

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 15 January 2026

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

**Public redacted version of "Ngaïssona Defence Response to 'Confidential
redacted version of "Prosecution's Submissions on the Article 70 Investigation'",
ICC-01/14-01/18-2372-Conf, 19 February 2024**

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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D30

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I. INTRODUCTION

1. The Defence hereby presents its response to the “Prosecution’s Submissions on the Article 70 Investigation”, ICC-01/14-01/18-2348-Conf-Red, in particular to the non-disclosure of the Investigation Report regarding [REDACTED] (‘Investigation Report’) and the material received on 9 January 2024 pursuant to the 21 October 2022 RFA (‘9 January 2024 material’) (together ‘Material’)(‘Response’). The Prosecution submits that it needs more time to evaluate the risks associated with the disclosure to the Defence of the Investigation Report and that this evaluation will take place once it has finalised the review of the information received on 9 January 2024.
2. Swift disclosure of this Material will allow the Defence to assess relevant information that can have an impact on its Defence case and on the credibility of Prosecution evidence. *First*, as previously argued by the Defence, the continuation of the Article 70 investigation constitutes an impediment to the integrity of the Defence investigations and the preparation and presentation of the Defence case. *Second*, the [REDACTED] evidence previously disclosed in relation to the Article 70 investigation suggests that [REDACTED], and that such [REDACTED] was related to his testimony before the Court. To date, the Defence has not received any information related to this serious allegation.
3. The Defence should be given access to any material information in the possession of the Prosecution related to this potential [REDACTED] testimony. The Defence requests that the timing of the disclosure of the Material should take into account the need for the Defence to readjust its case and adapt to the information contained in the Investigation Report and the 9 January 2024 material. In view of these preparations, the Material should be disclosed within one month from the filing of the Response.

II. CONFIDENTIALITY

4. In accordance with regulation 23bis(1) of the Regulations of the Court, the Response is classified “Confidential, *Ex Parte*” as it responds to a filing of the same classification.

III. PROCEDURAL HISTORY

5. On 19 October 2021, the Prosecution filed its “Corrected version of “Prosecution Submission on Article 70 Investigation” whereby it noted concerns to the security of witness [REDACTED].¹
6. On 12 July 2022, the Prosecution received several [REDACTED]. The Prosecution provided an update to the Chamber regarding the material received on 28 September 2022 and, directed it specifically to [REDACTED].² The material was eventually disclosed to the Defence on 7 July 2023 and the Defence was provided with a confidential redacted version of the Prosecution’s filing and an update on the state of the Article 70 investigation on 6 September 2023.³
7. On 6 February 2024, the Prosecution filed its confidential redacted version of “Prosecution’s Submissions on the Article 70 Investigation”, whereby it informed the Chamber that “[t]he material items [REDACTED] pursuant to the 21 October 2022 RFA, as well as the remaining undisclosed Investigation Report, will be assessed and disclosed accordingly as soon as practicable”.⁴

IV. APPLICABLE LAW

8. The Defence incorporates by reference its previous submissions with respect to the applicable law regarding the Prosecution's disclosure obligations, the right of the

¹ ICC-01/14-01/18-1139-Conf-Corr-Red, para. 12.

² ICC-01/14-01/18-1588-Conf-Red, para. 7.

³ *Ibid.*

⁴ ICC-01/14-01/18-2348-Conf-Red, para. 15.

accused to a fair and expeditious trial, as well as the Chamber's duty to ensure that these rights are fully respected.⁵

V. SUBMISSIONS

9. At the outset, the Defence submits that due to the Prosecution's heavily redacting the core of its submissions, the Defence can only speculate on the content of the undisclosed material and the direction of the Prosecution's findings. From the information available, the Defence understands that the Prosecution has been investigating the security situation of witness [REDACTED] and potential breaches of confidentiality related to his in-court testimony.⁶ For the reason detailed below, the Material should be promptly disclosed to the Defence.

10. On 15 July 2022, the Prosecution received a series of [REDACTED] among which [REDACTED]. After analysis of pages 000033 to 000037, the Prosecution argued in a related filing that "[REDACTED]".⁷

11. The Prosecution's implicit argument is that the members of the Defence could be responsible for such a breach of confidentiality related to witness [REDACTED] and that the Prosecution expected to receive additional material in execution of the 21 October 2022 RFA. This allegation on its own has the potential to affect the course of the trial. As the Chamber is aware, as a direct result of the Prosecution's Article 70 investigation related to [REDACTED], the Prosecution requested that his prior recorded statement be introduced under Rule 68(2)(d) and made several serious accusations of potentially criminal interference by members of Mr Ngaïssona's Defence team. Prompt access to the information could allow the Defence to refute such insinuations and will enable the defence to assess whether the integrity of its Defence case will be affected, and consequently readjust the course of its investigations and presentation of its case.

⁵ ICC-01/14-01/18-1881-Conf-Exp, paras 22-26.

⁶ ICC-01/14-01/18-1588-Conf-Red, para. 7.

⁷ [REDACTED].

12. The Defence also understands from [REDACTED] prior to testifying in the case against Mr Ngaïssona. According to [REDACTED],⁸ [REDACTED]. The Defence is not in a position to ascertain whether these allegations are true, or to understand the full context of [REDACTED], however these allegations are very serious and bear the possibility that [REDACTED] evidence is impermissibly tainted by means of coercion.
13. The Defence therefore requests the Chamber to order the Prosecution to disclose the material obtained pursuant to the 21 October 2022 RFA as well as the 21 October 2022 RFA itself. The undisclosed material not only affects the Defence's investigations, as the Prosecution suggests misconduct or at least inadvertent disclosure from the Defence, but more importantly, it contains information affecting the credibility of [REDACTED] evidence and/or other exculpatory information. It suggests that [REDACTED] to give a false account while testifying. To date, the Defence has not received any information from the Prosecution regarding this allegation despite it being material for the preparation of the Defence.
14. On 28 October 2022, the Single Judge, when authorising the non-disclosure of items related to Article 70 investigation mentioned that "the Materials may impact on the credibility of Prosecution evidence and non-disclosure may therefore affect the preparation of the Defence in the present case".⁹ The Chamber held, in line with previous rulings,¹⁰ that it would not tolerate for the Article 70 investigation to "continue indefinitely in a manner that could impact the proceedings in the present case".¹¹

⁸ CAR-OTP-00000084, at 000037.

⁹ ICC-01/14-01/18-1641-Conf, para. 9.

¹⁰ ICC-01/04-02/06-1494-Red4, para. 24.

¹¹ *Ibid*, para. 10.

15. The presentation of evidence by the Defence started on 11 December 2023 and a limited number of witnesses are left to testify in court. In addition, the Defence will have to file its Final Brief two months after the last witness testifies. This gives little time to investigate and take into account any relevant evidence the Defence may gather on this issue to present to the Chamber and include in its Final Brief.
16. Should the Chamber grant the Defence's request to be provided with the material within a month of filing the Response, the Prosecution would have had two full months to review the material. This timeframe is reasonable in light of the fast-approaching end of the Defence case and subsequent written submissions.
17. Finally, the Prosecution opened the Article 70 investigation in early April 2021, almost 3 years ago. Considering this timeframe, a longer prolongation of the investigation is not justified. Delays in cooperation do happen but they should not be an excuse to allow investigations to continue endlessly. A reasonable balance must be established between fair trial rights and the Prosecution's investigations.

VI.RELIEF SOUGHT

The Defence respectfully requests the Chamber to ORDER the Prosecution to review and disclose the Material within a month of filing the Response.

Respectfully submitted,



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

Dated this 15 January 2026

At The Hague, the Netherlands