

**Cour
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**International
Criminal
Court**

Original:

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

Date: 13 March 2024

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
NGAISSONA*

Public with Confidential Annexes A and B

Public Redacted Version of "Second Ngai'ssona Defence request to introduce prior recorded testimonies of Defence Witnesses P-4680 and P-4777 pursuant to Rule 68(2)(b)", 13 December 2023, ICC-01/14-01/18-2259-Conf

Source: Defence of Patrice-Edouard Ngai'ssona

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 for Mr Patrice-Edouard Ngaissona ('the Defence') hereby requests the formal submission of the prior recorded statement of Witness CAR-D30-P-4680 ('P-4680's proposed evidence')¹ and that of Witness CAR-D30-P-4777 with its associated materials ('P-4777's proposed evidence')² pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence ('Rules') ('Request'). Both witnesses' proposed evidence relates to Mr Ngaissona's good character and background information on his exile in CAMEROON and are well suited for introduction under Rule 68(2)(b) of the Rules, in that they meet the rule's requirements. Specifically, none of the proposed evidence relates to Mr Ngaissona's acts and conduct. Additionally, the weighing of the different discretionary factors that trial chambers must consider when assessing Rule 68(2) applications, favours introducing P-4680 and P-4777's proposed evidence under Rule 68(2)(b) since both have been prepared in a reliable manner and are cumulative and corroborative of other witnesses who have testified or will testify on the same or similar facts. Granting the present Request will also serve the interests of justice in that it will enhance the expeditiousness of the proceedings, obviate the unnecessary appearance of P-4680 and P-4777 whose prior recorded testimony consists of precise and limited subjects, and advance Trial Chamber V's ('Chamber') truth finding function.
2. Given the Chamber's decision authorizing the Defence to obtain certification of the statements prior to the issuance of a decision on the Rule 68(2)(b) requests, the Defence will liaise with the Registry to obtain the certification of P-4680 and P-4777's statements as required by Rule 68(2)(b)(ii) and (iii) of the Rules and will ensure that such certification is completed as necessary.

¹ The Proposed evidence consists of one witness statement which is contained in Annex A of the present request.

² The Proposed evidence consists of one witness statement and two associated materials which are contained in Annex B of the present request.

II. CONFIDENTIALITY

3. In accordance with regulation 23 *bis* (1) of the Regulations of the Court, the Request and its accompanying Annexes A and B are filed confidentially because they include confidential information that identifies the witnesses. A public redacted version will be filed as soon as practicable.

III. APPLICABLE LAW

4. The Defence incorporates by reference its previous submissions with respect to the applicable law regarding the adjudication of Rule 68(2)(b) requests.³
5. If the prior recorded testimony should not be related to the acts and conducts of the accused to be admitted pursuant to Rule 68(2) of the Rules, a difference must be drawn between evidence going to the acts and conducts of an accused and character evidence. Trial chambers at the Court have allowed the introduction of the latter type of evidence, if the evidence sought to be admitted is rather a general commentary by the witness about his impression of the accused⁴ or if the references to the accused's personal acts are of limited significance to the act and conducts charged.⁵

IV. SUBMISSIONS

8. The Defence requests the Chamber to exercise its discretion by introducing P-4680 and P-4777's proposed evidence under Rule 68(2)(b) for the following four reasons: (1) the proposed evidence constitutes prior recorded testimony, (2) it does not relate to the acts and conduct of Mr Ngaïssona; (3) a consideration of the relevant factors that the Chamber must take into account favors introducing

³ ICC-01/14-01/18-2238-Conf, paras 4-6.

⁴ ICC-02/04-01/15-1294, para. 7.

⁵ ICC-02/04-01/15-1294, para. 11.

both witnesses' proposed evidence and (4) no prejudice would result from granting the Defence's request.

A. Analysis

i. P-4680's proposed evidence

9. P-4680 is a Muslim Cameroonian citizen who has worked on the [REDACTED] and, later on, as [REDACTED].⁶ His proposed evidence provides important details regarding Mr Ngaïssona's [REDACTED] during the period of the charges and especially during the time Mr Ngaïssona was in YAOUNDE.

