

ANNEX 1

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Version

From: Trial Chamber V Communications
Sent: 09 September 2024 16:51
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 D30-4608
Attachments: D30 Submission of Evidence Following the Testimony of CAR-D30-P-4608

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 D30-4608 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 item **CAR-D30-0017-0001** is already recognised as formally submitted, and therefore it need not rule on it again.

The Ngaïssona Defence opposes the submission of **CAR-OTP-00036594**, which consists of a CST, on the basis that it is unreliable. It also opposes its underlying CDR (**CAR-OTP-2112-1567** and **CAR-OTP-2054-1296**), as well as a media press article (**CAR-OTP-2088-2689**), arguing that they were not shown to the witness.

The Chamber considers that the Ngaïssona Defence's arguments concerning the 'methodology' and alleged inconsistencies of **CAR-OTP-00036594** relate to the relevance and/or probative value of the item, which the Chamber will take into account when assessing the reliability of the item during the judgment deliberations. Having identified no procedural bars, the Chamber recognises **CAR-OTP-00036594** as formally submitted.

With regard to the underlying CDR, the Chamber notes that, contrary to the Prosecution's assertion, these were not shown to the witness in court. Furthermore, taking into account the evidence elicited from the witness (*see T-292-CONF*, p. 72, line 19 to p. 76, line 23), and the fact that the alleged contacts between the witness and the referred individuals are referenced in the CST, the Chamber does not consider that the CDR are necessary to assess the witness's credibility or otherwise understand his testimony (*see also* Decision on Submitted Materials for D30-4504, email from the Chamber, 12 July 2024, at 11:21). It therefore rejects the submission of **CAR-OTP-2112-1567** and **CAR-OTP-2054-1296**.

As to **CAR-OTP-2088-2689**, the Chamber observes that the Prosecution did not show it to the witness, but made a reference to it and examined the witness on the basis of a fragment that was read to him (*see T-292-CONF-ENG*, p. 81, line 21 to p. 82, line 15). In light of the above, noting the limited extent to which the information contained in the item was used and taking into account the evidence elicited from the witness, the Chamber does not consider the item necessary to assess the witness's answers or otherwise understand his testimony. Accordingly, the Chamber rejects the submission of **CAR-OTP-2088-2689**.

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-OTP-2088-2780	L'HIRONDELLE / No. 3146	Media / press article
CAR-OTP-00036594	240618- CAR-OTP-00036594 - corrected.docx	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-D30-0017-0004	DECLARATION DE TEMOIN	ICC Statement - General
CAR-D30-0017-0022	Corrections to CAR-D30-0017-0004-R01	ICC Statement - General
CAR-D30-0017-0019	Defence Notes Clarification on CAR-D30-0017-0004-R01	Notes (other)
CAR-D30-0017-0020	Second Correction Note to CAR-D30-0017-0004	Notes (other)
CAR-D30-0017-0021	Third Correction Note to CAR-D30-0017-0004	Notes (other)
CAR-D30-0011-0015 to CAR-D30-0011-0063; CAR-D30-0011-0076 to CAR-D30-0011-0084; CAR-D30-0011-0086 to CAR-D30-0011-0092; CAR-D30-0011-0094 to CAR-D30-0011-0096; CAR-D30-0011-0098 to CAR-D30-0011-0102; CAR-D30-0011-0113 to CAR-D30-0011-0242; CAR-D30-0011-0247 to CAR-D30-0011-0410; CAR-D30-0011-0412 to CAR-D30-0011-0458; CAR-D30-0011-0460 to CAR-D30-0011-0480 and CAR-D30-0017-0003.		

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: Wednesday, June 26, 2024 5:59 PM
To: [REDACTED] 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]
[REDACTED] Associate Legal Officer-Court Officer [REDACTED]
[REDACTED] OTP CAR IIB [REDACTED]
Subject: RE: Prosecution Submission of evidence following the cross-examination of CAR-D30-4608

[ICC] RESTRICTED

Dear Trial Chamber V,

Item 1 (media article CAR-OTP-2088-2689): While the media article at issue was not displayed to D30-4608 on the monitors, a portion it was read out to the witness and the witness further testified regarding the excerpt. (T-292-CONF-ENG ET, p. 82, l. 20-p. 83, l. 3). Thus, the Defence's contention that item 1 was not 'used with' D30-4608 in Court is misleading. To the contrary, the item was sufficiently discussed in the witness's evidence and there is no procedural bar to its submission.

