

ANNEX 37

Public Redacted

Version

From: Trial Chamber V Communications
Sent: 08 July 2024 09:11
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 Ngaissona Defence Objection to Prosecution List of Material for D30-4848

[ICC] RESTRICTED

Dear Counsel,

The Single Judge takes note of the Ngaissona Defence's objection to the addition of CAR-OTP-00000637 (the 'Item') to the Prosecution's List of Materials for D30-4848, as well as the Prosecution's response thereto.

Having reviewed the Item, and noting that it is included in the Ngaissona Defence's List of Evidence, the Single Judge sees no reason to prevent the Prosecution from using it in court with D30-4848. He further considers that the Ngaissona Defence's arguments concerning the use and submission of the Item are speculative and premature. The Ngaissona Defence's request is therefore rejected, without prejudice to any objections being raised during the hearing.

Kind regards, TC V

From: OTP CAR IIB [REDACTED]
Sent: Saturday, July 6, 2024 9:57 AM
To: [REDACTED] 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] Associate Legal Officer-Court Officer [REDACTED]
Subject: RE: OTP cross examination list of D30-P-4848 - Hyperlinked list

[ICC] RESTRICTED

Dear Trial Chamber V,
 Dear Counsel,

The Ngaissona Defence's Request is unfounded and should be rejected. The Defence essentially seeks an abstract ruling on whether the Prosecution may use CAR-OTP-00000637 in its list of materials for cross-examination of D30-4848. As previous exchanges between the Parties show, this item is of clear relevance to the case, and it is already before the Chamber pending a determination on its formal submission (see the Parties' email exchange regarding "Prosecution Submission of evidence following the cross-examination of CAR-D30-4720" 1 May 2024 at 16:45).

Even if there were a legal basis for the request – and there is not – the Defence's application is premature, as the scope of the Prosecution's use of CAR-OTP-00000637 in the course of the witness's examination has not yet been broached. Further, the Defence's assumption that a witness as connected to members of Bozize's circle as D30-4848 was, can provide only limited information going to the accuracy of contact entries extracted from a [REDACTED]

[REDACTED], is purely speculative. Clearly, the extent to which this document may be used largely depends on the witness's answers. This is not constrained by the Defence's avoidance in eliciting such pertinent information in its direct examination.

Nothing impedes the Defence from objecting at any point during the cross-examination if (and when) the issue has actually become a live one. The Defence will thereafter have ample opportunity to make any relevant submissions at the appropriate time. It bears reiterating that CAR-OTP-00000637 was included in the Defence's own List of Exhibits, thus it cannot be plausibly asserted that its use by the Prosecution in any way gives rise to unfair prejudice. For this reason too, the request to limit the use of the document *in limine* necessarily fails. Thank you.

Kind regards,
On behalf of the OTP Trial Team

From: [REDACTED]
Sent: Friday, July 5, 2024 2:44 PM
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] Associate Legal Officer-Court Officer [REDACTED]
 [REDACTED]
 [REDACTED] Vanderpuye, Kweku [REDACTED]
Subject: RE: OTP cross examination list of D30-P-4848 - Hyperlinked list

[ICC] RESTRICTED

[ICC] RESTRICTED

Dear Trial Chamber V,

The Defence opposes the addition of CAR-OTP-00000637 to the Prosecution's List of Materials for CAR-D30-P-4848 as there is no viable procedural avenue through which the Prosecution may use the said item during D30-4848's testimony and subsequently request its submission through the witness.

First, CAR-OTP-00000637 is an Excel spreadsheet generated from a phone [REDACTED]'s [REDACTED]. The item is a list of phone contacts which comprises 4265 entries, each of which containing up to six different phone numbers. In the event that D30-4848 would be able to comment on CAR-OTP-00000637, his testimony would be limited, at best, to a handful of entries out of the thousands of phone numbers contained in the item. The Defence recalls in this regard the Chamber's previous ruling on the submission of CDRs through witnesses wherein it weighed the nature and scope of call data records against the extent to which they were used during the witnesses' questioning (e.g., see email "Decision on Submitted Materials for P-1719" dated 28 February 2023 at 9:47 or "Decision on Submitted Materials for P-0876" dated 25 May 2022 at 09:33). As such, D30-4848 is not, will not and cannot be in a position to provide meaningful testimony on the item, either in its entirety or to a sufficient extent that would warrant its submission following his testimony.

Second, the Defence fails to see how D30-4848 will be able to comment on an item that was extracted from a [REDACTED] and whose effective user(s) has not been established. D30-4848's potential testimony on the item would be limited to confirming or denying that the numbers associated to him in the item are/were his. As such, the transcripts of hearings will be self-evident in this regard and the item will be of no additional value to contextualise the questions put to the witness.

Therefore, the Defence respectfully requests the Chamber to order the Prosecution to not use the item during D30-4848's testimony.

Respectfully yours,

[REDACTED]

On behalf of the Ngaissona Defence

From: OTP CAR IIB [REDACTED]
Sent: Wednesday, July 3, 2024 2:30 PM
To: 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]; Associate Legal Officer-Court Officer
 [REDACTED]
 [REDACTED] Vanderpuye, Kweku [REDACTED] OTP CAR IIB
 [REDACTED]
Subject: RE: OTP cross examination list of D30-P-4848 - Hyperlinked list

[ICC] RESTRICTED

Dear Trial Chamber V,
 Dear Colleagues,

Please find attached the hyperlinked list.

To view the materials in Nuix database (upon completion by Ecourt Support today), please go to "Search", select in the field "CB OTP" – and the value "003 – D30-P-4848". To sort the material in the proper order, please add the field 'CB OTP – 003 tab' to your view and click on the arrow to sort it.

Best regards,

[REDACTED]

OTP Case Manager

From: OTP CAR IIB [REDACTED]
Sent: mercredi 3 juillet 2024 10:08
To: Trial Chamber V Communications [REDACTED] >
Cc: D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team
 [REDACTED] V44 LRV Team OPCV [REDACTED]; OTP CAR IIB
 [REDACTED] V44 LRV Team [REDACTED]; V45 LRV Team [REDACTED]
 Associate Legal Officer-Court Office [REDACTED]
 [REDACTED] Vanderpuye, Kweku
 [REDACTED]
Subject: OTP cross examination list of D30-P-4848 - Courtesy copy

[ICC] RESTRICTED

Dear Trial Chamber V,
 Dear Colleagues,

Please find attached the courtesy copy of OTP cross examination list of D30-P-4848.

The Courtesy copies of TAB 3,4,5 have been sent to you this morning and they will be disclosed as soon as practicable.

We will send you the hyperlinking version and the Ecourt binder as soon as it is completed today.

Best regards,



OTP Case Manager

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