

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/14-01/18
Date: 10 December 2025

TRIAL CHAMBER V

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

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

Public Document

**With Confidential EX PARTE Annex A Only available to the
Ngaïssona Defence and the Office of the Prosecutor**

**Public Redacted Version of the "Ngaïssona Defence Motion for disclosure and
lifting of redactions relating to the Article 70 Investigation", 23 May 2023, ICC-
01/14-01/18-1881-Conf**

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 Ngaïssona ('Defence') hereby submits a motion for disclosure of all documents collected in the course of the Prosecution's investigations under Article 70 of the Rome Statute ('Statute') or generated for use in any potential future Article 70 proceeding, such as statements or transcripts of interviews, in so far as they target members of the Defence team, or persons who are or have been in contact with the Defence team for Mr Ngaïssona ('Material'). In addition, the Defence requests Trial Chamber V ('Chamber') to order the Prosecution to review all the remaining redactions found in the Prosecution's filings regarding the Article 70 proceedings¹ and to file confidential versions of any filings, currently classified *ex parte*, which relate to Article 70 Investigation involving the Defence. Lastly, and in order to ensure that the Prosecution is abiding by its disclosure obligations, the Defence respectfully requests the Chamber to order the Prosecution to provide a list of all the items it has collected in the course of its Article 70 Investigation.
2. Disclosure of the Materials and lifting of all redactions (a) is necessary to protect the integrity of the Defence's investigations and (b) will prevent the tampering with the Defence case. Maintaining the non-disclosure and the existing redactions is unwarranted given that at this juncture such non-disclosure will seriously prejudice the fair trial rights of Mr Ngaïssona.

II. PROCEDURAL HISTORY

3. In early April 2021, the Prosecution initiated *ex parte* Article 70 proceedings after allegedly receiving information from both [REDACTED] and [REDACTED] about alleged conduct that may amount to offences against the administration of justice in the present case ('Article 70 Investigation').²

¹ ICC-01/14-01/18-1310-Conf-Exp, ICC-01/14-01/18-1444-Conf-Exp and ICC-01/14-01/18-1819-Conf-Exp-Red.

² ICC-01/14-01/18-1016-Conf, para. 3.

4. On 19 May 2021, Pre-Trial Chamber II granted the Prosecution's 29 April 2021 request for an order directing the Registry to provide certain Detention Unit call records from Mr Ngaïssona.³ On 1 June 2021, Pre-Trial Chamber II granted a second request for additional records encompassing an earlier time period.⁴ The Defence, to this day, does not have access to either decision.
5. On 8 June 2021, the Prosecution submitted a request for non-disclosure under Rule 81(2) of the Rules of Procedure and Evidence ('Rules') of materials collected during the Article 70 Investigation ('Material'). It argued that there was an objectively justifiable risk to the ongoing investigation should that Material be disclosed to the Defence, and that non-disclosure was necessary to safeguard the Article 70 Investigation, and proportional in that it was not prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.⁵
6. On 15 July 2021, the Single Judge granted the Prosecution's non-disclosure request. According to the Single Judge, the non-disclosure was necessary to protect the Article 70 Investigation from any prejudice.⁶
7. On 1 October 2021, given that the Prosecution had not provided any update on the expected timeline of its Article 70 Investigation and the disclosure of the Material, nor had filed any redacted version or requested reclassification of its non-disclosure request, the Chamber urged the Prosecution "to make all possible efforts to expedite its investigation, and to proceed with the disclosure of the Material as soon as possible".⁷ The Chamber further directed the Prosecution "to provide an update on the expected timeline of its Article 70 Investigation and disclosure of the Material within two weeks of notification of the present decision".⁸

³ ICC-01/14-01/18-1000-Conf-Exp.

⁴ ICC-01/14-01/18-1004-Conf-Exp.

⁵ ICC-01/14-01/18-1016-Conf, paras 7-9.

⁶ ICC-01/14-01/18-1063-Conf, para. 8.

⁷ ICC-01/14-01/18-1127-Conf, para. 5.

