



Original: English

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

Date: **28 June 2024**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung
Judge Beti Hohler, Alternate Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAÏSSONA***

PUBLIC

**Public Redacted Version of the “Ngaïssona Defence’s Request for the
Appointment of Duty Counsel pursuant to Rule 74”, ICC-01/14-01/18-2531-Conf,
13 June 2024**

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 Trial Chamber V ('Chamber') to direct the Registry to identify and appoint, as necessary, qualified counsel to advise witness CAR-D30-P4914 ('P-4914') on self-incrimination ('Request'), pursuant to Rules 74(9) and (10) of the Rules of Procedure and Evidence ('Rules'). In light of P-4914's prior recorded statement, the Defence considers prudent to advise the Chamber of the potential for self-incrimination and the Chamber should consider any measures outlined in Rule 74(7) that it sees fit, to ensure that the witness can testify without compromising his fundamental right against self-incrimination.

II. CONFIDENTIALITY

2. In accordance with Regulation 23*bis*(1) of the Regulations of the Court, the present Request is filed as "confidential" as it contains confidential information related to the witness that should not be made public. A public redacted version will be filed in due course.

III. APPLICABLE LAW

3. Pursuant to Rules 74(9) and (10) of the Rules:

"9. The accused, the defence counsel or the witness may advise the Prosecutor or the Chamber that the testimony of a witness will raise issues of self-incrimination before the witness testifies and the Chamber may take the measures outlined in sub-rule 7.

10. If an issue of self-incrimination arises in the course of the proceedings, the Chamber shall suspend the taking of the testimony and provide the witness with an opportunity to obtain legal advice if he or she so requests for the purpose of the application of the rule".

IV. SUBMISSIONS

4. The Defence expects that P-4914's prospective testimony may potentially raise issues of self-incrimination and advises the Chamber accordingly. The Defence's belief that the witness's prospective testimony could raise issues of self-incrimination arose after his interview, and upon further analysis of other information. Consequently, and pursuant to the Chamber's directions,¹ the Defence gave notice about a potential request under Rule 74 of the Rules for witness P-4914 in its Final Witness List submitted on 17 November 2023.²
5. P-4914's testimony provides several objective reasons for concern regarding possible self-incrimination. During the Relevant Period, P-4914 was[REDACTED]³ and [REDACTED].⁴
6. The Defence submits that, in light of P-4914's prior recorded statement and his prospective testimony before the Chamber, any question eliciting P-4914's knowledge and participation in military activities [REDACTED], has the potential of being incriminating. The role of the witness in the group located at the [REDACTED] could in itself establish a contribution in the commission of alleged crimes of the group, either directly or indirectly. The responsibility of the witness could therefore be triggered. Thus, the assignment of Duty Counsel in advance of P-4914's scheduled testimony is appropriately justified and will prevent any potential disruption or delay during the hearings.⁵

¹ ICC-01/14-01/18-2395, para. 37.

² ICC-01/14-01/18-2215 and ICC-01/14-01/18-2215-Conf-Anx1.

³ CAR-D30-0024-0001-R01, at 0010-0011.

⁴ CAR-D30-0024-0001-R01, at 0013.

⁵ See rule 74(10) of the Rules: "[i]f an issue of self-incrimination arises in the course of the proceedings, the Chamber shall suspend the taking of the testimony and provide the witness with an opportunity to obtain legal advice if he or she so requests for the purpose of the application of the rule".

7. The Defence has already requested in-court protective measures for P-4914 in the form of face and voice distortion, as well as the use of pseudonym.⁶ Should these measures be granted, the risk of self-incrimination may be further mitigated through the use of private sessions, on a case-by-case basis, where the examining party or the Chamber considers that the witness might provide answers that could potentially incriminate or identify him.
8. In the event the present Request is granted, the Defence considers that (i) the Registry should make the necessary arrangements to appoint a qualified and non-conflicted lawyer to provide independent legal advice to P-4914 regarding his potential self-incrimination during testimony;⁷ (ii) upon notice of said Duty Counsel's appointment by the Registry, the Defence will provide them the witness' statement and any other relevant material; and (iii) Duty Counsel should be directed to inform P-4914 of the offence defined in Article 70(1)(a) of the Statute, in accordance with Rule 66(3) of the Rules, as well as seize the Chamber of any application of assurances under Rule 74(3)(c) of the Rules, if required.⁸

V. RELIEF SOUGHT

9. For the reasons presented above, the Defence respectfully requests the Chamber to:
 - **DIRECT** the Registry to identify and appoint, as necessary, qualified and non-conflicted counsel to advise witness P-4914 on self-incrimination, pursuant to Rule 74 of the Rules.

Respectfully submitted,

⁶ ICC-01/14-01/18-2395-Conf.

⁷ ICC-01/14-01/18-2395, para. 38.

⁸ ICC-01/14-01/18-2395, para. 39.



Mr Knoops, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 28 June 2024

At The Hague, the Netherlands.