

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **12 July 2022**

TRIAL CHAMBER V

Before:

**Judge Bertrand Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

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

Public with Confidential Annexes A to C

**Public Redacted Version of “Ngaïssona Defence Response to
‘Prosecution’s submission of call data records and
related evidence *via* the “bar table” (ICC-01/14-01/18-1296)”, 12 July 2022**

Source: Defence of Patrice-Edouard Ngaïssona

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

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I. Introduction

1. The Defence for Mr Ngaïssona requests Trial Chamber V ('Trial Chamber' or 'Chamber') to reject the 686 items submitted through the 'Prosecution's submission of call data records and related evidence via the "bar table"'¹ filed on 1 March 2022.
2. The Defence provides category-specific objections below. Annex C to this response refers to these categories by cross-reference. The Defence also provides further item specific objections and observations in Annex C.
3. On 4 March 2022, the Trial Chamber granted a request to extend the deadline for the Defence to respond to the request from 14 March 2022 to 13 May 2022 in light of arguments² raised by the Defence.³ On 6 May 2022, the Trial Chamber rejected a 25 April 2022 Defence request to dismiss certain attributions and allegations of contacts and for suspension of the time limit to respond to the Bar-Table Motion.⁴
4. Finally, on 10 May 2022, the Trial Chamber authorised a Defence request to extend its response to up to 30 pages pursuant to Regulation 37(1) of the Regulations of the Court ('RoC').⁵

II. Confidentiality

5. In accordance with regulation 23*bis*(1) of the RoC, this request is filed confidentially as it refers to information that is confidential. The Defence will file a public redacted version as soon as practicable.

¹ [ICC-01/14-01/18-1296](#) ('Bar-Table Motion').

² These arguments concerned *inter alia* extensive new material contained within the annexes to the Bar-Table Motion, the addition of new attributions and statements of witnesses yet to testify, and pending disclosure requests.

³ Email, subject 'Decision on Request for an extension of time to respond to ICC-01/14-01/18-1296', sent 4 March 2022 at 15h39.

⁴ ICC-01/14-01/18-1377-Conf.

⁵ Email, subject 'Re: Request to extend the page limit of the response to ICC-01/14-01/18-1296', sent 10 May 2022 at 21h33.

III. Submissions

6. The Prosecution Bar-Table Motion⁶ is a puzzle⁷ with misshapen and missing parts that do not fit coherently together to form a cogent whole. The motion places previously submitted evidence and predicted future testimony alongside items the Prosecution is now requesting to submit. The Prosecution Bar-Table Motion claims there is no prejudice associated with receiving the material, but the manner by which the Prosecution presents the material will lead to misunderstanding its evidentiary value and will cause prejudice to Mr Ngaissona. As discussed below, the motion raises a number of legal issues. Among these are:
- a. The submission of testimonial material, which is barred from submission by the Court's legal regime;
 - b. Reliance upon material which if not authenticated, explained, and contextualised will lead to prejudice to the Defence; and
 - c. The submission of wholly irrelevant material which should be rejected.
7. The Defence argues that the Trial Chamber should not rely upon the CDRs until after conducting a detailed and item oriented examination of the material underlying their purported relevance (i.e. the items in Prosecution Annex C). However, as the Trial Chamber may examine many of these submissions during its deliberations on the verdict, the Defence urges that the Chamber to also keep in mind the birds eye view that was first observed by the Pre-Trial Chamber that:

[S]uch [CDRs] do not provide the Chamber with any kind of indicia as to the content and purpose of the conversations [...]⁸

⁶ [Bar-Table Motion](#).

⁷ ICC-01/14-01/18-T-108-CONF-ENG, p. 41 lines 1-4.

⁸ [ICC-01/14-01/18-403-Red](#), para. 180.

8. This reality was also acknowledged by the Presiding Judge of this Chamber when addressing the potential probative value of CDRs.⁹ The Presiding Judge noted that [REDACTED]. He noted that [REDACTED].¹⁰
9. The present response offers submissions on each of Prosecution Bar-Table Motion annexes. It concludes with a list of categories of objections based upon relevance, probative value and potential prejudice to which Defence Annex C cross-references.

A. Call Sequence Tables ('CST') (Prosecution Annex A)

10. CSTs are selective by their very nature as a condensation of information. The Prosecution has cherry picked only that information which supports its case and assembled it into CSTs. As discussed below,¹¹ other CSTs that can be constructed from the CDRs paint a different picture. In particular, CSTs annexed to this response call into question that telephone numbers attributed to Mr Ngaïssona by the Prosecution actually belonged to him.
11. As noted by the Trial Chamber:

[REDACTED].¹²
12. It is worth repeating that Prosecution Annex A cannot be qualified as evidence. As a Prosecution argument, it depends upon conclusions that the Prosecution asks the Trial Chamber to draw from Annex C. Its utility is only as strong as the conclusions the Trial Chamber ultimately reaches on numerous factual and legal issues. To make use of it requires concluding that:
 - a. The material used to support the attributions alleged in Annex C is not barred from submission;

⁹ ICC-01/14-01/18-T-127-CONF-ENG RT, p. 79, l. 13.

¹⁰ ICC-01/14-01/18-T-127-CONF-ENG RT, p. 79, l. 8-17.

¹¹ See paras 54 to 58 *below* regarding Mr Ngaïssona's alleged numbers calling other alleged number of Mr Ngaïssona.

¹² ICC-01/14-01/18-1392-Conf, para. 15.

- b. The items submitted to support the attributions (i.e. Annex C) can be used pursuant to the standard evidentiary criteria; and
 - c. The CDR materials themselves are neither barred from submission and the Trial Chamber can consider them in its judgment following an evaluation of the standard evidentiary criteria.
13. As an argument, Annex A is also incomplete since the Prosecution has set out that certain individuals were in contact with each other but the form is a table and not a section of the final brief. Therefore, the Defence reserves its rights to make arguments on the interpretation of these CSTs pursuant to Rule 64(1).