10. P-4680's proposed evidence establishes that:

- During his stay in YAOUNDE, Mr Ngaïssona was [REDACTED].
- Mr Ngaïssona respected everyone, without discriminating based on religion or nationality.

ii. P-4777's proposed evidence

11. P-4777 is a [REDACTED]. He met Mr Ngaïssona in 1998 when the witness [REDACTED]. They developed a professional relationship.

12. P-4777's proposed evidence establishes that:

- Mr Ngaïssona stayed at the [REDACTED]. The witness describes the photos of the hotel and confirms that [REDACTED].
- One of Mr Ngaïssona's romantic partners remained in the Central African Republic ('CAR') longer than him and [REDACTED].
- Mr Ngaïssona asked him to look [REDACTED]. P-4777 recognizes the photos of the [REDACTED].

⁶ CAR-D30-0016-0001, at 0003, paras 11-13.

- The deaths of Mr Ngaissona's sister and brother in CAMEROON happened during his exile, and the fact that it took time for Mr Ngaissona to repatriate the body of his sister from CAMEROON to CAR.

B. The proposed material constitutes "prior recorded testimony" under Rule 68(2)(b) of the Rules

12. The Defence incorporates by reference its submissions regarding the criteria a written statement must meet in order to be considered a prior recorded testimony under Rule 68(2)(b) of the Rules.⁷ In the 'First Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b) of the Rules' ('First Rule 68(2)(b) Decision'), the Chamber recalled that the term "previously recorded testimony" includes statements and transcripts of interviews taken pursuant to Rules 111 and 112 of the Rules.¹⁴

13. In the case at hand, both P-4680 and P-4777 provided their statements to the Defence and were questioned in their capacity as witnesses in the present proceedings.⁸ They knew they were providing information that may be relied upon in the context of the present proceedings since the Defence informed the witnesses that they were investigating the events that occurred in CAR since 2012 and that it sought to question them because they both held information that would assist the Chamber in establishing the truth.⁹ Moreover, both witnesses were informed that any information they would provide to the Defence, including their identity and statements, could be provided to the Prosecution, the victims representatives, and the Chamber.¹⁰ Therefore, there

⁷ ICC-01/14-01/18-2238-Conf, para. 11.

⁸ CAR-D30-0016-0001, at 0002, paras 1-4 and CAR-D30-0019-0001, at 0002, paras 1-4.

⁹ *Idem*.

¹⁰ CAR-D30-0016-0001, at 0002, para. 6 and CAR-D30-0019-0001, at 0002, para. 6.

can be no doubt that both Witness P-4680 and Witness P-4777 understood that their statements could be relied upon in the context of legal proceedings.

14. Lastly, the associated exhibit annexed to P-4777's statement is also part of his prior-recorded testimony. P-4777 explained this exhibit in his statement. Thus, it forms an integral part of his prior-recorded testimony.¹¹

C. The prior-recorded testimony goes to proof of matters other than the acts and conduct of the Accused

15. The Defence incorporates by reference its submissions on the interpretation of the phrase "acts and conduct of the accused" by the Chamber.¹² Furthermore, the Defence submits that evidence regarding the accused's "good character does not constitute the 'acts and conduct of the accused' for purposes of the procedural bar set by Rule 68(2)(b) of the Rules",¹³ since said Rule "excludes submission of evidence relating only to the acts and conduct of the accused as alleged in the confirmed charges".¹⁴ The same applies to the witness's impression of the defendant, as held by Trial Chamber IX in *Ongwen*.¹⁵

16. P-4680's impression of Mr Ngaïssona stems from [REDACTED] during Mr Ngaïssona's [REDACTED]. The Defence mainly seeks to rely on P-4680 to show the background of Mr Ngaïssona and his character, which are in stark contrast with the Prosecution's arguments regarding the alleged anti-Muslim sentiments Mr Ngaïssona had that led to the alleged targeting of the Muslim population in CAR during the Relevant Period. Moreover, P-4680's statement shines a light onto Mr Ngaïssona's [REDACTED]. All of the above, relate to Mr

¹¹ CAR-D30-0019-0001, at 0002, para. 20.

¹² ICC-01/14-01/18-2238-Conf, para. 14.

¹³ *The Prosecutor v. Bemba et al.*, Decision on Relevance and Propriety of Certain Kilolo Defence Witnesses, ICC-01/05-01/13-1600, 4 February 2016, para. 16.

