

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No: *ICC-01/14-01/18*

Date: **1 November 2022**

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
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAÏSSONA***

Public with confidential Annex 1

Public Redacted Version of “Defence Response to the ‘Prosecution’s Application for Submission of Yahoo Email Evidence from the Bar Table Pursuant to Article 64(9)’ ICC-01/14-01/18-1450-Conf”, 15 August 2022, ICC-01/14-01/18-1546-Conf

Source: Defence of Patrice-Edouard Ngaïssona

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. INTRODUCTION

1. The Defence of Mr Patrice-Edouard Ngaïssona (“Defence”) hereby responds to the “Prosecution’s Application for Submission of Yahoo Email Evidence from the Bar Table Pursuant to Article 64(9)” (“Prosecution Request”).¹
2. Further, the Defence provides in confidential Annex 1 to the present response its item-by-item objections to (i) the 307 documents the Prosecution wishes to submit before the Chamber and, (ii) in so far as the Prosecution has presented in its Request (and related annex) arguments as to their relevance and probative value, the additional 82 items from the Yahoo email evidence collection already deemed submitted or for which a decision on submission was pending at the time of the Prosecution Request (together the “Yahoo Email Collection”). The Defence makes these objections pursuant to rule 64(1) of the Rules of Procedure and Evidence, which are intended to assist the Chamber in its holistic assessment of the evidence during the deliberation of the judgement.²

II. CONFIDENTIALITY

3. In accordance with regulation 23bis(1) of the Regulations of the Court, this response is filed confidentially as it responds to a document of the same classification and contains confidential information. A public redacted version will be filed in due course.

III. APPLICABLE LAW

4. The Defence incorporates by reference its previous submissions with respect to the applicable law regarding the adjudication of Bar Table motions.³

¹ ICC-01/14-01/18-1450 together with confidential Annex A.

² ICC-01/14-01/18-631, para. 62 (« Directions »). As per the Directions, the Defence already provided the Prosecution with its view as to the submission of the items sought to be submitted.

³ ICC-01/14-01/18-1278, paras 6-9.

IV. SUBMISSIONS

5. As developed in the first section below, the Defence contests the reliability and authenticity of the Yahoo Email Collection. In a second section, the relevance and probative value of the six Yahoo email accounts will be discussed in detail, especially how the Prosecution has insufficiently substantiated their probative value to the core issues in the instant case.

A. The Prosecution has insufficiently substantiated the authenticity and the reliability of the Yahoo Email Collection

6. The Prosecution submits that the Yahoo evidence is reliable and authentic.⁴ Based on the current information, the Defence does not dispute the regularity of the procedure used to obtain the Yahoo Email Collection, and therefore does not submit that the Yahoo email items have somehow been forged or intentionally altered by either the [REDACTED] or the Prosecution.
7. The key element in dispute is whether the process used by the Prosecution to disclose the Yahoo material preserved the integrity of the items, *i.e.* the content and completeness of the messages. This key element is completely absent from the Prosecution's submissions, despite their being numerous *prima facie* indicators that the processing of the raw data from Yahoo into the disclosed pdfs resulted in, at best anomalies, and at worst errors in the processing of the Yahoo Email content. The consequence is that the Yahoo email items no longer present sufficient indicia of authenticity, because their content has been altered.
8. In determining the probative value of an item of evidence, trial chambers take into account whether the item has been sufficiently authenticated. Trial chambers "need to be satisfied that the item is what it purports to be either because this is

⁴ Prosecution Request, para. 74.

evident on its face or because other admissible evidence demonstrates the item's provenance."⁵

9. While the Prosecution did provide evidence of the provenance of the Yahoo email items, it provided no information as to how it processed the digital information in the Prosecution Request. This missing information is critical to the assessment of the Yahoo items' authenticity since it is not evident on its face that the email items are what they purport to be. A simple inspection of the items in their disclosed form gives no indication that they are from Yahoo since the Yahoo logo does not appear. This is due to the way the items were processed,⁶ and it should have been addressed by the Prosecution in the Prosecution Request.
10. There are several indicators, which raise doubts as to whether the Prosecution processed the Yahoo email items correctly. These are: (1) the lack of consistency of the format and the general appearance of the Yahoo email items for the user accounts subject to the Prosecution Request, despite them all emanating from the same source; (2) in several examples, when one email thread is reproduced across several ERNs, the email exchanges in that thread are not identical across ERNs whereas they should be since they represent one email thread between two interlocutors; (3) different versions of the same email conversations have varying time stamps ; (4) the extraction and then disclosure of attachments is not consistent throughout the Yahoo item evidence collection.
11. The format and general appearance of the emails and attachments should be the same across the Yahoo Email Collection. However, this is not the case. For the account [REDACTED] and [REDACTED], the email messages include raw text in addition to processed email content whereas for the other accounts subject to the

⁵ ICC-01/05-01/08-2012-Red, para. 15.

⁶ CAR-OTP-2118-6255, at 6263; CAR-OTP-2080-2903 at 2908; CAR-OTP-2130-4492 at 4499; CAR-OTP-2088-1884. The Defence was able to locate four forensic reports related to the processing of the Yahoo email content. The only user account for which the Defence was not able to retrieve a report was for the account user [REDACTED].

Prosecution Request, this raw data does not appear. The presence of raw text is surprising since three of the disclosed forensic reports describing the processing of the Yahoo email content indicated that the raw text files would either make it “impossible” or “very difficult” to read and review the content.⁷ Specifically, in the forensic report provided for the accounts [REDACTED] and [REDACTED], the Prosecution stated that the EML file format was unsupported by Ringtail, and so the only versions that were processed and received an ERN were the “printable pdf versions of each message.”⁸ However, the report is not clear on how such printable pdf messages were created.

12. The Prosecution’s assertion that the EML file format was unsupported by Ringtail in the forensic report relating to [REDACTED] and [REDACTED], contradicts the forensic report relating to the emails spanning from September 2013 to December 2014, associated with the [REDACTED] account. Indeed, in this second forensic report, the Prosecution unequivocally stated that “in order to create PDF versions of the 171 tagged messages for registration, the respective EML files were imported into [REDACTED] and then exported into PDF”.⁹ It can be deduced that it was the EML files that were transformed into PDFs, and that were imported into Ringtail, since the same report states that “only versions of the messages that were processed, received an ERN and were uploaded into Ringtail, were the printable PDF versions of each message and respective attachments.”¹⁰

13. The email messages for email accounts [REDACTED], [REDACTED], [REDACTED] all appear to have the same or very similar format as the email

⁷ CAR-OTP-2118-6255, at 6263; CAR-OTP-2080-2903 at 2908; CAR-OTP-2130-4492, at 4499. The forensic report specifically related to the emails from the [REDACTED] and [REDACTED] accounts does not refer to the raw text being impossible to read. It merely states: “Due to the fact that the messages were provided in EML file format, not supported for upload into Ringtail, the only versions that were processed, received ERNs and were uploaded into Ringtail, were the printable PDF versions of each message, including the eventual attachments.” CAR-OTP-2088-1884 at 1889.

⁸ CAR-OTP-2088-1884, at 1889.

⁹ CAR-OTP-2118-6255, at 6269.

¹⁰ CAR-OTP-2118-6255, at 6268.

messages for the [REDACTED] spanning from September 2013 to December 2014. However, for reasons unexplained by the Prosecution, emails from the [REDACTED] account spanning from January 2013 to August 2013 have a different format and it appears that they were processed from the portable case prepared with [REDACTED].¹¹

14. Such differences in processing would not present an issue if the content of the messages appeared to be unaffected. However, there are several examples where two versions of the same email thread will contain different responses though only two interlocutors are involved, or email responses will be missing from certain threads¹², which suggests that an error occurred when the Prosecution processed the digital data into pdfs for disclosure onto Ringtail. The several examples provided by the Defence of these errors raise doubts as to the integrity of the Yahoo email processing done by the Prosecution. While not all the examples

¹¹ Compare the preview of the email message on [REDACTED] portable case contained in CAR-OTP-2130-4492 at 4500 with the email messages contained in items 355 to 370 in the Annex to the Prosecution Request.

¹² Compare item CAR-OTP-2130-3296 with CAR-OTP-2130-3297. Item CAR-OTP-2130-3297, which includes a response from August 2013, should also include the response from July 2013 contained in item CAR-OTP-2130-3296; Compare items CAR-OTP-2124-0550 and CAR-OTP-2124-0552, which the Prosecution seeks to submit, with document CAR-OTP-2124-1027, which the Prosecution does not seek to submit, even though all three documents are part of the same exchange. The exchange whose subject is [REDACTED] contained in CAR-OTP-2124-1027 includes an email message from 9 September 2013 at 16:20:39. This message should be included in the email exchange contained in CAR-OTP-2124-0550 since the last message dates from 12 September 2013 at 12:48. However, this message of 9 September 2013 is missing from this exchange. The last message in the version of the same email exchange contained in CAR-OTP-2124-0552 dates from 12 September 2013 at 13:32:49, and therefore should include the messages from 12 September 2013 at 12:48 and 9 September 2013 at 16:20:39 in order for the email thread to be complete. However, these two messages are missing from item CAR-OTP-2124-0552; Compare item CAR-OTP-2124-0870 with CAR-OTP-2124-0736, which are part of the same exchange. CAR-OTP-2124-0736 contains messages sent on 13 September 2013 and 17 September 2013. However, CAR-OTP-2124-0870 contains the 13 September 2013 message and then two messages sent on 24 September 2013; the 17 September 2013 message is missing from the thread, whereas it should appear in order for the document to be complete; Compare item CAR-OTP-2124-0929 with CAR-OTP-2124-0936, which are part of the same exchange. CAR-OTP-2124-0929 contains two messages sent on 3 November 2013, and a message from 7 November 2013. However, CAR-OTP-2124-0936 contains the two 3 November 2013 messages and then a message from 22 November 2013; the 7 November message is missing from the thread, whereas it should appear in order for the document to be complete. The Prosecution did not include message CAR-OTP-2124-0929 in its annex of items to submit, which gives the mistaken impression that CAR-OTP-2124-0936 is the complete exchange. There are other emails, which the Prosecution has not requested to submit, but which demonstrate the same incomplete threads thereby casting doubt on the reliability of the Prosecution's processing of the Yahoo email items. Compare CAR-OTP-2130-3522 with CAR-OTP-2130-3517 and CAR-OTP-2130-3564; Compare CAR-OTP-2130-3498 with CAR-OTP-2130-3487 and CAR-OTP-2130-3491. While these are all errors the Defence could identify, it cannot exclude the possibility that there are more.

given by the Defence are items which the Prosecution seeks to submit, they are items which were processed in the same manner as the items subject to the Prosecution Request and therefore do demonstrate the lack of reliability of the Prosecution's processing of the emails. Given the important number of examples the Defence was able to identify, it does not seem like these are isolated errors. Moreover, if the Prosecution never processed certain exchanges, then identifying certain errors will be impossible. Therefore, the Defence submits that the Chamber should find that the Yahoo Email Collection do not demonstrate sufficient indicia of reliability given the number of errors.

