

ANNEX 1

PUBLIC

From: Trial Chamber V Communications
Sent: 25 November 2021 15:08
To: Vanderpuye, Kweku; [REDACTED]; Trial Chamber V Communications
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: Decision on submitted materials for P-2462
Attachments: Ngaïssona Defence List of documents to be submitted through P-2462

Dear Counsel, dear colleagues from the Registry,

The Chamber takes note of the emails on the submission of evidence following the examination of P-2462 by the Ngaïssona Defence (*see* attached email from the Ngaïssona Defence, 31 August 2021, at 14:35) and the Prosecution (*see* below email from the Prosecution, 1 September 2021, at 15:56); as well as of the Ngaïssona Defence's responses to the Prosecution's email (*see* below emails from the Ngaïssona Defence, 1 September 2021, at 17:52 and at 18:14), and the Prosecution's response thereto (*see* below emails from the Prosecution, 1 September 2021, at 23:38 and correction thereof on 2 September 2021, at 08:51).

At the outset, the Chamber notes that items CAR-OTP-2085-9425 and CAR-OTP-2073-1299, requested for submission by the Ngaïssona Defence, have already been submitted. In this regard, the Chamber recalls that it is not necessary to re-submit items.

The Chamber notes that while the Ngaïssona Defence objects to the wholesale submission of videos CAR-OTP-2065-0850 and CAR-OTP-2065-2857 (the 'Videos') 'since they were never shown to the witness', it does not oppose 'the submission of the screenshots that were indeed shown to the witness, once they are formally disclosed to the parties and participants', with the exception of the screenshot to which it objected (*see* ICC-01/14-01/18-T-060-CONF-ENG, p. 45, lines 4-11) during P-2462's testimony (*see* emails from the Ngaïssona Defence, 1 September 2021, at 17:52 and at 18:14). Contrary to the Ngaïssona Defence's submission, the Chamber considers that the Videos were shown to the witness, albeit only in the form of screenshots of the featured individuals. Since the Videos were disclosed to the Defence over two years ago, the Chamber further does not see the need for screenshots thereof to be separately disclosed at this point. In light of the nature and limited duration of the Videos, and noting that none of the arguments raised by the Ngaïssona Defence render the Videos inadmissible under the Court's legal framework or preclude their submission into evidence at this stage, the Chamber grants the Prosecution's request.

The Chamber also notes the Ngaïssona Defence's objection to the submission of items CAR-OTP-2127-9467 and CAR-OTP-2127-9468, two handwritten notes pertaining to [REDACTED] (the 'Notes'), arguing that they 'lack any prima facie indicia of authenticity, or reliability' (*see* email from the Ngaïssona Defence, 1 September 2021, at 17:52). In this regard, the Chamber reiterates that it will assess the standard evidentiary criteria of each item as part of its holistic assessment when deliberating its judgment pursuant to Article 74(2) of the Statute. The Chamber further notes that there appear to be no procedural bars, obstacles or preconditions in relation to these items which would require the Chamber to rule on the admissibility of these items at this stage (*see* Initial Directions on the Conduct of the Proceedings, ICC-01/14-01/18-631, paras 53-54).

In light of the above, the Chamber recognises as formally submitted the following items submitted by the Ngaïssona Defence and the Prosecution:

- CAR-OTP-2001-0391
- CAR-OTP-2074-0399
- CAR-OTP-2079-1940
- CAR-OTP-2087-9530
- CAR-OTP-2088-1749
- CAR-OTP-2109-0175
- CAR-OTP-2065-0850
- CAR-OTP-2065-2857
- CAR-OTP-2127-9467
- CAR-OTP-2127-9468

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: Vanderpuye, Kweku [REDACTED]
Sent: 02 September 2021 08:51
To: [REDACTED] Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED]; D30 Ngaïssona Defence Team [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 Office [REDACTED]
 [REDACTED]
Subject: RE: OTP List of the documents to be submitted through P-2462

Dear All,

Please note the correction in red below. I apologise for any inconvenience.