B. Documents containing Call Data Records (Prosecution Annex B – part I)

14. The relevance of the CDRs in Annex B depend upon the attributions that the Prosecution alleges they contain. The CDRs are not *prima facie* relevant if the items in Annex C that the Prosecution alleges demonstrate the attributions within the CDRs are not *prima facie* relevant themselves. This is because the CDRs are for the most part spreadsheets and files containing nothing but numbers and abbreviations there is nothing relevant about this information unless the Prosecution can persuade the Trial Chamber that the numbers have relevance to the case, which it has not. Moreover, evidence on the record about phone sharing¹³ also limits the relevance of the information that the Prosecution claims is contained in the CDRs.
15. The Prosecution is incorrect in stating that the reliability of the records is assured because their collection was authorised.¹⁴ It does not follow that because a state official authorised the Prosecution to collect information, in most cases, several years after the relevant period that the output of a machine is or is not a reliable indication of what occurred. Even where an authorisation to collect material was closer to the charged period, this says nothing about its reliability. It is the operator of the machine who can

¹³ See paras 59 to 61 *below*.

¹⁴ [Bar-Table Motion](#), para. 23.

provide information that enables the Trial Chamber to accept or reject whether the material is reliable for the purposes the Prosecution is giving the material at trial.

16. Moreover, the CDRs have not been authenticated, which renders them unreliable. It is for the party tendering the item to provide admissible evidence demonstrating its authenticity which the Prosecution failed to do.¹⁵ Private documents whose authenticity is dependent upon a connection with a third person or organisation must be authenticated by independent evidence. Such evidence must provide proof of authorship or adoption and integrity.¹⁶
17. The CDRs are too unreliable given that the Trial Chamber has received no information to be assured of the completeness or the accuracy of the information they contain, or, in fact, how to interpret the contained information. Disclosed information shows that these concerns are not only a Defence submission, given that an analyst engaged by the Prosecution from the [REDACTED] to examine and process this material gave a caution about the integrity of the material.¹⁷ This analyst noted *inter alia*:
 - a. the significant differences in formatting of the source data;
 - b. the impossibility of using the IMEI¹⁸ data for analysis of the use of mobile devices;
 - c. uncertainty with respect to the identification of certain foreign numbers;
 - d. issues with respect to the quality of the data; and
 - e. multiple duplicate entries.¹⁹
18. There is no material on the record to begin to dispel these issues. The Trial Chamber has not yet permitted submission of information from the telecommunication

¹⁵ [ICC-01/04-01/07-2635](#), para. 23.

¹⁶ [ICC-01/04-01/07-2635](#), para. 24(c).

¹⁷ CAR-OTP-2126-2529. At 2529: “**Il n'a pas été possible de vérifier leur intégrité, ni de les comparer avec un échantillon de contrôle de données similaires.** Des vérifications ponctuelles ont eu lieu, en ce qui concerne la numérotation et la plausibilité des numéros eux-mêmes et d'autres éléments (par exemple, la date et l'heure).”

¹⁸ « International Mobile Equipment Identity ».

¹⁹ CAR-OTP-2126-2529, at 2561.

providers [REDACTED] and [REDACTED] about CDRs.²⁰ There is no statement from an employee of [REDACTED] or [REDACTED]²¹ for the material sourced from these two companies. Neither the Defence, nor the Prosecution, nor the Trial Chamber are CDR technicians or experts. Without the testimony of a technician or expert, interpreting the content of CDRs could turn out to be incorrect or at best be a guess. Making findings without such information would be highly prejudicial.

19. Provided that the Trial Chamber will ultimately receive in evidence the statements from individuals from [REDACTED] and [REDACTED], these statements will demonstrate that the information contained in the CDRs is not reliable. For example, the [REDACTED] was not able to provide precise information as to when a phone number expires.²² He suggested that a phone number could be deactivated as quickly as within 1 week depending upon the amount of credit the user had and that numbers could be re-allocated within 6 months but that “cela n'est pas respecté”.²³ Similarly, a Prosecution expert who examined the material concluded that the data collected was not sufficiently complete to conduct important verifications.²⁴
20. In the present circumstances, which the Prosecution did not mention, the prejudice of admission outweighs the probative value of the items. The Prosecution claims that the Defence has sufficient notice of the content of the CDRs;²⁵ however, as noted by the Defence in a recent filing, the Prosecution has provided insufficient clarity as to how it intends to use these CDRs. In light of its prior usage of them during proceedings, and the introduction of attributions in the Bar-Table Motion annexes that are not referred to in the charging documents, there is an indication that this will lead to trial

²⁰ See, as examples, ICC-01/14-01/18-1043-Conf and ICC-01/14-01/18-808-Conf, paras 29-34.

²¹ The [REDACTED] material is only submitted in Annex D, which as discussed below at paras 46 to 52 should be dismissed as irrelevant.

²² CAR-OTP-2122-9950-R01 at 9959, paras 82-83.

²³ CAR-OTP-2122-9950-R01 at 9959, paras 82-83.

²⁴ “la qualité des données livrées ne permettait pas une attribution indiscutable de ces valeurs. Pour cette raison, une analyse de l'utilisation des appareils mobiles n'a pas été effectuée”, CAR-OTP-2126-2533 at 2533.

²⁵ [Bar-Table Motion](#), para 23.

by ambush.²⁶ Although it will not entirely eliminate this risk,²⁷ the Defence reserves its rights pursuant to Rule 64(1) to object to the Prosecution raising new potential attributions in the course of the proceedings or in its final brief, out of the voluminous body of material that is being submitted.

21. Despite the issues identified above, and in light of the presumption of innocence, the Defence may rely upon the CDRs to raise reasonable doubts; however, it would be highly prejudicial for the Trial Chamber to receive the CDRs in Annexes B and D and to rely upon them in order to determine the guilt or innocence of Mr Ngaïssona. Especially given that the Trial Chamber has not yet received any form of information concerning the creation and or how to interpret the CDRs, for the Chamber to draw incriminatory conclusions from the CDRs under these circumstances would amount to a determination of guilt or innocence upon an unsound basis.

C. Cell Site Data (Prosecution Annex B – part II)

22. The Defence opposes the submission of the cell-site material. The charging documents only refer to one of the five cell-site items the Prosecution is submitting.²⁸ It is not evident what fact in the Prosecution's case the other four documents contribute to making more likely or less likely.
23. Moreover, the Prosecution has not explained how to interpret the cell site data nor has it explained how material submitted to the Trial Chamber can assist it in doing so. For example, CAR-OTP-2036-0246 is a spreadsheet with columns titled 'LAC' and 'CI' that contain numbers. Another document²⁹ contains columns 'HMA' and 'Azimut' which also list numbers. The Prosecution does explain whether this information impacts upon the probative value of the items it is submitting for better or worse or not at all.

²⁶ ICC-01/14-01/18-1377-Conf, paras 33-46.