⁸ ICC-01/14-01/18-1127-Conf, para. 5. The Chamber also noted that "six months have passed since the reported commencement of the Article 70 Investigation, four months since the filing of the Request, and almost three months since the notification of the Decision on Request for Non-Disclosure. However, at this stage, the

8. On 19 October 2021, and pursuant to the aforementioned order, the Prosecution filed the “Prosecution Submission on Article 70 Investigation” (‘First Submissions’).⁹ The Prosecution maintained that the continued non-disclosure of the investigation was warranted because of the nature of the offences under investigation and the circumstances concerning the conduct of the proceedings. The Prosecution argued that the length of the investigation was not unreasonable, particularly given the adverse impact that domestic health policies and restrictions related to the COVID-19 pandemic had had on international cooperation, while the continued non-disclosure caused no undue or unfair prejudice to Mr Ngaïssona.¹⁰ Besides the arguments on the continuation of the non-disclosure, the Prosecution provided no other update on the progress of the Article 70 Investigation and no expected timeline.¹¹
9. On 10 November 2021, the Chamber issued its “Order to Provide Further Update on Article 70 Proceedings”, agreeing with the Prosecution that the non-disclosure continued to be warranted.¹² However, the Chamber recalled that non-disclosure of the Material “may risk causing prejudice to the accused’s rights to a fair trial” and reiterated that “the Prosecution should make all possible efforts to expedite its investigation, and to proceed with the disclosure of the Material as soon as possible”.¹³ Consequently, the Chamber directed the Prosecution to provide another update in four months on the progress of the Article 70 Investigation and when it anticipated being in a position to disclose the Material.¹⁴

Prosecution has not provided any update on the expected timeline of its Article 70 Investigation and the disclosure of the Material. Similarly, the Prosecution has not filed any redacted version or requested reclassification of its Request”, see ICC-01/14-01/18-1127-Conf, para. 4.

⁹ ICC-01/14-01/18-1139-Conf-Corr-Red.

¹⁰ ICC-01/14-01/18-1139-Conf-Corr-Red, para. 2.

¹¹ ICC-01/14-01/18-1139-Conf-Corr-Red, para. 14: “At such time, the Prosecution hopes to be sufficiently advanced in its efforts to apprise the Chamber more precisely as to when disclosure may safely proceed, to the extent warranted”.

¹² ICC-01/14-01/18-1172-Conf, para. 3.

¹³ ICC-01/14-01/18-1172-Conf, para. 3.

¹⁴ ICC-01/14-01/18-1172-Conf, para. 4.

10. On 10 March 2022 and pursuant to the aforementioned order, the Prosecution filed its second “Submission on Article 70 Investigation” (‘Second Submissions’).¹⁵ Besides incorporating by reference the arguments found in its First Submissions, the Prosecution further argued that disclosure in the current circumstances risked damaging the integrity of the investigation and, potentially, the integrity of the proceedings due to concerns regarding not only the safety and security of witnesses, but the potential for interference with them.¹⁶
11. On 22 March 2022, the Chamber issued the “Second Order to Provide an Update on Article 70 Proceedings”¹⁷, repeating its 10 November 2021 ruling and ordering the Prosecution to provide an update on the Article 70 Investigation and the disclosure status of any material collected in the context of this investigation, by 1 June 2022, at the latest.¹⁸
12. On 30 and 31 May 2022, the Prosecution disclosed the Material collected until that point during the Article 70 Investigation to the Defence.¹⁹
13. On 1 June 2022, the Prosecution filed the third “Submission on Article 70 Investigation” (‘Third Submissions’) and confirmed the *inter partes* disclosure of all the material evidence in its possession regarding the Article 70 Investigation.²⁰ Any items the Prosecution received pursuant to a pending Request for Assistance (‘RFA’) would be disclosed as soon as practicable.²¹ Nevertheless, the Prosecution provided no indication as to when these items were expected to become available and no timeline on the Article 70 Investigation and its end. To this day, according to the Defence’s records, the items related to the RFA have not been disclosed.

¹⁵ ICC-01/14-01/18-1310-Conf-Red.

¹⁶ ICC-01/14-01/18-1310-Conf-Red, paras 8-11.

¹⁷ ICC-01/14-01/18-1322-Conf.

¹⁸ ICC-01/14-01/18-1322-Conf, para. 4.

¹⁹ Disclosure packages titled “Trial Rule 77 package 78 30 May 2022” and “Trial Rule 77 package 79 31 May 2022”.

