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TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public

With Confidential Annexes A to D

**Prosecution's submission of call data records and related evidence *via*
the "bar table"**

Source: Office of the Prosecutor

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) hereby seeks Trial Chamber V’s (“Chamber”) formal recognition of 686 items of evidence submitted from the bar table, in accordance with articles 64(9)(a), 69(3) and 69(4), rule 63(2) of the Rules of Procedure and Evidence (“Rules”), and the Initial Directions on the Conduct of Proceedings (“Initial Directions”).¹ These 686 items comprise Call Data Records (“CDR”) and other related evidence, consisting of cell site and attribution information (together, “Submitted Items”).

2. The Submitted Items are *prima facie* relevant to and probative of material issues at trial. They are also mutually corroborative of other evidence and bear sufficient indicia of reliability on which the Chamber may properly base its article 74 decision. Recognising their formal submission – at the outset – causes no prejudice. To the contrary, it would assist the Chamber’s determination of the truth and ensure an expeditious trial.

3. **Confidential Annex A** contains Call Sequence Tables (“CST”) presenting in an easily readable and accessible format the relevant call data relied upon in the Prosecution’s case as pleaded in its Trial Brief.² **Confidential Annex B** lists the original CDR underlying the CST, by individual Evidence Registration Number (“ERN”), as well as five items containing cell site tower information. **Confidential Annex C** contains an attribution table, listing the evidence relied upon to substantiate the attribution of each telephone number to an individual user. **Confidential Annex D** lists the remaining original CDR submitted in its totality, by ERN.

¹ ICC-01/14-01/18-631, para. 61.

² ICC-01/14-01/18-723-Red.

II. CONFIDENTIALITY

4. Pursuant to regulation 23*bis*(1) of the Regulations of the Court (“RoC”), Annexes A to D to this Request are classified as “Confidential” because they identify the telephone numbers of individuals, including Prosecution witnesses, which should not be made public.

III. SUBMISSIONS

5. The Prosecution seeks the formal recognition of the Submitted Items. Specifically, they comprise 644 individual items containing CDR and 42 items of related materials, excepting data obtained as a result of the concurrent and ongoing Seleka investigation.

6. As required by the Initial Directions,³ the Prosecution has inquired with the Defence teams as to their respective positions on the items to be tendered for submission. The YEKATOM Defence has provided its position on the individual items. The NGAISSONA Defence has indicated that, at present, it opposes the submission of all items.

7. CDR are generated and maintained by communications service providers (“CSP”) regarding mobile and fixed telephone communications. They are made up of different telecommunications metadata, such as the type of communication (voice call or short message service (“SMS”)); the telephone numbers in communication; the time, date, and duration of the communication; and the direction of the communication (outgoing or incoming). They may also indicate the location of the cell site to which one or more of the telephone numbers connected during the communication, or contain subscriber information.

³ ICC-01/14-01/18-631, para. 62.

8. To assist the Chamber to provide a “full and reasoned statement of [its] findings on the evidence and conclusions” under article 74(5),⁴ and in particular to assist its understanding of this voluminous body of CDR material throughout the course of the trial, the standard evidentiary criteria (namely the relevance, probative value and potential prejudice)⁵ is addressed in turn below.

A. The Submitted Items are relevant to the issues at trial

i) CDR relevant to propositions in the Prosecution’s case

9. Specific items of the submitted CDR are relevant to issues at trial. They show i) contacts at specific points in time between among others, Anti-Balaka leaders and members; and ii) their approximate location (call location data or “CLD”), including at or around crime scenes or other significant areas. The evidentiary propositions that the CDR support are set out principally in the Trial Brief.⁶ However, they may also respond to factual issues arising during the course of the trial.

10. Each evidentiary proposition is listed in turn in **Confidential Annex A**. For each, the major communication trends shown by the data are briefly elaborated, and a CST containing all relevant communications is provided. Each communication is cross-referenced to the ERN(/s) of the underlying CDR, identifying the line number. For further details of how the CST were assembled, see paragraphs 16 to 20 below.