15. Further, indications of insufficient indicia of reliability are that the timestamps are not consistent for email threads containing the same exchange or contain timestamps that are incorrect. This issue is pervasive.¹³ The Prosecution does not provide any explanation, save for a reference in footnote 64 of the Prosecution Request, in which the Prosecution states that the discrepancy in one of the email exchanges is due to Mr Ngaïssona and [REDACTED] being located in different time zones. This argument does not pass muster for three reasons. First, according to the Prosecution's evidence, Mr Ngaïssona and [REDACTED] were located in the same time zone since Mr Ngaïssona was in Cameroon at the time and [REDACTED] was in the Central African Republic ("CAR").¹⁴ Second, the Prosecution's contention that the email duplicates a mere one-hour difference is incorrect, as certain duplicates contain a two-hour discrepancy, which is further unexplained.¹⁵ Moreover, the time stamp discrepancies within a single chain of

¹³ See for example CAR-OTP-2124-0788; CAR-OTP-2124-0789; CAR-OTP-2124-0823; CAR-OTP-2124-0842; CAR-OTP-2124-0844; CAR-OTP-2124-0890; CAR-OTP-2130-3373; CAR-OTP-2124-0891; CAR-OTP-2130-3376; CAR-OTP-2124-0892; CAR-OTP-2130-3379; CAR-OTP-2124-0894; CAR-OTP-2130-3375; CAR-OTP-2130-3282; CAR-OTP-2124-0978; CAR-OTP-2130-3389; CAR-OTP-2124-0895; CAR-OTP-2130-3374; CAR-OTP-2124-0896; CAR-OTP-2130-3381; CAR-OTP-2124-0899; CAR-OTP-2130-3383; CAR-OTP-2124-0900; CAR-OTP-2124-0901; CAR-OTP-2124-0903; CAR-OTP-2124-0886; CAR-OTP-2124-0838; CAR-OTP-2124-0840; CAR-OTP-2130-3504 and CAR-OTP-2130-3501.

¹⁴ [REDACTED]. According to the email items the Prosecution wants to submit, Mr Ngaïssona was in Cameroon. CAR-OTP-2124-0835; CAR-OTP-2124-0878; CAR-OTP-2124-0905.

¹⁵ Prosecution Request, footnote 64.

email and across duplicate versions of identical emails are internally incoherent.¹⁶ Third, a simple analysis of certain emails reveals that part of the issue results from the manner in which the time is displayed.¹⁷ The Defence noted at least three formats in which time is displayed in the email messages, namely 00h00, 00:00, and 00:00:00. The change in timestamp occurs when the display of the time changes. The three formats sometimes appear within a single email thread and leads to confusion as to when the items were received or sent.

16. These formatting issues affect the reliability of the evidence collection and raise serious doubts as to the authenticity of the exchanges. For example, in one of the versions of an email thread between Mr Ngaïssona and [REDACTED],¹⁸ [REDACTED] responds to an email at a time that is prior to Mr Ngaïssona sending him the email to which he responds. This cannot be an accurate reflection of the exchange. In this email exchange, Mr Ngaïssona allegedly requests [REDACTED] to send him [REDACTED] and [REDACTED] on 6 October at 17h58. [REDACTED] then responds on 6 October at 17h15, which is an impossibility. The last email in the thread is a response of Mr Ngaïssona to this email of 6 October 2013 at 17h15, and is dated with the timestamp 6 October at 16:23:47, which again

¹⁶ See [Annex 1](#) to the present response for observations on [REDACTED]'s emails.

¹⁷ Compare items CAR-OTP-2124-0788, CAR-OTP-2124-0789, CAR-OTP-2124-0823, CAR-OTP-2124-0842 and CAR-OTP-2124-0844, which all are part of the same email thread and whose timestamp changes according to the format of the time display. Compare items CAR-OTP-2124-0890, CAR-OTP-2130-3373, CAR-OTP-2124-0891, CAR-OTP-2130-3376, CAR-OTP-2124-0892 and CAR-OTP-2130-3379, which are all part of the same email thread and whose timestamp changes according to the format of the time display. Compare items CAR-OTP-2124-0894, CAR-OTP-2130-3375, CAR-OTP-2130-3382, CAR-OTP-2124-0978 and CAR-OTP-2130-3389, which are all part of the same email thread and whose timestamp changes according to the format of the time display. Compare items CAR-OTP-2124-0895, CAR-OTP-2130-3374, CAR-OTP-2124-0896 and CAR-OTP-2130-3381, which are all part of the same email thread and whose timestamp changes according to the format of the time display. Compare item CAR-OTP-2124-0899 with CAR-OTP-2130-3383, which are the same email but the timestamps differ due to the format of the time display. The Prosecution does not seek to submit CAR-OTP-2130-3383, but the Defence refers to it for the purpose of showing the errors in processing of the Yahoo email items. Compare items CAR-OTP-2124-0900, CAR-OTP-2124-0901 and CAR-OTP-2124-0903, which are all part of the same email thread and whose timestamps change according to the format of the time display. Compare item CAR-OTP-2124-0886 with the same email exchange, namely CAR-OTP-2124-0838 and CAR-OTP-2124-0840. The Prosecution does not seek to submit CAR-OTP-2124-0838 and CAR-OTP-2124-0840, but the Defence refers to them for the purpose of showing the errors in processing of the Yahoo email items. Compare items CAR-OTP-2130-3504 and CAR-OTP-2130-3501, which are both part of the same thread, but which contain different timestamps.

¹⁸ CAR-OTP-2124-0892.

is an impossibility. It is therefore clear on the face of the document that the document cannot be accurate. CAR-OTP-2130-3379, which is the same email thread as CAR-OTP-2124-0892 shows that Mr Ngaïssona's last response was on 6 October 2013 at 18:23, which at least makes this portion of the exchange plausible. However, [REDACTED]'s response being sent 43 minutes earlier than Mr Ngaïssona's email is also contained in this version of the exchange and cannot be accurate. This error cannot be explained by the changing of the timestamp of the email due to the format of the display, since both emails contain a timestamp in the 00h00 format.

17. The timeline of the exchanges became a live issue in the case when the Prosecution presented this same document, *i.e.* CAR-OTP-2130-3379 to P-2843. Given the issues of reliability of the timestamps in the email exchanges, it is impossible for the Chamber to evaluate the truthfulness of P-2843's testimony when compared to the email exchanges.
18. P-2843 testified that he first contacted Mr Ngaïssona to [REDACTED]. P-2843 then stated that Mr Ngaïssona asked for [REDACTED], and it was only after [REDACTED] that [REDACTED].¹⁹ However, the email exchanges present another timeline in which [REDACTED] is presented prior to Mr Ngaïssona asking for [REDACTED], thereby implying that Mr Ngaïssona was aware of [REDACTED] when he asked P-2843 for [REDACTED]. This difference is key in the interpretation of Mr Ngaïssona's intent with respect to [REDACTED]. Given the timestamp anomalies with respect to the processing of the emails, it is impossible to verify which version of events is accurate.
19. The processing of the attachments also is not consistent across Yahoo email accounts. In one of the forensic reports for the [REDACTED] account containing messages spanning from September 2013 to December 2014, the forensic team for

¹⁹ P-2843, ICC-01/14-01/18-T-073-CONF-ENG-ET, pages 64, 65-66, 68.

the Prosecution stated that it was not possible for the attachments to be registered as pages of the respective messages. Therefore, the attachments did receive individual ERNs, and were processed in such a way that the attachments received sequenced ERNs based on the respective email messages.²⁰ However, for the account [REDACTED], the Prosecution disclosed the main email messages and the attachments in the same ERN,²¹ whereas the processing of this digital content was done earlier than for the [REDACTED] emails. The Defence has also noted that for some email messages the attachments did not receive sequenced ERNs and are not located near the main message.²² While at times it is obvious that the attachment is associated with the main message from the title of the file that is attached to the main email or the text of the main email, this is not always the case.

20. For example, email CAR-OTP-2124-0489 seemingly contains an attachment file named [REDACTED]. There is no accompanying text to this email sent by [REDACTED] to [REDACTED]. Nothing in this email or in the title of the attachment establishes that [REDACTED] is in fact the document contained at CAR-OTP-2124-0490, which is a list of [REDACTED]. Moreover, it seems unlikely that such a list would be created and/or transmitted in a jpg file, considering jpg files are image files. In the event that the list was scanned prior to being attached, it would have been a pdf file, rather than a jpg file.

