

ANNEX 1

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Version

From: Trial Chamber V Communications
Sent: 02 July 2024 16:24
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 D29-5013
Attachments: Yekatom Defence submission of evidence following examination of D29-5013

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Counsel, dear colleagues of the Registry,

The Chamber notes the emails on the submission of evidence following the examination of D29-5013 (see emails below and attached).

The Chamber takes note of the Yekatom Defence's objections to item **CAR-OTP-00036113**.

At the outset, it observes that these objections partly concern item CAR-OTP-2074-3122, which purportedly forms the original source for the CDRs compiled in item CAR-OTP-00036113. However, the Chamber notes that item CAR-OTP-2074-3122 has not been requested for submission in the present context and will thus not address these submissions. It also recalls that it recently rejected the submission of item CAR-OTP-2074-3122 in the context of D29-5014's testimony (see Email Decision on Submitted Materials for D29-5014, 10 June 2024, at 14:30).

The Chamber observes that item CAR-OTP-00036113 exclusively contains call data records allegedly attributed to D29-5013 and Mr Yekatom, and calls amongst them between November 2016 to January 2018. In view of this, it is not persuaded by the Yekatom Defence's submission that the item bears no 'genuine connection to the Prosecution's examination of P-5013'. Further noting that the item has been shown and discussed with the witness (T-286, p. 43, line 7 to p. 44, line 20) and that no procedural bars exist, the Chamber dismisses the Yekatom Defence's objections with respect to the submission of this item. The Yekatom Defence's submissions regarding the reliability of this item will be addressed in the context of deliberations on the judgment.

In light of the above 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-00036104	Réhabilitation du BAC sur la rivière Ouham - Batangafo - RCA	Report
CAR-OTP-00036113	CAR 2B - CST - [REDACTED]	Call Data Records (CDR)
CAR-D29-0010-0167	DSC02863	Photograph
CAR-D29-0010-0174	DSC02870	Photograph
CAR-D29-0010-0175	DSC02871	Photograph
CAR-D29-0010-0182	DSC02878	Photograph
CAR-D29-0002-0696	RCA : au moins un mort pour un convoi	Media / press article
CAR-D29-0005-1099	[REDACTED]	Report
CAR-D29-0013-0276	[REDACTED]	Contract / Agreement

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: Tuesday, May 21, 2024 10:14 AM
To: Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED]; OTP CAR IIB [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]
 [REDACTED]
Subject: RE: Prosecution Submission of evidence following the cross-examination of CAR-D29-5013

[ICC] RESTRICTED

Dear Trial Chamber V,

The Prosecution maintains its formal submission of document CAR-OTP-00036113 (a call sequence table (CST) referencing phone communications between YEKATOM and D29-5013).

First, the Defence does not challenge the reliability of the document, but rather argues not to have “indication of the process techniques followed by the Prosecution to create the CST consequently depriving the item of its reliability”.

The reliability of item CAR-OTP-00036113 is apparent: the source of the information referenced (ERN and rows from the underlying CDRs) is clearly identified. The Defence does not contest its accuracy.

Second, the Chamber has already granted the formal submission of call sequence tables, notably from the Yekatom Defence (see for example “Decision on submitted Material for P-0487”, email sent on 27 September 2023, at 14:34; “Decision on submitted Material for P-1813”, email sent on 1 June 2023, at 10:28). There is no reason for the Chamber to adopt a different approach in this case.

Third, the Prosecution fails to understand the Defence’s argument according to which the Prosecution would have withdrawn “its reliance on CAR-OTP-2074-3122 in its Trial Brief and LoE, therefore indicating that it did not rely on those CDRs during trial”.

CAR-OTP-2074-3122 (source of the telecommunication data referenced in document CAR-OTP-00036113) was disclosed on 12 January 2024, far after the submission of the Prosecution’s Trial Brief and list of evidence, and pursuant to Rule 77. The Prosecution is not barred from using evidence that was not included in its list of evidence when cross-examining Defence witnesses, as long as the evidence in question was disclosed. Specifically regarding CAR-OTP-2074-3122, it was disclosed about four months prior to P-5013’s testimony. The Defence had thus ample time to analyse the document.

Last, the Defence’s claim that the Prosecution would not be prejudiced from the rejection of the formal submission of the document is unconvincing. The fact that D29-5013 admitted having been in phone contact with YEKATOM between 2016 and 2018 when cross examined by the Prosecution does not render the submission of the CST and of the underlying CDRs unnecessary. Their formal submission is required since they confirm and evidence the existence of these contacts, and provide further precision regarding their date and time.

