



Original: **English**

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

Date: **23 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 *PROSECUTOR v. ALFRED YEKATOM AND
PATRICE-EDOUARD NGAÏSSONA***

Public

**Public redacted version of “Prosecution’s Response to “Ngaissona Defence’s
Second Application for the Submission of Evidence form the Bar Table (Yahoo
Email Evidence)” (ICC-01/14-01/18-2559-Conf)”,
ICC-01/14-01/18-2585-Conf, 10 July 2024**

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) defers to Trial Chamber V’s (“Chamber”) discretion regarding the Defence’s “Second Application for the Submission of Evidence from the Bar Table (Yahoo Email Evidence)” (“Second Application”) subject to the following observations. The emails which the Defence seeks to submit are not probative of the lack of authenticity of the Yahoo emails submitted by the Prosecution;¹ they do not demonstrate that it would have been impossible for Ngaïssona to attend relevant meetings in 2013,² and they fail to demonstrate that Ngaïssona suffered from financial hardship during 2013 and that as a result he was unable to address other matters.³ The Defence’s arguments in this regard are speculative at best.

2. Further, the emails regarding Ngaïssona’s role as President of the Central African Football Federation (“CAFF”) on the eve of the Seleka coup⁴ are only marginally relevant and/or probative in this case – if at all. Last, the emails do not support the Defence’s claim that Ngaïssona was “not part of any ‘inner circle’ that was planning to take down the Seleka regime.”⁵

II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(2) of the Regulations of the Court (“RoC”), this document is filed as “Confidential”, as it responds to a filing of the same designation. A public redacted version will be filed as soon as practicable.

¹ ICC-01/14-01/18-2559-Conf, paras. 10-11.

² ICC-01/14-01/18-2559-Conf, paras. 12-14.

³ ICC-01/14-01/18-2559-Conf, paras. 15-16.

⁴ ICC-01/14-01/18-2559-Conf, para. 17.

⁵ ICC-01/14-01/18-2559-Conf, para. 18.

III. SUBMISSIONS

- a. *The proposed emails do not demonstrate a lack of prima facie authenticity of the Yahoo emails submitted by the Prosecution*

4. The emails proffered in this regard⁶ do not impugn the *prima facie* authenticity of the Yahoo emails submitted by the Prosecution. The Defence's line of reasoning is fundamentally flawed. It fails to point out any failing in the authenticity issues with the Yahoo emails submitted by the Prosecution, and/or to explain how the reliability of any specific relevant content is affected. Instead, the Defence makes a sweeping claim regarding the lack of reliability of the entire Yahoo email collection on the basis of unsubstantiated and undefined alleged "processing errors or anomalies."⁷

5. The authenticity and reliability of the Yahoo emails submitted by the Prosecution is firmly grounded.⁸ [REDACTED].⁹ The content of the emails further demonstrates their reliability as they form a contemporaneous, coherent chain of communications between interlocutors. In fact, the Defence merely invites the Chamber to speculate in asserting that it should attach "little evidentiary weight" to any email thread where there "could be" entire email messages missing from a given thread, or "the time at which the emails were sent is uncertain."¹⁰

- b. *The proposed emails do not show Ngaïssona's whereabouts from May to July 2013*

6. The five emails¹¹ proffered in this regard do not demonstrate that NGAISSONA's attendance at relevant meetings in YAOUNDE or PARIS in 2013 did not occur.¹² At

⁶ CAR-OTP-2130-3522; CAR-OTP-2130-3568; CAR-OTP-2130-3642; CAR-OTP-2130-3644; CAR-OTP-2130-3646; CAR-OTP-2130-3648; CAR-OTP-2124-1027; CAR-OTP-2125-0929; CAR-OTP-2130-3517; CAR-OTP-2130-3389.

⁷ ICC-01/14-01/18-2559-Conf, para. 6.

⁸ ICC-01/14-01/18-1632-Conf.

⁹ [REDACTED].

¹⁰ ICC-01/14-01/18-2559-Conf, para. 19.

¹¹ CAR-OTP-2130-3450; CAR-OTP-2130-3520; CAR-OTP-2130-3409; CAR-OTP-21300-3525; CAR-OTP-2130-3537.