11. All underlying CDR referenced in the CST (39 in total) are listed by ERN in **Confidential Annex B**, along with information related to the item’s relevance and probative value, pursuant to rule 64(1), and other information required by the Initial Directions.⁷ Finally, this annex also lists five items of related material: evidence that

⁴ ICC-02/04-01/15-1762-Red, paras. 246-247; ICC-01/05-01/13-1989-Red, para. 193.

⁵ ICC-01/14-01/18-631, para. 53. *See also* ICC-01/05-01/13-1989-Red, para. 193.

⁶ *See* ICC-01/14-01/18-723-Red, paras. 83 (fn 194); 87 (fn 206); 90 (fn 214); 113 (fn 269); 127 (fn 305); (fn 1054); 413 (fn 1059); 431 (fn 1102); 434 (fn 1105, 1108); 435 (fn 1110); 439 (fn 1120, 1122).

⁷ *See* ICC-01/14-01/18-631, para. 62.

explains the cell site data obtained in the CDR. The YEKATOM Defence's position on each individual item is also included.

ii) Evidence of attribution

12. The Prosecution also submits related documentary evidence upon which it relies to attribute relevant telephone numbers to specific users. **Confidential Annex C, Part I**, lists in order i) the asserted users; ii) the attributed telephone number/s; iii) the ERN of the item/s of evidence supporting the attribution; iv) a brief description, and – where necessary – an analysis of the item of evidence; and v) the submission status of the item of evidence (non-documentary, already submitted, or sought to be submitted in this bar table). In **Part II** of the annex, all items sought to be submitted by way of the bar table are listed by ERN, along with the specific relevance of each (i.e. what attribution(s) it shows), and other information required by the Chamber's Initial Directions.⁸ Again, the YEKATOM Defence's position on each individual item is also included.

iii) Remaining CDR

13. In addition to the CDR listed in Confidential Annex B, the Prosecution seeks formal recognition of 605 items of remaining CDR. These items of CDR are not relied upon specifically to prove allegations set out in the Prosecution's Trial Brief, but are relied upon as responsive to issues arising from documentary evidence and testimony presented at trial, as well as for completeness. They are listed by ERN in **Confidential Annex D**, along with the information required by the Chamber's Initial Directions.⁹ Once more, the YEKATOM Defence's position on each individual item is also included.

⁸ See ICC-01/14-01/18-631, para. 62.

⁹ See ICC-01/14-01/18-631, para. 62.

14. The Chamber, Parties, and Participants would benefit from the availability of the CDR collection in its entirety over the course of the proceedings. The collection is spread across a total of 644 individual ERNs, is internally corroborative, consistent, and contains a wealth of data highly relevant to the trial. The formal recognition of the submission of these further 605 items of CDR *now* would put the entire CDR collection at the disposal of the Chamber, Parties, and Participants. It would also facilitate the examination of witnesses, obviating the need to submit individual items used in each instance.¹⁰ Moreover, it would avoid multiple piecemeal motions as and when further evidence bearing on the weight of specific communications emerges during the course of the trial — for instance, the communication records reflecting multiple contacts between P-0965 and P-1521 (*contra* the latter’s claim not to know P-0965)¹¹; or communication records showing hundreds of contacts between Maxime MOKOM and Prince LAKOUE TENE (who was directly involved in the requests for money, weapons, and equipment for Anti-Balaka elements transmitted to NGAISSONA in October 2013) from at least August 2013 through January 2014.¹² At this stage, there is no impediment to the submission and formal recognition of the collection as a whole, given that the ultimate determinations on the “standard evidentiary criteria” and the weight of the evidence are in any case, deferred until the Chamber’s deliberation on the article 74 decision.¹³

¹⁰ In conformity with the Chamber’s approach to the Facebook collection, whereby voluminous documents only used limitedly with a given witness during testimony should be more appropriately submitted through a bar table application: *see* email decision of 2 July 2021 at 14:07 in relation to submitted materials for P-2841; email decision of 19 July 2021 at 11:37 in relation to submitted materials for P-2027; email decision of 27 August 2021 at 08:10 in relation to submitted materials for P-2673; email decision of 29 September 2021 at 15:05 in relation to submitted materials for P-0801; email decision of 1 October 2021 at 12:28 in relation to submitted materials for P-2328.