21. The Yahoo email items as disclosed to the parties and the Chamber do not present sufficient indicia of authenticity. While some witnesses have recognized the content of certain emails, as either the senders or the receivers of such items, their testimony is not sufficient to satisfy the Chamber of the reliability of the Yahoo

²⁰ CAR-OTP-2118-6255, at 6270-6271.

²¹ See e.g. CAR-OTP-2080-2511; CAR-OTP-2080-1763; CAR-OTP-2080-1771; CAR-OTP-2080-1781; CAR-OTP-2080-2244; CAR-OTP-2080-2247; CAR-OTP-2080-2250; CAR-OTP-2080-2258; CAR-OTP-2080-2503.

²² See e.g. CAR-OTP-2130-3490 whose attachment is located at CAR-OTP-2130-3406; CAR-OTP-2130-3496 whose attachment is located at CAR-OTP-2130-3407; CAR-OTP-2130-3497 whose attachment is located at CAR-OTP-2130-3408; CAR-OTP-2080-2394 whose attachment is located at CAR-OTP-2084-0111; CAR-OTP-2080-2247 whose attachment is located at CAR-OTP-2084-0116; CAR-OTP-2080-2244 whose attachment is located at CAR-OTP-2084-0134; CAR-OTP-2080-2487 whose attachment is located at CAR-OTP-2084-0172.

Email Collection for two reasons. First, the errors or anomalies in processing raised by the Defence are ones that a witness, several years after the events, would not be able to identify. For example, an email thread may be recognized by a witness, but an exchange that is missing from a long thread consisting of several emails may not come to mind, and may even mislead the witness to wrongly recollect the timeline of events. Second, the Prosecution has only authenticated a small portion of the emails through its witnesses. Indeed, the *raison d'être* for the Prosecution to submit the emails through a Bar Table is to submit the items into evidence without a witness. Additionally, for two of the individuals for whom the Prosecution submits emails, namely Mr Ngaya and [REDACTED], it forewent the opportunity to authenticate whether they were the users of the email accounts subject to the Prosecution Request when they testified before the Chamber.²³ Contrary to the Prosecution's submissions in paragraph 40 of its Request, P-0808 only authenticated certain specific emails sent from his personal email account.²⁴ P-0808 never testified about operating the account [REDACTED]. Both the [REDACTED] account and the [REDACTED] yahoo account are accounts set up for a group, thus it is highly probable that they could have been used by several individuals. Many emails from this account are unsigned.²⁵ Some are signed by the generic term "[REDACTED]".²⁶ One of the emails from the [REDACTED] Yahoo account the Prosecution seeks to submit is even signed by a certain [REDACTED], which, if anything, suggests that this Yahoo email account was employed by users other than Mr Ngaya (here [REDACTED]) and that the emails

²³ While the Prosecution did ask witness P-0287 whether Mr Ngaya was the user of the [REDACTED] account (resulting in no clear answer on his part) – P-0287, ICC-01/04-01/18-T-020-CONF-ENG CT, page 37, lines 1-4 –, it did not confirm with P-0808 whether this was his account or whether it was used by others. This is most surprising considering that [REDACTED]. Similarly, the Prosecution did not ask P-0801 to confirm the he was the user of the [REDACTED] or that it was his address.

²⁴ See Prosecution Request, footnote 116, referring to ICC-01/14-01/18-T-069-Red-ENG ET at page 10 line 25 to page 27, line 25.

²⁵ See e.g. CAR-OTP-2080-1771, CAR-OTP-2080-2503, CAR-OTP-2080-2394, CAR-OTP-2080-2543, CAR-OTP-2080-1781.

²⁶ See CAR-OTP-2080-2503.

from [REDACTED] cannot be generally considered as being used by Mr Ngaya.²⁷ The Prosecution's argument that it is established that the Yahoo account was used by Mr Ngaya is undermined by the very evidence the Prosecution wishes to submit.

22. Lastly, the contact lists from the accounts [REDACTED], [REDACTED] in addition to several other accounts have no bearing on showing that alleged Anti-Balaka members were in contact with each other as submitted by the Prosecution.²⁸ First, the Prosecution has provided no information in its submissions as to how contact lists were created and stored by the account users. Contact lists can be created without ever getting in touch with the contact or can be made automatically if the account user emails someone new just one time.²⁹ Therefore, the probative value of these contact lists is very limited in showing contact between individuals, since they could, at most, signify an attempt at contact. Second, for the other alleged Anti-Balaka related accounts namely [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], the Prosecution is incorrect when stating that there was no additional relevant content to submit from these accounts.³⁰ Rather, [REDACTED] informed the Prosecution that there was *no* content that was retrieved from these accounts, thereby making these contact lists devoid of probative value since no emails were retrieved.³¹

B. The Prosecution has insufficiently substantiated the probative value of the Yahoo Email Collection to the core issues in the instant case

²⁷ See CAR-OTP-2080-2511.

²⁸ Prosecution Request, para. 76.

²⁹ *How to add contacts to your Yahoo Mail account manually in 2 ways*, Business insider Nederland, 19 June 2020 (last accessed 10 August 2022) .

³⁰ Prosecution Request, para. 76.

³¹ See CAR-OTP-2118-6255 at 6258.

23. While the Prosecution submits that the Yahoo email items are relevant for the purposes of showing steps taken to structure the Anti-Balaka, to finance it and to issue instructions to group members and liaise with key members,³² the content of the items reveals that the Prosecution's claims are merely a subjective interpretation of such items.
24. While there is no requirement for evidence to be tested through a witness in order for it to be submitted,³³ the probative value of certain evidence, such as the Yahoo email items, which consist of conversations, is greatly diminished when a witness familiar with the exchanges is unable to contextualise them, especially when their meaning is unclear. The Prosecution manipulates this ambiguity by interpreting the messages according to its one-sided narrative, but never demonstrates how the Yahoo email items show the relationship between the conversations and the alleged commission of the crimes charged, by the Anti-Balaka.
25. The Prosecution seeks to submit Yahoo email items for six accounts allegedly belonging to Mr Ngaïssona, [REDACTED], [REDACTED], [REDACTED], [REDACTED], and an account allegedly run by Mr Ngaya (P-0808). The Defence shall address the Prosecution's submissions for each account in turn.

a. Patrice-Edouard Ngaïssona: [REDACTED]

26. The Prosecution alleges that the emails retrieved from Mr Ngaïssona's and [REDACTED]'s accounts show Mr Ngaïssona's involvement in various activities, but none of them bear directly upon the charges. Contrary to the Prosecution's submissions, the alleged activities of certain individuals, the alleged involvement in FROCCA, the liaising with certain individuals or certain alleged financial transactions of Mr Ngaïssona, while perhaps fulfilling the minimal logical

³² Prosecution Request, para 9.

³³ *The Prosecutor vs. Dominic Ongwen*, Decision on Prosecution's Request to Submit 1006 Items of Evidence, 28 March 2017, ICC-02/04-01/15-795, paras 14-15.

standard of relevance to the case, bear no significance to the determination of whether Mr Ngaïssona was involved in the charged crimes, as substantiated below.

i. The alleged May planning meeting in Cameroon

27. The Prosecution fails to establish the relevance to the charges of [REDACTED]'s email dated [REDACTED].³⁴ First, the planning of meetings is not at all "discussed". Discussing meetings would imply an exchange of emails, however, the Prosecution disclosed one email only, without any responses from the alleged recipient or the persons in copy. Second, the Prosecution fails to establish that [REDACTED] refers to [REDACTED] when using terms such as [REDACTED] or [REDACTED]. The term [REDACTED] was commonly used during this period to refer to many different persons, as pointed out in the conversation cited by the Prosecution in support of its allegation,³⁵ and nothing in this email suggests that [REDACTED] is referring to [REDACTED] or any other member of the [REDACTED]. Finally, the Prosecution's interpretation is incorrect, or misleading at best, in that (i) the strategy mentioned seems to only refer to the publication of messages as opposed to any planning of a criminal nature, (ii) the email is only addressed to [REDACTED] which could suggest the initiative of a meeting only between the two of them and (iii) contacting Mr Ngaïssona is only a suggestion made to [REDACTED] which materialization is not substantiated - and contrary to the Prosecution's submissions, nothing about Mr Ngaïssona [REDACTED] is mentioned.

28. Without any further detail on the circumstances or reasons why this email was sent, or without the testimony of the author or the recipient (or persons copied) to better contextualise its content (unfortunately, the Prosecution forewent this

³⁴ CAR-OTP-2130-3466.

³⁵ See Prosecution Request, footnote 19, referring to CAR-OTP-2103-3293, at 3392, where one of the interlocutors asks clarification as to which [REDACTED] the other interlocutor is referring to.

opportunity with [REDACTED]), reliance on this email in respect of central questions at issue is not appropriate.

ii. The alleged June 2013 Plan [REDACTED]

29. The Prosecution's submissions on the alleged June 2013 Plan [REDACTED] is a mere repetition of its submissions in its previous request to add six Yahoo email threads to the list of evidence ("Request for Leave").³⁶ The Prosecution does not substantiate the probative value of this exchange. Merely reciting the content of an email, unless its relevance is evident on its face, is not sufficient to satisfy the Prosecution's burden to show the relevance and probative value of each item of evidence it presents against Mr Ngaïssona. In its Decision on the Request for Leave, the Single Judge considered that it was premature to address the Defence's arguments as to the admissibility of certain Yahoo email threads, including the present one, and that it was sufficient, for the purpose of their addition to the Prosecution's list of evidence, to rely *inter alia* on the Prosecution's submissions that these emails were of "significant probative value".³⁷ Now that the time for submission has come, it is expected from the Prosecution more than simply repeating the contents of the communications. For instance, the Prosecution does not provide any information as to the circumstances in which this [REDACTED] was initiated and for what purpose.³⁸ The Prosecution provides no further evidence of whether Mr Ngaïssona ultimately sent his thoughts on the [REDACTED] or more generally whether it was followed upon.³⁹ In his email dated [REDACTED], [REDACTED] seems to be responding to a prior email, but the Prosecution fails to establish which email [REDACTED] is responding to and what the content of that email was, which casts doubt as to its reliability.⁴⁰

³⁶ ICC-01/14-01/18-0958-Conf, para. 12.