²⁷ Most specifically as per the Prosecution Final Brief.

²⁸ CAR-OTP-2082-1026-R02.

²⁹ CAR-OTP-2092-3914.

24. The Trial Chamber cannot presume the five cell site items to be reliable without more explanation from the Prosecution. Some of the submitted items are email correspondences. In the case of the item cited in the DCC and Pre Trial Brief, the Prosecution has redacted the sender.³⁰ The Defence does not suggest that this implies the item does not come from the source it has, but it does underscore the paucity of information available in these items necessary to assess their relevance and reliability.
25. No information exists on the record as to how this information was stored, maintained, or retrieved. There are, for example, indications in material disclosed by the Prosecution, that [REDACTED] moved cell-sites and that information in the Prosecution possession was not always up to date.³¹ In any case, the five items the Prosecution is submitting are not self-explanatory. CAR-OTP-2002-4276, for example, is four columns of information.³² It is not dated and no date exists in the courts meta-data. There is no information intrinsic to the item that provides an indication of the accuracy or even the actual source for that matter.
26. This limited clarity as to relevance and reliability creates prejudice to the Defence in itself because it reduces the precision with which the Defence can formulate submissions in response.
27. In the same vein, the [REDACTED] analyst noted that their ability to analyse the geo-referenced data in depth³³ was impeded because of the issues described above³⁴ combined with the ambiguity as to the localisation of the antennas.³⁵ This was despite the analyst receiving information similar to that which the Prosecution is submitting here.³⁶ Given that the analyst's report dates from 9 April 2020, which is two years after

³⁰ CAR-OTP-2082-1026-R02.

³¹ CAR-OTP-2082-1040-R01.

³² Site_Name, Cell_Type, Long, and Lat.

³³ CAR-OTP-2126-2529, at 2561.

³⁴ See para. 17(a) through (e) *above*.

³⁵ CAR-OTP-2126-2529, at 2561.

³⁶ See CAR-OTP-2126-2529 at 2534 footnote 9 *citing* to CAR-OTP-2054-0288.

the dates of the most recent cell site material,³⁷ it is conceivable³⁸ that the material which the Prosecution provided to the analyst was an aggregate of the material being submitted here. In any case, all this should sound both a caution to the reliability of the cell site location material and signal the necessity of an expert to explain the limitations and conclusions that can be possibly drawn from this material.

28. Absent an expert who can contextualise and explain how to use this material, the prejudice of admission will be considerable since the Trial Chamber would risk using such information in a manner untethered from a technically sound basis.
29. The Prosecution has made limited reference to this material in its Trial Brief and provided limited explanation in its Bar-Table Motion. Therefore, the Defence reserves its right to make submissions on the standard evidentiary criteria should the Prosecution make additional arguments regarding this material.

D. Alleged evidence of attribution (Prosecution Annex C)

30. It would be an oversimplification to state that the Defence contests the attributions contained in Prosecution Annex C, given the numerous issues raised in the Prosecution submissions. The Defence has indicated in Annex C to this filing where it contests the attributions the Prosecution puts forward. Where the Defence offers no position, it is because the Defence considers it premature to offer a final position. In the same column where the Defence indicates whether or not it contests an attribution, the Defence also notes other evidence or legal arguments that may be relevant to the Trial Chamber's ultimate assessment.

³⁷ CAR-OTP-2082-1026-R02 does not have a date indicated in Ringtail and there is no date intrinsic to the item. Its chain of custody indicates [REDACTED] transferred it to the Prosecution on 6 February 2015.

³⁸ The meta-data of CAR-OTP-2054-0288 in JEM provides no indication that the material originated from a source outside of the Prosecution.

31. The Prosecution refers to material that it has submitted or will be submitted, in part I of its Annex C. Where the Prosecution has submitted an item earlier in the proceedings and is now offering a new purpose for the submission of said item, the Defence has provided observations in Annex C on the standard evidentiary criteria with respect to this new alleged relevance and probative value. Defence Annex C mirrors the structure of the Prosecution Annex C and includes much of the same information. Defence Annex C part I references, *inter alia*, the categories below as well as refers the Trial Chamber to specific observations on individual items in Annex C part II.
32. Many of the documents the Prosecution has submitted are lengthy and contain other information that appears to concern events in the Central African Republic.³⁹ The Defence reserves its rights to make submissions on the standard evidentiary criteria should the Prosecution indicate that it intends to use these items for purposes not indicated in the Bar-Table Motion. The Trial Chamber should also afford the Defence an opportunity to provide submissions if it aims at relying on these items.

1. *Prospective evidence submission and witness statements or testimony to be introduced*

33. The Prosecution Bar-Table Motion Annex C Part 1 contains numerous references to items that the Prosecution intends to submit, and references to statements that the Prosecution intends to submit through Rule 68(3), Rule 68(2), or may be used with witnesses who will testify *viva voce*. Two categories of material which the Prosecution will submit in the future, are Facebook conversations and emails from Yahoo!. The Prosecution has indicated its intention to submit these *via* a bar-table motion.⁴⁰
34. Where it is possible to make observations on the standard evidentiary criteria on the prospective material, the Defence has done so. As previously noted,⁴¹ the Bar-Table

³⁹ See for example [CAR-OTP-2003-1010](#).

⁴⁰ See Prosecution Annex C, Part I, fourth column of the table entitled "submissions status". For some items, in this column, the Prosecution indicated "Document to be submitted in forthcoming Facebook bar table motion" and "Document to be submitted in forthcoming Yahoo! bar table motion".

⁴¹ ICC-01/14-01/18-1377-Conf, para. 27, *see* paras 23-27 more generally.

Motion obliges the Defence to provide its observations on the standard evidentiary criteria of the CDRs in Annex A of the Bar-Table Motion without the benefit of future testimony. Where statements contain phone numbers, they must be elicited *viva voce*. In any case, it is prejudicial to the Defence to be denied the opportunity to offer a final position since the Defence does not have the benefit of hearing the future testimony.

35. For all the items relied upon in Annex C that are not yet submitted, the Defence reserves its rights to make further submissions as to their relevance, probative value and potential prejudice at the time of submission. Concerning statements and expected testimony, the Defence also reserves its rights to augment its submissions in light of future testimony.

