

# **ANNEX 1**

## **Public Redacted**

### **Version**

**From:** Trial Chamber V Communications  
**Sent:** 10 September 2024 09:46  
**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 D30-4848

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

## [ICC] RESTRICTED

Dear Counsel, dear colleagues of the Registry,

The Chamber notes the emails on the submission of evidence following the examination of D30-4848 by the Ngaïssona Defence and the Prosecution, as well as the objections and responses thereto (*see below*, emails from the Ngaïssona Defence, 8 July 2024, at 16:23 and 12 July 2024, at 14:30; emails from the Prosecution, 9 July 2024, at 12:41 and 13 July 2024, at 13:03).

At the outset, the Chamber notes that items **CAR-D30-0003-0029** and **CAR-D30-0006-0328** are already recognised as formally submitted. It therefore need not rule on them again.

The Ngaïssona Defence objects to the submission of **CAR-OTP-00000637** on the basis that, given its 'extensive nature and scope', it is not suitable to be submitted through D30-4848, and because its submission would cause undue prejudice to the Ngaïssona Defence. The Chamber further notes the Ngaïssona Defence's submission that the item 'is an Excel spreadsheet generated by the Prosecution from a phone seized by the Chadian authorities during a search and seizure operation at Mr Mokom's residence', and that 'it comprises 4265 entries, some of which containing six different phone numbers'.

Taking into account the evidence elicited from D30-4848 in court (*see* T-298-CONF-ENG, p. 34, lines 6-8), the Chamber does not consider that this item is necessary to assess the witness's answers or otherwise understand his testimony. Further noting the nature and the scope of this item, compared to the limited extent to which it was used during D30-4848's examination, the Chamber considers that it would not be appropriate to recognise this item as formally submitted through this witness (*see also* 'Decision on Submitted Materials for D30-4720', email from the Chamber, 23 August 2024, at 12:30). The Chamber therefore rejects the submission of **CAR-OTP-00000637**.

Furthermore, the Ngaïssona Defence objects to the submission of **CAR-OTP-00036624** and **CAR-OTP-00036627**, which consist of call sequence tables ('CST'). The Ngaïssona Defence argues that the authenticity and reliability of the items has not been established, that the items contain inconsistencies and errors when compared to their underlying call data records ('CDR'), and that **CAR-OTP-00036627** was not shown to the witness in court.

With regard to **CAR-OTP-00036624**, the Chamber notes that the item was shown to the witness and that he commented on it (*see* T-298-CONF-ENG, p. 39, line 23 to p. 41, line 20; p. 42, line 16 to p. 47, line 14). As to the Ngaïssona Defence's arguments concerning the alleged lack of authenticity and reliability of the item, the Chamber will take them into account during its judgment deliberations, as well as the Prosecution's explanations on the alleged discrepancies contained in the items. Having identified no procedural bars, the Chamber hereby recognises **CAR-OTP-00036624** as formally submitted (*see also* 'Decision on Submitted Materials for D30-4679', email from the Chamber, 23 August 2024, at 16:14).

With regard to **CAR-OTP-00036627**, the Chamber notes that the reference of the CST was not mentioned during the hearing and that the parties disagree as to whether it was actually shown to the witness (*see* T-298, p. 47, line 16 to p. 49, line 12). Noting that the issue put to the witness concerned whether he was in contact with Maxime Mokom and Mr Yekatom at the relevant time, in light of the evidence elicited from the witness in court, the Chamber does

not consider that the item is necessary to understand or otherwise assess the witness's answer. The Chamber therefore rejects the submission of **CAR-OTP-00036627**.

The Ngaïssona Defence further objects to the submission of **CAR-OTP-2018-0611**, **CAR-OTP-2112-1420**, **CAR-OTP-2112-1479** and **CAR-OTP-2125-0458**, which consist of the underlying CDRs of **CAR-OTP-00036624**, on the basis, *inter alia*, that they were not shown to the witness and that their submission would be prejudicial to the Ngaïssona Defence. The Chamber observes that these CDRs were not shown to the witness. It further takes into account the Ngaïssona Defence's submissions that the items contain 'thousands of contacts which relevance to the case remains unknown'. In light of the nature and scope of the items, as well as the evidence elicited from the witness in court in relation to **CAR-OTP-00036624**, the Chamber does not consider that these CDRs are necessary to understand or otherwise assess the witness's answers. The Chamber therefore rejects their submission (*see also* 'Decision on Submitted Materials for D30-4504', email from the Chamber, 12 July 2024, at 11:21).