¹⁴ *Idem*.

¹⁵ *The Prosecutor v. Dominic Ongwen*, Decision on Defence Request to Introduce Previously Recorded Testimony Pursuant to Rule 68(2)(b) of the rules of Procedure and Evidence, ICC-02/04-01/15-1294, 02 July 2018, para. 9.

Ngaïssona's good character and fall outside the scope of his alleged "acts and conduct".

17. P-4777 proposed evidence provides relevant information regarding Mr Ngaïssona and his family's whereabouts during their exile in [REDACTED]. It also provides background information regarding the help they have received from [REDACTED], in light of the difficulties they were facing as refugees. This includes financial difficulties, logistical help, as well as moral support. The proposed evidence also shows that Mr Ngaïssona was, to a certain extent, responsible for bringing his family from CAR to CAMEROON and [REDACTED]. This evidence provides background information relevant to Mr Ngaïssona's financial situation and the plausibility of the Prosecution's underlying argument that Mr Ngaïssona was financing the Anti-Balaka from CAMEROON. Therefore, P-4777's evidence gives background and contextual information on the situation of Mr Ngaïssona while in exile in CAMEROON, without going directly to the acts and conducts of the accused. The proposed evidence also provides some important timelines during Mr Ngaïssona's exile including the death of his brother and sister. The proposed evidence consists of commentary on a personal document, photos and official documents.

D. The introduction of the proposed evidence is warranted

18. Since P-4680 and P-4777's proposed evidence does not relate to the acts and conduct of Mr Ngaïssona, the Defence requests the Chamber to consider that the discretionary factors listed in Rule 68(2)(b)(i) favour the introduction of their prior recorded testimonies and associated exhibits, and that such introduction will cause no prejudice to Mr Ngaïssona's rights.

i. The proposed evidence does not relate to facts that are materially in dispute

19. P-4680's proposed testimony does not touch upon matters "which are soundly and conceivably disputed between the parties, and are crucial, or of at least sufficient significance for the Chamber's eventual determination of the charges against the accused in its judgment."²⁷ Mr Ngaissona's good character and [REDACTED] are not disputed by the parties.

20. P-4777 provides evidence that is of contextual and background nature. Mr Ngaissona's financial situation during his exile is not determinative of the Chamber's disposition of the charges against Mr Ngaissona, and is not at the heart of a dispute between the parties, nor crucial for the determination of Mr Ngaissona's guilt.

ii. The proposed evidence is of a cumulative and corroborative nature in that other witnesses have given oral or written testimony on similar facts

i. P-4680

21. P-4680's proposed evidence is cumulative of or corroborated by several witnesses who have given oral or written testimony on the same or similar facts. In particular:

- P-2843 corroborates P-4680's account that Mr Ngaissona, [REDACTED]. P-2843, the [REDACTED] during Mr Ngaissona's Presidency, testified that there was no discrimination on the part of Mr Ngaissona and that everybody, including Muslims, were included in the [REDACTED].¹⁶ P-2843 further testified that there was never a complaint against Mr Ngaissona for violating the duty of non-discrimination.¹⁷

¹⁶ P-2843: ICC-01/14-01/18-T-074-CONF-ENG ET, p. 20-21. *See also* P-4680 : CAR-D30-0016, at 0005, para. 23.

¹⁷ *Idem*, p. 24.

- P-4680's account that Mr Ngaissona was a good person who did not like the war¹⁸ is of cumulative nature, in that other witnesses, namely P-0808,¹⁹ P-0888,²⁰ P-1193²¹ and P-1962,²² all testified before the Chamber that Mr Ngaissona is a man of peace.
- P-4680's account that Mr Ngaissona is passionate about football and wants to help the youth and those in need²³ is corroborated by witnesses P-0889,²⁴ P-1521²⁵ and P-2232.²⁶
- P-2084 praised Mr Ngaissona as someone who did much to promote sports in CAR,²⁷ a testimony that corroborates P-4680's account that Mr Ngaissona did much to develop football in the countries of central Africa.²⁸
- P-4680's account that Mr Ngaissona's main activities during his time in [REDACTED]²⁹ is corroborated by witness P-2027 whose testimony, both written and oral, mentions that Mr Ngaissona, while in [REDACTED].³⁰ P-4504 is also expected to testify that during his exile, [REDACTED].

ii. P-4777

¹⁸ CAR-D30-0016-0001, at 0005, para. 26.

