

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **14 February 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

Public Redacted Version of 'Defence Response to the "Prosecution's Second Request for the Protection of the Identity of Witnesses P-0567 and P-2324 in the Public Redacted versions of their Statements", (ICC-01/14-01/18-2106-Conf-Red), filed 20 September 2023' (ICC-01/14-01/18-2116-Conf), filed on 2 October 2023

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 ("the Defence") respectfully requests Trial Chamber V ("the Chamber") to order the Prosecution to file a lesser redacted version of the "Second Request for the Protection of the Identity of Witnesses P-0567 and P-2324 in the Public Redacted Versions of their Statements" ("the Request"),¹ or in the alternative, defers to the Chamber the assessment of the necessity, proportionality, and prejudicial nature to the rights of the Accused, of the redactions sought. The Defence is unable to meaningfully respond to the Request as the arguments of the Prosecution regarding the security concerns of the witnesses are heavily redacted. The general security situation in the Central African Republic ("CAR") is not sufficient to establish an objective risk justifying the sought redactions of the Public Redacted Versions of the statements.

II. CONFIDENTIALITY

2. Pursuant to Regulation 23*bis* of the Regulations of the Court, this Response is filed as "Confidential", as it responds to a Request of that same classification. The Defence does not oppose to the reclassification of this filing as Public, in due course.

III. SUBMISSIONS

A. The Defence is unable to meaningfully respond to the Request because of the redactions it contains.

3. The Prosecution heavily redacted its arguments regarding the security concerns of P-0567 and P-2324, making it impossible for the Defence to meaningfully respond to these arguments. No substantial information on the personal security situation

¹ ICC-01/14-01/18-2106-Conf-Red.

of any of the witnesses is available to the Defence, preventing it from assessing the existence of an objective security risk for the witnesses in the case of the publishing of their identifying information, as well as the proportionality of the measures sought. The Prosecution also refers to the security risk of innocent third parties² without making available to the Defence any information on the circumstances of these innocent third parties or the nature of their relations with the witnesses.

4. There is no justification for the Prosecution not disclosing this information to the Defence. Mr Ngaïssona can only discuss case-related information with members of his Defence Team, who are bound by professional obligations, and comply with the Code of Professional Conduct for counsel of the International Criminal Court. Moreover, Mr Ngaïssona is still under [REDACTED].
5. Therefore, the Defence requests the Chamber to order the Prosecution to file a lesser redacted version of the Request, enabling the Defence to meaningfully respond to it. In the alternative, the Defence defers the assessment of the proportionality and necessity of the measure sought, as well as its potential prejudice to Mr Ngaïssona's rights, to the Chamber.
6. This assessment should be done in light of Mr Ngaïssona's right to publicity of the proceedings pursuant to Articles 64(7) and 67(1) of the Statute which is an essential component of his right to a fair trial, as well as considering the exceptional nature of protective measures. The Chamber previously stated that the presentation of evidence shall be held in public to the extent possible³ and that this same principle applies to testimonies which were previously obtained and introduced under Rule 68 of the Rules of Procedure and Evidence.⁴ In this regard, the Defence incorporates

² ICC-01/14-01/18-2106-Conf-Red, para. 9.

³ Initial Directions, ICC-01/14-01/18-631, para. 45.

⁴ Email decision from Trial Chamber V Communications "Publishing of prior recorded testimonies", 3 June 2021, 15:58.

by reference its arguments in its Response to the “Prosecution’s Request for the Non-Publication of P-2467 Prior-Recorded Testimony”.⁵

B. The general security situation of the CAR is not sufficient to establish an objective risk justifying the sought redactions.

7. The objective risk faced by witnesses and justifying protective measures must be assessed given their personal situation. The general security situation of a country is not sufficient to establish such risk. In *The Prosecutor v. Gbagbo & Blé Goudé*, Trial Chamber I held, *inter alia*, that generic references to a social context in Ivory Coast was unsuitable to trigger the application of Rule 87.⁶ Similar to the *Gbagbo & Blé Goudé* case, the Prosecution in the present case only provided general information regarding CAR’s current situation, in order to justify the requested measures,⁷ stating for example that “[REDACTED]”.⁸
8. Additionally, the Chamber previously indicated that “the need for protective measures must be assessed on a case-by-case basis, considering specific circumstances of the witness”.⁹ It further stated that the absence of protective measures must “create or unduly increase an impermissible danger to any of the legitimate interests of the witness”.¹⁰ By solely relying on the general security situation in CAR to justify the redactions proposed, the Prosecution failed to demonstrate specific security risks concerning the said witnesses.

IV. RELIEF SOUGHT

⁵ ICC-01/14-01/18-2051-Conf, paras 19-20.

⁶ *Gbagbo and Blé Goudé* case, transcript of hearing on 17 October 2016, ICC-02/11-01/15-T-86-Red-ENG, page 18 paras 1-5.

⁷ ICC-01/14-01/18-2106-Conf-Red, paras 5-7.

⁸ [REDACTED].

⁹ ICC-01/14-01/18-906-Conf-Red, para. 18.

¹⁰ *Ibid.*, para. 17.

The Defence respectfully requests the Chamber to:

- **ORDER** the Prosecution to file a lesser redacted version of the Request available to the Defence.
- **IN THE ALTERNATIVE**, the Defence defers to the Chamber the assessment of the necessity, proportionality and prejudice to Mr Ngaïssona's rights of the proposed redactions of P-0567 and P-2324's public redacted versions of their prior-recorded statements.

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 14 February 2024

At The Hague, the Netherlands.