

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 27 January 2026

TRIAL CHAMBER V

Before: Judge Beti Hohler , Presiding Judge
Judge Joanna Korner
Judge Keebong Paek

SITUATION IN CENTRAL AFRICAN REPUBLIC II

***IN THE CASE OF THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public Document

**Public Redacted Version of "Ngaïssona Defence Request for Partial
Reconsideration of the "Decision on the Ngaïssona Defence Request to Exclude
Evidence or, Alternatively, to Recall Prosecution Witness P-2657" (ICC-01/14-
01/18-2521-Conf), issued on 5 June 2024", ICC-01/14-01/18-2522-Conf, 6 June 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

☒ Counsel for the Defence

D30

D29

☒ Legal Representatives of the Victims

V44

V45

☐ 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

M. Zavala Giler, Osvaldo

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other

I. INTRODUCTION

1. The Defence for Mr Patrice-Edouard Ngaïssona ('the Defence') hereby respectfully requests that Trial Chamber V ('the Chamber') partially reconsider its "Decision on the Ngaïssona Defence Request to Exclude Evidence or, Alternatively, to Recall Prosecution Witness P-2657" ('Decision').¹
2. Specifically, the Defence seeks reconsideration of the Chamber's decision to introduce *proprio motu* under Rule 68(2)(b) of the Rules of Procedure and Evidence ('The Rules') Witness P-3177's statement ('the Statement'),² the existence of which the Defence was not even made aware until 17 November 2023, namely the day it filed its final list of witnesses and evidence.

II. CONFIDENTIALITY

3. The present filing is classified as confidential since it refers to the content of a decision that has the same classification.

III. SUBMISSIONS

4. The Defence seeks reconsideration of the Decision on the basis that it is necessary to prevent an injustice.³ The Chamber did not sufficiently consider the impact of introducing the Statement would have on the Defence's preparation and attempt to close its case. The Statement raises factual allegations that prejudice the Defence's theory of the case regarding events in Bossangoa. Indeed, in the Decision, the Chamber did not consider that the Defence had submitted that "there [was] no sound procedural avenue that would allow the Defence to tender only the one paragraph in the statement that contains the New Information".⁴ Instead, in determining whether the

¹ ICC-01/14-01/18-2521-Conf.

² CAR-OTP-00001982-R01.

³ ICC-01/14-01/18-2182, para. 8.

⁴ ICC-01/14-01/18-2300, para. 20.

introduction of the Statement would be prejudicial to or inconsistent with Mr Ngaïssona's fair trial rights, the Chamber only considered the Prosecution's suggestion that the Defence could have applied to introduce the Statement under Rule 68(2)(b).

5. Despite the express requirement under Rule 68(1) that the Chamber hear from the parties before introducing a statement under Rule 68's sub-rules, the Chamber rendered the Decision without hearing the Defence's view on the matter. Had the Chamber requested the parties' views, the Defence would have opposed the wholesale introduction of P-3177's statement, especially at this stage of the proceedings.
6. The Defence is currently wrapping up its case, with the last witnesses scheduled to testify in one month. Moreover, there are only two witnesses the Defence is calling whose testimony relates to the Bossangoa charges. Witness D30-4496 is scheduled to testify tomorrow, 7 June 2024 and Witness D30-4608 is scheduled to begin his testimony in just two weeks, on 19 June 2024. The Defence does not have the time to investigate the factual allegations contained in the Statement, which it could never have anticipated would become part of the case record. Its request regarding P-3177's was limited to the information contained in one paragraph of his statement. Its relevance to the Defence was related to impugning the testimony of P-2657. Given that neither the Defence, nor the Prosecution requested the introduction of P-3177's statement under Rule 68, the Defence could not have anticipated that the Chamber would do so, especially without hearing the views of the parties as required under Rule 68(1).⁵
7. Now the Defence finds itself on the eve of the examination of one of its two Bossangoa witnesses, with virtually no time and resources to both consider

⁵ This is the first time in the case that the Chamber has introduced under Rule 68 the statement of an individual who was never intended to be called as a witness by any of the parties or participants in the case.

the impact of the Statement on its theory of the case, and to further investigate the allegations therein if necessary.

8. The Statement covers a wide range of factual issues regarding events in Bossangoa, which are disputed by the Prosecution and the Defence, such as the organisation of Anti-Balaka, their means of communication in the area of Bossangoa,⁶ the alleged coordination of Anti-Balaka's alleged attacks,⁷ and the combatant status of certain Muslim alleged victims.⁸ Additionally, the Statement also comprises an entire section on P-2658, who testified before the Chamber in June 2022. The Defence is now deprived of the opportunity of putting aspects of the Statement to P-2658, a crucial witness on Bossangoa-related charges.
9. Overall, from the alleged events in Zéré to those in Bowaye; from the arrival of the Seleka to the alleged exactions of the Anti-Balaka; from the roles of international forces to the those of several NGOs, from the alleged September 2013 attacks in the Ouham region to the alleged 5 December 2013 attack on Bossangoa, the Statement weaves an intricate evidentiary tapestry that covers all disputed facts and incidents related to the Bossangoa charges.
10. More concerning, the structure and content of the statement seem directed to rebut evidence that the Defence either elicited from Prosecution witnesses during their testimonies or issues it raised outside of the courtroom during the Prosecution's case.⁹ As such, the Statement is evidence which the Prosecution would consider submitting as part of a potential rebuttal case. Yet, the Chamber is effectively submitting *proprio motu* evidence that amounts to rebuttal evidence on Bossangoa charges, two years after the last

⁶ CAR-OTP-00001982-000001, paras 32, 33, and 77.

⁷ CAR-OTP-00001982-000001, para. 46.

⁸ CAR-OTP-00001982-000001, paras 33, 41, 42, 46, 57.

⁹ For example, the mention that [REDACTED] did not bear weapons (CAR-OTP-00001982, paras 41-42) seems aimed at contradicting the Defence's position that he was in fact a member of a Muslim armed group (ICC-01/14-01/18-T-103-CONF-FRA, p.17).

Prosecution witness on Bossangoa testified and less than 48 hours before the Defence first Bossangoa witness, whose handover to the Victims and Witnesses Section already took place.

11. In light of the foregoing, introducing P-3177's statement at this juncture of the case would violate Mr Ngaïssona's Article 67(1)(b) right to have adequate time and facilities for the preparation of his defence. The fair trial right issues raised by the present request warrant the Chamber's reconsideration of the Decision. In the Decision, the Chamber found that the Statement "could assist the Chamber in its determination of the truth."¹⁰ The Chamber did not find that it was "necessary." The Defence requests that the Chamber weigh the Defence's strong opposition to introducing the statement under Rule 68(2)(b) against the mere possibility that the Statement could assist it with its determination of the truth. When balancing these two countervailing interests, the Defence respectfully submits the Chamber should reconsider the Decision.

IV.RELIEF SOUGHT

12. For the aforementioned reasons, the Defence respectfully requests the Chamber to partially reconsider the Decision.

Respectfully submitted,

¹⁰ Decision, para. 18.



G. J. Akexander Knoops
on behalf of
Patric-Edouard Ngaïssona

Dated this 27 January 2026

At The Hague, the Netherlands