Items 2 (call sequence table CAR-OTP-00036594 ("CST"), 3, and 4 (call data records CAR-OTP-2112-1567 and CAR-OTP-2054-1296 ("CDR"))):

First, there is no procedural bar in formally recognising as submitted the CST and its underlying CDR records. All these items were effectively “shown” to D30-4608 during his testimony (T-292-CONF-ENG ET, p. 73, l. 19-p.77, l. 21). Indeed, showing a witness raw data from CDR records is not an efficient way to proceed in Court, as they are difficult to read and the calls can be spread out on multiple rows in multiple CDR sheets. Instead, to facilitate the witness’s and all the Parties’ understanding of the material used, this took the form of a CST (item 2) which makes reference in the last columns to the underlying CDR records and their respective tabs and/or rows (items 3 and 4). Therefore, both the CST and the CDRs have been effectively “shown” to him in a simplified form.

Second, although the submission of the underlying CDRs (items 3 and 4) was previously rejected for lack of prima facie relevance upon their bulk submission in its Annex D to the Prosecution CDR Bar Table Motion (ICC-01/14-01/18-1499, para. 46), the Chamber further explained that “the Prosecution is not precluded from submitting additional call related data in response to ‘issues arising from documentary evidence and testimony presented at trial’, should it wish to do so later” (ICC-01/14-01/18-1499, para. 49). The relevance of items 2, 3, and 4 therefore became apparent when the telephone calls between D30-4608 and various interlocutors were put to D30-4608 in Court and he provided answers thereto.

Third, regarding the CST’s reliability, a telecommunications database is used to generate uniformity across a variety of CDR formats which enables mixed datasets to be viewed in the correct chronological time and date order in the CST, and this may necessitate the calculation of a call start time in CST where the underlying CDR represents the call end time. However, the indicated CDR row numbers will lead the Chamber and the Parties to the relevant call that was put to D30-4608 and is in fact a further argument to recognise items 3 and 4 as formally submitted.

Kind regards,
On behalf of OTP Trial Team

From: [REDACTED]
Sent: mardi 25 juin 2024 15:24
To: Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED]; D30 Ngaïssona 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] OTP CAR IIB [REDACTED]
Subject: Re: Prosecution Submission of evidence following the cross-examination of CAR-D30-4608

[ICC] RESTRICTED

[ICC] RESTRICTED

Dear Trial Chamber V,

The Defence for Mr Ngaïssona (the "Defence") takes note of the below Prosecution's request to submit evidence following the testimony of CAR-D30-P-4608 ("D30-4608"), dated 21 June 2024. The Defence opposes the submission of all items contained in the first table of the Prosecution.

1. The Defence opposes the submission of CAR-OTP-00036594 (Item 2)

The Defence notes that the methodology which the Prosecution followed to create **CAR-OTP-00036594 (Item 2)** was not shared to the parties and the Chamber. The item therefore lacks reliability.

The reliability of Item 2 is further impeded by the inconsistencies between the data it presents, and the data contained in the underlying call data records (CDRs). Indeed, while the majority of the underlying CDRs (CAR-2054-1480, CAR-OTP-2054-1481, CAR-OTP-2054-1482, CAR-OTP-2112-1567) record the end time of each contact, CAR-OTP-00036594 seems to reflect the start time of each contact. This evidences that the data was not simply extracted but was manually altered by the Prosecution to create Item 2. And such alteration leads to human error which, in this case, could be identified on the first page of the Item (which is already the corrected version of the courtesy copy of the item communicated on 18 June 2024, at 11:45). Indeed, the third row of at CAR-OTP-00036594-0001 shows that a call was made at 18:07:45 which lasted 13 seconds, with reference to CAR-OTP-2112-1567, row 5517. Yet, row 5517 of CAR-OTP-2112-1567 shows that the call ended at 18:08:20. The math simply does not add up.

Hence, the result of this *prima facie* assessment shows that Item 2 comprises information that are incorrect, and it is not precluded that additional errors can be found further down in the Item.

