

ANNEX 1

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Version

From: Trial Chamber V Communications
Sent: 30 May 2024 12:11
To: OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaïssona Defence Team; 'V44 LRV Team'; V44 LRV Team OPCV; V45 LRV Team
Cc: Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber V Communications
Subject: Decision on Submitted Materials for D30-4197
Attachments: Ngaïssona Defence submission of document following the testimony of witness P-4197; Re: Ngaïssona Defence submission of document following the testimony of witness P-4197

Follow Up Flag: Follow up
Flag Status: Flagged

[ICC] RESTRICTED

Dear Counsel, dear colleagues from the Registry,

The Chamber takes note of the emails on the submission of evidence following the examination of D30-4197 by the Ngaïssona Defence and the Prosecution, as well as the former's objections thereto (*see emails attached and below*).

The Chamber notes that the Ngaïssona Defence objects to the submission of **CAR-OTP-00036281** and **CAR-OTP-00036295**, which consist of call data records ('CDRs'). With respect to the first item, it argues that the document is neither admissible nor relevant, given that (i) the witness 'did not recognise having spoken with every individual comprised in the [CDR]'; (ii) it was not established by the Prosecution that a specific number 'was used solely by the witness'; and (iii) the item consists of a compilation created by the Prosecution which 'mostly relies on CDRs excel sheets that were not formally submitted'. With regard to the second item, the Ngaïssona Defence submits that it 'does not see its relevance, as this is [...] a compilation of extracts from document CAR-OTP-2089-0199 that is already formally submitted'. In addition, it makes a series of observations concerning the attribution of a specific phone number to Mr Ngaïssona.

With regard to **CAR-OTP-00036281**, the Chamber notes that it was not shown to the witness, but merely mentioned for the Chamber's reference (*see* T-278-CONF-ENG, p. 81, lines 12-14). The Chamber therefore rejects the submission of this item. With regard to **CAR-OTP-00036295**, the Chamber observes that it was shown to the witness, who commented on it (*see* T-278-CONF-ENG, p. 76, line 8 to p. 78, line 17). The Chamber sees no impediment to recognising **CAR-OTP-00036295** as formally submitted through D30-4197, and considers that the Ngaïssona Defence's arguments rather concern the probative value of the item, which will be assessed during the judgment deliberations.

In the absence of any procedural bars, the Chamber recognises as formally submitted the following items:

Doc ID	Title	Type
CAR-D30-0001-0101	[REDACTED]	Internal guidelines / instruction / orders
CAR-D30-0003-0020	[REDACTED]	Legal, Administration and Court document – non ICC
CAR-D30-0007-0822	Décret No. 19.056	Legislation / government instruction / guidelines
CAR-OTP-00036295	[REDACTED]	Call Data Records (CDR)

In addition, the Chamber confirms that the requirements of Rule 68(3) of the Rules have been met for the following items:

Doc ID	Title	Type
CAR-D30-0027-0001	DECLARATION DE TEMOIN	ICC Statement - General
CAR-D30-0027-0018	Corrections made by CAR-D30-P-4197 to his statement (CAR-D30-0027-0001-R01)	Notes (other)
CAR-D30-0027-0014	Correction Note to CAR-D30-0027-0001	Notes (other)

The Registry is directed to proceed in accordance with paragraph 63(v) of the Initial Directions, ICC-01/14-01/18-631.

Kind regards, TC V

From: [REDACTED]

Sent: Tuesday, April 23, 2024 5:26 PM

To: OTP CAR IIB [REDACTED]; Trial Chamber V Communications [REDACTED]

Cc: D29 Yekatom Defence Team [REDACTED]

[REDACTED] D30 Ngaissona Defence Team [REDACTED]; V44

LRV Team OPCV [REDACTED]; V44 LRV Team [REDACTED] V45 LRV Team

[REDACTED] Associate Legal Officer-Court Officer

[REDACTED]

[REDACTED]

Subject: RE: Prosecution Submission of evidence following the cross-examination of CAR-D30-4197

[ICC] RESTRICTED

[ICC] RESTRICTED

Dear Trial Chamber, dear colleagues,

In accordance with paragraph 63(ii) of the *Initial Directions on the Conduct of the Proceedings* (ICC-01/14-01/18-631), the Defence for Mr Ngaissona hereby objects to the formal submission of the first item on the Prosecution's list of material to be submitted for the reason that this document is neither admissible nor relevant. This item is a compilation of alleged contacts between the witness and certain individuals based on different CDRs excel sheets.

