

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: **2 May 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 ANNEX A**

**Public Redacted Version of “Ngaïssona Defence Request for Formal Submission of Prior Recorded Testimony of Defence Witness D30-P-4504 pursuant to Rule 68(3) of the Rules”, ICC-01-14-01-18-2396-Conf, filed on 6 March 2024**

**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 Asad Ahmad Khan KC  
Mr Mame Mandiaye Niang  
Mr Kweku Vanderpuye

**Counsel for the Defence of Mr  
Ngaïssona**

Mr Geert-Jan Alexander Knoops  
Ms Marie-Hélène Proulx  
Ms Lauriane Vandeler  
Ms Barbara Szmatala

**Counsel for the Defence of Mr  
Yekatom**

Ms Mylène Dimitri  
Mr Thomas Hannis  
Ms Anta Guissé  
Ms Sarah Bafadhel

**Legal Representatives of the Victims**

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

**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**

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**Registrar**

Mr Osvaldo Zavala Giler

**Counsel Support Section**

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section Other**

## I. INTRODUCTION

1. Pursuant to Rule 68(3) of the Rules of Procedure and Evidence (the “Rules”), the Defence of Mr Ngaissona (the “Defence”) hereby requests Trial Chamber V (the “Chamber”) to introduce the prior recorded testimony of D30-P-4504 (“D30-P-4504’s Proposed Evidence”) (the “Request”), an 8-page statement signed on 13 December 2023.<sup>1</sup>
2. D30-P-4504’s Proposed Evidence is relevant to and cumulative of other evidence on the record and satisfies the remaining requirements of Rule 68(3).
3. Were the Chamber to grant the Request, the Defence estimates that it will require 4 hours to examine witness D30-P-4504 from the original estimate of 8 hours, thus reducing by half the number of hours of in-court direct examination required, which is in line with the need to streamline the proceedings for the sake of expeditiousness.

## II. CONFIDENTIALITY

4. The Request and its annex are classified as “confidential” as they relate to evidence disclosed confidentially and proposed by D30-P-4504, whose identity needs to remain confidential. A public redacted version of the Request will be filed in due course.

## III. PROCEDURAL HISTORY

5. On 16 October 2020, the Chamber issued its “Decision on the Prosecution Extension Requests and Initial Guidance on Rule 68 of the Rules”,<sup>2</sup> wherein it provided general guidance on the recourse to Rule 68(3) of the Rules and ordered,

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<sup>1</sup> CAR-D30-0023-0001.

<sup>2</sup> ICC-01/14-01/18-685.

*inter alia*, the Prosecution “to submit its Rules 68(3) applications latest 45 days before the scheduled date of a witness’s testimony”.<sup>3</sup>

6. On 10 March 2021, the Chamber issued its “Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1962, P-0925, P-2193, P-2926, P-2927, P-1577 and P 0287 [...]”<sup>4</sup> (the “First Decision”) wherein it set out the applicable law under Rule 68(3) of the Rules.<sup>5</sup>
7. On 29 May 2023, the Chamber issued its “Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)”,<sup>6</sup> whereby it set the deadline for the Defence to file its applications pursuant to Rules 68(2) and (3) of the Rules to 17 November 2023.<sup>7</sup>
8. On 1 November 2023, the Chamber partly granted the Defence Request for Extension of Time,<sup>8</sup> and instructed, *inter alia*, the Defence to disclose the statements of its witnesses and file their corresponding applications pursuant to Rules 68(2) and (3) of the Rules until no later than 15 December 2023.<sup>9</sup>
9. On 12 December 2023, the Defence filed an “Urgent Consolidated Ngaïssona Defence request to extend the time limit for the submission of Rule 68(3) applications [...]”, requesting to submit its Rule 68(3) applications not less than 45

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<sup>3</sup> *Ibid.*, para. 19.

<sup>4</sup> ICC-01/14-01/18-907-Red.

<sup>5</sup> *Ibid.*, paras. 8-16.

