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

**Date: 26 June 2024**

**TRIAL CHAMBER V**

**Before:** Judge Bertram Schmitt, Presiding Judge  
Judge Péter Kovács  
Judge Chang-ho Chung  
Judge Beti Hohler, Alternate Judge

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II**

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

**Public**

**Decision on the Ngaißsona Defence Request for Partial Reconsideration of the  
‘Decision on the Ngaißsona Defence Request to Exclude Evidence or,  
Alternatively, to Recall Prosecution Witness P-2657’**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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**TRIAL CHAMBER V** of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 54(1), 64(2), (6) and (9), 67, and 74(2) of the Rome Statute (the ‘Statute’) and Rule 63(2) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the 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”’.

## **I. Procedural history and submissions**

1. On 5 June 2024, the Chamber rejected<sup>1</sup> the Ngaïssona Defence’s (the ‘Defence’) request to exclude the evidence of P-2657 or, alternatively, to recall the witness (the ‘Initial Request’). In its Initial Request, the Defence had, *inter alia*, argued that recalling witness P-2657 was the only manner in which it could put the information contained in paragraph 34 of P-3177’s statement<sup>2</sup> on the record (the ‘New Information’ and the ‘Statement’).<sup>3</sup> While rejecting the Initial Request, the Chamber *proprio motu* introduced P-3177’s statement (the ‘Statement’)<sup>4</sup> in its entirety pursuant to Rule 68(2)(b) of the Rules, considering, *inter alia*, that this witness’s evidence might assist the Chamber in the determination of the truth (the ‘Rule 68 Decision’).<sup>5</sup>
2. On 7 June 2024, the Defence asked the Chamber to reconsider the Rule 68 Decision (the ‘Request’).<sup>6</sup> It argues, *inter alia*, that (i) the Chamber ‘did not sufficiently consider the impact that introducing the Statement would have on the Defence’s preparation and attempt to close its case’; (ii) the Chamber should have invited the parties’ submissions before introducing the Statement *proprio motu*; and (iii) the Defence was deprived of the opportunity of confronting P-2658,

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<sup>1</sup> Decision on the Ngaïssona Defence Request to Exclude Evidence or, Alternatively, to Recall Prosecution Witness P-2657, ICC-01/14-01/18-2521-Conf.

<sup>2</sup> CAR-OTP-00001982, at 000005-06, para. 34.

<sup>3</sup> Ngaïssona Defence request to exclude evidence or, alternatively, to recall Prosecution witness P-2657, 15 January 2024, ICC-01/14-01/18-2300-Conf (with confidential Annex 1) (public redacted version notified on 12 June 2024, ICC-01/14-01/18-2300-Red), para. 26.

<sup>4</sup> CAR-OTP-00001982.

<sup>5</sup> Rule 68 Decision, ICC-01/14-01/18-2521-Conf, paras 18-23.

<sup>6</sup> 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, paras 1-2, 12.

‘a crucial witness on Bossangoa-related charges’, with ‘aspects of the Statement’. In the Defence’s submission, the introduction of the Statement in its entirety violates Mr Ngaïssona’s right to have adequate time and facilities for the preparation of his defence pursuant to Article 67(1)(b) of the Statute.<sup>7</sup>

3. On 20 June 2024, the Office of the Prosecutor (the ‘Prosecution’) opposed the Request (the ‘Response’). It avers that the Request ‘fails to meet the legal threshold for reconsideration’. Furthermore, the Prosecution submits that the Defence fails to establish prejudice against the accused as the Rule 68 Decision ‘was a foreseeable outcome of the relief sought by the Defence in its Initial Request’.<sup>8</sup>

