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

Date: **2 July 2024**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung
Judge Beti Hohler, Alternate Judge

**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 Response to the Ngaissona Defence’s
“Motion for Finding of Disclosure Violation in relation to CAR-OTP-2114-0229”,
(ICC-01/14-01/18-2494-Conf)”, 15 May 2024**

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. Trial Chamber V (“Chamber”) should reject the NGAISSONA Defence’s “Motion for Finding of Disclosure Violation in relation to CAR-OTP-2114-0229” (“Motion”),¹ which concerns [REDACTED] Statement (“Statement”).
2. *First*, the Prosecution disclosed the Statement once its materiality was uncovered through the exercise of reasonable diligence – specifically, that a person initially referred to as ‘KOMAS’ in P-2658’s Statement may be the same person as [REDACTED] identified by the nickname ‘KOUMAS’.
3. *Second*, the information in the Statement is neither exculpatory, nor does it affect P-2658’s credibility.
4. *Third*, the timing of the disclosure has caused no undue prejudice to the Defence.

II. CONFIDENTIALITY

5. Pursuant to regulation 23bis(2) of the Regulations of the Court (“RoC”), this Response is filed as “Confidential”, as it responds to a filing of the same classification and contains information concerning witnesses that may not be made public. A public redacted version will be submitted as soon as practicable.

III. SUBMISSIONS

A) The Statement was promptly disclosed once its materiality was uncovered

6. [REDACTED].² The Statement refers to [REDACTED], known as ‘KOUMAS’, and concerns him being a victim of pillaging and arrests in May 2013 and October

¹ ICC-01/14-01/18-2479-Conf.

² CAR-OTP-2114-0229.

2013 by the Seleka in BOSSANGO and BANGUI. The Statement also describes the Seleka's arrest and attempted arrest of [REDACTED].

7. [REDACTED], Prosecution investigators [REDACTED] obtained a statement from P-2658. P-2658's statement describes three individuals known to him by the nicknames 'CHARLI', 'KOMAS', and 'YONGO', as having been in telephone contact with the Anti-Balaka leadership in GOBERE. He asserts that they transmitted information from NGAISSONA to DEDANE regarding, *inter alia*, NGAISSONA sending ammunition and equipment to the GOBERE Anti-Balaka group.³

8. Immediately prior to his trial testimony, during his familiarisation with the Victims and Witnesses Unit ("VWU"), P-2658 statement was corrected. In particular, several references to 'KOMAS' were modified to read 'KEMA' (*i.e.*, Florent KEMA⁴). Notably, this change was made regarding the reference in his statement to the three men (CHARLI, YONGO, and KOMAS (now KEMA)) in respect of their transmittal of information on NGAISSONA's behalf.⁵ No change was made to the singular reference to the nickname 'KOMAS' as regards his telephone communication with DEDANE.⁶ In fact, given the confusion around the corrections made by the VWU on P-2658's behalf due to his pronunciation of phonetically similar words ('GOBERE', 'GBONGUERE'; 'KOMAS', 'KEMA'), in Court the Presiding Judge equally sought to clarify the circumstances and the nature and extent of the corrections made.⁷

9. However, neither at this stage nor in preparation for witnesses P-2658 and [REDACTED], was the Prosecution able to discern that the person nicknamed 'KOMAS' (P-2658 statement) or [REDACTED] was the same person as [REDACTED] 'KOUMAS' [REDACTED]. Significantly, there is no confluence of the three statements - P-2658, [REDACTED] - in respect of the individual's proper name, their companions

³ CAR-OTP-2126-0012 at 0024, 0037, paras. 72, 164.

⁴ T-134-CONF-ENG CT2, p. 54, l. 25-p. 55, l. 12.

⁵ CAR-OTP-2135-3476 at. 3488-3489, para. 164.

⁶ CAR-OTP-2135-3476 at 3480, para. 72.

⁷ T-134-CONF-ENG CT2, p. 29, l. 2-20; p. 33, l. 10-13; p. 36, l. 6-23; in particular p. 38, l. 14- p. 52, l. 8.

and activities within the Anti-Balaka, and the spellings of the nicknames, which, although similar, in fact comprise distinct names with different pronunciations. In respect of the latter, the differences in their spelling make conventional key-word searches more difficult. While a Prosecution with infinite time and limitless resources might have discovered the link between these nicknames at an earlier stage, in the circumstances, the Prosecution exercised diligence in its review of the available information in preparation of P-2658 and [REDACTED].⁸ Thus, the timing of its discovery that they may have in fact have been discussing [REDACTED] was reasonable in the circumstances.

