

ANNEX 6
Public Redacted
Version

From: Trial Chamber V Communications
Sent: 07 November 2022 11:27
To: Chamber Decisions Communication; Trial Chamber V Communications; OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaïssona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team
Subject: Directions in relation to the Ngaïssona Defence's second email pertaining to the Adding of items to the Prosecution's List of Evidence

Dear Counsel,

The Chamber takes note of the Prosecution's list of anticipated motions to add items to its List of Evidence, as well as the responses thereto by the Ngaïssona Defence, the Yekatom Defence and the Common Legal Representatives.

The Chamber recalls its previous findings in relation to the addition of items to the Prosecution's List of Evidence (*see for example* email from the Chamber, 14 October 2022, at 10:11).

It further stresses that the Prosecution has not been granted a '*carte blanche*' to add items to its List of Evidence in unlimited numbers or for an indefinite amount of time, as alleged by the Ngaïssona Defence. On the contrary, the Chamber is vigilantly assessing each item requested for addition to the List of Evidence and duly takes the defence's interests and objections into account when balancing the interests at stake. It will continue to do so, bearing in mind the progression of the investigation and prosecution in the various ongoing cases.

After balancing the accused's rights to adequate time and facilities for the preparation of their defence and their rights to a fair trial with the Chamber's obligation to determine the truth, the Chamber considers it appropriate to further order the Prosecution (i) to submit requests to add items to its List of Evidence in relation to items which have *already been disclosed* to the accused, without delay, and in any case by 30 November 2022, and (ii) to keep the Chamber and participants informed of any updates to the below list of anticipated motions.

Kind regards, TC V

From: Massidda, Paolina [REDACTED]
Sent: 31 October 2022 09:49
To: Trial Chamber V Communications [REDACTED]
Cc: [REDACTED] OTP CAR IIB [REDACTED] D29 Yekatom Defence Team [REDACTED] D30 Ngaïssona Defence Team [REDACTED] V44 LRV Team OPCV [REDACTED] [REDACTED] V44 LRV Team [REDACTED] V45 LRV Team [REDACTED]
Subject: RE: Further requests to add material to the Prosecution's List of Evidence

Dear All,

The Common Legal Representatives reserve their right to respond to any formal submission the Prosecution will file in this regard.

Kind regards,

Paolina Massidda and Dmytro Suprun

From: [REDACTED]
Sent: 27 October 2022 12:55
To: [REDACTED] Trial Chamber V Communications [REDACTED] OTP CAR IIB [REDACTED] D29 Yekatom Defence Team [REDACTED] D30 Ngaïssona Defence Team

V44 LRV Team OPCV

V44 LRV Team

V45 LRV Team

Subject: RE: Further requests to add material to the Prosecution's List of Evidence

Dear Trial Chamber V,
Dear all,

The Yekatom Defence takes note of the Prosecution's email and of its intention to file requests before the Chamber seeking permission to add items to its List of Evidence.

The Yekatom Defence does not intend to respond substantially to the below mentioned Prosecution's email, unless required by the Chamber. It intends to object to the addition of the items through a formal responses once the requests will be filed before the Chamber by the Prosecution.

Kind regards,

Legal Consultant
Yekatom Defence

From:**Sent:** jeudi 27 octobre 2022 12:35**To:** Trial Chamber V Communications OTP CAR IIB
D29 Yekatom Defence Team D30 Ngaissona Defence Team

V44 LRV Team OPCV

V44 LRV Team

V45 LRV Team

Subject: RE: Further requests to add material to the Prosecution's List of Evidence

Dear Trial Chamber V,
Dear Parties and Participants,

The Defence for Mr Ngaissona (the 'Defence') takes note of the Prosecution's intentions as regards prospective requests for late addition of documents to its List of Evidence ('LoE').

The Defence further notes that the Prosecution was, in essence, granted a carte blanche as to the timing of two categories of documents, namely those gathered in the Mokom investigation, and those stemming out of [REDACTED]. This means in practice, that the Defence will be kept in the dark as to the content of the material, potentially until the end of the proceedings.

First, as regards material coming out of the Mokom investigations, we note that pursuant to the procedural framework of the Statute and the Court's jurisprudence, the Prosecutor's investigations should be largely completed at the stage of the confirmation of charges hearings (*ICC-01/14-01/18-1597-Conf, 6 October 2022, para. 23* and *The Prosecutor v. Uhuru Muigai Kenyatta, ICC-01/09-02/11-728, 26 April 2013, para. 119*). This date has long passed for the case of Mr Ngaissona, as well as the disclosure date as set forth by the Chamber (*ICC-01/14-01/18-589, para. 10*). The Confirmation of charges hearing in the Mokom's case is currently scheduled for 30 January 2023, date by which the Prosecution is expected to have largely completed its investigation against Mr Mokom. The Defence observes that any request for addition of items to its LoE filed after this date would therefore in any event be unreasonably late, also considering that the Prosecution's investigations in the CAR situation have been going on for over 8 years.