<sup>6</sup> ICC-01/14-01/18-1892.

<sup>7</sup> *Ibid.*, para. 21.

<sup>8</sup> Defence Request pursuant to Regulation 35 to vary the time limit, ICC-01/14-01/18-2157-Conf-Exp, confidential ex parte, only available to the Ngaïssona Defence (confidential redacted version notified the same day, ICC-01/14-01/18-2157-Conf-Red) (with one confidential annex); Decision on the Ngaïssona Defence Request for Extension of Time, ICC-01/14-01/18-2181.

<sup>9</sup> ICC-01/14-01/18-2181, paras 8-9.

days before the witnesses are scheduled to appear.<sup>10</sup> The Request was granted by the Chamber on 14 December 2023.<sup>11</sup>

10. [REDACTED], the statement was formally signed by witness D30-P-4504 and on 15 December 2023 it was disclosed to the parties and participants.<sup>12</sup>

#### IV. APPLICABLE LAW

11. The Defence incorporates by reference the applicable law set out by the Chamber in its First Decision.<sup>13</sup>

12. Further, Trial Chamber X in the *Al Hassan* case stated that a “[...] prior recorded testimony may still be introduced even if it relates to issues that are materially in dispute, central to core issues of the case, or are uncorroborated. However, the Chamber will take into account, on a case-by-case basis, that the introduction of the prior recorded testimony in question will not be prejudicial to or inconsistent with the rights of the accused or the fairness of trial generally.”<sup>14</sup>

13. The Appeals Chamber further decided in the *Gbagbo and Blé Goudé* case that: “[w]hile no one factor is, as a matter of principle, determinative, the Appeals Chamber considers, in particular, that where statements relate to issues that are materially in dispute, central to core issues of the case or are uncorroborated, a Chamber must be extra vigilant that introduction of the prior recorded testimony in question will not be prejudicial to or inconsistent with the rights of the accused or the fairness of the trial generally [...]” and that this prejudice could be mitigated by the fact that the witness will undergo in-court examination by the Parties and

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<sup>10</sup> ICC-01/14-01/18-2256-Conf.

<sup>11</sup> ICC-01/14-01/18-2264.

<sup>12</sup> See CAR-D30-0023-0001-R01 included in “Trial D30 Evidence Package 55 15 December 2023”.

<sup>13</sup> ICC-01/14-01/18-907-Red, paras 8-16.

<sup>14</sup> *The Prosecutor v Al Hassan*, ICC-01/12-01/18-987-Red, para. 10 (footnotes omitted). See also *Gbagbo and Blé Goudé* Appeals Judgment, ICC-02/11-01/15-744, paras 2, 67, 69. See also *Ongwen* Decision, ICC-02/04-01/15-621, para. 7.

the Chamber, if necessary.<sup>15</sup> The Appeals Chamber thus confirmed that a witness prior recorded testimony relating to core and uncorroborated issues in the case does not preclude the introduction of this prior recorded statement under Rule 68(3) of the Rules.

## V. SUBMISSIONS

### A. D30-P-4504's Proposed Evidence fulfils the requirements set out under Rule 68(3) of the Rules

14. The Defence seeks the introduction of witness D30-P-4504's Proposed Evidence.

D30-P-4504 is a fact witness. His 8-page statement was signed by the witness [REDACTED].

15. D30-P-4504 prior recorded testimony establishes, *inter alia*, the following:

- a. D30-P-4504 describes the change of the situation in Bangui following the Seleka coup and notably the deterioration of the once peaceful relationship between the Christian and Muslim populations;<sup>16</sup>
- b. D30-P-4504 describes the crimes committed by the Seleka on the civilian population of Bangui, the protest of the civilian population against the Seleka's exactions and the acts of retaliation by the Seleka;<sup>17</sup>
- c. D30-P-4504 describes his living conditions while in exile in Cameroon in 2013 and that of his fellow citizens including Mr Ngaïssona's;<sup>18</sup>
- d. D30-4504 describes Mr Ngaïssona's [REDACTED] and difficult financial situation;<sup>19</sup>

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<sup>15</sup> *Gbagbo and Blé Goudé Appeals Judgment*, ICC-02/11-01/15-744, paras 67, 69.

