

ANNEX 1

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Version

From: Trial Chamber V Communications
Sent: 06 June 2024 12:58
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 D30-4864
Attachments: Yekatom Defence submission of evidence following the examination of D30-P-4864; RE: Yekatom Defence submission of evidence following the examination of D30-P-4864; RE: Yekatom Defence submission of evidence following the examination of D30-P-4864

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 D30-4864 by the Yekatom Defence and the Ngaïssona Defence, as well as the respective objections and responses thereto (*see emails below and attached*).

The Chamber notes that the Prosecution opposes the Yekatom Defence's request for the submission of items **CAR-D29-0004-3912, CAR-D29-0004-3913, CAR-D29-0004-3918, CAR-D29-0004-3920 and CAR-D29-0004-3922** which consist of guides to the Yekatom Defence's production of certain Call Sequence Tables (respectively, the 'CST' and the 'CST Guides'), on the basis that they are testimonial in nature. In particular, it argues that an unknown member of the Yekatom Defence team created the CST Guides 'for the purpose of the *present* proceedings' in order to 'prove the procedure followed' in producing the CST.

The Chamber further notes the Yekatom Defence's response to the Prosecution's objections. Notably, it argues that the CST Guides are merely 'demonstrative aids' to assist the Chamber and parties to understand the methodology it used to produce the CST; and as D30-4864 was asked to comment on the reliability of the methodology described in the CST Guides, their submission 'allows for the completeness of the record'.

In this regard, the Chamber recalls that '[e]vidence which is testimonial in nature is [...] inadmissible [...] when not elicited orally or when the conditions for the introduction of the prior recorded testimony specifically provided for in the Court's applicable law are not met' (*see* ICC-01/14-01/18-631, para. 56). Having examined the CST Guides, the Chamber considers that they are not testimonial in nature and it will be aided by the purely technical explanations contained therein in its consideration of both the CST as well as D30-4864's testimony.

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

Doc ID	Title	Type
CAR-D29-0004-3912	CAR-D29-0004-2592 - Single-target Telecel CDRs to CSTs for single number	Notes (other)
CAR-D29-0004-3913	CAR-D29-0004-2650 - Guide for Multi-target Orange CDRs to CSTs for single number	Notes (other)

CAR-D29-0004-3918	CAR-D29-0004-3815 - Multi-target Telecel CDRs - by month - to CSTs for single number	Notes (other)
CAR-D29-0004-3920	CAR-D29-0004-3899 - Guide Multi-target Orange CDRs to CSTs	Notes (other)
CAR-D29-0004-3922	CAR-D29-0004-3895 - Multi-target Telecel CDRs - by target numbers - to CSTs for single number	Notes (other)
CAR-OTP-2008-0480	Détails des communications / DOSSIER CPI 2014 global.xlsx	Call Data Records (CDR)
CAR-D29-0004-2371	CST - [REDACTED] (Complete)	Call Data Records (CDR)
CAR-OTP-00000125	RAE OTP_CAR2_CAF-9I_ID-mtpt_[REDACTED].csv	Call Data Records (CDR)
CAR-D29-0004-0023	CST 2013-14 - Contact between [REDACTED]	Call Data Records (CDR)
CAR-D29-0004-3908	CST-D29-0004-0042_Revised	Call Data Records (CDR)
CAR-D29-0004-3909	CST-D29-0004-0044_Revised	Call Data Records (CDR)
CAR-D29-0004-3910	CST-D29-0004-0048_Revised	Call Data Records (CDR)
CAR-D29-0004-3911	CST-D29-0004-0148_Revised	Call Data Records (CDR)
CAR-D29-0004-2621	CST - [REDACTED] (4-6 December 2013)	Call Data Records (CDR)
CAR-D29-0004-2650	CST - [REDACTED] (Complete)	Call Data Records (CDR)
CAR-D29-0004-3743	CST - [REDACTED] - [REDACTED]	Call Data Records (CDR)
CAR-D29-0004-3764	CST - [REDACTED] / [REDACTED]	Call Data Records (CDR)
CAR-D29-0004-3815	CST - [REDACTED] / [REDACTED] (with location and duration)	Call Data Records (CDR)
CAR-D29-0004-0003	CDR - Cooperation judiciaire Telecel	Call Data Records (CDR)
CAR-OTP-2135-4034	REQ_CPI_OTP.CAR2.CAF-303.TL.OEA-rn_[REDACTED].csv	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-D30-0018-0001	Report _ Interpretation and Limitations of CDRs	Forensic Records or Reports
CAR-D30-0018-0028	ANNEXES to CAR-D30-0018-0001	Forensic Records or Reports

