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**International
Criminal
Court**



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

Public Redacted Version

With Confidential Annex 1

**Public Redacted Version of “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-Conf-Exp, 6 September 2024**

Source: Defence of Patrice-Edouard Ngaïssona

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 the Defence of Mr Ngaïssona

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

Counsel for the Defence of Mr Yekatom

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

Legal Representatives of the 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 the Applicants

Unrepresented Victims

**Unrepresented
(Participation/Reparation)**

Applicants

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section Other**

I. INTRODUCTION

1. On 18 July 2024, Trial Chamber V ('Chamber') issued the "Decision on the Sentencing Procedure and Amended Directions on the Conduct of the Proceedings" ('Decision on the Sentencing Procedure').¹ In the Sentencing Procedure Decision, the Chamber decided to render any potential decision on sentencing simultaneously with its judgment and established several related deadlines. Regarding the presentation of evidence for potential sentencing, the Chamber ordered that such requests be made by 6 September 2024. The Defence for Patrice-Edouard Ngaïssona ('the Defence') hereby requests: (1) to present additional non-testimonial evidence for potential sentencing, further to Article 76(2) of the Rome Statute ('Statute') and the Chamber's Decision on the Sentencing Procedure, and (2) an extension of time to submit additional testimonial evidence in the form of Rule 68(2)(b) statements relating to, at most, four potential witnesses. Specifically, the Defence seeks to submit such statements and Rule 68(2)(b) requests on a rolling basis until 1 October 2024.
2. The additional non-testimonial evidence the Defence seeks to submit through the present request consists of eight items. Hyperlinks to the items in addition to detailed submissions regarding their relevance and probative value are annexed to the present filing in Confidential Annex 1.
3. With respect to testimonial evidence, the Defence was unable to meet the deadline for reasons outside of its control. Pursuant to Regulation 35(2) of the Regulations of the Court, the Defence respectfully requests an extension of time to file Rule 68(2)(b) statements for at most four witnesses. The Defence was unable to conclude its investigations with respect to these four potential witnesses for two reasons. First, [REDACTED]. Second, [REDACTED].

¹ ICC-01/14-01/18-2600.

II. CONFIDENTIALITY

4. In accordance with Regulation 23*bis*(1) of the Regulations of the Court. The Defence files the present consolidated request confidential, *ex parte* only available to the Ngaïssona Defence. The consolidated request contains confidential information related to the obstacles the Defence has encountered in concluding its investigations related to sentencing. A confidential redacted version will be filed simultaneously, which will refer to individuals whose cooperation with the Defence is not public. A public redacted version will be filed in due course.

III. SUBMISSIONS

A. Request to submit eight additional items of non-testimonial evidence for potential sentencing

5. Bearing in mind the abundance of evidence on record, the Defence seeks to present only a small number of non-testimonial items for potential sentencing. The eight items are probative, as detailed in Annex 1, and are relevant to the criteria for potential sentencing. In particular, the items relate to either mitigating circumstances, or to Mr Ngaïssona's individual circumstances as specified in Article 78 of the Statute and Rule 145 of the Rules of Procedure and Evidence ('Rules').

1. *The Defence seeks to submit two items relating to mitigating circumstances*

6. Rules 145(1)(b) and 145(2)(a) of the Rules requires trial chambers to consider mitigating circumstances when determining an appropriate sentence. Rule 145(2)(a) of the Rules further lists examples of such mitigating circumstances. This list is not exhaustive leaving to the discretion of the trial chamber other scenarios in which such circumstances can be found to be present. For example, trial chambers have found that the convicted person's efforts to promote peace and reconciliation can constitute a mitigating circumstance.² To be considered as a mitigating circumstance, such

² ICC-01/04-02/06-2442, para. 218; ICC-01/05-01/08-3399, para. 72.

efforts to promote peace and reconciliation must be genuine and concrete, without the need to demand results.³

7. For the past several years, the Defence has structured part of its case around Mr Ngaïssona becoming the National Coordinator of the Anti-Balaka in January 2014 to bring peace and reconciliation to the CAR after President Djotodia resigned. Therefore, the record of the case is replete with evidence regarding Mr Ngaïssona's efforts for peace and reconciliation that were genuine and concrete during the Relevant Period. The Defence will cite extensively this evidence in its written submissions on potential sentencing. Mr Ngaïssona also addressed these efforts in detail during his unsworn statement.⁴ While Mr Ngaïssona's unsworn statement is not evidence, Chambers have taken unsworn statements into consideration for the purposes of evaluating an appropriate sentence.⁵ Given this consistent jurisprudence, the Defence intends to rely on Mr Ngaïssona's statement for the purposes of potential sentencing.
8. Through the present request, the Defence seeks to introduce three items which relate to mitigating factors. While the items relate to events that are already on the record, they provide additional information from a unique vantage point, which will assist the Chamber in its holistic assessment of the evidence in potentially determining an appropriate sentence.
9. The first item is an invitation from Mr Ngaïssona to [REDACTED] to attend the general assembly announcing the creation of Mr Ngaïssona's party, the PCUD.⁶ This is a genuine and concrete effort made by Mr Ngaïssona to include all CAR nationals in his party. Additionally, if the Chamber were to find that the Anti-Balaka was a

