

Annex 1

Public Redacted

From: Trial Chamber VI Communications
Sent: 01 October 2024 11:13
To: Jacobs, Dov; Trial Chamber VI Communications
Cc: Associate Legal Officer-Court Officer; [REDACTED];
 D33 Said Defence Team; Said LRV Team OPCV; OTP CAR IIA
 Communications; [REDACTED]
Subject: RE: SAID : Report on FS items with P-2563 - 20.09.2024

[ICC] RESTRICTED

Dear Parties and participants,

The Chamber has taken note of the Prosecution's request (Prosecution Email dated 20 September 2024, at 17h06) and the Defence's response (Defence Email dated 23 September, at 17h20).

The Prosecution objects to the Defence's formal submission of Tab 109 of the Defence's List of Materials, CAR-D33-0004-0360, which consists of a policy briefing published by the International Crisis Group. The Prosecution notes that, when being cross-examined by the Defence, P-2563 stated, 'I was never a member of the APRD. So I don't know what you want me to tell you on that subject' (see ICC-01/14-01/21-T-114-CONF-ENG ET, p. 43, lines 16-17). Referring to this passage, the Prosecution submits that, '[o]n the premise of the above information the Defence's request for formal submission of this document is unfounded'. The Prosecution provides no further arguments or detail in support of its objection.

The Defence submits that the Prosecution's request should be rejected. First, the Defence argues that paragraph 8 of the Streamlined Procedure for the Formal Submission of Evidence Through Witnesses (Email from Trial Chamber VI to parties and participants, dated 2 April 2024, at 13h41) ('Streamlined FS Procedure') requires that a party must formulate its objection at the moment an item's formal submission is requested in court. Second, the Defence observes that paragraph 16 of the Directions on the Conduct of Proceedings provides that the 'Chamber will recognise the submission of such items without a prior ruling on the admissibility of the evidence' and will 'ultimately assess the relevance, probative value and potential prejudice of the evidence (the 'standard evidentiary criteria') as part of the holistic assessment of all evidence submitted when deciding on the guilt or innocence of the accused, in its judgment pursuant to Article 74 of the Statute'. Lastly, the Defence submits that it used the document in question in court to ask P-2563 follow-up questions on the APRD, and that the witness himself had previously testified about the APRD earlier in his testimony during the Prosecution's direct examination.

At the outset, the Chamber notes that paragraph 8 of the Streamlined FS Procedure states that, '[i]f the non-using party wishes to raise an objection to the formal submission of a particular item, it must do so immediately after the using party has stated its wish to have it formally submitted'. Additionally, the Chamber observes that paragraph 3 of the Streamlined FS Procedure provides that the new formal submission procedure outlined therein 'does not change anything fundamental about the submission process' and that 'the Chamber will generally not consider the standard evidentiary criteria at the time of submission'. The Chamber notes that the Prosecution did not object to the Defence's request for formal submission at the time it was made in court, but only after the Defence

responded to the Registry's daily email report on formally submitted items of evidence (see Registry email Report on FS items with P-2563, dated 20 September 2024, at 1506), highlighting the omission of Tab 109 despite the Defence's request in court for formal submission of the item.

Second, the Chamber recalls that the Streamlined FS Procedure and the Directions on the Conduct of Proceedings clearly establish that the Chamber will recognise the submission of items of evidence without a prior ruling on the admissibility of the evidence and that the Chamber will assess the relevance, probative value and potential prejudice of evidence when deciding on the guilt or innocence of the accused.

In accordance with the foregoing, the Chamber rejects the Prosecution's request.

