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Date: **23 August 2024**

TRIAL CHAMBER V

Before: 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 ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

With Confidential Annexes A and B

**Public Redacted Version of “Yekatom Defence Request for the Formal
Submission of Telecommunication Related Material”, 28 June 2024, ICC-
01/14-01/18-2562-Conf**

Source: Defence for Mr. Alfred Rombhot Yekatom

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

The Office of the Prosecutor

Mr Karim Asad Ahmad Khan
Mr Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Mr. Yekatom

Ms Mylène Dimitri
Ms Anta Guissé
Ms Sarah Bafadhel
Mr Thomas Hannis
Mr Gyo Suzuki
Mr Florent Pages-Granier

Counsel for Mr. Ngaïssona

Mr Geert-Jan Alexander Knoops
Ms Marie-Hélène Proulx
Ms Lauriane Vandeler

Legal Representatives of Victims

Mr Dmytro Suprun

Legal Representatives of Applicants

Mr Abdou Dangabo Moussa
Ms Elisabeth Rabesandratana
Mr Yaré Fall
Ms Marie-Edith Douzima-Lawson
Ms Paolina Massidda

Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

Ms Marie O'Leary

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

INTRODUCTION

1. The Defence for Mr Alfred Rombhot Yekatom ("Defence") hereby requests the formal recognition of 3 telecommunication related items from the bar table ("Submitted Items") in accordance with articles 64(9)(a), 69(3) and 69(4) of the Rome Statute and rule 63(2) of the Rules of Procedure and Evidence ("Request"). The Submitted Items comprise of one Call Data Record ("CDR")¹ and two Call Sequence Tables ("CST").²
2. As detailed in the present Request and Annex A, the Defence argues that the items for which submission into evidence is sought are *prima facie* relevant, reliable and meet the authenticity criteria. It is also argued that no procedural bars or obstacles affect the Submitted Items, and that the preconditions set out by the Chamber are fulfilled.³ The Defence furthermore has detailed its position as to the relevance of the items, and has provided information as regard to which other items present in the case record those items are related to.

PROCEDURAL HISTORY

3. On 17 November 2023, the Defence filed its List of Evidence.⁴ [
4. On 2 February 2024, the Chamber issued its "*Further Directions on the Conduct of the Proceedings (End of Defence Presentation of Evidence and Closure of Evidence)*".⁵ The Chamber set the deadline for the Defence to submit evidence in writing at one week after the testimony of the last witness called by the Defence; but encouraged requests to be filed on a rolling basis during the presentation of evidence.⁶

¹ CAR-OTP-00000125

² CAR-D29-0004-3925 and CAR-D29-0004-3926.

³ ICC-01/14-01/18-631, para. 62.

⁴ ICC-01/14-01/18-2212-Conf-AnxD.

⁵ ICC-01/14-01/18-2342.

⁶ ICC-01/14-01/18-2342, para. 6.

5. On 1 March 2024, the Defence filed its notice of information on prospective Bar Table Applications. The Defence *inter alia* indicated that it anticipated to submit 20 items in the “Call Date Records” category.⁷ The Defence added that the “number of aforementioned items may be subject to change upon further assessment of the materials”.⁸
6. On 22 May 2024, pursuant to request by the Defence, the Chamber authorised the latter to file its annexes to prospective bar table motions in A3 format containing additional reference to the chain of custody of the items as well as related submitted items in support of its submissions concerning the relevance and probative value of each item.⁹
7. On 6 June 2024, the Chamber issued its email Decision on Submitted Materials for D30-4864. The Chamber, *inter alia*, recognized as formally submitted into evidence 20 items related to telecommunication evidence (CDRs, CSTs, and Guides on the production of CSTs).¹⁰
8. On 14 June 2024, the Defence provided the Prosecution and the Ngaïssona Defence with Annex A of the present Request in order to obtain their positions pursuant to paragraph 62 of the Initial Directions on the Conduct of the Proceedings.¹¹

SUBMISSIONS

9. The Defence recalls its previous submissions as regard to the methodology it adopted as regard to its bar table requests.¹²

⁷ ICC-01/14-01/18-2392, para 2, page 1.

⁸ ICC-01/14-01/18-2392, para. 3.