Kind regards,
 On behalf of OTP Trial Team

From: [REDACTED]
Sent: Monday, May 20, 2024 12:30 PM
To: Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED]; OTP CAR IIB [REDACTED]
 [REDACTED]; D30 Ngaissona Defence Team

██████████ V44 LRV Team OPCV ██████████; V44 LRV Team
 ██████████ V45 LRV Team ██████████; ██████████
 ██████████ Associate Legal Officer-Court Officer ██████████
 ██████████

Subject: RE: Prosecution Submission of evidence following the cross-examination of CAR-D29-5013

[ICC] RESTRICTED

[ICC] RESTRICTED

Dear Trial Chamber V,
 Dear all,

The Defence objects to the formal submission of item #2, CAR-OTP-00036113.

First, the Defence recalls that it previously objected to the formal submission of CAR-OTP-2074-3122 (see email sent to the Chamber, Parties and Participants on 22 January 2024 at 15:44, RE: Prosecution Submission of evidence following the cross-examination of CAR-D29-P-5014). Given that CAR-OTP-00036113 consists of a CST compiling lines of calls extracted from CAR-OTP-2074-3122, the Defence maintains its position for the reasons exposed within the above-cited email and similarly objects to the admission of CAR-OTP-00036113 on the same basis.

In particular, the Defence reiterates that the Prosecution withdrew its reliance on CAR-OTP-2074-3122 in its Trial Brief and LoE, therefore indicating that it did not rely on those CDRs during trial. The Prosecution's attempt to therefore indirectly rely on this item during the cross-examination of P-5013 is untimely and remains prejudicial to the Defence given that this position did not form any part of its case during the presentation of its evidence -thereby preventing the Defence from properly analysing and testing the CDR with relevant witnesses - and nor can it be said that either the CDR CAR-OTP-2074-3122 nor the CST CAR-OTP-00036113 have a genuine connection to the Prosecution's examination of P-5013 (see Abd Al Rahman ICC-02/05-01/20-1041-Red, para. 13). Rather, the Prosecution's compilation of a CST in relation to a handful of calls is no more than a pretextual attempt to belatedly shoehorn CAR-OTP-2074-3122 into these proceedings.

Second, the Prosecution did not provide an explanation concerning the modalities of creation of CAR-OTP-00036113. The Defence has no indication of the process techniques followed by the Prosecution to create the CST consequently depriving the item of its reliability.

Third, the Prosecution will not suffer any prejudice from the rejection of the submission of the item as P-5013 responded to the Prosecution line of questioning; the witness confirmed having been in communication between 2016 and 2018 with Mr Yekatom ██████████ (ICC-01/14-01/18-T-286-CONF-FRA, page 46, line 1 to page 47, line 13) therefore rendering flimsy any potential argument to affect her credibility.

In the event the Chamber is inclined to grant the formal admission of CAR-OTP-00036113, the Defence submits that the submission should be limited to the calls appearing on the CST and without permitting the use of the other thousands of lines contained in the CDR (CAR-OTP-2074-3122). The Defence's position in this regard does not negate the Prosecution's obligation to attribute ██████████ to Mr. Yekatom and nor should it be construed as a concession of the attribution of phone number ██████████ to Mr Yekatom. The Defence recalls on this subject that phone number ██████████ was also used by individuals other than Mr Yekatom during the same period of time (see CAR-OTP-2100-0002 referring to calls by OTP investigators to ██████████ in 2018 where ██████████).

Kind regards,

██████████
 Yekatom Defence

From: OTP CAR IIB [REDACTED]
Sent: Wednesday, May 15, 2024 12:34 PM
To: 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: Prosecution Submission of evidence following the cross-examination of CAR-D29-5013

[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-D29-5013. The submitted documents were discussed with the witness during the course of her 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-00036104	CAR-D29-5013	Report	14/05/2024	OTP	Yes
2	CAR-OTP-00036113	CAR-D29-5013	Call Data Records (CDR)	14/05/2024	OTP	Yes

Kind regards,

On behalf of the OTP Trial Team

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From: [REDACTED]
Sent: 15 May 2024 12:48
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 examination of D29-5013

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-5013.

Count	Document	Title	Document Type
1	CAR-D29-0010-0167	DSC02863	Photograph
2	CAR-D29-0010-0174	DSC02870	Photograph
3	CAR-D29-0010-0175	DSC02871	Photograph
4	CAR-D29-0010-0182	DSC02878	Photograph
5	CAR-D29-0002-0696	RCA : au moins un mort pour un convoi	Media / press article
6	CAR-D29-0005-1099	[REDACTED]	Report
7	CAR-D29-0013-0276-R01	[REDACTED] [REDACTED]nt	Contract / Agreement

Kind regards,

[REDACTED]

Legal intern – Yekatom Defence Team

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