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Date: **2 June 2022**

TRIAL CHAMBER VI

Before: Judge Miatta Maria Samba, Single Judge
Judge María del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godínez

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

**Public
with Confidential Annex A**

Public Redacted “Version of Prosecution’s Fourth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)”, ICC-01/14-01/21-312-Conf, dated 17 May 2022

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. Pursuant to the Decision Setting the Commencement Date of the Trial and Related Deadlines (“Scheduling Order”),¹ the Directions on the Conduct of Proceedings² and in accordance with articles 64(9)(a) and 69(2)-(4), the Office of the Prosecutor (“Prosecution”) requests Trial Chamber VI (“Chamber”) to recognise as formally submitted 121 items of evidence from the bar table.³ These items, which are set out in Annex A, comprise material obtained from four Yahoo email accounts (“Yahoo email evidence”).

2. The Yahoo email evidence *prima facie* satisfies the criteria for submission. It is relevant to material issues at trial, probative and bear sufficient indicia of reliability. They are also cumulative to or corroborative of other Prosecution evidence. Their submission would assist the Chamber to determine the truth and contribute to an expeditious trial.

II. CONFIDENTIALITY

3. Pursuant to regulation 23bis(1) of the Regulations of the Court, the Prosecution files this submission confidential because it contains confidential information regarding Prosecution evidence, refers to confidential filings and details of *inter partes* communications. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

4. The Yahoo email evidence is relevant to issues at trial, has significant probative value and does not unfairly prejudice the Accused Mahamat Said Abdel Kani (“Mr SAID”). The relevance and probative value of the items are summarised below and

¹ ICC-01/14-01/21-243.

² ICC-01/14-01/21-251, hereinafter (“Directions”).

³ The words “Items of evidence” and “Documents” are used interchangeably in this Request.

set out in detail in Annex A. On 9 May 2022, following the Chamber's Directions, the Prosecution has inquired whether the Defence consents or objects to the submission of the items in Annex A.⁴ On 13 May 2022, the Defence indicated that they currently cannot take a position on the items listed in the Annex for reasons to be further developed in their response to this Application.⁵

A. Background to the Yahoo email evidence

5. The documents were obtained through official Prosecution Requests for Assistance ("RFA") made to the competent Irish authorities.⁶ These were executed pursuant to the relevant domestic legal procedures,⁷ and accordingly provided by the Irish authorities.⁸ The 121 items have been disclosed and will be included on the Prosecution's List of Evidence along with the relevant information as to their chain of custody.

B. The Yahoo email evidence is relevant to issues at trial

6. The Yahoo email evidence is directly relevant to issues at trial, namely the organisation of the parties to the conflict and the existence of ongoing armed hostilities at the time relevant to the charges and accordingly the contextual elements of war crimes.

⁴ Prosecution Email of 9 May 2022 at 12:10hrs.

⁵ Defence Email of 13 May 2022 at 15:28hrs.

⁶ The RFA references are provided in the Annex A for each item. *See also* CAR-OTP-2122-9516 (IRL-12); CAR-OTP-2122-9509 (IRL-11); CAR-OTP-2122-9494 and its annexes CAR-OTP-2080-1508 and CAR-OTP-2080-1529 (IRL-8); CAR-OTP-2127-8509 (IRL-14).

⁷ *See, e.g.* CAR-OTP-2084-0022, CAR-OTP-2084-0023, CAR-OTP-2084-0024; CAR-OTP-2124-0083; CAR-OTP-2124-0084; CAR-OTP-2124-0077; CAR-OTP-2124-0079; CAR-OTP-2080-1500; CAR-OTP-2126-2378; CAR-OTP-2126-2379; CAR-OTP-2126-2376; CAR-OTP-2126-2375; CAR-OTP-2126-2374; CAR-OTP-2083-0748; CAR-OTP-2083-0681; CAR-OTP-2130-4260; CAR-OTP-2130-4259.

⁸ CAR-OTP-2124-0076; CAR-OTP-2122-9508; CAR-OTP-2126-2375; CAR-OTP-2130-4259; CAR-OTP-2130-4260; CAR-OTP-2130-4263; CAR-OTP-2080-1499.

