

**Cour
Pénale
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**International
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Court**

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TRIAL CHAMBER V

Before: Judge Beti Hohler , Presiding Judge
Judge Joanna Korner
Judge Keebong Paek

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

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

Public Document

Public Redacted Version of the "Defence Response to the 'Prosecution's Request for the Formal Submission of the Prior Recorded Testimony of P-2602 pursuant to Rule 68(3)'" , 24 April 2023, ICC-01/14-01/18-1846-Conf

Source: Defence of Patrice-Edouard Ngaïssona

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I. INTRODUCTION

1. The Defence for Mr Patrice-Edouard Ngaïssona (“Defence”) hereby provides its response to the “Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-2602 pursuant to Rule 68(3)” dated 6 April 2023 (the “Request”).¹
2. The Defence opposes the Request. As will be demonstrated below, P-2602’s prior statement is (i) central to core issues in dispute, such as the alleged planning and implementation of a series of attacks by the GOBERE leadership, allegedly culminating into the Bossangoa and Bangui attacks on 5 December 2013² and (ii) not corroborated by other witnesses who offered or are expected to offer full in-court testimony on several issues relevant to the origin, organisation, leadership and structure of the GOBERE group.
3. The relevance of the alleged events in GOBERE to the case against Mr Ngaïssona, whom the Prosecution alleges supported the alleged crimes of the GOBERE group and liaised with it,³ and the fact that none of the other witnesses who are expected to offer full oral testimony have spent time in GOBERE weigh in favour of a fully *viva voce* testimony from P-2602 before the Chamber. This is particularly warranted in light of the inconsistencies between P-2602’s prior statement and with other witness statements/testimonies.
4. Finally, the witness’ unwillingness to cooperate with the Office of the Prosecutor (the “Prosecution”) can only preclude his prior testimony from being introduced through Rule 68(3) of the Rules of Procedure and Evidence (the “Rules”) as it directly and undoubtedly affects the accuracy, credibility and reliability of the information he provided to the Prosecution.

¹ ICC-01/14-01/18-1834-Conf, along with confidential Annexes A and B.

² ICC-01/14-01/18-723-Conf, paras 91 and seq.

³ See, for instance, ICC-01/14-01/18-723-Conf, paras 76 and 253.

5. For these reasons, the formal submission of P-2602's prior testimony under Rule 68(3) would cause undue prejudice to the fair trial rights of Mr Ngaïssona while no time can realistically be saved for this particular witness' testimony.

II. CONFIDENTIALITY

6. In accordance with regulation 23bis(1) of the Regulations of the Court, this response is filed confidentially as it responds to documents of the same classification. A public redacted version will be filed in due time.

III. APPLICABLE LAW

7. The Defence incorporates by reference its summary of the applicable law set out in paragraphs 4 to 6 of its consolidated response to the Prosecution's requests for the formal submission of the prior recorded testimonies of P-0627 and P-0287 under Rule 68(3),⁴ and its submissions in its response to the Prosecution's request for the formal submission of the prior recorded testimony of P-0801 under Rule 68(3).⁵

IV. SUBMISSIONS

A. P-2602's prior statement touches upon core issues in dispute

8. The importance of P-2602's anticipated evidence in light of (i) the charges relating to Mr Ngaïssona and (ii) the evidence of the case as a whole is such that a full in-court testimony is necessary and any other approach would be prejudicial to the rights of the accused or inconsistent with the fairness of the trial generally.⁶
9. P-2602 is expected to testify on key issues that are in dispute at trial. In his prior statement, P-2602 allegedly provides first-hand information on, *inter alia*, (i) his month allegedly living and training others in GOBERE, their alleged division

⁴ ICC-01/04-01/18-888-Conf, paras 4-6.

⁵ ICC-01/04-01/18-920-Conf, paras 3-5.

