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TRIAL CHAMBER V

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
THE PROSECUTOR *v.* ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA**

**Confidential
with Confidential Annex I**

**Ngaïssona Defence's Third Application for the Submission of Evidence from the
Bar Table**

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. Pursuant to paragraphs 61 and 62 of Trial Chamber V's ('Chamber') Initial Directions on the Conduct of Proceedings ('Initial Directions'), the Defence of Mr Patrice-Edouard Ngaïssona ('Defence') hereby submits seven items from the bar table. The seven items relate to several discrete topics that fall into two different categories, namely: (1) media articles and (2) miscellaneous documents.
2. The Submitted Items are *prima facie* relevant to material issues at trial, are corroborative of other evidence on record, and bear sufficient indicia of reliability to be recognized as formally submitted by the Chamber. Annex 1 of the present application provides the following for each item the Defence seeks to submit: (1) the evidence registration number ('ERN'); (2) the title of the item; (3) the date; (4) a short description of the item in addition to its relevance and probative value, and (5) the objections of the Prosecution.¹
3. Through the present bar table application, the Defence has filed all of its bar table applications relating to the categories enumerated in the "Defence's information regarding its Bar Table Applications (pursuant to ICC-01/14-01/18-2342)" ('the Bar Table List').² The Defence has chosen to not submit through the bar table call data records or complaints as previously announced in the Bar Table List. Since filing it, the Defence has continued to reduce the number of items it wishes to submit through the bar table to avoid cluttering unnecessarily the case record with items, which are either minimally probative or redundant of other evidence on record. However, the Defence has not waived its right to file one last bar table application within

¹ The Yekatom Defence did not present any objections to the submission of the items during *inter partes* consultations. The Prosecution objected to the submission of six of the seven items as noted in the Prosecution position column of Annex 1.

² ICC-01/14-01/18-2393, para. 4.

one week after the testimony of the last witness called by the Defence. If the Defence does file such a bar table application, it may include documents identified in the Ngaissona Defence List or other documents, which do not fall into one of the enumerated categories contained in the list.

II. CONFIDENTIALITY

4. The present filing is classified as confidential since it refers to items of evidence that either the Prosecution or the Defence have classified as such. A public redacted version will be filed as soon as practicable.

III. APPLICABLE LAW

5. The Defence incorporates by reference its submissions on the law applicable to the submission of evidence from the bar table set out in paragraphs 6 through 9 of its response to the Prosecution's first bar table motion filed in this case.³

IV. SUBMISSIONS

6. The Submitted Items fulfill the requirements for formal submission, as outlined in the Chamber's Decision on the First Prosecution Submission Request from the Bar Table.⁴ They are not subject to an exclusionary rule and are relevant and probative for establishing the facts of this case. The present application will not fully address the relevance and probative value of every item the Defence seeks to submit. The Defence respectfully refers the Chamber and the parties to Annex 1 for its complete submissions on the relevance and probative value of the Submitted Items. Additionally, Annex

³ ICC-01/14-01/18-1278.

⁴ ICC-01/14-01/18-1359, paras. 10-12, referring to the Initial Directions ICC-01/14-01/18-631, paras. 53-54, 62.

1 also contains the Prosecution's objections to and views on the Submitted items.⁵

7. In the present application, the Defence will provide an overview of the Submitted Items, which it has organized into the following categories related to relevance: (1) documents relevant to the evidentiary weight that should be attributed to the Prosecution's evidence on certain core issues of the case and (2) a document relevant to Mr Ngaïssona's support for the CAR Muslim community.

A. Documents relevant to the evidentiary weight that should be attributed to the Prosecution's evidence on certain core issues of the case

8. The Defence seeks to submit five documents that are relevant to the evidentiary weight that should be attributed to the Prosecution's evidence on certain core issues of the case. They consist of three media articles,⁶ and two documents related to Witness P-2625's alleged stay at the *Hôtel des Députés* in YAOUNDÉ in 2013.⁷
9. Two out of the three media articles are relevant to diminishing the evidentiary weight that should be attributed to the Facebook evidence the Prosecution submitted under CAR-OTP-2091-0455 and CAR-OTP-2114-0550. CAR-D30-0012-0012 and CAR-D30-0012-0009 are two media articles dated from 2011 regarding the post electoral crisis in Côte d'Ivoire. These articles feature the exact same images that the user of the E Zingo Siriri posted in November 2013. In the posts, he stated the images depicted FROCCA fighters surrounding Bangui.⁸ The Defence submits these two items to show that the

⁵ The Yekatom Defence did not object to the submission of the Submitted Items.

⁶ CAR-D30-0006-0328; CAR-D30-0012-0009; CAR-D30-0012-0012.

