

# **ANNEX 1**

## **Public Redacted**

### **Version**

**From:** Trial Chamber V Communications  
**Sent:** 03 July 2024 09:48  
**To:** OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; Associate Legal Officer-Court Officer  
**Cc:** Trial Chamber V Communications; Chamber Decisions Communication  
**Subject:** Decision on Submitted Materials for D29-3014  
**Attachments:** Yekatom Defence submission of evidence following the examination of D29-3014

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Counsel, dear colleagues of the Registry,

The Chamber notes the below and attached emails on the submission of evidence following the examination of D29-3014.

The Chamber takes note of the Yekatom Defence's arguments regarding the relevance and admissibility of the call data records CAR-OTP-2030-0320, CAR-OTP-2112-1622, CAR-OTP-2112-1619, and CAR-OTP-2112-1654 sought to be submitted by the Prosecution, which will be addressed in the context of the Chamber's deliberation of the judgment.

Noting that no objections were made and in the absence of any procedural bars, the Chamber recognises the following items as formally submitted:

| Document ID       | Document Title                                                   | Document Type           |
|-------------------|------------------------------------------------------------------|-------------------------|
| CAR-OTP-2015-0782 | The List established and maintained by the 2127 (2003) Committee | List / table            |
| CAR-OTP-2030-0320 | 2014.xlsx / Détails des communications                           | Call Data Records (CDR) |
| CAR-OTP-2112-1622 | [REDACTED].xlsx                                                  | Call Data Records (CDR) |
| CAR-OTP-2112-1619 | [REDACTED]8.xlsx                                                 | Call Data Records (CDR) |
| CAR-OTP-2112-1654 | [REDACTED].xlsx                                                  | 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 item:

| Document ID       | Document Title                    | Document Type           |
|-------------------|-----------------------------------|-------------------------|
| CAR-D29-0009-0355 | Déclaration de P-3014 (Sept 2022) | ICC Statement - General |

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:** OTP CAR IIB [REDACTED]  
**Sent:** 19 March 2024 16:52  
**To:** [REDACTED] Trial Chamber V Communications [REDACTED]  
**Cc:** D29 Yekatom Defence Team [REDACTED]  
 [REDACTED]; OTP CAR IIB [REDACTED] D30 Ngaissona Defence Team  
 [REDACTED]; V44 LRV Team OPCV [REDACTED]; V44 LRV Team  
 [REDACTED]; V45 LRV Team [REDACTED]  
 [REDACTED] Associate Legal Officer-Court Officer [REDACTED]  
 [REDACTED]  
**Subject:** RE: Prosecution Submission of evidence following the cross-examination of CAR-D29-3014

[ICC] RESTRICTED

Dear Trial Chamber,

Dear Counsel,

For the sake of clarity, the Prosecution is not 'signalling' an intention to call rebuttal evidence, but instead stating its objection to the transparent opportunism demonstrated by the Yekatom Defence. Accordingly, where appropriate – such as where the Defence has 'opened the door' – the Prosecution will seek the Chamber's leave to introduce responsive evidence. This includes, for the purposes of addressing mischaracterisations of evidence and misrepresentations of the Prosecution's position. The practice in this trial with respect to the submission of evidence is well-established and clear. To the extent that the Yekatom Defence sees fit to carry on in this manner, the Prosecution reserves its right to respond accordingly.

Kind regards,  
 On behalf of OTP Trial Team

**From:** [REDACTED]  
**Sent:** 19 March 2024 12:50  
**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]  
**Subject:** RE: Prosecution Submission of evidence following the cross-examination of CAR-D29-3014

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[ICC] RESTRICTED

[ICC] RESTRICTED

Dear Trial Chamber V,

The Defence respectfully submits that its arguments on the relevance and admissibility of the items tendered by the Prosecution (in Defence email of 15 March 2024 at 13:33) should not be disregarded by the Chamber, contrary to the Prosecution's email request below.

