

Annex 1

PUBLIC

From: Trial Chamber V Communications
Sent: 27 August 2021 08:10
To: [REDACTED] D29 Yekatom Defence Team
 ([REDACTED]); D30 Ngaissona Defence Team [REDACTED];
 V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; OTP CAR IIB Case
 Management; OTP CAR IIB Operations
Cc: [REDACTED]; Chamber Decisions Communication; Associate
 Legal Officer-Court Officer; Trial Chamber V Communications
Subject: Decision on submitted materials for P-2673
Attachments: Ngaissona Defence - Document to be submitted through Witness P-2673

Dear Counsel, dear colleagues from the Registry,

The Chamber takes note of the emails on the submission of evidence following the examination of P-2673 by the Ngaissona Defence (see attached email from the Ngaissona Defence, 4 June 2021, at 16:32) and the Prosecution (see below email from the Prosecution, 7 June 2021, at 19:16); as well as the Ngaissona Defence's response to the Prosecution's email (see below email from the Ngaissona Defence, 11 June 2021, at 16:00), and the Prosecution's response thereto (see below email from the Prosecution, 14 June 2021, at 20:24).

The Chamber notes the Ngaissona Defence's objections to the submission of five items consisting of Facebook conversations, namely (i) CAR-OTP-2102-9507 and CAR-OTP-2103-4779 with regard to those pages containing messages on which P-2673 did not 'specifically g[i]ve evidence', and (ii) CAR-OTP-2103-3553, CAR-OTP-2103-4023 and CAR-OTP-2103-4073. In light of the nature and scope of these five items, compared to the extent to which they were used during P-2673's questioning, the Chamber is of the view that it would be more appropriate to seek their formal submission through a bar table application. Therefore, without prejudice to its ruling on any bar table request, the Chamber rejects the Prosecution's request to formally submit these items by way of email through P-2673 (see also decisions on submitted materials for P-2841 and P-2027: emails from the Chamber, 2 July 2021, at 14:07, and 19 July 2021, at 11:37, respectively).

Accordingly, the Chamber does not consider it necessary to address the matters raised by the Prosecution in its response.

In light of the above, the Chamber recognises as formally submitted item CAR-OTP-2124-1029 submitted by the Ngaissona Defence.

Further, the Chamber confirms that the requirements of Rule 68(3) of the Rules have been met for the following items:

- CAR-OTP-2127-6435
- CAR-OTP-2130-1581
- CAR-OTP-2127-6468
- CAR-OTP-2100-3030
- CAR-OTP-2101-6897
- CAR-OTP-2102-5143

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: 14 June 2021 20:24
To: Trial Chamber V Communications [REDACTED]; D29 Yekatom Defence Team

([REDACTED] < [REDACTED] >;
D30NgaissonaDefenceTea [REDACTED] V44 LRV Team OPCV [REDACTED]; V44 LRV Team
< [REDACTED] >; V45 LRV Team [REDACTED]; OTP CAR IIB Case Management
< [REDACTED] >; OTP CAR IIB Operations [REDACTED]; Associate
Legal Officer-Court Officer < [REDACTED] >
Cc: [REDACTED] [REDACTED] [REDACTED] [REDACTED] >
Subject: RE: OTP List of the documents to be submitted through P-2673

Dear Trial Chamber V,

With respect to the Ngaissona team's first objection, the Prosecution is mindful of the Chamber's decision for Rule 68(3) materials that it will consider items submitted as a whole, rather than in a piecemeal manner (see ICC-01/14-01/18-907-Red, para. 16). As previously stated in the Prosecution's response to Defence objections regarding the submission of material used during P-2251's testimony, the Chamber has already applied this rationale to the submission of evidence through a witness per the Initial Directions on the conduct of Proceedings (ICC-01/14-01/18-631, para. 63) in its decision on Submitted Materials for P-2193 (see email from the Trial Chamber V, 3 May 2021, at 19:09). That decision allowed for the submission of an entire video and its transcript and translation when only an excerpt was shown in Court. The same logic should extend to the submission of documents. If not, the parties would be left in the inefficient and untenable position of having to continuously apply to submit different paragraphs of the same document, or different excerpts of the same audio/video item, throughout the trial.

In response to the Ngaissona team's second objection, the Prosecution recalls that, although P-2673 does not appear in the three Facebook communications and may not have knowledge of one of the interlocutors in these conversations, it was clearly established that he was in a position to know and understand the subject matter thereof and thus able to provide meaningful evidence and information concerning the role and identity of other interlocutors. In particular:

- 1) CAR-OTP-2103-3553: P-2673 gave additional details about [REDACTED] in response to a question regarding this document (see ICC-01/14-01/18-T-041-CONF-ENG ET, p.37, l.1-5);
- 2) CAR-OTP-2103-4023: P-2673 clarified what is a 'BJ80' on the basis of this document (see ICC-01/14-01/18-T-041-CONF-ENG ET, p.39, l.20). He also provided additional information about individuals mentioned in this document such as [REDACTED] [REDACTED] p.32, l.20 – p.36, l.15);
- 3) [REDACTED] P-2673 gave additional details about [REDACTED] in response to a question regarding this document (see ICC-01/14-01/18-T-041-CONF-ENG ET, p.8, l.13 – p.9, l.10).