First, the witness did not recognise having spoken with every individual comprised in the list. He only confirmed [REDACTED] (T-278-CONF-ENG ET, p. 78, line 18 - p.79, lines 2) and [REDACTED] (T-278-CONF-ENG ET, p. 79, lines 3-16). He confirmed that he never heard of the name [REDACTED] (T-278-CONF-ENG ET, p. 81, lines 1-4), nor the name of [REDACTED] (T-278-CONF-ENG ET, p. 81, lines 5-11). He confirmed [REDACTED] but was not asked if he spoke on the phone with him during the target period (T-278-CONF-ENG ET, p. 79, lines 21-24). Similarly for [REDACTED] the witness confirmed knowing that individual, but did not confirm having spoken on the phone with him (T-278-CONF-ENG ET, p. 80, lines 9-25).

Second, the witness was not asked by the Prosecution if he used the number attributed to him in the document – [REDACTED] o the contrary, the Prosecution asked the witness to confirm that [REDACTED] s or was his phone number (T-278-CONF-ENG ET, p. 76, lines 14-16), but did not ask for the phone number [REDACTED]. In re-examination, the witness indicated that the number [REDACTED] was actually a number that belonged to the [REDACTED] (T-278-CONF-ENG ET, p. 84, lines 5-9). It was therefore not established by the Prosecution that this number was solely used by the witness, and that the alleged contacts between certain individuals and the number [REDACTED] necessarily involved P-4197.

Third, this compilation created by the Prosecution mostly relies on CDRs excel sheets that were not formally submitted (CAR-OTP-2057-0447; CAR-OTP-2010-0565; CAR-OTP-2030-0320; CAR-OTP-2112-1622; CAR-OTP-2017-0178; CAR-OTP-2019-1363; CAR-OTP-2025-0650; CAR-OTP-2019-1363). Considering that the Prosecution has already closed the presentation of its evidence, those documents should not be submitted through the creation of another document.

For the above reasons, the document CAR-OTP-00036281 is not relevant and presents serious admissibility challenges to be formally submitted via this witness. The Defence kindly request the Chamber to reject the Prosecution request in relation to this item.

Regarding the second item, the Defence does not see its relevance, as this is - from the Defence understanding - a compilation of extracts from document CAR-OTP-2089-0199 that is already formally submitted. However, should the Trial Chamber deem this document admissible and relevant, the Defence wishes to make the following observations.

Since the document only refers to the witness phone number and the phone number [REDACTED], the Defence simply wishes to clarify that this number should not be confused for an attributed phone number to Mr Ngaïssona. Indeed, this number does not appear to be an attributed number, but more of a “complementary number”.

Indeed, in the second item, the number [REDACTED] only appears in the column titled [REDACTED] (see CAR-D30-0018-0028 at 0039). Further, this number only appears when the contact is a terminating [REDACTED], characterised by a duration of calls of 0 second. As such, the number [REDACTED] may simply be the number of that [REDACTED]

To exemplify this inference, documents CAR-OTP-2130-9559, CAR-OTP-2134-1751, CAR-OTP-2134-1752, CAR-OTP-2134-1753 and CAR-OTP-2074-3122 all display the number [REDACTED] as a complementary number. As recalled by Expert Witness P-4864 on diverted contacts, “[i]n some cases it is obvious, because it tells you that it’s a diverted call. In other cases it might not be so obvious. It may be that you can see the C number” (T-271-ENG ET WT, p. 27, lines 6-7). As such, the number [REDACTED] may also be a “C number” to which a call or a SMS was diverted.

Therefore [REDACTED] seems to be a complementary number through which a SMS was delivered or to which a SMS may have redirected when the intended number is non-existent or unreachable. The absence of any testimonial evidence from the telecom provider ORANGE unfortunately prevents any further understanding of what constitutes an “complementary number” for ORANGE.

Finally, and in any event, the number [REDACTED] appears yet again as a complementary number, in relation to SMSs sent in May 2021 (CAR-OTP-2134-1754), almost two and a half years after Mr Ngaïssona's arrest and transfer to the Court. Therefore, it is safe to conclude that Mr Ngaïssona could not have been the subscriber or user of [REDACTED].

For the above reasons, the Defence submits that this document is of minimal relevance if any, and should not allow for the attribution of phone number [REDACTED] to Mr Ngaïssona.