The Defence's arguments constitute 'issues related to the relevance or admissibility of the items submitted' and are therefore properly within the remit of the Chamber's Initial Directions (ICC-01/14-01/18-631, at para. 63 (ii)). The mere fact that the Defence's arguments address the relevance and admissibility of the items vis-à-vis the material issues or facts that the items purport to prove, does not equate to inappropriately arguing the Defence's case in advance. On the contrary, any determination of an item's relevance necessarily encompasses an examination of whether the item tends to prove or disprove the material issue or fact in question. The Defence was also within its rights to raise the fact that an item submitted by the Prosecution was probative of, and therefore relevant to, material issues and facts that run contrary to the Prosecution evidence and case: in this instance, the whereabouts of Habib SOUSSOU in February-May 2014 and by extension, [REDACTED]. In any event, the Prosecution was free to substantively address the Defence's arguments and substantiate its claims as to the Defence's 'incomplete assertions', 'misleading impressions', 'flawed analysis', and/or 'mischaracterisations' of the Prosecution position, through its automatic right of reply, which it declined to exercise (ICC-01/14-01/18-631, at para. 63 (ii)).

Further, the Defence notes that the Prosecution appears to be signalling its intention to call rebuttal evidence (rechristened as 'responsive evidence'). At the outset, the Prosecution position that the impugned Defence arguments should be raised at final arguments and thus be disregarded at this stage, contradicts its position that these arguments have also 'opened the door' to the introduction of rebuttal evidence; the Prosecution cannot have it both ways. In any event, while it is the Prosecution's prerogative to seek leave to call rebuttal evidence, the Defence notes that the impugned arguments would not appear to ground such a request, not least given that none of the impugned arguments can reasonably be considered to constitute significant issues that have arisen *ex improvisio*, directly from the evidence introduced by the Defence (ICC-01/04-02/06-2246, paras 20, 27). Indeed, with regard to its arguments as to **CAR-OTP-2112-1619 (item #4)**: the key facts referred to by the Defence all arise from material that has been in the possession of the Prosecution for multiple years: CAR-OTP-2009-4962 was received in 2015; CAR-OTP-2068-0037 was taken in 2018; and CAR-OTP-2112-1619 was received in 2019. As such, the fact that CAR-OTP-2112-1619 goes to proof of Habib SOUSSOU's presence in BANGUI, and not BODA, in this period, [REDACTED], would not (or should not) have come as a surprise to the Prosecution, given its decision to rely on this document in an attempt to impeach Defence witness D29-P-3014. The Prosecution's attempt to lay the groundwork for a future request for leave to call rebuttal evidence is thus misguided.

Best regards,

[REDACTED]  
Assistant to Counsel, Yekatom Defence

---

**From:** OTP CAR IIB [REDACTED]  
**Sent:** Monday, March 18, 2024 9:17 AM  
**To:** [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]; OTP CAR IIB [REDACTED] >  
**Subject:** RE: Prosecution Submission of evidence following the cross-examination of CAR-D29-3014

[ICC] RESTRICTED

[ICC] RESTRICTED

Dear Trial Chamber V,

Dear Counsel,

The Chamber should disregard the arguments advanced by the Yekatom Defence and formally recognise the submission of the evidence proffered; the propriety of which the Defence does not oppose.

The Prosecution considers that the additional commentary provided by the Defence goes far beyond the limited and straightforward issue before the Chamber in determining the formal submission request. The Defence assertions comprise a transparent and, in our view, inappropriate attempt to argue its case in advance and moreover, mischaracterise the Prosecution's position in doing so.

The Prosecution does not dispute the Defence's right to raise substantive arguments on the evidence in these proceedings at the appropriate time. As laid out by the Chamber, the Yekatom Defence, like the other Parties, is guaranteed an opportunity to set out its position comprehensively on the weight, probative value, and meaning of the evidence in the record of the case in its Closing Submissions.

In electing to make substantive assertions about the evidence in a manner that is incomplete and/or creates a misleading impression, the Yekatom Defence has 'opened the door' to the introduction of responsive evidence to clarify and/or correct the misimpression left as a result of its unnecessary and, more importantly, flawed analysis. Accordingly, the Prosecution reserves its right to submit responsive evidence in this limited respect, as the Chamber may deem appropriate in the circumstances.

Kind regards,  
On behalf of Kweku Vanderpuye

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**De :** [REDACTED]  
**Envoyé :** vendredi 15 mars 2024 13:33  
**À :** 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]; [REDACTED]; Associate Legal Officer-Court Officer  
 [REDACTED]  
**Objet :** Re: Prosecution Submission of evidence following the cross-examination of CAR-D29-3014

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Dear Trial Chamber V,

The Yekatom Defence does not oppose the submission of the items, without prejudice to its position as to the permissibility of seeking formal submission of items through witnesses where those items were not shown to them.