¹¹ *See* T-081-CONF-ENG, p. 58, l. 23-p. 59, l. 2.

¹² *Cf* P-2841: T-029-CONF-ENG, p. 29, l. 1-13; P-2843: T-073-CONF-ENG, p. 79, l. 15-21.

¹³ ICC-01/05-01/13-1989-Red, para. 190, 192.

B. The Submitted Items are reliable and authentic

15. The vast majority of CDR submitted in Confidential Annexes B and D come from four CSP of mobile communications in the Central African Republic: Orange, Telecel, Moov and Azur. To a lesser extent, the Prosecution has also collected CDR produced by CSP in France and Cameroon. In all instances, CDR were provided to the Prosecution in response to requests for assistance (“RFA”) directed to national authorities.¹⁴

16. The CDR were provided by the CSP in various file formats, namely as text documents (denoted by file “.txt”), Comma Separated Values (denoted by file “.csv”) or Excel (denoted by file “.xls”), and in various layouts.

17. From these underlying original files, an analytical database (Ockham Mercure 4) was used to standardise and de-duplicate the communication records and generate CSTs.

18. CSTs further addressed the limited instances of discrepancies in the timestamps or call durations regarding different records of the *same* communications as follows:

¹⁴ The Prosecution has disclosed to the Defence all such RFA: CDR CAR-OTP-2107-8877; CAR-OTP-2107-8884; CAR-OTP-2107-8891; CAR-OTP-2107-8896; CAR-OTP-2107-8929; CAR-OTP-2107-8935; CAR-OTP-2107-8941; CAR-OTP-2107-8956; CAR-OTP-2107-8961; CAR-OTP-2107-8965; CAR-OTP-2107-8979; CAR-OTP-2107-8984; CAR-OTP-2107-8989; CAR-OTP-2107-8994; CAR-OTP-2107-9009; CAR-OTP-2107-9015; CAR-OTP-2107-9031; CAR-OTP-2107-9037; CAR-OTP-2107-9052; CAR-OTP-2107-9058; CAR-OTP-2107-9087; CAR-OTP-2107-9092; CAR-OTP-2107-9098; CAR-OTP-2107-9103; CAR-OTP-2107-9107; CAR-OTP-2107-9113; CAR-OTP-2107-9119; CAR-OTP-2107-9126; CAR-OTP-2107-9132; CAR-OTP-2107-9147; CAR-OTP-2107-9153; CAR-OTP-2107-9159; CAR-OTP-2107-9165; CAR-OTP-2107-9176; CAR-OTP-2107-9205; CAR-OTP-2107-9212; CAR-OTP-2107-9220; CAR-OTP-2107-9235; CAR-OTP-2117-0098; CAR-OTP-2117-0109; CAR-OTP-2117-0116; CAR-OTP-2117-0123; CAR-OTP-2117-0129; CAR-OTP-2117-0135; CAR-OTP-2117-0142; CAR-OTP-2117-0148; CAR-OTP-2117-0168; CAR-OTP-2117-0186; CAR-OTP-2117-0195; CAR-OTP-2117-0201; CAR-OTP-2117-0211; CAR-OTP-2117-0220; CAR-OTP-2117-0227; CAR-OTP-2117-0234; CAR-OTP-2122-9748; CAR-OTP-2122-9755; CAR-OTP-2122-9761; CAR-OTP-2122-9769; CAR-OTP-2127-0792; CAR-OTP-2127-0802; CAR-OTP-2127-0809; CAR-OTP-2127-0816; CAR-OTP-2127-0823; CAR-OTP-2127-0830; CAR-OTP-2127-0837; CAR-OTP-2127-0844; CAR-OTP-2127-0877; CAR-OTP-2127-0883; CAR-OTP-2127-0888; CAR-OTP-2127-0915; CAR-OTP-2127-0926; CAR-OTP-2127-0933; CAR-OTP-2127-0940; CAR-OTP-2127-0946; CAR-OTP-2127-0952; CAR-OTP-2127-0959; CAR-OTP-2127-1006; CAR-OTP-2127-1136; CAR-OTP-2127-1150; CAR-OTP-2127-1157; CAR-OTP-2127-1178; CAR-OTP-2127-1192; CAR-OTP-2127-1197; CAR-OTP-2127-1203; CAR-OTP-2127-1208; CAR-OTP-2127-1213; CAR-OTP-2127-1218; CAR-OTP-2127-1233; CAR-OTP-2127-1237. *But see* ICC-01/05-01/13-2275-Red, para. 641.