## II. Analysis

4. The Chamber recalls the applicable law as set out in its first decision under Rule 68(2)(b) of the Rules.<sup>9</sup>
5. The Chamber considers that the Defence has failed to demonstrate any clear error of reasoning which would warrant reconsideration of the Rule 68 Decision. Contrary to the Defence’s submissions, the Chamber duly considered the impact of introducing the Statement pursuant to Rule 68(2)(b) of the Rules on the Defence’s preparation. In doing so, it was also fully cognisant of the fact that the Defence was unable to question P-2658 about the content of the Statement.
6. While it would have been possible to ask for the parties’ submissions on whether the Statement should be introduced under Rule 68(2)(b) of the Rules, the Chamber did not find this course of action necessary in the specific circumstances at hand. In this respect, it considers that the Defence’s stance on the matter was already clear from its Initial Request. Albeit arguing that it was ‘procedurally

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<sup>7</sup> Request, ICC-01/14-01/18-2522-Conf, paras 4-11.

<sup>8</sup> Prosecution’s Response to “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, ICC-01/14-01/18-2537-Conf, paras 1-2, 4-13.

<sup>9</sup> First Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b) of the Rules, 17 April 2023, ICC-01/14-01/18-1833-Conf-Corr (original version notified on 6 April 2023) (the ‘First Decision’), paras 16-47.

barred from requesting the submission of the full statement',<sup>10</sup> the Defence clearly sought to identify avenues to introduce only a *part* of the Statement (notably, the New Information) into evidence, as opposed to the full Statement.<sup>11</sup> This position has been further confirmed in the present Request, in which the Defence voiced its 'strong opposition' to the introduction of the entire Statement.<sup>12</sup>

7. Similarly, the Prosecution's position was already on the record by virtue of having identified the introduction of the Statement pursuant to Rule 68(2)(b) of the Rules as one of the possible legal avenues to introduce it into evidence in its response to the Initial Request.<sup>13</sup>
8. The Chamber can also not discern any prejudice caused to the Defence by virtue of the Rule 68 Decision, given its clear directions throughout the trial that prior recorded testimonies are generally introduced as a *whole*,<sup>14</sup> as well as the fact that the Chamber has the power to apply Rule 68 of the Rules *proprio motu* under the Court's legal framework. It was thus entirely foreseeable that the introduction of the full Statement under Rule 68(2)(b) of the Rules might be a potential outcome of the Defence's Initial Request.
9. Finally, the Defence has also not presented any new facts or arguments which would militate in favour of reconsidering the Rule 68 Decision.
10. In light of the above, the Request is rejected.

## **FOR THESE REASONS, THE CHAMBER HEREBY**

**REJECTS** the Request; and

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<sup>10</sup> Initial Request, ICC-01/14-01/18-2300-Red, para. 19.

<sup>11</sup> Initial Request, ICC-01/14-01/18-2300-Red, para. 12, where the Defence argues that there was 'no legal avenue available [...] to put the [New Information] on the record', subsequently seeking its introduction through recalling and examining witness P-2657 on it.

<sup>12</sup> Request, ICC-01/14-01/18-2522-Conf, para. 11.

<sup>13</sup> Prosecution's Response to the Ngaiissona Defence Request to exclude evidence or, alternatively, to recall Prosecution witness P-2657 (ICC-01/14-01/18-2300-Conf), 24 January 2024, ICC-01/14-01/18-2325-Conf (public redacted version notified on 11 June 2024), paras 3, 5. *See also* Response, ICC-01/14-01/18-2537-Conf, para. 7.

<sup>14</sup> *See, for example*, First Decision, ICC-01/14-01/18-1833-Conf-Corr, para. 18.

**ORDERS** the Defence and the Prosecution to file public redacted versions of the Request, ICC-01/14-01/18-2522-Conf, and the Response, ICC-01/14-01/18-2537-Conf, respectively, within one week of notification of the present decision.

Done in both English and French, the English version being authoritative.



**Judge Péter Kovács**



**Judge Bertram Schmitt**

**Presiding Judge**



**Judge Chang-ho Chung**

Dated 26 June 2024

At The Hague, The Netherlands