²⁰ ICC-01/14-01/18-1444-Conf-Red, para. 6.

²¹ ICC-01/14-01/18-1444-Conf-Red, para. 12.

14. On 15 June 2022, the Chamber issued the “Third Order in Relation to the Article 70 Proceedings” (“Third Order”)²² and ordered the Registry to reclassify decisions ICC-01/14-01/18-1063-Conf-Exp, ICC-01/14-01/18-1127-Conf-Exp, ICC-01/14-01/18-1172-Conf-Exp, and ICC-01/14-01/18-1322-Conf-Exp to confidential for the full information of the Defence²³; on 16 June 2022 the aforementioned documents were made available to the Defence.
15. In the same order, the Chamber found that “the Defence should be provided with access to all related Prosecution filings” and thus instructed the Prosecution to request reclassification or file confidential redacted versions of filings ICC-01/14-01/18-1016-Conf-Exp, ICC-01/14-01/18-1139-Conf-ExpCorr, ICC-01/14-01/18-1310-Conf-Exp and ICC-01/14-01/18-1444-Conf-Exp.²⁴ The Chamber further ordered the Prosecution to keep the necessity of redactions to the above filings under review as it progresses with its investigation.²⁵ The abovementioned Prosecution filings became available to the Defence on 28 June 2022, when the confidential redacted versions were filed.²⁶ The Defence did not receive any other disclosure or filings related to the Article 70 investigation after that date.
16. On 16 March 2023, the Defence submitted its “Request to Amend Mr Ngaïssona’s Restrictions on Contacts and Communications in Detention”,²⁷ requesting a change to the restrictions on Mr Ngaïssona’s non-privileged communications.
17. On 27 March 2023, the Prosecution filed its response to the abovementioned request.²⁸ In this response, the Prosecution used arguments redacted from the Defence which invoked the continuing Article 70 Investigation to justify the continuation of restrictions on Mr Ngaïssona’s non-privileged communications.

²² ICC-01/14-01/18-1459-Conf.

²³ ICC-01/14-01/18-1459-Conf, page 4.

²⁴ ICC-01/14-01/18-1459-Conf, page 4.

²⁵ ICC-01/14-01/18-1459-Conf, page 4.

²⁶ ICC-01/14-01/18-1016-Conf-Exp, ICC-01/14-01/18-1139-Conf-ExpCorr, ICC-01/14-01/18-1310-Conf-Exp and ICC-01/14-01/18-1444-Conf-Exp.

²⁷ ICC-01/14-01/18-1802-Conf-Exp.

²⁸ ICC-01/14-01/18-1819-Conf-Exp-Red.

18. On 3 May 2023, the Defence initiated *inter partes* discussions with the Prosecution, requesting (i) the disclosure of the items obtained via the remaining RFA, (ii) the disclosure of any Material collected after 1 June 2022 during the ongoing Article 70 Investigation and (iii) the lifting of redactions applied to the Prosecution's filings in the Article 70 proceedings. The Defence further informed the Prosecution that should it receive no response, the Defence would resort to addressing the Chamber.²⁹
19. On 10 May 2023, the Chamber rendered its "Seventh Decision on Mr Ngaïssona's Restrictions on Contacts and Communications in Detention",³⁰ which partially granted the Defence's request to modify Mr Ngaïssona's restrictions on contact under Regulation 101 of the Regulations of the Court. In its decision, the Chamber made no reference to any Article 70 Investigation as a reason to maintain the current contact restrictions regime.
20. On 11 May 2023, the Prosecution responded to the Defence's request for disclosure in the Article 70 Investigation, admitting that (i) the Article 70 Investigation is still pending, therefore the remaining redactions cannot be lifted and (ii) the material pertaining to the pending RFA has been received however the Prosecution is "not in a position to disclose the requested material, which is subject to rule 81(2)".³¹

III. CONFIDENTIALITY

21. In accordance with regulation 23*bis*(1) of the Regulations of the Court, the present motion is filed as "confidential *ex parte*", only available to the Defence and the Prosecution as it relates to the ongoing Article 70 Investigation and contains confidential information. A confidential redacted version will be filed in due course.

²⁹ Annex A, page 2.

³⁰ ICC-01/14-1/18-1863.

³¹ Annex A, page 1.