- a. where there was a discrepancy in the timestamps: the earlier timestamp was used in the CST; and
- b. where there was a discrepancy in the call duration: the value for the outgoing call was used in the CST (and, where the discrepancy was between two records of the outgoing call, the lower value was used).

19. In case of doubt as to whether two records represented distinct communications or duplicates, they were assessed as representing a single record of communication, in order to prevent an over-estimation of the number of contacts between the individuals in question. Where any further explanation is necessary, this is given by way of footnote.

20. For SMSs, discrepancies in timestamps as between the sender and the receiver are not unusual, varying from a few seconds to up to 24 or even 72 hours, depending on the corporate policy of the CSP.¹⁵ For this reason, the timestamp for the outgoing SMS record is used in the CST. In some cases, it was observed that only the outgoing SMS record was available, and the incoming record absent. Such communications were not included in the CST. Where only the incoming record was available, this was nevertheless included in the CST, as was the corresponding timestamp.

21. The CDR are sufficiently reliable and authentic. The collection as a whole – provided by multiple CSPs and for multiple individual target numbers – is self-authenticating. The compilation and maintenance of accurate and complete records is undertaken by CSP in the regular course of business and in accordance with domestic laws. This alone imbues them with sufficient indicia of reliability. As witness P-2973, a CSP employee explained:

¹⁵ See P-2687 : CAR-OTP-2134-0124, at 0126, para. 20; P-2973: CAR-OTP-2122-9874, at 9876, para. 19.

“Les CDR sont utilisés pour établir les factures de nos clients et générer ainsi les revenus pour l’entreprise. De plus, les CDR sont utilisés pour fournir les données d’appels dans le cas de réquisitions et dans le cas où le client souhaite comprendre les détails de sa facture.”¹⁶

22. In addition, the telephone number attributions contained in Confidential Annex C are supported by reliable evidence from a breadth of sources. These comprise, *inter alia*, witness statements and testimony, extracted contact list data from electronic devices, email and social media communications, subscriber information, and documents produced by the Anti-Balaka National Coordination.

C. There is no prejudicial effect

23. The probative value of the Submitted Items outweighs any prejudicial effect for the following reasons: (i) the items are highly relevant to the confirmed charges; (ii) the items are reliable as their collection and transmission was authorised by national authorities in accordance with the Statute;¹⁷ (iii) they will assist the Chamber in the determination of the truth and ensure an expeditious trial; and (iv) the Defence has had sufficient notice of their content.

¹⁶ P-2973: CAR-OTP-2122-9874, at 9876, para. 16.

¹⁷ See ICC-01/05-01/13-2275-Red, paras. 290-298, 343-348, with reference to article 69(8) and Part 9 of the Statute.

IV. CONCLUSION

24. For the foregoing reasons, the Prosecution requests that the Chamber recognise as formally submitted the 686 items of evidence listed in Confidential Annexes B, C (Part II), and D to this filing.



Karim A. A. Khan QC, Prosecutor

Dated this 1st day of March 2022
At The Hague, The Netherlands