¹² ICC-01/14-01/18-2559-Conf, para. 13.

their highest, this handful of emails only show that NGAISSONA claimed to have been in Douala on 19 April 2013¹³ and that airline tickets were issued in his name on 3 May 2013.¹⁴ Although DOUALA is mentioned in the email CAR-OTP-2130-3537,¹⁵ it does not show NGAISSONA's presence there at that time.

c. The proposed emails do not demonstrate NGAISSONA's financial hardship

7. Contrary to the Defence's suggestion, the proffered emails¹⁶ do not demonstrate that NGAISSONA was suffering from "financial hardship" in 2013 and therefore unable to finance the Anti-Balaka at key moments.¹⁷ The ten emails submitted by the Defence to support this sweeping claim are a red herring. The relevant parts of these email chains concern a limited period of approximately two months from 19 June¹⁸ until 23 August 2013.¹⁹ It is already a stretch to claim that these emails demonstrate the Accused's financial hardship during this specific period — without engaging in speculation — let alone throughout the year and most particularly in the relevant months prior to the 5 December 2013 Anti-Balaka attacks on BANGUI²⁰ and BOSSANGO.

8. Further, the Defence allegation that email CAR-OTP-2130-3555 demonstrates that Ngaïssona had no "mental bandwidth"²¹ to address other matters than those concerning the financial hardships of his family is farfetched and rooted in nothing more than rank speculation. There has been no testimony or evidence to this effect adduced in this trial, and should NGAISSONA wish to advance this thesis, he remains free to take the stand, subject to examination. However, the Defence may not

¹³ CAR-OTP-2130-3450.

¹⁴ CAR-OTP-2130-3409 at 3409.

¹⁵ At 3537.

¹⁶ CAR-OTP-2130-3486; CAR-OTP-2130-3633; CAR-OTP-2130-3517; CAR-OTP-2130-3522; CAR-OTP-2130-3674; CAR-OTP-2130-3637; CAR-OTP-2130-3568; CAR-OTP-2130-3537; CAR-OTP-2130-3530; CAR-OTP-2130-3555.

¹⁷ ICC-01/14-01/18-2559-Conf, paras. 15-16.

¹⁸ CAR-OTP-2130-3486.

¹⁹ CAR-OTP-2130-3674.

²⁰ Prosecution's Trial Brief, ICC-01/14-01/18-723-Red, paras. 273-276.

²¹ ICC-01/14-01/18-2559-Conf, para. 16.

circumvent the applicable procedures by proffering the unsubstantiated submissions of Counsel instead.

d. The proposed emails regarding Ngaïssona's role as President of the CAFF are at best marginally relevant and/or probative

9. That NGAISSONA would (or not) have been “pushing for the development of football in CAR” during his tenure as the Minister of Youth, Sports, Arts and Culture is at best marginally relevant to this case or probative of any important element. Further, the Defence’s claim that the four emails²² proffered in this regard — which are one-sided communications from a third party to NGAISSONA sent over approximately one week at the beginning of March 2013,²³ — are consistent with the latter’s “dedication to football in CAR, and his well-known generosity”²⁴ is tenuous to say the least.

e. The proposed emails do not attenuate NGAISSONA's participation in BOZIZE's “inner circle”

10. In the same vein, the Defence’s allegation that two emails²⁵ concerning “the practice of widespread information sharing among CAR citizens during the Seleka regime” are relevant to showing that NGAISSONA was not part of any “inner circle” that was planning to take it down,²⁶ is tenuous — even at face value — and is ultimately speculative. This cherry-picking exercise — limited to two emails from July and August 2013 — fails to substantiate, much less support, this sweeping claim, undermining their claimed probative value.

²² Including one estimate, CAR-OTP-2130-3396.

²³ CAR-OTP-2130-3437; CAR-OTP-2130-3438; CAR-OTP-2130-3396; CAR-OTP-2130-3443.

²⁴ ICC-01/14-01/18-2559-Conf, para. 17.

²⁵ CAR-OTP-2130-3555; CAR-OTP-2130-3659.

²⁶ ICC-01/14-01/18-2559-Conf, para. 18.

IV. CONCLUSION

11. Subject to the above, the Prosecution respectfully defers to the Chamber with respect to the disposition of the Defence's Request.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

Karim A. A. Khan KC, Prosecutor

Dated this 23th day of August 2024
At The Hague, The Netherlands