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No. ICC-01/14-01/18

Date: 16 August 2024

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***

Public

**Decision on the First Ngaïssona Defence Request for Submission from the Bar
Table (Official Documents)**

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

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TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 64(2) and (9), 66(2), 69 and 74(2) of the Rome Statute (the ‘Statute’) and Rules 63 and 64 of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the First Ngaïssona Defence Request for Submission from the Bar Table (Official Documents)’.

I. Procedural History

1. On 31 May 2024, in accordance with the time limit set by the Chamber,¹ the Ngaïssona Defence (the ‘Defence’) filed a request for the submission of 17 documents from the bar table (the ‘Items’ and the ‘Request’, respectively).² The Items comprise (i) 11 documents provided by national authorities; (ii) two documents issued by the Anti-Balaka; (iii) one letter from the United Nations Secretary-General addressed to the President of the Security Council; and (iv) three documents from the ‘*Fédération Internationale de Football Association*’ (the ‘FIFA’).³ The Defence submits that the Items are *prima facie* relevant to material issues at trial, corroborative of other evidence on the record, and that they bear sufficient indicia of reliability.⁴
2. On 13 June 2024, the Office of the Prosecutor (the ‘Prosecution’) partly opposed the Request. It requests that the Chamber reject the formal submission of six items⁵ (the ‘Contested Items’) and defers to the Chamber’s discretion as to the remainder of the Items, subject to some observations (the ‘Response’).⁶

¹ The Chamber initially set the final time limit for any bar table applications by the Defence at one week after the testimony of the last witness called by the Defence, whilst encouraging it to file requests on a rolling basis during its presentation of evidence (*see* Further Directions on the Conduct of the Proceedings [End of Defence Presentation of Evidence and Closure of Evidence], 2 February 2024, ICC-01/14-01/18-2342, para. 6). The Chamber later amended the deadline for bar table motions to be filed by the Defence, requiring each Defence team to *inter alia* file bar table motions for at least two categories of items by 31 May 2024 (*see* email from the Chamber, 15 May 2024, at 10:30).

² Ngaïssona Defence’s First Application for the Submission of Evidence from the Bar Table, ICC-01/14-01/18-2514-Conf (with one confidential annex, ICC-01/14-01/18-2514-Conf-Anx), paras 1, 22.

³ *See* Annex to the Request, ICC-01/14-01/18-2514-Conf-Anx.

⁴ Request, ICC-01/14-01/18-2514-Conf, para. 2.

⁵ CAR-D30-0003-0042, CAR-OTP-2113-0034, CAR-OTP-2136-1366, CAR-D30-0001-0039, CAR-OTP-2131-0186 and CAR-OTP-2131-0271.

⁶ Réponse de l’Accusation à la “Ngaïssona Defence’s First Application for the Submission of Evidence from the Bar Table” (ICC-01/14-01/18-2514-Conf), ICC-01/14-01/18-2528-Conf, paras 1-2, 46.

II. Analysis

3. The Chamber recalls the applicable law for the submission of evidence from the bar table.⁷ It also takes note of the parties' arguments on the relevance and probative value of the Items,⁸ and defers its consideration of such arguments to its deliberation of the judgment pursuant to Article 74(2) of the Statute.
4. The Prosecution argues that the Contested Items lack *prima facie* relevance and probative value, and that the Defence requests their submission merely to support baseless and/or speculative arguments.⁹ In addition, the Prosecution opposes three of the Contested Items¹⁰ on the basis that the Defence failed to provide an alibi notification under Rule 79(1) and (2) of the Rules.¹¹
5. The Chamber observes that the Contested Items consist of (i) a criminal complaint against P-2625 from November 2022,¹² which according to the Defence suggests that P-2625 fled the Central African Republic out of fear of criminal sanctions;¹³ (ii) a '*procès-verbal de synthèse*' from the French authorities from April 2019 in response to a request for assistance from the Prosecution concerning Mr Ngaïssona's entries to and exits from the French territory from March 2013 to December 2014;¹⁴ (iii) minutes of an Anti-Balaka meeting in April 2015, allegedly presided by P-1719, concerning its transformation into a political party;¹⁵ (iv) an invitation letter addressed by the FIFA to Mr Ngaïssona to attend the FIFA Clubs world cup in Japan in December 2012;¹⁶ (v) an invoice issued by the FIFA for the rebooking of Mr Ngaïssona's flight in June 2013;¹⁷ and (vi) a

⁷ Decision on the First Prosecution Submission Request from the Bar Table (Sexual and Gender Based Violence), 12 April 2022, ICC-01/14-01/18-1359, paras 10-12 *referring to* Initial Directions on the Conduct of the Proceedings, 26 August 2020, ICC-01/14-01/18-631, paras 53-54, 62.