10. On 17 November 2023, the Defence included [REDACTED] on its final witness list.⁹ His statement was disclosed on 8 December 2023, revealing that his nickname was [REDACTED].¹⁰ This nickname was not apparent from any previous documents: it was neither apparent from the Prosecution's screening note of [REDACTED],¹¹ nor from [REDACTED] Statement,¹² and P-2658's statement similarly only mentioned the nickname [REDACTED].¹³

11. In March 2024, following *inter partes* discussions with the NGAISSONA Defence, the Prosecution departed from its stated intention to assess information relevant to Defence witnesses on a rolling basis, and proceeded with a bulk review related to those added by the Defence since filing its preliminary witness list.¹⁴ It is only through the association between 'KOUMAS' [REDACTED] and the new information that

⁸ See *Prosecutor v. Popovic et al*, Decision on Motion to Reopen the Prosecution case, Case No. IT-05-88-T, 9 May 2008, paras. 28, 31.

⁹ ICC 2215-Conf-Anx1, p. 10, entry 13.

¹⁰ CAR-D30-0021-0001-R01.

¹¹ CAR-OTP-2075-0023.

¹² CAR-OTP-2114-0229, who does not attribute any nickname for [REDACTED].

¹³ CAR-OTP-2126-0012 at 0024, 0037, paras. 72, 164.

¹⁴ *Inter partes* email exchanges with NGAISSONA Defence, available upon request.

[REDACTED] that the Prosecution assessed that [REDACTED] could be the same person to whom P-2658's refers.

12. Given that [REDACTED]. Following the conclusion of this inquiry on 28 March 2024, a courtesy copy of the Statement was promptly provided to the Defence the same day.

B) The information contained in [REDACTED] Statement does not fall under article 67(2)

13. Nothing in the Statement objectively indicates or suggests NGAISSONA's innocence, mitigates his guilt, or rationally affects either P-2658's testimony or other Prosecution evidence.

14. *First*, the absence of information regarding [REDACTED] activities between May and October 2013 is not inconsistent with his having been involved with the Anti-Balaka before the September 2013 attack on BOSSANGO, as described by P-2658.

15. *Second*, neither [REDACTED] location, nor his financial situation contradict P-2658's testimony. [REDACTED] was able to be in *telephone* contact with the GOBERE Anti-Balaka leadership during this period. Further, according to [REDACTED], the Seleka arrested him in October 2013 because they obtained information about his support of the Anti-Balaka (*aka* 'Siriri')¹⁵ with François BOZIZE's money.¹⁶

16. In fact, the information in the Statement is consistent with the Prosecution's case and P-2658's testimony. [REDACTED].¹⁷ [REDACTED].¹⁸

¹⁵ For the association of 'Siriri' with the Anti-Balaka, *see* Prosecution's Trial Brief ICC-01/14-01/18-723-Conf, para. 92.

¹⁶ CAR-OTP-2114-0229 at 0238, para. 45.

¹⁷ *See* Annex A. For the attribution to [REDACTED] *see* ICC-01/14-01/18-1296-Conf-AnxC, p. 5.

¹⁸ *See* Annex B. For the attribution to [REDACTED] *see* ICC-01/14-01/18-1296-Conf-AnxC, p. 5.

C) There is no undue prejudice

17. The Defence's claimed prejudice in having been deprived of the possibility to "question witnesses about KOMAS, as well as carry out more detailed investigations with full knowledge of the allegations"¹⁹ is vacuous.

18. *First*, any question addressed to P-2658 regarding [REDACTED] location and activities would have been merely speculative. P-2658 expressly testified to having no direct knowledge of DEDANE's interlocutors' whereabouts and activities.²⁰

19. *Second*, the NGAISSONA Defence was not deprived of asking any other Prosecution witness questions regarding 'KOMAS', nor to investigate and call its own witnesses on this matter. In fact, the NGAISSONA Defence was able to identify and contact [REDACTED], but was ultimately "unable to conduct an interview with him"²¹ for reasons which are *unrelated* to the Prosecution.

20. *Finally*, the Defence could have introduced evidence about 'KOUMAS' through [REDACTED], but chose not to for strategic purposes. Significantly, '[REDACTED]' and had direct knowledge of his activities,²² despite later claiming otherwise.²³

¹⁹ ICC-01/14-01/18-2479-Conf, para. 23.

²⁰ CAR-OTP-2126-0012 at 0037, para. 164; T-136-CONF-ENG ET, p. 39, l. 17-22.

²¹ ICC-01/14-01/18-2479-Conf, para. 24.

²² CAR-OTP-2075-0023, p. 3; CAR-OTP-2114-0229 at 0236, para. 35.

²³ CAR-D30-0021-0001-R01 at 0002, para. 9.

IV CONCLUSION

21. For the reasons above, the Chamber should reject the Motion.

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

Karim A. A. Khan KC, Prosecutor

Dated this 2nd day of July 2024
At The Hague, The Netherlands