

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **3 November 2021**

TRIAL CHAMBER V

Before:

Judge Bertrand Schmitt, Presiding Judge

Judge Péter Kovács

Judge Chang-ho Chung

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF

***THE PROSECUTOR v. ALFRED ROMBHOT YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

**Public Redacted Version of “Defence Application pursuant to Article 57(3)(b) of the
Statute to
Seek the Cooperation of the Central African Republic”, ICC-01/14-01/18-1133-Conf, 11
October 2021**

Source: Defence of Patrice-Edouard Ngaißsona

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

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I. Introduction

1. The Defence for Mr Ngaïssona ("Defence") respectfully requests Trial Chamber V ("Chamber") to seek the cooperation of the Central African Republic ("CAR"), pursuant to Part 9 of the Rome Statute ("Statute"), by requesting the CAR to disclose a complete copy of [REDACTED] ("Requested Material"), and to consult with the Chamber promptly in respect of any problem the CAR encounters in implementing the request, in accordance with article 97 of the Statute ("Application").
2. As will be elaborated below, the Requested Material is material to the proper determination of certain key factual issues being discussed in this trial and to the proper preparation of Mr Ngaïssona's defence. Moreover, the Application meets the requirements of specificity, relevance and necessity.

II. Confidentiality

3. In accordance with regulation 23*bis*(1) of the Regulations of the Court (the "Regulations"), this Application together with Annexes B and C are filed confidentially as they contain certain personal and confidential information. Annex A is filed confidentially redacted as it relates to internal investigative steps and leads. A public redacted version will be filed as soon as practicable.

III. Applicable Law

4. According to article 57(3)(b) of the Statute, the Pre-Trial Chamber may, upon the request of a person who has been arrested, "seek such cooperation pursuant to Part 9 as may be necessary to assist the person in the preparation of his or her defence".

5. Article 57(3)(b) of the Statute is complemented by rule 116 of the Rules of Procedure and Evidence ("Rules"), which establishes that the Pre-Trial Chamber shall seek cooperation under article 57, paragraph 3(b) of the Statute, where it is satisfied that:
 - (i) this "would facilitate the collection of evidence that may be material to the proper determination of the issues being adjudicated, or to the proper preparation of the person's defence"; and
 - (ii) sufficient information to comply with article 96(2) of the Statute has been provided in the Defence's Application.

6. Article 96(2) of the Statute requires the cooperation request to contain or be supported by the following:
 - (a) A concise statement of the purpose of the request and the assistance sought, including the legal basis and the grounds for the request; (b) As much detailed information as possible about the location or identification of any person or place that must be found or identified in order for the assistance sought to be provided; (c) A concise statement of the essential facts underlying the request; (d) The reasons for and details of any procedure or requirement to be followed; (e) Such information as may be required under the law of the requested State in order to execute the request; and (f) Any other information relevant in order for the assistance sought to be provided. [...]

7. Pursuant to article 61(11) of the Statute, after the pre-trial stage of the proceedings is exhausted, the responsibility for the conduct of subsequent proceedings shall be transferred to the Trial Chamber constituted by the Presidency, which Chamber is vested with "any function of the Pre-Trial Chamber that is relevant and capable of application in those proceedings". Accordingly, the proper addressee of an application under article 57(3)(b) of

the Statute following the confirmation of the charges is the Trial Chamber and in the present case, the Chamber.

IV. Submissions

8. The Defence seeks the cooperation of the relevant authorities of the CAR for the purpose of obtaining the Requested Material. [REDACTED].¹ The Defence has further been informed that in 2015 or 2016, Mr Ngaïssona, while President of the Central African Football Federation, [REDACTED].
9. The type of cooperation that the Defence is requesting the Chamber to seek from the CAR is provided for in article 93(1)(i) of the Statute, which obliges States Parties to comply with requests by the Court to provide assistance with “[t]he provision of records and documents, including official records and documents”.²
10. The Defence team [REDACTED] has been attempting on several occasions to obtain the Requested Material, by visiting, sometimes several times, [REDACTED], to no avail. In an [REDACTED] report dated 5 March 2021, it was reported to the Defence team that [REDACTED].
11. The Defence reproduces in confidentially redacted Annex A an exhaustive summary of the various efforts made by the Defence [REDACTED] to obtain the Requested Material prior to 21 April 2021.
12. Having noted that a copy of the first page of [REDACTED] in question – with the cover and all the following pages missing – had been disclosed by the Prosecution as document CAR-OTP-2103-0038, and hoping for the missing

¹ CAR-OTP-2103-0038.