IV. APPLICABLE LAW

22. Pursuant to Article 54(1)(c) of the Statute, the Prosecution is required to fully respect the rights of persons arising under the Statute, a duty that is concomitant with the Prosecution's investigative powers. As the organ primarily in charge of the investigation, the Prosecution is "bound to act with due care to ensure that investigative techniques will by no means affect at a later stage the right of the accused persons to a fair trial".³²
23. Article 64(2) of the Statute imposes a duty to the Chamber to ensure that the trial is fair and expeditious and is conducted with full respect for the rights of the accused. As far as non-disclosure of information is concerned, this duty translates into the Chamber's obligation to assess whether the redactions sought are "prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial", as well as the obligation to periodically review the decision authorising the redactions should circumstance change.³³
24. Article 67(1) of the Statute enshrines the fundamental fair trial guarantees of suspects and accused persons, including the principle of equality of arms. According to Pre-Trial Chamber II "[f]airness is closely linked to the concept of 'equality of arms', or of balance between the parties during the proceedings. As commonly understood, it concerns the ability of a party to a proceeding to adequately make its case, with a view to influencing the outcome of the proceedings in its favour".³⁴ As far as the Article 70 proceedings are concerned, the rights of the accused enshrined in Article 67 of the Statute continue to apply.³⁵

³² *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on Article 54(3)(e) Documents Identified as Potentially Exculpatory or Otherwise Material to the Defence's Preparation for the Confirmation Hearing, ICC-01/04-01/07-621, 20 June 2008, para. 29.

³³ *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on the protocol establishing a redaction regime, ICC-01/09-01/11-458, 27 September 2012, para. 11.

³⁴ *Situation in Uganda*, Decision on Prosecutor's Application for leave to Appeal in Part Pre-Trial Chamber II's Decision on the Prosecutor's Applications for Warrants of Arrest under Article 58, ICC-02/04-01/05-20-US-Exp, 19 August 2005, para. 30.

³⁵ William A. Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (2nd edn, Oxford University Press 2016), p. 1021-1022.

25. Article 21(3) of the Statute stipulates that the law applicable under the Statute must be interpreted as well as applied in accordance with internationally recognized human rights. As the Appeals Chamber in *Lubanga* held:

“Human rights underpin the Statute; every aspect of it (...). Its provisions must be interpreted and more importantly applied in accordance with internationally recognized human rights; first and foremost, in the context of the Statute, the right to a fair trial, a concept broadly perceived and applied, embracing the judicial process in its entirety. (...) Where fair trial becomes impossible because of breaches of the fundamental rights of the suspect or the accused by his/her accusers, it would be a contradiction in terms to put the person on trial. Justice could not be done. A fair trial is the only means to do justice”.³⁶

26. Rule 77 of the Rules stipulates that the Prosecution shall permit the Defence to inspect evidentiary material which is “material to the preparation of the defence”. According to the Appeal Chamber in *Lubanga*, the phrase “material to the preparation of the defence” should be understood as referring to all objects that are relevant for the preparation of the defence, even if those objects are not “directly linked to exonerating or incriminating evidence”.³⁷ Trial Chamber III in *Bemba* elaborated further on the Prosecution’s disclosure obligations and held that the Prosecution is obliged to disclose materials related to the Article 70 Investigation “if they could (i) undermine the prosecution case, (ii) support a line of argument of the defence, or (iii) significantly assist the accused in understanding the incriminating and exculpatory evidence and the issues”.³⁸

V. SUBMISSIONS

27. Based on the progress of the case against Mr Ngaïssona, the end of the Prosecution’s case seems to be near, meaning that the Defence is currently obliged

³⁶ ³⁶ *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19 (2) (a) of the Statute of 3 October 2006, ICC-01/04-01/06-772, 13 December 2006, para. 37.

³⁷ *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeal of Mr. Lubanga Dyilo against the Oral Decision of Trial Chamber I of 18 January 2008, ICC-01/04-01/06-1433, 11 July 2008, para. 77.

