

ANNEX 23
Public Redacted
Version

From: Trial Chamber V Communications
Sent: 29 February 2024 13:29
To: OTP CAR IIB; D30 Ngaissona Defence Team
Cc: D29 Yekatom Defence Team; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber V Communications
Subject: Decision on further Ngaissona Defence requests regarding the Prosecution's use of material for the examination of D30-4864

[ICC] RESTRICTED

Dear Counsel,
 dear colleagues of the Registry,

The Single Judge takes note of the Ngaissona Defence's below email, the Prosecution's response thereto, and the reply from the Ngaissona Defence (see email from the Ngaissona Defence, 28 February 2024, at 23:02; email from the Prosecution, 29 February 2024, at 09:34; email from the Ngaissona Defence, 29 February 2024, at 12:00).

With regard to the Ngaissona Defence's first request for clarification regarding the scope of the Single Judge's decision of 27 February 2024 (see email from the Chamber, 27 February 2024, at 09:33), the Single Judge clarifies that he does not consider that this decision deviates from paragraph 44 of the Initial Directions. Paragraph 44 aims to facilitate the proceedings; it is not intended as a bar to the use of audio-recordings in circumstances where a transcript is not available, particularly when the material in question is already in a working language of the court. For the avoidance of doubt, paragraph 44 continues to apply in these proceedings.

As to the Ngaissona Defence's second request that the Prosecution provide it with the 'precise excerpt[s]' of the audio-recordings that will be relied upon by the Prosecution during its examination of D30-4864, the Single Judge notes that the Prosecution is due to commence its examination on 1 March 2024. Therefore, in light of the advanced stage of D30-4864's testimony, the Single Judge considers that the Ngaissona Defence's request is not 'premature'; and the Prosecution should already be in a position to provide the defence with the specific excerpts and/or sections of the audio-recordings it intends to rely on during its examination. Should the Prosecution wish to rely on further excerpts during the hearing, which the Defence objects to, the Chamber will rule on them on a case-by-case basis. The Single Judge therefore grants the Ngaissona Defence's second request.

Kind regards, TCV


From: [REDACTED] >
Sent: 29 February 2024 12:00
To: OTP CAR IIB <[REDACTED]>; Trial Chamber V Communications [REDACTED]; D30 Ngaissona Defence Team [REDACTED] >
Cc: D29 Yekatom Defence Team [REDACTED]; V44 LRV Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V45 LRV Team [REDACTED]; Associate Legal Officer-Court Officer [REDACTED] Chamber Decisions Communication [REDACTED]
Subject: RE: Decision on D30 Ngaissona Objection to the Use of Prosecution's Material for the Examination of P-4864




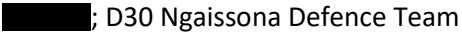




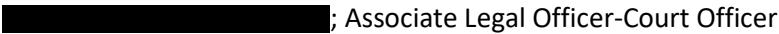




[ICC] RESTRICTED

Dear Trial Chamber,
Dear Parties and participants,

The Defence is surprised by the Prosecution reply as it has always been a standard practice to indicate the portion to be relied upon for voluminous or lengthy items. The Prosecution availed itself of this possibility numerous times (for example email dated 17/03/2023, at 12:22, see also email dated 25/02/2022, at 09:13). In addition, the examination by the calling party being over, the Prosecution should now be in a position to identify the excerpts it intends to rely on.

Respectfully yours,


On behalf of the Ngaissona Defence

From: OTP CAR IIB 
Sent: Thursday, February 29, 2024 9:34 AM
To: ; Trial Chamber V Communications 
; D30 Ngaissona Defence Team 
Cc: D29 Yekatom Defence Team ; V44 LRV Team
 V44 LRV Team OPCV  V45 LRV Team
; Associate Legal Officer-Court Officer 
Chamber Decisions Communication  OTP CAR IIB 

Subject: RE: Decision on D30 Ngaissona Objection to the Use of Prosecution's Material for the Examination of P-4864

[ICC] RESTRICTED








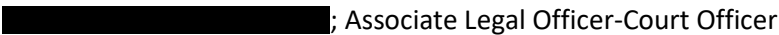


Dear Trial Chamber V;
Dear Parties and Participants;

For the reasons already outlined in the Prosecution's email of 27 February below, the Prosecution maintains that there is no deviation from the Initial Directions.

It further submits that the Defence's request as stated in its "Second" paragraph is premature, also for the reasons outlined in its email of 27 February. In any case, the Prosecution is unable to provide an exact excerpt that it wishes to rely upon, as to do so would unfairly impede it from the ability to rely on any other part of the interview, should the need so arise. Finally, if the Defence wished to have a transcript at its disposal in order to facilitate any objections it might have, it has had ample time to transcribe the recording for these purposes.

