination-in-chief ending on the same day. For reasons that fall outside of the Defence’s control, P-4504’s testimony was abruptly and unexpectedly interrupted on 7 May 2024, and set to resume on 17 May 2024. As such, the Prosecution should not be allowed to take advantage of this unfortunate gap in the hearing schedule to add documents to its List of Materials mid-testimony and a week after the Defence’s examination-in-chief.

Second, the material has been publicly available for 5 months, while the Prosecution has been on notice of the fact that D30-4504 [REDACTED] since the date of the disclosure of the statement, on 15 December 2023. This line of cross-examination could have been anticipated and the material identified over 5 months ago. Therefore, the Request is not only untimely, but also shows negligence on the part of the Prosecution.

Third, the items are of no relevance to the testimony of P-4504. The Prosecution fails to show 1) [REDACTED] relates to P-4504’s testimony and 2) how it can “reasonably bear” on the credibility of the P-4504.

Finally, the items and their intended use present no prospective significance or added value to P-4504’s testimony. The Prosecution fails to demonstrate the need for the two items to be present on its List of Materials. Should the Prosecution intend to question the witness on his interactions with member(s) of the Defence in the course of their investigative activities, it can easily proceed without the two items, as it has done so with previous Defence witnesses.

The lack of relevance and significance of the two items does not justify their untimely addition to the Prosecution’s List of Materials and the Request should therefore be rejected.

Kind regards,

[REDACTED]
On behalf of the Defence Team for Mr Ngaïssona

From: OTP CAR IIB [REDACTED]
Date: Tuesday, 14 May 2024 at 15:01
To: Trial Chamber V Communications [REDACTED], D29 Yekatom Defence Team [REDACTED] D30 Ngaïssona 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: Prosecution request to seek authorisation to add two documents to the list of exhibits for P-4504's cross

Dear Trial Chamber V,

The Prosecution requests authorisation to add two items, CAR-OTP-00036442 and CAR-OTP-00036443, to its attached list of exhibits for its cross examination of witness D30-4504.

These documents are (1) the audio recording of a public statement made in December 2023 on radio Ndeke Luka [REDACTED] (document CAR-OTP-00036442); and (2) the image of the related webpage from Radio Ndeke Luka's website (document CAR-OTP-00036443).

The request is justified for the following reasons:

First, these documents are relatively recent (from December 2023), and were only identified by the Prosecution on the Internet after providing its initial list to the Parties and Participants on 3 May 2024. A courtesy copy was sent to the Defence today at 11:19.

Second, they are relevant to the cross-examination of D30-4504 and are of prospective significance. The witness was [REDACTED]. The Prosecution intends to question the witness about [REDACTED] in particular, as this may reasonably bear on his credibility.

Last, the Defence will not be prejudiced by the late addition of these documents. Obviously, the Defence will be aware of [REDACTED]. Moreover, given that cross-examination is scheduled to start on 17 May, the Defence has ample time to review these limited items [REDACTED].

In addition to the above, the Prosecution respectfully respects the Chamber to instruct VWS to provide the Parties and Participants with the information at its disposal concerning the circumstances of D30-4504's 7 May non-appearance, including as regards the attempts made to contact the witness, to the extent that the Chamber may determine it is material to the Prosecution's examination. Thank you.

Kind regards,

On behalf of OTP Trial Team

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