³⁸ *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on defence requests for disclosure, ICC-01/05-01/08-3100, 2 July 2014, para. 24.

to assess the state of its current case and evaluate the additional investigations that must be conducted before the start of a potential Defence case. Consequently, having access to all the information pertaining to the Article 70 Investigation is necessary for the Defence to be able to adequately make such an assessment, such that Mr Ngaïssona's fair trial rights are not prejudiced.

a. Disclosure of the Material and lifting of all redactions is necessary to protect the integrity of the Defence's investigations

28. For the past two years, the Prosecution has been investigating alleged conduct violating Article 70 of the Statute. To the Defence's knowledge, this investigation was triggered by the testimony of [REDACTED], whose evidence was relevant in the Pre-Trial Chamber's decision to confirm the charges against Mr Ngaïssona. The potential outcome of this investigation, could require a new direction in the Defence investigations.

29. Further, while the Defence is only aware of the Prosecution's limited access to information related to privileged communications,³⁹ there is a risk that the Prosecution has access to other Defence communications, which could reveal the Defence case and strategy. Indeed, the Prosecution alluded to further investigations in relation to [REDACTED],⁴⁰ which are undisclosed to date. Such access to Defence communications raises questions on potential violations of Article 67(1)(b) of the Statute, which ties the confidentiality of Defence work to Mr Ngaïssona's fair trial rights⁴¹ and prevents the Prosecution from obtaining an unfair advantage in the proceedings against Mr Ngaïssona ('Main Case'). While the Article 70 procedure seeks to guard the integrity of the Main Case⁴² the Prosecution's access to Defence

³⁹ CAR-OTP-2127-9241.

⁴⁰ ICC-01/14-01/18-1444-Conf-Red, para. 7.

⁴¹ According to Article 67(1)(b) of the Statute, the accused is entitled "[t]o have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence".

⁴² *The Prosecutor v. Walter Osapiri Barasa*, Warrant of arrest for Walter Osapiri Barasa, ICC-01/09-01/13-1-Red2, 2 August 2013, para. 20. See also *Prosecutor v. Slobodan Milošević*, Decision on Interlocutory Appeals on Kosta Bulatović Contempt Proceedings, Case No. IT-02-54-A-R77.4, 29 August 2005, para. 21.

communications to facilitate the Article 70 Investigation must be necessary and proportional to the legitimate aim of the investigations so as not to infringe on the right to the confidential communications between Mr Ngaïssona and members of his Defence team.

30. The non-disclosure of the Material and the extensive redactions which were found to be necessary to protect the Article 70 Investigation when it started two years ago are no longer justified. The non-disclosure was supposed to be “limited to the timeframe ‘pending the completion’ of the Article 70 Investigation”⁴³ and was allowed to continue given the adverse impact domestic health policies and restrictions related to the COVID-19 pandemic had had on international cooperation which delayed the Article 70 Investigation. Even though the exigencies presented by the COVID-19 pandemic have long passed, the Article 70 Investigation is still ongoing, as per the Prosecution’s admission.⁴⁴

31. Further, the recent decision of the Chamber on Mr Ngaïssona’s restrictions on contact pursuant to Regulation 101⁴⁵ further lends support to the Defence’s position that the non-disclosure of the Material is no longer justified. In fact, the Chamber did not make any reference to the Prosecution’s submissions pertaining to the Article 70 Investigation in its decision to partially grant Mr Ngaïssona’s request to ease the restrictions.

32. The Defence is unaware of the alleged progress and extent of the Article 70 Investigation. In its Third Order, the Chamber appreciated the developments in the proceedings, i.e. the disclosure of nearly all the material collected in the course of the Article 70 Investigation with the exception of the records related to the pending RFA,⁴⁶ which the Prosecution would disclose as soon as practicable. The Chamber further held that “the Defence should be provided with access to all related

⁴³ ICC-01/14-01/18-1063-Conf, para. 10.

⁴⁴ Annex A, page 1.

⁴⁵ ICC-01/14-10/18-1863.

⁴⁶ ICC-01/14-01/18-1459-Conf, para. 2.

Prosecution filings”.⁴⁷ Thus far, however, the expected material has not been disclosed, nor have the redactions found in the Prosecution filings been reviewed, contrary to the Chamber’s order.