7. The Yahoo email accounts from which the email evidence was selected belonged to Patrice-Edouard NGAISSONA,⁹ [REDACTED] (P-0867),¹⁰ Clement NGREMANGOU,¹¹ [REDACTED] (P-2843).¹² The emails provide details of members of the pro-BOZIZE forces taking steps to structure, re-organise, re-arm and to secure finances of their forces between March and November 2013.

a. Patrice-Edouard NGAISSONA: [REDACTED]

8. The emails from NGAISSONA's account show that he was in communication with various pro-BOZIZE forces members and supporters at the relevant time. More specifically, the emails demonstrate NGAISSONA's involvement in: (i) coordinating the May 2013 planning meetings in Cameroon with Francois BOZIZE, [REDACTED] (P-0801), Levi YAKETE, [REDACTED] (P-2625) and others;¹³ (ii) coordinating a strategic plan in June 2013 to mobilise the youth in Bangui and "*actions d'insurrections*";¹⁴ (iii) planning and supporting military operations in the Provinces and Bangui in August and September 2013;¹⁵ and (iv) providing funds and weapons in October 2013 to lieutenants in charge of the Anti-Balaka elements in Bangui, PK12 and along the Boali, Bogangolo and Bozum axis.¹⁶

9. In several communications NGAISSONA and [REDACTED] (P-0808) discuss coordination activities. On 22 September 2013 NGAISSONA (addressing

⁹ See **P-2843**: CAR-OTP-2135-1726 at 1728. **P-2843**: Transcript T-073-CONF-ENG ET, p. 28, l. 10 to p. 29, l. 4. The latter transcript is part of a pending request with Trial Chamber V for disclosure to the Defence, see ICC-01/14-01/18-1358-Corr.

¹⁰ **P-0867** authenticated the use of this email account, see ICC-01/14-01/18-T-085-CONF-ENG ET, p. 5, ln. 15-22, p. 17, l. 11 – p. 25, l. 4; p. 73, l. 5- p. 74, l. 6; p.86, l.23 – p. 91, l.22; ICC-01/14-01/18-T-085-CONF-ENG ET. P. 89, l. 1 – p. 90, l.19. See ICC-01/14-01/18-1358-Corr.

¹¹ The attribution is based on the name of the account and the subscriber information (CAR-OTP-2126-2573). See also **P-0884**: ICC-01/14-01/18-T-056-CONF-ENG CT, p. 43, l. 11 –p. 45, l. 14 (referencing CAR-OTP-2126-2620).

¹² See **P-2843**: CAR-OTP-2135-1726; see T-073-CONF-ENG ET, p. 58, l. 14 to p. 66, l. 20 and p. 68, l.18 to p. 76, l. 23. See ICC-01/14-01/18-1358-Corr.

¹³ Items 32 to 71.

¹⁴ Items 41, 42 and 54.

¹⁵ Items 57, 69 and 70.

¹⁶ Items 70 and 71.

[REDACTED] as “DG”) asks him to respond “*le plus vite possible lese elements de reponses le Grand BOSS attends*”, which is a reference to BOZIZE.¹⁷

c. [REDACTED] (P-0876): [REDACTED]

10. [REDACTED] was a highly visible member and spokesperson of the Anti-Balaka. His emails provide insight into the group’s operations in 2013.¹⁸ He will be called to testify at trial.

11. In July 2013 [REDACTED] used the email account [REDACTED] to ask Levi YAKETE, for example, to provide him with a phone number because he had privacy and security concerns in respect of communicating online.¹⁹

12. On 14 September 2013, [REDACTED] sends an email with the subject “SOS” updating his interlocutor, [REDACTED],²⁰ about an operation in Boali and their FACA elements numbering over 1,600 and asking for financial assistance and the distribution of SIM cards:

*“...le travail avance bien du cote de nost amis de l’opération boali; par contre du coté de nos éléments (faca) il bous faut doter en puce et crédits de communication; il sont au nombre de 1694 alors je suis pratiquement le seul à y donner corps car les gens ici sont complètement tétanisés et dépourvus.”*²¹

13. [REDACTED] adds that the FACA were relying on civilians of the diaspora for financial support and he gives the name “[REDACTED]” to whom his interlocutor can transfer money for this purpose. The Prosecution will argue that this is likely a

¹⁷ Item 68.

¹⁸ Items 1-31. See P-0867: CAR-OTP-2042-4966, CAR-OTP-2042-4970, CAR-OTP-2042-5001.

¹⁹ Item 1.

