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

Public

Public redacted version of “Prosecution’s Request for leave to add six Yahoo email threads to the List of Evidence”, ICC-01/14-01/18-958-Conf, 16 April 2021

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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”) seeks leave from Trial Chamber V (“Chamber”) to add six Yahoo email threads (“Emails”)¹ to its List of Evidence (“LoE”)² in accordance with the Decision Setting the Commencement Date of the Trial (“Decision”).³ The addition of the Emails is warranted and appropriate in the circumstances. *First*, despite the Prosecution requesting the Emails on 5 March 2020, it only obtained them in January 2021, after the 9 November 2020 deadline to file its LoE.⁴ *Second*, the addition of these few items at the start of trial does not infringe the fair and expeditious conduct of the proceedings. The Emails are of significant probative value and their addition would not cause undue prejudice to either Accused, or derail the proceedings. Rather, it is in the interests of justice and the Chamber’s determination of the truth.

II. CONFIDENTIALITY

2. Pursuant to regulation 23bis(1) of the Regulations of the Court (“RoC”), the Prosecution files this submission as ‘*Confidential*’ because it contains confidential information regarding Prosecution evidence, and refers to confidential filings. A public redacted version will be filed as soon as practicable.

¹ CAR-OTP-2130-3276; CAR-OTP-2130-3279; CAR-OTP-2130-3282; CAR-OTP-2130-3288; CAR-OTP-2130-3291; CAR-OTP-2130-3294; CAR-OTP-2130-3295; CAR-OTP-2130-3296; CAR-OTP-2130-3297; CAR-OTP-2130-3298; CAR-OTP-2130-3299; CAR-OTP-2130-3300; CAR-OTP-2130-3301; CAR-OTP-2130-3303; CAR-OTP-2130-3305; CAR-OTP-2130-3306; CAR-OTP-2130-3373; CAR-OTP-2130-3374; CAR-OTP-2130-3375; CAR-OTP-2130-3377; CAR-OTP-2130-3379; CAR-OTP-2130-3381; CAR-OTP-2130-3382; CAR-OTP-2130-3406; CAR-OTP-2130-3407; CAR-OTP-2130-3408; CAR-OTP-2130-3466; CAR-OTP-2130-3490; CAR-OTP-2130-3493; CAR-OTP-2130-3496; CAR-OTP-2130-3497; CAR-OTP-2130-3501; CAR-OTP-2130-3504; CAR-OTP-2130-3505.

² ICC-01/14-01/18-724-Conf-AnxC-Corr.

³ ICC-01/14-01/18-589, para. 10.

⁴ ICC-01/14-01/18-589, para. 14.

III. SUBMISSIONS

3. The addition of the Emails to the LoE is justified because they are of significant probative value and the addition causes no undue prejudice to either Accused.

4. As decided in the *Ongwen* case, a determination of whether leave to add items to the LoE should be granted is not a decision under regulation 35 of the RoC. It does not involve the enlargement of a time limit, but rather, the amendment of an LoE *timely filed*. Thus, the Chamber is to determine whether:

“reliance on the part of the Prosecution on items of evidence additional to those included in the original list of evidence causes an undue prejudice to the procedural rights of the Defence. Relevant factors for the Chamber’s determination in this regard include, *inter alia*, the extent to which the requested addition is opposed by the Defence, the time when the addition is sought, the nature and amount of the material concerned, the intended purpose for the Prosecution’s requested reliance on such material as well as its prospective significance in light of the charges brought against the accused and the rest of the available evidence.”⁵

5. Each chamber has the discretionary power to allow amendments to the LoE. Amendments after the deadline for the submission of the LoE have been accepted in a number of cases, pursuant to, *inter alia*, articles 64(2),⁶ 64(6)(d),⁷ 64(6)(f)⁸ and/or 69(3).⁹ In this case, with respect to the 9 November 2020 disclosure deadline, the Chamber’s Decision confirmed “[t]he Prosecution may – and in some cases, must – continue disclosing materials after this date, but leave of the Chamber is required for the Prosecution to rely on such materials as incriminating evidence at trial.”¹⁰

⁵ ICC-02/04-01/15-619, para. 10; ICC-02/04-01/15-600, para. 14; ICC-02/04-01/15-957, para. 6; *see also* ICC-01/04-02/06-2079, para. 22; ICC-01/04-01/07-3059, para. 21.