Kind regards,
Trial Chamber VI

From: Jacobs, Dov <[REDACTED]>
Sent: Monday, September 23, 2024 5:20 PM
To: Trial Chamber VI Communications [REDACTED]
Cc: Associate Legal Officer-Court Officer [REDACTED]
 [REDACTED] D33 Said Defence
 Team <[REDACTED]> Said LRV Team OPCV [REDACTED]
 OTP CAR IIA Communications [REDACTED]
 [REDACTED]
Subject: RE: SAID : Report on FS items with P-2563 - 20.09.2024

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Chère Chambre de première instance VI,

La Défense a noté que l'Accusation s'oppose à la soumission au dossier d'une note d'information de l'International Crisis Group, CAR-D33-0004-0360. En application du paragraphe 22(iii) de la décision sur la conduite des débats du 9 mars 2022 (ICC-01/14-01/21-251), la Défense soumet la réplique suivante aux observations formulées par email par l'Accusation le 20 septembre 2024 :

Au préalable, la Défense rappelle que conformément à la décision de la Chambre de première instance VI « Streamlined procedure for the formal submission of evidence through

witnesses » du 2 avril 2024 (par. 8), l'Accusation aurait dû sur le principe formuler son objection à la demande de soumission formelle de l'élément CAR-D33-0004-0360 lorsque la Défense en a fait la demande en audience (ICC-01/14-01/21-T-114-CONF-FRA ET, page 43, lignes 14-15).

La Défense rappelle la décision de la Chambre de première instance VI « Streamlined procedure for the formal submission of evidence through witnesses » du 2 avril 2024 dans laquelle la Chambre a jugé que « Once an item has been used during a hearing, it shall in principle be recognised as formally submitted, unless there are specific reasons against this. » (par. 5), et que la Chambre a précisé à de nombreuses reprises que pour qu'un élément soit formellement soumis, « It is not a requirement that the document actually be shown to the witness for it to be considered as having been used. It suffices that a party reads from it on the record or otherwise refers specifically to its content. » (mail de la Chambre de première instance VI, « Decision on Submitted Materials for P-2241, P-1289, P-0662, P-2519, P-2179, P-1524, P-2263, P-0291, P-2504 and P-3047 », 27 mai 2024, 11h02).

Par ailleurs, la Défense rappelle que la soumission au dossier de l'affaire et son admission sont deux procédures distinctes (« Generally, the Chamber will recognise the submission of such items without a prior ruling on the admissibility of the evidence. The Chamber will ultimately assess the relevance, probative value and potential prejudice of the evidence (the 'standard evidentiary criteria') as part of the holistic assessment of all evidence submitted when deciding on the guilt or innocence of the accused, in its judgment pursuant to Article 74 of the Statute » (ICC-01/14-01/21-251, par.16)). La Chambre réaffirmait cette procédure le 8 avril 2022 : « the Chamber will consider the admissibility of each item of evidence submitted at the same time as it evaluates the evidence as a whole » (ICC-01/14-01/21-275, par.28). Ainsi, si une Partie se doit, en application de la Règle 64(1) de soulever toute question touchant à la pertinence ou à l'admissibilité des preuves lors de la présentation de celles-ci à une chambre, cette obligation n'empêche pas la soumission de l'élément au dossier de l'affaire.

En l'espèce, la Défense a utilisé ce document en audience afin de poser des questions de suivi au témoin [REDACTED] (ICC-01/14-01/21-T-114-CONF-FRA ET, page 40, ligne 8 à page 43, ligne 13), étant rappelé que le témoin avait connaissance [REDACTED] puisqu'il avait lui-même dit lors du premier jour de son témoignage en audience : [REDACTED]

[REDACTED] (ICC-01/14-01/21-T-112-CONF-FRA ET, page 10, ligne 26 à page 11, ligne 1). La Défense s'était donc fondée sur les dires du témoin en audience pour approfondir avec lui la question de [REDACTED] La

teneur de la réponse du témoin ne change rien à la situation et n'empêche pas la soumission de la pièce qui a bien été discutée avec lui.

Dans ces conditions, la Défense estime que la pièce CAR-D33-0004-0360 a été utilisée lors de l'audience et a satisfait aux conditions de sa soumission au dossier de l'affaire et en demande respectueusement sa soumission au titre du paragraphe 22(i) de la décision sur la conduite des débats du 9 mars 2022 (ICC-01/14-01/21-251).

