

ANNEX 1

Public Redacted

Version

From: Trial Chamber V Communications
Sent: 23 August 2024 16:02
To: OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaïssona Defence Team; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; Associate Legal Officer-Court Officer
Cc: Chamber Decisions Communication; Trial Chamber V Communications
Subject: Decision on Submitted Materials for D30-4679
Attachments: RE: Prosecution Submission of evidence following the cross-examination of CAR-D30-P-4679; RE: Prosecution Submission of evidence following the cross-examination of CAR-D30-P-4679

[ICC] RESTRICTED

Dear Counsel, dear colleagues of the Registry,

The Chamber notes the emails on the submission of evidence following the examination of D30-4679 by the Ngaïssona Defence and the Prosecution, as well as the objections and responses thereto (*see* emails below and attached).

The Chamber first notes that items **CAR-D30-0009-0090**, **CAR-D30-0009-0091**, **CAR-D30-0009-0092**, and **CAR-D30-0009-0093** were mentioned ‘for the record’, but that they were not shown to or used with the witness (*see* T-300-CONF-ENG, p. 69, lines 9-14). It therefore rejects their submission through this witness (*see, e.g.*, Decision on Submitted Materials for P-2018, email from the Chamber, 12 October 2023, at 15:03; Decision on Submitted Materials for D29-6036, email from the Chamber, 28 May 2024, at 11:02).

The Chamber notes that the Ngaïssona Defence seeks the submission of specific pages in relation to three items (**CAR-OTP-2131-3585** at pages 3609-10 only, **CAR-OTP-2131-6463** at page 6471 only, **CAR-OTP-2133-4163** at pages 4174 and 4236 only). The Chamber considers that these extracts can be read and understood on their own and, in the absence of any procedural bars, recognises these pages as formally submitted.

The Chamber further takes note of the Ngaïssona Defence’s objections to the wholesale submission of items **CAR-OTP-2103-7505**, **CAR-OTP-2131-5530**, **CAR-OTP-2132-3569** and **CAR-OTP-2132-4987**.

With regard to item **CAR-OTP-2132-4987**, the Chamber notes that pages 5035-36 were shown to D30-4679 by both the Ngaïssona Defence and the Prosecution, and that the witness commented on them (*see* T-300-CONF-ENG, p. 6, lines 11-24; T-301-CONF-ENG, p. 48, line 7 to p. 49, line 18). Noting the nature and the scope of this item, compared to the limited extent to which it was used during D30-4679’s questioning, the Chamber finds that it would not be appropriate to recognise the item in its entirety as submitted through this witness. The Chamber however considers it useful to recognise **CAR-OTP-2132-4987 at pages 5035-36** as formally submitted, as these specific pages can be read and understood on their own and might provide context to understand and assess the witness’s answers.

With regard to items **CAR-OTP-2103-7505**, **CAR-OTP-2131-5530**, and **CAR-OTP-2132-3569**, the Chamber notes that these items were not shown to the witness, but that information extracted from specific pages was put directly to him. Noting the nature and scope of these items, bearing in mind the limited extent to which their information was used, and taking into account the evidence elicited from D30-4679 in court (*see* T-301-CONF-ENG, p. 9, lines 9-23; p. 46, lines 1-8; p. 72, lines 1-10), the Chamber does not consider these items necessary to assess the witness’s answers or otherwise understand his testimony. According, the Chamber rejects the submission of these items through this witness.

The Chamber also notes the Ngaïssona Defence’s objection to the submission of item **CAR-OTP-00036769**. This document consists of a call sequence table (‘CST’) created by the Prosecution. The Chamber notes that this item was shown to the witness and that he was asked questions in relation to it (*see* T-301-CONF-ENG, p. 87, line 12 to p. 89, line 9). In this context, it recalls its prior ruling finding no impediments to the formal submission of a CST through a

witness (see Decision on Submitted Materials for D30-4504, email from the Chamber, 12 July 2024, at 11:21), and considers that the same applies to the submission of this item. It further considers that the remainder of the Ngaïssona Defence's arguments concern issues of probative weight that will be assessed during the judgment deliberations. The Chamber therefore recognizes **CAR-OTP-00036769** as formally submitted through D30-4679.