³⁷ ICC-01/14-01/18-989-Conf, paras 10-11.

³⁸ Prosecution Request, para. 13, referring to CAR-OTP-2130-3493 and CAR-OTP-2130-3490.

³⁹ Prosecution Request, para. 14.

⁴⁰ CAR-OTP-2130-3505.

Similarly, the Prosecution does not identify precisely which correspondence(s) [REDACTED] is seeking Mr Ngaïssona's reaction on.⁴¹ Lastly, the Prosecution fails to demonstrate how this Yahoo email chain is linked to the alleged commission of the crimes charged by the Anti-Balaka. Without such information, this email thread is unlikely to have bearing on the determination of any material fact in the case against Mr Ngaïssona.

30. In light of the above, the Defence contests the Prosecution's submissions in its Annex A, that this email thread would be relevant to the origins of the Anti-Balaka, Mr Ngaïssona's taking steps to structure the Anti-Balaka, his position of authority over them, and his ability to give instructions to them.⁴²

iii The alleged July-September 2013 strategy to return BOZIZE to power including contacting BOZIZE to obtain money and resources for mobilising supporters

31. The Prosecution's claim that the Yahoo email items show that Mr Ngaïssona was involved in a strategy to return Mr Bozizé to power through contacting Mr Bozizé to obtain money and resources, completely ignores the testimony of P-0808 who was part of these exchanges. Four of the five emails the Prosecution cites in support of these allegations are part of the same exchange, none of which represents a complete thread of the exchange.⁴³

32. When confronted with the exchanges, P-0808 testified that he sent a version of this email to several influential people, including the Obama administration, the President of the National Assembly of France, the President of the African

⁴¹ CAR-OTP-2130-3504.

⁴² Annex A to the Prosecution Request, entry #378 and seq.

⁴³ CAR-OTP-2130-3291 contains the email CAR-OTP-2130-3294 and attachment that Mr Ngaïssona allegedly forwarded to Vincent Wapounaba. CAR-OTP-2124-0788 and CAR-OTP-2124-0789 are part of the same email CAR-OTP-2130-3294, but the response from Mr Ngaïssona stating that he has forwarded the documents to the "BOSS" is missing from CAR-OTP-2124-0788 and 0789. This email should be reproduced in these exchanges since the latest emails in CAR-OTP-2124-0788 and CAR-OTP-2124-0789 date from September 2013, whereas Mr Ngaïssona's alleged response dates from July 2013. This again raises doubts as to the authenticity of the Yahoo email items. The fifth email cited is a forward of the two emails from Mr Ngaya contained in CAR-OTP-2124-0788 to [REDACTED]. The Prosecution has not substantiated the relevance of this email to showing that Mr Ngaïssona was involved in a plan to return Mr Bozizé to power.

Commission, and the UN group of experts.⁴⁴ He further testified that his emails to Mr Ngaïssona and the international community were for the purpose of helping the people of CAR who were suffering greatly under the Djotodia regime.⁴⁵ P-0808 therefore sought means to organize actions of civil disobedience by the civilian population to have the international community act.⁴⁶ The goal behind this civil disobedience was to have the international community observe that the CAR population was against the Seleka regime, thereby convincing it to intervene in CAR.⁴⁷

33. Moreover, when confronted with the email in which Mr Ngaïssona allegedly stated that he has forwarded the documents to the “BOSS”, P-0808 testified that he did not know to whom “the BOSS” was referring.⁴⁸ Therefore, the Prosecution’s submission that Mr Ngaïssona was clearly referring to Mr Bozizé by using this term has not been substantiated. Lastly, the Prosecution has also not substantiated how forwarding the message to Mr Wapounaba and informing Mr Ngaya that he has forwarded certain documents constitutes requesting and/or obtaining financial means from Mr Bozizé.

iv. The alleged August-October 2013 financial transfers to Mr Ngaïssona in Cameroon

34. The Prosecution fails to substantiate the significance of the emails showing money transfers from August to October 2013 to its case against Mr Ngaïssona. The emails between Mr Ngaïssona and [REDACTED], along with the exchanges between Mr Ngaïssona and [REDACTED], show that Mr Ngaïssona was *in dire* financial hardship due to the financial burden of his children’s schooling,⁴⁹ and a

⁴⁴ P-0808, ICC-01/14-01/18-T-069-CONF-ENG ET, page 12.

⁴⁵ P-0808, ICC-01/14-01/18-T-070-CONF-ENG ET, page 21.

⁴⁶ P-0808, ICC-01/14-01/18-T-070-CONF-ENG ET, pages 23-24.

⁴⁷ P-0808, ICC-01/14-01/18-T-070-CONF-ENG ET, page 22.

⁴⁸ P-0808, ICC-01/14-01/18-T-069-CONF-ENG ET, page 12.

⁴⁹ Annex 1 to the present response, specifically Defence submissions for items CAR-OTP-2124-0550, CAR-OTP-2124-0552, CAR-OTP-2124-0820, CAR-OTP-2124-0987, CAR-OTP-2124-0988, and CAR-OTP-2124-1029. In early 2013, the school of one of Mr Ngaïssona’s children contacted Mr Ngaïssona for an unpaid balance. CAR-

financial emergency caused by his younger brother's critical health condition.⁵⁰ Similarly, with respect to the [REDACTED] correspondence for financial support, the Prosecution does not substantiate how this support impacts on the charges. Indeed, the Defence submits that the aforementioned exchanges are probative to the difficult financial situation Mr Ngaïssona was in during the time of the charges and the improbability that he could have funded the needs of any alleged armed group.

v. The alleged involvement of Mr Ngaïssona in FROCCA from July 2013 to September 2013

35. Regarding the emails allegedly showing Mr Ngaïssona's involvement in FROCCA, the Prosecution is ignoring any information that does not fit its narrative, such as the whole contextualization provided by P-0808 on these emails during his testimony. In particular, the Prosecution is ignoring P-0808's exculpatory evidence which, as developed above, casts light on the purpose of FROCCA's creation. P-0808 was writing to Mr Ngaïssona, among other opinion leaders, to ask for help, so he might use his influence to prompt the international community to action. His hope was that the lawyer based in Paris who founded FROCCA could exert some pressure to get the international community involved because he was located in France, a major player in the CAR crisis.⁵¹

OTP-2130-3425 (email from: [REDACTED] to: [REDACTED] requesting that the Ngaïssona's pay the 3,606 euros unpaid balance).

⁵⁰ The email exchanges with [REDACTED] regarding financial transfers are reproduced in several ERNs with varying levels of completeness. See Defence submissions contained in Annex 1 to the present response for items CAR-OTP-2124-0766, CAR-OTP-2124-0785, CAR-OTP-2130-3276, CAR-OTP-2130-3279, CAR-OTP-2130-3282, CAR-OTP-2130-3667. The Prosecution does not include CAR-OTP-2130-3667 in the Prosecution Request. However, the Defence requests that the Chamber consider also CAR-OTP-2130-3667 in assessing the probative value of this exchange as part of its powers to consider all evidence that is necessary for the determination of the truth under Article 69 of the Rome Statute. The Prosecution's submissions fail to substantiate that this email exchange is about concealing money transfers. Indeed, it is clear from the email of 16/08/2013 at 12:45 contained in CAR-OTP-2130-3667 that the name of the recipient of the money is provided for, and Mr Ngaïssona also specifies that the money is to be used for his airport tax fees, and to provide medical care for Mr Ngaïssona's brother who is in critical condition in Daloua.

⁵¹ P-0808, ICC-01/14-01/18-T-069-CONF-ENG ET, page 15, lines 3-8; pages 20-24; page 32, lines 17-25. See also P-0808, ICC-01/14-01/18-T-069-CONF-ENG ET, page 12, lines 16-23.

36. Regarding the reference to military operations,⁵² P-0808 explains that it referred to military operations that they hoped the international community would get involved in to drive the Seleka out. He further explains that if it were to happen, it would then have been necessary to take it into account as far as their popular insurrection was concerned.⁵³ He emphasizes that Mr Ngaïssona was not a soldier but a civilian, and their actions were based on legal grounds to persuade the international community to help them; it was therefore not about military involvement.⁵⁴

37. P-0808 explains that Mr Ngaïssona was an opinion leader in CAR, that he had worked with various associations and that it was in that context that he was asking Mr Ngaïssona to provide him with the names of a few association leaders, especially since any contact with unknown persons was very risky and could lead to exposing oneself to the Seleka.⁵⁵ By “carrying out manoeuvres”, P-0808 meant contacting different association leaders to engage in civil disobedience.⁵⁶

38. P-0808 does not confirm using FROCCA’s name on behalf of Mr Ngaïssona but, rather, explains that because they shared the same vision as FROCCA, namely to liberate the country through a popular uprising, they would use that name as an appeal to the international community.⁵⁷ Moreover, when confronted with the email in which Mr Ngaïssona allegedly stated that the “Grand BOSS” awaits, P-0808 testified that he did not know to whom the “Grand BOSS” was referring.⁵⁸ Therefore, the Prosecution’s submission that Mr Ngaïssona was clearly referring to Mr Bozizé by using this term has not been substantiated.

⁵² CAR-OTP-2130-3296.

⁵³ P-0808, ICC-01/14-01/18-T-069-CONF-ENG ET, page 14, lines 19-25.

⁵⁴ P-0808, ICC-01/14-01/18-T-069-CONF-ENG ET, page 24, lines 9-20 ; page 26, lines 1-6.

⁵⁵ P-0808, ICC-01/14-01/18-T-069-CONF-ENG page 18, lines 11-17 and page 19, lines 19-24.

