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Date: 4 May 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
NGAÏSSONA***

PUBLIC

Public redacted version of “Defence Response to the “Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-1074 pursuant to Rule 68(3)”, (ICC-01/14-01/18-979-Conf), 3 May 2021

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

Ms Fatou Bensouda
Mr James Stewart
Mr Kweku Vanderpuye

Counsel for the Defence of Mr Ngaïssona

Mr Geert-Jan Alexander Knoops
Mr Richard Omissé-Namkeamaï
Ms Marie-Hélène Proulx
Ms Lauriane Vandeler

Counsel for the Defence of Mr Yekatom

Ms Mylène Dimitri
Mr Thomas Hannis

Legal Representatives of the Victims

Mr Abdou Dangabo Moussa
Ms Elisabeth Rabesandratana
Mr Yaré Fall
Ms Marie-Edith Douzima-Lawson
Ms Paolina Massidda
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 Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section Other**

I. INTRODUCTION

1. The Defence hereby provides its response to the “Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-1074 pursuant to Rule 68(3)” (“Request”).¹
2. The Defence opposes the Request. As will be demonstrated below, the extensive information provided in P-1074’s statement (i) is central to core issues in the Prosecution’s case against Mr Ngaïssona and (ii) largely refers to the alleged acts and conduct of Mr Ngaïssona. Furthermore, other witnesses are not expected to offer full in-court testimony on many of the same issues. 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.

II. CONFIDENTIALITY

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

III. APPLICABLE LAW

4. 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

¹ ICC-01/14-01/18-963-Conf together with confidential Annexes A and B.

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

Prosecution's request for the formal submission of the prior recorded testimony of P-0801 under rule 68(3).³

IV. SUBMISSIONS

5. While the evidence proposed by P-1074 in relation to Mr Ngaïssona's alleged contributions seems to be primarily based on speculation,⁴ the importance of the evidence intended to be presented by P-1074 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.⁵
6. In his statement, P-1074, [REDACTED], discusses at length, *inter alia*, (i) the planning of the alleged 5 December 2013 attack on Bangui, including from Cameroon, (ii) the alleged Anti-Balaka attack on Boeing on 5 December 2013, (iii) the alleged Anti-Balaka murder of the Mbaïki mayor, (iv) Mr Ngaïssona's alleged closeness with François Bozizé prior to and after 24 March 2013, (v) the relationship between Mr Ngaïssona and other key actors such as Bernard and Maxim Mokom, (vi) the alleged circumstances in which Mr Ngaïssona took up the role of national coordinator of the Anti-Balaka, (vii) the alleged role and activities of Mr Ngaïssona as national coordinator, (viii) his relationship with and alleged control over the Anti-Balaka militaries, (ix) the alleged use by Mr Ngaïssona of the Anti-Balaka to allegedly commit crimes, (x) alleged meetings that took place in Boy Rabe between Mr Ngaïssona and the Anti-Balaka, (xi)

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

⁴ ICC-02/11-01/15-744, para. 72: "[...] This assessment, which includes an analysis of the relative importance of the evidence, is without prejudice to the weight that the Trial Chamber will ultimately attach to a witness's evidence, which indeed can only be determined once the Trial Chamber has heard all of the evidence." *See*, for instance, CAR-OTP-2094-0228, at CAR-OTP-2094-0241, paras 72, 76 or at CAR-OTP-2094-0251, para. 130.

⁵ ICC-02/11-01/15-744, para. 71.

Mr Ngaïssona's alleged attempt, [REDACTED], to take personal advantage of his alleged influence over the Anti-Balaka, (xii) the alleged use by Mr Ngaïssona of the FIFA money to provide food, *per diems* and ammunitions to the Anti-Balaka, (xiii) the circumstances of an alleged meeting [REDACTED] and (xiv) the role of Mr Ngaïssona during the Brazzaville talks.