¹⁹ ICC-01/14-01/18-T-070-ENG CT, p. 66, lns 17-19.

²⁰ ICC-01/14-01/18-T-123-ENG ET, p. 62, ln. 9.

²¹ ICC-01/14-01/18-T-124-CONF-ENG ET, p. 68, lns 12-14.

²² ICC-01/14-01/18-T-140-CONF-ENG ET, p. 6, lns 8-12.

²³ CAR-D30-0016-0001, at 0005, para. 25.

²⁴ ICC-01/14-01/18-T-109-CONF-ENG ET, p. 32, lns 24-25 to p. 33, lns 1.

²⁵ ICC-01/14-01/18-T-080-CONF-ENG ET, p. 38, lns 20-25 : "A. [14:45:26] Yes. I knew him because he was the former president of the Central African Football Federation. He was also the former minister of youth and sports. But he is most known by the youth because he was active with the youth. We used to play football in the neighbourhoods and sometimes we will organise championships and he would assist and help the youth. He was very, very active, and -- so that's how I got to know him".

²⁶ ICC-01/14-01/18-T-075-CONF-ENG ET, p. 20, lns 16-25 to p. 21, lns 1-6.

²⁷ P-2084: ICC-01/14-01/18-T-235-CONF-ENG ET, p. 101, lns 5-11.

²⁸ CAR-D30-0016-0001, at 0004, para. 19.

²⁹ CAR-D30-0016-0001, at 0006, para. 30 and at 0007, para. 31.

³⁰ P-2027: CAR-OTP-2078-0059, at 0070, para. 63 and ICC-01/14-01/18-T-040-CONF-ENG CT2, p. 21, lns 24-25 to p. 22, lns 1-12.

22. P-4777 proposed evidence is cumulative of or corroborated by several witnesses who have given oral or written testimony on the same or similar facts or are expected to testify on such facts. In particular:

- D30-P-4756 is expected to testify that she was seeing Mr Ngaissona in [REDACTED], and that she stayed for a while at [REDACTED]. D30-P-4756 will also testify that, although Mr Ngaissona was a generous person and was trying to help people in need during his exile, he was in a difficult financial situation himself. She is also expected to testify on the death of Mr Ngaissona's sister in CAMEROON. This account is corroborative and cumulative of the proposed evidence of P-4777 in relation to the fact that [REDACTED] for Mr Ngaissona and his family and the financial difficulties in which he and his family were in during their exile in CAMEROON. This account is also corroborative of the matter of the death of Mr Ngaissona's sister in CAMEROON.
- D30-P-4747 is expected to testify that he met Mr Ngaissona in [REDACTED], CAMEROON, that he stayed at [REDACTED]. This account is corroborative and cumulative of the proposed evidence of P-4777 in relation to the fact that [REDACTED] for Mr Ngaissona and his family.
- P-4504 went to [REDACTED]. He is expected to testify on his knowledge of the death of Mr Ngaissona's sister and brother in CAMEROON. He is also expected to testify that he visited Mr Ngaissona in his house [REDACTED], where he also saw Mr Ngaissona's large family [REDACTED]. He will provide evidence on the financial situation of Mr Ngaissona and his family while [REDACTED]. This account is corroborative and cumulative of the proposed evidence of P-4777 in relation to the fact that he [REDACTED] and the financial difficulties in which he and his family were during their exile in CAMEROON. This

account is also corroborative of the matter of the death of Mr Ngaissona's sister and brother in CAMEROON.