Kind regards,

Kweku Vanderpuye

From: Vanderpuye, Kweku [REDACTED]
Sent: 01 September 2021 23:38

To [REDACTED] Trial Chamber V Communications [REDACTED]
 Cc: D29 Yekatom Defence Team [REDACTED] D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V44 LRV Team [REDACTED] V45 LRV Team [REDACTED] OTP CAR IIB Case Management [REDACTED]
 [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-2462

Dear Trial Chamber V,

Dear Counsel,

*The Ngaissona Defence's objections should be rejected for the reasons set out below. With regard to **CAR-OTP-2065-0850** and **CAR-OTP-2065-2857** (Videos): First, the provenance of the stills shown to P-2462 derives from the underlying videos. These were disclosed to the Defence over two years ago on 19 July 2019. Second, the videos are directly responsive to the Ngaissona Defence's suggestion on cross-examination that the witness's identification of [REDACTED] elements of the Anti-Balaka is inconsistent with her description of them as having worn turbans (despite the Defence's awareness that the content of the disclosed videos materially contradicts that suggestion). The videos further provide context and show not only that certain Anti-Balaka elements indeed wore turbans, but those elements in Bangui having arrived from Bossangoa and/or who were members of Anti-Balaka groups under the de facto Coordination did as well. The images and their context (as shown in the corresponding videos) are directly relevant to the reliability and accuracy of the witness's evidence concerning the group identity of the perpetrators, and the Chamber's search for the truth. Third, the stills were introduced rather than the videos because the Courtroom facilities do not accommodate the scrolling of videos to specific sections or time stamps. Rather, they have to be played from the beginning to such points which consumes unnecessary Court time. The Defence cannot seek to benefit from the Prosecution having proceeded in a manner specifically to advance the efficiency of the witness's examination in such circumstances. Further, it should be recognised that even in proceeding in this abbreviated manner to avoid prolonging the testimony of a [REDACTED] witness, the Prosecution only managed to present 3 of the 6 images that it intended to, with the remaining 3 derived from 3 additional videos (also long disclosed). Thus, on balance, there is no prejudice whatsoever to the Defence in the submission of the underlying video material, especially given the nature of the Defence examination.*

*As concerns **CAR-OTP-2127-9467** and **CAR-OTP-2127-9468** [REDACTED]: The records provided by the Witness concerning [REDACTED] are appropriately authenticated by the Witness herself. No further authentication is required for their formal submission, particularly given the fact that they were generated [REDACTED] in the midst of a serious and unfolding crisis. The witness's testimony clearly establishes that the documents [REDACTED]. The reliability of the documents is further objectively established by their consistent reflection of [REDACTED], which is presumptively reliable. Further, the witness described that a [REDACTED] the relevant information.*

For these reasons, and the fact that the witness clearly testified that the records were produced and provided contemporaneously to the events reported in them, they are tantamount to a past recollection which the witness is plainly competent to introduce. The Ngaissona Defence's position raises a question of weight, but in no way impedes the Chamber's ability to recognise the documents as formally submitted.

For the reasons above, the Ngaissona Defence's objections should be rejected.

Kind regards,

Kweku Vanderpuye

From: [REDACTED]
Sent: 01 September 2021 18:14
To: [REDACTED] Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team [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]
 [REDACTED]
Subject: RE: OTP List of the documents to be submitted through P-2462

Dear Trial Chamber V,

The Defence for Mr Ngaissona wishes to clarify that it would not object only to those screenshots upon which the witness commented on and not the one to which the Defence objected (see ICC-01/14-01/18-T-060-CONF-ENG, page 45, lns 4-11).

Kind regards,

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: 01 September 2021 17:52
To: [REDACTED] Trial Chamber V Communications [REDACTED]

Cc: D29 Yekatom Defence Team [REDACTED] D30 Ngaissona Defence Team <[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]>
[REDACTED]

Subject: RE: OTP List of the documents to be submitted through P-2462

Dear Trial Chamber V,

The Defence for Mr Ngaissona ('the Defence') respectfully objects to the submission of all four of the Prosecution's documents for the following reasons:

i. Videos CAR-OTP-2065-0850 and CAR-OTP-2065-2857

The aforementioned videos cannot be submitted as a whole since they were never shown to the witness during the hearing. On the contrary, the Prosecution only showed three screenshots taken from the videos, which have not been disclosed to the Defence, during their re-examination (see ICC-01/14-01/18-T-060-CONF-ENG, page 42, Ins 12-15). The Defence would not, however, object to the submission of the screenshots that were indeed shown to the witness, once they are formally disclosed to the parties and participants.

ii. Forensic records CAR-OTP-2127-9467 and CAR-OTP-2127-9468

Both documents, which are two handwritten notebook pages which appear to be written by a third party, lack any prima facie indicia of authenticity, or reliability. *First*, they do not [REDACTED] *Second*, they do not mention [REDACTED] *Third*, there is no stamp of seal from [REDACTED] *Fourth*, the witness could not identify who had provided her with the document: during her cross-examination by the Defence, witness P-2462 said that this document was given to her by a man, without specifying who that man was (see ICC-01/14-01/18-T-060-CONF-ENG, page 32, Ins 9-21) and during her examination-in-chief she said she did not know if it was a man or a woman (ICC-01/14-01/18-T-059-CONF-ENG, page 26, Ins 16-19). Consequently, the authenticity and reliability of the two handwritten notes are severely lacking.