33. In addition, the Single Judge cautioned the Prosecution that “he will not tolerate the Article 70 Investigation to continue indefinitely in a manner that could impact the proceedings in the present case” and advised the Prosecution to “conclude relevant portions of its investigation as promptly as possible, to continually assess the risk of prejudice, and to keep the Material under review with a view to disclosing it to the Defence as soon as possible”.⁴⁸ Yet, by the Prosecution’s own admission, the investigations are ongoing and there is apparently Material that is either still not available to the Defence or is heavily redacted. Moreover, the Prosecution has provided no timeline as to when the Article 70 Investigation will be concluded nor has it provided a timeline as to when it envisages disclosing the pending Material or lifting the existing redactions.⁴⁹ As held in *Lubanga*, the Prosecution’s disclosure obligations cease only if the Prosecutor has made the decision not to carry out further investigations and no additional evidence has been collected for that purpose; since the present investigation is still ongoing, the Prosecution needs to abide by its disclosure obligations.⁵⁰

34. Equality of arms implies the obligation to provide each party with a reasonable opportunity to present its case to the Court, including evidence, in circumstances which do not place the party at a substantial disadvantage *vis-à-vis* the opposing party.⁵¹ Obtaining privileged and confidential information related to the Defence

⁴⁷ ICC-01/14-01/18-1459-Conf, para. 4.

⁴⁸ ICC-01/14-01/18-1063-Conf, para. 11. *See also The Prosecutor v. Bosco Ntaganda*, Decision on Defence request seeking certain material relating to review of restrictions placed on Mr Ntaganda’s contacts, 3 June 2016, ICC-01/04-02/06-1364-Conf-Exp, ICC-01/04-02/06-1364-Red2, 21 November 2016, para. 22.

⁴⁹ Annex A, page 1.

⁵⁰ *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on the request of the Defence in relation to investigations conducted pursuant to article 70 of the Statute, ICC-01/04-01/06-3114, 17 June 2014, para. 22.

⁵¹ *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on the Defence request for leave to appeal regarding the transmission of applications for victim participation, ICC-01/04-01/06-672-tEN, 6 November 2006, p. 7. *See also Bulut v. Austria*, App no 17358/90 (ECHR, 22 February 1996), para. 47; *Dombo Beheer B. V. v. The Netherlands*, App no 14448/88 (ECHR, 27 October 1993), para. 33.

case through the Article 70 Investigation constitutes a fundamental violation of the principle of equality of arms.⁵² As the situation stands now, there is a lack of transparency regarding the information the Prosecution has access to since the last Article 70 Material was disclosed and the continuation of the Article 70 Investigation. Consequently, the Defence cannot properly assess the direction of its investigations and the preparation of the potential Defence case and is thus placed at a substantial disadvantage *vis-à-vis* the Prosecution.

35. The length of the Prosecution's Article 70 Investigation can no longer serve as a basis for maintaining the non-disclosure and the redactions applied so far. The measures taken to protect the Article 70 Investigation are no longer proportionate and cause prejudice to Mr Ngaïssona's right to a fair trial⁵³ given the stage of the Defence's preparations and investigations. Additionally, the continued non-disclosure and the existing redactions run counter to the Chamber's Third Order mentioned.

b. Disclosure of the Materials and lifting of all redactions is decisive for the direction of the Defence investigations

36. For the Defence to be able "to adequately make its case, with a view to influencing the outcome of the proceedings in its favour",⁵⁴ the Defence must be able to conduct investigations in a serene manner, without fearing that their communications are monitored by the opposing party.

37. Given the absence of any information regarding the scope of the Prosecution investigation, the Defence is prevented from adequately proceeding in preparing a

⁵² See also *The Prosecutor v. Bosco Ntaganda*, Decision on Defence request for stay of proceedings with prejudice to the Prosecution, ICC-01/04-02/06-1883, 28 April 2017, para. 42. Trial Chamber I found that having access to information relevant to defence strategy, including names of individuals who could have provided information for the Defence and potential witnesses, "is prejudicial to the accused as it places the Prosecution in an unduly advantageous position *vis-à-vis* the Defence".

⁵³ As the Single Judge cautioned in ICC-01/14-01/18-1063-Conf, para. 9.

⁵⁴ *Situation in Uganda*, Decision on Prosecutor's Application for leave to Appeal in Part Pre-Trial Chamber II's Decision on the Prosecutor's Applications for Warrants of Arrest under Article 58, ICC-02/04-01/05-20-US-Exp, 19 August 2005, para. 30.