²⁰ [REDACTED] (Decree of 31 March 2014: CAR-OTP-2004-0273 at 0283). [REDACTED] (Panels of Experts report: CAR-OTP-2001-0835 at 0887, para.6).

²¹ Item 2.

pseudonym for Francis BOZIZE to conceal the true nature of the financial transaction. [REDACTED] further mentions that: “...les opérations sont prévues avant la fin de ce mois pour neutraliser Bangui en premier lieu car le congolais a donné son accord de principe.”

14. On 12 October 2013, [REDACTED] emails [REDACTED] an unsourced article entitled “*DIJHAD EN CENTRAFRIQUE DJOTODIA ALLIE DU SOUDAN ET DE L’IRAN*” in both English and French, with commentary that the person thinks jihadists will use CAR as a training ground and pillage uranium to help the Iranian nuclear program.²²

15. On 22-23 October 2013, [REDACTED] exchanges emails with [REDACTED] again and she indicates she is going to send to [REDACTED] evidence of the Seleka crimes. [REDACTED] asks her to review a press statement²³ for the purpose of encouraging a feeling of revolt among the CAR population.²⁴

16. Later in October and early November 2013, she and [REDACTED] send each other multiple drafts of a speech criticising Prime Minister TIANGAYE and DJOTODIA and their inability to stop the Seleka violence in the country and the presence of foreign mercenaries.²⁵

c. Charles NGREMANGOU: [REDACTED]

17. Emails from FACA Captain and Anti-Balaka leader Charles NGREMANGOU’s²⁶ account show correspondence between other Anti-Balaka leaders such as Steve

²² Item 4.

²³ CAR-OTP-2084-1003 and attachment CAR-OTP-2084-1005 at 1005.

²⁴ CAR-OTP-2084-1000; see Items 8, 9 and 10.

²⁵ See, e.g. Items 11-15.

²⁶ Items 72- 121. See **P-2328**: CAR-OTP-2099-0165 at 0176, para. 60 (Fr); **P-2232**: CAR-OTP-2090-0561 at 0595-0596, paras. 260-264 (Eng).

YAMBETE²⁷ and Eugène NGAIKOSSET.²⁸ The emails place Anti-Balaka elements in [REDACTED]; he links the Bangui neighbourhood [REDACTED] with YAMBETE, NGAIKOSSET and [REDACTED] as early as May 2013. NGREMANGOU also provides YAMBETE several drafts of the logistical needs for his men, including, inter alia, heavy weapons, ammunition and vehicles.

18. Specifically, the email correspondence from this account in late May 2013 shows that from Bangui, NGREMANGOU was in contact with YAMBETE and NGAIKOSSET and was providing them with requests for military material and intelligence. Furthermore, in late May 2013, NGREMANGOU sent to [REDACTED], a list of FACA personnel in the areas of Boeing and Cattin, including YEKATOM, NGREMANGOU and [REDACTED].²⁹

19. On 24 June 2013, NGREMANGOU sent an email to the FACA member [REDACTED]³⁰ informing him that a counter-attack to the Seleka would take place because there were infiltrations in all prefectures. The Angolans, Congolese, South Sudanese, Ugandans and Rwandans were also mobilised for that campaign.³¹ A few days later, [REDACTED] responded: *“N’oublies surtout pas de me tenir informer de l’évolution des préparatifs de l’action en cours”*³² further supporting NGREMANGOU’s position as a high-level Anti-Balaka member and strategist.

20. On 19 July 2013, NGREMANGOU sent Steve YAMBETE a document titled *“Expressions de Besoins”*, in which NGREMANGOU lists his requirements: 1200 men

²⁷ YAMBETE was a high-ranking member of the pro-BOZIZE forces who fled to Cameroon and was organizing the movement near the border. He is also known as the leader of COAC, which later merged into the COCORA, see **P-0808** : CAR-OTP-2025-0324 at 0349, para.152-153; **P-2232** : CAR-OTP-2100-2569 at 2570-2572, paras. 7, 24 ; **P-2027** : CAR-OTP-2078-0059 at 0080, para. 128 ; **P-1719** : CAR-OTP-2062-0039 at 0045, paras. 37-38. ²⁸ **P-2328**: CAR-OTP-2099-0165 at 0179, para.71-73 (Fr); **P-2232**: CAR-OTP-2090-0561 at 0563, 0564, 0566-0567, paras. 15, 25, 37 and 43 (Eng).

²⁹ Items 75, 76, 77, 78, 79, 80, 81 and 82.

