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No.: ICC-01/14-01/18
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PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

**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 Request pursuant to Regulation 35 for variation of time limit to add two documents to its Amended List of Evidence",
ICC-01/14-01/18-375-Conf, 3 October 2019

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”) requests an extension of the time limit to add to its Amended List of Evidence (“LoE”), two additional documents containing incriminating evidence, in accordance with Regulation 35 of the Regulations of the Court (“Request”). The two documents – a *Process Verbal d’Investigation*¹ and a [REDACTED] document² – were received by the Prosecution on 16 August and 17 September 2019, respectively, and are relevant to the arguments raised by NGAISSONA Defence during the confirmation of charges hearing.

II. CONFIDENTIALITY

2. The Request is filed Confidential since it contains private information pertaining to one of the Suspects. The Prosecution will file a public redacted version of this submission as soon as practicable.

III. SUBMISSIONS

3. On 15 May 2019, the Chamber issued the “Decision on the “Prosecution’s Request to Postpone the Confirmation Hearing and all Related Disclosure Deadlines”” (“Decision”).³ This Decision ordered the Prosecution to, *inter alia*, “submit the DCC, together with a list of evidence she intends to present at the confirmation hearing, and to disclose all evidence within the meaning of article 67(2) of the Statute and all material referred to in rule 77 of the Rules by 19 August 2019 at the latest”.⁴

¹ CAR-OTP-2115-0462.

² CAR-OTP-2117-0389.

³ ICC-01/14-01-18-199.

⁴ ICC-01/14-01-18-199, p.18.

A. Request to add document CAR-OTP-2115-0462 to the Amended LoE

4. On 16 August 2019, three days prior to the disclosure deadline set by the Chamber, the Prosecution received document CAR-OTP-2115-0462, the *Process Verbal d'Investigation*, from the [REDACTED]. This document provides limited information about [REDACTED] and indicates that he held a temporary residence permit for France from 26 April 2013 to 25 April 2014. The relevance of this information to the current stage of the proceedings was not apparent upon its initial review by the Prosecution, and the document was therefore not disclosed or added to the Prosecution's LoE by the 19 August 2019 deadline.

5. The significance of the information provided in the *Process Verbal d'Investigation* became apparent only following the argument raised by NGAISSONA Defence that the Suspect was not in possession of a valid Schengen visa at the time of FROCCA's creation in August 2013, and that he could therefore not enter France during that time.⁵ In the absence of any indication that this line of Defence would be raised, the Prosecution did not deem it necessary to disclose, and include in its LoE, a document indicating that in August 2013 NGAISSONA was in possession of a valid temporary residence permit for France. The inclusion of this document in the Prosecution's Amended LoE is in the interests of justice, as it provides relevant information to counter an affirmative representation of facts by the Defence, which may otherwise mislead the Chamber.

6. The arguments set out above demonstrate that there is good cause, and it is in the interests of justice, to permit the addition of document CAR-OTP-2115-0462 to the Prosecution's Amended LoE. The Prosecution submits that the Defence will not suffer any prejudice if the request is granted, since information provided in the *Process Verbal d'Investigation* is of limited nature and has no direct relevance to the

⁵ ICC-01/14-01/18-T-008-CONF-FRA ET, p.104, l.26 – p.105, l.6.

Suspect's role in the FROCCA. In addition, Defence should have been aware that their client was in possession of a temporary residence permit for France, and of a diplomatic passport (mentioned at paragraph 9 below), prior to making their assertion of his inability to legally enter France in August 2013. There can be no prejudice because NGAISSONA himself must have known of the existence of these documents.

B. Request to add document CAR-OTP-2117-0389 to the Amended LoE

7. On 17 September 2019, two days prior to the commencement of the confirmation hearing, and almost one month after the disclosure deadline set by the Chamber, the Prosecution received [REDACTED] document CAR-OTP-2117-0389 [REDACTED]. It was therefore not possible for the Prosecution to disclose and include this item in its LoE prior to the 19 August 2019 deadline.

8. Information provided in this [REDACTED] document is relevant, as it provides additional corroboration on the attribution of [REDACTED] phone number [REDACTED] to NGAISSONA. Lack of evidence attributing this number to the Suspect was raised by the Defence during the confirmation hearing.⁶

9. Specifically, [REDACTED].⁷ [REDACTED].⁸ [REDACTED].⁹

10. The arguments set out above demonstrate that there is good cause, and it is in the interests of justice, to permit the addition of document CAR-OTP-2117-0389 to the Prosecution's Amended LoE. The Defence will not suffer any prejudice if the request is granted, since information provided in the [REDACTED] document is of limited nature and is not new, but merely serves to further substantiate the

⁶ ICC-01/14-01/18-T-009-CONF-FRA ET, p.42, l.10 – p.43, l.23.

⁷ See, in particular, [REDACTED] at CAR-OTP-2117-0389.

⁸ See [REDACTED].

⁹ See [REDACTED].

Prosecution's earlier assertion.¹⁰ In addition, as with the *Process Verbal d'Investigation*, Defence should have been aware that their client used the phone number in question, as well as his diplomatic passport, in the context of [REDACTED] at the relevant time. There can be no prejudice because NGAISSONA himself also knew this information.

IV. RELIEF SOUGHT

11. For the above reasons, the Prosecution requests the Chamber to grant, pursuant to Regulation 35, the extension of time for the Prosecution to include two documents to its Amended LoE.



Fatou Bensouda, Prosecutor

Dated this 22nd day of October 2019
At The Hague, The Netherlands

¹⁰ ICC-01/14-01/18-282-Conf-AnxB1, para.39 (see, in particular, footnote 76).