E. Procedural bars to submission (Prosecution Annex C)

2. Testimonial evidence

36. Evidence that constitutes prior recorded testimony cannot be submitted through a bar-table.⁴² A statement constitutes prior recorded testimony if the person, when providing the statement, understands that they are “providing information which may be relied upon in the context of legal proceedings”, namely when they are questioned in the capacity of a witness in the context of or in anticipation of legal proceedings.⁴³

⁴² Initial Directions, ICC-01/14-01/18-631, para. 56; Appeals Chamber, *The Prosecutor v. Jean Pierre Bemba Gombo et al.*, Judgment on the appeals against the decision of Trial Chamber VII entitled “Judgment pursuant to Article 74 of the Statute”, [ICC-01/05-01/13-2275-Red](#), 8 March 2018, , para. 581. See also *The Prosecutor v. Willima Samoei Ruto and Joshua Arap Sang*, Trial Chamber V, Decision on the Prosecution’s Request for Admission of Documentary Evidence, [ICC-01/09-01/11](#), 10 June 2014, para. 85.

⁴³ ICC-01/14-01/18-1359, para. 16; [ICC-01/14-01-18-907-Red](#), para. 11; *The Prosecutor v. Dominic Ongwen*, Trial Chamber IX, Decision on the Prosecution’s Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules, 18 November 2016, [ICC-02/04-01/15-596-Red](#), para. 9 (internal footnotes omitted), referring to *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Trial Chamber II, Decision on the Prosecutor’s Bar Table Motion, 17 December 2010, [ICC-01/04-01/07-2635](#), para. 49.

37. Three types of documents submitted through the present bar table constitute prior recorded testimony and, consequently the Trial Chamber should reject their submission.

Non-ICC statements

38. CAR-OTP-2030-0460 is an item the Prosecution itself qualifies as ‘statement’.⁴⁴ This qualification is indicative of the document as a prior recorded testimony.⁴⁵ More precisely, the item is a statement taken by the [REDACTED] concerning the alleged kidnapping of [REDACTED] in the framework of an ‘enquête préliminaire’. This Trial Chamber has already declined the submission of CAR-OTP-2030-0518, another statement given to [REDACTED] in the framework of the same ‘enquête préliminaire’ because of it being testimonial in nature.⁴⁶ This Trial Chamber should adopt the same reasoning regarding CAR-OTP-2030-0460 and reject its submission.

Non-ICC court records and investigative reports

39. CAR-OTP-2003-1010 is a Bangui court dossier that includes witnesses or defendants’ statements. In *Ongwen*, Trial Chamber IX rejected the submission of Ugandan police reports relating witnesses’ accounts of what they observed,⁴⁷ after having qualified them as testimonial in nature. When giving their statements to the Bangui authorities, witnesses undoubtedly understood that they were providing information that could be relied upon in the context of legal proceedings. Also, this dossier cannot be submitted from the bar-table.

⁴⁴ See Annex C to the Bar Table Motion where CAR-OTP-2030-0460 is described as ‘[REDACTED]’ and CAR-OTP-2030-0518 as ‘[REDACTED]’.

⁴⁵ *The Prosecutor v. Willima Samoei Ruto and Joshua Arap Sang*, Trial Chamber V, Decision on the Prosecution’s Request for Admission of Documentary Evidence, 10 June 2014, [ICC-01/09-01/11](#), para. 86.

⁴⁶ Trial Chamber V email decision of 11 March 2022, at 17.32 (“Decision on Submitted Materials for P-0306”). See also *Ruto and Sang* where Trial Chamber V found testimonies taken by the Kenyan authorities to qualify as testimonial in nature and, as such, refused to admit them from the bar table : [ICC-01/09-01/11](#), paras 85-87.

⁴⁷ *The Prosecutor v. Dominic Ongwen*, Trial Chamber IX, Decision on Prosecution’s Request to Submit 1006 Items of Evidence, 28 March 2017, [ICC-02/04-1/15-795](#), para. 20 and Decision on Defence Request to Submit 470 Items of Evidence, 14 November 2019, [ICC-02/04-01/15-1670](#), at paras. 12-13.

Annexes to ICC statements

40. The content of annexes that were used or explained by the witness in their statements qualifies equally as testimonial in nature since when explaining or providing these materials the witnesses knew that they were providing information that might be relied on in the context of proceedings before the ICC.
41. The Prosecution submits six such “annexes”.⁴⁸ This Trial Chamber clarified that the notion of prior recorded testimony includes “any annex to the witness’ statement, document otherwise associated with it, that is used or explained by the witness and which, as such, is an integral part of the testimony itself”.⁴⁹ Thus, annexes to ICC statements are prior recorded testimony and qualify as testimonial in nature.

*P-1521’s statement*⁵⁰

42. To support six attributions,⁵¹ the Prosecution relies on the statement of P-1521, that it qualifies as “testimonial, already introduced”. The Prosecution did not submit P-1521’s statement through Rule 68. The statement is testimonial in nature. In addition, the footnote to “testimonial, already introduced” reads as follows:

In his testimony, P-1521 confirmed that this was the number he had given in his statement: see ICC-01/14-01/18-T-082-CONF-ENG ET, p. 41, l. 15, p. 45, l. 15-21

43. The Prosecution is wholly incorrect. During his live testimony, the Prosecution put these numbers to the witness as the ones he provided in his statement. However, P-1521 stated that he did not remember these numbers nor even how he provided them

⁴⁸ CAR-OTP-2062-0088; CAR-OTP-2062-0086; CAR-OTP-2041-0779-R03; CAR-OTP-2087-9028; CAR-OTP-2001-5365 and CAR-OTP-2014-0763-R02.

⁴⁹ ICC-01/14-01/18-1186-Conf, para. 10; ICC-01/14-01/18-907-Conf, para. 13. See also *The Prosecutor v. Dominique Ongwen*, Trial Chamber IX, Decision on the Prosecution’s Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules, 18 November 2016, [ICC-02/04-01/15-596-Red](#), para. 10.

⁵⁰ [CAR-OTP-2046-0603-R03](#).

⁵¹ [REDACTED].

to the Prosecution.⁵² Thus, even if found admissible, the statement is not unambiguously a reflection of telephone number the witness provided and the transcript cannot be relied upon to clarify this.

44. Counsel for Mr Ngaïssona did not *contest* that the witness may have provided numbers but he did not agree that the numbers in the statement were a reflection of the numbers that the witness may have provided.⁵³ The Prosecution has not produced any information to demonstrate how the telephone numbers appeared in the statement. P-1521 speculated that he gave the numbers on a piece of paper.⁵⁴ If this were the case, the Prosecution would have been obliged to disclose it or annex it to the witness's statement.