<sup>16</sup> CAR-D30-0023-0001, at 0002-0003, paras 11-12.

<sup>17</sup> CAR-D30-0023-0001, at 0003, para. 13.

<sup>18</sup> CAR-D30-0023-0001, at 0003-0004, paras 16-21.

<sup>19</sup> CAR-D30-0023-0001, at 0003-0004, paras 16-21.

- e. D30-P-4504 explains that [REDACTED] during their exile in DOUALA, Cameroon, and [REDACTED];<sup>20</sup>
- f. D30-P-4504 describes his gatherings [REDACTED];<sup>21</sup>
- g. D30-P-4504 recalls meeting [REDACTED], and the information they shared together;<sup>22</sup>
- h. D30-P-4504 describes his lack of knowledge regarding alleged meetings in Cameroon between Mr Ngaïssona and BOZIZE or other Central Africans;<sup>23</sup>
- i. D30-P-4504 describes his absence of knowledge as to Mr Ngaïssona's involvement in the Anti-Balakas or more generally in the armed resistance against the Seleka;<sup>24</sup>
- j. D30-P-4504 describes being informed through his family or through other media about the security and political situation regarding the Anti-Balaka's advance, the 5 December attack and President DJOTODIA's resignation.<sup>25</sup>

16. D30-P-4504's prior recorded testimony can be formally submitted under Rule 68(3) for the following reasons.

17. *First*, D30-P-4504 will attest to its accuracy as he will be present in the courtroom and will be available for examination by the Parties, Participants, and the Chamber. D30-P-4504 understood that (i) his statement would be used in the context of the proceedings brought against Mr NGAISSONA; and (ii) the Defence may call him to testify in the present case.<sup>26</sup> D30-P-4504 had the opportunity to

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<sup>20</sup> CAR-D30-0023-0001, at 0003, para. 18.

<sup>21</sup> CAR-D30-0023-0001, at 0003-0004, para. 20.

<sup>22</sup> CAR-D30-0023-0001, at 0004, para. 25.

<sup>23</sup> CAR-D30-0023-0001, at 0005, para. 36, 39.

<sup>24</sup> CAR-D30-0023-0001, at 0005-0006, paras 40-42.

<sup>25</sup> CAR-D30-0023-0001, at 0006, paras 43-44.

<sup>26</sup> CAR-D30-0023-0001, at 0002, para. 7.

read the statement, to confirm that the statement is true to the best of his knowledge and recollection and to sign it.<sup>27</sup>

18. *Second*, the prior recorded testimony is relevant and probative. D30-P-4504's Proposed Evidence challenges key aspects of [REDACTED] testimony including, *inter alia*, that: (i) [REDACTED];(ii) [REDACTED]; (iii) D30-P-4504 often received money from Mr Ngaïssona while in DOUALA and; (iv) D30-P-4504 was sharing the content of meetings that took place in YAOUNDE.

19. Further, parts of D30-P-4504's prior recorded testimony are corroborated by and/or cumulative of evidence provided by other witnesses or who soon will testify before the Chamber, in particular:

- a. The lack of Mr Ngaïssona's appeal to Central African youth in exile in Cameroon for resistance at the border<sup>28</sup> which is corroborated by, *inter alia*, D30-P-4914,<sup>29</sup> D30-P-4679;<sup>30</sup>
- b. Christians and Muslims lived in harmony prior to the arrival of the Seleka<sup>31</sup> which is corroborated by, *inter alia*, P-0291,<sup>32</sup> P-0446,<sup>33</sup> and P-0808;<sup>34</sup>

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<sup>27</sup> CAR-D30-0023-0001, at 0008-0009.