⁷ CAR-D30-0003-0211; CAR-D30-0003-0212 .

⁸ CAR-OTP-2091-0455; CAR-OTP-2114-0550.

user of E Zingo Siriri account was posting false content regarding FROCCA. The unreliability of these two posts is further corroborated by witness testimony.⁹ Additionally, the items show that FROCCA never became an effective organization, which is consistent with other evidence on record regarding FROCCA's lack of concrete actions.¹⁰

10. The two media articles are probative for the following reasons. First, the articles were published online in April 2011, more than two years prior to E Zingo Siriri's posts, long before the Anti-Balaka emerged, and the preparations for the alleged 5 December 2013 attack could have ever been contemplated. Second, the Defence was able to easily retrieve the images online through a simple Google search. The user of the E Zingo Siriri account had the same easy access to the articles through an online search. Third, the articles were published by *Jeune Afrique* and *Abidjan.net*, which report mainly on the news from the African continent. While the Defence cautions against relying on media articles for the truth of their content because of the anonymous hearsay they may contain, it is highly unlikely that these two publications would have misidentified the images to such an extent that they are not in the very least depictions of the post-electoral crisis in Côte d'Ivoire in 2011.

11. The third media article the Defence seeks to submit is an RFI article, namely CAR-D30-0006-0328, which was the original source of the media article the Prosecution submitted under CAR-OTP-2079-0574. Unlike CAR-OTP-2079-0574, which was published by *Centrafrique Presse*, this original RFI article makes no mention of a meeting to restore constitutional order by military means that would have included Mr Bozizé and Mr Ngaïssona. Indeed, Mr

⁹ P-0889: T-108 [ENG], p. 83, lines 1-25; P-1521, T-082[ENG], p. 60, lines 20-25 to p. 61, lines 1-5.

¹⁰ P-4720: T-280[ENG], p. 78, lines 17-25; p.82, lines 11-12; T-281[ENG], p. 6 lines 17-25 to p.7 lines 1-13, p.11, lines 18-21, pp.14-16, lines 1-11, p. 17, lines 15-20, p.25, lines 16-22.

Ngaïssona is not even mentioned in the RFI article. This original RFI article is relevant to establishing: (1) the lack of authenticity of CAR-OTP-2079-0574, which purports to be a copy of the RFI article, and (2) the reporting bias of the newspaper *Centrafrique Presse*, whose editor-in-chief Prosper Ndouba was the Minister advisor in communication and spokesperson to Mr Djotodia as of 24 April 2013,¹¹ and (3) the unreliability of *Centrafrique Presse* news articles.

12. CAR-D30-0006-0328 is probative of establishing these facts for two reasons.

First, it is clear on its face that it is the original RFI article that CAR-OTP-2079-0574 purports to be. It contains RFI's logo and it has been accessed through RFI's official website, which can be readily accessed as of the time of the filing the present application.¹² *Second*, the RFI article is probative of *Centrafrique Presse*'s reporting bias, as it shows that *Centrafrique Presse* had no source for the information claiming that Mr Bozizé, Mr Yakité, and Mr Ngaïssona¹³ were planning a return to constitutional order through military means. *Centrafrique Presse* attempted to convey this information through masquerading as an RFI article, which is a well-known news source.

13. *Lastly*, the Defence seeks to submit two documents relevant to impugning the testimony of P-2625 regarding his alleged meeting with Mr Ngaïssona that would have taken place in 2013 at the *Hôtel des Députés* in YAOUNDÉ. The Defence intends to rely on CAR-D30-0003-0211 in this regard and submits CAR-D30-0003-0212 for the sake of completeness given that CAR-D30-0003-0211 refers to this document. P-2625 testified that after a meeting at the Hilton Hotel where François Bozizé's return to power was discussed, the meeting

¹¹ CAR-D30-0003-0029.

¹² See RFI, 'RCA: la « nouvelle vie » de François Bozizé, exilé au Cameroun' (17 May 2013) <https://www.rfi.fr/fr/afrique/20130517-francois-bozize-exil-cameroun-djotodia-bangui-miskine-hilton-tchad-rca> accessed 28 June 2024.

¹³ Among other individuals listed in CAR-OTP-2079-0574.

continued at the *Hôtel des Députés*. P-2625 testified he was staying at this hotel and that this second meeting was held there with certain participants of the alleged Hilton hotel meeting, specifically Mr Ngaïssona, Levy Yakité David Gbanga and Joachim Kokaté.¹⁴ CAR-D30-0003-0211 shows that P-2625 was untruthful in his account regarding his stay at *Hôtel des Députés*. It therefore impugns his testimony of any meetings having taken place there. There is no evidence linking the participants in this alleged meeting to the *Hôtel des Députés* unless the Chamber were to give credence to P-2625's testimony that he was staying there.

