

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No: ICC-01/14-01/18

Date: 18 April 2024

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

Public
with Confidential Annex A

Public Redacted Version of the "Third Ngai'ssona Defence request for leave to add items to the List of Evidence", ICC-01/14-01/18-2439-Conf, 8 April 2024

Source: Defence of Patrice-Edouard Ngai'ssona

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

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I. INTRODUCTION

1. The Defence for Mr Patrice-Edouard Ngaïssona ('the Defence') hereby requests leave to add eight items to the List of Evidence ('List') submitted on 17 November 2023 ('Request').¹ The items in question are listed in Annex A accompanying the present Request. Seven of the eight items are documents that came to the Defence's possession after the submission of the List and after the submission of the Defence's two requests for leave to add items to the List.² One item has been regrettably omitted from the List due to an oversight.
2. The Defence submits that the items are of significant relevance and probative value and their addition to the List does not cause any prejudice to the parties and participants nor does it affect the fair and expeditious conduct of the proceedings.

II. PROCEDURAL HISTORY

3. On 29 May 2023, the Chamber issued the 'Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)'.³
4. On 11 September 2023, the Prosecution filed the 'Prosecution's Notice of the Close of its Case-in-Chief'.⁴
5. On 17 November 2023, the Defence filed the 'Defence Submission of its Final List of Witnesses and its List of Evidence'.⁵

¹ See ICC-01/14-01/18-2215 with Annex 2 ICC-01/14-01/18-2215-Conf-Anx2. ICC-01/14-01/18-2297 with Annex A ICC-01/14-01/18-2297-Conf-AnxA.

² ICC-01/14-01/18-2269 and ICC-01/14-01/18-2269-Conf-AnxA and ICC-01/14-01/18-2297 with Annex A ICC-01/14-01/18-2297-Conf-AnxA.

³ ICC-01/14-01/18-1892.

⁴ ICC-01/14-01/18-2089.

⁵ ICC-01/14-01/18-2215, as well as ICC-01/14-01/18-2215-Conf-Anx1 and ICC-01/14-01/18-2215-Conf-Anx2.

6. On 15 December 2023, the Defence filed the 'Ngaissona Defence request for leave to add items to the List of Evidence' ('First Request'), seeking leave to add 14 items to its List.⁶
7. On 11 January 2024, the Chamber issued its 'Decision on the Ngaissona Defence Request for Leave to Add Fourteen Items to its List of Evidence', granting the First Request.⁷
8. On 12 January 2024, the Defence filed the 'Second Ngaissona Defence request for leave to add items to the List of Evidence' (Second Request'), seeking leave to add two items to the List.⁸
9. On 24 January 2024, the Chamber issued its 'Decision on the Ngaissona Defence Request for Leave to Add Two Items to its List of Evidence', granting the Second Request.⁹

III. CONFIDENTIALITY

10. In accordance with Regulation 23*bis*(1) of the Regulations of the Court, the present Request is filed as "confidential" as it contains confidential information pertaining to the Defence's investigations and State cooperation. A public redacted version will be filed in due course.

IV. SUBMISSIONS

11. The Defence respectfully requests that the following eight items be added to the List:

⁶ ICC-01/14-01/18-2269 and ICC-01/14-01/18-2269-Conf-AnxA.

⁷ ICC-01/14-01/18-2292.

⁸ ICC-01/14-01/18-2297 with Annex A ICC-01/14-01/18-2297-Conf-AnxA.

⁹ ICC-01/14-01/18-2324.

- a. Documents CAR-D30-0028-0001-R01, CAR-D30-0028-0003-R01 and CAR-D30-0028-0005-R01 ('D30-P-4756's documents'), given to the Defence by witness CAR-D30-P-4756 prior to her testimony before the Chamber;
- b. Documents CAR-D30-0003-0211 and CAR-D30-0003-0212 which were obtained following the execution of an outstanding cooperation request to the [REDACTED] ('[REDACTED] documents');
- c. Documents CAR-D30-0001-0101 and CAR-D30-0007-0822, which the Defence intends to use during D30-P-4197's examination ('D30-P-4197 documents'); and
- d. Document CAR-D30-0003-0213 which was regrettably omitted from the List due to an oversight.

a. *D30-P-4756's documents*

12. Witness D30-P-4756 testified before the Chamber on 21 and 22 February 2024.¹⁰ On 14 February 2024, the Defence was informed by the Court Officer that the witness brought with her documents that she would like to be used during the hearing.¹¹

13. Pursuant to the Chamber's order,¹² these documents were given to the Defence by D30-P-4756 on 15 February 2024.¹³ After assessing the documents, the Defence disclosed them to the parties and participants on 16 February 2024.¹⁴ The said documents were added to the Defence's List of Materials and respective court binder,¹⁵ and were used during D30-P-4756's direct examination.¹⁶ After the completion of D30-P-4756's testimony, the Defence requested their submission¹⁷

¹⁰ [REDACTED] hence D30-P-4756's testimony started on 21 February 2024.

¹¹ Email from the Defence to the Chamber on 14 February 2024 at 17:00.