⁵⁶ P-0808, T-069-CONF-ENG page 24, lines 9-20; page 26, lines 1-14; ICC-01/14-01/18-T-070-CONF-ENG, pages 23-25.

⁵⁷ P-0808, ICC-01/14-01/18-T-069-CONF-ENG ET, page 21, lines 2-9.

⁵⁸ P-0808, ICC-01/14-01/18-T-069-CONF-ENG ET, page 12.

39. The lack of significance of the emails allegedly showing Mr Ngaïssona's involvement in FROCCA is also underscored by P-0808's testimony in which he confirms that there was no coordination just before or just after the attack on Bangui.⁵⁹

vi. The alleged Anti-Balaka military operations and the armed conflict between the Seleka and the Anti-Balaka from October 2013-July 2014

40. The Prosecution's mere repetition of the content of the emails fails to substantiate how the Yahoo email items are probative to determining whether the Anti-Balaka were involved in military operations and whether Mr Ngaïssona had any role to play therein between October 2013-July 2014. While this method might be sufficient where the probative value of the evidence is clear on its face – for example, when an authentic video depicts an accused physically committing a crime – here, the Prosecution has admitted that as an alleged “accessory,” the nature of the evidence against Mr Ngaïssona is different than that of a principal perpetrator.⁶⁰ The probative value of this circumstantial evidence is therefore not evident on its face and calls upon the Prosecution to substantiate it such that the only reasonable inference to draw from the evidence is the one the Prosecution is putting forward.⁶¹

41. [REDACTED]'s emails of 23 November and 4 December 2013 are of such limited significance that they are unlikely to have bearing on the Chamber deciding a material fact in the case against Mr Ngaïssona. News from the field, including fake news, were circulating on such a large scale at the time that the Prosecution might

⁵⁹ P-0808, ICC-01/14-01/18-T-070-CONF-ENG, page 35, lines 11-18.

⁶⁰ ICC-01/14-01/18-T-012-ENG ET, pages 33-34.

⁶¹ Trial Chamber I, *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Reasons of Judge Geoffrey Henderson, ICC-02/11-01/15-1263-AnxB-Red, para. 51; Trial Chamber III, *Prosecutor v. Bemba*, Judgment pursuant to Article 74 of the Statute, 21 March 2016, ICC 01/05-01/08-3343, para. 239.

as well have claimed that every single Central African was being kept abreast of alleged military operations in the field.⁶²

42. Regarding P-0808's email dated 28 December 2013, in which he sent Mr Ngaïssona two CLPC declarations,⁶³ P-0808 was very clear during his testimony that Mr Ngaïssona did not have a role within the CLPC. He further explained that the reason they sought Mr Ngaïssona's reaction on these declarations was simply due to his position as a high-ranking dignitary living outside of CAR. P-0808 referred, the same way as he did for FROCCA, to Mr Ngaïssona's potential influence within the international community and the hope he could help, through his position, to exert pressure on that community to deliver the people from CAR from the Seleka.⁶⁴ Within such context, this email does not make Mr Ngaïssona's involvement in the Anti-Balaka military operations more or less probable and should be disregarded for that purpose.

43. The Prosecution submits that a set of alleged email exchanges between a certain individual named [REDACTED] and Mr Ngaïssona is probative to show that Mr Ngaïssona had the intent to support military operations of the Anti-Balaka and that he used coded language to conceal criminal activities.⁶⁵ The email exchanges fail to establish these allegations for the following reasons.

44. First, the Prosecution cites no evidence to establish that the "coded language" was used to conceal criminal activities. The evidence on record shows that coded language was indeed used by anyone who opposed the Seleka regime for fear of reprisals if they were caught.⁶⁶ Therefore, the meaning behind using words such as [REDACTED] and [REDACTED] has not been established by the Prosecution,

⁶² Prosecution Request, paras 27-28.

⁶³ Prosecution Request, para. 32.

⁶⁴ P-0808, ICC-01/14-01/18-T-069-CONF-ENG ET, page 47.

⁶⁵ Prosecution Request, para. 33.

⁶⁶ P-0808, ICC-01/14-01/18-T-069-CONF-ENG ET, page 19; P-0889, ICC-01/14-01/18-T-111-CONF-FRA ET, pages 26-27, 30.

and without a witness to contextualize the meaning it is devoid of probative value. Second, the Prosecution has not established the alleged criminal nature of the exchanges with [REDACTED]. The Prosecution does not present any evidence establishing that [REDACTED] is a “[REDACTED].”⁶⁷ The link cited in the Prosecution Request is inaccessible. Further, the Prosecution neither establishes who [REDACTED] is, nor what is his relationship to either Mr Ngaïssona or to [REDACTED].

45. Without this information, the probative value of these exchanges is extremely limited, especially since contrary to the Prosecution’s submissions, [REDACTED] and Mr Ngaïssona did not continue to send each other emails.⁶⁸ There is no follow up from Mr Ngaïssona regarding [REDACTED], and no indication that Mr Ngaïssona requested and/or obtained the services of [REDACTED]’s “team”. Indeed, Mr Ngaïssona’s response does not address [REDACTED]’s reference to the [REDACTED] and Mr Ngaïssona states that he is doing everything so that peace comes back to the country.⁶⁹ Similarly, while Mr Ngaïssona seemingly forwards a list of military equipment that he received from the account user “[REDACTED]” (whose identity is unknown) to [REDACTED], neither Mr Ngaïssona nor [REDACTED] refer to it in any subsequent exchange and therefore neither the intent nor the consequences of sending this list has been established by the Prosecution. The lack of any response by either Mr Ngaïssona or [REDACTED] make any inference on the purpose of sending this list pure speculation. Similarly, the Prosecution fails to establish that any criminal actions occurred due to the list being sent.

46. Like the exchanges with [REDACTED], the Prosecution fails to provide crucial information with respect to the exchanges Mr Ngaïssona allegedly had with the

⁶⁷ Prosecution Request, para. 33.

⁶⁸ Prosecution Request, para. 37.

⁶⁹ CAR-OTP-2124-0758.

account user “[REDACTED]”, thereby diminishing any probative value that these exchanges could potentially have.⁷⁰ First, as indicated above, the Prosecution does not establish the identity of the user of the “[REDACTED]” account. Second, given the anomalies with the processing of the Yahoo Email Collection, and in particular with CAR-OTP-2124-0490 as substantiated by the Defence in paragraph 20 above, it is not certain whether this email chain is complete and whether Mr Ngaïssona’s alleged response actually relates to the list of military equipment seemingly sent by “[REDACTED]”.⁷¹ Third, the Prosecution presents no evidence that Mr Ngaïssona followed up on forwarding this list to either [REDACTED] or [REDACTED]. Fourth, the allegation that someone brings up the suggestion to [REDACTED] is far from conclusive for proof of *mens rea* for the crimes charged. Therefore, without further information, these exchanges with the anonymous user “[REDACTED]” are not probative of Mr Ngaïssona’s alleged intent to participate in military activities.

47. The Prosecution’s submissions regarding Mr Ngaïssona’s actual or constructive knowledge of the alleged Anti-Balaka crimes do not withstand muster when the email CAR-OTP-2124-0604 in support of this allegation is analyzed. First, it is not apparent from the four corners of this email that it was sent to Mr Ngaïssona. The only field that appears is “From” and there is no “To” field that appears in this exchange. Second, there is no response from Mr Ngaïssona. Therefore, the Prosecution leads no evidence to show that Mr Ngaïssona read this email, if he indeed received it. Third, the Prosecution has not cited any evidence to show that [REDACTED] was one of President BOZIZE’s advisors and whether [REDACTED] had ever met or knew Mr Ngaïssona. Given the Prosecution does not cite any response from Mr Ngaïssona, a more likely inference is that Mr

⁷⁰ CAR-OTP-2124-0489 (email); CAR-OTP-2124-0490 (attachment); CAR-OTP-2124-0499.

⁷¹ The Defence also notes that Mr Ngaïssona allegedly requesting that [REDACTED] be added is not reflected in the attachment Mr Ngaïssona allegedly sent to [REDACTED], which casts additional doubt as to the sequencing of this email thread – see CAR-OTP-2124-0506 and CAR-OTP-2124-0507.

Ngaïssona ignored this email if he indeed received it. The text in the email only states “[REDACTED]” without specifying that it is intended to be sent to Mr Ngaïssona. The Prosecution’s assumption does not exclude the reasonable inference that this email could have been part of a mass mail, which are commonly ignored.

b. [REDACTED]

48. The Prosecution fails to substantiate the significance of the email exchanges between the [REDACTED] Yahoo account and Mr Llorca as well as the diffusion of Anti-Balaka press releases to various media outlets and international organisations in determining Mr Ngaïssona’s involvement in the alleged crimes.

49. These emails are also of limited probative value in showing Mr Ngaïssona’s promotion of the Anti-Balaka’s public communications through Mr Ngaya.⁷² The coordinator of the UN Group of Experts on CAR explained during his testimony that his organisation was already well aware of the existence and content of these Anti-Balaka press releases, and simply requested to receive copies during a meeting he had with Mr Ngaya.⁷³ It is noteworthy that these press releases were sent at Mr Llorca’s request. This interpretation is further consistent with the time that elapsed between the issuance of the first press releases sent (21 January 2014) and the email exchange in question (between June and July 2014). Therefore, based on the circumstances in which these press releases were sent, the allegation that these exchanges would show Mr Ngaïssona’s promotion of the Anti-Balaka’s public communications does not pass muster.

50. More generally, the many messages sent from the [REDACTED] yahoo account to various media outlets, diplomatic representatives and international and

⁷² Prosecution Request, paras 9, 42.

