

Original: **English**No.: **ICC-01/14-01/18**Date: **30 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 *PROSECUTOR v. ALFRED YEKATOM AND  
PATRICE-EDOUARD NGAÏSSONA***

**Public**

**Public redacted version of “Prosecution’s Response to the Ngaïssona Defence Request for the Formal Submission of the Prior Recorded Testimony of D30-4504 pursuant to Rule 68(3) (ICC-01/14-01/18-2396-Conf)”,  
ICC-01/14-01/18-2408-Conf, 12 March 2024**

**Source:** Office of the Prosecutor

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

**The Office of the Prosecutor**

Mr Karim A. A. Khan KC  
Mr Mame Mandiaye Niang  
Mr Kweku Vanderpuye

**Counsel for Alfred Yekatom**

Ms Mylène Dimitri  
Ms Anta Guissé  
Mr Thomas Hannis  
Ms Sarah Bafadhel

**Counsel for Patrice-Edouard Ngaïssona**

Mr Geert-Jan Alexander Knoops  
Mr Richard Landry Omissé-Namkeamaï  
Ms Marie-Hélène Proulx

**Legal Representatives of Victims**

Mr Dmytro Suprun  
Mr Abdou Dangabo Moussa  
Ms Elisabeth Rabesandratana  
Mr Yaré Fall  
Ms Marie-Edith Douzima-Lawson  
Ms Paolina Massidda

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

---

**Registrar**

Mr Osvaldo Zavala Giler

**Counsel Support Section**

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. INTRODUCTION

1. The Prosecution opposes the Ngaissona Defence's Request for the submission of the prior recorded testimony of D30-4504 pursuant to Rule 68(3) of the Rules of Procedure and Evidence<sup>1</sup> ("Request").<sup>2</sup> The Chamber should reject the Request, and D30-4504 be heard fully *viva voce*. Introducing D30-4504's prior statement ("Statement") would neither substantially expedite his testimony, given its nature and the scope of the proposed evidence. Moreover, as described below, its formal submission pursuant to Rule 68(3) would not be in the interests of justice in the circumstances.

## II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis*(2) of the Regulations of the Court ("RoC"), this document is filed as "Confidential", as it responds to a filing of the same designation. A public redacted version will be filed as soon as practicable.

## III. SUBMISSIONS

3. The Prosecution refers to the applicable law on the introduction of prior recorded testimonies pursuant to Rule 68(3) of the Rules, as previously set out by the Chamber.<sup>3</sup>

4. Contrary to the Defence's contentions,<sup>4</sup> introducing D30-4504's Statement under Rule 68(3) would not expedite the proceedings. This is because the Defence both (a) underestimates the time required to lead evidence probative of the issues for which the witness's testimony is sought, given the serious deficiencies in the reliability of the Statement; and (b) overestimates the time needed to examine the witness absent the

---

<sup>1</sup> Hereinafter ("Rules").

<sup>2</sup> ICC-01/14-01/18-2396-Conf.

<sup>3</sup> ICC-01/14-01/18-907- Red, paras 8-16, *see also* ICC-01/14-01/18-1383, paras. 4-17.

<sup>4</sup> Request, paras. 3, 22.

Statement. The net result is that any advantage to be gained by introducing D30-4504's Statement would be marginal at best, a far cry from the 50% reduction in time contended by the Defence.

- i. The Statement requires substantially more examination by the Defence to account for its failings*

5. A cursory examination of the Statement, reveals its extensive vagueness and lack of reliability. In addition to proffering obviously speculative and conclusory assertions, the Statement lacks almost any substantiation. Moreover, its probative value is weakened by D30-4504's claimed absence of knowledge of events and matters that are of common knowledge.<sup>5</sup> In the same vein, the Statement is devoid of any colourable explanation for his assertions, including in relation to occurrences and events that the witness claims that he did not hear about — without any indication as to why he would have been in a position to observe the given circumstance to begin with.<sup>6</sup>

6. It is clear from its nature that, absent considerable substantiation, D30-4504's Statement is essentially empty, and without probative value. As such, its introduction would not save time or expedite the proceedings since it would be incumbent on the Defence to lead a significant amount of evidence to simply account for the otherwise clear evidentiary deficit. This is even more so, in respect of substantiating the witness's claims regarding the Accused's acts or conduct.<sup>7</sup>

---

<sup>5</sup> CAR-D30-0023-0001, at 0006, para. 50 (such as, BOZIZE's presence in CAMEROON); *see* CAR-D30-0023-0001, at 0005, para. 40 (such as, NGAISSONA having become the National General Coordinator of the Anti-Balaka upon his return to BANGUI).

<sup>6</sup> *See e.g.*, CAR-D30-0023-0001, at 0003, para. 19 [REDACTED]; CAR-D30-0023-0001, at 0003, para. 20 ([REDACTED]); CAR-D30-0023-0001, at 0005, para. 36 (NGAISSONA met BOZIZE in CAMEROON); CAR-D30-0023-0001, at 0004, para. 27 ([REDACTED]).

<sup>7</sup> CAR-D30-0023-0001, at 0004, para. 20 (claiming that [REDACTED]) ; CAR-D30-0023-0001, at 0005, para. 37 ([REDACTED]); CAR-D30-0023-0001, at 0003, para. 18 ([REDACTED] [REDACTED]); CAR-D30-0023-0001, at 0005, paras. 32-33 ([REDACTED]); CAR-D30-0023-0001, at 0005, para. 36 ([REDACTED]).

7. Accordingly, the Request fails to plausibly establish any meaningful time or resource savings to be had by introducing the Statement under Rule 68(3). To the contrary, the witness's *viva voce* testimony will serve to better streamline the proceedings and ensure that the Defence focusses on probative matters truly within the ambit of D30-4504's knowledge.

*ii. The Request overestimates the time needed to examine the witness absent the Statement*

8. The Defence's claim that the introduction of the Statement pursuant to Rule 68(3) would streamline and expedite the proceedings<sup>8</sup> is not realistic. As noted above, even if the Statement is submitted, the Defence would have to expend a substantial amount of Court time, effectively making up for its lack of reliability and thoroughness.

9. With that said, it bears noting that the Statement is merely nine pages long. The suggestion that, absent the introduction of these nine pages, the Defence would be required to lead the evidence of this witness for eight hours in total is untenable. Given the subject matter, its overall relevance, the indicated limits of D30-4504's basis of knowledge, and the scope of the Statement, the Defence's claim that introducing the Statement would save 50% of the otherwise anticipated Court time lacks any semblance of proportionality. The estimation is greatly overstated, and in any event the Request fails to substantiate *why* leading the witness's evidence fully *viva voce* would realistically require two full Court days.

10. By contrast, the Prosecution considers that objectively, given the prevailing factors noted above, D30-4504's evidence could reasonably be led on direct examination in one day, irrespective of whether the Statement is introduced. To this extent, the Prosecution considers that the Request seriously overestimates the length

---

<sup>8</sup> Request, paras. 3, 22.

of time necessary to lead the witness's evidence absent his nine-page Statement. In any case, the Request otherwise fails to justify the Statement's introduction under Rule 68(3) in these circumstances.

#### IV CONCLUSION

11. For the foregoing reasons, the Prosecution requests the Chamber to dismiss the Rule 68(3) Request regarding D30-4504's prior recorded testimony and require that he testify fully *viva voce*.

A handwritten signature in black ink, appearing to be 'K.A.K.', with a horizontal line underneath it.

---

**Karim A. A. Khan KC, Prosecutor**

Dated this 30<sup>th</sup> day of April 2024  
At The Hague, The Netherlands