⁶ *See, e.g.*, ICC-02/11-01/15-183-Red.

⁷ *See, e.g.*, ICC-01/04-01/07-2325-Red, para. 15.

⁸ ICC-01/05-01/13-1191, para 10.

⁹ *See, e.g.*, ICC-01/04-01/07-2325-Red, para. 15.

¹⁰ ICC-01/14-01/18-589, para. 10 (citations omitted), *see also*, para. 16.

A. Background

6. The Prosecution sent the Request for Assistance (“RFA”) in producing the Emails to the competent [REDACTED] authorities on 5 March 2020 (“[REDACTED]”), yet only received the formal transmission of the Emails from the [REDACTED] authorities on 22 January 2021,¹¹ well after the 9 November 2020 LoE deadline. The partial closure of domestic courts in [REDACTED] due to the Covid-19 pandemic caused the request to be delayed in [REDACTED] for several months. Upon numerous requests for expedited treatment of this request, the competent [REDACTED] authorities repeatedly informed the Prosecution that, despite marking these requests as urgent, the partial closure of the courts due to Covid-19 was the primary reason for their delay in obtaining the Yahoo materials from [REDACTED].

7. There was no delay in the disclosure of the material. Upon receiving the formal response to [REDACTED], the Prosecution downloaded them into its internal servers on 22 January 2021. The response contained 5265 emails with 885 attachments from [REDACTED] different Yahoo accounts. As soon as these items were downloaded, investigators or analysts reviewed them and filtered out irrelevant items, and then two sets of attorneys reviewed a smaller number to classify them legally, doing a primary and secondary review to prepare them for disclosure, and adding redactions where necessary. After being processed by the Information and Evidence Unit, the content from these three accounts was disclosed in either INCRIM or Rule 77 packages before opening statements. On 4 February 2021, three of the email threads were disclosed in Pre-trial INCRIM package 84, showing the Prosecution’s intention to rely on this material as incriminatory.¹² On 10 February 2021, the other three email threads

¹¹ An advanced copy was emailed to the Prosecution on 15 January 2021 and made available for download on 20 January 2021, two days before the formal transmission.

¹² ICC-01/14-01/18-872; ICC-01/14-01/18-872-Conf-Anx.

were disclosed in Pre-Trial Rule 77 Package 28, along with additional emails from [REDACTED].¹³

B. The Emails are relevant and have significant probative value

8. The compelling Emails are of significant probative value, and will assist the Chamber in its truth-seeking function, including with respect to NGAISSONA's intention to plan and contribute to the crimes charged, including: (i) coordinating May 2013 planning meetings in Cameroon with BOZIZE, [REDACTED], YAKETE, and others; (ii) coordinating a strategic plan in June 2013 to mobilise the youth in BANGUI; (iii) contacting former President François BOZIZE ("BOZIZE") in July 2013 to obtain money and resources for mobilising BOZIZE supporters on the ground in BANGUI; (iv) creating *le Front pour le Retour à l'Ordre Constitutionnel en Centrafrique* ("FROCCA"); (v) planning military operations in the Provinces and BANGUI in August 2013; (iv) concealing financial transactions between BANGUI and DOUALA; and (vi) providing funds and weaponry in October 2013 to [REDACTED] in charge of Anti-Balaka elements in BANGUI, [REDACTED]. As detailed below, these Emails bring to light previously unknown details about NGAISSONA's involvement in planning and contributing to the crimes charged.

9. The six email threads discussed below are spread across thirty-four ERNs, many of which are partially duplicative in that they are different replies to the same original thread, or are the same email with slightly different time stamps.¹⁴

¹³ ICC-01/14-01/18-880; ICC-01/14-01/18-880-Conf-Anx.

