

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **15 December 2023**

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

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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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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I. INTRODUCTION

1. The Defence for Mr Patrice-Edouard Ngaïssona ('the Defence') hereby requests leave to add 14 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 and their associated exhibits ('Items') whose ERNs were not included in the List submitted on 17 November 2023.
2. As elaborated below, the statements will be introduced under Rule 68 of the Rules of Procedure and Evidence ('Rules') therefore their addition to the List is necessary before Trial Chamber V ('Chamber') rules on the Rule 68 requests which will be submitted on a rolling basis and no later than 15 December 2023.² 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 are disclosed on a rolling basis.

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)'.³
4. On 11 September 2023, the Prosecution filed the 'Prosecution's Notice of the Close of its Case-in-Chief'.⁴
5. On 17 November 2023, the Defence filed the 'Defence Submission of its Final List of Witnesses and its List of Evidence'.⁵

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

² ICC-01/14-01/18-2181, p. 6.

³ ICC-01/14-01/18-1892.

⁴ ICC-01/14-01/18-2089.

⁵ 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.

III. SUBMISSIONS

6. At the time of filing the Final List of Evidence, the Defence had not yet prepared, read back and secured the necessary signature for all the witness statements it needs for the presentation of its case. Therefore, said statements had not been stamped and assigned an ERN either.
7. Consequently, on 17 November 2023, the Defence could not have added the ERNs to the List, even as placeholders, as these were not yet created.
8. Since 17 November, the Defence has finalised and stamped the Items which will be the subject of the remaining Rule 68 requests, thus the missing ERNs are now available and should be added to the List.
9. 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.⁶ It is therefore evident and expected that prior recorded testimonies will accompany those requests. *Second*, and in conformity with the Chamber's order, the Defence is disclosing these prior recorded testimonies on a rolling basis,⁷ thus the parties and participants will have time to review them before the witnesses' testimonies, which are expected to commence in February 2024. *Lastly*, and in relation to the Rule 68(3) requests, the parties and participants will have the opportunity to cross-examine the witnesses, a right that is not violated by the addition of the Items' ERNs to the List.

IV. RELIEF SOUGHT

⁶ 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.

⁷ See for example 'Trial D30 Evidence Package 53 30 November 2023' which includes the written statement (CAR-D30-0019-0001) of witness CAR-D30-P-4777; and 'Trial D30 Evidence Package 54 8 December 2023' which included the written statement (CAR-D30-0021-0001-R01) of witness CAR-D30-P-4551.

10. For the reasons presented above, the Defence respectfully requests the Chamber to
GRANT the present request for leave to add the Items to the List.

Respectfully submitted,

A handwritten signature in dark ink, appearing to be a stylized 'N' or 'G' followed by a horizontal stroke.

Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 15 December 2023

At The Hague, the Netherlands.