⁸ See Request, ICC-01/14-01/18-2514-Conf, paras 5, 8-10, 16-21; Response, ICC-01/14-01/18-2528-Conf, paras 34-45.

⁹ Response, ICC-01/14-01/18-2528-Conf, paras 7-25.

¹⁰ CAR-OTP-2131-0186, CAR-OTP-2113-0034 and CAR-OTP-2131-0271.

¹¹ Response, ICC-01/14-01/18-2528-Conf, paras 26-33.

¹² CAR-D30-0003-0042.

¹³ See Annex to the Request, ICC-01/14-01/18-2514-Conf-Anx, pp. 7-8, entry 9.

¹⁴ CAR-OTP-2113-0034.

¹⁵ CAR-OTP-2136-1366.

¹⁶ CAR-D30-0001-0039.

¹⁷ CAR-OTP-2131-0186.

report of Mr Ngaïssona's expenses while at the FIFA Clubs world cup in Morocco in 2013.¹⁸

6. Having reviewed the Contested Items the Chamber considers that they are *prima facie* relevant to the factual allegations in this case. Moreover, the Chamber notes the Defence's arguments that four of these Contested Items relate to the whereabouts of Mr Ngaïssona from December 2012 to December 2014,¹⁹ while the remaining two seek to impeach the credibility of P-2625, as well as to show an alleged bias of P-1719 against Mr Ngaïssona and the accused's alleged lack of control over the Anti-Balaka movement.²⁰
7. Furthermore, the Chamber is of the view that the alleged lack of probative value of the Contested Items, as argued by the Prosecution, is a matter to be addressed during the judgment deliberations and does not constitute, in itself, a procedural bar at this stage. In this regard, the Chamber is not persuaded by the Prosecution's submission that rejecting the submission of the Contested Items is necessary to preserve the integrity of the proceedings.²¹
8. Moreover, the Chamber does not consider that in this instance the alleged lack of any alibi notification is relevant to its assessment or otherwise precludes the submission of the three Contested Items in question.²² The Chamber further observes that any potential prejudice to the Prosecution would be minimal, especially since the latter argues that the Contested Items do not have any probative value.
9. With regard to the remainder of the Items, the Chamber notes that the Prosecution defers to its discretion and does not raise any procedural bars.

¹⁸ CAR-OTP-2131-0271.

¹⁹ Request, ICC-01/14-01/18-2514-Conf, paras 7-9 *referring to* CAR-D30-0001-0039, CAR-OTP-2131-0186, CAR-OTP-2131-0271 and CAR-OTP-2113-0034.

²⁰ Request, ICC-01/14-01/18-2514-Conf, para. 18 *referring inter alia to* CAR-D30-0003-0042 and CAR-OTP-2136-1366; Annex to the Request, ICC-01/14-01/18-2514-Conf-Anx, pp. 7, 10-11, entries 2 and 9.

²¹ See Response, ICC-01/14-01/18-2528-Conf, paras 9-25.

²² CAR-OTP-2131-0186, CAR-OTP-2113-0034 and CAR-OTP-2131-0271.

10. In light of the above, having reviewed the remaining Items and in the absence of any procedural bars, the Chamber recognises all of the Items as formally submitted.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Request;

RECOGNISES as formally submitted CAR-OTP-2100-0582, CAR-OTP-2100-1680, CAR-OTP-2100-0638, CAR-OTP-2101-3410, CAR-OTP-2008-0791, CAR-D30-0003-0031, CAR-D30-0003-0029, CAR-D30-0003-0022, CAR-D30-0003-0042, CAR-OTP-2113-0034, CAR-D30-0003-0213, CAR-D30-0006-0332, CAR-OTP-2136-1366, CAR-D30-0004-0383, CAR-D30-0001-0039, CAR-OTP-2131-0186 and CAR-OTP-2131-0271; and

ORDERS the Defence and the Prosecution to file a public redacted version of the Request, ICC-01/14-01/18-2514-Conf, and the Response, ICC-01/14-01/18-2528-Conf, respectively, within one week of notification of this decision.

Done in both English and French, the English version being authoritative.

 Judge Péter Kovács	 Judge Bertram Schmitt Presiding Judge	 Judge Chang-ho Chung
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Dated 16 August 2024

At The Hague, The Netherlands