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

| Count | Doc ID            | Title                                                                 | Type                                                       |
|-------|-------------------|-----------------------------------------------------------------------|------------------------------------------------------------|
| 1.    | CAR-D30-0007-0823 | [REDACTED]                                                            | Legislation / government instruction / guidelines          |
| 2.    | CAR-OTP-2092-1635 | [REDACTED]<br>[REDACTED]<br>[REDACTED]                                | Correspondence - Letter                                    |
| 3.    | CAR-OTP-2079-0993 | Annex 4 / FICHE SPECIALE<br>No. 063/MDNRA/EMA/DB2<br>EMA/SEC          | Report                                                     |
| 4.    | CAR-OTP-2136-1350 | LISTE DES MEDIEATEURS<br>RETENUS POUR LE FORUM<br>DE BANGUI           | List / table                                               |
| 5.    | CAR-OTP-00036596  | [REDACTED]<br>[REDACTED]<br>[REDACTED]sx                              | Mobile communications                                      |
| 6.    | CAR-OTP-00036624  | [REDACTED]                                                            | Call Data Records (CDR)                                    |
| 7.    | CAR-OTP-00036589  | INVESTIGATOR'S REPORT /<br>Related to CAR-OTP-P-2673                  | ICC Investigation notes /<br>report / correspondence – ICC |
| 8.    | CAR-OTP-2135-4203 | INVESTIGATOR'S REPORT /<br>Additional information<br>regarding P-2673 | ICC Investigation notes /<br>report / correspondence – ICC |

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

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**From:** OTP CAR IIB [REDACTED]  
**Sent:** Saturday, July 13, 2024 1:03 PM  
**To:** Trial Chamber V Communications [REDACTED]  
**Cc:** D30 Ngaïssona Defence Team [REDACTED] D29 Yekatom Defence Team  
[REDACTED] V44 LRV Team OPCV [REDACTED]; V44 LRV Team  
[REDACTED] V45 LRV Team [REDACTED]  
[REDACTED]; Associate Legal Officer-Court Officer [REDACTED]

OTP CAR IIB

**Subject:** RE: D30 - NGAISSONA Defence Submission of Evidence following D30-P-4848 testimony

[ICC] RESTRICTED

Dear Trial Chamber,  
Dear Counsel,

The Chamber should reject the NGAISSONA Defence's objections to the formal submission of items listed below, following D30-4848's testimony.

**CAR-OTP-00000637**

CAR-OTP-00000637 was included in the Defence's Final List of Exhibits (LoE) without qualification or restriction, since 17 November 2023 (see ICC-01/14-01/18-2215-Conf-Anx2, p.25, Item 136) and until its withdrawal on 11 July 2024 (see e-mail of 11 July 2024 at 15:34). However, the Defence's belated objection to its submission and claim of 'irreparable harm' is belied by its prior conduct.

By way of background, the Prosecution first included CAR-OTP-00000637 on its Examination List on 19 April 2024 in respect of D30-4720. The Defence lodged no protest. The item was then used in Court with D30-4720 on 24 April 2024 without any contemporaneous objection from the Defence. Upon the Prosecution's request for recognition of the item's formal submission, the Defence objected. In its 1 May 2024 response, the Prosecution noted the Defence's failure to object to the use of the item on the two prior occasions. It further noted that, as the item was on the Defence's own LoE, its objection to the submission was contradictory and untenable given that it had taken no action to withdraw the document at any point (see e-mail of 1 May 2024 at 16:45). Thereafter, the Defence persisted in taking no such action. Subsequently, on 3 May 2024, the item was included in the Prosecution's Examination List for D30-4504. Again, the Defence did not object. Although it was not used on that occasion after a reassignment of Prosecution Counsel upon the rescheduling of the witness's appearance, the Defence still took no action in the interim to withdraw it from its LoE.