⁹ Email from the Trial Chamber V dated 22 May 2024 at 16:14.

¹⁰ Email from the Chamber to the Parties titled “Decision on Submitted Materials for D30-4864” and dated 6 June 2024 at 12:58.

¹¹ ICC-01/14-01/18-631, para. 62.

¹² ICC-01/14-01/18-2515-Conf, paras 9-15.

10. In the same vein, and in order to assist the Chamber during its deliberation, the Defence appends to this Request a document (Annex B) which contains the Defence's attribution of certain phone numbers to specific individuals, with an indication of which underlying submitted evidence is used to assert this attribution. This attribution table contains not only references to be used for the Chamber's assessment of the Submitted Items, but also for other previously submitted CSTs prepared by the Defence in the course of the trial.
11. In addition to the Submitted Items, Annex A also contains detailed submissions on CSTs that were previously recognized as submitted into evidence by the Chamber through emails decisions after the conclusion of the testimony of witnesses. Those CSTs are identified in Annex A with a grey background.
12. The Defence undertook to provide the Chamber with submissions on those CSTs, despite their formal submission into evidence, in order to facilitate the Chamber's assessment during its deliberation of their relevance, reliability and probative value. Indeed, those CSTs were used by the Defence during its examination of key witnesses such as P-0954, P-0487 or P-0876; in light of the intrinsic complexity of CSTs the Defence contends that the Chamber will be assisted by the written submissions on those documents contained in Annex A.
13. The Defence will first provide submissions as regard the three Submitted Items (A); before providing further submission on some CSTs already recognized as formally submitted into evidence (B).

A. On the Submitted Items

14. The Defence seeks submission in evidence of 3 documents comprising of one CDR (CAR-OTP-00000125) and two CSTs (CAR-D29-0004-3925 and CAR-D29-0004-3926). The Prosecution¹³ and Ngaïssona Defence¹⁴ does not object to the

¹³ Email from the Prosecution to the Defence dated 27 June 2024 at 15:57.

¹⁴ Email from the Ngaïssona Defence to the Defence dated 27 June 2024 at 18:23.

submission of those items, but make specific submissions as to the relevance set out by the Defence.

On the relevance of the Submitted Items

15. The Submitted Items are relevant to topics that are central to the case as detailed in Annex A.

i) CAR-OTP-00000125

16. CAR-OTP-00000125 is the underlying CDR of previously submitted CSTs CAR-D29-0004-2592 and CAR-D29-0004-2593 which show contacts, from January 2014, between on one side Mr Yekatom's element named [REDACTED], and on the other side (i) Sangaris and (ii) DAOUDA Souleymane, a Seleka member. Those CSTs, and incidentally their underlying CDR CAR-OTP-00000125, are thus objective evidence of the existence of such contacts; this further the Defence arguments presented throughout the case of (i) the existence of collaboration between Mr. Yekatom's group and French forces Sangaris, and (ii) the fact that the objective of Mr Yekatom's group was the resignation of Mr Djotodia, the removal of Seleka from politics, and the ousting of mercenaries associated with the Seleka, as opposed to any anti-Muslim animus.

17. Submission of the underlying CDR CAR-OTP-00000125, used to create the CSTs to further those arguments, is thus necessary for the completeness of the record. Its submission in evidence is also necessary to allow the Chamber and Parties to assess the reliability of the CSTs created from CAR-OTP-00000125 by following the process described in the guide CAR-D29-0004-3912.

ii) CAR-D29-0004-3925 and CAR-D29-0004-3926

18. In addition to the Defence's Annex A submissions on the relevance and probative value of CAR-D29-0004-3925 ('MBOSSE CST') and CAR-D29-0004-3926 ('Habib SOUSSOU CST'), the Defence provides the following submissions,

addressing both the Prosecution's observations regarding these items as set out in the 'Prosecution's Response to the "Yekatom Defence Request for Leave to Add 22 Items to its List of Evidence" (ICC-01/14-01/18-2425)',¹⁵ as well as the Prosecution's submissions provided *inter partes*.

