

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 12 January 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
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public with Confidential Annex A

Second Ngaïssona Defence request for leave to add items to the List of Evidence

Source: Defence of Patrice-Edouard Ngaïssona

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

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I. INTRODUCTION

1. The Defence for Mr Patrice-Edouard Ngaïssona ('the Defence') hereby requests leave to add 2 items to the List of Evidence ('List') submitted on 17 November 2023.¹ The items in question, which are listed in Annex A accompanying the present request, are prior recorded testimonies of Defence witnesses CAR-D30-P-4197² and CAR-D30-P-4953³ whose ERNs were not included in the "Ngaïssona Defence request for leave to add items to the List of Evidence" ('First Request')⁴ due to the fact that the witnesses' statements hadn't been secured at the time..
2. The Defence intends to request the introduction of P-4197's statement pursuant to Rule 68(3) of the Rules of Procedure and Evidence ('Rules') and P-4953's pursuant to Rule 68(2)(b) of the Rules. As such, their addition to the List is necessary before Trial Chamber V ('Chamber') rules on the Rule 68 requests which will be submitted in due course. The addition does not cause any prejudice to the parties and participants as they were already put on notice when the Defence submitted the List and the items were disclosed in the latest disclosure package.⁵

II. PROCEDURAL HISTORY

3. On 29 May 2023, the Chamber issued the 'Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)'.⁶
4. On 11 September 2023, the Prosecution filed the 'Prosecution's Notice of the Close of its Case-in-Chief'.⁷

¹ ICC-01/14-01/18-2215 and ICC-01/14-01/18-2215-Conf-Anx2.

² The ERN of the statement is CAR-D30-0027-0001-R01.

³ The ERN of the statement is CAR-D30-0026-0001-R01

⁴ ICC-01/14-01/18-2269 and ICC-01/14-01/18-2269-Conf-AnxA.

⁵ See Trial D30 Evidence Package 57 11 January 2024.

⁶ ICC-01/14-01/18-1892.

⁷ ICC-01/14-01/18-2089.

5. On 17 November 2023, the Defence filed the 'Defence Submission of its Final List of Witnesses and its List of Evidence'.⁸
6. On 4 December 2023, the Defence sought guidance from the Chamber "regarding any legal or procedural obstacles to obtaining prior recorded testimonies of certain Defence witnesses in a fully remote manner".⁹
7. On 12 December 2023, the Chamber authorized the proposed course of action, i.e. allowed the Defence to obtain the prior recorded testimonies in a fully remote manner.¹⁰
8. On 14 December 2023, the Chamber issued its 'Decision on the Ngaissona Defence Request to Extend the Time Limit for the Submission of Rule 68(3) Requests and for the Disclosure of D30-4197's Prior Recorded Testimony' ('Decision on P-4197's materials'), granting the Defence's request to postpone the disclosure of P-4197's prior recorded testimony until contact with the witness is resumed.¹¹
9. On 15 December 2023, the Defence filed its First Request, seeking leave to add 14 items to its List.¹²
10. On 4 January 2024, the Defence obtained Witness P-4197's prior recorded testimony remotely, as previously authorized by the Chamber.¹³
11. On 9 January 2024, the Defence met with Witness P-4953, who read and signed his statement, in the presence of a Court interpreter.¹⁴

⁸ ICC-01/14-01/18-2215, as well as ICC-01/14-01/18-2215-Conf-Anx1 and ICC-01/14-01/18-2215-Conf-Anx2.

⁹ Email from the Defence to the Chamber titled "Request for guidance - Process for obtaining prior statements remotely", sent on 4 December 2023, at 16:27.

¹⁰ Email from the Chamber to the parties and participants titled "Decision on the Ngaissona Defence's Request for guidance on the process for obtaining prior statements remotely", sent on 12 December 2023, at 11:13.

¹¹ ICC-01/14-01/18-2292.

¹² ICC-01/14-01/18-2269 and ICC-01/14-01/18-2269-Conf-AnxA.

¹³ CAR-D30-0027-0001-R01.

¹⁴ CAR-D30-0026-0001-R01.

12. On 11 January 2024, the Chamber issued its ‘Decision on the Ngaiissona Defence Request for Leave to Add Fourteen Items to its List of Evidence’, granting the First Request.¹⁵

III. SUBMISSIONS

13. As mentioned in the First Request, at the time of filing the Final List of Evidence, the Defence had not yet prepared, read back and/or secured the necessary signatures for all the witness statements it needs for the presentation of its case. Therefore, said statements had not been stamped and assigned an ERN and their placeholders were missing from the List.

14. Due to the fact that the Defence momentarily lost contact with the two witnesses and was unable to secure their prior recorded testimonies in December 2023, P-4197 and P-4953’s prior recorded testimonies were not included in the First Request filed on 15 December 2023.

15. Since 15 December 2023, the Defence has obtained the prior recorded testimonies which will be the subject of the respective Rule 68 requests, thus the missing ERNs are now available and should be added to the List for the sake of completeness.

16. The addition of the aforementioned materials causes no prejudice to the parties and participants. *First*, with the submission of the Defence’s List of Witnesses, the parties and participants were put on notice of the Defence’s intent to submit requests under Rule 68(2) and (3) of the Rules for witnesses P-4197 and P-4953.¹⁶ Their prior recorded testimonies are part and parcel of those requests.

17. *Second*, in its Decision on P-4197’s materials, the Chamber ordered the Defence “to disclose D30-4197’s prior recorded testimony within one week of obtaining it”,¹⁷

¹⁵ ICC-01/14-01/18-2292.

¹⁶ See ICC-01/14-01/18-2215-Conf-Anx1 where next to each witness the Defence intends to call, their mode of testimony is mentioned.

¹⁷ ICC-01/14-01/18-2264, p. 5.

making it once again evident to the parties and participants that a prior recorded testimony is expected.

18. *Lastly*, both statements were disclosed as soon as the Defence obtained them,¹⁸ thus the parties and participants will have time to review them and, as far as P-4197 is concerned, before the witness's testimony, which is not expected to take place before at least March 2024.

19. Should the present request be granted, the Defence stands ready to provide an updated List to all parties and participants.

IV. RELIEF SOUGHT

20. For the reasons presented above, the Defence respectfully requests the Chamber to **GRANT** the present request for leave to add P-4197 and P-4953's prior recorded testimonies to the List.

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 12 January 2024

At The Hague, the Netherlands.

¹⁸ See 'Trial D30 Evidence Package 57 11 January 2024' which includes the written statements for both witnesses.