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

Doc ID	Title	Type
CAR-D30-0013-0001	Cité du Golf	Photograph/s
CAR-OTP-2131-3585, at pages 3609-10 only	Facebook Messenger Messages (Warrant Return)-03_02_2014 09_57_43	Communication - E-message
CAR-OTP-2131-6463, at page 6471 only	Facebook Messenger Messages (Warrant Return)-05_11_2013 14_38_35	Communication - E-message
CAR-OTP-2133-4163, at pages 4174 and 4236 only	Facebook Messenger Messages (Warrant Return)-28_02_2014 08_46_55	Communication - E-message
CAR-OTP-2133-9190	Facebook Status Updates (Warrant Return)-30_07_2013 16_45_46	Communication - E-message
CAR-OTP-00036359	Francois Bozizé, ancien président centrafricain - Le grand i.mp3	Audio / Video Material
CAR-OTP-00036768	SMS Message	Mobile communication
CAR-OTP-00036769	Call sequence table D30 -4679	Call Data Records (CDR)
CAR-OTP-2132-4987, at pages 5035-36 only	Facebook Messenger Messages (Warrant Return)-19_02_2014 10_30_19	Communication - E-message
CAR-OTP-2098-0066	Exemplaire Client / NUMERO D'ORDRE : [REDACTED]	Financial document - Other
CAR-OTP-2098-0067	Exemplaire Client / NUMERO D'ORDRE : [REDACTED]	Financial document - Other

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: [REDACTED]
Sent: Thursday, July 18, 2024 12:16 PM
To: Trial Chamber V Communications [REDACTED]
Cc: Associate Legal Officer-Court Officer [REDACTED]; D30 Ngaïssona Defence Team [REDACTED] D29 Yekatom Defence Team [REDACTED] OTP CAR IIB [REDACTED] V44 LRV Team OPCV [REDACTED] <[REDACTED]> 44 LRV Team [REDACTED]; V45 LRV Team [REDACTED]
Subject: D30 - Ngaïssona Defence Submission of Evidence following D30-P-4679 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 following documents used during the examination of witness P-4679:

Count	Document ID	Document Date	Document Type	Title	WIT - Used Through	Excerpts
1	CAR-D30-0009-0090	11/30/2013	Electronic Media (Data)	2013-11-30-2 poupoulengue-bangos.png	CAR-D30-P-4679	Entire item
2	CAR-D30-0009-0091	12/1/2013	Electronic Media (Data)	2013-11-30-3 poupoulengue-bangos.png	CAR-D30-P-4679	Entire item
3	CAR-D30-0009-0092	12/2/2013	Electronic Media (Data)	2013-12-01 poupoulengue-bangos.png	CAR-D30-P-4679	Entire item
4	CAR-D30-0009-0093	12/2/2013	Electronic Media (Data)	2013-12-02 poupoulengue-bangos.png	CAR-D30-P-4679	Entire item
5	CAR-D30-0013-0001	10/29/2023	Photograph/s	Cité du Golf	CAR-D30-P-4679	Entire item
6	CAR-OTP-2131-3585	5/26/2013	Communication - E-message	Facebook Messenger Messages (Warrant Return)-03_02_2014 09_57_43	CAR-D30-P-4679	Only pages 3609-3610
7	CAR-OTP-2131-6463	4/3/2013	Communication - E-message	Facebook Messenger Messages (Warrant Return)-05_11_2013 14_38_35	CAR-D30-P-4679	Only page 6471
8	CAR-OTP-2133-4163	4/30/2013	Communication - E-message	Facebook Messenger Messages (Warrant Return)-28_02_2014 08_46_55	CAR-D30-P-4679	Only pages 4174 and 4236
9	CAR-OTP-2133-9190	7/30/2013	Communication - E-message	Facebook Status Updates (Warrant Return)-30_07_2013 16_45_46	CAR-D30-P-4679	Entire item

Kind regards,

██████████ on behalf of the Ngaïssona Defence

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From: OTP CAR IIB
Sent: 18 July 2024 17:54
To: OTP CAR IIB; Trial Chamber V Communications
Cc: D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; Garcia, Marisela; Associate Legal Officer-Court Officer; [REDACTED] OTP CAR IIB
Subject: RE: Prosecution Submission of evidence following the cross-examination of CAR-D30-P-4679

[ICC] RESTRICTED

Dear Trial Chamber V

Dear All,

Please note the corrections below in **RED**. Thank you.

Kind regards,

On behalf of OTP Trial Team

From: OTP CAR IIB [REDACTED]
Sent: Thursday, July 18, 2024 5:43 PM
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]; OTP CAR IIB [REDACTED]
Subject: Prosecution Submission of evidence following the cross-examination of CAR-D30-P-4679

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 D30-4679. 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, as appropriate.