19. First, the cited 'data gaps' in the MBOSSE CST, including 'missing cell site data' and 'phone inactivity', have no bearing on the specific question as to whether the existing and available data within the MBOSSE CST contradicts the account of P-1962.¹⁶
20. Indeed, the fact that the CDRs do not contain data for the period 5-6 February 2014 is doubly irrelevant, in that i) P-1962 specifically claimed [REDACTED], and that MBOSSE led the fighting there, on 3-4 February 2014, not 5-6 February 2024;¹⁷ ii) the location of MBOSSE's mobile phone cannot be inferred on the basis of non-existent cell site data.¹⁸ Nor can it simply be assumed that a 'NULL' entry represents a cell tower outside of BANGUI (or at least, a cell tower in BODA).¹⁹
21. In the same vein, the fact that 'secondary data' indicates that MBOSSE's attributed mobile phone connected with a cell tower in MBAIKI on 4 January 2014 – i.e. approximately one month prior to the BODA events – is an irrelevant straw man, not least given that the tendered item is limited to data for the period 15 January 2014 to 28 February 2014.²⁰

¹⁵ ICC-01/14-01/18-2433-Conf, paras 11-21.

¹⁶ *Contra*, *ibid.*, para. 12; see also, Prosecution submissions in Annex A, pp 10-11. The Prosecution notably fails to substantiate its claim that the MBOSSE CST 'does not necessarily substantiate a conclusion that MBOSSE was [...] not [in] BODA on 3-4 February 2014'. Regarding the specific contradictions raised by the Defence, see Annex A, pp 10-11.

¹⁷ See Annex A, pp 10-11.

¹⁸ The Prosecution's reliance on a 'data gap' for the period of 'the early morning of 23 February until the evening of 24 February 2014' is likewise irrelevant for the same reason; *contra*, ICC-01/14-01/18-2433-Conf, para. 13.

¹⁹ This is apparent from instances where 'NULL' entries are followed or preceded by records with data indicating connections to cell towers in BANGUI in such a manner that would effectively rule out the 'NULL' record constituting a BODA cell tower activation, given the distance between the two cities – see e.g., CAR-D29-0004-3925, rows 1107-1109, where in the span of approximately 15 minutes, a 'NULL' activation (at 08:13) is preceded by an activation of the KPETENE cell site (at 08:05) and followed by an activation of the KM5 cell site (at 08:20).

²⁰ *Contra*, ICC-01/14-01/18-2433-Conf, para. 13.

22. The Prosecution's reliance on 'gaps' in the Habib SOUSSOU CST is likewise misplaced, in that they have no bearing on the fact that the mobile phone attributed to Habib SOUSSOU continuously and repeatedly activates cell sites in BANGUI in the period in which P-1962 claims that Habib SOUSSOU was in BODA and acting as the chief of the BODA Anti-Balaka.²¹ In this regard, the cited relevant 'periods of inactivity',²² should be assessed in light of the fact that a round trip between BODA and MBAIKI is roughly 400 km in distance.
23. The Prosecution's suggestion that the Defence's position on geolocation data is 'self-serving' appears to be based on a failure to recognise the distinction between the cell tower locations as understood in terms of the cities in which these towers are located (and indeed, the cities in which they are not located) versus their locations as narrowly defined – for example, in terms of their locations within a given city or neighbourhood.²³ In other words, the Prosecution ignores the difference between i) seeking to use cell site data and CDRs to rule out the possibility that a given mobile phone is located in a given city at a given time; versus ii) seeking to use such data to positively and narrowly locate a given mobile phone at a given time.²⁴ In this regard, the Defence recalls the evidence of CDR analysis expert Duncan BROWN (D30-P-4864), who testified as to the impossibility of a cell phone activating a cell tower located 100-120 km away.²⁵ As set out in Annex A, and notwithstanding the myriad factors affecting cell site analysis, the Chamber can indeed infer from

²¹ See, Annex A, pp 12.

²² See, Prosecution submissions in Annex A, p. 12. As regards the cited 'gaps' of 4-7 April and 21-29 April 2014: the Prosecution has again failed to take into account the specific timeframe relied upon by the Defence in this item: specifically, 8 February 2014 through 21 April 2014 as previously set out by the Defence (see, ICC-01/14-01/18-2425-Conf, para. 21). Indeed, the Defence does not take a position on the whereabouts of Habib SOUSSOU in the period prior to 8 April, nor 21-29 April (with the exception of part of 21 April). The Defence also notes that the Prosecution appears to concede that Habib SOUSSOU was indeed in BANGUI prior to 21 April 2014 (and thus contradicts P-1962's claims) – see ICC-01/14-01/18-2433-Conf, fn. 27.

