

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 10 November 2021

TRIAL CHAMBER V

Before: 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-0954 pursuant to Rule 68(3)”, ICC-01/14-01/18-1146-Conf, 25 October 2021

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 hereby responds to the “Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-0954 pursuant to Rule 68(3)” (“Request”).¹
2. The Defence opposes the Request because, as will be demonstrated below, P-0954’s prior statement (i) refers to the alleged acts and conduct of Mr Ngaïssona, (ii) is central to core issues in the Prosecution’s case against Mr Ngaïssona, and (iii) is 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 the witness will be outweighed by the prejudice that the formal submission of the 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 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-0287 and P-0627 under rule 68(3),² and its submissions in its response to the

¹ ICC-01/14-01/18-1137-Conf, together with Confidential Annexes A and B.

² ICC-01/14-01/18-888-Conf, 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. *First*, the statement of P-0954 relates to the alleged acts and conduct of Mr Ngaïssona and to issues which are materially in dispute. In his statement, P-0954 alleges, *inter alia*, that (i) Mr Ngaïssona financed the Anti-Balaka to buy weapons and ammunition;⁴ (ii) Mr Ngaïssona issued orders to erect roadblocks or create disorders;⁵ (iii) Mr Ngaïssona requested the creation of civil disorder and erection of roadblocks [REDACTED];⁶ (iv) Mr Ngaïssona requested the Anti-Balaka to block roads and stop all activities in town [REDACTED];⁷ (v) Mr Ngaïssona supported the Anti-Balaka through providing money for food, travel expenses, and the organization of funerals.⁸
6. *Second*, these issues touch on core aspects of the case as the Prosecution intends to prove key elements of Mr Ngaïssona's alleged criminal responsibility with P-0954's testimony. For instance, P-0954's statement is used in the Trial Brief to attempt demonstrating:
 - That Mr Ngaïssona allegedly financed the youth in Bangui for the acquisition of weapons and ammunition;⁹
 - That Mr Ngaïssona allegedly distributed money to ComZones in Bangui and the provinces for their support, including to pay for food, accommodation, burial expenses and other expenditures;¹⁰

³ ICC-01/14-01/18-920-Conf, paras 3-5.

⁴ CAR-OTP-2048-0171-R02, at 0179, para. 47.

⁵ CAR-OTP-2048-0171-R02, at 0183, para. 70.

⁶ CAR-OTP-2048-0171-R02, at 0183, para. 71.

⁷ CAR-OTP-2048-0171-R02, at 0183, para. 72.

⁸ CAR-OTP-2048-0171-R02, at 0189, para. 106.

⁹ Prosecution's Trial Brief, para. 78, footnote 187.

¹⁰ Prosecution's Trial Brief, para. 139, footnote 340.

- [REDACTED];¹¹
- That Ngaïssona allegedly contributed to the commission of the crimes by the Anti-Balaka;¹²
- Mr Ngaïssona's alleged knowledge and intent.¹³

7. *Third*, the Prosecution fails to adequately substantiate as to how precisely P-0954's proposed evidence with respect to Mr Ngaïssona is corroborated by the evidence of the seven witnesses cited by the Prosecution as allegedly corroborative.¹⁴ Once again, the Prosecution does not provide any statement reference in support of its argument.
8. Also, out of those seven witnesses, only two, P-2232 and P-1719, are expected to offer full in-court testimony.
9. Furthermore, except for P-2232, none of the witnesses cited by the Prosecution with regard to M. Ngaïssona allegedly distributing money to ComZones in Bangui are expected to corroborate the allegation that Mr Ngaïssona financed the Anti-Balaka specifically to buy weapons and ammunition. Although some of the witnesses give evidence relating to alleged financial contributions by Mr Ngaïssona, the money was allegedly provided for different purposes. Therefore, it cannot be alleged that *several* other witnesses are expected to offer full in-court testimony on the same issues as P-0954.
10. In light of the above, the Defence submits that a full in-court testimony of the evidence of P-0954 is necessary and any other approach would be prejudicial

¹¹ Prosecution's Trial Brief, para. 181, footnote 498.

¹² Prosecution's Trial Brief, para. 261, footnote 695; para. 263, footnotes 706-707; para. 264, footnote 715; paras 265-266, footnotes 719 and 721.

¹³ Prosecution's Trial Brief, para. 312, footnote 815.

¹⁴ Request, para. 12, iv)-v). The Prosecution cites P-0992, P-1193, P-2232, P-0966, P-0808, P-1719, and P-0876.

to the rights of the accused or inconsistent with the fairness of the trial generally.¹⁵

V. RELIEF SOUGHT

11. The Defence respectfully requests the Chamber to REJECT the Prosecution's Request to introduce P-0954's prior-recorded testimony and associated exhibits pursuant to Rule 68(3).

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 10 November 2021

At The Hague, the Netherlands.

¹⁵ ICC-02/11-01/15/744, para. 71.