For the purposes of the Chamber's ultimate assessment of these items' relevance and probative value, the Defence respectfully makes the following submissions on the four CDR documents tendered by the Prosecution ('CDR Documents').

The CDR Documents are not probative of any involvement, affiliation, collaboration etc. between D29-P-3014 and BODA Anti-Balaka, contrary to the Prosecution position. At the outset, the Defence

recalls the Pre-Trial Chamber's findings in respect of the inherently limited probative value of uncorroborated call data records with respect to the content and purpose of alleged conversations (see, Confirmation of Charges Decision, paras 159, 180).

Firstly, two calls between D29-P-3014 and the phone number attributed to Roddy MBOSSE (**in CAR-OTP-2112-1654, item #5 below**), both on 18 February 2014 and respectively 44 seconds and 23 seconds long, do not constitute 'contact with the BODA Anti-Balaka coordination' in any meaningful sense. Of itself, a mere two calls is too few to allow any inferences to be drawn as to a relationship, if any, between D29-P-3014 and MBOSSE; and this is further demonstrated by the fact that these two calls are the only instances of contact with MBOSSE's attributed phone number, in the 2,791 rows of CDRs that constitute his alleged contacts within CAR-OTP-2112-1654, with date range June 2013 to December 2014.

Secondly, in the same vein, two calls in September 2014, each approximately one minute in length, between D29-P-3014 and a phone number attributed to Moraise SENDE (**in CAR-OTP-2030-0320, item #2 below**) are not probative of the Prosecution position. It should also be noted that these two calls are the only instances of contact between these two numbers, this time among 144,062 rows of CDRs constituting SENDE's alleged contacts in the period January 2013 to December 2014.

The probative value of these two documents is further diminished by the fact that these calls, along with their sheer infrequency (i.e. two phone calls each, in a period of 18 months and 24 months, respectively) must also be seen in the following context: i) D29-P-3014 was a public figure in BODA, having previously served both as mayor and local MP (T-274 ENG, 8:7-10); ii) D29-P-3014 was involved in 'sensibilisation' work/meetings in the context of the BODA violence and in such meetings, including in August-September 2014, through to the January 2015 visit to BODA of President Samba-Panza (see CAR-OTP-2101-2916); and iii) D29-P-3014 stated that his adult children, among whom is Habib SOUSSOU, were responsible for taking his mobile phone to charging booths to be charged when there was no electricity at his home, and that as such they may have used his telephone without authorisation (T-274 ENG, 29:1-30:3).

Thirdly, the alleged contacts between D29-P-3014 and Maxime MBONDJO (**in CAR-OTP-2112-1622, item #3**) are not probative of any affiliation or involvement of D29-P-3014 with the BODA Anti-Balaka, not least given that Prosecution witness [REDACTED]

[REDACTED] (CAR-OTP-2068-0037, paras 91, 127). Further, these contacts must be assessed against the fact that D29-P-3014 was in extensive phone contact with the phone number attributed to MBONDJO throughout 2013 (well before the outbreak of violence in BODA and the establishment of the Anti-Balaka coordination): specifically, the CDRs show 45 instances of contact in the period 22 March 2013 through to the end of 2013 i.e. at approximately a weekly basis. Likewise, these contacts must be assessed in light of the fact that both D29-P-3014 and MBONDJO were respectively former and serving members of parliament for the BODA area (see, CAR-OTP-2068-0037, para. 127), and therefore colleagues, at the time of these contacts; as well as the fact that both D29-P-3014 and MBONDJO were involved in the CAR transitional government's outreach and 'sensibilisation' efforts in the context of the BODA violence (see, T-265 ENG, 13:20-14:6; see also, CAR-D29-0009-0355, para. 18).

Fourthly, the Prosecution's reliance on alleged contact between D29-P-3014 and phone number [REDACTED] attributed to Habib SOUSSOU (**in CAR-OTP-2112-1619, item #4**), to suggest that D29-P-3014 was involved or affiliated in any way with the BODA Anti-Balaka is misplaced, given that the latter is his son; and further, given that, akin to MBONDJO, there was extensive contact between D29-

P-3014 and phone number [REDACTED] attributed to Habib SOUSSOU in 2013, long prior to the BODA violence and the establishment of the Anti-Balaka (specifically, the CDR indicates 76 calls between these two numbers in the period 12 March 2013 to 28 September 2013).