³ ICC-01/04-02/06-2442, para. 218; ICC-01/05-01/08-3399, para. 72; ICC-01/04-01/07-3484-tENG-CorrPara, para. 91.

⁴ ICC-01/14-01/18-T-304-CONF-FRA ; ICC-01/14-01/18-T-305-CONF-FRA.

⁵ ICC-01/04-02/06-2442, para. 238 ; ICC-02/04-01/15-1819-Red, para. 394; ICC-01/12-01/18-2633.

⁶ CAR-D30-0029-0003.

group which targeted the Muslim population, it shows Mr Ngaïssona's intent to change the Anti-Balaka movement's anti-Muslim sentiment to one of inclusion.

10. The second item consists of a letter from [REDACTED] all the signatories of the Disarmament, Demobilisation, Reintegration and Reconciliation ('DDRR') agreement signed in May 2015.⁷ It is relevant to the information that the CAR government needed to successfully implement the DDRR agreement. In the letter, [REDACTED] asks the signatories for specific information to implement the DDRR agreement such as such as a list of combatants, their weapons, assembly points, and what support the different groups who signed the agreement needed. This is the exact information Mr Ngaïssona shared with the transitional government and the international community in February 2014.⁸ Since Mr Ngaïssona had been providing this information since very shortly after the 5 December 2013 alleged attack, it is probative of the genuine and concrete steps Mr Ngaïssona made in in 2014 to demobilize the Anti-Balaka and reintegrate the members of Anti-Balaka groups into their respective societies.
11. The last item relating to mitigating circumstances the Defence seeks to introduce is a request from the *Association Islamique pour la Paix* asking Mr Ngaïssona for monetary assistance during Ramadan in 2017.⁹ This item, when assessed in conjunction with the 2012 request for monetary assistance from the same organization, is relevant to demonstrating Mr Ngaïssona's lack of anti-Muslim animus before and after the Relevant Period. The item also relates to mitigating circumstances in that Muslim associations were regularly reaching out to Mr Ngaïssona for assistance. This is relevant to Mr Ngaïssona's acts of reconciliation after the Relevant Period.

⁷ CAR-OTP-2100-1743.

⁸ CAR-OTP-2025-0362; CAR-OTP-2025-0372.

⁹ CAR-D30-0001-0022.

12. The Defence refers the Chamber to Annex 1 to its detailed submissions regarding the three items' relevance and probative value.

2. *Items relating to Mr Ngaïssona's individual circumstances*

13. The Defence seeks to submit one item relating to Mr Ngaïssona's acceptance of the government's decision to invalidate his presidential candidacy in 2016 in addition to two items relating to Mr Ngaïssona's role as *Union des Fédérations de Football d'Afrique Centrale* ('UNIFAC') president in 2018. The three items relate to Mr Ngaïssona's individual circumstances under Article 78 of the Statute and Rule 145(1)(c) of the Rules. While not expressly mentioned by the Statute or the Rules such individual circumstances may relate to rehabilitation, which is also a relevant purpose for sentencing.¹⁰
14. Mr Ngaïssona has always acted in a manner that was consistent with him being a concerned and generous CAR citizen who wanted to develop, unify and bring peace to CAR. However, in the event the Chamber were to convict him, these three items demonstrate that Mr Ngaïssona's position had changed. As emphasized by the Midterm report of the United Nations Panel of Experts on the Central African Republic in its report of July 2017, "Mr Ngaïssona ha[d] gradually removed himself from his Anti-Balaka base".¹¹
15. The item relating to the elections in 2016 is a United Nations report from the Secretary General on the situation in CAR.¹² The report states that a major milestone was reached in CAR since the 2016 presidential and legislative elections were conducted in peace. The report also includes information about Mr Ngaïssona's candidacy being rejected. The item is probative because Mr Ngaïssona did not use his political party or anyone associated with the Anti-Balaka to attempt to gain power once his

¹⁰ ICC-01/05-01/08-3399, para. 11.

¹¹ CAR-OTP-2058-0607, at 0625.

