

ANNEX 1

PUBLIC

From: Trial Chamber V Communications
Sent: 01 April 2022 14:59
To: OTP CAR IIB Case Management; OTP CAR IIB Operations; D29 Yekatom Defence Team; D30 Ngaïssona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team
Cc: Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber V Communications
Subject: Decision on Submitted Materials for P-2232
Attachments: OTP List of the documents to be submitted through P-2232; Yekatom Defence documents to be submitted through P-2232; Ngaïssona Defence List of documents to be submitted through P-2232; RE: OTP List of the documents to be submitted through P-2232; RE: OTP List of the documents to be submitted through P-2232

Dear Counsel, dear colleagues from the Registry,

The Chamber takes note of the emails on the submission of evidence following the examination of P-2232 by the Prosecution (*see* attached email from the Prosecution, 19 November 2021, at 09:32); the Yekatom Defence (*see* attached email from the Yekatom Defence, 19 November 2021, at 15:34); and the Ngaïssona Defence (*see* attached email from the Ngaïssona Defence, 19 November 2021, at 16:04); as well of the Yekatom Defence's objections to the Prosecution's email (*see* attached email from the Yekatom Defence, 23 November 2021, at 17:29), and the Prosecution's response thereto (*see* attached email from the Prosecution, 24 November 2021, at 11:25).

At the outset, the Chamber notes that item CAR-OTP-2004-1530, included in the Ngaïssona Defence's email, has already been recognised as formally submitted. In this regard, the Chamber recalls that it is not necessary to re-submit items.

With regard to the Yekatom Defence's objections to item CAR-OTP-2087-9014, the Chamber notes that the Prosecution discussed this item with the witness when asking him whether the 'Guy Baya [who] was part of the political bureau of the KNK party' he had previously mentioned was the same Guy Baya who, according to the item in question, '[w]orks at the presidency and [...] is responsible for monitoring or tailing Demafouth', to which the witness responded that 'I knew that he was working at the presidency, but when it comes to tailing or monitoring Demafouth, I was not aware of that' (T-075, p. 17, line 7 to p. 18, line 16).

With regard to the authenticity of the item, challenged by the Yekatom Defence in its email and by the Ngaïssona Defence during the hearing (T-075, p. 17, line 22 to p. 18, line 1), the Chamber recalls that it 'will assess the standard evidentiary criteria (namely the relevance, probative value and potential prejudice) of each item as part of its holistic assessment when deliberating its judgment pursuant to Article 74(2) of the Statute' (Initial Directions on the Conduct of the Proceedings, ICC-01/14-01/18-631, para. 53). Further noting that there does not appear to be any procedural bars, obstacles or preconditions in relation to this item which would require it to rule on its admissibility at this stage, the Chamber grants the Prosecution's request to consider CAR-OTP-2087-9014 as formally submitted.

With regard to CAR-OTP-2135-0891, the Chamber notes that this item is a media article including the same picture that the witness posted on his Facebook profile (*see* screenshot in CAR-D29-0016-0048). It further notes that, while this item was included in the Ngaïssona Defence's email and unopposed by the other participants, it is not included in the participants' lists of materials for P-2232's examination. Absent any objections to its submission, considering that it does not cause prejudice to the participants and that there does not appear to be any procedural bars, obstacles or preconditions in relation to this item which would require it to rule on its admissibility at this stage, the Chamber grants the Ngaïssona's request to consider CAR-OTP-2135-0891 as formally submitted.

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

CAR-OTP-2039-0063
CAR-OTP-2087-9014
CAR-OTP-2090-0603
CAR-OTP-2100-2602
CAR-OTP-2100-2667
CAR-OTP-2100-2668
CAR-OTP-2108-0049
CAR-D29-0002-0078
CAR-D29-0016-0048
CAR-D30-0007-0728
CAR-OTP-2094-0387
CAR-D30-0007-0729
CAR-OTP-2135-0891

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: 24 November 2021 11:25
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; [REDACTED] Associate Legal Officer-Court Officer; [REDACTED]
Subject: RE: OTP List of the documents to be submitted through P-2232

Dear Trial Chamber V,

The Chamber should reject the Defence's submission, the Prosecution notes that the witness confirmed information mentioned in the document CAR-OTP-2087-9014 at 9014 [*Guy BAYA: travaille à la Présidence et il est chargé de filer DEMAFOUTH*]. While he testified that he was not aware that Guy BAYA was tailing or monitoring Demafouth, he confirmed that he knew that Guy BAYA was working at the presidency [see T-075 Ins.14-15]:

14 A. [10:32:49] I knew that he was working at the presidency, but when it comes to
 15 tailing or monitoring Demafouth, I was not aware of that. It is just now that I am
 16 seeing it in this document.

The document thus forms an integral part of his testimony which warrants its submission.

More generally, the Prosecution notes that the submission of documents cannot be limited to material cited in the Document Containing the Charges or the Pre-Trial Brief. Adequate notice is provided by the document's inclusion in the List of Evidence or its appropriate addition, as well as through the use of material during the course of the proceedings as the Chamber may deem appropriate, such as in the context of re-direct examination.

