

Pursuant to Trial Chamber V Single Judge's instruction, dated 4 December 2024, this document is reclassified as "Public"

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 20 November 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***

Confidential

Corrected version of “ Prosecution’s Response to “Ngaïssona Defence request to submit additional evidence on sentencing through Rule 68(2)(b) – D30-4321” (ICC-01/14-01/18-2713-Conf)”, ICC-01/14/18-2726-Conf, 14 October 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
 Mr Thomas Hannis
 Ms Anta Guissé
 Ms Sarah Bafadhel

Counsel for Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoops
 Ms Marie-Hélène Proulx
 Ms Lauriane Vandeler

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 defers to the discretion of Trial Chamber V ("Chamber") in the disposition of the Ngaissona Defence's request to submit additional evidence on sentencing,¹ subject to the observations set out below.

II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis*(2) of the RoC, this submission 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. *First*, although the import of D30-4321's proffered statement is marginal, insofar as it relates to the Accused's state of mind at the end of 2014 and later, the Prosecution defers to the Chamber as to the necessity to receive it in these proceedings. The Chamber has duly noted its authority to limit submissions on sentencing where they may be unnecessarily duplicative of evidence already received in the trial record. That appears to be the case here, notwithstanding that the Defence's submission that D30-4321 will be the only witness for whom it "will seek to introduce prior recorded testimony through Rule 68(2)(b) by the 1 October 2024 deadline."²

4. Notably, D30-4321's evidence on the "role religious leaders had during and after the conflict",³ has nothing to do with a potential sentencing procedure regarding the Accused, should he be convicted of any charged crime. Indeed, the proposed statement is replete with anecdotes, unsubstantiated remarks and opinions collateral to any cognisable sentencing issue.

¹ See ICC-01/14-01/18-2713-Conf ("Request").

² ICC-01/14-01/18-2713-Conf, para. 5.

³ ICC-01/14-01/18-2713-Conf, para. 9.

5. *Second*, as proposed under Rule 68(2)(b) of the Rules of Procedure and Evidence ("Rules"),⁴ D30-4321's statement does not satisfy the express requirements of the provision. The Defence misreads the *Bemba et al* case in seeking to exclude from the scope of Rule 68(2) evidence which may — apart from showing the Accused's character⁵ — *also* goes to any subjective or objective element of the confirmed charges and modes of liability. It commits the same interpretive error with regard the *Ongwen* and *Al Hassan* cases cited.

6. To the extent the proffered statement bears on the impetus of NGAISSONA in respect of the commission of the crimes charged (or lack thereof), it is excludable precisely because it relates to his acts or conduct.⁶ This is even more clear since the statement also covers a period *within the temporal scope of the confirmed charges* and within the context of the Anti-Balaka attack in western CAR out of which they arise. While this does not necessarily preclude the statement's introduction under Article 76(1) via other provisions of the Statute,⁷ it cannot be introduced as prior recorded testimony pursuant to Rule 68(2)(b), as such.

7. *Third*, to the extent that the statement contains information that does not implicate NGAISSONA's acts or conduct, the Prosecution observes that it is cumulative to evidence already within the trial record. Indeed, the Request itself describes these particular areas of duplication – notwithstanding the Defence's characterisation of it as 'corroboration'.⁸

8. The Chamber's consideration of the proposed statement should be confined to those matters which it finds *strictly* and *exclusively* relevant to a determination for the appropriate sentence to be imposed against NGAISSONA, should he be convicted in this case. As previously noted, sentencing submissions are not meant to relitigate the

⁴ ICC-01/14-01/18-2713-Conf, para. 8.

⁵ See ICC-01/14-01/18-2713-Conf, para. 14.

⁶ ICC-01/05-01/13-1600, para. 16

⁷ See e.g., Article 69(3).

⁸ See ICC-01/14-01/18-2713-Conf, para. 20 (citing to P-0808, P-0888, P-0889, and P-0446).

merits of the case, but must be tied to factors clearly defined in the Court's jurisprudence and regulatory framework. Articles 76 and 78, and Rule 145 principally define the relevant scope of sentencing evidence and submissions that a Chamber may and, must consider. The Prosecution considers that the proposed statement should be regarded accordingly.

IV. CONCLUSION

9. For the reasons above, the Prosecution defers to the Chamber's discretion in the disposition of the Request, subject to the above observations.



Karim A. A. Khan KC, Prosecutor

Dated this 20th of November 2024

At The Hague, The Netherlands