

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/14-01/18
Date: 15 December 2025

TRIAL CHAMBER V

Before: Judge Beti Hohler , Presiding Judge
Judge Joanna Korner
Judge Keebong Paek

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

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

Public Document

Public redacted Version of "Defence Observations on Registry's Observations on the Prosecution's 'Request for leave to add one item to the List of Evidence (ICC-01/14-01/18-1702-Conf)' (ICC-01/14-01/18-1794-Conf)", ICC-01/14-01/18-1807-Conf, 21 March 2023

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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D30

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☐ Unrepresented Victims

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(Participation/Reparation)

☐ The Office of Public Counsel for Victims

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M. Zavala Giler, Osvaldo

☐ Counsel Support Section

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I. Confidentiality

1. The present observations are filed as confidential pursuant to Regulation 23(1)*bis* of the Regulations of the Court, as they refer to a filing of the same classification. A public redacted version will be filed in due time.

II. Submissions

2. The Defence hereby submits the following observations concerning the Registry's Observations on the Prosecution's "Request for leave to add one item to the List of Evidence (ICC-01/14-01/18-1702-Conf)" ("Observations").¹
3. On 15 December 2022, the Office of the Prosecutor (the "Prosecution") filed its "Request for leave to add one item to the List of Evidence" (the "Request") relating to CAR-OTP-00000637 (the "Item").² On 10 February 2023, the Defence for Mr Ngaïssona (the "Defence") responded to the Request (the "Response").³ On 7 March 2023, and in need for further clarifications, Trial Chamber V (the "Chamber") instructed the Registry to submit observations on, *inter alia*, the chain of custody of the phone from which the Item was allegedly extracted and the dates on which the Prosecution had accessed the phone (the "Order").⁴
4. The Defence notes that the Observations fail to provide all the information requested by the Chamber or that is necessary to respond to the Defence concerns which prompted the Order. Furthermore, the Observations raise new questions about the Item, the phone, and the forensic copy from which the Item was allegedly extracted thus providing further support to the concerns raised by the Defence in its Response.
5. The Observations do not provide information that affect the relief sought by the Defence in its Response. However, if the Chamber will not reject the Prosecution

¹ ICC-01/14-01/18-1794-Conf.

² ICC-01/14-01/18-1702-Conf ("Request").

³ ICC-01/14-01/18-1748-Conf.

⁴ Email from Trial Chamber V dated 07 March 2023 at 15:18.

Request outright, then the Defence submits that the Chamber should consider requesting further information as the Observations do not satisfy the Chamber's Order. Material provided by the Prosecution demonstrates that the Observations are not complete. Specifically, material provided by the Prosecution demonstrates⁵ that the phone was turned on more than the one instance mentioned in the Observations.⁶ On 19 October and 11 November 2022, where there is photographic confirmation that the phone was turned on, the Observations only note that the phone was inspected by the Prosecution in the presence of the Registry.⁷ The Defence observes that this should lead the Chamber to consider inquiring further and approach the Observations with a critical stance as far as whether the phone was switched on in other circumstances where the Observations do not indicate this. The Chamber should consider seeking clarification from the Registry whether it has any further information that is not reflected in the Observations as to when the phone was switched on or activated, and by whom.

6. Whether the phone was activated, when, and by whom is important to ascertain particularly since the Observations indicate that the Prosecution inspected the phone on 8 July 2022 which is *prior* to the forensic copy being made on 20 July 2022.⁸ The inspection on the 8 July 2022 lasted from 10:32 to 16:36. This suggests that the 'consultation'⁹ may have involved a more thorough inspection of the evidence which included activating the phone. This piece of information supports the concerns raised in the Ngaïssona Defence Response,¹⁰ according to which failing to follow digital forensic practices may have caused alteration to the phone before the forensic copy was made.

⁵ ICC-01/14-01/18-1748-Conf, para. 19

⁶ ICC-01/14-01/18-1794-Conf, para. 12.

⁷ ICC-01/14-01/18-1794-Conf, para. 14 ("at 10:46 the evidence bag was opened and the phone was handed over to the Prosecution for inspection in the presence of a representative of the Registry") and para. 16 ("the Prosecution's request evidence bag number P0485280 was opened and the Prosecution inspected the smartphone in the premises of the Registry").

⁸ ICC-01/14-01/18-1794-Conf, para. 16.

⁹ ICC-01/14-01/18-1794-Conf, para. 16.

¹⁰ Response, paras 22-25.