² See also *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Trial Chamber IV, Decision on “Defence Application pursuant to Articles 57(3)(b) and 64(6)(a) of the Statute for an order for the preparation and transmission of a cooperation request to the African Union”, 1 July 2011, ICC-02/05-03/09-170, para. 16.

pages to be in the Prosecution's possession or control, the Defence contacted the Prosecution by email dated 13 April 2021 to request the disclosure of a complete copy of this [REDACTED] pursuant to rule 77 of the Rules. In response, the Prosecution confirmed to not be in possession of the Requested Material. The relevant exchange of emails is attached as confidential Annex B.

13. Immediately thereafter, on 21 April 2021, the Defence sent a formal letter to [REDACTED] to seek assistance to obtain the Requested Material. A copy of the letter sent by the Defence, with proof of receipt, is attached as Annex C.

14. To date, the Defence has received no response to this letter.

15. In light of the above, the intervention of the Chamber is necessary because the Defence has exhausted all other alternatives. As set out above, the Defence has conscientiously yet unsuccessfully attempted to obtain the Requested Material from the relevant authorities of the CAR directly. The Defence considers that more than sufficient time was given to [REDACTED] to respond to the Defence's letter and that a response should no longer be reasonably expected at this stage. The Requested Material is not in the Prosecution's possession or control.³ In the circumstances, the intervention of the Chamber, pursuant to article 57 (3)(b) of the Statute, is necessary to assist the Defence in obtaining this Requested Material as it is the only option remaining to the Defence.⁴

16. The Defence seeks the Requested Material in order to assess the credibility and the reliability of the evidence proposed against Mr Ngaïssona. The question of Mr Ngaïssona's [REDACTED], arises almost every single time a witness comes

³ See *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Trial Chamber IV, Public redacted Decision on the second defence's application pursuant to Article 57(3)(b) and 64(6)(a) of the Statutes, 21 December 2011, ICC-02/05-03/09-268- Red, para. 22.

⁴ See *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Trial Chamber IV, Decision on "Defence Application pursuant to Articles 57(3)(b) and 64(6)(a) of the Statute for an order for the preparation and transmission of a cooperation request to the African Union", 1 July 2011, ICC-02/05-03/09-170, para. 26.

to testify. The missing pages of the Requested Material, [REDACTED], would (i) allow the Chamber to determine precisely and with certainty [REDACTED] and (ii) allow the Defence to show that the accounts of events presented by certain Prosecution witnesses in relation to [REDACTED], are totally unfounded. Therefore, the cooperation of the CAR to obtain the Requested Material would facilitate the collection of evidence that is material to the preparation of the defence of Mr Ngaïssona and is key to the determination of certain issues materially in dispute before the Chamber.⁵

17. The Defence recalls that proper preparation of the Defence is an aspect of the right to a fair hearing enshrined in article 67 of the Statute and the assistance of the CAR would therefore ensure this right.

18. The Defence highlights the urgency of the execution by the CAR of the cooperation request in light of the nature and purpose of the Requested Material. Therefore, the Defence respectfully asks that the cooperation request to be sent to the CAR emphasise the importance of a prompt execution.

19. The Chamber will note that the Defence has not included in its Application [REDACTED].⁶ The Defence believes that [REDACTED]. However, the Defence leaves it to the discretion of the Chamber to decide whether [REDACTED] should also be included within the request for assistance to the CAR.

20. The Defence submits that the Application contains all the information that the Defence is required to provide in a request for assistance pursuant to article 96(2). It therefore also satisfies rule 116(1)(b).⁷

⁵ See *Ibid.*, paras 22-23.

⁶ CAR-OTP-2077-0141.

⁷ *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Magenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, Decision on Second Mangenda Request for Cooperation, 5 April 2016, ICC-01/05-01/13-1768, paras 9-11.

V. Relief sought

(iii) The Defence respectfully requests the Chamber to:

- **GRANT** the Application, and seek, under article 57 (3)(b) of the Statute, the cooperation of the CAR, pursuant to its obligations under articles 86, 87 and 93 of the Statute, for the transmission of the Requested Material, and
- **ORDER** the Registrar to, as soon as practicable, prepare and transmit the necessary cooperation request, which shall include all information required by articles 93 and 96 of the Statute and which will emphasise the importance of its prompt execution.

Respectfully submitted,



Mr Knoop
Lead Counsel for Mr. Patrice-Edouard
Ngaïssona

Dated this 3 November 2021

At The Hague, the Netherlands.