(i) Documents discussed with CAR-D30-P-4679 during the course of his cross-examination:

Count	Doc ID	WIT - Used Through	Type	EVD - Date Used	Participant	Request Submission
1	CAR-OTP-00036359	CAR-D30-P-4679	Audio / Video Material	17/07/2024	OTP	Yes
2	CAR-OTP-00036768	CAR-D30-P-4679	SMS Message	17/07/2024	OTP	Yes
3	CAR-OTP-00036769	CAR-D30-P-4679	Call sequence table (CST)	17/07/2024	OTP	Yes

4	CAR-OTP-2103-7505	CAR-D30-P-4679	Facebook Messenger Messages (Warrant Return)-17_11_2015 07_42_46	17/07/2024	OTP	Yes
5	CAR-OTP-2131-5530	CAR-D30-P-4679	Facebook Messenger Messages (Warrant Return)-05_02_2014 07_14_52	17/07/2024	OTP	Yes
6	CAR-OTP-2132-3569	CAR-D30-P-4679	Facebook Messenger Messages (Warrant Return)-17_09_2013 19_42_29	17/07/2024	OTP	Yes
7	CAR-OTP-2132-4987	CAR-D30-P-4679	Facebook Messenger Messages (Warrant Return)-19_02_2014 10_30_19	17/07/2024	OTP	Yes

(ii) Documents referenced and to be marked for identification purposes in respect of the transcript of testimony:

Count	Doc ID	WIT - Used Through	Type	EVD - Date Used	Participant	Request Submission
1	CAR-OTP-2103-7447	CAR-D30-P-4679	Facebook Messenger Messages (Warrant Return)-08_02_2014 09_02_09 -	17/07/2024	OTP	No
2	CAR-OTP-2130-0280-R01	CAR-D30-P-4679	ICC Investigation notes / report / correspondence – ICC	17/07/2024	OTP	No
3	See attached	CAR-D30-P-4679	Summary of Witness D30-4679's anticipated testimony	17/07/2024	OTP	No

The Prosecution further submits the following documents, should the Nguissoua Defence not seek their submission.

Count	Doc ID	WIT - Used Through	Type	EVD - Date Used	Participant	Request Submission
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1	CAR-OTP-2098-0066	CAR-D30-P-4679	Financial document - Other	16/07/2024	D30	Yes
2	CAR-OTP-2098-0067	CAR-D30-P-4679	Financial document - Other	16/07/2024	D30	Yes

Kind regards,
On behalf of OTP Trial Team

From: OTP CAR IIB
Sent: 23 July 2024 18:52
To: [REDACTED] OTP CAR IIB; Trial Chamber V Communications
Cc: D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; [REDACTED] Associate Legal Officer-Court Officer; [REDACTED]
Subject: RE: Prosecution Submission of evidence following the cross-examination of CAR-D30-P-4679

[ICC] RESTRICTED

Dear Trial Chamber V,

Dear All,

The Ngaissona Defence's objection should be rejected. The Defence conflates the notion of cumulative evidence and some as yet undefined principle of 'proportionality' – there is no such doctrine or basis for the exclusion of evidence under the statutory framework. Relevant and probative evidence is just that. Moreover, a professional bench of experienced judges such as comprise this Chamber, is well-placed to determine and identify the clear relevance of the tendered Facebook records, to discern their material subject matter, import to the case, and significance to a meaningful assessment of the witness's evidence. This is even more so, since the Facebook exchanges that were painstakingly identified and obtained by the Prosecution in this case comprise communications concerning key actors, operations, strategies, and events on the ground relative to the Anti-Balaka as a group and its leadership – including the Accused. It moreover directly relates to the organisation and intent of the group in the actions in which it engaged, and is responsive to the contextual elements broached in the witness's direct testimony elicited by the Defence, as well as subjective and/or objective commission of the charged crimes by the Group.

As the Chamber made clear early in the case when directing the Prosecution to submit Facebook materials *via* the 'bar table', this necessarily meant that witnesses were not presented all 'relevant' conversations during the course of their testimony. Given that the Prosecution was obliged to file its Facebook bar table motions *before* the Defence witnesses were called – notwithstanding its effort to anticipate – all relevant conversations, it is well-within its rights to identify and submit further conversations relevant to those witnesses' testimonies. That factual propositions contained in the tendered records were put to the witness – which are not disputed by the Defence below – readily establishes the relevance of their records. Nothing moreover impedes the Chamber's authority to consider – even demand – that the records tendered be otherwise submitted under article 69(3) in its discretion. The Defence's arguments are thus unavailing, and the Chamber may indeed consider the tendered documents for all purposes.