45. In light of the above, the Trial Chamber cannot rely upon P-1521's statement in the manner suggested by Prosecution in Annex C, and the information placed in the transcript of proceedings cannot be seen as confirmation of the telephone number(s) upon which the Trial Chamber can rely.

F. Remaining CDR (Prosecution Annex D)

46. The Trial Chamber should reject the submission of the materials contained in Annex D to the Bar-Table Motion as irrelevant. The Defence requests the Trial Chamber to

⁵² ICC-01/14-01/18-T-082-CONF-ENG, p. 42, l. 14-15 and pp.42-45.

⁵³ ICC-01/14-01/18-T-082-CONF-ENG, p. 45, lines 11-14:

11 MR KNOOPS: [12:51:30] Of course we will not contest that the witness gave
12 telephone numbers, but we cannot stipulate to the fact that these numbers were either
13 written down correctly by the investigators or were not the numbers the witness now
14 can recollect. That's something of course which is subject to examination in court.

⁵⁴ ICC-01/14-01/18-T-082-CONF-ENG, p. 42, lines 18-19:

18 THE WITNESS: [12:45:40](Interpretation) Mr President, regarding the telephone
19 numbers, I don't remember these numbers. Perhaps I gave it on a piece of paper.

exercise its discretion⁵⁵ to rule on any other admissibility related issues upfront in order to ensure the fairness of the trial.

47. The Prosecution description does not specify relevance or probative value and this should lead to the outright dismissal of Annex D. The Prosecution states that it “contains a wealth of data highly relevant to the trial”⁵⁶ but the Prosecution does not describe what it is. The Directions on the Conduct of Proceedings requires the Prosecution to state “a short description of the asserted relevance and probative value”.⁵⁷ Yet the Prosecution states :

These items of CDR are **not relied upon specifically to prove allegations** set out in the Prosecution’s Trial Brief, but are relied upon as responsive to issues arising from documentary evidence and testimony presented at trial, as well as for completeness.⁵⁸

48. The Prosecution position lacks any of the content required by paragraph 62 of the Directions on the Conduct of Proceedings. If the Trial Chamber accepted this basis for submission, there would be no reason to have a process for the submission of evidence. The Prosecution could submit all disclosed evidence submitted on the same basis and the Chamber would have no principled basis for rejecting this. Submission would involve no legal control, and this would lead to unfairness and the lack of integrity of the proceedings since there would be no way for the Defence to respond or to have any notice as to the purpose of an item’s submission.

49. The Prosecution’s request will also cause redundancy. The jurisprudence of the *Katanga* Trial Chamber has noted that:

If a party has tendered an item of evidence as proof of a particular proposition, the Chamber will in principle admit it only for that purpose, even if the entire exhibit is admitted into evidence.⁵⁹

⁵⁵ [ICC-01/14-01/18-631](#) (‘Directions on Conduct of Proceedings’), para. 59.

⁵⁶ [Bar-Table Motion](#), para. 14.

⁵⁷ [Directions on Conduct of Proceedings](#), para. 62.

⁵⁸ [Bar-Table Motion](#), para. 13 (emphasis added).

⁵⁹ [ICC-01/04-01/07-2635](#), para. 17.

50. Here the Prosecution's position lack any clear purpose. Thus, in order to admit a CDR for the Prosecution's anticipated purpose (i.e. some future unspecified purpose) now, the Prosecution will still need to state a new purpose when it seeks to use any of the items any way. This defeats the Prosecution's claim that this approach "would also facilitate the examination of witnesses, obviating the need to submit individual items used in each instance" and "would avoid multiple piecemeal motions".⁶⁰

51. The Defence requests the Chamber to exercise its discretion to rule upon the relevance of the material to avoid the situation Judge Morrison of the Appeals Chamber referred to when criticizing the majority's decision permitting the submission regime at the ICC. In particular he warned that this regime:

may result in the evidential record being flooded with evidence of dubious or no relevance. This is in no one's interest, and is certainly not conducive to efficiency, especially in a case of such considerable scale and magnitude. Indeed, the Chamber has an obligation to ensure that the case record remains focused and free from evidence that lacks relevance or probative value.⁶¹

52. Nothing prevents the Prosecution from requesting to add a particular CDR to a particular witness's list of evidence when an issue appears to have arisen from testimony presented at trial by the Defence. At that point, the Trial Chamber will have the information necessary to ascertain whether the addition creates prejudice to the Defence.

G. Categories of objections based upon relevance, probative value and potential prejudice

53. The Defence has indicated in Annex C to this response the material that the Trial Chamber should dismiss, *inter alia*, for the categories described below.

1. Phone numbers attributed to Mr Ngaïssona

⁶⁰ [Bar-Table Motion](#), para. 14.

⁶¹ [ICC-02/11-01/15-773-AnxI](#), para. 15.

54. The Defense contends that the attributions of eight phone numbers to Mr Ngaïssona are not reliable or probative of him being the user of such phone numbers because the CDRs show contacts between these eight numbers attributed to Mr Ngaïssona.
55. Mr Ngaïssona cannot be both receiver and caller of the same call at once and, taking the evidence at its highest, he could only have been on one side of the line. Even assuming *arguendo* that Mr Ngaïssona used these phone numbers, the inference to be drawn is that Mr Ngaïssona was not the only individual using the attributed phone numbers. In such a case, the Prosecution cannot attribute specific phone contacts to Mr Ngaïssona while the person actually making or receiving the call could be another individual.
56. In any event, assuming that he would have been on one side of the line during any or all of these contacts, there is no evidence provided by the Prosecution to assist the Trial Chamber in assessing which given telephone connection he was using at a given moment for both numbers. Therefore, in any instance where these numbers call each other, reasonable doubts exist as to the accuracy of the attribution of the telephone number to Mr Ngaïssona more generally. If the Trial Chamber cannot conclude that one of the two numbers was Mr Ngaïssona's when these numbers were calling each other, then it cannot conclude that either telephone numbers were Mr Ngaïssona's, including when those numbers call other attributed numbers.
57. In addition, regarding Mr Ngaïssona's alleged telephones, it must be noted that [REDACTED] (P-0446) explained to the Prosecution investigators that Mr Ngaïssona would sometimes lose his telephones and that Mr Ngaïssona's younger brothers would even steal his phones.⁶² This further impedes the Prosecution to reliably attribute numbers, and subsequently phone contacts, to Mr Ngaïssona.
58. The Defence provides the details of contacts between phone numbers attributed to Mr Ngaïssona in Annex B to this response, but the following overview will be instructive

