

**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 Redacted Version of 'Ngaïssona Defence Request for Leave to Reply to the
"Prosecution's Response to the Ngaïssona Defence Request for Formal
Submission of Prior Recorded Testimony of Defence Witness D30-P-4197
pursuant to Rule 68(3) of the Rule (ICC-01/14-01/18-2368-Conf)", (ICC-01/14-01/18-
2389-Conf), filed on 29 February 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 Mélissa Beaulieu Lussier

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 Yaré Fall
Ms Marie Edith Douzima Lawson
Ms Paolina Massidda
Mr Abdou Dangabo Moussa
Ms Elisabeth Rabesandratana
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
Section**

Other

I. INTRODUCTION

1. The Defence for Mr Patrice-Edouard Ngaïssona ("Defence") seeks leave to reply to the 'Prosecution's Response to the Ngaïssona Defence Request for Formal Submission of Prior Recorded Testimony of Defence Witness D30-P-4197 pursuant to Rule 68(3) of the Rule (ICC-01/14-01/18-2368-Conf)'¹ ("Prosecution Response") pursuant to Regulation 24(5) of the Regulations of the Court ("RoC") ("Request").
2. The Defence seeks leave to reply on two interrelated and limited issues, which are (i) whether the interview conducted with the witness on [REDACTED] amounts to a statement and should be considered as an 'associated document'; and (ii) whether, as a result, the Defence has the obligation to disclose the content of a witness interview that occurred prior to a remote read-back of a statement.
3. The Defence submits that a reply is warranted to address this new issue raised by the Prosecution, that could not have been reasonably anticipated by the Defence and is in the interest of justice.

II. CONFIDENTIALITY

4. The present Request is filed as 'Confidential' pursuant to Regulation 23(1)*bis* of the RoC as it is addressing a submission that bears this classification. A public redacted version will be submitted in due course.

III. PROCEDURAL HISTORY

5. On 12 December 2023, the Trial Chamber V ("Chamber") authorized the Defence to conduct the taking of the prior recorded testimony of D30-P-4197 in a fully remote manner.²

¹ ICC-01/14-01/18-2379-Conf.

² Email from Trial Chamber V Communications, 12 December 2023 at 11:13, to the parties and participants.

6. On 16 February 2024, the Defence submitted its Request for Formal Submission of Prior Recorded Testimony of Defence Witness D30-P-4197 pursuant to Rule 68(3) of the Rules.³ The filing was notified on 19 February 2024.
7. On 26 February 2024, the Prosecution submitted its response to the Defence's Request for Formal Submission of Prior Recorded Testimony of Defence Witness D30-P-4197 pursuant to Rule 68(3) of the Rules ("Response").⁴

IV. SUBMISSIONS

8. The Defence is, to say the least, surprised by the Prosecution's Response, considering that the Chamber had authorized the Defence to conduct a fully remote read-back of D30-P-4197's statement beforehand.⁵ This is even more so considering that the Defence also submitted a transcript of a read-back conducted in the same way for witness D30-P-4514 and no objection or disclosure request arose from the Prosecution on the form of the statement. This latter read back was eventually admitted by the Chamber under Rule 68(2).⁶
9. The Defence hereby seeks leave to present a focused and limited reply to the arguments and request made by the Prosecution in its Response on the following two points.
10. *First*, when arguing that "[a]lthough a declaration may be attributed to a witness upon their acceptance of propositions put to them, where those propositions purportedly arise from the witness's pre-existing declaration, it is that which constitutes their prior testimony — not the witness's subsequent confirmation of their own previous

³ ICC-01/14-01/18-2368-Conf.

⁴ ICC-01/14-01/18-2379-Conf.

⁵ Email from Trial Chamber V Communications, 12 December 2023 at 11:13, to the parties and participants.

⁶ ICC-01/14-01/18-2382-Conf

assertions”, the Prosecution is misconstruing the concept of read-back of a prepared statement.

11. *Second*, and as a result, the Prosecution is misinterpreting and wrongly expanding the scope of Defence’s disclosure obligations.
12. If leave is granted, the Defence will explain in more detail how the Defence finalised the transcript of the read-back of D30-P-4197’s statement. This will allow the Defence to demonstrate how the content of a witness interview informs the creation of a written statement but does not, in itself, constitute a ‘pre-existing’ statement that triggers the Defence’s disclosure obligation.⁷
13. The Defence could not have reasonably anticipated the Prosecution’s request to disclose the witness’s interview. Moreover, the issues outlined above stem directly from the Prosecution’s Response, thus, granting this reply is warranted as it would allow the Defence to assist the Chamber in its determination of the Defence Request. A reply is also in the interests of justice for the reasons elaborated above.

V. RELIEF SOUGHT

14. For the reasons above, the Defence respectfully requests the Chamber to **GRANT** the present Request for leave to reply.

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 18 April 2024

At The Hague, the Netherlands.

⁷ ICC-01/14-01/18-1892, para. 20; ICC-01/14-01/18-2242, paras. 8-9.