Best regards,

[REDACTED], on behalf of Mr Ngaïssona Defence team

From: OTP CAR IIB [REDACTED]

Sent: Friday, April 19, 2024 4:20 PM

To: Trial Chamber V Communications [REDACTED]

Cc: D29 Yekatom Defence Team [REDACTED]

[REDACTED] D30 Ngaïssona Defence Team [REDACTED] V44

LRV Team OPCV [REDACTED] V44 LRV Team [REDACTED] V45 LRV Team

[REDACTED]; Associate Legal Officer-Court Officer

OTP CAR IIB

Subject: Prosecution Submission of evidence following the cross-examination of CAR-D30-4197

[ICC] RESTRICTED

Dear Trial Chamber V,

In accordance with paragraph 63(i) of the *Initial Directions on the Conduct of the Proceedings* (ICC-01/14-01/18-631), the Prosecution submits the documents listed below relating to the testimony of witness CAR-D30-4197. The submitted documents were discussed with the witness during the course of his cross-examination.

The Prosecution, therefore, requests that they be recognised as formally submitted.

Count	Doc ID	WIT - Used Through	Type	EVD - Date Used	Participant	Request Submission
1	CAR-OTP-00036281	CAR-D30-4197	Call Data Records (CDR)	18/04/2024	OTP	Yes
2	CAR-OTP-00036295	CAR-D30-4197	Call Data Records (CDR)	18/04/2024	OTP	Yes

Kind regards,

On behalf of the OTP Trial Team

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From: [REDACTED]
Sent: 19 April 2024 17:40
To: Trial Chamber V Communications
Cc: D30 Ngaissona Defence Team; D29 Yekatom Defence Team; OTP CAR IIB; V45 LRV Team; V44 LRV Team OPCV; V44 LRV Team
Subject: Re: Ngaissona Defence submission of document following the testimony of witness P-4197

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[ICC] RESTRICTED

Dear Trial Chamber V,

The Defence also respectfully seeks the formal submission of an additional document used during the examination of witness P-4197 and apologises for the overlook.

Document ID	Title	EVD - Date Used	WIT - Used Through
CAR-D30-0027-0018	Corrections made by CAR-D30-P-4197 to his statement (CAR-D30-0027-0001-R01)	4/18/2024	CAR-D30-P-4197
		D30	Notes (other)

Kind regards,

[REDACTED] on behalf of the Ngaissona Defence team

From: [REDACTED]
Sent: 19 April 2024 14:31
To: Trial Chamber V Communications [REDACTED]
Cc: D30 Ngaissona Defence Team [REDACTED]; D29 Yekatom Defence Team [REDACTED] OTP CAR IIB [REDACTED] V45 LRV Team [REDACTED] V44 LRV Team OPCV [REDACTED] V44 LRV Team [REDACTED]
Subject: Ngaissona Defence submission of document following the testimony of witness P-4197

Dear Trial Chamber V,
 In accordance with paragraph 63(i) of the *Initial Directions on the Conduct of the Proceedings* (ICC-01/14-01/18-631), the Defence for Mr Ngaissona respectfully seeks the formal submission of the following documents used during the examination of witness P-4197.

With regard to item at tab 5, the Defence mistakenly provided the ERN CAR-D30-0027-0015 instead of CAR-D30-0027-0014 during the hearing (T-278-CONF-FRA, p. 12, line 13-15), but did specifically refer to the tab 5 of the Defence binder. With the Chamber's leave, the Defence kindly request to allow the submission of this document although the correct ERN was not provided during the hearing.

Tab	ERN	Relevant passages/parts	Description
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1	CAR-D30-0001-0101	<i>Entire item</i>	Internal guidelines / instruction / orders [REDACTED]
2	CAR-D30-0003-0020	<i>Entire item</i>	Legal, Administration and Court document – non ICC [REDACTED]
3	CAR-D30-0007-0822	<i>Entire item</i>	Legislation / government instruction / guidelines Décret No. 19.056
4	CAR-D30-0027-0001-R01	<i>Entire item</i>	ICC Statement – General DECLARATION DE TEMOIN
5	CAR-D30-0027-0014	<i>Entire item</i>	Notes (other) Correction Note to CAR-D30-0027-0001

Kind regards,

[REDACTED] on behalf of the Ngaïssona Defence team

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From: [REDACTED]
Sent: 19 April 2024 14:32
To: Trial Chamber V Communications
Cc: D30 Ngaissona Defence Team; D29 Yekatom Defence Team; OTP CAR IIB; V45 LRV Team; V44 LRV Team OPCV; V44 LRV Team
Subject: Ngaissona Defence submission of document following the testimony of witness P-4197

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[ICC] RESTRICTED

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Tab	ERN	Relevant passages/parts	Description
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4	CAR-D30-0027-0001-R01	Entire item	ICC Statement – General DECLARATION DE TEMOIN
5	CAR-D30-0027-0014	Entire item	Notes (other) Correction Note to CAR-D30-0027-0001

Kind regards,

[REDACTED] on behalf of the Ngaissona Defence team

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