¹⁴ It is the Prosecution's understanding that the time stamps may differ based off the time zone of the sender versus the recipient.

i. Thread 1: NGAISSONA, [REDACTED] ([REDACTED] May 2013)

10. The first thread consists of one email titled [REDACTED] sent on [REDACTED] May 2013 from [REDACTED] to NGAISSONA, [REDACTED], and [REDACTED].¹⁵ [REDACTED] refers to sending [REDACTED] to [REDACTED] in [REDACTED], and says [REDACTED] May 2013 [REDACTED] [REDACTED].¹⁶ [REDACTED] confirms [REDACTED] with [REDACTED] (an alias for BOZIZE),¹⁷ as well as to NGAISSONA [REDACTED].¹⁸

ii. Thread 2: NGAISSONA and [REDACTED] (June 2013)

11. The second email thread (consisting of 10 ERNs¹⁹) contains correspondence from late June 2013 between NGAISSONA and [REDACTED] in relation to a [REDACTED] BANGUI. On [REDACTED] June 2013, [REDACTED] emails NGAISSONA, addressing him [REDACTED] and with the subject [REDACTED].²⁰

12. The email attaches [REDACTED]²¹ that NGAISSONA asked for and outlines a [REDACTED], including to: [REDACTED].²² [REDACTED] also requests [REDACTED].²³ NGAISSONA responds the next day, asking for the [REDACTED],²⁴ which [REDACTED] on [REDACTED] June 2013, sending [REDACTED] NGAISSONA requested.²⁵ Also on [REDACTED] June 2013, [REDACTED] sends another email to NGAISSONA, attaching a [REDACTED]²⁶ including [REDACTED],

¹⁵ CAR-OTP-2130-3466.

¹⁶ CAR-OTP-2130-3466 at 3466.

¹⁷ See, e.g., CAR-OTP-2103-3293, at 3392; CAR-OTP-2103-3870, at 3873; CAR-OTP-2103-3964, at 3965.

¹⁸ CAR-OTP-2130-3466 at 3466.

¹⁹ CAR-OTP-2130-3406; CAR-OTP-2130-3407; CAR-OTP-2130-3408; CAR-OTP-2130-3490; CAR-OTP-2130-3493; CAR-OTP-2130-3496; CAR-OTP-2130-3497; CAR-OTP-2130-3501; CAR-OTP-2130-3504; CAR-OTP-2130-3505.

²⁰ CAR-OTP-2130-3493 at 3493.

²¹ CAR-OTP-2130-3490 (attaching CAR-OTP-2130-3406).

²² CAR-OTP-2130-3493 at 3493.

²³ CAR-OTP-2130-3493 at 3493.

²⁴ CAR-OTP-2130-3493 at 3493.

²⁵ CAR-OTP-2130-3496 at 3496 (attaching CAR-OTP-2130-3407).

²⁶ CAR-OTP-2130-3497 at 3497 (attaching CAR-OTP-2130-3408).

including: [REDACTED], and [REDACTED].²⁷ On the same day, [REDACTED] writes a separate email to NGAISSONA, asking him to confirm receipt of the documents.²⁸ NGAISSONA replies on the same day, confirming receipt, and asking for time to reflect, indicating that he will revert to [REDACTED].²⁹ On the following day, [REDACTED] June 2013, [REDACTED] replied, informing NGAISSONA that [REDACTED] adds that: [REDACTED], likely referring to [REDACTED]. [REDACTED] further tells NGAISSONA that [REDACTED].³⁰

iii. Thread 3: NGAISSONA, [REDACTED] and [REDACTED] (July 2013)

13. The third email thread (consisting of seven³¹ ERNs) contains correspondence between NGAISSONA, [REDACTED], and [REDACTED] dated mid-July 2013.

14. Late on the evening of [REDACTED] July 2013, [REDACTED] sends NGAISSONA an attachment [REDACTED] dated [REDACTED] 2013, addressing NGAISSONA [REDACTED] and discussing the composition of the [REDACTED],³² [REDACTED], with the ultimate goal of returning BOZIZE to power.³³ [REDACTED] notes [REDACTED], and asks NGAISSONA [REDACTED]. [REDACTED] also notes [REDACTED], and that he knows NGAISSONA [REDACTED].³⁴ Within a couple of hours, NGAISSONA promptly forwards this message and attachment to [REDACTED],³⁵ and confirms [REDACTED]: “... [REDACTED]...”³⁶ [REDACTED].

²⁷ CAR-OTP-2130-3408 at 3408.

²⁸ CAR-OTP-2130-3501 at 3501.

²⁹ CAR-OTP-2130-3501 at 3501.

³⁰ CAR-OTP-2130-3505 at 3505.