⁷³ P-0287, ICC-01/14-01/18-T-020-CONF-ENG CT, page 36, lines 2-20.

governmental institutions, do not present sufficient indicia of authenticity as developed above.⁷⁴ The Prosecution failed to authenticate the emails from that account when it declined to ask P-0808 who was operating and using that account. Among the emails cited by the Prosecution as sent by Mr Ngaya, there are emails that are either unsigned, or signed by [REDACTED].⁷⁵ The others, while Alfred Ngaya's name is type-signed at the bottom, could have been sent by anyone. These emails are therefore devoid of probative value in showing that Mr Ngaya was the operator of this account and sent all or part of these emails.⁷⁶

51. Finally, the emails allegedly showing a Facebook connection between two accounts are of such limited significance that they are unlikely to have any impact on the Chamber's findings on any questions of material fact.⁷⁷ First, there is no way of knowing who is behind the account(s) in question, also, a connection on Facebook has no bearing as to whether the operators behind the two accounts actually knew each other. Moreover, in cases where the friend request is accepted, which is not the case for all documents sought to be submitted,⁷⁸ it does not show the exchanges the two would have had.

52. Regarding the emails allegedly showing a connection between Mr Ngaïssona's Facebook account and the CLPC Facebook account, they show that months after Mr Ngaïssona allegedly accepted the CLPC Facebook account's friends request, on 12 November 2014, no exchanges had yet taken place between the two accounts, to the point that automatic reminders from Facebook were sent.⁷⁹

⁷⁴ See the present response, para. 21.

⁷⁵ See Prosecution Request, para. 46, citing in footnotes 143-145 the following emails: CAR-OTP-2080-2394, CAR-OTP-2080-2543, CAR-OTP-2080-1781, CAR-OTP-2080-2511, CAR-OTP-2080-2503.

⁷⁶ See also Annex 1 to the present response, especially Defence submissions for documents CAR-OTP-2056-0371 and CAR-OTP-2080-1838.

⁷⁷ Prosecution Request, para. 41.

⁷⁸ See e.g. CAR-OTP-2080-1845.

⁷⁹ See CAR-OTP-2080-2764, CAR-OTP-2080-2769, CAR-OTP-2080-2770, CAR-OTP-2080-2771.

53. The significance of these so-called connections is therefore limited regarding any material fact in this case.

c. [REDACTED]

54. The Defence strongly disagrees with the Prosecution's claim that the contents of the emails from the [REDACTED] account speak for themselves, especially when the alleged author of such emails came to testify in court and contextualized many of them. For instance, [REDACTED]'s testimony suggests that the email sent to [REDACTED] on 2 July 2013 was only one part of a bigger email thread which was not disclosed and is therefore incomplete.⁸⁰ [REDACTED] explained that [REDACTED] [REDACTED]. This undermines the Prosecution's interpretation that [REDACTED] was the one having concerns over communicating online. [REDACTED] further explained that he was hoping to meet [REDACTED] in [REDACTED] to save him a trip to Bangui but that this meeting never materialized and that their communication remained virtual, suggesting once again that there was more than this one email.⁸¹ Without the whole email thread, this email alone cannot assist the Chamber in reaching a conclusion about the existence or the non-existence of any issue of material facts.

55. Similarly, the explanations provided by [REDACTED] with respect to his email to [REDACTED] on 14 September 2013 are necessary to correctly interpret its contents and relevance and *a contrario*, the probative value of this email cannot be properly assessed without them. This should form a whole. Yet, the Prosecution totally disregards them, thereby maintaining the ambiguity over the email content's meaning. [REDACTED], who is the author of this email, actually refuted the interpretation suggested by the Prosecution in the courtroom, especially with regards to whom the [REDACTED] were intended for.⁸² This should be taken into

⁸⁰ P-0876, ICC-01/14-01/18-T-085-CONF-ENG ET, page 17, lines 11-24.

⁸¹ P-0876, ICC-01/14-01/18-T-085-CONF-ENG ET, page 18, lines 1-7.

⁸² P-0876, ICC-01/14-01/18-T-085-CONF-ENG ET, pages 18-21.

account for the purpose of deciding on the relevance and significance of that email.

56. Regarding [REDACTED]'s email to [REDACTED] on 23 September 2013 titled "[REDACTED]", [REDACTED] clarified that the [REDACTED] was referring to the [REDACTED]. Moreover, [REDACTED] never testified to [REDACTED] but [REDACTED]. Finally, in light of [REDACTED]'s clarifications during his testimony, the reference in his email to the [REDACTED] cannot possibly be interpreted as a proposed way of obtaining weapons from the Seleka.⁸³ [REDACTED] very clearly explained that the presence of the [REDACTED] allowed them to [REDACTED]. [REDACTED] even appeared very surprised and dubitative at the suggestion of the Prosecution that the Anti-Balaka could have ever come into possession of these weapons.⁸⁴ It is quite astonishing that the Prosecution chose in the cover filing of its Request to refer to emails that had been already discussed with the witness, when so many sought to be submitted in its Annex A were not, while completely disregarding the context provided by that witness, thereby maintaining an unconvincing one-sided narrative.

57. In light of the information provided by [REDACTED] during his testimony, his exchange of emails with [REDACTED] between 10 and 14 October 2014 is devoid of probative value in showing the Anti-Balaka's ability to organise destabilization operations in Bangui, including [REDACTED].⁸⁵ At best, these emails show that both [REDACTED] and Mr Ngaïssona were being played with by [REDACTED]. [REDACTED] suggests that they might even have advised Mr Ngaïssona to [REDACTED]. [REDACTED] expressly clarified: "[REDACTED]".⁸⁶ This exchange

⁸³ Prosecution Request, para. 52.

⁸⁴ P-0876, ICC-01/14-01/18-T-085-CONF-ENG ET, pages 21-22.

⁸⁵ Prosecution Request, para. 55.

⁸⁶ P-0876, ICC-01/14-01/18-T-085-CONF-ENG ET, page 90, line 7.

is therefore devoid of probative value in showing Mr Ngaïssona's control over the Anti-Balaka.

58. Finally, once again, the Prosecution does not refer to the proper context provided by [REDACTED] during his testimony on the [REDACTED] he had been asked to comment on and to [REDACTED]'s clarification as to the absence of involvement of the Anti-Balaka in relation to the Muslim displacement.⁸⁷

59. To conclude, the contents of [REDACTED]'s testimony confirms that the Prosecution's claims as to the relevance and probative value of [REDACTED]'s emails to the charges amount to the Prosecution's subjective interpretation of such items and its incomplete and misleading presentation of [REDACTED]'s evidence.

d. [REDACTED]

60. The Defence refers to its submissions above, on the authenticity and reliability of emails extracted from the account [REDACTED].⁸⁸ Moreover, for all documents submitted from [REDACTED]'s e-mail account,⁸⁹ the Prosecution's observations are limited to describing the documents, rather than providing submissions as to their relevance and probative value. This in and of itself warrants the rejection of their submission *in limine*.⁹⁰

61. Further, the documents submitted from [REDACTED]'s e-mail account are of such limited probative value in relation to the charges against Mr Ngaïssona, that they are unlikely to have an impact on the Chamber's findings on questions of material fact. First, the anonymity of the user behind the account [REDACTED]

⁸⁷ P-0876, ICC-01/14-01/18-T-085-CONF-ENG ET, page 92, lines 4-24.

⁸⁸ See above, paras 11-12.

⁸⁹ CAR-OTP-2084-1162; CAR-OTP-2084-1163; CAR-OTP-2084-1184; CAR-OTP-2084-1192; CAR-OTP-2084-1205; CAR-OTP-2084-1219; CAR-OTP-2084-1221; CAR-OTP-2084-1222; CAR-OTP-2084-1228; CAR-OTP-2084-1229.

⁹⁰ See ICC-01/14-01/18-631, para. 62.

significantly diminishes the probative value of the exchanges involving this account.⁹¹ Second, the Prosecution's assertion that the attachment to the email of 17 August 2013 from the [REDACTED] account, which bears [REDACTED]'s name as the signatory, [REDACTED], is contradicted by the live testimony evidence of [REDACTED].⁹² When shown this document,⁹³ [REDACTED] denied having had any role in the drafting of the letter.⁹⁴ He also denied [REDACTED].⁹⁵ Third, some emails submitted from [REDACTED]'s account lack reliability, as they present issues of authenticity. For example, at least one document appears incomplete and is therefore unreliable.⁹⁶ Fourth, several emails submitted by the Prosecution lack contextualisation, further diminishing their probative value.⁹⁷

62. As it concerns the Prosecution's contention that [REDACTED]'s emails show that [REDACTED] communicated "with other high-level Anti-Balaka officials such as [REDACTED]",⁹⁸ the Prosecution relies *inter alia* on an email [REDACTED] sent [REDACTED] acknowledging receipt of a document [REDACTED].⁹⁹ First, it is unclear whether [REDACTED] given the email does not provide such information. Rather, the exchange appears to be strictly between [REDACTED] and [REDACTED].¹⁰⁰ Second, the Prosecution's claim that the memorandum is found at ERN CAR-OTP-2084-1222 can only be inferred, and has not been demonstrated.

e. [REDACTED]

⁹¹ See for instance CAR-OTP-2084-1162 and CAR-OTP-2084-1163.

⁹² Prosecution Request, para. 58.

⁹³ Albeit under a different ERN: CAR-OTP-2069-3544.

⁹⁴ P-0801, ICC-01/14-01/18-T-034-ENG CT, page 43, lines 24-25.

⁹⁵ P-0801, ICC-01/14-01/18-T-034-ENG CT, page 45, lines 8-13.

⁹⁶ See Annex 1 to the present response for item CAR-OTP-2084-1184.

⁹⁷ See, for instance, CAR-OTP-2084-1205. The Defence refers the Chamber to its observations in Annex 1.

⁹⁸ Prosecution Request, para. 58.

⁹⁹ Prosecution Request, para. 60.

¹⁰⁰ CAR-OTP-2084-1221.

