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**Cour
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**International
Criminal
Court**

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No.: ICC-01/14-01/18

Date: 12 February 2024

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. ALFRED YEKATOM AND
PATRICE-EDOUARD NGAÏSSONA***

Confidential

Prosecution's Submissions on the introduction of CAR-OTP-2126-2529

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. INTRODUCTION

1. The Office of the Prosecutor ("Prosecution") hereby provides its submissions on the introduction of CAR-OTP-2126-2529, the report of an analyst not called to testify ("analyst's report"), as instructed by Trial Chamber V.¹ The Prosecution submits that the analyst's report should not be submitted into evidence because it i) is not an associated document to D30-4864's prior recorded testimony; and ii) is testimonial in nature.

II. SUBMISSIONS

A. The analyst's report is not an associated document

2. The analyst's report is not an associated document to the prior recorded testimony of D30-4864. Its submission as such should be rejected on this basis alone.

3. The analyst's report is clearly not an annex to D30-4864's report. Nor is it an associated document, properly understood. While the analyst's report is indeed referred to in D30-4864's report, it is not "used" or "explained" by D30-4864 in any meaningful sense.² Significantly, recourse to the analyst's report is not "necessary to read and understand the prior recorded testimony being introduced."³

4. D30-4864's report answers questions posed by the Defence on two topics in the area of call data records: IMEI-related analysis,⁴ and cell site analysis.⁵ These questions make reference to the analyst's report, in that they use it as a launching pad from which to pose specific substantive questions on the two topics. However, the same questions could just as well have been posed without reference to the analyst's report.

¹ ICC-01/14-01/18-2346.

² See ICC-01/14-01/18-907-Red, para. 13.

³ See ICC-01/09-01/11-1938-Red, para. 33.

⁴ See CAR-D30-0018-0001 at 0023-0026, section 5.3.

⁵ See CAR-D30-0018-0001 at 0023-0026, section 5.3.

This is apparent from the stand-alone nature of D30-4864's responses, which have their own independent value in explaining aspects of IMEI-related analysis and cell site analysis.

5. To the extent – if any – that D30-4864 attempts to comment upon or interpret the analyst's findings,⁶ his responses have minimal probative value. D30-4864 did not have access to the same material as the external analysis who authored his report based on "large numbers of files", and is candid about his inability to draw conclusions on material not available to him.⁷ For this same reason, the analyst's report itself has very limited probative value and would be of little assistance to the Chamber in assessing the call data record evidence in this case.

B. The analyst's report is testimonial in nature

6. In any case, the analyst's report is inadmissible because it is testimonial in nature, and the conditions for its introduction as the prior recorded testimony of its author under Rule 68 of the Rules of Procedure and Evidence have not been fulfilled.⁸

7. As apparent on its face,⁹ the report was prepared by an external analyst, upon the request of the Prosecution, for potential use at trial. Clearly, the analyst provided the report "in their capacity as [a] witness[] in the context of or in anticipation of legal proceedings."¹⁰ As such, it is testimonial in nature and its submission is governed by the *lex specialis* of Rule 68 on prior recorded testimony.

8. Further, no party or participant has moved to submit the analyst's report under Rule 68. Nor has the Chamber moved to submit it under Rule 68 of its own motion, as

⁶ See, for example, CAR-D30-0018-0001 at 0024, para. 5.3.8.

⁷ See, CAR-D30-0018-0001 at 0024, para. 5.3.11.

⁸ See ICC-01/14-01/18-631, para. 56; ICC-01/05-01/13-2275-Red, para. 581.

⁹ See CAR-OTP-2126-2529 at 2529 ('*Mission*'), 2531 ('*Informations préliminaires*').

¹⁰ See ICC-01/05-01/13-1478-Red-Corr, para. 32.

it did, for example, with the expert report of P-0925.¹¹ To receive the report into evidence, in the absence of fulfilment of the conditions for introduction under Rule 68, would run contrary not only to the Chamber's Initial Directions on the Conduct of the Proceedings¹² but also to the Court's statutory framework.

IV CONCLUSION

9. For the foregoing reasons, the Prosecution submits that the analyst's report should not be submitted into evidence.



Karim A. A. Khan KC, Prosecutor

Dated this 12th day of February 2024

At The Hague, The Netherlands

¹¹ See ICC-01/14-01/18-2016-Red, para. 55-62.

¹² See ICC-01/14-01/18-631, para. 56