

ANNEX 16

PUBLIC

From: Trial Chamber V Communications
Sent: 02 March 2022 16:10
To: [REDACTED] 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: [REDACTED] Chamber Decisions Communication
 RE: OTP Courtesy copy of Examination list P-1595 and Summary

Dear Counsel, dear colleagues from the Registry,

The Single Judge takes note of the Ngaissona Defence's objection to the use of item CAR-OTP-2135-1573 by the Prosecution during its examination of P-1595, the Prosecution's response, and the Ngaissona Defence's reply thereto (*see emails below*).

The Single Judge recalls that all documents to be relied upon during the hearings are to be included in the List of Evidence. Noting that item CAR-OTP-2135-1573 is not included in this list, the Prosecution is therefore not allowed to use it during the examination of P-1595. The Prosecution is instructed to provide an updated list of material for P-1595, taking this ruling into account.

Kind regards,

TC V

From: [REDACTED]
Sent: 28 February 2022 13:35
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]>
Subject: RE: OTP Courtesy copy of Examination list P-1595 and Summary

Dear Trial Chamber V,
 Dear All,

Respectfully, the Defence disagrees. The Prosecution refers in its email to the 'Familiarisation Protocol', in particular the section which refers to the 'Reading of the statement' facilitated by VWU, aiming to refresh a witness' memory with their statement or related materials (for instance annexes to a statement).

The referenced para 91 of the Familiarisation protocol refers specifically to the fact that the "*witness will be reminded that none of the material the witness has re-read can be brought into the Court*". In this case, document **CAR-OTP-2135-1573** was not part of the familiarisation package for this witness and was not read by the witness; therefore, the present situation falls outside the scope of para 91 referring to the "re-reading" a document.

We maintain our position that the inclusion of document **CAR-OTP-2135-1573** violates the Chamber's instructions. These instructions apply independently of the submission status of a document.

Kind regards,

[REDACTED]

Defence for Mr Ngaïssona

From: [REDACTED]

Sent: 28 February 2022 13:01

To: 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 Officer [REDACTED]; [REDACTED]

[REDACTED]

[REDACTED]

Subject: RE: OTP Courtesy copy of Examination list P-1595 and Summary

Dear Trial Chamber V,

Dear All,

The Prosecution does not agree with the Defence's position. For the purpose of refreshing a witness' memory, it is immaterial whether the documents are admissible as evidence or not, and thus whether they are on the list of evidence or not. The Decision on Protocols at Trial provides that the Chamber may allow witnesses to refer to documents to refresh their memory insofar as: a) the documents in question contain the personal recollections of the witness, and b) copies of the document have been made available to the opposing Party, who may rely on the parts referred to by the witness during its examination (see ICC-01/14-01/18-677-Anx1, para. 91). Both conditions have been fulfilled in the case at hand.

The Prosecution underscores that it has no intention to *tender* the document as *evidence*, and will appropriately seek the Chamber's leave in respect of the limited purposes for which it may be used to facilitate the witness's memory during the course of his testimony.

Kind regards,

On behalf of OTP Trial Team

From: [REDACTED]

Sent: lundi 28 février 2022 10:58

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

[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 Officer [REDACTED]; [REDACTED]

[REDACTED]

[REDACTED]

Subject: RE: OTP Courtesy copy of Examination list P-1595 and Summary

Dear Trial Chamber V,

Dear All,

The Defence of Mr Ngaïssona objects to the inclusion of item #6 on the Prosecution's list of exhibits (**CAR-OTP-2135-1573**) as this document is not on the Prosecution's updated List of Evidence.

The Defence recalls and incorporates by reference its arguments made in objection to the inclusion of several items on the Prosecution's examination list for witness P-0889, of 17 February 2022 which had not been included in the LoE. The Chamber has consistently reminded the Prosecution of the importance that materials to be used during a witness' examination be included in the Prosecution's list of evidence, and held that this procedural step was "essential to safeguard the procedural rights of the Defence" (ICC-01/14-01/18-T-073-CONF-ENG, page 2, lns 9-15). Regrettably, the Chamber's specific instruction that the Prosecution "do better in this regard in the future" has had little impact.

It is moreover perplexing that the document was only disclosed to the Defence on 24 December 2021 (pursuant to rule 77), despite the content of the report pertaining to a phone call apparently dated June 2019, more than two years prior.

In light of the above, the Prosecution should not be permitted to rely on this document.

Respectfully Yours,

[REDACTED]

Defence for Mr Ngaissona

From: [REDACTED]
Sent: 28 February 2022 09:51
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]; [REDACTED]
Subject: RE: OTP Courtesy copy of Examination list P-1595 and Summary

Dear Trial Chamber V,
 Dear Colleagues,

Please find attached the hyperlinked Examination list of P-1595.
 To view the materials in e-Court database, please select in the field "CB OTP – PICK" - the value "P- 1595". To sort the material in the proper order, please add the field 'CB OTP – 005 tab' to your view and click on the arrow to sort it.

Best regards,

[REDACTED]

OTP Case Manager

From: [REDACTED]
Sent: 25 February 2022 18:06
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]; [REDACTED]
Subject: [REDACTED]

[REDACTED] >

Subject: OTP Courtesy copy of Examination list P-1595 and Summary

Dear Trial Chamber V,
Dear Colleagues,

Please find attached the summary and list of materials for Prosecution Witness CAR-OTP-P-1595. A courtesy copy of the Examination list is attached, as our technical staff are still working on the hyperlinking and the electronic binder.

Kind regards,

[REDACTED]
OTP Case Manager

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