The Prosecution next included the item on its Examination List for D30-4848 on 3 July 2024, to which the Defence objected. That objection was dismissed by the Chamber (see e-mail of 8 July 2024 at 09:11) noting significantly, *inter alia*, that the item was on the Defence's LoE. Still, the Defence failed to withdraw it. The item was appropriately used with the witness during his cross-examination. Notably, it was only presented to the Witness after he volunteered two phone numbers attributed to him in the contact list in question (see T-298-Conf-Eng ET, p. 31, l. 18-p. 32, l. 2). Contrary to the Defence's assertion, all three numbers listed under entry 1481 were confirmed by D30-4848 as having been used by him, including the [REDACTED] number that he admitted was his when confronted with a Facebook communication he had [REDACTED] in which he provided it as his contact (see T-298-Conf-Eng ET, p. 35, l. 13-22). Reference to this portion of the testimony is notably missing from the Defence submissions below. In addition to these three numbers, when asked about entry 1482, D30-4848 also confirmed having used [REDACTED] which corroborates the attribution on a *prima facie* basis (see T-298-Conf-Eng ET, p. 34, l. 19-p. 35, l. 3).

The Defence's compounded failures to object to, or withdraw the item, particularly given its active use in the proceedings between April and July 2024, undermines any claimed inadvertence in maintaining the item on its LoE, or assertion that its introduction in whole would be "irreparable". Certainly, the latter would have been absolutely clear to the Defence from the moment the item was first included on the Examination Materials for D30-4720 in April 2024.

The item's relevance to the case is clear, and extends *prima facie* beyond the limited grounds on which it was tendered through witnesses D30-4720 (pending a decision on its formal submission – see e-mail of 25 April 2024 at 15:48) and D30-4848. Notably, its relevance goes beyond the entries shown to these witnesses, as it contains attributions of phone numbers for, *inter alia*, Bernard MOKOM, Claude NGAIKOSSET, Charles NGREMANGOU, Vincent WAPOUNABA, NGAISSONA (an additional Moroccan number), Prince LAKOUETENE, Lin BANKOUKEPA, Hyppolite LAMKAGUE, and Didier OUEBIO, among others. In addition, aside from the testimonies of D30-4720 and D30-4848, the materiality and probative value of the contacts list is further demonstrated by other independently corroborated attributions it

provides, such as the attribution of [REDACTED] to NGAISSONA via Western Union (see CAR-OTP-2117-0389) and the Notebook of Levi YAKETE (see CAR-OTP-2129-0219 at 0323), among others.

It is well established that a Chamber is not bound by the grounds on which a relevant document is tendered. Rather, it remains free to assess its relevance and probative value as a whole. This principle is moreover captured in the Court's statute. Article 69(3), authorises a Chamber to request the submission of all evidence necessary for the determination of the truth. Nothing precludes the Chamber's recognition of the formal submission of CAR-OTP-00000637 in its entirety, and to appropriately and fully consider it in discharging this independent statutory obligation.

As previously stated (see e-mail of 1 May 2024 at 16:45), the provenance of CAR-OTP-00000637 – being the product of a search carried out by State authorities under the auspices of the Court itself — is a matter of which the Chamber may reasonably take judicial notice and, in any event, is a question to be weighed when the Chamber considers the standard evidentiary criteria in its holistic assessment of the evidence in this case. As a document procured under the Court's auspices, there could be no greater paradox than for the same Court to simply disregard its obvious probative value in this case.

Finally, as concerns the attribution of the phone to [REDACTED] the Prosecution clarifies that this inference reasonably arises from messages contained therein starting with [REDACTED] and [REDACTED], suggesting that the user of the phone was [REDACTED] E (see CAR-OTP-00000650, CAR-OTP-00000655, CAR-OTP-00000658, CAR-OTP-00000662, CAR-OTP-00000665, and CAR-OTP-00000667). In addition, as referenced in the Registry's Observations, the residence of MOKOM that had been searched and from which the material in question was seized, "had been placed at his disposal by M [REDACTED]" (see ICC-01/14-01/18-1837-Conf, footnote 4).

For the above reasons, the Chamber should reject the Defence objection and recognise the formal submission of CAR-OTP-00000637 in its entirety.

#### **CAR-OTP-00036624 and CAR-OTP-00036627**

The purpose of the CSTs is to assist the Chamber in the course of its deliberations, allowing it to easily retrieve the relevant phone data evidence. The underlying CDRs, which are the actual evidence (and on which the reliability and authenticity of the CSTs is based), are referenced in the CSTs.