63. The emails from the account [REDACTED] which the Prosecution seeks to submit present several issues of reliability and authenticity, which are detailed in Annex 1.¹⁰¹

64. The emails allegedly extracted from [REDACTED]'s email account submitted by the Prosecution lack probative value in showing any alleged "culpable contribution" on Mr Ngaïssona's part.¹⁰² None of the emails attributed to [REDACTED] relate in any way to Mr Ngaïssona or to the charges. It is only at paragraph 66 of its Request that the Prosecution appears to insinuate a link between the emails exchanged between [REDACTED] and Mr Yambété on the one hand, and Mr Ngaïssona on the other. It claims that Mr Ngaïssona "helped fund" COAC, led by Mr Yambété, and seems to draw this inference from the mere fact that Mr Yambété was employed at the Ministry of Youth, Sports, Arts and Culture at the same time as Mr Ngaïssona. These allegations lack foundation and amount to pure speculation. Evidence shows that Mr Ngaïssona and Mr Yambété did not have a close relationship and they only worked in the same Ministry for around 40 days.¹⁰³ It is telling that the Prosecution has not cited any evidence to support Mr Ngaïssona's alleged role or funding of COAC.¹⁰⁴ It also ignores the evidence on record directly contradicting this allegation.¹⁰⁵ Any purported link between Mr

¹⁰¹ See Annex 1 to the present response, for documents CAR-OTP-2126-2571; CAR-OTP-2126-2572; and CAR-OTP-2126-2573.

¹⁰² Prosecution Request, paras 9, 66, 72.

¹⁰³ Mr Yambété was nominated as "Chargé de mission" to the Ministry of Youth, Sports, Arts and Culture on 30 December 2012, *see* CAR-D30-0007-0728, whereas Mr Ngaïssona was nominated on 3 February 2013, *see* CAR-OTP-2004-1530. Mr Ngaïssona only held this position for over one month, until the Seleka 24 March 2013 coup d'état. *See* P-1847, ICC-01/14-01/18-T-023-CONF-ENG CT, page 13, lines 8-17: "8 Q. [10:02:04] Do you know if there was a relationship between Steve Yambete, chargé de mission, and Patrice-Edouard Ngaïssona as the minister of youth, sports, art and culture? A. [10:02:32] I know that they worked together, but I also know they -- they didn't really have very close relationships. Let me explain why I'm saying this. Steve Yambete, as a military person, did not really respect the administrative hierarchy in order to relay his messages. He went to the presidency for that in order to relay his messages. It was someone who was really close to President Bozizé and, when he had something to say, he didn't go via a minister to communicate. That's what I know about him".

¹⁰⁴ The Prosecution relies in the Prosecution Request, footnote 201, on its own Trial Brief, which in turn provides no evidence of such funding or role of Mr Ngaïssona in COAC.

¹⁰⁵ For instance, *see* P-2843, ICC-01/14-01/18-T-075-CONF-FRA ET, page 16, lines 5-16: « 16: 5 Pouvez-vous expliquer aux juges de la Chambre quel était le rôle de Ngaïssona — pour autant qu'il en ait eu un — au sein du COAC et du COCORA ? R. [10:24:12] Vous savez, à cette époque-là, Ngaïssona était le ministre de la Jeunesse et des Sports. Ce n'était pas lui qui avait créé les... les groupes. Les fondateurs de ces mouvements étaient là.

Ngaïssona, and the email communications between [REDACTED] and Yambété has not been established nor even explained by the Prosecution in its Request. Therefore they lack probative value.

65. As it concerns the emails and attachments submitted by the Prosecution between [REDACTED] and [REDACTED]¹⁰⁶ in May 2013, the Prosecution fails to substantiate how the mere sending of [REDACTED] relate in any way to the charges. They are not probative of any purported planning or organising of the Anti-Balaka or in showing *“a degree of planning and preparation of the Anti-Balaka in organizing FACA members to join their cause as early as May 2013”*.¹⁰⁷ Neither military operations, recruitment efforts, or the Anti-Balaka are mentioned in these exchanges. Without a witness to contextualise these items, the Prosecution’s interpretation of their meaning remains speculative. Moreover, the identity or purported role of user [REDACTED] is unknown. The mere reference in a witness statement that [REDACTED] would have become a [REDACTED],¹⁰⁸ without any indication of a timeframe, or attribution, lacks probative value. The Prosecution submits several emails attributed to [REDACTED] with individuals whose email attribution, identity and purported role or connection to the charges are wholly unsubstantiated by the Prosecution. This is the case for email users [REDACTED], [REDACTED], and [REDACTED]. The identity of these users and their alleged role in relation to [REDACTED] and to the charges is entirely unknown, significantly diminishing their probative value.

Toutes les activités concernant la jeunesse se menaient sous l’autorité du ministère de la Jeunesse, mais M. Ngaïssona, je l’ai jamais vu aller sur le terrain financer un... une quelconque activité des mouvements. C’étaient plutôt Yambété et Levy Yakité qui étaient... qui étaient conseillers à la Présidence qui travaillaient avec leurs mouvements ».

¹⁰⁶ CAR-OTP-2126-2607; CAR-OTP-2126-2608; CAR-OTP-2126-2612; CAR-OTP-2126-2614; CAR-OTP-2126-2619; CAR-OTP-2126-2620; CAR-OTP-2126-2626.

¹⁰⁷ For instance the Prosecution argues that the [REDACTED] CAR-OTP-2126-2614 “shows a degree of planning and preparation of the Anti-Balaka in organizing FACA members to join their cause as early as May 2013.”

¹⁰⁸ Prosecution Request, para. 64. See Annex A to the Prosecution Request, entry #306.

66. In addition, emails and attachments exchanged between [REDACTED] and other users present several reliability and authenticity issues. For instance, there are doubts as to whether certain purported attachments of emails exchanged between [REDACTED] and [REDACTED]¹⁰⁹ in May 2013 are in fact associated with the emails indicated by the Prosecution. For example, the Prosecution claims that email CAR-OTP-2126-2612 is a response from [REDACTED] to [REDACTED] acknowledging receipt of an attachment of the email CAR-OTP-2126-2607 dated [REDACTED]. However, from the four corners of the email, there is no indication that this is the case. To the contrary, the email does not show a history of previous exchanges. It contains no subject, no header, nor any indication that an attachment was associated to this email exchange. With other emails submitted by the Prosecution, the existence of an attachment is apparent, and the subject line may, at times, suggest some continuity between emails.¹¹⁰ No such markers of reliability are apparent here. Therefore, these items do not meet the threshold of reliability for submission via the bar table.¹¹¹

67. As it concerns the email exchanges attributed to [REDACTED] and [REDACTED],¹¹² the Prosecution speculates as to their meaning and provides interpretations which do not arise from the documents.¹¹³ Significantly, as it concerns apparent [REDACTED],¹¹⁴ there is no evidence that such requests ever materialised or were intended to be used by the Anti-Balaka in the 5 December 2013 attack. Such an interpretation certainly does not arise from the documents

¹⁰⁹ CAR-OTP-2126-2607; CAR-OTP-2126-2608; CAR-OTP-2126-2612; CAR-OTP-2126-2614; CAR-OTP-2126-2619; CAR-OTP-2126-2620; CAR-OTP-2126-2626.

¹¹⁰ See for example email CAR-OTP-2126-2607 where there is a subject line both as header to the document and in the “subject” line of the email itself, and there is a section indicating the existence of an attachment.

¹¹¹ The Defence directs the Chamber to its [Annex 1](#), where reliability issues are addressed item by item for emails.

¹¹² See CAR-OTP-2126-2629; CAR-OTP-2126-2630; CAR-OTP-2126-2632; CAR-OTP-2126-2633; CAR-OTP-2126-2634; CAR-OTP-2126-2635; CAR-OTP-2126-2637; CAR-OTP-2126-2638; CAR-OTP-2126-2639; CAR-OTP-2126-2641; CAR-OTP-2126-2640; CAR-OTP-2126-2643; CAR-OTP-2126-2644; CAR-OTP-2126-2645; CAR-OTP-2126-2646; CAR-OTP-2126-2647; CAR-OTP-2126-2651; CAR-OTP-2126-2697; CAR-OTP-2126-2698; CAR-OTP-2126-2702; CAR-OTP-2126-2703; CAR-OTP-2126-2707, CAR-OTP-2126-2708.

¹¹³ The Defence refers to its observations in its [Annex 1](#).

¹¹⁴ See, for instance, CAR-OTP-2126-2698.

themselves. Without a witness to contextualise these [REDACTED], their probative value, along with their accompanying emails is *de minimus*. Moreover, the Prosecution fails to demonstrate how the email exchanges relating to the [REDACTED] bear a link to the alleged commission of the crimes charged by the alleged Anti-Balaka. Without such information, this email thread is unlikely to have any bearing on the determination of any material fact in the case against Mr Ngaïssona. These [REDACTED] also bear insufficient indicia of reliability. For example, the attachment CAR-OTP-2126-2630 does not have a header, author, stamp, date, or signature. The Prosecution does not substantiate the authorship or provenance of this document and [REDACTED]. Moreover, the Prosecution has not shown the probative value of documents sent as attachments which are of a very general nature, including [REDACTED],¹¹⁵ or a [REDACTED].¹¹⁶

68. Moreover, several of the items lack relevance in relation to the charges. For instance, [REDACTED].¹¹⁷ As it concerns a [REDACTED] which was sent from [REDACTED] to [REDACTED],¹¹⁸ the Prosecution mischaracterises its contents which in turn impacts on its probative value. This document merely describes the situation in CAR and the prevailing insecurity at the time, which is well-documented and was widely reported in the local and international media. Contrary to the Prosecution's assertion that [REDACTED], the [REDACTED].¹¹⁹ The phrase [REDACTED] is a figure of speech in French, and does not translate into the [REDACTED]. These words merely means that it is quite a job to re-establish peace. Furthermore, the Prosecution's contention that this document demonstrates "the Anti-Balaka leadership's knowledge of the ICC Prosecutor's preliminary examination" is not only speculative but also irrelevant to the

¹¹⁵ See for instance CAR-OTP-2126-2633.

