

ANNEX 1

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Version

From: Trial Chamber V Communications
Sent: 23 August 2024 12:30
To: OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaïssona Defence Team; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; Associate Legal Officer-Court Officer
Cc: Chamber Decisions Communication; Trial Chamber V Communications
Subject: Decision on Submitted Materials for D30-4720
Attachments: RE: Prosecution Submission of evidence following the cross-examination of CAR-D30-4720

Follow Up Flag: Follow up
Flag Status: Flagged

[ICC] RESTRICTED

Dear Counsel, dear colleagues of the Registry,

The Chamber notes the emails on the submission of evidence following the examination of D30-4720 by the Ngaïssona Defence and the Prosecution, as well as the objections and responses thereto (*see* emails below and attached).

With regard to item CAR-OTP-00000637, the Chamber notes the Ngaïssona Defence's objections and the fact that it consists of 'an Excel spreadsheet generated from a [REDACTED] and 'is a list of phone contacts which comprises 4265 entries'. Taking into account the evidence elicited from D30-4720 in court (*see* T-281-CONF-ENG, p. 63, line 7 to p. 64, line 13), the Chamber does not consider that this item is necessary to assess the witness's answers or otherwise understand her testimony. Further noting the nature and the scope of this item, compared to the limited extent to which it was used during D30-4720's questioning, the Chamber finds that it would not be appropriate to recognise this item as submitted through this witness. The Chamber therefore rejects the Prosecution's request to formally submit item CAR-OTP-00000637 through D30-4720.

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

Doc ID	Title	Type
CAR-D30-0014-0046	Bangui - PK0	Photograph/s
CAR-OTP-2000-0657	6 Disc Bozize	Audio / Video Material
CAR-OTP-2006-0654	Transcription de document audio/vidéo / 6 Disc Bozize	Transcript
CAR-D30-0007-0740	Decision n 001/KNK/BP/SG/19	Internal guidelines / instruction / orders
CAR-D30-0007-0744	Le premier congrès du parti du président François Bozizé, Kwa Na Kwa (KNK), s'est tenu à Mbaïki. Un bureau politique est mis en place	Media / press article
CAR-OTP-2018-0069	LISTE DEFINITIVE DES CANDIDATS AUX ELECTIONS LEGISLATIVES DU 23 JANVIER 2011	List / table

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: Thursday, April 25, 2024 2:17 PM
To: Trial Chamber V Communications [REDACTED]
Cc: Associate Legal Officer-Court Officer [REDACTED]; D30 Ngaïssona Defence Team [REDACTED]; D29 Yekatom Defence Team [REDACTED]; OTP CAR IIB Case Management [REDACTED]
 [REDACTED] OTP CAR IIB Managers [REDACTED] V44 LRV Team OPCV [REDACTED]
 [REDACTED]; V44 LRV Team [REDACTED] V45 LRV Team [REDACTED]
Subject: Ngaïssona Defence Submission of Evidence following D30-P-4720's testimony

[ICC] RESTRICTED

Dear Trial Chamber V,

Pursuant to paragraph 63(i) of *the Initial Directions of the Conduct of the Proceedings* (ICC-01/14-01/18-631), the Defence for Mr. Ngaïssona requests the submission of the following items used during D30-P-4720's questioning by the non-calling party :

Count	Document ID	Title	Document Type	Document Date
1	CAR-D30-0014-0046	Bangui - PK0	Photograph/s	10/11/2023
2	CAR-OTP-2000-0657	6 Disc Bozize	Audio / Video Material	15/03/2013
3	CAR-OTP-2006-0654	Transcription de document audio/vidéo / 6 Disc Bozize	Transcript	15/03/2013

Respectfully yours,

[REDACTED]

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From: OTP CAR IIB
Sent: 01 May 2024 16:45
To: [REDACTED] Trial Chamber V Communications; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; [REDACTED] Associate Legal Officer-Court Officer; [REDACTED]
Cc: OTP CAR IIB
Subject: RE: Prosecution Submission of evidence following the cross-examination of CAR-D30-4720

[ICC] RESTRICTED

Dear Trial Chamber,

Dear Counsel,

The Chamber should reject the NGAISSONA Defence's response ("Response") opposing the formal submission of CAR-OTP-00000637.

First, the Chamber's decision rejecting the Prosecution's earlier request to include the document in its list of evidence is inapposite. Far from the risk of prejudice discussed in the Decision regarding the addition of the document to the Prosecution's list, there is none here. This is because the Defence has included CAR-OTP-00000637 in its own Final List of Exhibits without qualification or restriction (see ICC-01/14-01/18-2215-Conf-Anx2, p.25, Item 136). It is notable that the Defence response omits this dispositive fact.

As an item on the Defence's list of evidence, it comprises "material which the [Party] intends to submit as evidence during trial" (see, ICC-01/14-01/18-589, para. 14). Moreover, having been timely notified of the Prosecution's intention to use and submit the document through D30-4720 in accordance with the Conduct of Proceedings Decision, the Defence raised no objection either then or during the course of the witness's cross-examination. Nor, did it seek to retract the document from its LoE.