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

Finally, turning to the Ngaïssona Defence's request for the disclosure of a screenshot taken from CAR-OTP-2068-0034 (see email from the Ngaïssona Defence, 4 March 2024, at 11:17), the Chamber considers that it is sufficiently clear which rows were shown by the Prosecution to D30-4864 from CAR-OTP-2068-0034 (see Transcript of hearing, 1 March 2024, ICC-01/14-01/18-T-273-ENG, p. 19, lines 23-25 to p. 20, lines 5-6) and that no further action is required by the Prosecution in this regard. The Defence's request is therefore rejected.

Kind regards, TC V

From: OTP CAR IIB [REDACTED]

Sent: Friday, March 8, 2024 11:23 AM

To: [REDACTED] Trial Chamber V Communications

Cc: D30 Ngaïssona Defence Team [REDACTED] D29 Yekatom Defence Team

[REDACTED] OTP CAR IIB [REDACTED] V44 LRV Team OPCV

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

Subject: RE: D30 Ngaïssona Defence submission of evidence following the examination of D30-P-4864

Dear Trial Chamber;
Dear Parties and Participants;

The Prosecution has no observations to make on the Ngaïssona Defence's submission of evidence by email, on the chain below.

In relation to the disclosure request contained in the same email, the Prosecution responds as follows. As was made clear on the record, the Prosecution displayed a screenshot of two rows from an item of raw CDR. This was done at the request of the Ngaïssona Defence, who intervened in the Prosecution's questioning to ask for the CDR to be shown. The record also makes clear which rows were being displayed and from what document (see T-273 at [10:11:38] and [10:12:14]). In these circumstances, the Prosecution does not consider that any disclosure obligations arise in relation to the screenshot. If the Defence were to make a (belated) request that the screenshot be registered onto the court record by the Court officer (i.e. through allocation of a CAR-REG- number), the Prosecution would not oppose it.

Kind regards,

On behalf of the OTP Trial Team

From: [REDACTED]
Sent: 04 March 2024 11:17
To: Trial Chamber V Communications [REDACTED]
Cc: D30 Ngaïssona Defence Team [REDACTED]; D29 Yekatom Defence Team [REDACTED]
 [REDACTED] OTP CAR IIB [REDACTED]; V44 LRV Team OPCV [REDACTED]
 [REDACTED]; V44 LRV Team [REDACTED] V45 LRV Team [REDACTED]
 [REDACTED]
Subject: D30 Ngaïssona Defence submission of evidence following the examination of D30-P-4864

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 Ngaïssona hereby requests the formal submission of the documents listed below following the examination of Defence witness P-4864.

- i. 2 items submitted under Rule 68(3) at the start of P-4864's testimony (ICC-01/14-01/18-T-270-ENG ET WT, page 6, lines 8-10) :

Count	Document ID	Title	Document Type	EVD - Date Used	WIT - Used By	WIT - Used Through
1	CAR-D30-0018-0001	Report _ Interpretation and Limitations of CDRs	Forensic Records or Reports	2/27/2024	D29	CAR-D30-P-4864
				2/28/2024	D30	
				2/29/2024	OTP	
				3/1/2024		
2	CAR-D30-0018-0028	ANNEXES to CAR-D30-0018-0001	Forensic Records or Reports	2/27/2024	D30	CAR-D30-P-4864

Additionally, the Defence requests that, for the clarity and completeness of the record, the screenshot of CAR-OTP-2068-0034 presented by the Prosecution and shown to the witness (ICC-01/14-01/18-T-273-ENG RT, at [10:15:10]) be assigned an ERN and be disclosed to the parties and participants.

