

ANNEX 1

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Version

From: Trial Chamber V Communications
Sent: 12 July 2024 11:21
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 D30-4504
Attachments: D30 Ngaïssona Defence Submission of Evidence following P-4504's testimony

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 D30-4504 by the Prosecution and the Ngaïssona Defence, as well as the objections and responses thereto (*see emails below and attached*).

At the outset, the Chamber notes that **CAR-D30-0005-0020** is already recognised as formally submitted. The Chamber therefore need not rule on this item again.

As to **CAR-D30-0020-0001**, the Chamber observes that it consists of four pictures of different individuals, and that the Ngaïssona Defence requests the submission of **page 0001** only, as that page was used in court with D30-4504 (*see* T-283-ENG, p. 40, line 25 to p. 41, line 6). The Chamber further notes that CAR-D30-0020-0001 was recognised as formally submitted in its entirety through D30-4914 pursuant to Rule 68(3) of the Rules, subject to the fulfilment of the requirements of said provision (*see* ICC-01/14-01/18-2435-Conf). However, noting that D30-4914 has not appeared before the Chamber yet, in the interest of the efficiency of the proceedings, the Chamber hereby recognises **CAR-D30-0020-0001** at **page 0001** as formally submitted through D30-4504.

Moreover, the Chamber notes that the Prosecution requests the formal submission of **CAR-OTP-00036482** (the Prosecution initially submitted an earlier version of the item with ERN CAR-OTP-00036362, but it later submitted a corrected version thereof, with ERN CAR-OTP-00036482. *See* emails from the Prosecution, 23 May 2024, at 19:58 and 24 May 2024, at 15:06). This document consists of a call sequence table ('CST') created by the Prosecution that compiles lines of calls extracted from call data records ('CDR') that are also requested for submission, namely **CAR-OTP-2019-1363**, **CAR-OTP-2025-0646**, **CAR-OTP-2025-0650**, **CAR-OTP-2112-1471**, **CAR-OTP-2134-1644** and **CAR-OTP-2134-1652**. The Ngaïssona Defence objects to the submission of all of these items. With respect to the CST, it argues that it lacks any reliability and is 'of little to no significance' in light of the answers provided by the witness in court. As to the underlying CDR, the Ngaïssona Defence contends, *inter alia*, that they were not shown to or used with the witness in court.

The Chamber recalls the Presiding Judge's remarks that it was not necessary for the Prosecution to cite the references of the CDR since they were already contained in the CST (*see* T-287-CONF-ENG, p. 26, line 17 to p. 27, line 8). It further notes that the Prosecution, during its examination of the witness, sought to challenge his credibility by showing that he 'was in contact on 17 occasions with [...] Machin Machin', among other individuals. Taking into account the evidence elicited from the witness in court (*see* T-287-CONF-ENG, p. 25, line 13 to p. 31, line 3), the fact that the alleged contacts are referenced in the CST, and that the Prosecution did not use the CDR with the witness in court, the Chamber does not consider that the CDR are necessary to assess the witness's credibility or otherwise understand his testimony, and therefore rejects their submission (*see also* email from the Chamber, 10 June 2024, at 14:30).

As to **CAR-OTP-00036482**, the Chamber finds no impediments for its formal submission through D30-4504. It further considers that the Ngaissona Defence's arguments concern issues of probative weight that will be assessed during the judgment deliberations. It therefore recognises **CAR-OTP-00036482** as formally submitted through D30-4504.

Lastly, the Chamber notes that the Ngaissona Defence also objects to the submission of **CAR-OTP-2103-0007**, which consists of a financial document, on the basis that it was not used, but merely referenced by the Prosecution during the examination of the witness. Recalling its findings above concerning the use of evidence during a hearing, and noting the Presiding Judge's remarks (see T-287-CONF-ENG, p. 32, line 7 to p. 33, line 1 and p. 35, lines 8-14), the Chamber rejects the formal submission of this item.

