

ANNEX 28

PUBLIC

From: Trial Chamber V Communications
Sent: 23 August 2021 08:45
To: [REDACTED] Trial Chamber V Communications
Cc: D30 Ngaissona Defence Team; D29 Yekatom Defence Team; OTP CAR IIB Case Management; OTP CAR IIB Managers; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; Chamber Decisions Communication
Subject: RE: Metadata of audio CAR-OTP-2000-0603

Dear Counsel,

The Chamber takes note of the below email from the Ngaissona Defence concerning ‘the correctness of the “main date” metadata of audio CAR-OTP-2000-0603’.

Noting that the issues raised by the Ngaissona Defence relate to the substance of an item in the case record, the Chamber will consider this matter, as necessary and appropriate, in the context of its deliberations pursuant to Article 74 of the Rome Statute.

In this regard, the Chamber orders that any future challenges to the metadata of items in the case record be presented in the participants’ final submissions.

Kind regards,
 TCV

From: Giudici, Chiara [REDACTED]
Sent: 29 July 2021 09:37
To: Trial Chamber V Communications [REDACTED]
Cc: D30 Ngaissona Defence Team [REDACTED]; D29 Yekatom Defence Team [REDACTED] OTP CAR IIB Case Management [REDACTED] [REDACTED]; OTP CAR IIB Managers [REDACTED] V44 LRV Team [REDACTED] V44 LRV Team OPCV [REDACTED]; V45 LRV Team [REDACTED]
Subject: Metadata of audio CAR-OTP-2000-0603

Dear Trial Chamber V,

During the hearing of 12 July 2021, the Prosecution played audio document CAR-OTP-2000-0603. The Prosecution stipulated that the audio was dated December 2013 (ICC-01/14-01/18-T-051-CONF-ENG ET, pp. 22-24), despite the eCourt metadata indicating the "main date" of 26 February 2014. In the Prosecution's submissions, the metadata indicated on eCourt had been attributed based on the date when the audio was posted on YouTube. However, withdrawn witness P-1951 had indicated that the telephone call recorded in the audio would have taken place earlier, either on 31 December 2013 or on 31 January 2014, and when Djotodia was still in power (hence, on 31 December) (Ibid, pp. 48-49). On 14 July 2021, the Prosecution issued a metadata update in which the “main date” of audio CAR-OTP-2000-0603, as well as its underlying transcript and translation, was changed from 26 February 2014 to 31 December 2013.

The Defence respectfully submits that the content of P-1951’s statement, unlike argued by the Prosecution, does not reflect the above-mentioned change in metadata. In particular, the Defence notes that while P-1951 initially stated that the conversation recorded in audio CAR-OTP-2000-0603 would have taken place either on 31 December 2013 or on 31 January 2014 (CAR-OTP-2092-0322-R01, at 0326), he later stated that he spoke to Bozizé twice, once on 31 December, and once later on (when he needed help for a meeting with Sangaris) and that it is their second call which was recorded. (CAR-OTP-2092-0369-R02, 0388-0389, see especially lines 670-694). Further, the Defence notes that witness P-0291, to whom the audio was played, categorically excluded that the call would have taken

place in 2013 (ICC-01/14-01/18-T-051 RT, p. 64). Similarly, P-2328, who was also made to listen the audio, stated that the call took place when the transitional government was already in place (CAR-OTP-2099-0165-R03, para 251).

In light of the above, the Defence respectfully submits that the metadata update issued by the Prosecution is not reflected in the Prosecution's evidence. The Defence already discussed these concerns with the Prosecution via email last week. However, the Prosecution "maintains the date change for the reasons indicated in the trial transcript p. 60, line 15 to p. 61, line 5 (T-051-CONF-ENG RT)" and submits that "the witness's recollection of the event indicated in the references [provided by the Defence] concern a second call which took place on the same day (effectively, a call back) (see CAR-OTP-2092-0369-R02, 0389 line 715 - 0390, line 730)".

The Defence respectfully submits that metadata should not be unilaterally manipulated, nor based on dubious witnesses' recollection. If the date of a document is not certain, the document should remain undated rather than being attributed a tentative date that fits the purposes of a party or participant. Given the Defence and the Prosecution's fundamentally different views on the matter, the Defence respectfully turns to the Chamber for a determination of the correctness of the "main date" metadata of audio CAR-OTP-2000-0603.

Respectfully yours,



On behalf of the Ngaissona Defence team

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