

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **21 December 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-0992 pursuant to Rule 68(3)”, 01 October 2021, ICC-01/14-01/18-1128-Conf

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

Mr Karim A.A. Khan QC
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

Counsel for the Defence of Mr Yekatom

Ms Mylène Dimitri
Mr Thomas Hannis
Ms Anta Guissé

Legal Representatives of the Victims

Mr Yaré Fall
Ms Marie Edith Douzima Lawson
Ms Paolina Massidda
Mr Abdou Dangabo Moussa
Ms Elisabeth Rabesandratana
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 responds to the “Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-0992 pursuant to Rule 68(3)” (“the Request”).¹ The Defence opposes the Request because, as will be demonstrated below, P-0992’s evidence (i) is central to core issues in the Prosecution’s case against Mr Ngaïssona, (ii) refers to the alleged acts and conduct of 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 this witness will be outweighed by the prejudice that the formal submission of his prior testimony would cause to the fair trial rights of Mr Ngaïssona.
2. As to the Prosecution’s request to formally submit the prior recorded testimony and associated exhibits of Witness P-0446, the Defence defers to the Chamber’s discretion as to whether it is compatible with Mr Ngaïssona’s fair trial rights.

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-0627 and P-0287 under rule 68(3),² and its submissions in its response to the

¹ ICC-01/14-01/18-1111-Conf.

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. First, the statement of P-0992 refers to the alleged acts and conducts of Mr Ngaïssona, relates to issues which are central to core issues in the Prosecution's case against Mr Ngaïssona and which are materially in dispute. According to P-0992, [REDACTED].⁴ In his statement he alleges *inter alia* that: i) [REDACTED];⁵ ii) when Mr Ngaïssona was in Cameroon he was allegedly kept informed of the development of a resistance movement and their journey from the provinces to Bangui;⁶ iii) Mr Ngaïssona allegedly [REDACTED];⁷ iv) that badges which were made for the Anti-Balaka were allegedly signed by Mr Ngaïssona and distributed from his house;⁸ and v) the Anti-Balaka allegedly targeted anyone they saw wearing a long *boubou* because the person was identified as a Muslim.⁹
6. All these issues are materially in dispute and touch on the core aspects of the case and issues (i)-(iv) relate to the alleged acts and conducts of the accused. Therefore the Defence submits that the evidence of P-0992 should be elicited orally in its entirety.
7. Secondly, on the issue of corroboration, the Prosecution fails to adequately substantiate as to how precisely P-0992's proposed evidence is corroborated by the evidence of the witnesses indicated in the Request.¹⁰ The Prosecution does not provide any witness statement reference in support of its argument. While

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

⁴ CAR-OTP-2110-0048-R01, para. 65.

⁵ CAR-OTP-2110-0048-R01, para. 46.

⁶ CAR-OTP-2110-0048-R01, para. 38.

⁷ CAR-OTP-2110-0048-R01, para. 39.

⁸ CAR-OTP-2110-0048-R01, para. 98.

⁹ CAR-OTP-2110-0048-R01, para. 61.

¹⁰ Request, para. 14.

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-0992.

8. For example on the allegation that Mr Ngaïssona made financial contributions to the Anti-Balaka the Prosecution argues that this allegation is corroborated by five witnesses, namely, P-0884, P-0954, P-0966, P-1193, and P-2232. Three of these five witnesses (P-0954, P-0966 and P-1193) are indicated by the Prosecution as rule 68 (3) witnesses. It therefore cannot be considered that these witnesses will give or have given oral testimony of similar facts. Furthermore, although some of the five witnesses give evidence relating to alleged financial contributions by Mr Ngaïssona, their evidence relates to different time periods and the money was allegedly provided for different purpose. For this reason, the Defence submits that the evidence should be elicited orally in its entirety.
9. Finally, on the issue of expeditiousness, the Defence submits that the time-saving as announced by the Prosecution is not persuasive.¹¹ Given the multitude of issues contained in P-0992's statement that are central to the Prosecution's case against Mr Ngaïssona, introducing P-0992'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-0992's full in-court testimony outweighs any potential and limited promotion of the expeditiousness of the proceedings.
10. In light of the above, the Defence submits that a full in-court testimony of the evidence of P-0992 is necessary and any other approach would be prejudicial

¹¹ Request, paras 17-20.

to the rights of the accused or inconsistent with the fairness of the trial generally.¹²

V. RELIEF SOUGHT

11. The Defence respectfully requests the Chamber to REJECT the Prosecution's Request to introduce P-0992's prior-recorded testimony and associated exhibits pursuant to Rule 68(3).

Respectfully submitted,



Mr Knoops, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 21 December 2021

At The Hague, the Netherlands.

¹² ICC-02/11-01/15-744, para. 71.