⁶ ICC-02/11-01/15-744, para. 71.

into groups, the alleged military-like organisation of DEDANE and other alleged key Anti-Balaka leaders, including Thierry LEBENE; (ii) the Anti-Balaka's alleged planning of attacks on BOSSANGO and the surrounding villages; (iii) the alleged attacks on villages surrounding BOSSANGO in September and October 2013; (iv) the alleged Anti-Balaka attack of BOSSANGO on 5 December 2013; and (v) the alleged displacement of BOSSANGO's Muslim population to the *Ecole de la Liberté* from 5 December 2013 onwards, and their alleged subsequent evacuation to CHAD.

10. Many of the issues discussed by this witness are core issues in this case and are materially in dispute, in particular those relating to (i) the alleged organisation and planning of the Anti-Balaka in GOBERE and (ii) the alleged BOSSANGO attack. The former is directly linked to Mr Ngaïssona's alleged contributions to the Charged Crimes by allegedly "provid[ing] money, food, weapons, and/or ammunitions to the elements located [in GOBERE]".⁷ The latter is linked to twelve different counts, i.e., counts 30 to 35 and 37 to 42, all of which are brought against Mr Ngaïssona. The Defence recalls in this regard that the centrality of the evidence was a key factor for the chamber in the *Ntaganda* case to reject the Prosecution's application pursuant to Rule 68(3) of the Rules.⁸

11. While the Defence will have the opportunity to examine the witness on all these issues in court, much of the witness' account is uncorroborated and unique, as elaborated below, and will impose an unreasonable burden on the Defence to investigate and refute.

B. P-2602's prior statement is unique

12. P-2602's proposed evidence on the origins of the Anti-Balaka as the [REDACTED] group in BANGUI,⁹ the persons involved ([REDACTED],

⁷ ICC-01/14-01/18-723-Conf., para. 227. Similarly, ICC-01/14-01/18-723-Conf., paras. 393, 418, and 431.

⁸ ICC-01/04-02/06-2124, para. 8; ICC-01/04-02/06-988, para. 11.

⁹ CAR-OTP-2118-9560, lines 420-442; CAR-OTP-2118-9560, lines 598-601 (where the witness says that [REDACTED]); CAR-OTP-2118-9579, lines 18-32 (where the witness says that [REDACTED]).

[REDACTED],¹⁰ [REDACTED],¹¹ [REDACTED], and [REDACTED]) and their decision to establish a base in GOBERE is entirely unique and not corroborated by other Prosecution witnesses. Indeed, no other witnesses have testified to the “GOBERE group” allegedly originating in BANGUI.

13. Despite the apparent centrality of GOBERE to the Prosecution’s case, only a few witnesses who actually were or allege to have been in GOBERE have appeared before the Chamber. Of twelve (12) witnesses who were or allege to have been there, six (6) were withdrawn by the Prosecution during the course of the trial.¹² The remaining witnesses include :

- P-2251, a simple element who had limited knowledge about any alleged organisation of the group;¹³
- P-2658, a [REDACTED] civilian who allegedly spent time in GOBERE [REDACTED] and therefore has a similarly limited knowledge;¹⁴
- P-0306, a witness who had difficulties admitting that he was ever in GOBERE in the first place, providing very vague testimony in this regard;¹⁵
- P-2269, a witness who has not yet appeared before the Court and whose testimony is yet to be ascertained.¹⁶

¹⁰ No other witness on the record has mentioned an individual by the name of [REDACTED].

¹¹ No other witness on the record has mentioned an individual by the name of [REDACTED].

¹² P-1048, P-0975, P-0458, P-1337, P-1951, P-0958.

¹³ P-2251: ICC-01/14-01/18-T-043-CONF-ENG CT, p. 14 (where the witness says [REDACTED]); ICC-01/14-01/18-T-043-CONF-ENG CT, p. 18 (where the witness says [REDACTED]).

¹⁴ P-2658 : ICC-01/14-01/18-T-135-CONF-ENG ET, e.g., pp. 43-44 (where the witness says [REDACTED]. A similar remark is made with respect to alleged training that would have taken place there.).