⁶² P-0446: CAR-OTP-2105-0593, at 0605.

to this Chamber. The CDR show 29 connections between [REDACTED] and [REDACTED] between 19/04/2014 and 13/06/2014⁶³; 36 connections between [REDACTED] and [REDACTED] between 24/05/2014 and 31/10/2014⁶⁴; 17 connections between [REDACTED] and [REDACTED] between 01/05/2014 and 27/10/2014⁶⁵; 49 connections between [REDACTED] and [REDACTED] between 18/03/2014 and 05/06/2014⁶⁶; 31 connections between [REDACTED] and [REDACTED] between 11/02/2014 and 29/05/2014⁶⁷; 17 connections between [REDACTED] and [REDACTED] between 14/01/2014 and 15/01/2014⁶⁸; 2 connections between [REDACTED] and [REDACTED] on 10/04/2014⁶⁹; 24 connections between [REDACTED] and [REDACTED] between 01/10/2014 and 30/10/2014⁷⁰.

2. The common practice of phone sharing in CAR

59. Witnesses have indicated that phone sharing and lending is common in CAR. Lending or sharing a phone could even be qualified as common practice during the timeframe of the charges where individuals in exile would try to keep abreast of the situation in their country or for individuals with relatives and friends in exile or living in different parts of CAR.⁷¹

⁶³ CAR-OTP-2068-0034, at multiple rows beginning at row 325183; CAR-OTP-2008-0483, Sheet 2, at multiple rows beginning at row 16130.

⁶⁴ CAR-OTP-2008-0483, Sheet 2, at multiple rows beginning at row 35263.

⁶⁵ CAR-OTP-2019-1362, May, at rows 7488, 7493 and 8072 and CAR-OTP-2019-1362, October, at multiple rows beginning at row 9582

⁶⁶ CAR-OTP-2008-0483, Sheet 1, at multiple rows beginning at row 59053 and CAR-OTP-2068-0034, at multiple rows beginning at row 233177.

⁶⁷ CAR-OTP-2008-0483, Sheet 1, at multiple rows beginning at row 39896 and CAR-OTP-2068-0034, at multiple rows beginning at row 124074.

⁶⁸ CAR-OTP-2008-0483, Sheet 1, at multiple rows beginning at row 13151 and CAR-OTP-2068-0034, at multiple rows beginning at row 37116.

⁶⁹ CAR-OTP-2112-1435, rows 918 and 919.

⁷⁰ CAR-OTP-2008-0483, Sheet 3, at multiple rows beginning at row 18512.

⁷¹ See for instance **P-0446**: ICC-01/14-01/18-T-099-ENG, p. 22, l. 17-24; **P-0446**: CAR-OTP-2059-1523, at 1532. **P-1951** : CAR-OTP-2092-0535, at 0538.

60. For instance, [REDACTED] (P-0446) – for whom the Prosecution alleges contacts with other individual in its Annex A and attributes a phone number in its Annex C – explained that he would share his telephone to allow others to make calls when running out of credit or battery on their telephone, or if there was a power outage, which often happened in Bangui.⁷² This witness explained that sometimes people would borrow his phone for days on end or for several hours, for instance to call their families.⁷³ The witness confirmed that individuals would ask, for instance a colleague, if they could borrow his phone to make a call.⁷⁴
61. Given this practice, the Prosecution cannot – without testimonial evidence – reliably attribute specific phone contacts to individuals when the person actually making or receiving the call could be another individual. This practice impacts upon the reliability and the probative value of the CDRs as an indication of contacts between particular individuals at particular times.

3. Telephone subscriber information

62. The Defence contests the reliability of the information provided in CAR-OTP-2008-0483 described as ‘CDR of [REDACTED] indicating subscriber identity’ in Prosecution Annex C, Part I. This item seems to list names of [REDACTED] subscribers and the number attributed to them in the year 2014 and is extensively relied upon by the Prosecution to attribute phone numbers.⁷⁵
63. *First*, [REDACTED] explained to the Prosecution investigators that the identification procedure for the subscription of an [REDACTED] line was not rigorous in 2013-2014.⁷⁶ Both [REDACTED] explained that, while subscribers are supposed to present an ID to subscribe a line, it was not always the case in reality and that sometimes there

⁷² **P-0446**: CAR-OTP-2059-1523, at 1531-1532.

⁷³ **P-0446**: CAR-OTP-2059-1523, at 1531-1532.

⁷⁴ **P-0446**: ICC-01/14-01/18-T-099-ENG, p. 22, l. 17-24.

⁷⁵ This document is relied on to attribute 20 phone numbers out of the 72 attributions, meaning more than a fourth of the attributions rely upon it. See Part I of Annex C to the Prosecution bar table.

⁷⁶ CAR-OTP-2122-9950, at 9959, para. 84 and CAR-OTP-2134-0124, at 0131, para. 69.

was no identity linked to the line.⁷⁷ [REDACTED] also explained that the identity appearing in the CDR is the identity declared when subscribing a line but that for the period 2012-2014, there was not any control of the identity yet.⁷⁸ The [REDACTED] even added that in 2013-2014, SIM cards could be bought in the streets in CAR.⁷⁹ Given these circumstances, it is impossible for a court of law to evaluate whether any given attribution is not the result of the use of someone else's identity, unless that individual certifies that this line belonged to them.

64. *Second*, the Prosecution presents this Excel sheet as indicating 'subscriber identity' and not the user identity. The subscriber and the user are not necessarily the same person. The fact that an individual subscribed a line does not mean that person used the line themselves. The Prosecution incorrectly conflates these two situations when it refers to subscriber information.
65. *Third*, [REDACTED] explained that telephone numbers are deactivated when they are not used for a certain period of time⁸⁰ and can be put back on the market six months after being deactivated.⁸¹ This meant that the subscriber to the line and user of the phone number might have changed in 2014. Therefore, it is not possible to know when a number became associated with a subscriber or whether a number was re-allocated within the year 2014. In addition, the subscriber information does not connect a subscriber to an IMSI number (*i.e.* individual phone). As explained by [REDACTED], when a number is 'reactivated' the number is then associated to another IMSI.⁸² With this information, it would be possible to notice a change in subscriber/user. CAR-OTP-2008-0483, and most CDRs, do not indicate an IMSI number. Accordingly, it is not

⁷⁷ CAR-OTP-2122-9950, at 9959, para. 84 and CAR-OTP-2134-0124, at 0131, para. 69.