Second, even if the Chamber's prior ruling on the Prosecution's previous request to add CAR-OTP-00000637 to its list of evidence is relevant here – and it is not – the Prosecution disagrees with the Defence's characterisation of its scope. In fact, the Decision relates solely to that narrow issue. It does not preclude the introduction of the document as a matter of law (see, e.g. ICC-01/14-01/18-631). Moreover, the Chamber has repeatedly noted that its decisions on the addition of a document to a party's list of evidence do not extend to the submission of the item into evidence (see e.g. ICC-01/14-01/18-2451-Conf, para. 12). Therefore, the Chamber's prior ruling on the Prosecution's application does not preclude the submission of the contested item. Apart, the Response confounds the Pre-Trial Chamber's decision providing the Prosecution access to material [REDACTED] by conflating the purpose of that access with the Pre-Trial Chamber's recitation of the scope of its legal authority to provide it. In addition, the Prosecution was under no obligation to [REDACTED] relevant to a case of which it is seized. Rather, the Pre-Trial Chamber's direction to [REDACTED] in any event, be read consistently with the Prosecution's statutory mandate (i.e., article 54) which applies to all of its cases, and especially as regards evidence lawfully within its possession and control. In any case, it is incontestable that CAR-OTP-00000637 was relevant to [REDACTED] (i.e., it does not go to an irrelevant private matter), as well as the present trial.

Third, there is no question in these proceedings that an opposing party may make use of and submit material provided on another party's or participant's list of evidence. It has occurred routinely throughout the trial. During the presentation of the Prosecution's direct case, the Defence submitted documents appearing on the Prosecution's list of evidence regularly and particularly given that the Defence was not required to file any such list until the end of the Prosecution's case-in-chief. Thus, this is not an issue. Moreover, the document is a singular document – and its relevance to the case is obvious – well beyond its limited use with the D30-4720. Nothing therefore, precludes its

formal submission in its entirety for the Chamber to appropriately consider in discharging its independent obligation to determine the truth in this case.

Finally, the provenance of CAR-OTP-00000637 – being [REDACTED] is a matter of which the Chamber may reasonably take judicial notice and, in any event, is a question to be weighed when the Chamber considers the standard evidentiary criteria in its holistic assessment of the evidence in this case.

For the above reasons, the Chamber should reject the Response and recognise the formal submission of CAR-OTP-00000637 in its entirety.

Kind regards,

On behalf of Kweku Vanderpuye

From: [REDACTED] >
Sent: mardi 30 avril 2024 15:50
To: OTP CAR IIB [REDACTED] 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]
Subject: RE: Prosecution Submission of evidence following the cross-examination of CAR-D30-4720

[ICC] RESTRICTED

[ICC] RESTRICTED

Dear Trial Chamber V,
 Dear parties and participants,

The Ngaissona Defence opposes the submission of item CAR-OTP-00000637 by the Prosecution given the extensive nature and scope of the document compared to its use in court.

Document CAR-OTP-00000637 is an Excel spreadsheet generated from a phone [REDACTED]. The item is a list of phone contacts which comprises 4265 entries, some of which containing six different phone numbers. It was used by the Prosecution during D30-P-4720's examination to put to the witness three phone numbers. The witness attested that [REDACTED] and [REDACTED] are her own phone numbers (T-281, pp 63-64). The Prosecution then put to the witness phone number [REDACTED] and asked the witness to confirm that this number belongs to the [REDACTED] (T-281, p. 64).

First, the transcript is self-evident and the item is of no additional value to contextualise the questions put to the witness regarding the phone numbers. *Second*, the witness commented on the phone numbers put to her and not on the document itself. The witness is not an expert and adds no value with respect to the authenticity and reliability of the document.

Finally, and in addition to the lingering uncertainty surrounding the chain of custody and the handling of the item and the phone it was extracted from (see ICC-01/14-01/18-1748-Conf and ICC-01/14-01/18-1807-Conf), the Chamber [REDACTED] (see ICC-01/14-01/18-1908-Conf, p. 7, para. 15) ('7 June 2023 Decision'). The Chamber recalled that [REDACTED]

(see ICC-01/14-01/18-1908-Conf, para. 14 and ICC-01/14-01/18-1837-Conf, para. 19 mentioning decision ICC-01/14-01/22-64-US-Exp, paras 5, 7). The Chamber further recalled

(ICC-01/14-01/18-1908-Conf, p. 7, para. 15). Not only the Prosecution did not comply with the Pre-Trial Chamber's decision to it now seeks to submit the item through the backdoor, via a witness in the present case. Nothing in the use made by the Prosecution of this item justifies a departure from the 7 June 2023 Decision.

For the above reasons, the Defence opposes the submission of item CAR-OTP-00000637.

Kind regards,

From: OTP CAR IIB >

Sent: Thursday, April 25, 2024 3:48 PM

To: Trial Chamber V Communications

Cc: D29 Yekatom Defence Team

; D30 Ngaissona Defence Team V44

LRV Team OPCV < >; V44 LRV Team >; V45 LRV Team

>; Associate Legal Officer-Court Officer

OTP CAR IIB

Subject: Prosecution Submission of evidence following the cross-examination of CAR-D30-4720

[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-D30-4720. 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.

Count	Doc ID	WIT - Used Through	Type	EVD - Date Used	Participant	Request Submission
1	CAR-D30-0007-0740	CAR-D30-4720	Internal guidelines / instruction / orders	24/04/2024	OTP	Yes
2	CAR-D30-0007-0744	CAR-D30-4720	Media / press article	24/04/2024	OTP	Yes
3	CAR-OTP-00000637	CAR-D30-4720	List / table	24/04/2024	OTP	Yes

4	CAR-OTP- 2018-0069	CAR- D30-4720	List table	24/04/2024	OTP	Yes
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Kind regards,

On behalf of the OTP Trial Team

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