14. While the document was provided for the purposes of these proceedings, it is probative of impugning P-2625's testimony for the following reasons. *First*, it was prepared during the regular course of the Defence's investigations with the assistance of a professional investigator who has been recognized as such by being registered on the ICC's List of Professional Investigators. *Second*, the *Hôtel des Députés* and its employees have no interest in these proceedings, and there is no reason this certificate would not be a reflection of their records regarding P-2625's stay there. *Third*, the document bears sufficient indicia of authenticity. It is dated, stamped and signed by the Director of the hotel.

15. While the Defence submits this document for the purpose of showing that there was no meeting that included Mr Ngaïssona and P-2625 at the *Hôtel des Députés*, the Defence notes that the issue of notice of an alibi defence does not arise. Throughout these proceedings, the Prosecution has argued that the Defence has impermissibly presented an alibi defence without having given the Prosecution due notice as required by Rule 79(1)(a) of the Rules.¹⁵ The Defence reiterates its position that Rule 79(1)(a) does not apply in

¹⁴ P-2625: T-189[ENG], p. 9, lines 3-13.

¹⁵ ICC-01/14-01/18-2298, para. 4 and the references therein.

circumstances where the accused has never been in close proximity to the crime scene.¹⁶ Therefore, when the Defence submits evidence regarding the impossibility that Mr Ngaïssona would have attended meetings in YAOUNDÉ or PARIS during a given time period, it can do so without any need to provide notice under Rule 79(1)(a).

16. The Prosecution is not able to cite one case to show otherwise. Instead, the Prosecution argues by analogy that if an accused allegedly fired a long-range missile from a given location, they would have to give notice of an alibi if they were to put forward evidence showing that they were not present at the location from which the missile was fired. The Prosecution underscores that such notice is necessary despite the accused not being alleged to have been present at the location of the explosion.¹⁷ This analogy is inapposite. Contrary to the assumption underlying the Prosecution's submissions, the location where the long-range missile would be fired would be part of the crime scene given that it would be the location where evidence related to a crime would be found.¹⁸ Here, the location of any said meeting in YAOUNDÉ or PARIS is not part of the crime scene since no evidence of the alleged crime base occurring in either BOSSANGO or BANGUI can be found there.

B. Documents relevant to Mr Ngaïssona's support for the CAR Muslim community

17. The Defence seeks to submit a request from the National Executive Bureau of the *Communauté Islamique Centrafricaine* to Mr Ngaïssona, which shows Mr Ngaïssona's support of the Muslim community in CAR.¹⁹ The document is relevant to showing Mr Ngaïssona's lack of anti-Muslim animus during the

¹⁶ ICC-01/14-01/18-2291, paras 4-5.

¹⁷ ICC-01/14-01/18-2528, para. 31.

¹⁸ *Flippo v. West Virginia*, 528 U.S.11, 145 L.Ed.2d 16 (1999).

¹⁹ CAR-D30-0001-0023

period where the Seleka coalition was gaining great strength, namely the end of December 2012. It is during this time that the Prosecution alleges that President Bozizé began mobilizing support for his regime through using rhetoric that excluded the Muslim population.²⁰

18. The document is probative for the following reasons. *First*, the document was drafted and sent to Mr Ngaïssona in December 2012, long before these proceedings were ever contemplated. *Second*, the authors of the document state that they trust Mr Ngaïssona will have a merciful view of their request, implying that they trusted Mr Ngaïssona as someone who could help them achieve national cohesion. This is consistent with other evidence on record regarding Mr Ngaïssona's support for the Muslim community during the Relevant Period.²¹ *Third*, the document presents sufficient indicia of authenticity - it presents a logo; it is dated, signed and stamped.

V. RELIEF SOUGHT

19. For the aforementioned reasons, the Defence respectfully requests the Chamber to recognize the Submitted Items listed in Annex 1 as formally submitted.

Respectfully submitted,



²⁰ Pre-Trial Brief, ICC-01/14-01/18-723, para. 46.

²¹ P-0808: T-071 [ENG], p. 40, lines 10-19; P-954 : T-169 [ENG], p. 59, lines 5-25; P-889:T-110 [ENG], p. 24, lines 20-25 to p. 25, lines 1-15; P-2843: T-074 [ENG], p. 21, lines 8-25 to p. 22, lines 1-7; D30-4197: T-278 [ENG], p. 23, lines 1-25 to p. 24, lines 1-10; P-0446: T-098 [ENG], p. 25 lines 16-25 to p. 28, lines 1-6.

Mr Knoops, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 28 June 2024

At The Hague, the Netherlands.