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-D30-0020-0001, at page 0001 only	Photo Gallery	Photograph/s
CAR-OTP-00036482	Copy of Copy of Corrected version of CAR-OTP-00036362.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 items:

Doc ID	Title	Type
CAR-D30-0023-0001	DECLARATION DE TEMOIN	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: Friday, May 24, 2024 3:06 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]
Subject: RE: Prosecution Submission of evidence following the cross-examination of CAR-D30-4504

[ICC] RESTRICTED

Dear Trial Chamber V,

As a follow up to its below email, the Prosecution hereby informs the Chamber, the parties and the participants that the corrected version of document CAR-OTP-00036362 has been registered with the ERN number CAR-OTP-00036482. The document is appended to this email and will be formally disclosed on Friday 31 May.

The Prosecution requests the formal submission of this corrected version *in lieu* of CAR-OTP-00036362.

Thank you,
 Kind regards,

On behalf of OTP Trial Team.

From: OTP CAR IIB [REDACTED]
Sent: Thursday, May 23, 2024 7:58 PM
To: [REDACTED] >; Trial Chamber V Communications
 [REDACTED]
Cc: OTP CAR IIB [REDACTED] 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]
 [REDACTED]
Subject: RE: Prosecution Submission of evidence following the cross-examination of CAR-D30-4504

[ICC] RESTRICTED

Dear Trial Chamber V,

The Prosecution maintains its formal submission of the contested documents, with the exception of CAR-OTP-00036362 (the formal submission of a corrected version is requested instead, as explained below).

1/ Formal submission of a corrected version of CAR-OTP-00036362 (a call sequence table ("CST")) (the ERN will be provided as soon as possible)

The Prosecution acknowledges two errors in CAR-OTP-00036362 regarding the reference to the row of the underlying CDRs for the communications at lines 9 and 26. These two errors are limited to the row numbers. The communications referenced at these two lines remain supported by the CDRs identified in the document.

An amended corrected version of the CST is appended to this email, with the corrected row numbers highlighted for the Chamber and the parties' reference.

The formal submission of the amended version of the CST is requested *in lieu* of CAR-OTP-00036362. The Prosecution will communicate the ERN of the corrected version as soon as the document is registered; it will provide a courtesy copy to the Chamber and the parties and participants immediately, and then proceed to its formal disclosure.

Regarding the Defence's objections to the formal submission of the CST, they are unconvincing.

First, contrary to the Defence's argument, the corrected version of the CST is reliable. The purpose of the CST is to assist the Chamber in the course of its deliberations, allowing it to retrieve easily the relevant phone data evidence. The underlying CDRs, which are the actual evidence, are referenced in the CST.

Second, contrary to the Defence's claim, the CST and the underlying CDRs are not deprived of significance. In fact, this evidence affects the credibility and reliability of the witness' testimony regarding his whereabouts in the relevant period (through cell tower references) and his contacts with relevant individuals.

2/ Formal submission of CAR-OTP-2019-1363, CAR-OTP-2025-0646, CAR-OTP-2025-0650, CAR-OTP-2112-1471, CAR-OTP-2134-1644, and CAR-OTP-2134-1652 (CDRs)

The Prosecution maintains its formal submission of the above referenced CDRs, which consist of evidence put to the witness in the course of his cross-examination and which affect his credibility.

The Defence's argument that the formal submission of most of these items should be denied because they were not referenced during the Prosecution's cross-examination is without basis.

As the Defence must recall, the Prosecution was expressly asked by the Presiding judge not to cite the ERNs of the CDRs discussed with the witness for the purpose of expediting the proceedings. Specifically, the Presiding judge stated that the lengthy enumeration of the ERNs and rows of the CDRs put to the witness would be "too cumbersome. [...] That's not necessary" (ICC-01/14-01/18-T-287-CONF-ENG ET, p. 26, l. 18-25).

The fact that the ERNs of the CDRs listed in the CST do not appear on the court transcript cannot, in these circumstances, militate against their formal submission.