Bien à vous,

Dov Jacobs

From: [REDACTED]
Sent: Friday, September 20, 2024 5:06 PM
To: [REDACTED]
 [REDACTED] Trial Chamber VI Communications
Cc: Associate Legal Officer-Court Officer [REDACTED]
 [REDACTED] D33 Said Defence Tea [REDACTED]
 Said LRV Team OPCV [REDACTED]; OTP CAR IIA Communications
Subject: RE: SAID : Report on FS items with P-2563 - 20.09.2024

[ICC] RESTRICTED

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Dear Trial Chamber VI,

In accordance with paragraph 8 of the Streamlined procedure for the formal submission of evidence through witness, issued on 2 April 2024, the Prosecution objects to the Defence's formal submission of Tab 109 of the Defence's List of Material for the questioning of witness P-2563.

When lead Defence counsel completed her series of questions regarding Tab 109 (CAR-D33-0004-0360) at page 52 of T-114 ENG RT, the witness explicitly stated: [REDACTED]

[REDACTED] - reference to transcript T-114 ENG RT extracts below:

52:19 MS NAOURI: [12:43:31](Interpretation) Thank you, your Honour.

20 I listened to the end of the interpreting.

21 Q. [12:43:36] So, Witness, I'm going back to the question that

22 I put on this document and I'm going to go back ...

23 Please give me a second, I don't want to alter my question, but

24 [REDACTED]
 25 [REDACTED]

 53: 1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]

7 *Q. [12:45:05] Very well. It's noted.*
 8 *So I would ask the formal submission of tab 109, which we've*
 9 *just looked at together and I have a last question on all these*
 10 *movements.*

On the premise of the above information the Defence's request for formal submission of this document is unfounded.

Kind regards
 [REDACTED]

Sent on behalf of the SAID Prosecution Team

From: [REDACTED]
Sent: Friday, September 20, 2024 3:31 PM
To: [REDACTED]
Cc: Associate Legal Officer-Court Officer [REDACTED]; Trial Chamber VI Communications [REDACTED]
 [REDACTED] D33 Said Defence Team [REDACTED] Said LRV Team OPCV [REDACTED] OTP CAR IIA Communications [REDACTED]
Subject: RE: SAID : Report on FS items with P-2563 - 20.09.2024

[ICC] RESTRICTED

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Chère [REDACTED],

En application du paragraphe 16 de la « Streamlined procedure for the formal submission of evidence through witness » adoptée par la Chambre le 2 avril 2024, la Défense transmet les éléments suivants :

Sauf erreur de notre part, il semblerait que l'élément CAR-D33-0004-0360, onglet 109 de notre liste de notification, discuté en audience avec le témoin et pour lequel la Défense a demandé la soumission formelle au dossier (ICC-01/14-01/21-T-114-CONF-FRA RT, p.48, l.12 à p.52, l.1) ne figure pas sur la liste communiquée dans votre précédent mail. Dans le même sens, le document n'est pas indiqué comme formellement soumis sur Nuix.

Dans ces conditions, pouvez-vous avoir la gentillesse de procéder aux modifications nécessaires afin d'indiquer l'élément CAR-D33-0004-0360 comme formellement soumis ?

En vous remerciant par avance.

Bien à vous,

[REDACTED]

From: [REDACTED] >
Sent: Friday, September 20, 2024 3:06 PM
To: [REDACTED]; D33 Said Defence Team
 [REDACTED] Said LRV Team OPC [REDACTED] OTP
 CAR IIA Communications [REDACTED]
Cc: Associate Legal Officer-Court Officer [REDACTED]; Trial
 Chamber VI Communications [REDACTED]
 [REDACTED]
Subject: SAID : Report on FS items with P-2563 - 20.09.2024

[ICC] RESTRICTED

Dear Trial Chamber VI colleagues,
 Dear parties and participants,

Pursuant to paragraph 16 of Trial Chamber's *Streamlined procedure for the formal submission of evidence through witnesses* adopted on 2 April 2024, please find attached the Report on items that were considered as Formally Submitted through P-2563 on 20.09.2024.

Should any amendments be required, please revert to the Court Officer - Carine Pineau.

Thank you,

Kind regards,


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