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Date: 5 June 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***

Public

**Public redacted version of “Prosecution's Request for submission of item CAR-
OTP-2083-3166 (ICC-01/14-01/18-2416-Conf),
ICC-01/14-01/18-2416-Conf, 20 March 2024”**

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”) requests the formal submission of the call data record CAR-OTP-2083-3166 (“CDR item”) pursuant to Trial Chamber V’s (“Chamber”) previous decisions.¹

2. The CDR item concerns Defence witness D29-3014’s phone number [REDACTED], and reflects contact with an MBAIKI interlocutor on 31 January 2014.² The CDR item thus bears directly on D29-3014’s 11 March 2024 testimony : a) confirming his use of the phone number [REDACTED] in the Relevant Period;³ and b) regarding his telephone contacts in 2014, including on the question of calls to an interlocutor in MBAIKI on 31 January 2014.

3. The CDR item is reliable and authentic. It was obtained by the Prosecution through cooperation procedures following a Request for Assistance (“RFA”). It is also not prejudicial to the Defence, particularly given that the Defence has had notice of its content since its disclosure in November 2020.

II. CONFIDENTIALITY

4. Pursuant to regulation 23*bis*(1) of the Regulations of the Court (“RoC”), this request is filed as “Confidential” as D29-3014’s testimony regarding his phone number was given in private session. A public redacted version will be filed as soon as practicable.

¹ ICC-01/14-01/18-1499, paras. 49-51; Email decision (Chamber, 15 March 2024, 16:49) ordering the Prosecution to file the present request on the record.

² CAR-OTP-2083-3166, TAB MBAIKI, entries 19427-19428, 20189-20190, lasting 144 and 150 seconds respectively.

³ From September 2013 through December 2014 (“Relevant Period”).

III. SUBMISSIONS

A. The submission of the CDR item is authorised and there is no procedural impediment to its introduction

5. The present request is authorised under the Chamber's Decision on the Third Prosecution Submission Request (Call Data Records).⁴ In its Decision, which rejected the submission of the CDR items listed in Annex D to the Prosecution's request without prejudice (including CAR-OTP-2083-3166),⁵ the Chamber specifically noted:

“the Prosecution is not precluded from submitting additional call related data in response to ‘issues arising from documentary evidence and **testimony presented at trial**’, should it wish to do so later.”⁶

B. The CDR item is responsive to the documentary evidence and testimony presented

6. *First*, the requested submission of the CDR item arises from, and is directly related to, the recent testimony of D29-3014, who confirmed under oath that one of his 2014 and 2015 telephone numbers was [REDACTED] :

“Q. [9:56:54] Mr Soussou, do you remember the telephone numbers that you used back in 2014 and 2015? (...)”

Q. [9:59:02] Mr Soussou, the number that I have here is [REDACTED]. Does that jog your memory?

A. [9:59:29] Yes. *That's my telephone number.*”⁷

⁴ See ICC-01/14-01/18-1499, paras. 49-51.

⁵ See ICC-01/14-01/18-1296-Conf-AnxD, p. 36, item 361.

⁶ ICC-01/14-01/18-1499, paras. 49-51 (emphasis added).

⁷ T-274-CONF-ENG ET, p. 9, l. 18-p. 10, l. 19.

7. D29-3014 similarly confirmed that he did not give his number or his telephone to other people to use in that period, except to charge the device:

“Q. [10:55:47] Did you give your telephone to somebody to use for a period of time during 2014? Did you give the actual phone to someone?”

*A. [10:56:17] Mr President, **I never gave my number to somebody.** You know, we don’t have electricity at home. Often, we send our phones to people to charge our phones, but **I never gave my phone to anybody else so that they could use it**, but we do sometimes send them to be charged.”⁸*

8. D29-3014 further denied any recollection of calls made from his device and telephone number to an individual in MBAIKI on 31 January 2014 – the immediate aftermath of the 30 January 2014 St Jeanne d’Arc meeting in MBAIKI.

“Q. [12:07:59] Would you have any reason to be in contact with an individual in Mbaiki on 31 January 2014, to your recollection?”

A. [12:08:27] Mr President, I don’t remember having called anyone on that date.”⁹

9. To the extent that the CDR item reflects such contact, it is clearly relevant to and probative of D29-3014’s testimony. Although the witness’s telephone contact with Bishop Guerrino PERIN later in 2014 is referenced in his testimony,¹⁰ his contacts with other persons in MBAIKI, particularly proximate to PERIN’s meeting with the Accused YEKATOM and few days after the killings in BODA began, which prompted D29-3014 to organise a meeting at his house on 2 February 2014,¹¹ are not.

⁸ T-274-CONF-ENG ET, p. 29, l. 1-9 (emphasis added).

⁹ T-274-CONF-ENG ET, p. 42, l. 5-8.

¹⁰ T-265-CONF-ENG ET, p. 14, l. 1-6.

¹¹ CAR-OTP-2068-0037 at 0041, para. 10-11.

10. *Second*, the CDR item is reliable and authentic.¹² As noted, it was obtained through cooperation procedures [REDACTED], which maintained the record in the regular course of business and in accordance with domestic laws.¹³

11. *Finally*, recognising the formal submission of the CDR item is not prejudicial to the Defence: (i) it is inherently reliable and its collection and transmission was authorised by national authorities in accordance with the Statute; (ii) it will assist the Chamber in the determination of the truth; (iii) the Defence has had notice of D29-3014's telephone number since June 2019;¹⁴ and (iv) the Defence has had notice of CAR-OTP-2083-3166's content, including the 'IMEI' (International Mobile Equipment Identity) number of D29-3014's telephone device, since 3 November 2020.¹⁵

IV. RELIEF SOUGHT

12. For the above reasons, the Prosecution requests that the Chamber recognises CAR-OTP-2083-3166 as formally submitted.



Karim A. A. Khan KC, Prosecutor

Dated this 5th day of June, 2024
At The Hague, The Netherlands

¹² ICC-01/14-01/18-1499, para. 52, formally recognising CDR records from the bar.

¹³ In response to [REDACTED], which can be provided upon request.

¹⁴ CAR-OTP-2101-2916 at 2918, disclosed in June 2019.

¹⁵ CAR-OTP-2083-3166, disclosed in November 2020.