Second, concerning [REDACTED], we note by the Prosecution's own admission, some items have been disclosed and could already be subject to requests for addition to the LoE. To the extent that these items are of any relevance to the subject-matter of the case, their addition should be requested without delay. The Prosecution alleges that [REDACTED], and that there is [REDACTED]. These facts were not known to the Defence, and therefore, it is impossible at this stage to make informed submissions as to the reasonableness of the Prosecution's (absence of) timeline. Nonetheless, [REDACTED] violates the defence's right to adequate time and facilities for the preparation of the defence, and of its

right to notice. Therefore, keeping in mind the fairness of the proceedings, we respectfully request the Chamber to consider imposing a final deadline, or at least, some guidelines, for these prospective motions, so that the Defence is not kept in the dark indefinitely.

The Defence is concerned that allowing the Prosecution to modify its LoE indefinitely without a deadline is tantamount to depriving the LoE of any meaningful content, and would significantly compromise Defence fair trial rights, and defeat the purpose of the LoE for the preparation of the Defence.

The Defence will of course respond to the upcoming LoE motions on their merits at the appropriate time.

Kindest regards,

[REDACTED]
On behalf of the Defence Team for Mr Ngaissona

From: OTP CAR IIB [REDACTED]
Sent: 25 October 2022 17:46
To: Trial Chamber V Communications [REDACTED] D29 Yekatom Defence Team
 [REDACTED] D30 Ngaissona Defence Team
 [REDACTED] V44 LRV Team OPCV [REDACTED] V44 LRV Team
 [REDACTED] V45 LRV Team [REDACTED]
Subject: Further requests to add material to the Prosecution's List of Evidence

Dear Trial Chamber,

Dear All,

In respect of Chamber's direction ICC-01/14-01/18-1597-Conf, p. 10) the Prosecution considers that it will move to add a certain number of records presently in its possession comprising:

Media articles

There are two media articles with a corresponding photograph that have been disclosed and for which a request will be filed this week. The ERNs are:

- CAR-OTP-2135-2120, and related photograph CAR-OTP-2135-2123; and
- CAR-OTP-2001-4122.

Emails

There are two email chains from NGAISSONA's email account [REDACTED] that have been disclosed and for which a request will be filed by 4 November 2022. These are:

- CAR-OTP-2130-3615
- CAR-OTP-2130-3641

[REDACTED] P-1819

There are seven items [REDACTED] by witness P-1819 that have been disclosed and for which a request will be filed by 4 November 2022. The ERNs are:

- CAR-OTP-2065-4585
- CAR-OTP-2065-4597
- CAR-OTP-2065-0850
- CAR-OTP-2065-1969
- CAR-OTP-2065-2300
- CAR-OTP-2065-2857
- CAR-OTP-2065-2903

Documents collected pursuant to the Prosecution's [REDACTED]

It is the Prosecution's intention to seek to rely on, and to that end to add to its List of Evidence, certain documents it has collected in the course of [REDACTED], where such evidence may assist the Chamber in its ultimate assessment of the witnesses called at trial. [REDACTED], it is premature for the Prosecution to identify which documents these are. The Prosecution is currently waiting on responses to a limited number of requests, after which it expects that it will be in a position to disclose certain items collected and likewise add them to its LoE. Such items may consist of:

- *i) the 19 documents subject to the [REDACTED] [REDACTED] (see ICC-01/14-01/18-1016-Conf), all of which are now disclosed;*
- *ii) the 12 documents subject to the Prosecution's second such request (see ICC-01/14-01/18-1558-Conf-Exp), currently pending decision; and*
- *iii) any additional documents [REDACTED].*

Mokom Records

In addition, the Prosecution notes that certain devices acquired pursuant to the arrest of Mr MOKOM remain in the custody and control of the Registry. The Prosecution expects that it will shortly obtain access to this information, and that it may yield items prospectively to be added to the Prosecution's List of Evidence. Furthermore, the Prosecution cannot rule out the possibility that the ongoing investigation against MOKOM may yield evidence of significant probative value against Mr NGAISSONA, and that it therefore may seek to add to its List of Evidence at a future time.

Kind regards,

On behalf of the OTP Trial Team

This message contains information that may be privileged or confidential and is the property of the International Criminal Court. It is intended only for the person to whom it is addressed. If you are not the intended recipient, you are not authorized by the owner of the information to read, print, retain copy, disseminate, distribute, or use this message or any part hereof. If you receive this message in error, please notify the sender immediately and delete this message and all copies hereof.

Les informations contenues dans ce message peuvent être confidentielles ou soumises au secret professionnel et elles sont la propriété de la Cour pénale internationale. Ce message n'est destiné qu'à la personne à laquelle il est adressé. Si vous n'êtes pas le destinataire voulu, le propriétaire des informations ne vous autorise pas à lire, imprimer, copier, diffuser, distribuer ou utiliser ce message, pas même en partie. Si vous avez reçu ce message par erreur, veuillez prévenir l'expéditeur immédiatement et effacer ce message et toutes les copies qui en auraient été faites.