

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **4 April 2023**

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 ROMBHOT YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

**Public Redacted Version of “Defence response to the “Prosecution’s Request for
Authorisation to Disclose Transcripts of and Materials used in the Testimony of
Witness P-2625 to the Defence in the case of *Prosecutor v. Mahamat Said Abdel Kani*”
(ICC-01/14-01/18-1822)”, ICC-01/14-01/18-1827-Conf**

Source: Defence of Patrice-Edouard Ngaïssona

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 Ngaïssona (“Defence”) requests Trial Chamber V (“Chamber”) to partially reject the “Prosecution’s Request for Authorisation to Disclose Transcripts of and Materials used in the Testimony of Witness P-2625 to the Defence in the case of *Prosecutor v. Mahamat Said Abdel Kani*” (“Request”).¹
2. The Defence objects to the disclosure of Defence document CAR-D30-0001-0036 (“Item”). It defers to the Chamber’s discretion as it concerns the remaining associated items, transcripts, and filings the Prosecution seeks to disclose, as detailed in Annex A of the Request.²

II. Applicable Law

3. Article 67(1) of the Rome Statute enshrines the fair trial rights of accused persons, including the right to be heard, while article 64(2) provides that the “Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses”. Article 21(3) provides that the application and interpretation of the Statute “must be consistent with internationally recognized human rights”, which includes the right to privacy.
4. Regulation 42(2) of the Regulations of the Court (“Regulations”) provides that when “the Prosecutor discharges disclosure obligations in subsequent proceedings, he or she shall respect the protective measures as previously ordered by a Chamber and shall inform the defence to whom the disclosure is being made of the nature of these protective measures”.³

¹ ICC-01/14-01/18-1822.

² ICC-01/14-01/18-1822-Conf-AnxA.

³ See ICC-01/14-01/18-1465, para. 7.

III. Confidentiality

5. The present response is filed confidentially pursuant to regulation 23bis(1) of the Regulations, as it refers to confidential information. A public redacted will be filed shortly.

IV. Submissions

6. *First*, item CAR-D30-0001-0036 is irrelevant to the *Prosecutor v. Mahamat Said Abdel Kani* case. It is a [REDACTED]. Similarly to item CAR-D30-0007-0672, which the Chamber excluded from disclosure to the Said Defence in the context of a similar Prosecution request, the Item bears no link to the case against Mr Said.⁴ Moreover, the Prosecution fails to provide any support for its assertion concerning the relevance of the Item.
7. *Second*, the Item contains personal and confidential data relating to Mr Ngaïssona, including [REDACTED]. The Item was only made available confidentially to the Chamber, parties and participants in the present case by the Defence. It was shown neither to Witness P-2625 nor the public. Given Mr Ngaïssona's privacy interest in the Item, and the lack of relevance of the Item in relation to the charges brought against Mr Said, it should remain confidential vis-à-vis third parties to preserve Mr Ngaïssona's right to privacy.⁵ In its previous ruling on a similar document containing personal data belonging to Mr Ngaïssona, the Chamber excluded an item on the basis that it contained personal information regarding Mr Ngaïssona, while taking into account the lack of relevance to the Said Defence.⁶ The same reasoning should apply here.

⁴ ICC-01/14-01/18-1465, para. 11.

⁵ ICC-01/14-01/18-1465, para. 11. The Defence incorporates by reference its submissions as to Mr Ngaïssona's right to privacy, ICC-01/14-01/18-1427-Conf, paras 31-34.

⁶ ICC-01/14-01/18-1465, para. 11.

8. *Third*, the Item does not form part of the case record, given the limited extent to which it was used during P-2625's questioning. Witness P-2625 was not shown the Item and was not asked to comment on the document specifically. The Item was only referred to in passing by Counsel during the Defence's examination, for the Chamber, parties and participants' reference.⁷ Moreover, the general information relevant to the questioning of P-2625 extracted from the Item – that Mr Ngaïssona was traveling on 26 December 2012 – was discussed in public session. Thus, the Said Defence has access to the transcript in which the Item was discussed, and therefore, to the information relevant to the questioning of P-2625.
9. *Fourth*, upon ruling on a similar Prosecution request for disclosure to the Mokom Defence, the Chamber directed the Prosecution to exclude from disclosure "items collected during the Ngaïssona Defence's investigations".⁸ The Item was collected in the context of Defence investigations. It should therefore be excluded from disclosure to the Said Defence.
10. The Defence defers to the Chamber's discretion as it concerns the disclosure of the remaining items associated with the testimony of Witness P-2625, as well as the confidential transcripts and filings relating to P-2625 listed in Annex A to the Request.

V. Relief sought

11. The Defence respectfully requests the Chamber to
 - REJECT the disclosure of document CAR-D30-0001-0036 to the Said Defence.

⁷ ICC-01/14-01/18-T-192-FRA ET, page 15, lines 9 to 26; *see also* the Chamber's email ruling of 16 March 2023, at 9:51 rejecting the Prosecution's submission of item CAR-OTP-2005-0323.

⁸ ICC-01/14-01/18-1552, para. 10.

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 4 April 2023,

At The Hague, the Netherlands