<sup>28</sup> CAR-D30-0023-0001, at 0004, para. 23.

<sup>29</sup> D30-P-4914: CAR-D30-0024-0001, at 0010-0012.

<sup>30</sup> D30-P-4679: ICC-01/14-01/18-2270-Conf-Anx1, at page 58, para. 99.

<sup>31</sup> CAR-D30-0023-0001, at 0002-0003, para. 12.

<sup>32</sup> P-0291: ICC-01/14-01/18-T-051-CONF-ENG ET, p. 29, lns 5-9.

<sup>33</sup> P-0446: ICC-01/14-01/18-T-098-ENG ET, p. 73, lns 14-22.

<sup>34</sup> P-0808 : ICC-01/14-01/18-T-070-ENG CT, p. 14, lns 11-24.



- c. Seleka elements were committing crimes and reprisals against those who were expressing their discontent, which is corroborated by, *inter alia*, P-0808,<sup>35</sup> P-0888,<sup>36</sup> and P-0889,<sup>37</sup>
- d. The Anti-Balaka rose as a response to the Seleka crimes, which is corroborated by, *inter alia*, P-0291,<sup>38</sup> P-4953,<sup>39</sup> P-0888;<sup>40</sup>
- e. Mr Ngaïssona's destitute living conditions in Cameroon which is corroborated by D30-P-4756.<sup>41</sup>

20. Additionally, corroboration is not a determinative factor. The fact that some remaining aspects of the proposed evidence by witness D30-P-4504 are not corroborated by the evidence on the record does not preclude its admission through Rule 68(3) of the Rule. The relevance and probative value of the information combined with the fact that the Parties and Participants, as well as the Chamber, will have the opportunity to examine the witness on those aspects counterbalances the lack or corroboration of some parts of the prior statement.

### **B. The introduction of D30-P-4504's Proposed Evidence is not prejudicial**

- 21. The Defence incorporates by reference its submissions on the lack of prejudice to the Prosecution resulting from the introduction of a testimony pursuant to Rule 68(3) of the Rules.<sup>42</sup>
- 22. Considering that some aspects of D30-P-4504's prior recorded testimony are corroborated, its introduction through Rule 68(3) would allow the Defence to focus its examination on the unique aspects of his proposed evidence, in particular the

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<sup>35</sup> P-0808 : ICC-01/14-01/18-T-070-ENG CT, pp 17-18, lns 20-13.

<sup>36</sup> P-0888 : ICC-01/14-01/18-T-121-ENG ET, p. 7, lns 10-21.

<sup>37</sup> P-0889 : ICC-01/14-01/18-T-108-CONF-ENG ET, p. 69, lns 9-21.

<sup>38</sup> P-0291: ICC-01/14-01/18-T-051-CONF-ENG ET, p. 29, lns 10-24.

<sup>39</sup> D30-P-4953: CAR-D30-0017-0001-R01, paras 52-54.

<sup>40</sup> P-0888: ICC-01/14-01/18-T-121-ENG ET, p. 7, lns 10-21.

<sup>41</sup> D30-P-4756: ICC-01/14-01/18-T-269-CONF-ENG, p. 10, lns 6-11. *See also* CAR-OTP-2130-3454.

<sup>42</sup> ICC-01/14-01/18-2368-Conf, pp 10-11, paras 25-26.

allegations put forth by [REDACTED] regarding the organisation of the Anti-Balaka resistance from Cameroon. The submission of D30-P-4504's proposed evidence would therefore be in the interest of the expeditiousness of the proceedings.

## **VI.RELIEF SOUGHT**

23. The Defence respectfully requests the Chamber to **GRANT** the Request to introduce D30-P-4504's Proposed Evidence pursuant to Rule 68(3), subject to the fulfilment of the further conditions of Rule 68(3).

Respectfully submitted,



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Mr Knoops, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 2 May 2024

At The Hague, the Netherlands.