³¹ CAR-OTP-2130-3291 is the master of several partial duplicates: CAR-OTP-2130-3288, CAR-OTP-2130-3294, CAR-OTP-2130-3301, CAR-OTP-2130-3303, CAR-OTP-2130-3305, and CAR-OTP-2130-3306.

³² CAR-OTP-2130-3291 at 3292.

³³ CAR-OTP-2130-3291 at 3291.

³⁴ CAR-OTP-2130-3291 at 3291.

³⁵ CAR-OTP-2130-3291 at 3291.

³⁶ CAR-OTP-2130-3294 at 3294.

15. The body of this [REDACTED] July 2013 email was previously disclosed in multiple emails from NGAISSONA's account already on the LoE.³⁷ *First*, it is part of an email NGAISSONA also forwarded to [REDACTED] on [REDACTED] August 2013.³⁸ *Second*, it forms part of an email chain from [REDACTED] to which NGAISSONA responded on [REDACTED] September 2013,³⁹ and to which [REDACTED] further replied on the same day, [REDACTED].⁴⁰

iv. Thread 4: NGAISSONA and [REDACTED] (July-August 2013)

16. The fourth email thread (consisting of six⁴¹ ERNs) from late July and early August 2013 between NGAISSONA and [REDACTED] discusses the [REDACTED], and the planning of [REDACTED] BANGUI to take back power.

17. On [REDACTED] July 2013, [REDACTED] wrote to NGAISSONA, addressing him "[REDACTED]," and asking to obtain a proposed date so that they can plan [REDACTED], while taking into account [REDACTED] that NGAISSONA and others will engage. [REDACTED] suggests that if the [REDACTED], that they should [REDACTED] in BANGUI too. [REDACTED] further says [REDACTED] NGAISSONA's proposals: [REDACTED]⁴² NGAISSONA replies on the same day, thanking [REDACTED] and saying he will revert soon [REDACTED].⁴³ [REDACTED] August 2013, NGAISSONA replies to [REDACTED], informing him [REDACTED], and that they should keep contact [REDACTED].⁴⁴ On the [REDACTED] August 2013,

³⁷ CAR-OTP-2124-0004 at 0005.

³⁸ CAR-OTP-2124-0004 at 0005.

³⁹ CAR-OTP-2124-0788 at 0788.

⁴⁰ CAR-OTP-2124-0789 at 0789.

⁴¹ CAR-OTP-2130-3295; CAR-OTP-2130-3296; CAR-OTP-2130-3297; CAR-OTP-2130-3298; CAR-OTP-2130-3299; CAR-OTP-2130-3300.

⁴² CAR-OTP-2130-3296 at 3296.

⁴³ CAR-OTP-2130-3296 at 3296.

⁴⁴ CAR-OTP-2130-3297 at 3297.

NGAISSONA writes to [REDACTED], informing him that they [REDACTED]. NGAISSONA asks [REDACTED].⁴⁵

18. [REDACTED] August 2013, [REDACTED] replies to NGAISSONA, saying that [REDACTED] is in line [REDACTED] indicates he will [REDACTED] says he will contact the [REDACTED], as NGAISSONA wishes. [REDACTED] also asks NGAISSONA [REDACTED]. [REDACTED] further indicates he will keep NGAISSONA informed [REDACTED].⁴⁶ On [REDACTED] August 2013, [REDACTED] sends another message to NGAISSONA, titled "[REDACTED]", asking if NGAISSONA could [REDACTED]. [REDACTED] says he is contacting them, but adds that: "...[REDACTED]."⁴⁷

19. Call Data Records ("CDR") evidence⁴⁸ corroborates that NGAISSONA and [REDACTED] were also in contact over the phone during the time period emails were exchanged, indicating that more details of their plans were discussed verbally. CDR from NGAISSONA's [REDACTED] mobile phone [REDACTED] show that in the period between [REDACTED] August 2013, NGAISSONA was in contact with [REDACTED] multiple times.⁴⁹

v. Thread 5: NGAISSONA and [REDACTED] (August 2013)

20. The fifth email thread (consisting of three⁵⁰ ERNs) is from NGAISSONA's Yahoo email account dated [REDACTED] August 2013, and include correspondence

⁴⁵ CAR-OTP-2130-3299 at 3299.

⁴⁶ CAR-OTP-2130-3298 at 3298.

⁴⁷ CAR-OTP-2130-3300 at 3300.