With respect to the disposition of the CST, the Prosecution has taken the Chamber's recent ruling denying the submission of CDR on the basis that the CSTs provided were sufficient to evaluate the evidence elicited from the witness (*see* Chamber's email decision on the submission of evidence concerning D30-4504, 12 July 2024, at 11:21). The circumstance here is fundamentally the same. In fact, D30-P-4679 did not dispute the contacts represented in the CST. A witness need not comment on evidence which, when presented, speaks for itself in order for such evidence to be sufficiently relevant to be submitted and relied on. Moreover, his concession as to the contents of the CST – and non-dispute of the telephone numbers attributed to him alone – constitutes 'discussion' of the item of evidence presented within the meaning of article 74.

The Defence again raises the suggestion of the Prosecution's "manipulation" of data, whereas it is fully aware that such data is processed in an automated way, and readily capable of replication using the same devices. The Prosecution will not burden the Chamber with repeating its previous explanation (*see* submissions in response to the Defence's objection to the use of similar evidence with D30-4848 (13 July 2024 at 13:03)). At the same time, the Defence

concedes that such issues goes to the ultimate weight of the item to be determined by the Chamber in its holistic assessment of the evidence in the case. It is not a matter that precludes the item's submission.

For the above reasons, the Prosecution considers that the Defence's objections should be rejected in their entirety. Thank you.

Kind regards,

On behalf of OTP Trial Team

From: [REDACTED]
Sent: Monday, July 22, 2024 9:32 PM
To: OTP CAR IIB [REDACTED]; Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED] D30 Ngaissona Defence Team [REDACTED]
 [REDACTED] V44 LRV Team OPCV <V44LRVTeam-OPCV@icc-cpi.int>; 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-P-4679

[ICC] RESTRICTED

[ICC] RESTRICTED

Dear Trial Chamber V,
 Dear All,

The Defence for Mr Ngaissona ('Defence') objects to the wholesale submission of items 4-7 in the Prosecution's first list. The Defence notes that these documents are lengthy Facebook conversations, none of which was even shown to the witness, but rather referenced to in order to draw information for the purpose of putting a single question to the witness. For this reason, the Defence objects to their wholesale submission, in light of the nature and scope of the items compared to the extent to which they were used in court (see TCV email dated 22/05/2023 at 15:53, see also TCV email dated 16/03/2023, at 09:51, see also TCV email dated 28/02/2023 at 09:47, see also TCV email dated 25/05/2022 at 09:33, see also TCV email dated 01/04/2022 at 12:19, see also TCV email dated 21/10/2021 at 13:16, see also TCV email dated 29/09/2021 at 15:05, see also TCV email dated 02/07/2021 at 14:07).

Concerning item 3 (CAR-OTP-00036769):

As noted in the Defence response to the Prosecution's first bar-table request concerning call-data records (ICC-01/14-01/18-1409-Conf, para. 10-13), a call sequence table ('CST') is not evidence and therefore the Chamber should reject its submission or give it no weight. The Defence recalls that at the beginning of the trial, the Prosecution did not submit CSTs as evidence, considering them to be "evidentiary propositions" (ICC-01/14-01/18-1296, para 9 and 10). The Chamber's decision concerning this CST is thus dependent upon its evaluation of the standard evidentiary criteria concerning the underlying CDRs.

In any case, D30-4679 did not comment upon the CST and so there is no basis to submit it as 'evidence' through D30-4679's testimony. Even if he did comment upon it, this would not give the CST probative

value as he did not create it and there is no basis for concluding that D30-4679 has the technical background to offer any useful comment upon it.

Moreover, the Prosecution has not provided an explanation of the methodology used to prepare the CST. There is therefore no basis for the Chamber to conclude that the CST was prepared competently or with the necessary skill and care. Given the lack of explanation of methodology, the Chamber is precluded from assessing whether the CST is accurate, which further confirms that it has little to no probative value. Furthermore, a *prima facie* scrutiny of the CST rather demonstrates that, once again, the information contained therein does not match the purported source. First, the CST present the start time of a contact, whereas the underlying CDRs (to the exception of CAR-OTP-2103-0675) records the end time of a contact. This suggests that the Prosecution manipulated the data instead of simply extracting it, thereby increasing the risk of errors and severely impugning the reliability of the CST. Second, while the CST attribute phone number [REDACTED] to Charles Ngremangou, the underlying CDR cited as the source attribute the number to Martial Ngaïbona (CAR-OTP-2069-0479, rows 6959 and 8628). Similarly, while the CST attributes phone number [REDACTED] to Charles Ngremangou, the underlying CDR cited as the source attribute the number to DIMANCHE SANDRINE JOCELYNE (CAR-OTP-2054-1480, row 161139). As such, CAR-OTP-00036769 presents data (time of the calls and user attribution) that cannot be elicited from the underlying CDRs the sole and only source of information available in the CST. Out of fairness to the parties and the witness, the Prosecution should have presented a CST that accurately reflects the underlying CDRs or provide references to all information and data contained in the CST.

