

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **9 August 2024**

TRIAL CHAMBER V

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

PUBLIC with PUBLIC ANNEX A

Fifth Ngaïssona Defence request for leave to add items to the List of Evidence

Source: Defence of Patrice-Edouard Ngaïssona

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

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I. INTRODUCTION

1. The Defence for Mr Patrice-Edouard Ngaïssona ('Defence') hereby requests Trial Chamber V ('Chamber') leave to add one item to the List of Evidence ('List' or 'LoE') submitted on 17 November 2023 ('Request').¹
2. The item consists of Recommendations from Cell Site Analysis by the Scientific Working Group on Digital Evidence, which was created on 18 December 2023 ('Item').² The Defence has come into possession of the Item on 22 February 2024 and seeks leave to add it to its LoE for the following reasons. *First*, the Item is relevant and has probative value as it provides explanations and guidelines regarding the best practices to adopt when manipulating the data of a call data record ('CDR') and presenting it in Court. *Second*, the addition of the Item to the LoE does not cause prejudice to the parties and participants, since the Defence came into possession of the Item after the LoE was submitted, and the document is publicly available through open source.

II. PROCEDURAL HISTORY

3. On 29 May 2023, the Chamber issued the 'Further directions on the Conduct of the Proceedings (Presentation of Evidence by the CRLV and the Defence)',³ ordering the Defence to file its final LoE on 17 November 2023.
4. On 15 December 2023, the Defence filed the 'Ngaïssona Defence request for leave to add items to the List of Evidence'.⁴

¹ ICC-01/14-01/18-2215, with confidential Annex 2 ICC-01/14-01/18-2215-Conf-Anx2.

² CAR-D30-0018-0104.

³ ICC-01/14-01/18-1892.

⁴ ICC-01/14-01/18-2215, with Annex 1 ICC-01/14-01/18-2215-Conf-Anx1, and Annex 2 ICC-01/14-01/18-2215-Conf-Anx2.

5. On 12 January 2024, the Defence filed the 'Second Ngaïssona Defence request for leave to add items to the List of Evidence'.⁵
6. On 08 April 2024, the Defence filed the 'Third Ngaïssona Defence request for leave to add items to the List of Evidence'.⁶
7. On 21 June 2023, the Defence filed the 'Fourth Ngaïssona Defence request for leave to add items to the List of Evidence'.⁷
8. On 05 August 2024, the Defence disclosed the Item.

III. SUBMISSIONS

9. The Item for which the addition is sought provides recommendations on the use of Historic Cell Site Location information contained in Call Data Records ('CDRs') when conducting Cell Site Analysis for the purposes of legal proceedings. These recommendations are provided by the Scientific Working Group on Digital Evidence ('SWGDE'). The SGWDE "brings together organizations actively engaged in digital and multimedia evidence" with the objective of fostering "communication, cooperation, consistency, and quality within the forensic community through consensus-based documents".⁸ The Item details the data that can be reflected in different CDRs and provides explanations on, *inter alia*, cell sites,⁹ cell sectors,¹⁰ azimuth,¹¹ and geolocation information.¹² The SWGDE also recommends that certain processing and verifying steps be taken and outlines the best practices to follow for the purpose

⁵ ICC-01/14-01/18-2297, with Annex A ICC-01/14-01/18-2297-Conf-AnxA.

⁶ ICC-01/14-01/18-2439, with Annex A ICC-01/14-01/18-2439-Conf-AnxA.

⁷ ICC-01/14-01/18-2542-Conf, with Annex A ICC-01/14-01/18-2542-Conf-AnxA.

⁸ <https://www.swgde.org/>

⁹ CAR-D30-0018-0104, p. 0116.

¹⁰ Id., p. 0117.

¹¹ Id., p. 0118.

¹² Id., p. 0120.

of presenting Cell Site Information before courts and submit it in trial proceedings.¹³

10. The Defence intends to use this Item to corroborate the testimony of D30-4864 in relation to best practices in terms of analysis of CDRs.¹⁴ This Item would be the only documentary evidence establishing the best practices in CDR analysis, and as such, it would complement and contextualize D30-4864's testimony.

11. The Item is relevant and has probative value as it provides further information on the methodology constituting the best practices to present CDR evidence before a court of law and the different steps to process the data in this regard.¹⁵ The Item will therefore assist the Chamber in its holistic assessment of the CDR related evidence.

12. The addition of the Item to the LoE will not cause prejudice to the parties and participants. The Defence was not in possession of the Item when the LoE was submitted, as it had not even been published at this date.¹⁶ However, the Item was publicly available through open source research, and as such, it has been available to the Prosecution since December 2023.

13. The Defence disclosed the item after careful review of the evidence in its possession in preparation of the filing of its last Bar table motion. While the Defense apologizes for not requesting the addition earlier, any potential prejudice is outweighed by the prospective significance of the item,¹⁷ especially considering the amount of CDR evidence presented by the Prosecution.

¹³ Id., p. 0121.

¹⁴ D30-4864, T-271-ENG ET, p. 18, lines 9-18.

¹⁵ CAR-D30-0018-0104, p. 0116.

¹⁶ Id., p. 0125.

¹⁷ ICC-01/14-01/18-2567-Conf, *see* para. 16-17, in which the Chamber admitted an item even when it found that the Defence "could have acted with more diligence".

Additionally, the document is brief, limited in scope, and its content is straightforward.

14. Moreover, in accordance with Regulation 35(2) of the RoC, which allows the Chamber to “extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard”, the Defence requests for the deadline allocated to the parties and participants to respond to the present leave to add the item to be reduced to five days.
15. Indeed, considering the schedule imposed by the Chamber and the upcoming deadlines, notably regarding the imminent last Defence Bar table motion,¹⁸ the Defence has good cause to request a reduction of time limit. In addition, the present filing is brief and straightforward.

IV. RELIEF SOUGHT

16. For the reasons above, the Defence respectfully requests the Chamber to

GRANT the present request for leave to add the Item listed in Public Annex A to the List of Evidence; and

REDUCE the time limit allocated to the parties and participants to respond to the present request to a maximum of five days, pursuant to Regulation 35(2) of the Regulations of the Court.

Respectfully submitted,



¹⁸ ICC-01/14-01/18-2342, para. 6.

Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 9 August 2024

At The Hague, the Netherlands.