- P-4777's account that Mr Ngaissona's family was [REDACTED] is also corroborated by P-0889³¹ and P-2027's³² testimonies before the Chamber.
- P-4777's account that Mr Ngaissona's sister died in CAMEROON is corroborated by that of P-2027 who testified before the Chamber that indeed, Mr Ngaissona lost his sister in CAMEROON and P-2027 went to visit Mr Ngaissona to pay his respects and express his condolences to Mr Ngaissona.³³

iii. Introducing the proposed evidence through Rule 68(2)(b) would serve the interests of justice

23. Introducing Witness P-4680 and P-4777's proposed evidence under Rule 68(2)(b) would serve the objectives set out by the Chamber as these were analysed in the Defence's prior submissions.³⁴

24. *First*, the interests of justice would be served by expediting the proceedings. It would obviate the need to spend the Defence's limited court time on a witness whose evidence does not relate to the core of the charges against Mr Ngaissona. *Second*, it would streamline such presentation because the Defence would focus its examinations on witnesses whose testimony relates to the issues which are materially in dispute and at the heart of the case. *Third*, it would minimize cumulative testimony, since the topics to which P-4680 and P-4777's evidence relates have been or will be addressed by other witnesses in these proceedings as submitted above. *Fourth*, resources would be saved by the Court not needing to spend its limited budget on the appearance of witnesses whose testimony

³¹ P-0889 testified that Mr Ngaissona's entire family was in CAMEROON, *see* ICC-01/14-01/18-T-108-CONF-ENG ET, p. 43, lns 4-7.

³² ICC-01/14-01/18-T-040-CONF-ENG CT2, p. 20, lns 10-11.

³³ ICC-01/14-01/18-T-040-CONF-ENG CT2, p. 19, lns 24-25 to p. 20, lns 1-15.

³⁴ ICC-01/14-01/18-2238-Conf, para. 20.

touches upon the character of Mr Ngaissona. *Lastly*, the interests of victims are not affected by Witness P-4680 and P-4777's proposed evidence, since said evidence mainly focuses on Mr Ngaissona's character and the context of his time spent in CAMEROON.

iv. The proposed evidence has sufficient indicia of reliability

25. P-4680 and P-4777's statements fulfil the formal requirements determined by the Chamber as important factors to consider when conducting a *prima facie* analysis of whether the prior recorded testimony presents sufficient indicia of reliability, an analysis that the Defence incorporates by reference.³⁵
26. Both P-4680 and P-4777's proposed evidence was prepared in a reliable manner. The Defence obtained the statements in the ordinary course of the Defence's investigations and explained to the witnesses their role as representatives of Mr Ngaissona in the current proceedings.³⁶ The Defence also explained the significance of P-4680 and P-4777's statements for the proceedings, and that they may play a role in the Chamber's determination of the truth.³⁷ Before signing the statement, Witness P-4680 read it and verified that information contained in it is accurate and reflects his interviews with the Defence.³⁸ The same process was followed for Witness P-4777, who signed both the statement and its associated exhibit.³⁹ Both statements were prepared in French, which is a language that both witnesses understand and speak fluently. For these reasons, the statements present sufficient indicia of reliability under Rule 68(2)(b)(ii).

³⁵ ICC-01/14-01/18-2238-Conf, para. 22.

³⁶ CAR-D30-0016-0001, at 0003, paras 1-3 and CAR-D30-0019-0001, at 0002, paras 1-3.

³⁷ CAR-D30-0016-0001, at 0003, para. 3 and CAR-D30-0019-0001, at 0002, para. 3.

³⁸ CAR-D30-0016-0001, at 0008.

³⁹ CAR-D30-0019-0001, at 0006.

E. Granting the Defence's request will not result in any prejudice to Mr Ngaissona

27. The Defence incorporates by reference its analysis on the object and purpose of Rule 68(1), i.e. to protect the accused from prejudice caused by the introduction of a prior recorded testimony pursuant to Rule 68(2)(b).⁴⁰ The Defence submits that when the Defence seeks to submit evidence pursuant to Rule 68(2)(b) considerations of prejudice do not apply. Mr Ngaissona has decided to not examine P-4680 and P-4777, since he has determined that their testimonies are well suited for introduction under Rule 68(2)(b). This will expedite the already long proceedings, which have deprived Mr Ngaissona of his liberty for the last five years, by saving precious court time.

V. RELIEF SOUGHT

The Defence respectfully requests the Chamber to GRANT the present Rule 68(2)(b) Request to introduce P-4680 and P-4777's proposed evidence.

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaissona

Dated this 13 March 2024

At The Hague, the Netherlands.

⁴⁰ ICC-01/14-01/18-2238-Conf, para. 24.