Kind regards,



On behalf of the Defence for Mr Ngaïssona

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From: [REDACTED]
Sent: 06 March 2024 16:46
To: OTP CAR IIB; Trial Chamber V Communications
Cc: D30 Ngaissona Defence Team; D29 Yekatom Defence Team; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; Associate Legal Officer-Court Officer
Subject: RE: Yekatom Defence submission of evidence following the examination of D30-P-4864

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Dear Trial Chamber V,

The Yekatom Defence ('Defence') takes note of the Prosecution opposition to the submission of the CST's Guides (Items 1-5) ('Guides') on the basis that they should be submitted in conformity with Rule 68.

However, the Defence submits that these Guides are not statements and consequently not subject to rule 68. Indeed, on the day of the hearing, the Guides were presented as documents which describe the methodology employed by the Defence in the production of its CSTs. The Guides are therefore submitted as demonstrative aids to allow the Chamber and the Parties to more accurately follow the process employed by the Defence noting further that P-4864 was asked to provide his expert opinion on the reliability of the methodology set out in the Guides. As such, submission of the Guides allows for the completeness of the record both in relation to the production of Defence CSTs and the testimony of P-4864.

The Defence recalls the previous Chamber's decision whereby it *proprio motu* submitted into evidence several "Report on the extraction of data", prepared by the Scientific Response Unit of the Prosecution, related to Yahoo emails (see "*Decision on the Fifth Prosecution Submission Request from the Bar Table (Yahoo Emails)*", ICC-01-14-01/18-1632-Conf, para 12). Notably, the reports were internally prepared by the Prosecution and described the methodology used to extract and process the underlying digital information.

The Chamber considered "*it appropriate to recognise the submission of the reports, CAR-OTP-2118-6255, CAR-OTP-2080-2903, CAR-OTP-2130-4492, and CAR-OTP-2088-1884, proprio motu in the interest of completeness of the record in relation to the processing of the [Yahoo related items].*"

The Defence submits that the present situation is similar as the Guides were created as technical explanation of the generic process used to create CSTs from CDRs.

Further, the Defence notes that during the course of P-4864's testimony, the Prosecution did not object to the use of the Guides on the basis of its current position that the Guides are both testimonial and created by a so-called 'unknown author' thereby barring the Defence the opportunity to address the matter in real time with input from the expert on the stand. Notwithstanding this position, the Defence reiterates that the Guides are: (a) internal documents which describe internal processes used by the Defence team collectively and (b) reflect the working practices of Defence teams in general which do not have distinct analysts at their disposal as compared to the Office of the Prosecutor.

In light of the above, the Defence maintains its request to submit the Guides in evidence as they are not subject to a submission pursuant to rule 68.

Kind Regards,

[REDACTED]
 Legal Intern – Yekatom Defence Team

From: OTP CAR IIB [REDACTED]
Sent: Tuesday, March 5, 2024 7:03 PM
To: [REDACTED] Trial Chamber V Communications [REDACTED]
Cc: D30 Ngaissona Defence Team [REDACTED]; D29 Yekatom Defence Team [REDACTED]; OTP CAR IIB [REDACTED] V44 LRV Team [REDACTED] V44 LRV Team OPCV [REDACTED] V45 LRV Team [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]
Subject: RE: Yekatom Defence submission of evidence following the examination of D30-P-4864