¹⁵ P-0306 : ICC-01/14-01/18-T-067-CONF-ENG CT, pp. 55-56.

¹⁶ ICC-01/14-01/18-1756-Conf; Based on *inter partes* discussions with the Prosecution, it is at present unclear whether the Registry was even able to serve the Summon to Appear to the witness.

14. Against this backdrop, it is evident that P-2602, [REDACTED] who would have information on the origins, structure and organisation of the GOBERE group is absolutely unique.
15. The unique nature of P-2602's evidence was put forward by the Prosecution itself in its "Request under Articles 64(6)(b) and 93 of the Rome Statute to Summon [the] witness", arguing that P-2602's "evidence is material and unique".¹⁷
16. As such, the above should alone warrant hearing P-2602's account of the events entirely *viva-voce*.

C. P-2602's prior testimony is uncorroborated in many aspects and contains internal inconsistencies

17. The Prosecution fails to adequately substantiate how precisely P-2602's proposed evidence is allegedly corroborated by the evidence of the witnesses cited in the Request. The Prosecution does not provide any witness statement references in support of its arguments. Having reviewed the content of the statements and testimonies of the witnesses cited by the Prosecution, the Defence has the following observations. Contrary to the Prosecution's assertion, P-2602's proposed evidence is not corroborated by the testimonies of witnesses who were or alleged to have been part of the "GOBERE group" on several points.
18. *First*, with respect to the alleged origins of the movement and the related alleged circumstances surrounding the decision to gather in GOBERE, P-2269 claims to [REDACTED], [REDACTED], [REDACTED], following which the various groups moved to GOBERE.¹⁸ This is at odds with P-2602's prior testimony,

¹⁷ ICC-01/14-01/18-1690-Conf-Red2, para. 20.

¹⁸ CAR-OTP-2111-0336-R01, paras 46-53.

according to which initial discussions about the movement would have taken place [REDACTED].¹⁹

19. *Second*, with respect to the alleged training that would have been provided by the FACA, P-2251, a civilian element in GOBERE, does not corroborate P-2602 and claims not to have received, nor to have observed, any training in GOBERE.²⁰ He further stated that he did not see any automatic weapons there,²¹ which similarly contrasts with P-2602's suggested evidence. P-1521 also informed the Chamber that, to his knowledge, none of the civilian elements received military training before they arrived at the hill behind BANGUI.²²

20. *Third*, P-2602's proposed evidence on the structure of the "GOBERE group", is not corroborated by other witnesses. If anything, other witnesses have provided contrasting evidence in this regard. While P-2602 stated that the GOBERE group was organised in eleven (11) "camps" (or companies), each with their own chief, P-0966 stated that there were eight (8) companies in GOBERE,²³ while P-2269 stated that the group was divided into fourteen (14) groups, each with their own chief.²⁴ The Prosecution's suggestion that P-2602's prospective evidence on the structure and alleged leadership of the "GOBERE group" would be corroborated by witnesses such as P-1521 and P-2027 is simply misleading. Indeed, the two were never in GOBERE²⁵ and expressly stated that they were not aware of how the group was organised.²⁶ This not only weakens the Prosecution's assertion but reinforces the present submissions i.e. that P-2602's prior statement is uncorroborated on the above points.

¹⁹ CAR-OTP-2118-9579, lines 65-77 and lines 119-130.

²⁰ ICC-01/14-01/18-T-043-CONF-ENG CT, p. 19 lines. 4-10.

²¹ ICC-01/14-01/18-T-043-CONF-ENG CT, p. 20 lines 9-16.

²² ICC-01/14-01/18-T-081-CONF-ENG ET, p. 44 lines 7-22.

²³ ICC-01/14-01/18-T-116-CONF-ENG ET, p. 21 lines 21-25.

²⁴ CAR-OTP-2111-0336-R01, para. 77.

²⁵ P-1521: ICC-01/14-01/18-T-081-CONF-ENG ET, p. 46 lines 4-5 ; P-2027: CAR-OTP-2078-0059-R03, paras 47-48.