Therefore, the submission of CAR-OTP-00036594 should be rejected as it may otherwise hinder the accuracy of the record.

2. The Defence opposes the submission of items not used during the hearing

The Defence reiterates its objection to the submission of items not shown to the witness in the course of his testimony. Accordingly, the Defence objects to the submission of items 1, 3 and 4 in the first table (CAR-OTP-2088-2689, CAR-OTP-2112-1567, and CAR-OTP-2054-1296 respectively).

The Defence recalls the explicit wording of the Chamber's Initial Directions on the Conduct of the Proceedings (the "Initial Directions") that unequivocally limits the present procedure for the submission of evidence 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 explicit requirement to use the item during a hearing has been clearly defined by the Chamber in its previous rulings on the submission of evidence through witnesses. Indeed, the Chamber considered an item to have been used during the hearing when the item has been shown to the witness. Conversely, the Chamber expressly distinguishes an item that was shown to the witness from an item that was mentioned for the record, rejecting the submission of the latter ("*The Chamber notes that these items were indeed not shown to or used with the witness. Rather, they were mentioned 'for the record' [...] The Chamber therefore rejects the submission of these items [...]*" - Decision on Submitted Materials for P-2018, dated 12 October 2023, at 15:03 ; "*However, CAR-OTP-00025601 itself was not shown to the witness and he also did not comment on it. The Chamber therefore rejects the submission of CAR-OTP-00025601*" - Decision on Submitted Materials for D29-6036, dated 28 May 2024, at 11:02; "*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 [...]. The Chamber therefore rejects the submission of this item*" - Decision on Submitted Materials for D30-4197, dated 30 May 2024, at 12:11) .

CAR-OTP-2088-2689 (Item 1) was not shown to D30-4608; the item was referenced during his testimony, as reflected by the Prosecution's own words ("Q. [15:38:45] I'd like to make reference to tab 19, tab 19, 2008-2689" (sic.)- T-292-CONF-ENG ET, page 81, lines 21-22). This is equally reflected in the list of items used in court with D30-P-4608 (see email from Court Officer titled **Items used in court with D30-P-4608 on 20.06.2024**, dated 20 June 2024 at 19:18) :

The Defence therefore requests the Chamber to reject the submission of CAR-OTP-2088-2689 in accordance with its previous decisions.

For the same reasons as above, the Defence objects to the submission of the call data records (CDRs) **CAR-OTP-2112-1567 (Item 3)** and **CAR-OTP-2054-1296 (Item 4)** as they were not shown to the witness. Here, the Prosecution failed to even "reference" the items during D30-4608's testimony.

Additionally, the Defence recalls that the Prosecution previously sought the submission of the two items 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 541 and 263 respectively). The Chamber rejected their submission 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 D30-4608's testimony as the two items were not shown to nor discussed with the witness. 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.

In any event, the Defence recalls the Chamber's previous ruling on the submission of CDRs 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 CDRs represent several hundreds of thousands of entries, that cover contacts between hundreds, if not thousands, of numbers that are irrelevant and immaterial to D30-4608's testimony. As such, should the Chamber be inclined to consider that the CDRs were in fact used – albeit obliquely through CAR-OTP-00036594–, their limited use cannot reasonably warrants their wholesale submission.

Therefore, the submission of the CAR-OTP-2112-1567 and CAR-OTP-2054-1296 should be rejected.

In conclusion, the sought submission of Items 1, 3 and 4 should be rejected as it is procedurally improper and barred by the Chamber's Initial Directions.

Kind regards,

On behalf of the Defence for Mr Ngaïssona

From: OTP CAR IIB [REDACTED]
Sent: 21 June 2024 11:31 AM
To: Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED] D30 Ngaïssona 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] OTP CAR IIB [REDACTED]
Subject: Prosecution Submission of evidence following the cross-examination of CAR-D30-4608

[ICC] RESTRICTED

[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 D30-4608. 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.