²³ Cf. ICC-01/14-01/18-2433-Conf, paras 14-15.

²⁴ In this regard, see also, Prosecution submissions in Annex A, pp 10-11.

²⁵ ICC-01/14-01/18-T-272-ENG ET, 46:15-19.

MBOSSE's attributed mobile phone's activations of cell towers in BANGUI, that this mobile was not in fact in BODA at the time of these activations.

24. Lastly, the Prosecution's reliance on certain alleged activations of MBAIKI cell sites by mobile phones attributed to [REDACTED] or SOUSSOU is misplaced,²⁶ in that they are irrelevant to the question of whether the tendered CSTs contradicts the specific contested claims of P-1962.
25. In this regard, and more broadly, the Prosecution position²⁷ appears to be based on the misconception that the Defence is contesting that Habib SOUSSOU and other FACA travelled to BODA following the outbreak of fighting there in early February 2014; this, despite the fact that the Defence has specifically led evidence on this through Defence witness Fidele SOUSSOU (D29-P-3014).²⁸
26. On the contrary, the Defence is specifically contesting P-1962's account of the events: [REDACTED] ; [REDACTED] ; [REDACTED]; and the subsequent 'establishment' of the so-called 'BODA Anti-balaka'. It is the Defence's position that P-1962 has co-opted and significantly embellished a well-known event, [REDACTED], in a successful attempt to fraudulently obtain benefits from his participation in these proceedings, [REDACTED], in what is by now a regrettably familiar leitmotif in the Prosecution case.²⁹
27. In this respect, the Prosecution's suggestion that the contradiction between the data in the MBOSSE CST, and P-1962's account and contested claims, could simply be a matter of merely 'reflect[ing] no more than P-1962's mis-recollection of the exact date of the BODA operation'³⁰ should be assessed against the

²⁶ ICC-01/14-01/18-2433-Conf, paras 20, 21; see also, Prosecution submissions in Annex A, pp 10-12.

²⁷ See especially, ICC-01/14-01/18-2433-Conf, para. 19 (specifically, the manifestly unfounded claim that this item 'buttresses P-1962's evidence significantly, including in respect of the circumstances of the BODA attack'); and Prosecution submissions in Annex A, pp 10-12.

²⁸ CAR-D29-0009-0355, paras 30-31; see also, ICC-01/14-01/18-T-265-CONF-ENG CT, 9:23-10:4.

²⁹ See e.g., ICC-01/14-01/18-2240-Conf.

³⁰ See, Prosecution submissions in Annex A, pp. 10-12.

mounting evidence demonstrating the fundamental lack of credibility of P-1962 – [REDACTED].³¹

On the reliability and authenticity of the Submitted Items

28. The Submitted Items display sufficient indicia of reliability and authenticity as detailed for each one of them in Annex A.
29. CDR CAR-OTP-00000125 was provided to the Prosecution by Telecom Company Telecel.³² Its provenance is *prima facie* legitimate and there are no apparent indicia that it was tampered with.
30. CSTs CAR-D29-0004-3925 and CAR-D29-0004-3926 were created by the Defence from CDRs CAR-OTP-2112-1654 and CAR-OTP-2112-1619 respectively.³³ As those CSTs were created after the testimony of Expert D30-P-4864 they are not included in the guides presented to this witness. However, the underlying CDRs are Single Target Telecel CDR divided by month, a similar approach as that described in Guides CAR-D29-0004-3918 and CAR-D29-0004-3912 allows the Chamber and Parties to reverse engineer the CSTs for which submission is sought and assert their reliability.

On the absence of prejudice resulting from the submission of the Submitted Items

31. No prejudice to a fair trial pursuant to Article 69(4) of the Statute would arise from recognizing the three items as formally submitted.
32. Indeed, CDR CAR-OTP-00000125 was included in the Defence List of Evidence on 17 November 2023.³⁴ As for CSTs CAR-D29-0004-3925 and CAR-D29-0004-

³¹ See, [REDACTED].