Discrepancies between the CSTs and their underlying CDRs as highlighted by the Defence, are explained below and do not diminish the overall reliability of the CSTs.

##### **(i) Regarding the start time of the CSTs versus their underlying CDRs and the conversion of seconds to minutes**

The mismatch between the CDR and CST times is of exactly one hour. This is caused by the fact that the CSTs are aligned to CAR Time (which does not have Summer time), while certain CDRs have been extracted in France, or in the Netherlands, and thus have been aligned with CET time (which implements summer time). This means that six months a year there will be discrepancies between the records, which reinforces their accuracy. Concerning the transformation of seconds into minutes, it has been performed by the system automatically. The methodology is universal: one minute is composed of 60 seconds. 586 seconds is, indeed, transposed correctly into 9:46 minutes;

##### **(i) Regarding the SMS message at row 1 of the CST**

Row 1 of the CST contains the names of the columns. Assuming the Defence refers to "row 2", the correct row is 3981 (and not 3982), which has the correct information related to the reported SMS;

##### **(i) Regarding row 47 of the CST and row 19932 of the underlying CDR**

Please note that the correct row is not 19932, but 19931.

In relation specifically to the CST at CAR-OTP-00036627 for phone number [REDACTED] the Prosecution notes that, contrary to the Defence assertion, this document was displayed to the witness during his cross-examination (see T-298-Conf-Eng ET, p. 49, l. 7, where D30-4848 comments on CAR-OTP-00036627 being displayed on his screen with "*I saw that it's up on the screen*"). Moreover, when asked to comment on the contacts between the phone number in question and the numbers attributed to Maxime MOKOM and YEKATOM, far from denying such contacts, the Witness said "*I might remember, but not exactly, what was said. Perhaps it might have had to do with this*"

*awareness-raising campaign I just mentioned. Maybe that's why I called them. But, in actual fact, I have no idea"* (see T-298-Conf-Eng ET, p. 49, l. 7-10). D30-4848 further confirmed that he knew both, Maxime MOKOM and YEKATOM (see T-298-Conf-Eng ET, p. 49, l. 18-p. 50, l. 4).

*Finally*, any issues related to the probative weight of the CSTs will be assessed by the Chamber during the judgment deliberations and do not form an obstacle to their formal submission.

**CAR-OTP-2018-0611, CAR-OTP-2112-1420, CAR-OTP-2112-1479, and CAR-OTP-2125-0458**

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 these items should be denied because they were not referenced during the Prosecution's cross-examination is without basis.

Notably, 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" (see T-287-Conf-Eng ET, p. 26, l. 17-p. 27, l. 8).

Thus, 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.

Kind regards,

On behalf of the OTP Trial Team

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**From:** [REDACTED]  
**Sent:** Friday, July 12, 2024 2:30 PM  
**To:** OTP CAR IIB [REDACTED] Trial Chamber V Communications [REDACTED]  
**Cc:** D30 Ngaïssona Defence Team [REDACTED]; D29 Yekatom 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: D30 - Ngaïssona Defence Submission of Evidence following D30-P-4848 testimony

[ICC] RESTRICTED

[ICC] RESTRICTED

Dear Trial Chamber V,  
 Dear parties and participants,

The Ngaïssona Defence opposes the submission of the following items as sought by the Prosecution following D30-P-4848 testimony.

**# CAR-OTP-00000637**

The Defence for Mr Ngaïssona opposes the submission of item #1 CAR-OTP-00000637 given the extensive nature and scope of the document compared to its use in court and because the submission of this document would cause irreparable damage to the Defence. In addition, while

entitled to test evidence during the Defence case, the Prosecution is not entitled to mislead. The Prosecution is using the Defence case to remedy shortcomings in their gathering of evidence and trying to bring forth new allegations through the backdoor, i.e. by presenting to P-4848 their unverified and unsupported claim that this phone belongs to [REDACTED], with the aim of influencing not only the witness but also the Chamber.