Dear Trial Chamber V,
 Dear All,

The Prosecution opposes the formal submission of the 'CST guides' (Items 1-5). They are manifestly 'testimonial' in nature and cannot be introduced except in conformity with Rule 68 (*see* ICC-01/05-01/13-2275-Red, footnote 693). *First*, an unknown member of or person engaged by the YEKATOM Defence team ("Author") appears to have created the CST guides for the purpose of the *present* proceedings. *Second*, the Author was aware that the CST guides may be used for the purpose of legal proceedings, and clearly intended as much in making them, when they were making them (ICC-01/04-01/07-2635, para.49). Their development and use are not merely incidental. Thus, if the Defence intends to introduce these so-called "guides" as evidence in the case, they must do so through the Author who created them in accordance with the requirements Rule 68 (*see* Decision on Submitted Materials for P-1813). Moreover, the Defence cannot circumvent the application of Rule 68 by not identifying the Author to avoid producing a 'finalised' prior statement. As the *Bemba* Appeal Judgement above makes clear the Rule applies to 'testimonial' evidence used to prove or disprove a fact before the Court. Here, the 'guides' are offered to prove the procedure followed to in producing the CSTs, and as such, may not be formally submitted outside the requirements of the Rule.

Kind regards,

[REDACTED]
 On behalf of the OTP Trial Team

From: [REDACTED]
Sent: 04 March 2024 10:13
To: Trial Chamber V Communications [REDACTED]
Cc: D30 Ngaissona Defence Team [REDACTED]; D29 Yekatom Defence Team [REDACTED]; OTP CAR IIB [REDACTED]; V44 LRV Team [REDACTED] V44 LRV Team OPCV [REDACTED] V45 LRV Team [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]
Subject: Yekatom Defence submission of evidence following the examination of D30-P-4864

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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 Yekatom respectfully seeks the formal submission of the following documents used during the examination of witness CAR-D30-P-4864, or reviewed by him in the context of his in-court testimony.

Count	Document ID	Title	Document Type
1	CAR-D29-0004-3912	CAR-D29-0004-2592 - Single-target Telecel CDRs to CSTs for single number	Notes (other)

2	CAR-D29-0004-3913	CAR-D29-0004-2650 - Guide for Multi-target Orange CDRs to CSTs for single number	Notes (other)
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9	CAR-D29-0004-0023	CST 2013-14 - Contact between [REDACTED]. [REDACTED]	Call Data Records (CDR)
10	CAR-D29-0004-3908	CST-D29-0004-0042_Revised	Call Data Records (CDR)
11	CAR-D29-0004-3909	CST-D29-0004-0044_Revised	Call Data Records (CDR)
12	CAR-D29-0004-3910	CST-D29-0004-0048_Revised	Call Data Records (CDR)
13	CAR-D29-0004-3911	CST-D29-0004-0148_Revised	Call Data Records (CDR)
14	CAR-D29-0004-2621	CST - [REDACTED] (4-6 December 2013)	Call Data Records (CDR)
15	CAR-D29-0004-2650	CST - [REDACTED] (Complete)	Call Data Records (CDR)
16	CAR-D29-0004-3743	CST - [REDACTED] - [REDACTED]	Call Data Records (CDR)
17	CAR-D29-0004-3764	CST - [REDACTED] / [REDACTED]	Call Data Records (CDR)
18	CAR-D29-0004-3815	CST - [REDACTED] / [REDACTED] (with location and duration)	Call Data Records (CDR)
19	CAR-D29-0004-0003	CDR - Cooperation judiciaire Telecel	Call Data Records (CDR)
20	CAR-OTP-2135-4034	REQ_CPI_OTP.CAR2.CAF-303.TL.OEA-rn_[REDACTED].csv	Call Data Records (CDR)

Kind regards,

[REDACTED]

Legal Intern – Yekatom Defence Team

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From: OTP CAR IIB
Sent: 05 March 2024 19:03
To: [REDACTED]; Trial Chamber V Communications
Cc: D30 Ngaissona Defence Team; D29 Yekatom Defence Team; OTP CAR IIB; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; Associate Legal Officer-Court Officer
Subject: RE: Yekatom Defence submission of evidence following the examination of D30-P-4864