7. The evidence as proposed by P-1074 largely relates to the charged crimes, such as the alleged Bangui attack and the alleged incidents in Mbaïki. Also, the issues discussed by this witness and listed above are core issues in this case, and are materially in dispute.
8. With P-1074's testimony, the Prosecution intends to prove key elements of Mr Ngaïssona's alleged criminal responsibility. For instance, P-1074's statement is used in the Trial Brief to attempt to demonstrate:
 - that as a member of Bozizé's Gbaya ethnic group and family, Mr Ngaïssona was close to François Bozizé and a part of his inner circle that (i) "began organizing a response to the Seleka offensive and a plan to claim or reclaim power in CAR",⁶ and (ii) "planned and coordinated a multifaceted response including a military option [...]",⁷
 - that Mr Ngaïssona would have "provided money to members of the Anti-Balaka for the purchase of weapons and ammunition to enable them to carry out operations",⁸
 - Mr Ngaïssona's alleged intent.⁹

⁶ Prosecution's Trial Brief, para. 66, footnote 146.

⁷ Prosecution's Trial Brief, para. 66, footnote 149. *See also ibid.*, para. 215, footnote 592.

⁸ Prosecution's Trial Brief, para. 143, footnote 345.

⁹ Prosecution's Trial Brief, para. 312, footnote 815.

9. Furthermore, the Prosecution fails to adequately substantiate as to how precisely P-1074's proposed evidence is corroborated by the evidence of the 13 witnesses cited by the Prosecution as allegedly corroborative.¹⁰
10. First, out of the 13 witnesses the Prosecution is citing as corroborative, only 7 might be offering full in-court testimony (assuming all expected rule 68(3) requests are granted).¹¹
11. Second, it is misleading to allege that these 7 witnesses would provide corroborating evidence of "the plan of Bozizé's supporters in Cameroon to use and coordinate pre-existing self-defence groups to re-claim power from the Seleka" as each of these witnesses makes very different statements that do not squarely support the Prosecution's above proposition.¹² Similarly, while corroboration can always be found on some level in relation to Mr Ngaïssona's role as coordinator, it cannot be alleged that several other witnesses are expected to offer full in-court testimony on the same countless relevant issues P-1074 is addressing.
12. Third, save for P-0808's statement, P-1074's statement is the only statement relied upon by the Prosecution to prove the allegation that Mr Ngaïssona and François Bozizé were close. While P-0808 refers to the two men's closeness long before the events,¹³ P-1074 is the only witness alleging that they were close after 24 March 2013. Similarly, his proposed evidence as to (i) the expressed intention of Maxim Mokom, to whom P-1074 allegedly associates Mr Ngaïssona with, to raze to the ground PK5,¹⁴ (ii) Mr Ngaïssona having "led actions to destabilize

¹⁰ Request, para. 12.

¹¹ P-2625, P-2328, P-1719, P-0801, P-0884, P-2232, and P-0458.

¹² Compare, for instance, the statement of P-2625, CAR-OTP-2123-0377-R01, at 0388, paras 64-68, and that of P-2328, CAR-OTP-2099-0165-R01, at 0172-0173, paras 41, 43.

¹³ P-0808, CAR-OTP-2093-0010-R01, at 0022, para. 62; P-1074, CAR-OTP-2094-0228, at CAR-OTP-2094-0241, paras 71-72.

¹⁴ Prosecution's Trial Brief, para. 172, footnote 472.

or influence the transition government”¹⁵ or (iii) the role of Mr Ngaïssona at the Brazzaville Summit¹⁶ is relied upon in the Trial Brief without the support of any corroborative testimonial evidence.

13. Finally, the time-saving as announced by the Prosecution is not persuasive.¹⁷

Given the multitude of issues contained in P-1074’s statement that are central to the Prosecution’s case against Mr Ngaïssona, introducing P-1074’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. Furthermore, [REDACTED], the Prosecution could streamline the questioning of P-1074 and further reduce the estimated time needed for its examination.¹⁸ Therefore, on balance, the prejudice to the fair trial rights of Mr Ngaïssona preventing him from hearing P-1074’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-1074’s testimony to be presented orally in its entirety.

V. RELIEF SOUGHT

15. The Defence respectfully requests the Chamber to:

- **REJECT** the Request; and
- **INSTRUCT** the Prosecution to streamline its questioning of P-1074.

¹⁵ Prosecution’s Trial Brief, para. 266, footnote 726.

¹⁶ Prosecution’s Trial Brief, para. 271, footnote 741.

¹⁷ Request, paras 15-18.

¹⁸ ICC-01/14-01/18-964-Conf, para. 20.

Respectfully submitted,

A handwritten signature in black ink, appearing to be a stylized 'N' or similar character, followed by a horizontal line.

Mr Knoops, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 4 May 2021

At The Hague, the Netherlands.