3/ Formal submission of CAR-OTP-2103-0007

The Prosecution maintains its formal submission of CAR-OTP-2103-0007, a bank record for an account at the [REDACTED] under the name of Patrice Ngaissona, showing bank operations for the period of 28 June 2013 to 31 December 2013.

First, even if this document was not shown to the witness, it was used with the witness as the Prosecution confronted D30-4504 with information from the document (notably the address mentioned - see ICC-01/14-01/18-T-287-CONF-ENG ET, p. 35, l. 25-p. 36, l. 25).

Second, the content of the bank record contradicts D30-4504's assertion that Ngaissona was lacking money in 2013 during his exile in Cameroon. The Bank record also demonstrates Ngaissona's presence in YAOUNDE ([REDACTED]).

Kind regards,

On behalf of OTP Trial Team.

From: [REDACTED]
Sent: Wednesday, May 22, 2024 5:46 PM
To: Trial Chamber V Communications [REDACTED]
Cc: OTP CAR IIB [REDACTED]; D29 Yekatom Defence Team [REDACTED]
 [REDACTED]; D30 Ngaissona Defence Team [REDACTED]
 [REDACTED]; V44 LRV Team OPCV [REDACTED]; V44 LRV Team [REDACTED]
 [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-D30-4504

[ICC] RESTRICTED

[ICC] RESTRICTED

Dear Trial Chamber V,

The Defence for Mr Ngaissona (the "Defence") takes note of the Prosecution's below request to introduce 8 Items following the testimony of witness CAR-D30-P-4504 (the "Request"). The Defence hereby opposes the Request in its entirety.

The Defence opposes the submission of CAR-OTP-00036362 (Item 1)

Item 1 consists of a call sequence table created by the Prosecution itself that compiles lines of calls apparently extracted from twelve call data records, including items 2,3,4,6,7 and 8.

First, the Defence and the Chamber were not provided with the methodology which the Prosecution followed to create Item 1, thus depriving the item of any indicia of reliability.

Second, the reliability of the item is even further impeded by the fact that certain underlying references contained in Item 1 are incorrect. Indeed, Item 1 shows that a call was made between [REDACTED] and [REDACTED] on Tue 11/11/2014 at 20:37:00, with a reference to the underlying call data records CAR-OTP-2093-0590, Row 238692. Yet, CAR-OTP-2093-0590, Row 238692, showcases a call between [REDACTED] and [REDACTED] on 27/02/2014 at 18:58:29. Similarly, Item 1 shows that a call was made between [REDACTED] and [REDACTED] on 04/07/2014 at 10:01:56 with a reference to the underlying call data records CAR-OTP-2112-1471, Row 25098. Yet, CAR-OTP-2112-1471, Row 25098 showcases a call between [REDACTED] and [REDACTED] on 04/07/2014 at 10:29. Hence, the result of this *prima facie* assessment shows that Item 1 comprises information that are incorrect.

Finally, the Item is of little to no significance given D30-4504's answers provided during his in-court testimony. When the Prosecution used item 1 to establish the witness' return date to Bangui, the witness replied that he "returned to Bangui because of the death of my father in 2014 and 2015, [he] think[s]" (ICC-01/14-01/18-T-287-CONF-ENG ET, page 19, lines 3-5). When the Prosecution used item 1 to put to the witness alleged contacts he may have had with Samy Urbain Bawa, Aubin Yanoue, Eusebe Emtenu, [REDACTED] the witness repeatedly provided the same answers over and over again as illustrated below :

"I can only repeat: I was a footballer. I was famous as a footballer. Many people had my phone number and anyone could call me, and when I saw an unknown number, I could return that call. I repeat for the third time: I was an international, well-known footballer. Many people could call me." (ICC-01/14-01/18-T-287-CONF-ENG ET, page 28, lines 22-25)

"Dongombe, well, I don't know him at all. Was he part of the sports field or scenario? I don't know. I must tell you, I had lots of calls from sports people. I repeat: I was a footballer, well known; anyone could call me. You talk about Dongombe, but I don't know him in particular." (ICC-01/14-01/18-T-287-CONF-ENG ET, page 29, lines 7-10).