Defence case. Prolongation of the Article 70 Investigation and the non-disclosure of the Material collected while progressing into the potential Defence case, is highly prejudicial for the Defence as it puts the Prosecution in a position to challenge the Defence case, without the Defence knowing the basis for these allegations beforehand.

38. As far as third parties are concerned, the Prosecution alleges that “persons closely associated with the NGAISSONA Defence” are implicated in the Article 70 Investigation.⁵⁵ Should that be the case, such information is likewise material to the preparation of the Defence and thus must be disclosed under Rule 77 of the Rules.⁵⁶ In light of the Defence’s preparations for its case, the Defence needs to know who these people are to assess the direction of its investigations and prepare its potential Defence case.

39. Disclosing all the information the Prosecution has collected thus far and lifting all the existing redactions will allow the Defence to have a fuller picture of the nature and extent of the Prosecution’s Article 70 Investigation and assess the direction of its investigations with the view to prevent the Prosecution from arguing at any stage of the presentation of a potential defence case that such a Defence case could be tainted. To ensure that the Prosecution is abiding by its disclosure obligations, the Defence respectfully requests the Chamber to order the Prosecution to provide a list of all the items it has collected in the course of its Article 70 Investigation so that the Defence and the Chamber can ensure that the Prosecution is abiding by its disclosure obligations.

c. Maintaining the non-disclosure and the existing redactions results in undue prejudice to Mr Ngaïssona’s right to family life

⁵⁵ The Prosecution mentions [REDACTED], allegedly implicated in the Article 70 Investigation, see ICC-01/14-01/18-1139-Conf-Corr-Red, para. 4.

⁵⁶ *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on the scope of the prosecution’s disclosure obligations as regards defence witnesses, ICC-01/04-01/06-2624, 12 November 2010, para. 13.

40. The effects of Article 70 Investigation's confidentiality go beyond the implications analysed above. As previously mentioned, the Defence recently requested an amendment to the restrictions on Mr Ngaïssona's non-privileged communications. In its response, the Prosecution partially opposed the request by using arguments stemming from the Article 70 Investigation. Nevertheless, the extensive redactions applied to the Prosecution's arguments regarding the Article 70 Investigation render the information provided to the Defence meaningless.⁵⁷
41. The Prosecution benefits from the confidentiality of the Article 70 Investigation to present arguments to justify the restrictions on Mr Ngaïssona's right to family life which is expressed through his non-privileged communication with his family members. Due to the extensive redactions applied, these arguments remain unavailable to the Defence and as such the Defence is prevented from fully responding to and challenging them. As a result, the Defence is unable to effectively and efficiently exercise its duty to advocate for Mr Ngaïssona's family rights.
42. From all of the above, it is clear that the prolongation the Article 70 Investigation and the non-disclosure of the Material collected thus far not only hampers the direction of the Defence's investigations and mounting a potential Defence case, but also has adverse effects on Mr Ngaïssona's rights. While the Defence can only speculate as to the information the Prosecution has in its possession, the effects of non-disclosure and the existing redactions on Mr Ngaïssona's fair trial rights are undeniable. The only measure to limit these effects is the disclosure of all the Material collected during the Article 70 Investigation, as previously ordered by the Chamber, along with the lifting of existing redactions found in the Prosecution filings listed below.

⁵⁷ ICC-01/14-01/18-1819-Conf-Exp-Red, paras 6-7.

VI.RELIEF SOUGHT

43. The Defence respectfully requests the Chamber to **ORDER** the Prosecution to:

- **DISCLOSE** all the Material relating to its Article 70 Investigation, implicating the Ngaïssona Defence or individuals associated with it;
- **LIFT** all redactions found in filings ICC-01/14-01/18-1310-Conf-Exp, ICC-01/14-01/18-1444-Conf-Exp and ICC-01/14-01/18-1819-Conf-Exp-Red;
- **FILE** confidential versions of any filings, currently classified *ex parte*, which relate to the Article 70 Investigation;
- **PRODUCE** a list in accordance with paragraph 39 of the present motion.

Respectfully submitted,



G. J. Alexander Knoop
on behalf of
Patrice-Edouard Ngaïssona

Dated this 10 December 2025

At The Hague, the Netherlands