(i) Documents discussed with D30-4608 during the course of his cross-examination:

Count	Doc ID	WIT - Used Through	Type	EVD - Date Used	Participant	Request Submission
1	CAR-OTP-2088-2689	D30-4608	Media / press article	20/06/2024	OTP	Yes
2	CAR-OTP-00036594	D30-4608	Call Sequence Table	20/06/2024	OTP	Yes
3	CAR-OTP-2112-1567	D30-4608	Call Data Record	20/06/2024	OTP	Yes (CDR underlying the calls in the CST at CAR-OTP-00036594)
4	CAR-OTP-2054-1296	D30-4608	Call Data Record	20/06/2024	OTP	Yes (CDR underlying the calls in the CST at CAR-OTP-00036594)

(ii) Items used during the course of the NGAISSONA Defence's examination of the witness, to the extent these items are not submitted by the NGAISSONA Defence:

Count	Doc ID	WIT - Used Through	Type	EVD - Date Used	Participant	Request Submission
1	CAR-OTP-2088-2780	D30-4608	Media / press article	19/06/2024	D30	Yes

Kind regards,
On behalf of OTP Trial Team

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From: [REDACTED]
Sent: 21 June 2024 14:31
To: Trial Chamber V Communications
Cc: D29 Yekatom Defence Team; D30 Ngaïssona Defence Team; OTP CAR IIB; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; Associate Legal Officer-Court Officer; [REDACTED]
Subject: D30 Submission of Evidence Following the Testimony of CAR-D30-P-4608

[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 D30-4608.

1. All items provided by witness D30-4608 and submitted under Rule 68(3) at the start of D30-4608's testimony (ICC-01/14-01/18-T-291-CONF-ENG ET, page 10, lines 4 - 6 and 18 - 20), which include the following items :

Count	Document ID	Title	Document Type	Document Date	EVD - Date Used	WIT - Used By	WIT - Used Through
1	CAR-D30-0017-0004-R01	DECLARATION DE TEMOIN	ICC Statement - General	8/11/2023	6/19/2024 6/20/2024	D30 OTP	CAR-D30-P-4608
2	CAR-D30-0017-0019	Defence Notes_Clarification on CAR-D30-0017-0004-R01	Notes (other)	12/15/2023	6/19/2024	D30	CAR-D30-P-4608
3	CAR-D30-0017-0020	Second Correction Note to CAR-D30-0017-0004	Notes (other)	5/2/2024			
4	CAR-D30-0017-0021	Third Correction Note to CAR-D30-0017-0004	Notes (other)	5/16/2024			
5	CAR-D30-0017-0022	Corrections to CAR-D30-0017-0004-R01	ICC Statement - General	6/18/2024			

The Defence recalls the Chamber's decision to grant the introduction of D30-4608's statement and its associated items pursuant to Rule 68(3) of the Rules (ICC-01/14-01/18-2476-Conf, para. 18). As such, all photographs and documentary evidence provided by D30-4608 are recognised as formally submitted to the exception of those already recognised as submitted through witness D30-4514 (pending the provision of D30-4514's declaration under Rule 68(2)(b)(ii) and (iii) of the Rules).

The Defence also clarifies that Item 5 has not yet been disclosed, but its ERN has been put to the record (ICC-01/14-01/18-T-291-CONF-ENG ET, page 10, lines 18 - 20) and a courtesy copy has been communicated to the Chamber, the parties and participants prior to the testimony (see email dated 18 June 2024 at 16:00). Item 5 will be disclosed today.

2. Two items that was shown to the witness during his testimony :

Count	Document ID	Title	Document Type
1	CAR-D30-0017-0001	Liste des Personnes Déplacees Internes_BOSSANGO	Notes (other)
2	CAR-OTP-2088-2780	L'HIRONDELLE / No. 3146	Media / press article

D30-4608 provided meaningful testimony on the two items. Specifically, the witness not only provided the Defence with CAR-D30-0017-0001 but also gave meaningful description of the item and extensive information to the Chamber on the methodology used to create such list, its date of creation, the individuals behind its creation, and its nature (ICC-01/14-01/18-T-291-CONF-ENG ET, page 75, lines 9 to page 77, lines 9). As such, CAR-D30-0017-0001 should be submitted through D30-4608.

The remaining items which the Defence relied upon during its examination of D30-4608 have already been recognised as formally submitted.

Kind regards,



Case Manager - Ngaïssona Defence

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