

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **18 April 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

Public with Confidential Annexes A and B

**Public Redacted Version of 'Defence Request for the Formal Submission of the
Prior Recorded Testimony of D30-P-4914 pursuant to Rule 68(3)' (ICC-01/14-01/18-
2350-Conf), filed on 8 February 2024**

Source: Defence of Patrice-Edouard Ngaiissona

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

Counsel for the Defence of Mr Yekatom

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

Legal Representatives of the Victims

Mr Abdou Dangabo Moussa
 Ms Elisabeth Rabesandratana
 Mr Yaré Fall
 Ms Marie-Edith Douzima-Lawson
 Ms Paolina Massidda
 Mr Dmytro Suprun

Legal Representatives of the Applicants**Unrepresented Victims****Unrepresented Applicants
(Participation/Reparation)****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 Other Section

I. Introduction

1. The Defence for Mr NGAISSONA (“Defence”) requests the formal submission of the prior recorded testimony of witness D30-P-4914, in accordance with Rule 68(3) of the Rules of Procedure and Evidence (“Rules”) and the “Initial Directions on the conduct of the proceedings” (“Directions”) (“Request”).¹ D30-P-4914’s prior recorded testimony comprises one (1) transcribed statement, dated [REDACTED], totalling 30 pages (“Prior Statement”), and one (1) associated exhibit.² Should the Chamber deem D30-P-4914’s prior recorded testimony formally submitted, the Defence further requests leave to conduct a limited examination-in-chief, currently estimated to take six (6) hours, elaborating specific issues raised therein, and other matters highly relevant to the case.
2. Granting the Request would reduce the presentation of the Defence’s examination-in-chief and help to streamline the proceedings. Moreover, the witness will be fully available for examination by the Parties and Participants and any inquiry by the Chamber itself.³
3. Confidential Annex A contains the Prior Statement itself. Confidential Annex B lists the corresponding associated exhibit. The Prior Statement and associated exhibit are available to the Chamber, Parties and Participants onto e-Court.⁴

¹ ICC-01/14-01/18-631, para. 58.

² CAR-D30-0020-0001.

³ ICC-01/14-01/18-685, para. 29.

⁴ *See also* ICC-01/14-01/18-2292, page 4.

II. Confidentiality

4. In accordance with Regulation 23 *bis* (1) of the Regulations of the Court, this Request and its annexes are filed as “Confidential”, as they contain information concerning witnesses which should not be made public. A public redacted version will be filed as soon as practicable.

III. Applicable Law

5. The Defence incorporates by reference the applicable law set out by the Chamber in its First Decision.⁵

IV. Submissions

6. The Prior Statement may be deemed formally submitted under Rule 68(3). D30-P-4914 will attest to its accuracy; he will be present in court; and will be available for examination by the Parties, Participants, and the Chamber.
7. D30-P-4914 understood that (i) his statement would be used in the context of the proceedings brought against Mr NGAISSONA; and (ii) the Defence may call him to testify in the present case.⁶
8. Moreover, in an email dated 12 December 2023, and following the Defence’s guidance request in this respect, the Chamber authorised the Defence, in light of D30-P-4914’s specific circumstances, to conduct the taking of the prior recorded testimony of D30-P-4914 in a fully remote manner, that is by (i) conducting a recorded read-back of his statement by phone and (ii) preparing a corresponding transcript of the witness confirming his identity and the truthfulness of his statement.⁷ Pursuant to this decision, the written statement

⁵ ICC-01/14-01/18-907-Conf (public redacted version notified on 1 April 2021, ICC-01/14-01/18-907-Red), paras 8-16 (the ‘First Decision’). *See also* ICC-01/14-01/18-1383, paras 4-17.

⁶ CAR-D30-0024-0001, at 0030.

⁷ Email decision dated 12 December 2023, at 11:13am.

of D30-P-4914 was read back to him on [REDACTED], transcribed in the form of the Prior Statement, and disclosed on 15 December 2023. The Defence therefore submits that every precaution was taken to ensure that the method used to obtain the Prior Statement satisfies all the formal conditions for a prior recorded testimony. Considering the above, D30-P-4914's Prior Statement constitutes a prior recorded testimony under Rule 68(3) of the Rules.