³⁰ [REDACTED] was Chef de Bataillon, Directeur du [REDACTED] in 2005 (CAR-OTP-2131-0408 at 0522). In 2010, he became a [REDACTED] (CAR-OTP-2131-0408 at 0584).

³¹ Item 83 and 84.

³² Item 84.

in four battalions throughout Bangui (Boeing, Boy-Rabe, Combattant, Fouh et Gobongo, PK 12 and Bimbo), weapons and ammunition (e.g. 1200 x AK47; 240 x RPG7; 120 RPD, DKM, or AA; 15 x Mortiers, 4 x Orgue de Stalline; 220 x Offensive Grenades; 220 x Defensive Grenades), accessories, phones and money for soldiers' food and health care.³³ NGREMANGOU mentions that he is awaiting instructions: "...nous sommes toujours dans l'attente d'une éventuelle Instruction de l'Autorité". YAMBETE's position as both the leader of "*Coalitions pour les Actions Citoyennes*" ("COAC"), a youth militia that NGAISSONA helped fund and NGAISSONA's subordinate at the Ministry of Youth, Sports, Arts and Culture, show that NGREMANGOU was awaiting instructions on these matters from, *inter alia*, NGAISSONA months before the 5 December 2013 attack. Notably, in early 2013, the COAC proceeded to erect barricades and checkpoints throughout Bangui and Bimbo and in several instances detained, searched and arrested Muslims, some of whom were never seen again.³⁴

21. Two days later, NGREMANGOU sends the same list "*Expressions de Besoins*," along with maps of CAR, to [REDACTED], copying YAMBETE.³⁵ On 26 July 2013, NGREMANGOU sends YAMBETE an updated and significantly longer list "*Expressions de Besoins*", requesting thousands more weapons and pieces of ammunition, airplanes, armoured vehicles and heavy artillery.³⁶ Two additional documents are attached. The first is a list of "*INFORMATIONS DEMANDEES*" which appears to be detailed intelligence requested about Seleka positions and weapons hidden around the main roads in CAR and in the different arrondissements of Bangui.³⁷ The second is a PowerPoint presentation for NGAIKOSSET about the history and structure of the CAR Armed Forces including the different "*Regions Militaires*"

³³ Items 85-86.

³⁴ **P-2232:** CAR-OTP-2100-2569 at 2571-2572, paras. 7-9; CAR-OTP-2042-2146 from [00:15:27] to [00:16:52] and its transcript CAR-OTP-2107-1485.

³⁵ Items 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97 and 98.

³⁶ Items 99 and 100.

³⁷ Item 102.

reflected in the maps of CAR previously sent.³⁸ NGREMANGOU sends YAMBETE versions of these documents again on 27 July 2013.³⁹

22. On 1 August 2013, NGREMANGOU sends YAMBETE a list of the names, functions and neighbourhoods where Seleka leaders reside in Bangui, in addition to various Seleka positions (number of men and weapons) along various strategic axes in CAR.⁴⁰ NGREMANGOU then forwards this email to Eugene NGAIKOSSET on 31 August 2013.⁴¹ On 3 September 2013, NGREMANOU emails YAMBETE a detailed memorandum on the socio-political situation in CAR, detailing Seleka crimes and demonstrating the Anti-Balaka leadership's knowledge of the Prosecution's preliminary examination. The memorandum ends with a recommendation of regime change by force.⁴²

23. On 3 October 2013, Eugene NGAIKOSSET responds to NGREMANGOU requesting 60,000 FCFA to help support troops that are travelling with him to ZONGO: *"bsr charles comment vas tu j ai reçu les documents merci et si tu peut m aidé avec une somme de 60,000 milles francs cfa ça me permettras a survivre en cour de route de gemena a zongo avec les elements qui seront avec moi merci encore."*⁴³ NGREMANGOU replies a few weeks later that he does not have the money – and that he called a Minister to help: *"...j'ai appelé même le ministre de voler à mon secours et rien jusqu'à présent."*⁴⁴

24. These emails and their respective attachments show that the pro-BOZIZE forces/Anti-Balaka were already organising an armed response against the Seleka as early as

³⁸ Item 101.

³⁹ Items 103-111.

⁴⁰ Items 112 to 115.

⁴¹ Items 116 and 117.

⁴² Items 118 and 119.

⁴³ Item 120.

⁴⁴ Item 121.