¹² CAR-OTP-2092-1021.

candidacy was rejected. Mr Ngaïssona accepted the decision invalidating his candidacy and even endorsed Mr Touadéra's candidacy despite much opposition from certain Anti-Balaka groups.¹³ In the event of a conviction, this evidence would be probative of Mr Ngaïssona's positive prospects for reintegration and rehabilitation into CAR society.

16. Similarly, the two video interviews of Mr Ngaïssona the Defence seeks to submit, along with their accompanying transcripts, are also probative for rehabilitation purposes.¹⁴ The videos show Mr Ngaïssona in his role as the President of UNIFAC in the same year as his arrest. Presiding over UNIFAC was a great responsibility in FIFA involving the coordination and development of football in several countries in the central African region. Countries involving Chad, played a significant role in the CAR crisis in 2012 and 2013, and the videos demonstrate Mr Ngaïssona's commitment to see his country reconcile through the development of football as well his desire for unity through the central African region. Mr Ngaïssona's advancement and contributions in the FIFA organization as the President of UNIFAC also demonstrates "how he had gradually removed himself from the Anti-Balaka base."¹⁵
17. The Defence refers the Chamber to Annex 1 to its detailed submissions regarding the three items' relevance and probative value.

B. Request for an extension of time to submit testimonial evidence pursuant to Regulation 35(2) of the RoC

18. Pursuant to Regulation 35(2) of the RoC, the Defence respectfully requests the Chamber for an extension of time to file, by 1 October 2024, additional testimonial evidence. This evidence would consist of Rule 68(2)(b) statements taken from at most four potential witnesses. If the extension were to be granted, the Defence undertakes to file the statements and their accompanying requests for submission on a rolling

¹³ CAR-OTP-2100-2609 at 2631.

¹⁴ CAR-D30-0029-0001; CAR-D30-0029-0004; CAR-D30-0029-0002; CAR-D30-0029-0007.

¹⁵ CAR-OTP-2100-2609 at 2631.

basis until 1 October 2024. Regulation 35(2) of the RoC provides that parties may benefit from an extension of time after the time limit has lapsed only if they are able to demonstrate that they were unable to file within the deadline for reasons outside of their control.

19. As detailed in the Defence's Request for Leave to Appeal the Decision on Sentencing Procedure, the Defence did not have sufficient time or resources to conduct in depth investigations needed for sentencing.¹⁶ In the past month, the Defence has directed significant resources to drafting its final bar table motion, concluding the testimony of its last witnesses, guiding Mr Ngaïssona in presenting his unsworn statement and responding to Prosecution's requests for rebuttal evidence. In this context, [REDACTED].
20. Delineating a sound strategy, which considered the evidence already submitted in trial, took approximately three weeks after the Defence had submitted its request for leave to appeal. During this time, the Defence proceeded with a selection of potential witnesses, and [REDACTED]. After assessing this selection for both its probative value and its feasibility in the limited time frame posed by the 6 September deadline, the Defence identified four witnesses for which it would seek to file a Rule 68(2)(b) statement, all of whom relate to Mr Ngaïssona's efforts for peace and reconciliation.
21. Unfortunately, the Defence was unable to complete its investigations relating to these four potential witnesses for reasons outside of its control. First, [REDACTED]. [REDACTED]. Second, [REDACTED].

1. *Inability to conduct interviews with two potential sentencing witnesses [REDACTED]*

22. [REDACTED]. [REDACTED],¹⁷ [REDACTED]. [REDACTED].

¹⁶ ICC-01/14-01/18-2608.

¹⁷ CAR-OTP-2104-0116 at 0138 paras 173-174.

23. [REDACTED].
24. [REDACTED]. The Defence was able to contact [REDACTED] and conducted a follow up interview with him on 5 September 2024. On the same day, the Defence was able to contact [REDACTED] who stated that he could be available for an in-depth interview on [REDACTED] September 2024, which the Defence has scheduled.
25. A limited extension to submit their two statements under Rule 68(2)(b) is warranted under these circumstances. The Defence anticipates that it will file the statements related to these two witnesses within the next two weeks given that in depth interviews for both witnesses will be concluded by [REDACTED].
2. *Inability to conduct interviews because [REDACTED]*
26. [REDACTED]. [REDACTED]¹⁸ [REDACTED].¹⁹
27. [REDACTED].
28. [REDACTED].
29. [REDACTED].
30. [REDACTED].
31. [REDACTED]. The Defence is currently assessing the probative value of this witness' prospective testimony.
32. For all four witnesses, the Defence was unable to complete its investigations relating to potential sentencing due to reasons outside of its control. The lack of time to prepare sentencing in addition to [REDACTED] caused significant delays in the Defence's ability to meet the deadline to request to present testimonial evidence. Further, the Defence had to respond to the Prosecution request to submit rebuttal

¹⁸ ICC-01/14-01/18-2670-Conf, paras 14-16.