Kind regards,

On behalf of the OTP Trial Team

From: 
Sent: 28 February 2024 23:02
To: Trial Chamber V Communications  >; OTP CAR IIB 
D30 Ngaissona Defence Team 
Cc: D29 Yekatom Defence Team < >; V44 LRV Team
; V44 LRV Team OPCV ; V45 LRV Team
; Associate Legal Officer-Court Officer 
Chamber Decisions Communication 

Subject: RE: Decision on D30 Ngaïssona Objection to the Use of Prosecution's Material for the Examination of P-4864

[ICC] RESTRICTED

Dear Trial Chamber,
dear parties and participants,











The Defence takes note of the Chamber's ruling on the use of audio recordings without associated transcripts during hearings.

First, the Defence respectfully request clarification as to whether this decision applies only to these specific items, or whether the deviation from the Initial Directions (ICC-01/14-01/18-631, para. 44) will apply throughout the remainder of the proceedings.

Second, and in accordance with the established practice regarding voluminous items, the Defence requests the Prosecution to provide the Defence with the precise excerpt that will be relied upon by the Prosecution. The audios are respectively 00:58:23 and 00:18:50 minutes long. The Defence will not be able to listen to the audios while in the courtroom in order to object to the questions of the Prosecution should it deem necessary to do so. For example, the Defence will not be able to contextualise the excerpt played, or research whether the topic touched upon in the excerpt was further developed during the interview. Where the search function allows a team member to search a transcript with a key word, while in the courtroom, it will be impossible to rewind the audio back and forth in order to retrieve a certain information. Objecting to a question has to be done timely and requires the possibility for team members to react swiftly, this ability is hampered by the absence of a transcript. The provision of the exact excerpt to be played is necessary to ensure Mr Ngaïssona's fair trial rights.

Respectfully yours,


On behalf of the Ngaïssona Defence

De : Trial Chamber V Communications 
Envoyé : mardi 27 février 2024 09:33
À : OTP CAR IIB  D30 Ngaïssona Defence Team <
Cc : D29 Yekatom Defence Team ; V44 LRV Team
; V44 LRV Team OPCV ; V45 LRV Team
 >; Associate Legal Officer-Court Officer 
 Trial Chamber V Communications  Chamber Decisions Communication

Objet : Decision on D30 Ngaïssona Objection to the Use of Prosecution's Material for the Examination of P-4864

[ICC] RESTRICTED

Dear Counsel,
dear colleagues of the Registry,

The Single Judge takes note of the objections raised in the Ngaïssona Defence's below email, as well as the Prosecution's response thereto.

Having considered the audio-recordings on the Prosecution's list of materials (CAR-OTP-00036094; CAR-OTP-00036095), the Single Judge notes that whilst there are no related transcripts of the audio-recordings available in JEM, both are in English. Therefore, noting that these items exist in at least one of the working languages of the court, the Single Judge does not consider the lack of transcripts to be a bar to their use by the Prosecution during its examination of D30-4864.

Kind regards, TC V

From: OTP CAR IIB [REDACTED]
Sent: Tuesday, February 27, 2024 8:47 AM
To: [REDACTED] Trial Chamber V Communications
 [REDACTED]
Cc: D30 Ngaissona Defence Team [REDACTED] D29 Yekatom Defence Team
 [REDACTED]; V44 LRV Team [REDACTED]; V44 LRV Team OPCV
 [REDACTED] OTP CAR IIB [REDACTED]; V45 LRV Team [REDACTED]
 [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]; [REDACTED]
 [REDACTED]
Subject: RE: D30 Ngaissona Objection to the Use of Prosecution's Material for the Examination of P-4864

[ICC] RESTRICTED

Dear Trial Chamber,

Dear Counsel,

The Ngaissona Defence's request should be rejected. First, the Defence misreads paragraph 23 of decision -2160 (explaining in turn paragraph 44 of the Chamber's Directions on the Conduct of the Proceedings), which imposes a cumulative (not alternative) conditions that a Party (a) seek the submission of the audio-visual; and (b) also relies on it for any spoken content. Second, the request is inapposite, as the Directions do not preclude the use of such audio-visual material during a witness's examination, and it is further premature insofar as no such material has yet been submitted, even if the intent to do so is indicated. Thank you.

Kind regards,

On behalf of the OTP Trial Team

From: [REDACTED]
Sent: Monday, February 26, 2024 4:49 PM
To: Trial Chamber V Communications [REDACTED]
Cc: D30 Ngaissona Defence Team [REDACTED] D29 Yekatom Defence Team
 <[REDACTED]>; V44 LRV Team [REDACTED] V44 LRV Team OPCV
 [REDACTED] OTP CAR IIB [REDACTED]; V45 LRV Team [REDACTED]
 [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]
 [REDACTED]
Subject: D30 Ngaissona Objection to the Use of Prosecution's Material for the Examination of P-4864

[ICC] RESTRICTED

Dear Trial Chamber V,
 Dear Parties and Participants,

The Defence for Mr Ngaissona notes that the Prosecution's List of Materials for Defence witness P-4864 contains two audio-recordings without corresponding transcripts.

The Defence recalls that paragraph 44 of the Initial Directions on the Conduct of the Proceedings (ICC-01/14-01/18-631) provides that "[a]s regards the use of speech in audio-visual material during the hearing, the participant in question must indicate the ERN of a corresponding working language transcript". Additionally, the Chamber further clarified that although "[i]t may not be strictly necessary for items to be accompanied by transcripts and/or translations at the time of filing of the list of evidence, however, it becomes necessary when such items are requested for submission, and if the submitting party intends to rely on spoken word contained therein." (ICC-01/14-01/18-2160, para. 23).