Document CAR-OTP-00000637 is an Excel spreadsheet generated by the Prosecution from a phone seized by the Chadian authorities during a search and seizure operation at Mr Mokom's residence. The item is a list of phone contacts which comprises 4265 entries, some of which containing six different phone numbers. It was used by the Prosecution during D30-P-4848 examination to put to the witness three phone numbers. The witness attested that [REDACTED] are his phone numbers but did not remember whether [REDACTED] phone number was indeed his phone number when he was in [REDACTED] (T-298, p 34, lines 6-8).

**1. a. Submission via a witness is not suitable in light of the nature and scope of the item**

*First*, the Chamber established a solid jurisprudence regarding submission of lengthy items i.e. that for those items submission via bar table motion is more appropriate than through a witness in light of the nature and scope of the items compared to the extend 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). Item CAR-OTP-00000637 is an excel spreadsheet that contains around 4265 entries containing in turn up to six different phone numbers each. The item was not presented to the witness in its entirety and only one entry and three phone numbers were discussed with the witness. As such the volume of the document far exceeds the scope of the Prosecution's use of it.

*Second*, the witness simply mentioned whether the numbers put to him were indeed his. The transcript is self-evident and the submission of the item is of no additional value to contextualise the questions and answers of the witness compared to the prejudice it would cause to the Defence (see TCV email dated 10/06/2024 at 14:29 : "Taking into account the evidence elicited from the witness in court, as well as the intended use of items CAR-OTP-2074-3122 and CAR-OTP-2008-0841 by the Prosecution, the Chamber does not consider them necessary to assess the witness's answers and credibility or otherwise understand her testimony").

*Third*, the witness commented on the phone numbers put to him and not on the document itself. The witness is not an expert and adds no value with respect to the authenticity and reliability of the document and cannot remedy the unreliability of this document. The Defence incorporates by reference its submission on the lingering uncertainty surrounding the chain of custody and the handling of the item and the phone it was extracted from (see ICC-01/14-01/18-1748-Conf and ICC-01/14-01/18-1807-Conf).

**2. b. Submission of this item would cause undue prejudice to the Defence**

*First*, the Chamber [REDACTED]  
[REDACTED]  
[REDACTED] (see ICC-01/14-01/18-1908-Conf, p. 7, para. 15) ('7 June 2023 Decision'). The Prosecution should not be allowed to remedy the Decision through Defence witness examination and because the Defence mistakenly added this item on their own List of Evidence (see email from the Defence, 11 July 2024 at 15:33). The Chamber recalled that [REDACTED]  
[REDACTED]  
[REDACTED] or

[REDACTED] (see ICC-01/14-01/18-1908-Conf, para. 14 and ICC-01/14-01/18-1837-Conf, para. 19 mentioning decision ICC-01/14-01/22-64-US-Exp, paras 5, 7). The Chamber further recalled [REDACTED]

[REDACTED] (ICC-01/14-01/18-1908-Conf, p. 7, para. 15).

Not only the Prosecution did not comply with the Pre-Trial Chamber's decision [REDACTED] or [REDACTED] it seeks to submit the item through the backdoor, via a witness in the present case. The Prosecution submits that such position does no longer hold given the presence of this item on the Defence List of Evidence. The Defence regrets the addition of this item on its List of Evidence but clarifies that it does not intend to rely on this item and notified its withdrawal from its List of Evidence. Nothing in the use made by the Prosecution of this item justifies a departure from the 7 June 2023 Decision.

*Second*, it appears that the Prosecution wishes to submit this item in order to supplement their phone numbers attributions. The Defence raised in the past issues of trial by ambush regarding the Prosecution case with regards CDR evidence, which apply in the present case. Admitting this item in the case record will not only supplement CDR attribution but also create thousands of unverified new attributions and to which the Defence will have no chance to respond. In addition, during the entirety of the litigation regarding the addition of this item to the Prosecution's list of evidence as referred above, the Prosecution not once attributed this phone to [REDACTED]. The Prosecution put forth this attribution in Annexes to filings such as in [REDACTED]

[REDACTED] (see ICC-01/14-01/18-2062-Conf-AnxB, pp 24 and 29). Or in the Annex to their Request to [REDACTED]

[REDACTED] (ICC-01/14-01/18-2543-Conf-Anx) filed on 24 June 2024 (see pages 22 and 24). The Prosecution does not explain where the attribution to [REDACTED] comes from, it simply states it as a fact and hides it in their argumentative annexes among hundred of other entries. Finally, in order to back up their attribution of this phone to [REDACTED], the Prosecution presented the item as [REDACTED] when questioning witness P-4848 (see T-298, at page 33, lines 4-5).

