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

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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 “Consolidated Ngaïssona
Defence Request to Present Additional Evidence for Potential Sentencing and
Request for an Extension of Time Pursuant to Regulation 35 (2) to present
testimonial evidence”(ICC-01/14-01/18-2676)”,
ICC-01/14-01/18-2688, 13 September 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. The Office of the Prosecutor (“Prosecution”) opposes in large part the Ngaissona Defence Request to submit eight additional items of non-testimonial evidence for potential sentencing (“Request”).¹ Specifically, Trial Chamber V (“Chamber”) should reject the request to add seven of these documents which are *prima facie* irrelevant to the pertinent factors in the determination of a sentence provided in articles 76 and 78 of the Statute and Rule 145 of the Rules of Procedure and Evidence (“Rules”). The Prosecution defers to the Chamber’s discretion regarding the submission of the remaining item CAR-D30-0029-0003.

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 filings of the same classification. A public redacted version will be submitted as soon as practicable.

III. SUBMISSIONS

A. Seven items lack *prima facie* relevance for the sentencing procedure

3. The Prosecution objects to the submission of the following seven items proffered by the Ngaissona Defence for the purposes of a potential sentencing procedure because they lack *prima facie* relevance in regards to the pertinent factors set out in articles 76 and 68, and Rule 145.

4. Item CAR-OTP-2100-1743 – [REDACTED] 2015 - makes no reference to February 2014, to NGAISSONA, or to any effort by him and/or the Anti-Balaka as concerns any DDRR program in 2014. Moreover, the request for “cantonment” found in CAR-OTP-

¹ ICC-01/14-01/18-2676-Conf-Red, para. 2.

2025-0362 and CAR-OTP-2025-0372 is not discussed or mentioned. Nor, was the proposal ever implemented as part of any sponsored DDRR program in 2014, which required the Anti-Balaka to agree to disarm as a first step.

5. The proposed pages (1021-1022) of item CAR-OTP-2092-1021 - a UN Secretary General Report, dated 1 April 2016 - concern NGAISSONA's political ambitions in supporting Faustin-Archange TOUADERA's candidacy in 2016. They shed no light on the appropriate sentence to be imposed, should the Chamber convict the Accused for his contributions to the crimes committed by the Anti-Balaka against Muslim civilians in an attempt to remove Michel DJOTODIA – the President of the Transitional Government confirmed in August 2013 – by force of arms in a *Coup d'état*. NGAISSONA "not using his political party to attempt to gain power through violence" in 2016 – does not speak to any relevant sentencing issue arising from his contribution to the crimes of the Anti-Balaka in 2013 and 2014, in targeting Muslim civilians. Moreover, the document does not demonstrate respect for the rule of law as argued, particularly given that the Anti-Balaka still operated as an unlawful armed militia in CAR at that time.

6. Item CAR-D30-0001-0022 - [REDACTED] 2017 – is well beyond the timeframe of the charged crimes and associated unlawful conduct, and the author's direction of the requested support matter to NGAISSONA does not speak to latter's earlier intent. While it may reflect a change of heart from 3-4 years earlier in time, coinciding with a concerted effort to forge a political career, the letter itself does not expressly or implicitly bear on this. Nor, is the request probative of any contribution on the part of NGAISSONA having taken responsibility for his role in the charged crimes, should the Chamber resolve to convict him.

7. Even if true, the Defence's claim that the videos CAR-D30-0029-0001² and CAR-D30-0029-0002³ demonstrate, *inter alia*, the Accused's purported 'support for democratic processes', this is not a relevant sentencing factor. Nor, does the defendant's claim to have been "using football as a tool to bring social cohesion and peace" *ex post facto* – by several years (no less) establish any proximity to the events as to reasonably bear on his circumstances at the time of the alleged commission of the offences. Similarly, they do not by their nature, necessarily demonstrate any contrition, rehabilitation, or mitigating circumstance in respect of the Accused's conduct, in the event that he is convicted. Additionally, they do not relate to his "personal circumstances" within the meaning of Rule 145(1)(b), which logically attends to his current circumstances at the time of sentence (such as health, for example); and/or those circumstances prevailing at the time of the commission of the offence.

IV. RELIEF SOUGHT

8. For the above reasons, the Chamber should reject the submission of the seven items listed above for potential sentencing. The Prosecution defers to the Chamber's discretion regarding the submission of CAR-D30-0029-0003.



Karim A. A. Khan KC, Prosecutor

Dated this 20th day of November 2024
At The Hague, The Netherlands

² Transcript CAR-D30-0029-0006.

³ Transcript CAR-D30-0029-0007.