Dear Trial Chamber V,
 Dear All,

The Prosecution opposes the formal submission of the 'CST guides' (Items 1-5). They are manifestly 'testimonial' in nature and cannot be introduced except in conformity with Rule 68 (see ICC-01/05-01/13-2275-Red, footnote 693). *First*, an unknown member of or person engaged by the YEKATOM Defence team ("Author") appears to have created the CST guides for the purpose of the *present* proceedings. *Second*, the Author was aware that the CST guides may be used for the purpose of legal proceedings, and clearly intended as much in making them, when they were making them (ICC-01/04-01/07-2635, para.49). Their development and use are not merely incidental. Thus, if the Defence intends to introduce these so-called "guides" as evidence in the case, they must do so through the Author who created them in accordance with the requirements Rule 68 (see Decision on Submitted Materials for P-1813). Moreover, the Defence cannot circumvent the application of Rule 68 by not identifying the Author to avoid producing a 'finalised' prior statement. As the *Bemba* Appeal Judgement above makes clear the Rule applies to 'testimonial' evidence used to prove or disprove a fact before the Court. Here, the 'guides' are offered to prove the procedure followed to in producing the CSTs, and as such, may not be formally submitted outside the requirements of the Rule.

Kind regards,

[REDACTED]
 On behalf of the OTP Trial Team

From: [REDACTED]
Sent: 04 March 2024 10:13
To: Trial Chamber V Communications [REDACTED]
Cc: D30 Ngaissona Defence Team [REDACTED]; D29 Yekatom Defence Team [REDACTED]; OTP CAR IIB [REDACTED] V44 LRV Team [REDACTED] V44 LRV Team OPCV [REDACTED] V45 LRV Team [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]
Subject: Yekatom Defence submission of evidence following the examination of D30-P-4864

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17	CAR-D29-0004-3764	CST - [REDACTED] / [REDACTED]	Call Data Records (CDR)
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Kind regards,

[REDACTED]

Legal Intern – Yekatom Defence Team

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From: [REDACTED]
Sent: 04 March 2024 10:13
To: Trial Chamber V Communications
Cc: D30 Ngaissona Defence Team; D29 Yekatom Defence Team; OTP CAR IIB; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; Associate Legal Officer-Court Officer
Subject: Yekatom Defence submission of evidence following the examination of D30-P-4864

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7	CAR-D29-0004-2371	CST - [REDACTED] (Complete)	Call Data Records (CDR)
8	CAR-OTP-00000125	RAE OTP_CAR2_CAF-9I_ID-mtpt_[REDACTED].csv	Call Data Records (CDR)
9	CAR-D29-0004-0023	CST 2013-14 - Contact between [REDACTED]	Call Data Records (CDR)
10	CAR-D29-0004-3908	CST-D29-0004-0042_Revised	Call Data Records (CDR)
11	CAR-D29-0004-3909	CST-D29-0004-0044_Revised	Call Data Records (CDR)
12	CAR-D29-0004-3910	CST-D29-0004-0048_Revised	Call Data Records (CDR)
13	CAR-D29-0004-3911	CST-D29-0004-0148_Revised	Call Data Records (CDR)
14	CAR-D29-0004-2621	CST - [REDACTED] (4-6 December 2013)	Call Data Records (CDR)
15	CAR-D29-0004-2650	CST - [REDACTED] (Complete)	Call Data Records (CDR)
16	CAR-D29-0004-3743	CST - [REDACTED] - [REDACTED]	Call Data Records (CDR)
		CST - [REDACTED] / [REDACTED]	Call Data Records (CDR)

17	CAR-D29-0004-3764		
18	CAR-D29-0004-3815	CST - [REDACTED] / [REDACTED] (with location and duration)	Call Data Records (CDR)
19	CAR-D29-0004-0003	CDR - Cooperation judiciaire Telecel	Call Data Records (CDR)
20	CAR-OTP-2135-4034	REQ_CPI_OTP.CAR2.CAF-303.TL.OEA-rn_[REDACTED].csv	Call Data Records (CDR)

Kind regards,

[REDACTED]

Legal Intern – Yekatom Defence Team

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