

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **12 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 Formal Submission of Prior Recorded Testimony of Defence Witness D30-P-4197 pursuant to Rule 68(3) of the Rules ( ICC-01/14-01/18-2368-Conf)”,  
ICC-01/14-01/18-2379-Conf, 26 February 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 Office of the Prosecutor (“Prosecution”), subject to the observations below, defers to Trial Chamber V (“Chamber”) in the disposition of the Ngaissona Defence’s request to introduce the prior testimony of D30-P-4197 under Rule 68(3) of the Rules of Procedure and Evidence (“Rules”).<sup>1</sup>

## II. CONFIDENTIALITY

2. Pursuant to regulation 23bis(2) of the Regulations of the Court (“RoC”), this document is filed as “Confidential”, as it responds to a filing of the same designation. It may be re-classified as “Public” as the Chamber deems appropriate.

## III. SUBMISSIONS

3. The Ngaissona Defence proposes to introduce the transcript of the ‘read back’ of D30-P-4197’s statement provided on [REDACTED]<sup>2</sup> as the witness’s prior recorded testimony. On this, the Prosecution makes two observations.

4. *First*, the Prosecution incorporates by reference its submissions on the process used to identify the interlocutor here and its impact on the reliability of the tendered transcript, as set out in its response to the Defence’s request to submit the prior recorded testimony of P-4914.<sup>3</sup> As in that case, the identification process here was cursory, if not deficient:

---

<sup>1</sup> [REDACTED] (“Request”).

<sup>2</sup> [REDACTED].

<sup>3</sup> [REDACTED].

[00:00:00. Début de l'enregistrement]  
 2 *Intervieweur 1* : C'est bon.  
 3 *Intervieweur 2* : Merci beaucoup  
 4 [Sonnerie de téléphone]  
 5 *Personne entendue* : Allo ? Allo ?  
 6 *Intervieweur 2* : Oui bonjour [REDACTED]  
 7 *Personne entendue* : Oui bonjour c'est moi.  
 8 *Intervieweur 2* : Bonjour, comment allez-vous ?  
 9 *Personne entendue* : Ca va bien par la grâce de Dieu. <sup>4</sup>

5. The interlocutor's asserted identity in this manner, without more, is of questionable adequacy. Further, it is neither material nor dispositive that the individual subsequently confirmed or attested to certain biographical information, since their identity was not fully established in the first place.

6. *Second*, the proffered transcript principally comprises the words of the *interviewer*, whereas it is D30-4197's [REDACTED] own words to the Defence that would comprise his prior testimony. Although a declaration may be attributed to a witness upon their acceptance of propositions put to them, where those propositions purportedly arise from the witness's pre-existing declaration, it is that which constitutes their prior testimony — not the witness's subsequent confirmation of their own previous assertions.<sup>5</sup>

7. Assuming *arguendo* that the witness's subsequent confirmation simply comprises a second independent statement, here D30-P-4197's 31 October 2023 interview would nevertheless at least constitute an 'associated document' with respect to the transcript. In this context, the statement was used and discussed

---

<sup>4</sup> [REDACTED].

<sup>5</sup> Note, this is consistent with the 'best evidence rule' which is effectively recognised in the rule 68 exception to article 69(2). The rule has also been applied in international tribunals: *see* R. Glover, *Murphy on Evidence* (15<sup>th</sup> edn., Oxford University Press, 2017), Section 2.5.1; *see also e.g. Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-T, Decision on the Admission into Evidence of Intercept Related Materials, 18 December 2003, para. 25 (noting that while "neither party is under an obligation under the Rules to tender perfect evidence ... "[t]he best evidence rule' will be applied" which means that "the Trial Chamber will rely on the best evidence available in the circumstances" (internal citations omitted); *see also Prosecutor v. Martić*, Case No. IT-95-11-T, Decision Adopting Guidelines on the Standards Governing the Admission of Evidence, 19 January 2006, para. 7.

extensively in the transcript. Thus, as per the Chamber's prior decisions on this matter, it is 'associated' with the proposed prior recorded testimony,<sup>6</sup> and as such, should be disclosed and tendered accordingly.

#### IV CONCLUSION

8. Subject to the foregoing observations, the Prosecution defers to the Chamber's discretion in the disposition of the Request.

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

---

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

Dated this 12<sup>th</sup> day of April 2024  
At The Hague, The Netherlands

---

<sup>6</sup> See ICC-01/14-01/18-907-Red, para. 13 (First Rule 68(3) Decision).