⁷⁸ CAR-OTP-2082-0995, at 0996.

⁷⁹ CAR-OTP-2122-9950, at 9959, para. 80 and CAR-OTP-2134-0124, at 0130, para. 65.

⁸⁰ At the time the Prosecution took the statements, this was currently from one week to two months but they cannot remember how long it would take in 2013/2014. See CAR-OTP-2122-9950, at 9959, para. 82 and CAR-OTP-2134-0124, at 0130, para. 67.

⁸¹ CAR-OTP-2122-9950, at 9959, para. 83 and CAR-OTP-2134-0124, at 0130, para. 68.

⁸² CAR-OTP-2122-9950, at 9959, para. 83 and CAR-OTP-2134-0124, at 0130, para. 68.

possible to determine whether there was a change of subscriber of a specific phone number during the year 2014.

66. *Fourth*, the Prosecution used this document in a manner fitting its narrative and is ignoring the information that would not fit such narrative. There are several examples of phone numbers the Prosecution attributed in Annex C to certain individuals that are listed for different telephone subscribers in CAR-OTP-2008-0483. Examples of such discrepancies are further listed in Annex A to this response. If CAR-OTP-2008-0483 is reliable for attributing numbers, then it is also reliable to exclude attributions. The Prosecution cannot pick and choose among subscribers to fit its narrative while disregarding evidence that is inconsistent with its case theory.
67. The Prosecution also relies on other documents described as ‘CDR of [REDACTED] indicating subscriber identity’ to attribute phone numbers. Similar reliability issues are inherent to such documents. This again resulted in the Prosecution picking and choosing evidence.⁸³
68. Finally, many attributions come from the same source – [REDACTED]– and seemingly from the same database. These attributions are based upon materials that are variously titled ‘CDR of [REDACTED] indicating subscriber identity’ or ‘Subscriber details provided by [REDACTED]’. Documents coming from the same source and likely created using the same database inflate the impression of corroboration. Where the subscriber identity appears, [REDACTED] must have relied on its own *single* database of subscribers. The material is not being derived from multiple independent sources.

4. Lack of contemporaneousness with the charges

69. The Trial Chamber should reject the admission of items that the Prosecution has submitted that are non-contemporaneous to the charged period, or alternatively find

⁸³ For example, in Annex C, the OTP attributes [REDACTED] to [REDACTED], unlike CAR-OTP-2068-0033 in which the number is attributed [REDACTED] to ‘[REDACTED]’.

that they have negligible evidentiary weight.⁸⁴ The Trial Chamber must assess the standard evidentiary criteria against the reason the Prosecution submits the item.⁸⁵ The Prosecution submits many items that at best show that certain individuals held phone numbers after the charged period.

70. Trial Chamber can characterise the non-suitability of the submission of non-contemporaneous items as irrelevant or not reliable or not probative. If the Trial Chamber was to find such items relevant and reliable, then it should afford them very low evidentiary value, for the same reasons the Defence argues they are not relevant or reliable.
71. Material extracted by various authorities from telephones in 2018 and 2019⁸⁶ are not contemporaneous to the relevant timeframe of the charges. For any given number obtained from these extractions, the Prosecution has not presented a reliable way to know when a user entered a phone number into the phone. Thus, at their highest, the attributions contained in the extracted data could only be relevant and/or reliable for the time at which they were extracted.
72. A document may be authentic, but a Trial chamber may still reject its admission due to it being unreliable.⁸⁷ An item must have the indicia of reliability in order to have probative value. The Trial Chamber should consider whether the information was obtained and recorded simultaneously or shortly after the events to which it pertains or whether the record was created at a later stage.⁸⁸

⁸⁴ [ICC-01/04-01/07-2635](#), para. 27(c).

⁸⁵ [ICC-01/04-01/07-2635](#), para. 17 (“If a party has tendered an item of evidence as proof of a particular proposition, the Chamber will in principle admit it only for that purpose, even if the entire exhibit is admitted into evidence.”).

⁸⁶ CAR-OTP-2102-1730, CAR-OTP-2098-0211, CAR-OTP-2094-2013; CAR-OTP-2094-2014, CAR-OTP-2094-2023, CAR-OTP-2094-0408, CAR-OTP-2112-1406, CAR-OTP-2098-0198 and CAR-OTP-2098-0197.

⁸⁷ [ICC-01/04-02/06-2359](#) (‘Ntaganda Trial Judgment’), para. 57; [ICC-01/04-01/06-2842](#) (‘Lubanga Trial Judgment’), para. 109; [ICC-01/05-01/13-1989-Red](#) (‘Bemba et al. Trial Judgment’), para. 208; [ICC-01/05-01/08-3343](#) (‘Bemba Trial Judgment’), para. 237; [ICC-01/04-01/07-3436-tENG](#) (‘Katanga Trial Judgment’), para. 91; and [ICC-01/04-02/12-3-tENG](#) (‘Ngudjolo Trial Judgment’), para. 57.

⁸⁸ [ICC-01/04-01/07-2635](#), para. 27(c).

73. Irrespective of whether evidence reliably shows that an individual used a phone number *after* the charged period, an item cannot reliably demonstrate its user had the phone number *during* the charged period. Due to their lack of contemporaneousness with the charges, some items do not meet the *prima facie* threshold of reliability.
74. The fact that a given individual might have been the user of a telephone line later in time does not prove that he was the user of the same line during the timeframe of the charges, especially in the context of the CAR conflict where SIM cards could be bought in the streets⁸⁹ and where witnesses testified that phones were shared.⁹⁰

5. *Undated items*

75. The Trial Chamber should reject the admission of undated items.⁹¹ The Trial Chamber cannot reliably determine that the information pertains to the charged period. The prejudice of the use of such unreliable information to convict Mr Ngaïssona would outweigh any probative value these items might have.

6. *Absence of an indication of how the telephone numbers were obtained or the source*

76. The Prosecution submits items where it is not possible to ascertain from the item how the phone number(s) were obtained. This problem is present in both documents containing phone numbers and names as well as in the statements.
77. In the case of statements, the way this information ended up in the statement may impact upon the reliability/probative value of the telephone number information. This would be the case, as an example, where the Prosecution investigator presented the witness numbers and then asked the witness to confirm the numbers rather than eliciting the telephone numbers from the witness's memory or personal records. If the witness is the source of the numbers, there is no indication as to whether the items were obtained by the witness contemporaneously to the charges or whether, for

⁸⁹ CAR-OTP-2122-9950, at 9959, para. 80 and CAR-OTP-2134-0124, at 0130, para. 65.

