

ANNEX 3

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Version

From: Trial Chamber V Communications
Sent: 20 November 2024 12:19
To: OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaïssona Defence Team; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team
Cc: Associate Legal Officer-Court Officer; Trial Chamber V Communications; Chamber Decisions Communication
Subject: On the Emails regarding Defence Annexes to Closing Briefs

[ICC] RESTRICTED

Dear Counsel,

The Single Judge takes note of the emails from the parties in relation to the annexes to the closing briefs (see email from the Prosecution, 18 November 2024, at 20:39; email from the Ngaïssona Defence, 19 November 2024, at 09:10; email from the Yekatom Defence, 19 November 2024, at 10:35). He further notes that the Chamber is not presently seized of any request.

Kind regards,
 TC V

From: [REDACTED]
Sent: Tuesday, November 19, 2024 10:35 AM
To: [REDACTED] Vanderpuye, Kweku ; Trial Chamber V Communications ; D30 Ngaïssona Defence Team ; D29 Yekatom Defence Team ; V45 LRV Team ; V44 LRV Team OPCV ; V44 LRV Team
Subject: RE: Substantive Defence Annexes to Closing Briefs

Certaines personnes qui ont reçu cet e-mail ne reçoivent pas souvent de e-mail de la part de [REDACTED] [Pourquoi c'est important](#)

[ICC] RESTRICTED

[ICC] RESTRICTED

Dear Trial Chamber V,
 Dear all,

Having taken note of the Prosecution's mischaracterisation of Annex A to the Yekatom Defence Brief, the Defence reiterates – as set out in paragraph 23 of the brief - that the annex provides pinpoint references to transcripts per witness as well as additional procedural categories which include reference: (i) OTP's expected relevance of testimony (based on their summaries); (ii) mentions of witness in the OTP Trial Brief; (iii) mentions of the witness in the Confirmation Decision; (iv) statements and associated documents submitted into evidence; (v) transcripts of the testimony; (vi) submitted items commented on by the witness; (vii) references to the witness in other testimonies; (viii) intra-inconsistencies; (ix) inter-inconsistencies; (x) OTP witnesses mentioned during witness testimony; (xi) Defence witnesses mentioned by the witness; and (xii) related items submitted via Defence BTM.

The annex is intended to be used as a reference table only, and the transcripts are cited by number, language, and timestamp, making them easily searchable in both languages. In this regard, the Defence does not summarise nor develop submissions therein.

The Yekatom Defence team is therefore also of the view that the Prosecution request should be dismissed.

Kind regards.

Conseil associée

Equipe de Défense de M. Alfred YEKATOM

De : [REDACTED]
Envoyé : mardi 19 novembre 2024 09:10
À : Vanderpuye, Kweku [REDACTED] Trial Chamber V Communications
 <[REDACTED]>; D30 Ngaïssona Defence Team [REDACTED]; D29
 Yekatom Defence Team [REDACTED]; V45 LRV Team <[REDACTED]>; V44
 LRV Team OPCV [REDACTED]; V44 LRV Team [REDACTED]
Objet : Re: Substantive Defence Annexes to Closing Briefs

[ICC] RESTRICTED

Dear Trial Chamber,
 Dear All,

The Ngaïssona Defence categorically rejects the suggestion that the annexes to its Closing Brief are in any way circumventing the rules. To the contrary, the Defence fully complied with the stipulation of Regulation 36(2)(b) of the Regulations of the Court that appendixes only contain "references, authorities, copies from the record, exhibits and other relevant, non-argumentative material."

The annexes listed in the Prosecution's email contain no new argument. They are either: 1) a compilation of evidence submitted at trial (annexes A.03 and A.17); 2) a visual representation of exhibits, or flaws in the evidence discussed in the Closing Brief (annexes A.05, A.10, A.12, A.16, A.18, A.19 and A.21); or 3) an academic article which cannot be found online (ie. 'authorities' as per Regulation 36) (annex A.15).

The annexes were carefully prepared so that they would fully comply with the rules. For this reason, we respectfully request that the Prosecution request below be rejected.

Kind regards,

[REDACTED], on behalf of Ngaïssona Defence

From: Vanderpuye, Kweku [REDACTED]
Sent: 18 November 2024 20:38
To: Trial Chamber V Communications [REDACTED]; D30 Ngaïssona Defence Team
 [REDACTED]; D29 Yekatom Defence Team [REDACTED]
 V45 LRV Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V44 LRV Team
 [REDACTED]
Subject: Substantive Defence Annexes to Closing Briefs

[ICC] RESTRICTED

Dear Trial Chamber V,

Dear Counsel,

The Prosecution is in the process of reviewing the Parties' and Participant's Closing Briefs notified this morning.

Upon a cursory examination of these filings, it appears a number of Annexes to the Defence's Closing Briefs contain argumentative material. This is contrary to Regulation 36(2)(b) of the Regulations of the Court, which provides that "[a]n appendix shall not contain submissions"; *see also* ICC-01/12-01/18-1467, para. 36 (holding that "portions of an annex that constitute 'summaries' or 'synthesis' of evidence, which reflect, *at least to some extent*, the parties' interpretation of circumstances, rather than a purely objective representation of facts, are contrary to this provision"), and ICC-01/05-01/13-2275-Red, para. 778 (precluding supplemental submissions contained in an annex).

The substantive Annexes circumvent the Chamber's order extending the applicable page limit for the Parties' Closing Briefs to 250 pages (ICC-01/14-01/18-2417). Taking into account these Annexes, the Yekatom Defence's submissions exceed the page limit by 180 pages (*see* Annex A), and the Ngaissona Defence's submissions by 124 pages (*see* Annexes A.03, A.05, A.10, A.12, A.15, A.16, A.17, A.18, A.19, and A.21).

Although the Prosecution is still assessing the potential effect on its preparation for its oral closing submissions, it considers that the matter is appropriately brought to the Chamber's immediate attention for a determination. Moreover, should the Defence filings prejudice the Prosecution's meaningful preparation – in particular, by having to negotiate 304 substantive pages over and above the page limit as between the two Defences, the Prosecution may seek such additional time as appropriate in the circumstances. Thank you.

Kind regards,

On behalf of the OTP

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