9. Furthermore, the Prior Statement is relevant and probative. It challenges the Prosecution's narrative on key aspects of the charges, such as, *inter alia*, the background of the conflict, the origin of the Anti-Balaka, the identity of the Anti-Balaka as an alleged 'organisation' or 'group' involved in the commission of the alleged article 7 widespread attack and the alleged contribution of Mr NGAISSONA and other alleged Anti-Balaka leaders in structuring, instructing, and financing the Anti-Balaka [REDACTED].
10. More specifically, the Prior Statement establishes the following:
 - a. D30-P-4914 describes [REDACTED];
 - b. D30-P-4914 describes the crimes committed by the Seleka in Bangui and on the [REDACTED] against the civilian population, [REDACTED];
 - c. D30-P-4914 describes the Seleka's persecutions against perceived Bozizé supporters;
 - d. D30-P-4914 explains that the Seleka controlled the whole zone on the [REDACTED];
 - e. D30-P-4914 describes [REDACTED];
 - f. D30-P-4914 explains the spontaneous origin of the Anti-Balaka and the lack of coordination between the different groups;

- g. D30-P-4914 explains the composition and functioning of the witness' group, its non-political nature, the lack of provision of money and weapons [REDACTED];
 - h. D30-P-4914 describes the personal nature of the CAR youth's motivation to [REDACTED] and their lack of resources;
 - i. D30-P-4914 explains the role of the SANGARIS force in the conflict;
 - j. D30-P-4914 attests to Mr NGAISSONA's lack of contribution in structuring, instructing, and financing the Anti-Balaka [REDACTED] prior to and after 5 December 2013;
 - k. D30-P-4914 attests to the whereabouts and acts and conduct of [REDACTED] (P-0300), P-2673, P-1719, P-0801, and other alleged "Anti-Balaka leaders", including false allegations several of them made against Mr NGAISSONA to further their personal ambitions.
11. D30-P-4914's proposed evidence is corroborated by, *inter alia*, the evidence of D30-P-4679, D30-P-4504, D30-P-4756, P-2027, P-2251, P-1521, as well as by documentary evidence included in the Defence's List of Evidence, in relation to (i) the Seleka's commission of exactions upon their takeover of CAR, (ii) the living conditions of the FACA in exile in CAMEROON , (ii) the Anti-Balaka's creation, lack of structure and leadership; (iii) NGAISSONA's lack of liaison with and support of Anti-Balaka elements, including [REDACTED]; (iv) the lack of Anti-Balaka's funding, weapons and ammunition; and (v) Mr NGAISSONA's role in restoring peace in BANGUI in 2014.
12. The Defence tenders one (1) associated exhibit for formal submission, which comprises a selection of photographs detailed in D30-P-4914's Prior Statement, namely photographs of: (1) P-1719, (2) P-2673, (3) [REDACTED] and (4) [REDACTED] (P-0300).

13. The item tendered with this Request is assessed as indispensable to the comprehension of the Prior Statement or would otherwise diminish its probative value if excluded. As an integral part of the Prior Statement, this exhibit is directly relevant to and probative of material issues in dispute, and its admission pursuant to Rule 68(3) would further be the most efficient and effective way to manage D30-P-4914's evidence.
14. The Defence's six (6) hour estimated supplemental examination of D30-P-4914 is necessary not only to fully understand and contextualise the Prior Statement, but also to advance the Chamber's fundamental truth-seeking function, particularly as regards Mr NGAÏSSONA's lack of contributions.
15. Alternatively, in the absence of the formal submission of the Prior Statement under Rule 68(3), the Defence estimates that the witness's testimony on direct examination would require at least ten (10) hours to present – almost twice as long.
16. Finally, the Prosecution cannot be prejudiced by the introduction of a testimony pursuant to Rule 68(3) of the Rules, as long as the requirements stipulated therein are met, as the provision provides fair trial guarantees to the sole benefit of the accused.

RELIEF SOUGHT

17. The Defence respectfully requests the Chamber to **GRANT** its Request to introduce D30-P-4914's Prior Statement and associated exhibit pursuant to Rule 68(3), subject to the fulfilment of the further conditions of Rule 68(3).

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaissona

Dated this
18 April 2024
At The Hague, the Netherlands