The Prosecution's description of this item is misleading and prejudicial to the Defence and to the truth-seeking mission of the Chamber. As recalled by Trial Chamber VII, "the Prosecution closing its evidence presentation does have some bearing as to what it is entitled to submit following its examination of defence witnesses. [...] [I]tems tendered by the Prosecution in this context must, in principle, have a genuine and not pretextual connection to its examination." (ICC-01/05-01/13-1786-Anx4-Red dated 21 March 2016 (page 6)).

For all the above reasons, the Defence objects to the submission of item CAR-OTP-0000637.

#### **# CAR-OTP-00036624 and # CAR-OTP-00036627**

At the outset the Defence recalls its position regarding CSTs. CSTs are not evidence and the methodology which the Prosecution followed to create the CSTs was not shared with the Parties and the Chamber (ICC-01/14-01/18-1409-Conf, para. 10-13). Therefore the authenticity and reliability of items CAR-OTP-00036624 and CAR-OTP-00036627 has not been established.

In addition, item CAR-OTP-00036624 displays a collection of CDRs related to phone numbers [REDACTED] and extracted from underlying CDRs. The reliability of this item is further impeded by inconsistencies between rows contained in the CSTs and their counterparts contained in the CDRs. For example, the start time in the CSTs does not match the underlying CDR as evidenced when looking at row 22 of the CST and row 1466 of the underlying CDRs. In addition, the



Prosecution converted seconds from the underlying CDRs to minutes, and therefore manipulated the content without providing information on the methodology used. Another example can be found at row 1 of the CST, which features an SMS message sent at 14:36:14 on 03/03/2013 while the underlying CDR at row 3982 displays the time 14:36:26 without mentioning whether it is the sending or receiving time. In any event, the information does not match. The Defence has no further information to verify where does the data come from, but it is apparent that it does not from the CDR. *Finally*, row 47 of the CST and row 19932 of the underlying CDR do not match at all. Where the CST displays a phone call between number [REDACTED] and number [REDACTED], the underlying CDR features a text message sent by [REDACTED] to a [REDACTED] which is not the one mentioned in the CST. These are only few examples but the CSTs are filled with those errors.

Through this brief analysis and former submissions (for example Defence email dated 25/06/2024 at 15:24, or Defence email dated 22/05/2024 at 17:45 where it conducted a similar exercise) it has been clearly established that CSTs created by the Prosecution contain errors and risk flooding the case records with inaccurate information.

In addition, item CAR-OTP-00036627 is a CST combining CDRs regarding phone number [REDACTED] which the Prosecution unsuccessfully tried to attribute to P-4848. The witness answered that he does recall ever using the number (T-092, p. 37, lines 16-18). Consequently, the Defence objected to the Prosecution using the CST associated to this phone number and the Chamber sustained the objection (T-298, pp 47-48, lines 23-2). Eventually, this CST was not shown to the witness nor was it used during the hearing and as such cannot be submitted through witness P-4848.

#### **# CAR-OTP-2018-0611 # CAR-OTP-2112-1420 # CAR-OTP-2112-1479 and # CAR-OTP-2125-0458**

The Defence opposes the submission of four underlying CDRs to Prosecution CST CAR-OTP-00036624, namely: CAR-OTP-2018-0611, CAR-OTP-2112-1420, CAR-OTP-2112-1479 and CAR-OTP-2125-0458.

The Defence recalls the explicit wording of the Chamber's Initial Directions on the Conduct of the Proceedings (the "Initial Directions") which 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 strictly observed 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) .

*First*, none of these four documents were shown to the witness, or even mentioned for the record. *Second*, the Defence recalls its above submission on lengthy documents and the appropriateness of

their submission through witnesses. As such, the submission of these four CDRs would unduly prejudice the Defence by expanding the case record with thousands of contacts which relevance to the case remains unknown. *Third*, the answers of the witness are reflected by the transcript without having to refer to the underlying CDRs and as such their submission is not necessary (see TCV email dated 12/07/2024, at 11:21). *Finally*, the CDRs which were received from Orange and Telecel were not authenticated and are therefore not reliable. The Defence incorporates by reference its submissions contained in its Response (ICC-01/14-01/18-1409-Conf, para 15-18).

