

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: **27 January 2022**

TRIAL CHAMBER V

Before: Judge 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 “Defence Consolidated Response to Prosecution requests ICC-01/14-01/18-744 and ICC-01/14-01/18-745”, 18 December 2020

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. On 27 November 2020, the Prosecution filed both the “Prosecution’s Second Request for the Formal Submission of Prior Recorded Testimony Pursuant to Rule 68(2)(b)”¹ and the “Prosecution’s Third Request for the Formal Submission of Prior Recorded Testimony Pursuant to Rule 68(2)(b)”.²
2. On 1 December 2020, the Defence for Mr Patrice-Edouard Ngaïssona (“the Defence”) requested Trial Chamber V (“the Chamber”) for an extension of time pursuant to Regulation 35 of the Regulations of the Court (“Regulations”) in order to be granted sufficient time to make an individual assessment for each application contained in the two requests while also reviewing the Prosecution’s recently disclosed evidence and Trial brief in order to prepare for the commencement of trial.³
3. On 2 December 2020, the Chamber extended the Defence’s deadline to respond to the two Prosecution requests until 21 December 2020.
4. After careful examination of each individual application and statement of the witnesses subject to the two Rule 68(2)(b) requests, the Defence has decided to defer to the Chamber’s discretion to assess whether the witnesses’ statements and associated documents should be introduced under Rule 68(2)(b). Additionally, the Defence requests that, in the event the Chamber grants the Prosecution’s two requests, the entirety of the witnesses’ statements be introduced, rather than the selection made by the Prosecution.

¹ ICC-01/14-01/18-744-Conf.

² ICC-01/14-01/18-745-Conf.

³ ICC-01/14-01/18-748-Conf.

II. Confidentiality

5. In accordance with Regulation 23*bis*(1) of the Regulations, this response is filed confidentially as it responds to a document of the same classification. The Defence submits that the document could be reclassified as public. However, it will make such a reclassification request or file a redacted version of its consolidated response upon receipt of the Prosecution's public redacted versions of ICC-01/14-01/18-744 and ICC-01/14-01/18-745.

III. Submissions

6. The Defence defers to the Chamber's discretion in evaluating whether the introduction of the statements and associated documents under Rule 68(2)(b) of Witnesses P-2486, P-2546, P-2422, P-2416, P-1779, P-0595, P-0732, P-0811, P-1598, P-1964, and P-2205 is not prejudicial or inconsistent with the rights of Mr Ngaïssona. The Defence notes that none of the statements refer to the acts and conduct of Mr Ngaïssona. Nonetheless, the Defence has not changed its position and submits that the Prosecution's extensive projected use of Rule 68(2)(b) is disproportionate. More importantly, the Defence submits that its decision to not contest should in no way be construed as an agreement to the Prosecution's interpretation of the witnesses' prospective evidence. Indeed, the Defence at the appropriate moment will contest the relevance, reliability, authenticity and probative value of these statements and annexes.
7. In the event that the Chamber grants the Prosecution's two respective requests, the Defence requests that the Chamber include the excluded paragraphs from

the Prosecution's applications with respect to the statements of Witnesses P-2546,⁴ P-2422,⁵ P-0595,⁶ P-0732,⁷ P-1598,⁸ P-2205,⁹ for the following two reasons.

8. Firstly, with respect to Witnesses P-2546, P-2205, P-0732 and P-1598, the excluded paragraphs from their statements provide potentially exonerating information as to the existence of the contextual elements of crime under Article 7 since they detail, *inter alia*, certain Seleka crimes committed contemporaneously to the alleged attacks of the Anti-Balaka, in the same relevant areas.
9. Secondly, the excluded paragraphs of witnesses P-2422 and P-0595's statements provide information as to the Witnesses' knowledge or lack thereof of certain events and people.¹⁰ It gives the parties and the Chamber a full appreciation of their statements, which is especially important in the context of the application of Rule 68(2)(b) where the witnesses will not be heard *viva voce*.
10. Given that the Defence will not be able to question the witnesses on these two aforementioned issues, these excluded paragraphs should be included as part of the witnesses' prior recorded testimony in the event the Chamber determines that the statements should be introduced under Rule 68(2)(b).

⁴ The Defence refers specifically to paragraphs 34-39 of statement CAR-OTP-2114-0402.

⁵ The Defence refers specifically to paragraphs 39-40,112 of statement CAR-OTP-2110-0801.

⁶ The Defence refers specifically to paragraphs 66-68 of statement CAR-OTP-2018-0761.

⁷ The Defence refers specifically to paragraph 29 of statement CAR-OTP-2061-0003 (ENG).

⁸ The Defence refers specifically to paragraphs 48, 51, 52, 53, 54, 56, 61, 65 of statement CAR-OTP-2057-0892.

⁹ The Defence refers specifically to paragraphs 63, 64, 65, 66, 67, 211 of statement CAR-OTP-2107-6579.

¹⁰ [REDACTED].

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 27 January 2022,

At The Hague, the Netherlands.