May 2013. They further show a progression from planning organised resistance, to its execution and resolution.

d. [REDACTED] (P-2843): [REDACTED]

25. [REDACTED], was in contact with the leader of a pro-BOZIZE youth group in Bangui, since at least July 2013.⁴⁵ [REDACTED] emails show he discussed the structure of the Anti-Balaka with NGAISSONA and requested from NGAISSONA military equipment and money needed by certain armed Anti-Balaka units in Bangui and across the river in Zongo, DRC.⁴⁶

C. The Yahoo email evidence is reliable and authentic

26. The Yahoo email evidence is reliable and authentic. To assess the *prima facie* reliability of evidentiary material, the Chamber may evaluate the factors supporting its authenticity, such as: its origin, the context in which it was created, the method with which the information contained therein was compiled and the nature and availability of corroborative evidence.⁴⁷

27. The Yahoo email evidence as a whole is self-authenticating. The compilation and maintenance of contemporaneous and complete records is undertaken in the regular course of business and regulated in accordance with domestic laws. As noted, the Yahoo email evidence was obtained from an objective primary source, the email service provider Oath EMEA Ltd. / Verizon Media (previously Yahoo! EMEA Ltd.), pursuant to RFAs to the competent authorities in Ireland sent in 2018, 2019 and 2020.⁴⁸

⁴⁵ **P-2843**: CAR-OTP-2135-1726; *see* T-073-CONF-ENG ET, p. 58, l. 14 to p. 66, l. 20 and p. 68, l.18 to p. 76, l.23. *See* ICC-01/14-01/18-1358-Corr.

⁴⁶ Items 16 to 30.

⁴⁷ ICC-01/04-01/06-1399, paras. 36-40; *see also* ICC-01/04-01/07-1665-Corr, para. 98.

⁴⁸ CAR-OTP-2122-9516 (IRL-12); CAR-OTP-2122-9509 (IRL-11); CAR-OTP-2122-9494 and its annexes CAR-OTP-2080-1508; CAR-OTP-2080-1529 (IRL-8); CAR-OTP-2127-8509 (IRL-14).

28. The names of the accounts, the content of their communications as detailed above and associated material produced by Yahoo, including account management tools,⁴⁹ subscriber details,⁵⁰ and contact lists, provide further indicia of reliability and authenticity.⁵¹

29. With respect to the chain of custody of the Yahoo email evidence, Yahoo provided the content of these email accounts to local law enforcement in Ireland,⁵² which passed this on to the competent cooperation authorities,⁵³ who then provided the materials to the Prosecution.⁵⁴

D. Submission of the evidence does not cause prejudice

30. The Prosecution's Request and the itemised assessment of relevance and probative value in Annex A, provide sufficient notice as to which items of this evidence are of importance to which aspects of the charges. Thus, the timely submission of the evidence does not cause any unfair prejudice. Mr SAID will have ample opportunity to address the evidence during the course of the trial. Further, Mr SAID will have the opportunity to cross-examine Witnesses P-2323 and P-2328 regarding the roles of the persons within the structure of the pro-BOZIZE forces.

⁴⁹ CAR-OTP-2080-1753 ([REDACTED]); CAR-OTP-2056-0371 ([REDACTED]); CAR-OTP-2126-2571 (NGREMANGOU).

⁵⁰ CAR-OTP-2126-2573 (NGREMANGOU).

⁵¹ Contacts file for email account NGREMANGOU: CAR-OTP-2126-2572.

⁵² *See, e.g.*, CAR-OTP-2124-0083; CAR-OTP-2124-0084; CAR-OTP-2080-1500; CAR-OTP-2084-0022; CAR-OTP-2084-0023; CAR-OTP-2084-0024; CAR-OTP-2126-2378.

⁵³ CAR-OTP-2124-0077; CAR-OTP-2080-1499; CAR-OTP-2126-2376.

⁵⁴ CAR-OTP-2124-0076; CAR-OTP-2122-9508; CAR-OTP-2126-2375; CAR-OTP-2130-4259; CAR-OTP-2130-4260; CAR-OTP-2130-4263.

IV. RELIEF SOUGHT

31. For the above reasons and the analysis set out in Annex A, the Prosecution requests that the Chamber recognise the formal submission of Yahoo email evidence.

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

Karim A. A. Khan QC, Prosecutor

Dated this 2nd day of June 2022
At The Hague, The Netherland