⁴⁸ The attributions of phone numbers to the relevant individuals referenced in this request will be presented by the Prosecution in the course of the trial.

⁴⁹ CAR-OTP-2054-1479, lines 11036, 11048, 30395, 49594, 49598, 49601, 69050, 69052, 69055, 107567, 107569, 126716, 126720, 146187, 146192; CAR-OTP-2019-1361, line 5134.

⁵⁰ These three items that are mostly duplicates of each other, with a couple minor differences. *Compare* CAR-OTP-2130-3276; CAR-OTP-2130-3279; and CAR-OTP-2130-3282. For example, CAR-OTP-2130-3276 is a partial duplicate of CAR-OTP-2130-3279 with parts of the same correspondence, but with different time stamps.

[REDACTED], who is in BANGUI.⁵¹ This correspondence, *inter alia*, shows NGAISSONA's intent in concealing his financial transactions between BANGUI [REDACTED].

21. On [REDACTED] August 2013, [REDACTED] emails NGAISSONA, mentioning "[REDACTED]" and then mentions his intention to go to the known Anti-Balaka location of [REDACTED] in the following week.⁵² On [REDACTED] August 2013, [REDACTED] writes to NGAISSONA: "[REDACTED]". NGAISSONA responds on the same day, giving instructions for sending [REDACTED].⁵³ [REDACTED], [REDACTED] emails NGAISSONA warning him about [REDACTED].⁵⁴ NGAISSONA replies on the same day: "[REDACTED]".⁵⁵ In a follow up from [REDACTED] dated [REDACTED] August 2013, [REDACTED] addresses NGAISSONA "[REDACTED]".⁵⁶

vi. Thread 6: NGAISSONA and [REDACTED] (October 2013)

22. The sixth email thread (consisting of seven⁵⁷ ERNs) dated [REDACTED] October 2013 includes correspondence between NGAISSONA and [REDACTED]. In particular, on [REDACTED] October 2013, [REDACTED] writes NGAISSONA, addressing him "[REDACTED]," and requesting [REDACTED] ("...[REDACTED]"), [REDACTED] elements from BANGUI and [REDACTED].⁵⁸ [REDACTED] complains

⁵¹ CAR-OTP-2130-3279.

⁵² CAR-OTP-2130-3279 at 3281.

⁵³ CAR-OTP-2130-3279 at 3280.

⁵⁴ CAR-OTP-2130-3279 at 3279.

⁵⁵ CAR-OTP-2130-3279 at 3279.

⁵⁶ CAR-OTP-2130-3282 at 3282.

⁵⁷ CAR-OTP-2130-3373; CAR-OTP-2130-3374; CAR-OTP-2130-3375; CAR-OTP-2130-3377; CAR-OTP-2130-3379; CAR-OTP-2130-3381; CAR-OTP-2130-3382. These eight items include several duplicates, with the only differences being a one hour difference in time stamps. For example, CAR-OTP-2130-3379 is the master in that it is the last reply on a chain containing CAR-OTP-2130-3377 and CAR-OTP-2130-3373. Similarly, CAR-OTP-2130-3381 is a reply to and contains the substance CAR-OTP-2130-3374, while CAR-OTP-2130-3382 is a reply to and contains the substance CAR-OTP-2130-3375. It is the Prosecution's understanding that the one hour difference in time stamps is likely due to the sender and recipient being in adjacent time zones.

⁵⁸ CAR-OTP-2130-3379 at 3379-3380.

that neither [REDACTED], who is in charge of BANGUI [REDACTED], nor [REDACTED], who is in charge of [REDACTED], have [REDACTED] (“[REDACTED]”).⁵⁹ [REDACTED] explains that he was contacted for the purpose of reaching out to NGAISSONA, and that he can put NGAISSONA in touch [REDACTED]⁶⁰ NGAISSONA responds on the [REDACTED] October 2013: “[REDACTED]”.⁶¹ Also on [REDACTED] October 2013, [REDACTED] provides [REDACTED], and NGAISSONA confirms their receipt.⁶²

23. CDR, email, and Facebook evidence already on the LoE corroborate this email thread. *First*, CDR showing two phone calls between [REDACTED] and [REDACTED] on [REDACTED] October 2013 coincide with [REDACTED]’s email to NGAISSONA providing [REDACTED].⁶³

