

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **26 April 2021**

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 the “Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-0965 pursuant to Rule 68(3)”, the “Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-0975 pursuant to Rule 68(3)” and the “Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-0291 pursuant to Rule 68(3)”, (ICC-01/14-01/18-960-Conf), 19 April 2021

Source: Defence of Patrice-Edouard Ngaißsona

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 hereby provides its consolidated response to the “Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-0965 pursuant to Rule 68(3)”, the “Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-0975 pursuant to Rule 68(3)” and the “the Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-0291 pursuant to Rule 68(3)” (“Requests”).¹
2. The Defence opposes the Prosecution’s Request concerning Witness P-0965. As will be demonstrated below, P-0965’s transcribed statements are (i) central to core issues in the Prosecution’s case against Mr Ngaïssona, (ii) refer to the alleged acts and conduct of Mr Ngaïssona and (iii) are not corroborated on certain issues by other witnesses expected to offer full in-court testimony. For these reasons, any time saving in the questioning of this witness will be outweighed by the prejudice that the formal submission of its prior testimony would cause to the fair trial rights of Mr Ngaïssona.
3. As to the Prosecution’s requests to formally submit the prior recorded testimony and associated exhibits of Witnesses P-0975 and P-0291, the Defence defers to the Chamber’s discretion as to whether it is compatible with Mr Ngaïssona’s fair trial rights.

II. CONFIDENTIALITY

4. In accordance with regulation 23*bis*(1) of the Regulations of the Court, this consolidated response is filed confidentially as it responds to documents of the

¹ ICC-01/14-01/18-948-Conf, along with confidential Annexes A and B (“Request concerning P-0965”); ICC-01/14-01/18-950-Conf, along with confidential Annexes A and B (“Request concerning P-0975”); ICC-01/14-01/18-954-Conf, along with confidential Annexes A and B (“Request concerning P-0291”).

same classification. A public redacted version will be filed as soon as practicable.

III. APPLICABLE LAW

5. 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),² 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).³

IV. SUBMISSIONS

6. The importance of the evidence intended to be presented by P-0965 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.⁴
7. In his transcribed statement, P-0965, who is an Anti-Balaka [REDACTED], provides first-hand information on, *inter alia*, (i) the planning, coordination and execution of the alleged 5 December 2013 attack on Bangui and the alleged support provided by François Bozizé in that regard [REDACTED], (ii) the leadership of the Anti-Balaka and in particular, the alleged role and activities of Mr Ngaïssona as the Anti-Balaka's national coordinator, (iii) Mr Ngaïssona's

² ICC-01/04-01/18-888-Conf ("Response to the Rule 68(3) Requests concerning P-0287 and P-0627"), paras 4-6.

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

⁴ ICC-02/11-01/15-744, para. 71.

alleged role in financing elements, giving them instructions and ammunition, and (iv) the acts and conduct of [REDACTED].

8. The evidence as proposed by P-0965 relates largely to charged crimes and is very detailed in this regard. Also, the issues discussed by this witness, that are core issues in this case, are materially in dispute, in particular those relating to Mr Ngaïssona's alleged role in financing and arming the Anti-Balaka.
9. Furthermore, the Prosecution fails to adequately substantiate as to how precisely P-0965's proposed evidence is corroborated by the evidence of the 14 witnesses cited by the Prosecution as allegedly corroborative.⁵ The Prosecution does not provide any witness statement reference in support of its argument. While corroboration can always be found on some levels, it cannot be alleged that *several* other witnesses are expected to offer full in-court testimony on the same issues as P-0965.
10. First, out of the 14 witnesses the Prosecution is citing as corroborative, only 6 might be offering full in-court testimony (assuming all expected rule 68(3) requests are granted).⁶
11. Second, except for P-2232, none of these witnesses expected to offer full in-court testimony are expected to provide information regarding Mr Ngaïssona's alleged distribution to the Anti-Balaka of (i) ammunition or (ii) money for the purchase of ammunition in Bangui after the alleged 5 December 2013 attack. P-0884 evokes the distribution of money for food and different events from 2014 on.⁷ P-1339 states that it was [REDACTED] and that Mr Ngaïssona even

⁵ Request concerning P-0965, para. 16.

⁶ P-0884, P-1521, P-1839, P-1339, P-1719 and P-2232.

⁷ P-0884, CAR-OTP-2072-1715-R01, at 1730-1733, 1.535-624, CAR-OTP-2072-1739-R01, at 1740-1751, 1.19-420, CAR-OTP-2072-1814-R01, at 1816-1818, 1820, 1.52-114, 184-199.

announced that he would not help the Anti-Balaka if they were caught with a weapon.⁸

12. P-0965's [REDACTED] position as [REDACTED] makes also his proposed evidence on (i) the planning, coordination and execution of the alleged 5 December 2013 attack on Bangui, including the acts and conduct of François Bozizé and other key actors in this regard, and (ii) the acts and conduct of [REDACTED],⁹ rather unique. P-0965's prior testimony is for instance the only item of evidence cited by the Prosecution in its Trial Brief in support of the allegation that [REDACTED].¹⁰

13. Finally, the time-saving as announced by the Prosecution is not persuasive.¹¹ Given the multitude of issues contained in P-0965's statement that are central to the Prosecution's case against Mr Ngaïssona, introducing P-0965's prior recorded testimony under rule 68(3) would impose a heavier burden on the Defence in preparing for and conducting the cross-examination, which would ultimately limit any time-saving. Therefore, on balance, the prejudice to the fair trial rights of Mr Ngaïssona preventing him from hearing P-0965's full in-court testimony outweighs any potential and limited promotion of the expeditiousness of the proceedings.

14. In light of the above, the Defence submits that it is necessary for Witness P-0965's testimony to be presented orally in its entirety.

V. RELIEF SOUGHT

⁸ P-1339, CAR-OTP-2041-0741-R01, at 0755-0756, paras. 98, 101, 103.

⁹ See [REDACTED].

¹⁰ [REDACTED].

¹¹ Request concerning P-0965, paras 20-22.

15. The Defence respectfully requests the Chamber to REJECT the Prosecution's Request to introduce P-0965's prior-recorded testimony and associated exhibits pursuant to Rule 68(3).

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Mr. Knoops', written in a cursive style.

Mr Knoops, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 26 April 2021

At The Hague, the Netherlands.