¹² See email from the Single Judge on 15 February 2024 at 12:13 and email from the Chamber on 16 February 2024 at 09:21.

¹³ As evident from the chain of custody, see documents' metadata in Trial D30 Evidence Package 62, 16 February 2024.

¹⁴ Trial D30 Evidence Package 62 16 February 2024.

¹⁵ See email from the Defence on 16 February 2024 at 18:27.

¹⁶ See ICC-01/14-01/18-T-269-CONF-ENG ET, page 43, lns 13-25 ; ICC-01/14-01/18-T-269-CONF-ENG ET, pages 12-13 and pages 23-24.

¹⁷ See email for the Defence on 22 February 2024 at 17:19.

pursuant to paragraph 63(i) of the “Initial Directions of the Conduct of the Proceedings”.¹⁸

14. The Defence seeks the addition of D30-P-4756’s documents to the List for the sake of completeness. Evidently, their addition could not have been sought earlier as the Defence was unaware of their existence and could not have anticipated that witness D30-P-4756 would bring these documents with her to the Seat of the Court. The documents were timely disclosed and the parties and participants had the opportunity to review them before D30-P-4756 testified. Further, the Defence questioned the witness about these documents. The other parties and participants cannot reasonably claim prejudice since they had the opportunity to also question the witness about these documents but chose not to. As such, their addition to the List is warranted.

b. [REDACTED] documents

15. Given the centrality of Mr Ngaïssona’s alleged acts and conduct while in exile in Cameroon in 2013-2014 to the Prosecution’s case, the Defence began its investigations [REDACTED] in 2021. The Defence attempted several times to receive assistance from the [REDACTED] in obtaining documents relevant to its case, to no avail.¹⁹

16. On 3 May 2023, after meeting in person with the [REDACTED],²⁰ the Defence submitted again a cooperation request to the [REDACTED] through the Counsel Support Section (‘CSS’) and the External Relations and State Cooperation Unit (‘ERSCU’)²¹ to obtain, *inter alia*, a copy of the [REDACTED] (P-2625) name at [REDACTED], that would have been made between March and June 2013. In the

¹⁸ ICC-01/14-01/18-631.

¹⁹ The first letter addressed to the [REDACTED] was sent on 22 November 2021. Given that this first request was unsuccessful, a second letter was sent on 16 March 2022.

²⁰ The meeting took place at the Seat of the Court on 24 April 2024.

²¹ ERSCU is now replaced by the Judicial Cooperation Support Service (‘JCSS’).

absence of such, the Defence requested a certificate attesting to P-2625's absence from the [REDACTED] during that period.

17. The [REDACTED] documents came to the Defence's possession almost a year later, on 2 March 2024.²² Such a delay, which is due to reasons outside of the Defence's control, justifies the late addition of the [REDACTED] documents to the List. The Defence could not have requested their addition to the List earlier as it was not in a position to know if and when the [REDACTED] would execute the outstanding cooperation request, nor had any knowledge of its outcome.
18. The Defence requests the addition of the [REDACTED] documents to its List because they are relevant to material issues at trial. In its Trial Brief, the Prosecution alleges that Mr Ngaïssona joined Bozizé in Cameroon and met with other members of Bozizé's close entourage, including P-2625, "to prepare a response to the Seleka offensive and coordinate, *inter alia*, military operations to regain power, including the 5 December 2013 Attack on BANGUI".²³ To support this allegation, the Prosecution cites P-2625's statement where he alleges that [REDACTED] where an alleged, second meeting took place in Mr Ngaïssona's presence.²⁴ P-2625 testified about the same alleged events under oath before the Chamber in January 2023.²⁵
19. The documents received in execution of the outstanding cooperation request, however, directly contradict P-2625's evidence and have *prima facie* significance to the Chamber's disposition of the matter. More specifically, the [REDACTED] clearly states that P-2625 [REDACTED] between March and August 2013,²⁶ shedding doubt on the veracity of his testimony and his overall credibility. Both

²² As evident from the chain of custody, see documents' metadata in Trial D30 Evidence Package 63, 26 March 2024.

²³ ICC-01/14-01/18-723-Conf, para. 67.

²⁴ See P-2625's statement CAR-OTP-2123-0377-R01, para. 62 « [REDACTED] » (emphasis added).

²⁵ See P-2625's testimony ICC-01/14-01/18-T-189-CONF-ENG ET, p. 7, ln. 25 to p. 11, lns 1-3, where P-2625 claims that he was [REDACTED] and testifies about the alleged meeting that took place there.

²⁶ CAR-D30-0003-0211.

documents bear significant indicia of reliability since they originate from reliable sources, i.e. the [REDACTED] and the [REDACTED], and are necessary for the Defence to challenge P-2625's evidence.

20. The [REDACTED] documents' late addition to the List causes no prejudice to the parties and participants. Both documents are brief, straightforward and relate to a specific and narrow issue, as explained above, thus their review and analysis will require minimal time and resources. Upon receipt, the documents were promptly reviewed by the Defence and were disclosed to the parties and participants on 26 March 2024.²⁷ Furthermore, the Defence intends to tender these documents through a bar table application which will allow the parties and participants ample time to analyse them and make submissions as they see fit.

c. D30-P-4197 documents

21. The Defence intends to use documents CAR-D30-0001-0101 and CAR-D30-0007-0822 during D30-P-4197's examination before the Chamber and their addition to the List is a necessary procedural step.