Kind regards,

[REDACTED]

From: [REDACTED]
Sent: vendredi 11 juin 2021 16:00
To: [REDACTED] Trial Chamber V Communications [REDACTED]
[REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team
[REDACTED] >; V44 LRV Team OPCV [REDACTED] >; V44 LRV Team
[REDACTED] V45 LRV Tea [REDACTED]; OTP CAR IIB Case Management
< [REDACTED] >; OTP CAR IIB Operations [REDACTED]; Associate
Legal Officer-Court Officer [REDACTED] >; [REDACTED]
[REDACTED]
Subject: RE: OTP List of the documents to be submitted through P-2673

Dear Trial Chamber V,

The Defence for Mr Ngaissona respectfully opposes the Prosecution's request to submit the following documents through Witness P-2673 :

First, The Defence respectfully opposes the wholesale submission of the Facebook messenger conversations, as listed in the Prosecution's first list, items #1 and #5 (CAR-OTP-2102-9507 and CAR-OTP-2103-4779). The Defence would not oppose the submission of those pages containing messages on which Witness P-2673 specifically gave evidence during oral testimony; however, the *prima facie* relevance and admissibility of the messages upon which the witness was not given an opportunity to comment have not been established by the Prosecution. In this regard, the Defence incorporates by reference its previous objections to the formal submissions of entire facebook conversations in relation to Witness P-2841 and Witness P-0801 (see emails dated 19 May 2021, 10:55, email from the Defence team of Mr Yekatom dated 18 May at 20:25 and email dated 4 June 2021 at 18:12).

Second, the Defence respectfully opposes the formal submission of Facebook messenger conversations, as listed in the Prosecution's first list, items #2, #3 and #4 (CAR-OTP-2103-3553, CAR-OTP-2103-4023 and CAR-OTP-2103-4073). The three Facebook conversations were shown to the witness

He also stated that he does not know [REDACTED], who is participating in the three conversations (ICC-01/14-01/18-T-041-CONF-ENG, p. 8, Ins 14-19). Therefore, given that the Witness is not mentioned [REDACTED], and that the Witness is not a participant in the conversation, the three items should not be submitted into evidence, as it would conflict with the ruling of the Chamber on the Facebook Messenger conversations (ICC-01/14-01/18-T-023-ENG, p. 89, Ins 5-12).

Respectfully yours,

From: [REDACTED]
Sent: 07 June 2021 19:16
To: Trial Chamber V Communications
Cc: D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; OTP CAR IIB Case Management; OTP CAR IIB Operations; Associate Legal Officer-Court Officer; [REDACTED]
Subject: OTP List of the documents to be submitted through P-2673

Dear Trial Chamber V,

In accordance with paragraph 63(i) of the Initial Directions of the Conduct of the Proceedings (ICC-01/14-01/18-631), the Prosecution submits the documents listed below relating to the testimony of witness P-2673. The submitted documents were discussed with the witness during the course of his direct examination. The Prosecution, therefore, requests that they be recognised as formally submitted.

(i) Documents discussed with the witness during the course of his direct examination:

Count	Doc ID	WIT - Used Through	Type	EVD - Date	EVD - Participant Tendering	Request Submission
1	CAR-OTP-2102-9507	CAR-OTP-P-2673	Communication - E-message	3-Jun-2021	OTP	Yes
2	CAR-OTP-2103-3553	CAR-OTP-P-2673	Communication - E-message	3-Jun-2021	OTP	Yes
3	CAR-OTP-2103-4023	CAR-OTP-P-2673	Communication - E-message	3-Jun-2021	OTP	Yes

4	CAR-OTP-2103-4073	CAR-OTP-P-2673	Communication - E-message	3-Jun-2021	OTP	Yes
5	CAR-OTP-2103-4779	CAR-OTP-P-2673	Communication - E-message	3-Jun-2021	OTP	Yes

- (ii) Items submitted under Rule 68(3) at the start of P-2673's testimony (ICC-01/14-01/18-998-Conf-Corr, paras. 10-14; ICC-01/14-01/18-T-041 ENG ET, p.6, l.3-10):

Count	Doc ID	WIT - Used Through	Type	EVD - Date	EVD - Participant Tendering	Request Submission
1	CAR-OTP-2100-3030	CAR-OTP-P-2673	Communication - E-message	3-Jun-2021	OTP	Yes
2	CAR-OTP-2101-6897	CAR-OTP-P-2673	Communication - E-message	3-Jun-2021	OTP	Yes
3	CAR-OTP-2102-5143	CAR-OTP-P-2673	Communication - E-message	3-Jun-2021	OTP	Yes
4	CAR-OTP-2127-6435-R01	CAR-OTP-P-2673	ICC Statement - General	3-Jun-2021 4-Jun-2021	OTP	Yes
5	CAR-OTP-2127-6468	CAR-OTP-P-2673	Photograph/s	N/A	OTP	Yes
6	CAR-OTP-2130-1581-R01	CAR-OTP-P-2673	ICC Statement - Translation - FRA	4-Jun-2021	OTP	Yes

Kind regards,


OTP Case Manager

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From: [REDACTED]
Sent:
To: Trial Chamber V Communications
Cc: D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; OTP CAR IIB Case Management; OTP CAR IIB Managers; Associate Legal Officer-Court Officer
Subject: Ngaissona Defence - Document to be submitted through Witness P-2673

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 Defence respectfully requests the formal submission of the below document, which was used during the course of P-2673's cross-examination:

Count	Doc ID	Title	WIT - Used Through	Type	Used By	Tendering Party	Request Submission
1	CAR-OTP-2124-1029	urgence	CAR-OTP-P-2673	Communication - E-mail	D30	D30	Yes

Thank you and kind regards,

[REDACTED]
Case Manager – Ngaissona Defence

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