

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 22 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 PROSECUTOR *v.* ALFRED YEKATOM AND
*PATRICE-EDOUARD NGAÏSSONA***

Confidential

Prosecution Response to the 'Third Ngaïssona Defence request to introduce the prior recorded testimonies of Defence Witnesses P-4551 and P-4514 pursuant to Rule 68(2)(b) of the Rules' (ICC-01/14-01/18-2271-Conf)

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 part, the 'Third Ngaissona Defence request to introduce the prior recorded testimonies of Defence Witnesses P-4551 and P-4514 pursuant to Rule 68(2)(b) of the Rules'.¹ Trial Chamber V ("Chamber") should reject the submission of P-4514's proposed testimony, insofar as it contains evidence going to the acts or conduct of the Accused NGAISSONA, contrary to the requirements of Rule 68(2)(b) of the Rules of Procedure and Evidence ("Rules"). In the alternative, the Chamber should exclude the offending portions thereof.

2. In all other respects, the Prosecution defers to the Chamber's discretion in the disposition of the Request.

II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(2) of the Regulations of the Court ("RoC"), this document is filed as "Confidential" because it responds to a filing of the same classification. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

A. P-4514's Proposed Testimony Impermissibly goes to Proof of Acts and Conduct

4. Contrary to the Request,² P-4514's proposed testimony goes to proof of the Accused's acts and conduct. At the paragraph 60, referenced in his statement, the witness asserts the following with regard to NGAISSONA:

¹ ICC-01/14-01/18-2271-Conf ("Request").

² ICC-01/14-01/18-2271-Conf, para. 14.

« Intervieweur 1 : Merci. Paragraphe 60 : Il n'a pas joué de rôle dans les Anti-balaka en 2013. Je n'ai ni vu ni entendu qu'il ait financé les Balaka à l'époque. C'est après son arrestation qu'on a su qu'il était coordonnateur des Balaka. Le rôle du coordonnateur est de conseiller ces jeunes Balaka qui étaient divisés à l'époque.³

5. Although the Request suggests that the references contained in the witness's proposed testimony "are only peripheral as well of limited importance", his affirmative assertions about the Accused's role within the Anti-Balaka in 2013 clearly constitute evidence of his personal actions "described in the confirmed charges or which are otherwise relied upon by the Prosecution to establish [NGAISSONA's] criminal responsibility for the crimes charged."⁴

6. As is clear from the Decision on the Confirmation of Charges, NGAISSONA's culpable contributions underpinning his criminal responsibility for crimes charged under articles 7 and 8, comprise *inter alia* that he:

"specifically (i) took steps to structure the Anti-Balaka; (ii) financed the Anti-Balaka, including for the purchase of weapons; (iii) issued instructions to Anti-Balaka members, including with regard to the 5 December 2013 Attack and preceding attacks; and (iv) liaised and coordinated with Anti-Balaka members exercising key functions, including Bernard Mokom and Maxime Mokom"⁵

7. P-4514's claim that NGAISSONA 'n'a pas joué de rôle dans les Anti-balaka en 2013' is (a) an *affirmative assertion* of fact concerning the Accused actual role — as distinguished from merely the witness's merely relating ignorance as to what role (if any) NGAISSONA may have played in the Group in 2013; and (b) it goes directly — not to a *peripheral* issue in this case — but to one upon which his criminal responsibility for the charged crimes may properly rest. Moreover, P-4514's further assertion as to the Coordinator's role, specifically: 'Le rôle du coordonnateur est de conseiller ces jeunes

³ CAR-D30-0025-0001-R01, at 0036, Ins. 1178-1184 ("Paragraph 60").

⁴ ICC-01/14-01/18-1833-Corr-Red, para. 28 (emphasis added).

⁵ ICC-01/14-01/18-403-Corr-Red, paras. 101, 112 (emphasis added)..

Balaka',⁶ is directly tied to NGAISSONA's acts and conduct. In context, the claim immediately follows the witness's description of having learned that NGAISSONA was the Anti-Balaka Coordinator after his arrest. It thus, seeks to explain NGAISSONA's *actual* function and acts within the group. Irrespective of whether the witness has any founded basis for the claims made—which is at best unclear—the proposed testimony is not merely a "peripheral reference to the Accused",⁷ but rather involves the nature and extent of NGAISSONA's culpable contributions including in 2013, as underscored by the Pre-Trial Chamber in the Decision on the Confirmation of Charges.⁸

8. The proposed testimony of P-4514 therefore violates the requirements of rule 68(2)(b), which expressly prohibits the introduction of acts or conduct evidence. As such, it may not be received in evidence in this manner.

B. References to the Accused's Acts and Conduct may be Excluded

9. However, should the Chamber consider that it can reasonably parse the proposed testimony and exclude the offending portion, *i.e.*, Paragraph 60, the Prosecution would have no objection to the submission of the remainder of P-4514's evidence pursuant to rule 68(2)(b).

IV. CONCLUSION

10. For the foregoing reasons, the Prosecution requests that the Chamber reject the submission of P-4514's proposed testimony or, alternatively, exclude the offending

⁶ CAR-D30-0025-0001-R01, at 0036, lns. 1178-1184 (confirming the assertions).

⁷ ICC-01/14-01/18-1833-Corr-Red, para. 29.

⁸ See ICC-01/14-01/18-403-Corr-Red, p. 111 (noting that NGAISSONA's contributions to the charged crimes consisted in, *inter alia*, "(i)) taking steps to structure the Anti-Balaka;... (iii) issuing instructions to Anti-Balaka members, including with regard to the 5 December 2013 Attack and attacks preceding it") (emphasis added).

portion thereof. In in all other respects, the Prosecution defers to the Chamber's discretion in the disposition of the Request.



Karim A. A. Khan KC, Prosecutor

Dated this 22nd day of December 2023
At The Hague, The Netherlands