24. *Second*, Facebook and email evidence on the LoE, as well as forthcoming witness evidence, corroborate NGAISSONA’s following up about these [REDACTED] in and around BANGUI. For example, Facebook evidence shows that on the same day, [REDACTED] October 2013, [REDACTED], [REDACTED] Anti-Balaka group⁶⁴) told [REDACTED] that everything that NGAISSONA had given [REDACTED]. [REDACTED] replied that this was [REDACTED].⁶⁵ Commenting on these messages in his statement, [REDACTED] explains that [REDACTED].⁶⁶ On the next day, [REDACTED] October 2013, [REDACTED] e-mailed NGAISSONA providing him [REDACTED].⁶⁷

⁵⁹ CAR-OTP-2130-3379 at 3379-3380.

⁶⁰ CAR-OTP-2130-3379 at 3380.

⁶¹ CAR-OTP-2130-3379 at 3379.

⁶² CAR-OTP-2130-3379 at 3379; CAR-OTP-2130-3381 at 3381; CAR-OTP-2130-3382 at 3382.

⁶³ Calls from [REDACTED] to [REDACTED] at 07:25:12 and 17:31:04, CAR-OTP-2112-1538 at row 2749 and 2807.

⁶⁴ CAR-OTP-2124-0900 at 0900.

⁶⁵ CAR-OTP-2101-9735 at 9805, 06/10/2013, 12:56:16-12:58:40.

⁶⁶ CAR-OTP-2127-4238, at 4253-4254, paras. 87-90.

⁶⁷ CAR-OTP-2124-0899 at 0899.

25. Further, on [REDACTED] October 2013, [REDACTED] checks with [REDACTED] on Facebook to see if the men from BANGUI, [REDACTED] and other locations [REDACTED]. [REDACTED]⁶⁸ told [REDACTED] they had not and that NGAISSONA was asking [REDACTED].⁶⁹ [REDACTED] confirms that [REDACTED] as there are many.⁷⁰ On [REDACTED] October 2013, [REDACTED] e-mailed NGAISSONA with [REDACTED] BANGUI, and identifying [REDACTED].⁷¹ On [REDACTED] October 2013, CDR show NGAISSONA called [REDACTED] provided.⁷² On [REDACTED] October 2013, NGAISSONA forwarded this last email to [REDACTED],⁷³ who confirmed its receipt on [REDACTED] October 2013, and indicated that he will [REDACTED].⁷⁴ This [REDACTED] October 2013 e-mail coincides with a phone call of nearly 10 minutes that NGAISSONA had [REDACTED].⁷⁵

C. The reliable and authentic Emails support NGAISSONA's individual criminal responsibility and corroborate evidence on the LoE

26. The six compelling email threads described above are relevant and have significant probative value. They are evidence of NGAISSONA's individual criminal responsibility in that the content of the Emails and the conduct described therein elucidates previously unknown details of NGAISSONA's four contributions discussed in the Trial Brief: (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.⁷⁶

⁶⁸ See, e.g., CAR-OTP-2102-3799 at 3799, 3826; CAR-OTP-2127-4238, at 4254, para. 90.

⁶⁹ CAR-OTP-2101-9735 at 9811-9812, 09/10/2013, 10:12:33-10:30:06.

⁷⁰ CAR-OTP-2101-9735 at 9811-9812, 09/10/2013, 10:12:33-10:30:06.

⁷¹ CAR-OTP-2124-0900 at 0900.

⁷² Call from NGAISSONA [REDACTED] to [REDACTED], CAR-OTP-2112-1431, line 492.

⁷³ CAR-OTP-2124-0901 at 0901.

⁷⁴ CAR-OTP-2124-0903 at 0903; attachment at CAR-OTP-2124-0490.

⁷⁵ Call from NGAISSONA [REDACTED] to [REDACTED], 14:00:43, CAR-OTP-2103-0675.

⁷⁶ ICC-01/14-01/18-723-Red at paras. 250-291.