As such, the transcript of hearing can be understood as a standalone in this respect.

Therefore, item 1 is devoid of any significance and, more concerning, its submission may hinder the accuracy of the record due to the incorrect information reflected therein.

The Defence objects to the submission of items 2,3,4,6,7 and 8 (together the " Underlying CDRs")

First, as set out in the Initial Directions on the Conduct of the Proceedings (the "Initial Directions"), the present procedure for the submission of evidence is limited to situations where "[...] the tendering participant wishes to formally submit *items used during a hearing* [...]" (ICC-01/14-01/18-631, para. 63(i) - emphasis added). The wording of the Initial Direction is explicit: for an item to be submitted through a witness, that item has to be used by the tendering party. Yet, items 2,3,6,7 and 8 were not used or referenced, and item 4 was simply "Referenced by OTP with D30-P-4504 on 17.05.2024" (See Court Officer's email on *Items used in court with D30-P-4504 on 17.05.2024* 17 dated 17 May 2024, at 12:33 and the corresponding amendment to it reflected in the metadata of CAR-OTP-2025-0650 on Nuix under "Notes"). Indeed, the Prosecution merely half-referenced item 4 only, in the following manner :

"For the Chamber, the data record ends 250650, line 13 to 25." (ICC-01/14-01/18-T-287-CONF-ENG ET, page. 18 line 21); and

"So for the Court, this data is 25-0650, 13670 -- 718 and line 1778, 41, et cetera, and line 13 16077." (ICC-01/14-01/18-T-287-CONF-ENG ET, page 19 line 12).

Instead, the Prosecution opted to use CAR-OTP-00036362 (item 1), a call sequence table of its own creation apparently based on, *inter alia*, the Underlying CDRs. As such, the Underlying CDRs themselves were not used by the Prosecution during D30-4504's testimony, let alone shown to D30-4504 for discussion.

Second, the Defence recalls that the Prosecution previously sought the submission of the Underlying CDRs through its "*Prosecution's submission of call data records and related evidence via the "bar table", ICC-01/14-01/18-1296*" (ICC-01/14-01/18-1296-Conf-AnxD, rows 27, 36, 40, 450, 589 and 597). The Chamber rejected the submission of the Underlying CDRs on the basis that their submission is not required to make sense of the material already submitted and that the Prosecution did "not state their *prima facie* relevance" (ICC-01/14-01/18-1499, paras 46-47). Here, there is no change in circumstances following D30-4504's testimony as the Underlying CDRs were not discussed. The Prosecution should not be allowed to obliquely introduce evidence, the submission of which through a bar table application was rejected, through a witness whom was not given the opportunity to discuss them.

Finally, and in any event, the Defence recalls the Chamber's previous ruling on the submission of call data records through witnesses wherein it weighed the nature and scope of call data records against the extent to which they were used during the witnesses' questioning (e.g., see email "Decision on Submitted Materials for P-1719" dated 28 February 2023 at 9:47 or "Decision on Submitted Materials for P-0876" dated 25 May 2022 at 09:33). The Underlying CDRs represent several hundreds of thousands of entries, that cover contacts between hundreds, if not thousands, of numbers that are irrelevant and immaterial to D30-4504's testimony. As such, should the Chamber be inclined to consider that the Underlying CDRs were in fact used – albeit obliquely through Item 1 –, the limited use of a total of 27 rows from the Underlying CDRs cannot reasonably warrants their wholesale submission.

Therefore, the sought submission of the Underlying CDRs through D30-4504 is procedurally improper and barred by the Chamber's Initial Directions.