¹¹⁶ See CAR-OTP-2126-2755.

¹¹⁷ See CAR-OTP-2126-2708 which the Prosecution incorrectly categorises as a "powerpoint" presentation.

¹¹⁸ See CAR-OTP-2126-2727, CAR-OTP-2126-2741; CAR-OTP-2126-2755.

¹¹⁹ See CAR-OTP-2126-2741, page 2753.

charges.¹²⁰ Another example of mischaracterisation by the Prosecution is its submissions relating to the email CAR-OTP-2126-2640. In this email [REDACTED] indicates [REDACTED] that [REDACTED].¹²¹ The Prosecution's assertions that this email and its attachments show that [REDACTED] "[REDACTED]", or show that "*clear indications the Anti-Balaka leadership is [sic] planned and executed military operations as early as July 2013*" are simply wrong.¹²²

f. [REDACTED]

69. The Prosecution relies on emails purportedly exchanged between [REDACTED] and Mr Ngaïssona in October 2013 to argue that Mr Ngaïssona allegedly contributed to (i) taking steps to structure the Anti-Balaka; (ii) financing the Anti-Balaka; (iii) issuing instructions to Anti-Balaka members; and (iv) liaising with Anti-Balaka members exercising key functions.¹²³ However, these emails lack probative value and their submission should therefore be rejected.

70. First, the seven emails dated 5-6 October 2013 submitted by the Prosecution¹²⁴ do not meet the threshold for submission via the bar table, as they present insufficient indicia of authenticity and reliability. As elaborated above¹²⁵ and in Annex 1, there are significant inconsistencies in the timestamps, chronology, and formatting in different versions of identical emails, which are unexplained.¹²⁶ This issue is pervasive and raises serious doubts as to the authenticity of the exchanges.

¹²⁰ Prosecution Request, para. 69.

¹²¹ CAR-OTP-2126-2640.

¹²² For a further example of an error of translation on the Prosecution's part, which impacts its interpretation of a document, and therefore its probative value, see Annex 1 for item CAR-OTP-2126-2712.

¹²³ Prosecution Request, para. 9.

¹²⁴ The emails were submitted in duplicate form, from both Mr NGAÏSSONA's and [REDACTED]'s respective mailboxes: CAR-OTP-2124-0890; CAR-OTP-2124-0891; and CAR-OTP-2124-0892 (purportedly extracted from Mr Ngaïssona's mailbox); CAR-OTP-2130-3373; CAR-OTP-2130-3377; CAR-OTP-2130-3379 (purportedly extracted from [REDACTED]'s mailbox), See Prosecution Request, para. 25.

¹²⁵ See para. 15 above which relate to the authenticity issues seemingly relating to the extraction process of the emails.

¹²⁶ The Prosecution's explanation in footnote 64 of its Request, according to which a one hour time discrepancy in the timestamps of emails exchanges between [REDACTED] and Mr Ngaïssona would be due to a time zone

71. Second, in addition to the authenticity and reliability issues arising from the emails exchanges between [REDACTED] and [REDACTED], the emails of 5-6 October 2013 lack probative value in showing an alleged contribution by Mr Ngaïssona: (i) the emails show that there was no follow-up by Mr Ngaïssona to the email exchanges; (ii) the evidence shows that the provision of the [REDACTED] never materialised;¹²⁷ and (ii) the Prosecution's contention that Call Data Records ("CDR") show a phone contact between Mr Ngaïssona and [REDACTED] on 13 October 2013¹²⁸ is unsubstantiated. The Defence strongly contested that Mr Ngaïssona could be the user of all phone numbers the Prosecution attributed to him, including the number [REDACTED].¹²⁹ Even if attribution were to be shown, for the sake of argument, the metadata relied upon by the Prosecution shows that the alleged call did not go through as it would have last 0 seconds.¹³⁰ In addition, this metadata does not provide any evidence as to the contents of the call.¹³¹

72. The email chains relating to [REDACTED] titled "[REDACTED]" and "[REDACTED]" of 7 and 12 October 2013 also lack probative value in showing an alleged contribution by Mr Ngaïssona: (i) Mr Ngaïssona provided no response to the emails purportedly sent to him by [REDACTED]. The absence of response and follow up is apparent from the email sent by [REDACTED] on 27 October 2013, in which he tells Mr Ngaïssona that he has not been able to reach him despite calling him four times. This email exchange shows that Mr Ngaïssona only responded

difference, does not pass muster, given they were both located in the same time zone, and because the time discrepancies and inconsistent and at times, there is a two-hour time zone difference which is unexplained by the Prosecution. *See* para. 15 above.

¹²⁷ For instance, *see* CAR-OTP-2127-4238-R01, at 4255 para. 97; P-2841, ICC-01/14-01/18-T-030-CONF-ENG CT2, page 16, line 20 to page 17, line 1. *See* below, para. 73.

¹²⁸ Prosecution Request, para. 26.

¹²⁹ ICC-01/14-01/18-1409-Conf, para. 58 and ICC-01/14-01/18-1409-Conf-AnxB, page 13.

¹³⁰ CAR-OTP-2112-1431, line 492, relied upon by the Prosecution in the Prosecution Request, footnote 74.

¹³¹ ICC-01/14-01/18-403-Conf-Corr, para. 180; P-1704, ICC-01/14-01/18-T-128-CONF-ENG ET, page 63, lines 8-15.

months later, on 15 December 2013.¹³² The absence of reaction by Mr Ngaïssona on the two “[REDACTED]” emails was confirmed by [REDACTED] during his live oral testimony;¹³³ (ii) the purported “transfer” of [REDACTED]’s email of 12 October 2013 by Mr Ngaïssona to a certain [REDACTED]¹³⁴ lacks probative value in showing a contribution made by Mr Ngaïssona. There is no body of the email, or any context showing any link between this “transfer” and military operations; and (iii) the Prosecution’s argument that these “emails are further corroborated by CDR, other emails, Facebook records, and witness testimony”¹³⁵ amounts to circular reasoning. Footnote 77 of the Prosecution Request relates to paragraphs 19, 23-25 and 28 of the Request, which are themselves either unsubstantiated or unrelated to the emails exchanged between Mr Ngaïssona and [REDACTED].

73. Third, [REDACTED] and [REDACTED] contextualised the contents of the emails exchanged between [REDACTED] and [REDACTED] during their live testimonies. They both confirmed that the contents of the expression of “[REDACTED]” emails sent to Mr Ngaïssona were entirely fabricated. They testified *inter alia* that (i) [REDACTED] was in frequent contact with Mr Ngaïssona during the relevant timeframe [REDACTED];¹³⁶ (ii) the various requests for “[REDACTED]” sent by [REDACTED] in October 2013 never materialised;¹³⁷ (iii) the contents of the emails expressing certain “[REDACTED]” sent by [REDACTED] were entirely fabricated, which both [REDACTED] and [REDACTED] confirmed during their testimonies. Both [REDACTED] and [REDACTED] indicated that [REDACTED]. [REDACTED] testified that in particular, [REDACTED].¹³⁸ [REDACTED] also indicated that the expression of

¹³² [REDACTED]

¹³³ [REDACTED].

¹³⁴ CAR-OTP-2124-0901 and CAR-OTP-2124-0903.

¹³⁵ Prosecution Request, para. 26.

¹³⁶ [REDACTED]

¹³⁷ [REDACTED]

¹³⁸ [REDACTED]

“[REDACTED]” likely was an attempt by [REDACTED] to [REDACTED].¹³⁹ [REDACTED] explained that the contents of the 7 October 2013 email relating to [REDACTED] were fabricated. [REDACTED].¹⁴⁰ He confirmed that [REDACTED]¹⁴¹ and [REDACTED].¹⁴² [REDACTED] also confirmed this version of events and indicated that the contents of the email “*didn’t really exist*”, and “*none of that really existed*”;¹⁴³ [REDACTED] also confirmed that [REDACTED].¹⁴⁴ Further, [REDACTED] confirmed that his purported role as [REDACTED] as indicated in the email CAR-OTP-2124-0900 was “*pure fantasy*”;¹⁴⁵ [REDACTED] and [REDACTED] both confirmed that the terminology used in the email such as [REDACTED] were hyperbole used for persuasive appeal in order to [REDACTED].¹⁴⁶

74. Therefore, the emails submitted for the account [REDACTED] lack probative value in showing any alleged contribution by Mr Ngaïssona in any military operation.

75. The aforementioned paragraphs provide the Chamber with a summary of the Defence’s objections, and are not exhaustive. The Defence respectfully refers the Chamber to confidential Annex 1 of the present response for a comprehensive overview of the Defence’s objections to the Yahoo Email Collection.

V. RELIEF SOUGHT

76. The Defence respectfully requests the Chamber to:

¹³⁹ [REDACTED]

¹⁴⁰ [REDACTED]

¹⁴¹ [REDACTED]

¹⁴² [REDACTED]

¹⁴³ [REDACTED]

¹⁴⁴ [REDACTED]

¹⁴⁵ [REDACTED]

¹⁴⁶ [REDACTED]

- **TAKE INTO ACCOUNT** the Defence's objections contained in the present response and Confidential Annex 1 when the Chamber conducts its holistic assessment of the evidence during the deliberation of the judgement;
- in particular, **FIND** that the Yahoo Email Collection does not demonstrate sufficient indicia of authenticity and reliability given the number of errors;
- **ORDER** the Prosecution to submit item CAR-OTP-2130-3667 as part of its powers to consider all evidence that is necessary for the determination of the truth under Article 69 of the Rome Statute.

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 1 November 2022

At The Hague, the Netherlands.