Finally, the CDR in **CAR-OTP-2112-1619 (item #4)** are in fact probative of the Defence position as to the lack of reliability of [REDACTED]. The cell sites consistently and repeatedly activated by [REDACTED] attributed by the Prosecution to Habib SOUSSOU, in the period 8 February 2014 to 21 April 2014 are all located in BANGUI, and in any event do not include the BODA cell site (see, Telecel cell site data in CAR-OTP-2009-4962), which suggests that Habib SOUSSOU/[REDACTED] was likewise in BANGUI and not in BODA in that period. In this regard, the Chamber will recall the evidence of CDR expert witness D30-P-4864, who stated that it was technically impossible for a mobile phone to connect to a cell tower in a city located 100-120 km away (see, T-272 ENG ET, 46:15-19) - which distance would approximately correspond to that between BODA and BANGUI - thereby ruling out any suggestion that Habib SOUSSOU/[REDACTED] was in BODA while connecting to BANGUI cell towers, in that period. The apparent presence of Habib SOUSSOU in BANGUI in the period immediately following the violence in BODA and through to April thus [REDACTED] [REDACTED] (see e.g. CAR-OTP-2068-0037, paras 48, 80-82, 90); and by extension, [REDACTED].

Best regards,

[REDACTED]  
Assistant to Counsel, Yekatom Defence

---

**From:** OTP CAR IIB [REDACTED]  
**Sent:** 12 March 2024 14:24  
**To:** Trial Chamber V Communications [REDACTED]  
**Cc:** D29 Yekatom Defence Team [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] OTP CAR IIB [REDACTED] >  
**Subject:** Prosecution Submission of evidence following the cross-examination of CAR-D29-3014

[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-D29-3014. The submitted documents were discussed with the witness during the course of his cross-examination. Specifically, as indicated in the CSTs the Prosecution shared with the Chamber, Parties, and Participants, D29-3014 was questioned on his contacts:

- with his son Habib SOUSSOU, item 5 (*see* T-274-CONF-ENG RT, p. 11, l. 11-17; p. 19, l. 19-p. 21, l. 3; p. 52, l. 3-6)
- with Moraise SENDE, item 2 (*see* T-274-CONF-ENG RT, p. 24, l. 17 – p. 25, l. 7; p. 29, l. 7-p. 30, l. 8.)
- with Rody MBOSSE, item 6 (*see* T-274-CONF-ENG RT, p. 24, l. 17 – p. 25, l. 7; p. 29, l. 7-p. 30, l. 8.)
- with Maxime BONDJO, item 4 (*see* T-274-CONF-ENG RT, p. 9, l. 24-p. 10, l. 24; p. 17, l. 24 – p. 18, 24)

The Prosecution, therefore, requests that the underlying CDRs be recognised as formally submitted.

| Count | Doc ID            | WIT - Used Through | Type                       | EVD - Date Used | Participant | Request Submission |
|-------|-------------------|--------------------|----------------------------|-----------------|-------------|--------------------|
| 1     | CAR-OTP-2015-0782 | CAR-D29-3014       | List / table               | 11/03/2024      | OTP         | Yes                |
| 2     | CAR-OTP-2030-0320 | CAR-D29-3014       | Call Data<br>Records (CDR) | 11/03/2024      | OTP         | Yes                |
| 3     | CAR-OTP-2112-1622 | CAR-D29-3014       | Call Data<br>Records (CDR) | 11/03/2024      | OTP         | Yes                |
| 4     | CAR-OTP-2112-1619 | CAR-D29-3014       | Call Data<br>Records (CDR) | 11/03/2024      | OTP         | Yes                |
| 5     | CAR-OTP-2112-1654 | CAR-D29-3014       | Call Data<br>Records (CDR) | 11/03/2024      | OTP         | Yes                |

Kind regards,

On behalf of the OTP Trial Team

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**From:** [REDACTED]  
**Sent:** 12 March 2024 10:15  
**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 D29-3014

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Dear Trial Chamber V,

In accordance with paragraph 3(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 document used during the examination of witness CAR-D29-P-3014.

| Count | Document ID       | Title                             | Document Type           |
|-------|-------------------|-----------------------------------|-------------------------|
| 1     | CAR-D29-0009-0355 | Déclaration de P-3014 (Sept 2022) | ICC Statement - General |

Kind regards,

[REDACTED]  
Legal intern – Yekatom Defence Team

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