²⁶ P-1521: ICC-01/14-01/18-T-081-CONF-ENG ET, pp. 11-12 lines 21-1 ; P-2027: CAR-OTP-2078-0059-R03, para 102.

21. *Fourth*, according to the Prosecution, P-2602's proposed evidence on "[REDACTED] with other Anti-Balaka leaders, especially with Maxime MOKOM ("MOKOM"), including on 5 December 2013 and after, is corroborated by, *inter alia*, the evidence of "P-0966, P-1521, and P-2027." However, while P-0966 did state that P-2602 used to [REDACTED], he was not present when said [REDACTED].²⁷ As to P-1521, he does not corroborate that P-2602 [REDACTED] MOKOM on 5 December, nor was he in a position to do so as he was in BANGUI on 5 December while P-2602 was in [REDACTED] at the time. Indeed, while he confirmed having heard that the two [REDACTED], he made it very clear that he only met P-2602 after 5 December.²⁸ His knowledge is therefore presumably limited to this timeframe. Lastly, P-2027 did not provide any evidence on P-2602's [REDACTED] with other Anti-Balaka leaders. Similarly, P-2027 did not provide any specific evidence on MOKOM's involvement in the BOSSANGO attack, nor on P-2602's involvement therein for that matter.²⁹

22. *Finally*, there are inconsistencies within the witness' own narrative, forcing the interviewers to ask for clarification over different recordings of the witness' prior testimony. The most notable instance concerns the timeline of [REDACTED] travels to pick up ammunitions in the area of BOSSEMBELE, regarding which the transcripts of deposition are not intelligible as they stand. Indeed, the witness said that [REDACTED] went to BOSSEMBELE to get ammunitions before the 5 December attack.³⁰ In another recording, the witness says that "it could be 12 or 13 days before the 5th of December attack".³¹ Nevertheless, P-2602 said in a different recording that [REDACTED] MOKOM while [REDACTED] was in BOSSEMBELE collecting ammunitions and that was

²⁷ ICC-01/14-01/18-T-116-CONF-ENG ET, p. 44.

²⁸ ICC-01/14-01/18-T-081-CONF-ENG ET, p. 40 lines 15-25.

²⁹ CAR-OTP-2078-0059-R03, para 101 (P-2027 specifically said that P-2602 did not tell him about [REDACTED]).

³⁰ CAR-OTP-2118-9641, lines 559 – 561.

³¹ CAR-OTP-2118-9714, line 153.

after the 5 December attack,³² leaving the interpreter “a bit confused”.³³ The witness then corrected himself and said that [REDACTED] from MOKOM the first time [REDACTED] went to BOSSEMBELE to collect the ammunition – so, allegedly before the 5 December attack.³⁴ However, in a previous recording, P-2602 specifically said that the first time [REDACTED] allegedly went to BOSSEMBELE, it was not to collect ammunitions but actual guns.³⁵

23. The inconsistencies found between P-2602’s prior statements and other witnesses’ statements and/or testimonies, as well as the lack of coherence throughout his own prior testimony should prevent its submission through Rule 68(3). In this sense, the Defence submits that it would be best to have in evidence information solely elicited from the witness before the Chamber and compiled coherently and intelligibly into one court document i.e., the transcripts of hearing.

24. More importantly, given that the above are just a glimpse of the inconsistencies between P-2602’s prior testimony and other witnesses’ statements and/or testimonies, it would be unfair to Mr Ngaïssona if the Defence was bound to examine the witness on all the inconsistencies embedded in the combined 326-page long prior testimony of P-2602.

D. P-2602’s reluctance to provide information and unwillingness to subsequently testify in the case should preclude the recourse to Rule 68(3)

25. In the course of his interviews with the Prosecution, the witness has been unforthcoming about several subjects, most notably on [REDACTED] MOKOM. P-2602 first maintained that [REDACTED] MOKOM for the sole purpose of keeping MOKOM [REDACTED], even when confronted [REDACTED] that the

³² CAR-OTP-2118-9737, lines 317-340.