Kind regards,

On behalf of the Ngaïssona Defence

De : OTP CAR IIB

Envoyé : mardi 9 juillet 2024 12:40

À : Trial Chamber V Communications

Cc : D30 Ngaïssona Defence Team; D29 Yekatom Defence Team

V44 LRV Team OPCV V44 LRV Team

V45 LRV Team

; Associate Legal Officer-Court Officer

OTP CAR IIB

Objet : RE: D30 - Ngaïssona Defence Submission of Evidence following D30-P-4848 testimony

[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 D30-4848. 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 D30-4848 during the course of his cross-examination:

| Count | Doc ID            | WIT - Used Through | Type                  | EVD - Date Used | Participant | Request Submission                                            |
|-------|-------------------|--------------------|-----------------------|-----------------|-------------|---------------------------------------------------------------|
| 1     | CAR-OTP-00000637  | D30-4848           | List / Table          | 08/07/2024      | OTP         | Yes                                                           |
| 2     | CAR-OTP-00036596  | D30-4848           | Mobile communications | 08/07/2024      | OTP         | Yes                                                           |
| 3     | CAR-OTP-00036624  | D30-4848           | Call Sequence Table   | 08/07/2024      | OTP         | Yes                                                           |
| 4     | CAR-OTP-00036627  | D30-4848           | Call Sequence Table   | 08/07/2024      | OTP         | Yes                                                           |
| 5     | CAR-OTP-2018-0611 | D30-4848           | Call Data Record      | 08/07/2024      | OTP         | Yes (CDR underlying the calls in the CST at CAR-OTP-00036624) |

|   |                   |          |                  |            |     |                                                               |
|---|-------------------|----------|------------------|------------|-----|---------------------------------------------------------------|
| 6 | CAR-OTP-2112-1420 | D30-4848 | Call Data Record | 08/07/2024 | OTP | Yes (CDR underlying the calls in the CST at CAR-OTP-00036624) |
| 7 | CAR-OTP-2112-1479 | D30-4848 | Call Data Record | 08/07/2024 | OTP | Yes (CDR underlying the calls in the CST at CAR-OTP-00036624) |
| 8 | CAR-OTP-2125-0458 | D30-4848 | Call Data Record | 08/07/2024 | OTP | Yes (CDR underlying the calls in the CST at CAR-OTP-00036624) |

(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-00036589  | D30-4848           | Investigation Report | 05/07/2024      | D30         | Yes                |
| 2     | CAR-OTP-2135-4203 | D30-4848           | Investigation Report | 05/07/2024      | D30         | Yes                |

Kind regards,

On behalf of the OTP Trial Team

**From:** [REDACTED]

**Sent:** Monday, July 8, 2024 4:23 PM

**To:** Trial Chamber V Communications [REDACTED] >

**Cc:** D30 Ngaissona Defence Team [REDACTED] D29 Yekatom 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:** D30 - Ngaissona Defence Submission of Evidence following D30-P-4848 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-4848.

| Count | Document ID       | Document Date | Document Type                                      | Title                                                        |
|-------|-------------------|---------------|----------------------------------------------------|--------------------------------------------------------------|
| 1     | CAR-D30-0003-0029 | 24/04/2013    | Legal, Administration and Court document – non ICC | Décret du 24 AVR 2013                                        |
| 2     | CAR-D30-0006-0328 | 17/05/2013    | Media / press article                              | RCA: la «nouvelle vie» de François Bozizé, exilé au Cameroun |
| 3     | CAR-D30-0007-0823 | 04/04/2006    | Legislation / government instruction / guidelines  | [REDACTED]                                                   |
| 4     | CAR-OTP-2079-0993 | 01/08/2013    | Report                                             | Annex 4 / FICHE SPECIALE No. 063/MDNRA/EMA/DB2 EMA/SEC       |
| 5     | CAR-OTP-2092-1635 | 30/06/2014    | Correspondence - Letter                            | [REDACTED]                                                   |
| 6     | CAR-OTP-2136-1350 |               | List / table                                       | LISTE DES MEDiateURS RETENUS POUR LE FORUM DE BANGUI         |

Kind regards,

[REDACTED]

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