Kind regards,

[REDACTED]
 OTP Case Manager

From: [REDACTED]
Sent: mardi 23 novembre 2021 17:29
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] [REDACTED] Associate Legal Officer-Court Officer [REDACTED]
Subject: RE: OTP List of the documents to be submitted through P-2232

Dear Trial Chamber V,

The Yekatom Defence hereby responds to the Prosecution's email of 19 November 2021 seeking the formal submission of eight documents used during the testimony of P-2232.

The Defence respectfully opposes the formal submission of Item #3 on the Prosecution's list; it takes no position on the remainder of the documents.

Item #3 (CAR-OTP-2087-9014)

The Prosecution has failed to provide any foundation for the formal submission of this document through P-2232 (T075, pp 17-18).

The Defence notes that Prosecution Counsel could have simply put the relevant proposition to the witness (i.e. whether the individual discussed was 'Working at the presidency tailing Demafouth') instead of relying on the document to elicit evidence in a suggestive manner (T075, pp 17-18). In the event, the witness stated that he was not aware of the proposition and that it is the first he had heard of it (T075, p. 18), which itself further militates against its admission through this witness.

Further, as regards the issue of the authenticity of the document, it is notable that the Presiding Judge drew a distinction between the Prosecution's reliance on the document to draw out a question and its submission into evidence (albeit from the bar table) (T075, pp 17-18).

Lastly, the Prosecution does not appear to rely on this document in its Document Containing the Charges or in its Pre-Trial Brief and as such the Defence is not on notice of how the Prosecution intends to rely on this document to prove its allegations (see e.g. ICC-02/04-01/15-1762-Red, para. 245), further compounding the prejudice occasioned by its formal submission through P-2232.

Best regards,

[REDACTED]

Legal Assistant, Yekatom Defence

From: [REDACTED]

Sent: 19 November 2021 09:32

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]

[REDACTED]; Associate Legal Officer-

Court Officer [REDACTED]

[REDACTED]

Subject: OTP List of the documents to be submitted through P-2232

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-2232. The Prosecution requests that these documents be recognised as formally submitted.

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

Count	Doc ID	WIT - Used through	Type	EVD – Date used
1	CAR-OTP-2025-0356	CAR-OTP-P-2232	Internal guidelines / instruction / orders	12-Nov-2021
2	CAR-OTP-2039-0063	CAR-OTP-P-2232	List / table	11-Nov-2021
3	CAR-OTP-2087-9014	CAR-OTP-P-2232	List / table	11-Nov-2021
4	CAR-OTP-2090-0603	CAR-OTP-P-2232	Media / press article	12-Nov-2021
5	CAR-OTP-2100-2602	CAR-OTP-P-2232	Notebook	12-Nov-2021 16-Nov-2021

6	CAR-OTP-2100-2667	CAR-OTP-P-2232	Contract / Agreement	11-Nov-2021
7	CAR-OTP-2100-2668	CAR-OTP-P-2232	List / table	11-Nov-2021
8	CAR-OTP-2108-0049	CAR-OTP-P-2232	Internal guidelines / instruction / orders	16-Nov-2021

- (ii) The Prosecution seeks to submit the following item used during the course of NGAISSONA's cross-examination of witness P-2232, to the extent that this item is not submitted by the NGAISSONA Defence :

Count	Doc ID	WIT - Used through	Type	EVD - Date
1	CAR-OTP-2094-0387	CAR-OTP-P-2232	Media / press article	17-Nov-2021

Kind regards,

OTP Case Manager

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From: [REDACTED]
Sent: 23 November 2021 17:29
To: Mostfa, Yassin; 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; [REDACTED]; Associate Legal Officer-Court Officer; [REDACTED]
Subject: RE: OTP List of the documents to be submitted through P-2232

Dear Trial Chamber V,

The Yekatom Defence hereby responds to the Prosecution's email of 19 November 2021 seeking the formal submission of eight documents used during the testimony of P-2232.

The Defence respectfully opposes the formal submission of Item #3 on the Prosecution's list; it takes no position on the remainder of the documents.

Item #3 (CAR-OTP-2087-9014)

The Prosecution has failed to provide any foundation for the formal submission of this document through P-2232 (T075, pp 17-18).

The Defence notes that Prosecution Counsel could have simply put the relevant proposition to the witness (i.e. whether the individual discussed was 'Working at the presidency tailing Demafouth') instead of relying on the document to elicit evidence in a suggestive manner (T075, pp 17-18). In the event, the witness stated that he was not aware of the proposition and that it is the first he had heard of it (T075, p. 18), which itself further militates against its admission through this witness.

Further, as regards the issue of the authenticity of the document, it is notable that the Presiding Judge drew a distinction between the Prosecution's reliance on the document to draw out a question and its submission into evidence (albeit from the bar table) (T075, pp 17-18).

Lastly, the Prosecution does not appear to rely on this document in its Document Containing the Charges or in its Pre-Trial Brief and as such the Defence is not on notice of how the Prosecution intends to rely on this document to prove its allegations (see e.g. ICC-02/04-01/15-1762-Red, para. 245), further compounding the prejudice occasioned by its formal submission through P-2232.