³³ CAR-OTP-2118-9737, line 343.

³⁴ CAR-OTP-2118-9737, lines 346 – 356.

³⁵ CAR-OTP-2118-9714, lines 163 – 177.

interviewers presented. It is only when the interviewers were “having trouble believing that [REDACTED]”³⁶ and reminded the witness “about the importance of telling the truth”³⁷ that P-2602 admitted having had alleged [REDACTED] MOKOM [REDACTED]. Nevertheless, P-2602 remained unforthcoming about [REDACTED], forcing the interviewers to ask the question again in the following recording: “So ... I'm going to come back to my question from earlier ... [REDACTED]” to which P-2602 replied anew “I don't ... I didn't have anything [REDACTED], I've never known him, I've never seen him”.³⁸

26. P-2602's lack of forthcomingness was crystalised by deliberately avoiding contact with the Prosecution after his interviews and ultimately stating that [REDACTED].³⁹ [REDACTED], and absent any form of justification, inevitably affects the credibility and reliability of P-2602's prior testimony in its entirety and, as such, the Prosecution should not be allowed to introduce it into evidence through Rule 68(3). As recalled by the Chamber, under Rule 68(3), the prior-recorded testimony is meant to *complement* the oral testimony,⁴⁰ and that “this provision may not be used without limits”.⁴¹ The already extensive recourse to the Rule 68(3) in the present case should not be extended any further to allow the Prosecution to complement the prospective oral testimony of a witness who is unwilling to testify and who “will not testify in this trial unless compelled”.⁴²

27. In light of the above, a full *viva voce* testimony from P-2602 under oath and under the Chamber's oversight is specially warranted in the present circumstances. As recalled by the Chamber, it would enable “the Chamber and the accused to hear a natural and spontaneous account from the witness, to directly and closely observe his reactions, demeanour and composure, and to

³⁶ CAR-OTP-2118-9714, line 593.

³⁷ CAR-OTP-2118-9714, line 576.

³⁸ CAR-OTP-2118-9737, lines 250-255.

³⁹ ICC-01/14-01/18-1690-Conf-Red2, paras. 18-19.

⁴⁰ ICC-01/14-01/18-685, para.30.

⁴¹ ICC-01/14-01/18-685, para.31.

⁴² ICC-01/14-01/18-1690-Conf-Red2, para. 19.

immediately seek clarifications".⁴³ This is even more true in the case of this witness who, for unknown reasons, was unforthcoming during his interviews and decided not to testify upon the Prosecution's request.

E. Introducing P-2602's prior testimony would limit any time-saving

28. While the time-saving as announced by the Prosecution appears significant,⁴⁴ it will be counter-balanced by the time needed by the Defence to extensively examine the witness. Given the issues contained in and inherent to P-2602's transcribed statements that are central to the Prosecution's case against Mr Ngaïssona, and given the lack of credibility of this witness as illustrated *inter alia* by the inconsistencies found in his prior statements and between his prior statements and other witnesses' testimonies, introducing P-2602's prior recorded testimony under Rule 68(3) would impose an unreasonable burden on the Defence in preparing for and conducting the examination, and would ultimately limit any time-saving.

29. In light of the above, it is necessary for Prosecution Witness P-2602's testimony to be presented orally in its entirety.

V. RELIEF SOUGHT

30. The Defence respectfully requests the Chamber to **REJECT** the Prosecution's Request to introduce P-2602's prior-recorded testimony and associated exhibits pursuant to Rule 68(3).

⁴³ ICC-01/14-01/18-685., para. 33.

⁴⁴ ICC-01/14-01/18-1834-Conf., para. 19.

Respectfully submitted,



G. G. J. Alexander Knoops
on behalf of
Patrice-Edouard Ngaïssona

Dated this 19 Ferbruary 2026

At The Hague, the Netherlands