22. Document CAR-D30-0001-0101 is a [REDACTED]. The document was transmitted to the Defence on 26 January 2024,²⁸ i.e. after the submission of the List and the previous two requests to add items to the List, thus its late addition is justified.

23. Document CAR-D30-0007-0822 is a [REDACTED]. The last substantive interview with D30-P-4197 was conducted close to the 17 November deadline,²⁹ at a time when the Defence was busy preparing the submission of the List, as well as the Final List of Witnesses. As such, the Defence was operating under extreme time constraints and was not in a position to prepare the exact contours of D30-P-4197's

²⁷ Trial D30 Evidence Package 63, 26 March 2024.

²⁸ As evident from the chain of custody, see documents' metadata in Trial D30 Evidence Package 64, 02 April 2024.

²⁹ The last substantive interview with witness D30-P-4197 was conducted on 31 October 2023, see CAR-D30-0027-0001-R01, at 0003, lns 49-51.

in-court testimony or determine all the documents that would be useful for his examination. In light of the upcoming commencement of his testimony on 18 April 2024, the Defence conducted open-source research on this individual which resulted in the said document, hence its late addition to the List.

24. The Defence intends to use both documents during D30-P-4197's examination to further elicit information on these two individuals mentioned extensively in the witness' statement.³⁰ Their addition to the List will facilitate D30-P-4197's examination, while it will not affect the fair and expeditious conduct of the proceedings.

25. Additionally, no prejudice is caused to the parties and participants. *First*, both documents are brief, straightforward and their scope is very narrow. Thus, they do not require extensive review and analysis. CAR-D30-0007-0822 in particular relates to an event that is public knowledge. *Second*, the parties and participants will have ample time to review them ahead of D30-P-4197's testimony, as the documents were disclosed on 2 April 2024 and D30-P-4197 is set to commence his testimony on 18 April 2024. *Lastly*, the parties and participants will have the opportunity to question the witness regarding these documents during their respective examinations.

d. Document CAR-D30-0003-0213

26. The Defence requests leave to add document CAR-D30-0003-0213 to its List since it is relevant to material issues and contradicts P-0306's testimony before the Chamber.

³⁰ CAR-D30-0027-0001-R01.

27. When examined by the Prosecution on 27 September 2021, P-0306 [REDACTED],³¹ despite claiming that [REDACTED].³² In addition to [REDACTED], P-0306 allegedly [REDACTED].³³
28. On 1 October 2021, during the Prosecution's re-direct examination, P-0306 was [REDACTED].³⁴ When asked whether [REDACTED], P-0306 denied it.³⁵
29. Document CAR-D30-0003-0213 directly contradicts P-0306's claim that [REDACTED] at the time of his testimony; according to the letter received by the [REDACTED] at the time of his testimony. The significance of this document is evident since it impacts the credibility of P-0306, who appears to have lied under oath. Contrary to P-0306's contested testimony, document CAR-D30-0003-0213 bears significant indicia of reliability since it is an official letter from the [REDACTED].
30. The Defence acknowledges that the document was obtained before the 17 November 2023 deadline, thus should have been included in the List. Due to a regrettable oversight, the document was not included in the List, nor in the subsequent two requests to add items to the List.
31. Nevertheless, the Defence submits that its late addition causes no prejudice to the parties and participants. *First*, immediately upon detecting the omission, the Defence disclosed the document to the parties and participants.³⁶ *Second*, the document is brief and straightforward, relates to a narrow issue and requires limited time and resources for its review and analysis. *Third*, the significance of the document far outweighs any potential prejudice the parties and participants could argue. *Lastly*, the Defence intends to tender this item through a bar table

³¹ ICC-01/14-01/18-T-065-CONF-ENG ET, p. 34-35.

³² ICC-01/14-01/18-T-064-CONF-ENG ET, p. 44, lns 19-25 to p. 45, lns 1-14.

³³ ICC-01/14-01/18-T-064-CONF-ENG ET, p. 50, lns 3-24.

³⁴ ICC-01/14-01/18-T-068-CONF-ENG CT, p. 77, lns 9-17.

³⁵ ICC-01/14-01/18-T-068-CONF-ENG CT, p. 77, lns 20-25 to p. 78, lns 1-5.

³⁶ [REDACTED].

application which will afford more time to the parties and participants to analyse the document and make further submissions if they so wish.

V. RELIEF SOUGHT

32. For the reasons presented above, the Defence respectfully requests the Chamber to GRANT the present request for leave to add the abovementioned eight items to the List.

Respectfully submitted,

A handwritten signature in black ink, appearing to be a stylized name or set of initials, located below the text 'Respectfully submitted,'.

Mr Knoop, Lead Counsel for Patrice-Edouard Ngaissona

Dated this 18 April 2024

At The Hague, the Netherlands.