For the reasons explained above, the Defence respectfully objects to the submission of CAR-OTP-2065-0850, CAR-OTP-2065-2857, CAR-OTP-2127-9467 and CAR-OTP-2127-9468 by the Prosecution.

Kind regards,

[REDACTED]

From: [REDACTED]
Sent: 01 September 2021 15:56
To: Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED] D30 Ngaissona Defence Team [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]>
Subject: OTP List of the documents to be submitted through P-2462

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 P-2462. The Prosecution requests that these documents be recognised as formally submitted.

(i) Documents discussed with the witness during the course of her examination by the Prosecution:

Count	Doc ID	WIT - Used through	Type	EVD - Date	EVD - Participant Tendering	Request Submission
1	CAR-OTP-2065-0850	CAR-OTP-P-2462	Audio / Video Material	31-Aug-21	OTP	YES
2	CAR-OTP-2065-2857	CAR-OTP-P-2462	Audio / Video Material	31-Aug-21	OTP	YES
3	CAR-OTP-2127-9467	CAR-OTP-P-2462	Forensic Records or Reports	30-Aug-21	OTP	YES
4	CAR-OTP-2127-9468	CAR-OTP-P-2462	Forensic Records or Reports	30-Aug-21	OTP	YES

Kind regards,

[REDACTED]
 OTP Case Manager

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From: [REDACTED]
Sent: 31 August 2021 14:35
To: Trial Chamber V Communications
Cc: D30 Ngaïssona Defence Team; D29 Yekatom Defence Team; V45 LRV Team; V44 LRV Team OPCV; V44 LRV Team; OTP CAR IIB Case Management; OTP CAR IIB Managers; Associate Legal Officer-Court Officer
Subject: Ngaïssona Defence List of documents to be submitted through P-2462
Follow Up Flag: Follow up
Flag Status: Completed

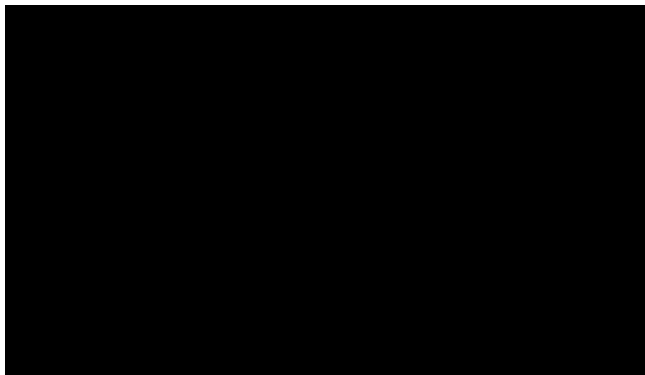
Dear Trial Chamber V,

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 item used during P-2462's cross-examination:

Count	Doc ID	Title	WIT - Used Through	Type	Used By	EVD - Date Used	Request submission
1	CAR-OTP-2001-0391	Rapport de la Haut-Commissaire des Nations Unies aux droits de l'homme sur la situation des droits de l'homme en République centrafricaine	CAR-OTP-P-2462	Report	D30	31-Aug-2021	Yes
2	CAR-OTP-2073-1299	Arte Reportage 05 10 2013 - YouTube.mp4	CAR-OTP-P-1577 CAR-OTP-P-2462	Audio / Video Material	D30	30-Apr-2021 31-Aug-2021	Yes
3	CAR-OTP-2074-0399		CAR-OTP-P-2462	Media / press article	D30	31-Aug-2021	Yes
4	CAR-OTP-2079-1940	RCA: Bossangoa, là où la peur règne encore	CAR-OTP-P-2462	Media / press article	D30	31-Aug-2021	Yes
5	CAR-OTP-2085-9425	Annex E / HRW_CAR_JAN_07022014_08439.CR2	CAR-OTP-P-1577	Photograph/s	D30 OTP	29-Apr-2021	Yes

			CAR-OTP-P-2462			31-Aug-2021	
6	CAR-OTP-2087-9530	LA VILLE DE BOSSANGO A BIENTÔT L'INSTAURATION DE LA CHARIA ?	CAR-OTP-P-2462	Media / press article	D30	31-Aug-2021	Yes
7	CAR-OTP-2088-1749-R01	Annex 4 Witnesses for SGBV in the CAR_Seika	CAR-OTP-P-2462	Non ICC Statement (Note / Screening / Transcript)	D30	31-Aug-2021	Yes
8	CAR-OTP-2109-0175-R01	SCREENING NOTE	CAR-OTP-P-2462	ICC Statement - ICC screening	D30	31-Aug-2021	Yes

Kind regards,



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