³² See « Chain of Custody » on Nuix/JEM

³³ Both of those underlying CDRs were transmitted by Telecom company Telecel to the Prosecution who subsequently disclosed them.

³⁴ ICC-01/14-01/18-2212-Conf-AnxD, item 769.

3926, the Chamber granted addition to the Defence List of Evidence on 5 April 2024.³⁵ The Parties were thus informed of the Defence's intention to rely on them.

33. Moreover, the Defence provides detailed submission on each item in Annex A as to how each document fits in the Defence case theory and how it is corroborative of other evidence; and as such, the Parties are put in a situation to easily assess the evidence for which submission is sought and provide their position to the Chamber.
34. Consequently, in light of all the above, as no procedural bars or obstacles affect the Submitted Items, and that the preconditions set out by the Chamber are fulfilled,³⁶ the Defence hereby requests the Chamber to recognize as submitted items CAR-OTP-00000125, CAR-D29-0004-3925 and CAR-D29-0004-3926.

B. On CSTs already recognized as submitted into evidence

35. As indicated above, the Defence included in Annex A detailed submissions on some telecommunication related items which are already recognized as formally submitted pursuant to previous Chamber decision.
36. The CSTs included in Annex A particularly relate to Witness P-0487 in demonstrating that he was untruthful when he claimed that he did not have telephone or SMS contacts with [REDACTED]³⁷ as CST CAR-D29-0004-0023 demonstrates otherwise. Likewise, P-0487's untruthfulness is demonstrated when he indicated that he was in contact with [REDACTED] only two to three times a month,³⁸ while CST CAR-D29-0004-3815 shows thousands of contacts between [REDACTED].

³⁵ ICC-01/14-01/18-2436-Conf, page 11.

³⁶ ICC-01/14-01/18-631, para. 62.

³⁷ **P-0487** : ICC-01/14-01/18-T-205-CONF-ENG ET from 09:45:21 to 09:46:51, ICC-01/14-01/18-T-206-CONF-ENG ET from 09:54:48 to 10:02:50.

³⁸ **P-0487** : ICC-01/14-01/18-T-207-CONF-ENG ET from 09:58:11 to 09:58:51.

37. Witness P-0487's untruthfulness is also apparent in his refusal to explain the numerous telephone contacts he had [REDACTED].³⁹ Indeed, CST CAR-D29-0004-2621 shows that on [REDACTED] P-0487 had 244 communications with his phone, including 97 between 17h18 and 20h01; and that on [REDACTED], he had 18 calls and 2 SMS between 1am and 5am.
38. As regards P-0954, the Defence refers to its submissions for CST CAR-D29-0004-3911 in Annex A as this document undermines P-0954's credibility in his various assertions that he spoke with Mr. Yekatom [REDACTED],⁴⁰ or that he would have discussed [REDACTED] with Mr Yekatom.⁴¹
39. The Defence highlights that the detailed submissions contained in Annex A as regard to those already submitted documents, of which the above submissions are only an excerpt, will assist the Chamber during its deliberation in assessing the overall credibility of those witnesses and the weight to give to their evidence.

CONFIDENTIALITY

40. The present Request is filed as Confidential due to references to the identity of protected witnesses. A Public Redacted Version will be filed in due course. Annexes A and B are classified as confidential as they contain identifying information of protected witnesses, such as their names and phone numbers.

RELIEF SOUGHT

41. In light of the above, the Defence respectfully requests Trial Chamber V to:
- RECOGNIZE** as formally submitted into evidence items CAR-OTP-00000125, CAR-D29-0004-3925 and CAR-D29-0004-3926.

³⁹ **P-0487** : ICC-01/14-01/18-T-206-CONF-FRA ET from 12:38:51 to 12:50:54.

⁴⁰ **P-0954** : CAR-OTP-2048-0171-R03, para. 34.

⁴¹ **P-0954** : ICC-01/14-01/18-T-168-CONF-FRA ET from 12:50:42 to 12:56:13.

RESPECTFULLY SUBMITTED ON THIS 23rd DAY OF AUGUST 2024



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands