

**Cour  
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**International  
Criminal  
Court**



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

Date: 14 March 2022

**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***

**Confidential**

**Defence Response to the "Prosecution's Request for the Formal Submission of the  
Prior Recorded Testimony of P-2556 pursuant to Rule 68(3)"**

**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 A.A Karim Khan QC  
 Ms Nazhat Shameem Khan  
 Mr Mame Mandiaye Niang  
 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  
 Ms Elsa Bohne

**Counsel for the Defence of Mr Yekatom**

Ms Mylène Dimitri  
 Mr Thomas Hannis  
 Ms Anta Guissé

**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  
 (Participation/Reparation)**

**Applicants**

**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-2556 pursuant to Rule 68(3)" ("Request").<sup>1</sup>
2. The Defence opposes the Request because, as will be demonstrated below, P-2556'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),<sup>2</sup> and its submissions in its response to the Prosecution's request for the formal submission of the prior recorded testimony of P-0801 under Rule 68(3).<sup>3</sup>

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<sup>1</sup> ICC-01/14-01/18-1299-Conf, together with Confidential Annexes A and B.

<sup>2</sup> ICC-01/14-01/18-888-Conf, paras 4-6.

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

#### IV. SUBMISSIONS

5. *First*, the prior statement of P-2556 relates to the alleged acts and conduct of Mr Ngaïssona and to issues which are materially in dispute. In his prior statement, P-2556 alleges, *inter alia*, that (i) Mr Ngaïssona financed and provided weapons to the Anti-Balaka from Bossangoa and Benzambe;<sup>4</sup> (ii) Mr Ngaïssona agreed with Mr Bozizé that Mr Ngaïssona would provide the Anti-Balaka of Bossangoa and Benzambe with Mr Bozizé's weapons hidden in the areas of Bossembélé and Benzambe;<sup>5</sup> (iii) Mr Ngaïssona provided food and money to the Anti-Balaka in the Bossangoa and Benzambe areas.<sup>6</sup>
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-2556's testimony. For instance, P-2556's statement is used in the Prosecution's Trial Brief to attempt demonstrating that:
- Mr Ngaïssona allegedly provided money, food, weapons and/or ammunition to Anti-Balaka elements located in Bossangoa and Benzambe;<sup>7</sup>
  - Mr Ngaïssona allegedly signed, from January 2014 onwards, ID cards issued to Anti-Balaka elements in Bangui and in the provinces;<sup>8</sup>
  - Mr Ngaïssona was allegedly able to summon Anti-Balaka leaders, including ComZones from the provinces and National Coordination members, to attend regular meetings held at his BOY-RABE home or at the Hotel Azimut, during which he would discuss the security situation,

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<sup>4</sup> CAR-OTP-2112-1300-R01, at 1313, para. 100.

<sup>5</sup> CAR-OTP-2112-1300-R01, at 1313, para. 101.

<sup>6</sup> CAR-OTP-2112-1300-R01, at 1313, para. 102.

<sup>7</sup> Prosecution's Trial Brief, para. 76, footnote 182.

<sup>8</sup> Prosecution's Trial Brief, para. 149, footnote 361.

including crimes committed by the Anti-Balaka, distribute money, and/or issue orders;<sup>9</sup>

- Mr Ngaïssona allegedly contributed to the commission of the crimes by the Anti-Balaka.<sup>10</sup>

7. *Third*, the Prosecution fails to substantiate or provide notice as to how precisely P-2556's proposed evidence with respect to Mr Ngaïssona's alleged criminal responsibility is corroborated by the evidence of the eleven witnesses cited by the Prosecution as allegedly corroborative.<sup>11</sup> Once again, the Prosecution does not provide any statement reference in support of its argument.
8. Also, out of those eleven witnesses, assuming all Rule 68(3) requests are granted, only five are expected to offer or have offered full in-court testimony.<sup>12</sup>
9. Furthermore, it is unreasonable and misleading to argue that all those eleven witnesses would provide corroborating evidence on Mr Ngaïssona's alleged provision of money and weapons to the Anti-Balaka, as none of these witnesses' allegations support the Prosecution's proposition.
10. For instance, contrary to the Prosecution's submissions, the witnesses cited by the Prosecution do not corroborate P-2556's prior recorded testimony in relation to Mr Ngaïssona's alleged provision of money and weapons to the Anti-Balaka. P-2556 alleges that Mr Ngaïssona was financing and providing weapons to the Anti-Balaka from Bossangoa and Benzambe. According to P-2556, Mr Ngaïssona would also have provided food and money to the Anti-

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<sup>9</sup> Prosecution's Trial Brief, para. 263, footnote 711.

<sup>10</sup> Prosecution's Trial Brief, para. 265, footnote 719.

<sup>11</sup> Request, para. 12. The Prosecution cites P-0458, P-0808, P-0992, P-0954, P-0884, P-2625, P-2673, P-0965, P-1074, P-2232 and P-1339.

<sup>12</sup> P-2232, P-0884, P-0458, P-2625 and P-1339.

Balaka in that same area.<sup>13</sup> Except for P-0458, none of the witnesses cited by the Prosecution mention the financing of the Bossangoa and Benzambe Anti-Balaka elements. Despite P-2232 and P-1339 making allegations relating to alleged financial contributions by Mr Ngaïssona,<sup>14</sup> none of them state that the money was specifically destined to the Bossangoa and Benzambe areas. And, even though P-2232 proposes evidence that Mr Ngaïssona's alleged financial contributions were designed for the purchase of weapons,<sup>15</sup> the lack of credibility of P-2232's in-court testimony, as illustrated by numerous manifest inconsistencies with the testimonies of other insider witnesses, most of them asserting not even knowing him,<sup>16</sup> makes it unreasonable to argue that his proposed evidence corroborates P-2556's proposed evidence.

11. Besides, although some of the witnesses make general statements relating to alleged financial contributions by Mr Ngaïssona, the money was allegedly provided for different purposes, such as food or transportation.<sup>17</sup> Therefore, it cannot reasonably be argued that *several* other witnesses are expected to offer full in-court testimony on this issue.

12. Also, regarding the provision of weapons to the Anti-Balaka of Bossangoa and Benzambe, although P-0458 and P-2625 propose evidence on alleged provision

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<sup>13</sup> **P-2556:** CAR-OTP-2112-1300-R01, at 1313, paras 100 and 102.

<sup>14</sup> **P-2232:** ICC-01/14-01/18-T-077-CONF-ENG ET, from p. 21, line 17 to p. 23 line 6; **P-1339:** CAR-OTP-2041-0741-R-03, at 0755, para. 99.

<sup>15</sup> **P-2232:** ICC-01/14-01/18-T-077-CONF-ENG ET, from p. 21, line 17 to p. 23 line 6.

<sup>16</sup> See for instance, **P-0808:** ICC-01/14-01/18-T-071-CONF-ENG ET WT, p. 60, lines 9-15; **P-1521:** ICC-01/14-01/18-T-083-CONF-ENG ET, from p. 42, line 25 to p. 43, line 8; **P-0992:** ICC-01/14-01/18-T-095-CONF-ENG ET, p. 17, lines 11-20.

<sup>17</sup> **P-0808:** ICC-01/14-01/18-T-071-CONF-FRA ET, from p. 48, line 27 to p. 49, line 11; **P-0992:** CAR-OTP-2110-0048-R-05, at 0065, para. 94; **P-0954:** CAR-OTP-2048-0171-R-02, at 0189, para. 106; **P-0884:** ICC-01/14-01/18-T-056-CONF-ENG CT, from p. 79, line 2 to p. 80, line 16; ICC-01/14-01/18-T-058-CONF-ENG ET, from p. 66, line 10 to p. 67, line 24; **P-2232:** ICC-01/14-01/18-T-076-CONF-ENG ET, p. 67, lines 14-25.

of weapons by Mr Ngaïssona,<sup>18</sup> their statements rely on inferences and hearsay. In the absence of exact corroboration on this issue, it cannot be reasonably alleged that their expected full in-court testimony corroborates P-2556's allegations.

13. Furthermore, as to François Bozizé's hidden stock of weapons in the areas of Bossembélé and Benzambe, P-2556 alleges that Mr Ngaïssona would have agreed to give François Bozizé's hidden weapons to the Anti-Balaka of Bossangoa and Benzambe.<sup>19</sup> Out of all the witnesses cited by the Prosecution, only P-0808 proposes evidence in relation to François Bozizé's hidden stock of weapons in Bossembélé.<sup>20</sup> However, not only P-0808 himself specifies that this was a rumor, but he also draws no link between such hidden stock of weapons and Mr Ngaïssona, therefore not corroborating P-2556's allegations.

14. *Fourth*, on the expeditiousness of the proceedings, the Defence submits that the significant time-saving as announced by the Prosecution is not persuasive.<sup>21</sup> Given the multitude of issues contained in P-2556's prior statement that are central to the Prosecution's case against Mr Ngaïssona, introducing P-2556'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-2556's full in-court testimony outweighs any potential and limited promotion of the expeditiousness of the proceedings.

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<sup>18</sup> **P-0458**: CAR-OTP-2118-2341-R02, at 2356, lines 508-539; CAR-OTP-2118-5048-R02, at 5058, lines 335-355; CAR-OTP-2118-2319-R-02, at 2337, lines 581-611; **P-2625**: CAR-OTP-2123-0377-R01, at 0383, paras 33-34.

<sup>19</sup> **P-2556**: CAR-OTP-2112-1300-R01, at 1313, para. 101.

<sup>20</sup> **P-0808**: ICC-01/14-01/18-T-070-CONF-FRA ET, from p. 38, line 19 to p. 39, line 18.

<sup>21</sup> ICC-01/14-01/18-1299-Conf, paras 15-18.

15. In light of the above, the Defence submits that a full in-court testimony of the evidence proposed by P-2556 is necessary and any other approach would be prejudicial to the rights of the accused or inconsistent with the fairness of the trial generally.<sup>22</sup>

## V. RELIEF SOUGHT

16. The Defence respectfully requests the Chamber to REJECT the Prosecution's Request to introduce P-2556's prior-recorded testimony and associated exhibits pursuant to Rule 68(3).

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 14 March 2022

At The Hague, the Netherlands.

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<sup>22</sup> ICC-02/11-01/15/744, para. 71.