

Annex 35

From: Trial Chamber V Communications
Sent: 28 September 2021 13:54
To: [REDACTED]; Trial Chamber V Communications; [REDACTED]
Cc: D29 Yekatom Defence Team; D30 Ngaïssona 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]; Chamber Decisions Communication
Subject: RE: OTP Examination list P-0306 and Summary - Additional ERN

Dear counsel,

The Single Judge takes note of the Ngaïssona Defence's objections to the Prosecution's request to add one item to its list of evidence (the 'Request').

The Single Judge is unconvinced by the arguments raised. First, with regard to the alleged lack of sufficient notice, the Single Judge considers that the Prosecution should make efforts to submit its requests earlier. In this instance however, the Single Judge notes that the timeframe between the end of yesterday's hearing and the commencement of today's hearing was limited. Furthermore, it would be unreasonable for the Chamber, to which a truth-seeking function is assigned by the Statute, to prevent the Prosecution from using an item at trial solely on the basis that it had not been initially itemised in its list of documents.

Second, the Single Judge considers that to the extent that item CAR-OTP-2099-0262 (a photograph) could serve to clarify the identity of a person discussed at yesterday's hearing, showing this item to the witness is justified.

Noting the Ngaïssona Defence's concerns regarding the risk of leading the witness to a specific answer, the Prosecution is directed to pose its question(s) in a neutral way.

In light of all the above, the Single Judge maintains his previous decision to grant the Request.

Kind regards, TC V

From: [REDACTED]

Sent: 28 September 2021 12:24

To: [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

Subject: RE: OTP Examination list P-0306 and Summary - Additional ERN

Dear Trial Chamber V,

As instructed by the Chamber, the Defence of Mr Ngaïssona ("Defence") hereby presents its objections to the Prosecution's request to add photograph CAR-OTP-2099-0262 to its List of Material for P-0306. The Defence presents its apologies for not having done so via email following the Prosecution's request. However, given that the Prosecution's request was sent a few minutes before the hearing, and that the Prosecution was on notice of the Defence's intention to object to it, the Defence assumed that the matter would be debated orally.

First, the photograph was not included in the Prosecution's original List of Material, and the Defence was only informed of the Prosecution's intention to use it a few minutes before the beginning of today's hearing, which does not constitute sufficient notice. The Prosecution has known since yesterday morning that the witness had mentioned the name of [REDACTED]. Yet, it failed to timely inform the Chamber and the Parties of its intention to add CAR-OTP-2099-0262 to its List of Material.

Second, the Defence understands that by showing photograph CAR-OTP-2099-0262, the Prosecution intends to attempt to establish that the [REDACTED] mentioned by the witness during yesterday's hearing was [REDACTED]. However, the witness clearly stated that the [REDACTED] he mentioned was not [REDACTED] whom he does not know (ICC-01/14-01/18-T-064 RT ENG, page 38, lines 12-13). The Defence submits that showing this single photograph to the witness today, in the absence of a proper lineup, will result in leading the witness to a specific answer, on a matter on which the witness already provided a definitive answer.

Respectfully Yours,

[REDACTED]

On behalf of the Ngaïssona Defence team

From: Trial Chamber V Communications [REDACTED]

Sent: 28 September 2021 10:51

To: [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

Subject: RE: OTP Examination list P-0306 and Summary - Additional ERN

Dear counsel,

The Single Judge takes note of the Prosecution's request to add one item to its list of documents for P-0306 (see email below).

Noting the explanation provided, and in the absence of any objections by the other participants, the Single Judge grants the request. The Prosecution is directed to provide an updated list of documents to the Chamber and participants.

Kind regards, TC V

From: [REDACTED]

Sent: 28 September 2021 10:19

To: Trial Chamber V Communications [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

Subject: RE: OTP Examination list P-0306 and Summary - Additional ERN

Dear Trial Chamber V, dear all,

The Prosecution would like to add one photograph, at [CAR-OTP-2099-0262](#), to its List of Exhibits for P-0306, because the witness referred to the name [REDACTED], as opposed to [REDACTED] for the first time during his testimony yesterday.

Kind regards,
On behalf of OTP Trial Team

From: [REDACTED]
Sent: 21 September 2021 18:16
To: Trial Chamber V Communications [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
Subject: OTP Examination list P-0306 and Summary

Dear Trial Chamber V,
Dear Colleagues,

The Prosecution attaches its hyperlinked list of materials and summary of the expected testimony for Prosecution Witness CAR-OTP-P-0306. Please note that, in principle, the areas that the Prosecution intends to discuss in private session are highlighted in grey in the summary.

To view the materials in e-Court database, please select in the field "CB OTP – PICK" - the value "P-0306". To sort the material in the proper order, please add the field 'CB OTP - 010 tab' to your view and click on the arrow to sort it.

Best regards,

[REDACTED]
OTP Case Manager

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