⁹⁰ See paras 59 to 61 of this filing.

⁹¹ CAR-OTP-2062-0086, CAR-OTP-2087-9028, and CAR-OTP-2079-0054.

example, the witness obtained the numbers from other individuals such as friends or acquaintances subsequently.

78. For these items, the absence of any indication as to this process or methodology to obtain the attribution means that the Trial Chamber should reject the submission of the items as unreliable. This is because without a basis to conclude that the telephone numbers were obtained from an exterior source that reliably dates the telephone numbers to the charged period, there is no way to conclude that telephone numbers are contemporaneous or in fact that the attribution is even correct.⁹²

7. Material stemming from a deceased individual

79. Material pertaining or stemming from a deceased individual cannot be admitted without prejudicing the Accused's right to "examine, or to have examined, the witnesses against him" pursuant to Article 67(1)(e).⁹³ The Bar-Table Motion contains two items of evidence stemming from [REDACTED] in order to support several telephone attributions.⁹⁴ He passed away in 2014.⁹⁵ Those items, gathered by the [REDACTED] police after his death,⁹⁶ are the phone contact list extracted from his SIM card⁹⁷ and a notebook.⁹⁸
80. The Trial Chamber cannot admit material from deceased individuals unless the probative value outweighs its prejudicial effect.⁹⁹ Because the Defence cannot question [REDACTED] about the content of the documents, admission would be *highly* prejudicial. CAR-OTP-2010-2505 and CAR-OTP-2129-0219 only provide for a surname or a nickname. The real identity of the user associated with the telephone numbers

⁹² See Section 4 'Lack of contemporaneousness with the charges' *above*.

⁹³ *The Prosecutor v. Dario Kordić et Mario Čerkez*, [Decision on Appeal Regarding Statement of a Deceased Witness](#), 21 July 2000, para. 28.

⁹⁴ Annex C to the OTP Bar Table motion.

⁹⁵ CAR-OTP-2127-0940, at 0942, para. 6 [REDACTED].

⁹⁶ CAR-OTP-2127-0940 requesting the [REDACTED].

⁹⁷ CAR-OTP-2010-2505.

⁹⁸ CAR-OTP-2129-0219.

⁹⁹ *The Prosecutor v. Thomas Lubanga Dyilo*, Corrigendum to Decision on the admissibility of four documents, [ICC-01/04-01/06-1399](#), 20 January 2011, paras 27-32.

remains uncertain. Therefore, the documents have at best minimal probative value, but the prejudicial effect of admission outweighs any probative value and therefore the Trial Chamber should not allow the admission of these two items.

8. *Western Union records*

81. The Trial Chamber should reject the admissibility of CAR-OTP-2117-0389 as unreliable and lacking any probative value of phone attributions. CAR-OTP-2117-0389 contains Western Union records of financial transactions. The Prosecution's purpose for submitting this item has nothing to do with financial transfers and relates to proving number attributions.
82. This is not a reliable method for attributing phones. Based upon an examination of open source information,¹⁰⁰ it is clear that Western Union does not require that a sender provide a phone number. The only mandatory requirements are a valid ID document and the tracking number for the receiver. Filling in a telephone number is optional and there is no verification of the validity of the phone number provided by the sender or receiver or the identity of its user. Therefore, a person can provide someone else's number or even an invalid number. Even for a mobile transfer, the sender does not need to have or provide a mobile phone number.
83. The Prosecution decided not to call or interview a CAR Western Union employee that could have testified as to how data was stored or extracted by Western Union in CAR in 2013-2014. There is therefore no basis whatsoever for authenticating CAR-OTP-2117-0389. No witness has provided any context to the item or explained it. This further affects the reliability and probative value of the information provided in CAR-OTP-2117-0389 and this means that the phone numbers provided in Western Union records are not a reliable source to attribute phone numbers to individuals.

¹⁰⁰ <https://www.westernunion.com/br/en/faq-send-money-in-person.html#Q4>

9. *Material allegedly signed by Mr Ngaïssona*

84. Among the items that are part of the Bar-Table Motion, several are hand-written and allegedly signed by Mr. Ngaïssona. These signatures have not been authenticated and no expert evidence has been called to confirm their authenticity. Witnesses have testified that some individuals imitated Mr Ngaïssona's signature and others may have signed on his behalf.¹⁰¹ In other cases before the ICC, the Prosecution has called expert evidence to authenticate materials alleged to be signed by an accused person. Here, the Prosecution is alleging that Mr Ngaïssona's signature confirms attributions that are used to incriminate him. It is prejudicial to receive and admit items which are said to support an accused's alleged culpability without any further material to support the proposition that the accused person in fact signed a given document. That notwithstanding, where a signature on a document raises reasonable doubts about Mr Ngaïssona's responsibility, then the Trial Chamber should take this into account as a consequence of the presumption of innocence without requiring authentication.

IV. Relief Sought

85. The Defence respectfully requests Trial Chamber V to:

- a. REJECT the items for which there is a procedural bar to submission that are described in general above in paragraphs 36 to 45 and identified in Annex C to the present response;
- b. EXERCISE its discretion pursuant to the Directions on the Conduct of Proceedings paragraph 59 and REJECT the submission of the material contained in Annex D;
- c. DECLINE to consider the items in Annex C when deliberating upon the Article 74 Judgment or, in the alternative, ACCORD the items limited to no evidentiary

¹⁰¹ P-0889: ICC-01/14-01/18-T-110-CONF-ENG, p. 9, l. 17-24; CAR-OTP-2122-7825-R02, at 7831, l. 188-226.

weight for the reasons specified in in Annex C to the present filing and cross-referenced to the present filing; and

- d. DECLINE to consider the CDRs contained in Annex B of the Prosecution filing having ruled upon the submission of items in Annex C and taking into account the Defence objections on standard evidentiary criteria discussed above in paragraphs 14 to 29 or, in the alternative, ACCORD the items in Annex B limited to no evidentiary weight for the reasons explained in this response at paragraphs 54 to 84 and the reasons specified in Annex C to the present filing.

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 12 July 2022

At The Hague, the Netherlands.