The Defence objects to the submission of CAR-OTP-2103-0007 (Item 5)

Again, the Defence submits that the item was not used, but merely referenced by the Prosecution (see the Court Officer's email on "*Items used in court with D30-P-4504 on 17.05.2024*", dated 17 May 2024, at 12:33, entry 5, under "Notes"). Indeed, the Defence recalls in this regard that the Presiding Judge, when sustaining the Defence's in-court objection to the use of Item 5, expressly ruled twice that there was "no need to discuss [Item 5] with the witness" and that the Prosecution "cannot ask the witness to comment on this document" (ICC-01/14-01/18-T-287-CONF-ENG ET, page 33, line 1 and page 35, lines 8-14). And, the Defence recalls that the Chamber previously rejected the recognition of an item as submitted through a witness when it was not discussed by the witness (see email "*Decision on Submitted Materials for P-0446*", dated 12 October 2022 at 15:09).

As such, D30-4504 was never shown Item 5 and provided no meaningful testimony on it. Therefore, the submission of Item 5 through D30-4504 is procedurally inappropriate, barred by the Chamber's Initial Directions, and in disregard of the Chamber's previous rulings.

For the reasons elaborated above, the Defence respectfully asks the Chamber to reject the Request in its entirety and remind the Prosecution of the rules governing the submission of evidence through testifying witnesses.

Kind regards,

[REDACTED]

On behalf of the Defence for Mr Ngaiissona

From: OTP CAR IIB [REDACTED]
Sent: 20 May 2024 5:29 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]
 [REDACTED]; OTP CAR IIB [REDACTED]
Subject: Prosecution Submission of evidence following the cross-examination of CAR-D30-4504

[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-D30-4504. 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-00036362	CAR-D30-4504	Call Data Records (CDR)	17/05/2024	OTP	Yes
2	CAR-OTP-2019-1363	CAR-D30-4504	Call Data Records (CDR)	17/05/2024	OTP	Yes
3	CAR-OTP-2025-0646	CAR-D30-4504	Call Data Records (CDR)	17/05/2024	OTP	Yes
4	CAR-OTP-2025-0650	CAR-D30-4504	Call Data Records (CDR)	17/05/2024	OTP	Yes
5	CAR-OTP-2103-0007	CAR-D30-4504	Financial document - Bank record	17/05/2024	OTP	Yes
6	CAR-OTP-2112-1471	CAR-D30-4504	Call Data Records (CDR)	17/05/2024	OTP	Yes
7	CAR-OTP-2134-1644	CAR-D30-4504	Call Data Records (CDR)	17/05/2024	OTP	Yes
8	CAR-OTP-2134-1652	CAR-D30-4504	Call Data Records (CDR)	17/05/2024	OTP	Yes

Kind regards,

Kind regards,

On behalf of the OTP Trial Team

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From: [REDACTED]
Sent: 20 May 2024 18:07
To: Trial Chamber V Communications
Cc: D30 Ngaïssona Defence Team; D29 Yekatom Defence Team; Neithardt, Caroline; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; [REDACTED] Associate Legal Officer-Court Officer; [REDACTED] OTP CAR IIB
Subject: D30 Ngaïssona Defence Submission of Evidence following P-4504's testimony

[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 Defence for Mr Ngaïssona respectfully requests the formal submission of the documents listed below following the examination of Defence witness P-4504.

1. One item submitted under Rule 68(3) at the start of P-4504's testimony (ICC-01/14-01/18-T-283-ENG ET WT, page 10, lines 9-12) :

Count	Document ID	Title	Document Type	EVD - I
1	CAR-D30-0023-0001-R01	DECLARATION DE TEMOIN	ICC Statement - General	5/6/20

2. Two items shown to the witness in the course of his testimony:

Count	Document ID	Title	Document Type	EVD - Date Used	WIT - Used By	WIT - Used Through
1	CAR-D30-0005-0020	Photo Douala 2	Photograph/s	2/22/2024 5/6/2024	D30	CAR-D30-P-4504 CAR-D30-P-4756
2	CAR-D30-0020-0001	Photo Gallery	Photograph/s	5/6/2024	D30	CAR-D30-P-4504

Specifically, the Defence seeks the submission of CAR-D30-0020-0001, page 0001.

Kind regards,

[REDACTED]
Case Manager - Ngaïssona Defence

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