27. The Emails are reliable and authentic. Five of the six threads come from NGAISSONA's own Yahoo email account, while the sixth thread is from [REDACTED] account but includes NGAISSONA as a participant from the same Yahoo email address. In addition, these emails were obtained from the primary source: the email service provider Yahoo/[REDACTED]. Furthermore, they form part of a larger pool of evidence obtained from various Yahoo email accounts, following three RFAs to the Government of [REDACTED] sent in 2018 and 2019.⁷⁷ The Prosecution previously disclosed and added over 400 items of Yahoo email evidence to its List of Evidence within the 9 November 2020 deadline, including other email correspondence of NGAISSONA from the same account.⁷⁸

28. The Emails corroborate other email, Facebook, and CDR evidence on the LoE. As detailed above,⁷⁹ the third email thread is a partial duplicate of emails from NGAISSONA's Yahoo account entitled "[REDACTED]" that are already on the LoE.⁸⁰ In addition, CDR of NGAISSONA's [REDACTED] mobile phone show that in the period between [REDACTED] August 2013, NGAISSONA was [REDACTED] times in conversation [REDACTED],⁸¹ further corroborating the fourth email thread that NGAISSONA [REDACTED] were in close contact in this period. Lastly, the sixth email thread is also extensively corroborated by CDR, Facebook, and email evidence, as detailed above.⁸²

29. The Single Judge in *Ongwen* also held "it would be unreasonable for the Chamber, to which a truth-seeking function is assigned by the Statute, to determine that potentially relevant evidence could not, under any circumstance, be used by the Prosecution at trial if not itemised in the list of evidence three months before the trial

⁷⁷ CAR-OTP-2122-9516; CAR-OTP-2122-9494; and CAR-OTP-2122-9509.

⁷⁸ The Prosecution expects to file a bar table motion to submit these materials into evidence the near future.

⁷⁹ Supra, para. 15.

⁸⁰ See, e.g., CAR-OTP-2124-0004 at 0005, CAR-OTP-2124-0788 at 0788, and CAR-OTP-2124-0789 at 0789.

⁸¹ CAR-OTP-2054-1479, lines 11036, 11048, 30395, 49594, 49598, 49601, 69050, 69052, 69055, 107567, 107569, 126716, 126720, 146187, 146192; CAR-OTP-2019-1361, line 5134.

⁸² Supra, paras. 23-25.

commences.”⁸³ The same is true in this case, where the parties and participants would benefit from the addition of this compelling material, and should be able to put questions to witnesses to address all relevant aspects of the Emails.

D. Reliance on the Emails causes no undue prejudice to the Defence

30. The addition of the Emails to the LoE does not cause any undue prejudice to either Accused. There can be no undue prejudice to the Defence where, as here: (i) the relatively small number of Emails were disclosed within a few weeks of coming into the Prosecution’s possession and before opening statements, (ii) the Emails are from NGAISSONA’s own Yahoo account - portions of which are already on the LoE, and (iii) the Accused will have an opportunity to address them fully during the course of the trial.

31. There can be no undue prejudice to the Defence where the six email threads were disclosed either as INCRIM or Rule 77 material on 4 or 10 February 2021. Furthermore, many of the Emails are partially duplicative in that they are different replies to the same original thread, or contain the same emails with different time zone stamps. The Defence has therefore has had ample time to review this small amount of material in their preparations for opening statements as well as the four Prosecution witnesses who have testified thus far.

32. There can be no undue prejudice to the Defence where the Emails are mostly from NGAISSONA’s own email account, such that he has known about them since 2013. Similarly, the Parties have been aware of the nature of the Email evidence based on previously disclosed emails from the same account already on the LoE, including portions of the Emails which are the subject of the present request.⁸⁴ As indicated

⁸³ ICC-02/04-01/15-619, para. 8.

⁸⁴ Supra, para. 14

above, corroborative evidence on original LoE also exists in the form of CDR and Facebook evidence.⁸⁵

33. Lastly, given the early stage of the proceedings, the Accused will have ample opportunity to address the substance of these emails and other corroborating evidence throughout the course of the trial.

IV. CONCLUSION

34. In sum, the fair and expeditious conduct of the proceedings is not infringed by permitting the Prosecution to add these few items at the start of the trial. It is justified because the compelling Emails are of significant probative value and their addition causes no undue prejudice to either Accused.

35. For the above reasons, the Prosecution requests leave from the Chamber to add the Emails to the Prosecution's LoE.



Fatou Bensouda, Prosecutor

Dated this 7th day of May 2021
At The Hague, The Netherlands

⁸⁵ Supra, paras. 18, 22-24.