The Defence is cognisant to the fact that the inaccuracy and erroneous information contained in an item do not constitute a procedural bar to its submission. However, the Defence wishes to point out that the CSTs created by the Prosecution for its examination of defence witnesses consistently fail to accurately reflect the data as available in the underlying CDRs, or distort the data as available in the underlying CDRs (see e.g., Defence submissions dated 12 July 2024 at 14:30, Defence submissions dated 25 June 2024 at 15:24 and Defence submissions dated 24 May 2024 at 15:05). As such, the Defence stands by its previous submission: the submission of CAR-OTP-00036769 hinders the accuracy of the case record, will not assist the Chamber in its truth-seeking mission, and drawing any incriminatory factual conclusions from CAR-OTP-00036769 would be prejudicial to Mr Ngaïssona's trial.

Kind regards,

[REDACTED] on behalf of the Ngaïssona Defence

From: OTP CAR IIB [REDACTED]

Sent: Thursday, July 18, 2024 5:43 PM

To: Trial Chamber V Communications <[REDACTED]>

Cc: D29 Yekatom Defence Team [REDACTED]; D30 Ngaïssona 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: Prosecution Submission of evidence following the cross-examination of CAR-D30-P-4679

[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 D30-4679. 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, as appropriate.

(i) Documents discussed with CAR-D30-P-4679 during the course of his cross-examination:

Count	Doc ID	WIT - Used Through	Type	EVD - Date Used	Participant	Request Submission
1	CAR-OTP-00036359	CAR-D30-P-4679	Audio / Video Material	17/07/2024	OTP	Yes
2	CAR-OTP-00036768	CAR-D30-P-4679	SMS Message	17/07/2024	OTP	Yes
3	CAR-OTP-00036769	CAR-D30-P-4679	Call sequence table (CST)	17/07/2024	OTP	Yes
4	CAR-OTP-2103-7505	CAR-D30-P-4679	Facebook Messenger Messages (Warrant Return)-17_11_2015 07_42_46	17/07/2024	OTP	Yes
5	CAR-OTP-2131-5530	CAR-D30-P-4679	Facebook Messenger Messages (Warrant Return)-05_02_2014 07_14_52	17/07/2024	OTP	Yes
6	CAR-OTP-2132-3569	CAR-D30-P-4679	Facebook Messenger Messages (Warrant Return)-17_09_2013 19_42_29	17/07/2024	OTP	Yes
7	CAR-OTP-2132-4987	CAR-D30-P-4679	Facebook Messenger Messages (Warrant Return)-19_02_2014 10_30_19	17/07/2024	OTP	Yes

(ii) Documents referenced and to be marked for identification purposes in respect of the transcript of testimony:

Count	Doc ID	WIT - Used Through	Type	EVD - Date Used	Participant	Request Submission
1	CAR-OTP-2103-7447	CAR-D30-P-4679	Facebook Messenger Messages (Warrant Return)-08_02_2014 09_02_09 -	17/07/2024	OTP	Yes

2	CAR-OTP-2130-0280-R01	CAR-D30-P-4679	ICC Investigation notes / report / correspondence – ICC	17/07/2024	OTP	Yes
3	See attached	CAR-D30-P-4679	Summary of Witness D30-4679's anticipated testimony	17/07/2024	OTP	Yes

The Prosecution further submits the following documents, should the Ngaissona Defence not seek their submission.

Count	Doc ID	WIT - Used Through	Type	EVD - Date Used	Participant	Request Submission
1	CAR-OTP-2098-0066	CAR-D30-P-4679	Financial document - Other	16/07/2024	D30	Yes
2	CAR-OTP-2098-0067	CAR-D30-P-4679	Financial document - Other	16/07/2024	D30	Yes

Kind regards,
On behalf of OTP Trial Team

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