Best regards,

[REDACTED]
 Legal Assistant, Yekatom Defence

From: [REDACTED]
Sent: 19 November 2021 09:32
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-2232

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-2232. The Prosecution requests that these documents be recognised as formally submitted.

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

Count	Doc ID	WIT - Used through	Type	EVD – Date used
1	CAR-OTP-2025-0356	CAR-OTP-P-2232	Internal guidelines / instruction / orders	12-Nov-2021
2	CAR-OTP-2039-0063	CAR-OTP-P-2232	List / table	11-Nov-2021
3	CAR-OTP-2087-9014	CAR-OTP-P-2232	List / table	11-Nov-2021
4	CAR-OTP-2090-0603	CAR-OTP-P-2232	Media / press article	12-Nov-2021
5	CAR-OTP-2100-2602	CAR-OTP-P-2232	Notebook	12-Nov-2021 16-Nov-2021
6	CAR-OTP-2100-2667	CAR-OTP-P-2232	Contract / Agreement	11-Nov-2021
7	CAR-OTP-2100-2668	CAR-OTP-P-2232	List / table	11-Nov-2021
8	CAR-OTP-2108-0049	CAR-OTP-P-2232	Internal guidelines / instruction / orders	16-Nov-2021

(ii) The Prosecution seeks to submit the following item used during the course of NGAISSONA's cross-examination of witness P-2232, to the extent that this item is not submitted by the NGAISSONA Defence :

Count	Doc ID	WIT - Used through	Type	EVD - Date
1	CAR-OTP-2094-0387	CAR-OTP-P-2232	Media / press article	17-Nov-2021

Kind regards,


OTP Case Manager

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From: [REDACTED]
Sent: 19 November 2021 16:04
To: Trial Chamber V Communications
Cc: D30 Ngaïssona Defence Team; D29 Yekatom Defence Team; V45 LRV Team; V44 LRV Team; V44 LRV Team OPCV; 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-2232

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 items used during P-2232's questioning by the non-calling party:

Count	Doc ID	WIT - Used through	Type	EVD – Date used
1	CAR-OTP-2004-1530	CAR-OTP-P-2232	Decret	17-Nov-2021
2	CAR-D30-0007-0728	CAR-OTP-P-2232	Decret No. 12.290	17-Nov-2021
3	CAR-OTP-2094-0387	CAR-OTP-P-2232	Media/press article	17-Nov-2021
4	CAR-D30-0007-0729	CAR-OTP-P-2232	Legal, Administration and Court document - non ICC	17-Nov-2021
5	CAR-OTP-2135-0891	CAR-OTP-P-2232	Media/press article	18-Nov-2021

Best wishes,

[REDACTED]
 On behalf of the Ngaïssona Defence

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From: [REDACTED]
Sent: 19 November 2021 15:34
To: Trial Chamber V Communications
Cc: OTP CAR IIB Case Management; OTP CAR IIB Managers; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; D29 Yekatom Defence Team
Subject: Yekatom Defence documents to be submitted through P-2232

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 Defence for Mr Yekatom respectfully seeks the formal submission of the following documents used during its examination of witness P-2232.

Count	Doc ID	Pages submitted	Title	EVD - Date Used
1	CAR-D29-0002-0078	Entire document	Reuters article: 'Ex-rebel sworn in as Central African Republic president'	18 November 2021
2	CAR-D29-0016-0048	Entire document	Screenshot of Facebook for P-2232	18 November 2021

Best regards,

[REDACTED]
 Legal Assistant, Yekatom Defence

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From: [REDACTED]
Sent: 19 November 2021 09:32
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; [REDACTED]; Associate Legal Officer-Court Officer; [REDACTED]
Subject: OTP List of the documents to be submitted through P-2232

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-2232. The Prosecution requests that these documents be recognised as formally submitted.

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

Count	Doc ID	WIT - Used through	Type	EVD - Date used
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2	CAR-OTP-2039-0063	CAR-OTP-P-2232	List / table	11-Nov-2021
3	CAR-OTP-2087-9014	CAR-OTP-P-2232	List / table	11-Nov-2021
4	CAR-OTP-2090-0603	CAR-OTP-P-2232	Media / press article	12-Nov-2021
5	CAR-OTP-2100-2602	CAR-OTP-P-2232	Notebook	12-Nov-2021 16-Nov-2021
6	CAR-OTP-2100-2667	CAR-OTP-P-2232	Contract / Agreement	11-Nov-2021
7	CAR-OTP-2100-2668	CAR-OTP-P-2232	List / table	11-Nov-2021
8	CAR-OTP-2108-0049	CAR-OTP-P-2232	Internal guidelines / instruction / orders	16-Nov-2021

- (ii) The Prosecution seeks to submit the following item used during the course of NGAISSONA's cross-examination of witness P-2232, to the extent that this item is not submitted by the NGAISSONA Defence :

Count	Doc ID	WIT - Used through	Type	EVD - Date
1	CAR-OTP-2094-0387	CAR-OTP-P-2232	Media / press article	17-Nov-2021

Kind regards,

[REDACTED]
 OTP Case Manager