

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/14-01/18

Date: 19 August 2024

TRIAL CHAMBER V

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

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

Public Redacted Version of

Report of Duty Counsel Pursuant to Rule 74

Source: Anthony Abato, Legal Advisor to CAR-D30-4914

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

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I. INTRODUCTION

1. Witness D30-4914 will testify about his role in the *gendarmerie* of the Central African Republic during the period of the charges in this case. The Legal Advisor files this report to explain the particular concerns of witness D30-4914 and to seek assurances in this regard pursuant to Rule 74 of the Rules of Procedure and Evidence (“Rules”).

II. PROCEDURAL HISTORY

2. On 20 June 2024, the Single Judge on behalf of Trial Chamber V (“Chamber”) issued a decision directing the Registry to appoint duty counsel for D30-4914 to advise the latter on issues of self-incrimination that may arise during his testimony.¹

3. On 1 July 2024, the Registry transmitted to the Chamber a notification of the appointment of the undersigned as legal advisor (“Legal Advisor”) to witness D30-4914. The Registry indicated that the Legal Advisor would be provided with access to the relevant material in connection with the case, including the statements and transcripts of interviews of D30-4914. The Legal Advisor received from the Defence the prior statement of D30-4914, dated 14 December 2023, and the hearing transcripts of Prosecution witnesses P-1719, P-1847, and P-2673, through a secure channel.

4. On 19 August 2024, the Legal Advisor met in-person with D30-4914 at the premises of the Court. The Legal Advisor consulted the witness about any concerns regarding self-incrimination, and advised him of his rights and obligations under Articles 70 and 71 of the Rome Statute and Rule 74 of the Rules. The meeting lasted approximately one hour.

III. SUBMISSIONS

5. During the temporal scope of the indictment, D30-4914 was [REDACTED], and he will likely give extensive oral testimony about [REDACTED]. He will also testify

¹ Trial Chamber V, Decision on the Ngaïssona Defence Request for the Appointment of Duty Counsel, 20 June 2024, ICC-01/14-01/18-2536; *see also* Ngaïssona Defence’s Request for the Appointment of Duty Counsel pursuant to Rule 74, 13 June 2024, ICC-01/14-01/18-2531-Conf.

about [REDACTED]. Finally, D30-4914 may give testimony about: (i) [REDACTED], and (ii) [REDACTED].

6. Rule 74(3) of the Rules provides that a witness may object to making any statement that might tend to incriminate him or her, except where that witness has received assurances in respect of a question and the Chamber requires the witness to answer. Under Rule 74(3)(c) of the Rules, the Chamber may give such assurances by informing the witness that the evidence provided in response to the question (i) will be kept confidential and will not be disclosed to the public or any State; and (ii) will not be used either directly or indirectly against that person in any subsequent prosecution by the Court, except under articles 70 and 71 of the Statute.

7. In deciding on assurances, the Chamber must consider (i) the importance of the anticipated evidence, (ii) whether the witness would be providing unique evidence, (iii) the nature of the possible incrimination, if known, and (iv) the sufficiency of the protections for the witness, in the particular circumstances.²

8. The Legal Advisor submits that the areas of testimony described above could be incriminating.³ Moreover, the evidence described above is important to this case, and D30-4914 is in a position to provide unique evidence about [REDACTED]. Thus, the Legal Advisor submits that it would be appropriate for the Chamber to give assurances against self-incrimination to D30-4914 in respect of the subject matter described above. Granting such assurances would facilitate a fair and expeditious proceeding, as D30-4914 would then be able to testify freely for the Defence without fear of any repercussions. The assurances requested are both necessary and proportionate, and they are consistent with the co-accused's right to a public trial.

IV. CLASSIFICATION

9. This filing is submitted as "confidential" pursuant to Regulation 23 *bis* of the Regulations of the Court, as it contains information about testimony that will be given in private session. A public redacted version will immediately follow.

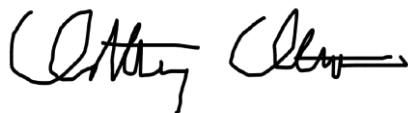
² Rule 74(5)(a)-(d) of the Rules.

³ *Supra* para. 5.

10. Consistent with the assurances against self-incrimination requested in this filing, and the general right against self-incrimination protected in human rights jurisprudence, the Legal Advisor requests that this filing maintain the same classification in perpetuity and that it be excluded from any initiative of the Chamber or the Court, generally, for the reclassification of records in this case.

V. RELIEF REQUESTED

11. For the above reasons, the Legal Advisor respectfully REQUESTS that
- a. the Chamber provide the assurances in Rule 74(3)(c) of the Rules to witness D30-4914 in respect of any potentially self-incriminating evidence in his upcoming testimony;
 - b. the Chamber ORDER the measures set out in Rule 74(7) of the Rules in order to give effect to the assurances; and
 - c. the classification of this document remain “confidential”.



Anthony Abato
Legal Advisor to CAR-D30-4914

Dated this 19th day of August 2024

At The Hague, the Netherlands