7. There is also still a gap in the chain of custody provided in the Observations. According to the Observations, on 23 March 2022, “the Registry handed over the custody of the seized evidence to the Court Management Section (“CMS”) for its preservation and safety deposit in the Registry vault”.¹¹ Yet according to the Prosecution metadata, the Item was provided on 19 March 2022.¹² There is no explanation as to the status of the phone in the intervening four (4) days nor is there clarity as to how or why it first arrived in the possession of the Registry and not the Prosecution.
8. Although the Prosecution provided *inter partes* further information on its access to the phone and the corresponding forensic copy thereof,¹³ the Observations further confirm that the information provided to the Defence and through the Request was not complete. The Registry indicates that the Prosecution had access to the phone and its derivative forensic image four (4) times more than has thus far been indicated¹⁴ and had access to both a total of seven (7) times according to the Observations.¹⁵ It thus becomes even more untenable for the Prosecution to claim that it could not have anticipated the late Request earlier.
9. Moreover, the Observations reveal that the Prosecution accessed the phone 12 days earlier (8 July 2022) than previously known (20 July 2022). The Observations note that “original evidence bag number M14847834, which bears number 9 in the Chain of Custody Form was opened in the presence of representatives of the Prosecution and the Registry”¹⁶ and that “[a]t 16:36, the items were returned to the Registry vault after its consultation by the Prosecution.”¹⁷ The Observations do not indicate what the substance of the consultations were, whereas it would aid the Chamber to have information about this.

¹¹ ICC-01/14-01/18-1794-Conf, para. 9.

¹² ICC-01/14-01/18-1748-Conf, para. 19. Specifically, the JEM record indicates “[REDACTED]”.

¹³ See emails from the Prosecution dated 13 January 2023 at 17:38, 26 January 2023 at 16:53, 6 February 2023 at 17:39, and 7 February 2023 at 15:34.

¹⁴ ICC-01/14-01/18-1702-Conf, para. 2.

¹⁵ ICC-01/14-01/18-1794-Conf, para. 16.

¹⁶ ICC-01/14-01/18-1794-Conf, para. 10.

¹⁷ ICC-01/14-01/18-1794-Conf, para. 10.

10. The Observations bolster the prior Defence submissions¹⁸ concerning the unusual status of the phone and Item and the need for the Prosecution to clarify what entity had control of the phone and its forensic copy and why. The Chamber could consider ordering the Prosecution to seek the reclassification of the under-seal filings that are cited in the Observations [REDACTED] and the Request [REDACTED], but to which the Defence does not have access.¹⁹ The Observations do not provide any clarity as to why the Prosecution was not able to extract the Item until November 2022 after it had created a disk image on 20 July 2022. One would expect that even if the physical phone needed preservation in one way or another within the Registry, there would be no restrictions upon the Prosecution retraining the digital copy for prompt analysis. However, this does not seem to be the case. Rather the digital copy was sealed and left untouched by the Prosecution for three (3) months,²⁰ thus the Prosecution had the opportunity to extract the Item earlier. Indeed, according to the Registry's account, the "Prosecution consulted another item seized from [REDACTED] included in evidence bag B0051294916"²¹ in which the digital copy was placed.²² In other words, the Observations suggest that the Prosecution decided to prioritise the inspection of another piece of evidence, presumably for the purpose of [REDACTED], when it had the opportunity to extract the Item as early as July 2022 and to promptly request its late addition to the List of Evidence in the present case.

11. Finally, the Registry's observation that "[t]he item remained in the custody of the Registry in order to preserve the chain of custody of the evidence"²³ is not an intelligible reason or explanation. The chain of custody requires documentation of who had possession and control of an item and the dates on which this changed. This is so that the parties and Chamber can understand and assess the integrity of material introduced into proceedings. Nothing would interfere with the chain of

¹⁸ See ICC-01/14-01/18-1748-Conf, paras 13 – 32.

¹⁹ [REDACTED]; [REDACTED].

²⁰ ICC-01/14-01/18-1794-Conf, paras. 11, 13, and 15.

²¹ ICC-01/14-01/18-1794-Conf, para. 13.

²² ICC-01/14-01/18-1794-Conf, para. 11.

²³ ICC-01/14-01/18-1794-Conf, para. 11.

custody by indicating that the item had changed custody from the Registry to the Prosecution. Thus, the Registry's claim either requires scrutiny or is non-sensical as it stands.

III. Conclusion

12. The Registry's Observations further confirm the Defence's initial Response regarding the untimeliness of the Request and the Item's lack of reliability. Given the inconsistencies between the Prosecution's and the Registry's respective narratives around (1) the chain of custody of the phone, its forensic copy and the extracted Item, and (2) the Prosecution's accesses to the phone and its forensic copy, the Defence reiterates what it previously sought in its Response, namely that the Chamber reject the Request.

Respectfully submitted,



G.J. Alexander Knoops,
on behalf of
Patrice-Edouard Ngaïssona

Dated this 15 December 2025

At The Hague, Netherlands