As such, the Defence intends to object to the use of the two audio-recordings by the Prosecution during the examination of P-4864.

Kind regards,

██████████
On behalf of the Ngaissona Defence

From: OTP CAR IIB ██████████
Sent: Monday, February 26, 2024 12:34 PM
To: Trial Chamber V Communications ██████████
Cc: D30 Ngaissona Defence Team ██████████; D29 Yekatom Defence Team ██████████
 ██████████ V44 LRV Team ██████████ V44 LRV Team OPCV ██████████
 ██████████ V45 LRV Team ██████████; Associate Legal Officer-Court Officer ██████████
 ██████████; ██████████ OTP CAR IIB ██████████
Subject: RE: OTP List of Material for CAR-D30-P-4864 - Hyperlinked list

[ICC] RESTRICTED

Dear Trial Chamber V,
Dear Colleagues,

Please find attached the hyperlinked list of materials for Defence Witness CAR-D29-P-4864.

To view the materials in Nuix database (upon completion by Ecourt Support today), please go to "Search", select in the field "CB OTP" – and the value "006 – CAR-D29-P-4864". To sort the material in the proper order, please add the field 'CB OTP – 006 tab' to your view and click on the arrow to sort it.

Best regards,

██████████
OTP Case Manager

De : OTP CAR IIB ██████████
Envoyé : lundi 26 février 2024 10:25
À : Trial Chamber V Communications ██████████
Cc : D30 Ngaissona Defence Team ██████████ D29 Yekatom Defence Team ██████████
 ██████████; V44 LRV Team ██████████ V44 LRV Team OPCV ██████████
 ██████████ V45 LRV Team ██████████ Associate Legal Officer-Court Officer ██████████

[REDACTED] OTP CAR IIB

Objet : RE: OTP List of Material for CAR-D30-P-4864 - Courtesy copy

[ICC] RESTRICTED

Dear Trial Chamber V,
Dear Colleagues,

Please find attached the courtesy copy of the list of materials for Defence Witness CAR-D29-P-4864.
We will send you the hyperlinked version and CB binder as soon as possible.

Best regards,

[REDACTED]
OTP Case Manager

De : OTP CAR IIB [REDACTED]

Envoyé : lundi 26 février 2024 10:10

À : [REDACTED] Trial Chamber V Communications

Cc : D30 Ngaissona Defence Team [REDACTED]; D29 Yekatom Defence Team

[REDACTED]; OTP CAR IIB [REDACTED] V44 LRV Team

[REDACTED] V44 LRV Team OPCV [REDACTED] V45 LRV Team

<[REDACTED] Associate Legal Officer-Court Officer [REDACTED]>

Objet : OTP List of Material for CAR-D30-P-4864

[ICC] RESTRICTED

Trial Chamber V;
Parties and Participants;

The Prosecution offers its apologies for the slightly belated provision of its list. While the standard email will follow shortly, we can advise that it contains two items:

CAR-OTP-00036094; and
CAR-OTP-00036095.

Kind regards,

[REDACTED]
OTP Trial Lawyer

From: [REDACTED]

Sent: Monday, February 26, 2024 9:55 AM

To: Trial Chamber V Communications [REDACTED]

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

[REDACTED] OTP CAR IIB [REDACTED]; V44 LRV Team

[REDACTED]; V44 LRV Team OPCV [REDACTED]; V45 LRV Team

[REDACTED] Associate Legal Officer-Court Officer [REDACTED]

Subject: Yekatom Defence List of Material for CAR-D30-P-4864

Dear Trial Chamber V,
Dear all,

The Defence for Mr. Yekatom provides in attachment its list of material for witness CAR-D30-P-4864.

The Defence e-binder for D30-P-4864 will shortly be available on Nuix and can be accessed by selecting the field "CB D29" – and the value "009 – CAR-D30-P-4864". To sort the material in the proper order, please select the filed "CB D29 – 009".

Further to the "*Decision on Yekatom Defence Request for authorization for P-4864 to bring laptop into Courtroom*" dated 23 February 2024 at 17:32, the Defence wishes to inform the Chamber and Parties that it intends to provide P-4864 with items 1 to 41 of its List of Material.

With regard to the voluminous nature of some of the documents, for the CDRs and CSTs numbered 6 to 41 the Defence indicated that the "Entire item" would be used. Indeed, as previously explained, the purpose of the provision of those documents to P-4864 is to allow the witness an opportunity to review the material in order to streamline the proceedings when he will be asked to ascertain the reliability of the process used (described in items 1 to 5) by the Defence to create its CSTs. When the Defence intends to show P-4864 specific portions of CDRs or CSTs, this information has been duly detailed in the column "Relevant passages to be used".

Accordingly, the Defence assures the Chamber, parties and participants that items 6 to 41 do not therefore need to be printed in full unless otherwise required.

Kind regards,


Yekatom Defence

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