¹⁹ Ibid., para 15.

evidence whose scope was unforeseeable. The Prosecution's baseless accusations against Mr Ngaïssona and the entirety of his Defence team drained the Defence's resources and caused further delays by requiring two senior members of the team to respond in a very limited time frame.

33. Despite these unforeseen and difficult circumstances, the Defence has found a way to [REDACTED]. By being allowed to have this limited extension, the Defence will be in a position to submit the testimonial evidence for the four above mentioned witnesses.
34. Additionally, in the interests of the expeditiousness of the proceedings, the Defence requests the Chamber to dispense with the requirement to have a member of the Registry to witness accompanying declarations with any prior recorded testimony, pursuant to Rule 68(2)(b)(ii) and (iii) of the Rules of Evidence and Procedure ("Rules") for the purposes of sentencing.
35. Pursuant to Rule 68(2)(b)(iii) of the Rules, the accompanying declaration "must be witnessed by a person authorized to witness such a declaration by the relevant Chamber or in accordance with the law and procedure of a State."
36. In past cases, Trial Chambers have held that it was not necessary for the parties to meet procedural pre-requisites of Rule 68 of the Rules to submit witness statements in writing for sentencing purposes.²⁰ In the *Bemba et al.* case, the Trial Chamber

²⁰ *The Prosecutor v. Bemba et al.*, Decision on Sentencing Witnesses and Setting an Article 76(2) Hearing, ICC-01/05-01/13-2025, 11 November 2016, paras 6-7; *The Prosecutor v. Al Hassan*, Decision on Defence request to dispense with certain certification requirements under Rule 68(2)(b)(ii) of the Rules, 18 July 2024, ICC-01/12-01/18-2610, para. 7; *The Prosecutor v. Ntaganda*, Public Redacted version of 'Preliminary ruling on prior recorded testimony pursuant to Rule 68(2)(b) in relation to sentencing', ICC-01/04-02/06-2385-Red, 23 August 2019, para. 10; *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Transcript of Hearing, 22 August 2016, ICC01/12-01/15-T-4-Red-ENG, page 3 line 20 to page 4 line 15; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on requests to present additional evidence and submissions on sentence and scheduling the sentencing hearing, 4 May 2016, ICC-01/05-01/08-3384, para. 15; Trial Chamber II, *The Prosecutor v. Germain Katanga*, Order on the Prosecution and Defence requests for admission of documentary evidence into the record of the sentencing proceedings and on

concluded that “Rule 68 procedural pre-requisites are not a procedural bar for sentencing in the same way they are at trial.”²¹

37. The Defence considers that the procedure adopted by previous Trial Chambers is appropriate in this case, in light of the phase the expected evidence will be presented.
38. The Defence also envisages that its ability to obtain the Registry certifications pursuant to Rule 68(2)(b) of the Rules is currently impaired due to the [REDACTED], as described above. The field office in Bangui is the only option to conduct the certification procedure since the connection in Bangui is too unstable to conduct this procedure anywhere else. This procedure at the field office however requires a Defence team member to be present in order to conduct the certification process.
39. Considering the current timeframe to submit the Rule 68 statements and concurrent deadlines, the impossibility to [REDACTED], the Defence considers that the dispensing of the requirement to have a member of the Registry to witness accompanying declarations with any prior recorded testimony, pursuant to Rule 68(2)(b) of the Rules will assist in expediting the sentencing procedure.
40. The Defence confirms that any prior recorded statement that will be submitted (1) will be accompanied by a declaration confirming the witness’ identity; (2) will be signed and given voluntarily; (3) will be given under declaration of honour and conscience that the statements are accurate, internally consistent and coherent. The Defence will expand on the process in its eventual request to present additional evidence under Rule 68(2)(b), should this present request be granted.

IV. RELIEF SOUGHT

the Legal Representative’s request for reclassification of a Registry report, 10 April 2014, ICC-01/04-01/07-3463-Conf-tENG, para. 8.

²¹ *Bemba et al.*, Decision on Sentencing Witnesses and Setting an Article 76(2) Hearing, ICC-01/05-01/13-2025, 11 November 2016, para. 7.

41. For the foregoing reasons, the Defence respectfully requests the Chamber to

GRANT the Defence's request to submit eight additional items of non-testimonial evidence;

GRANT the Defence's request for an extension of time to submit up to four Rule 68(2)(b) statements on a rolling basis and by no later than 1 October 2024; and

GRANT the Defence's request to dispense of Rule 68(2)(b) certification requirements for the purposes of potential sentencing.

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 20 November 2024

At The Hague, the Netherlands.