



Original: English

No.: ICC-01/14-01/18  
Date: 16 February 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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-  
EDOUARD NGAÏSSONA***

**Public**

Public redacted version of "Prosecution's response to "Ngaïssona Defence Motion for disclosure and lifting of redactions relating to the Article 70 Investigation" ICC-01/14-01/18-1881-Conf, 23 May 2023"", 2 June 2023, ICC-01/14-01/18-1906-Conf

**Source:** Office of the Prosecutor

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

D29

D30

☒ 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  
Appeals Chamber

## I. INTRODUCTION

1. Trial Chamber V (“Chamber”) should reject the NGAISSONA Defence’s “Motion for disclosure and lifting of redactions relating to the Article 70 Investigation” (“Request”).<sup>1</sup> The Request lacks merit and should be dismissed.

2. The Request advances no grounds warranting the disclosure of all materials relating to the article 70 investigation (“Materials”). *First*, the non-disclosure of the Materials pending the completion of the article 70 investigation is authorised pursuant to rule 81(2) of the Rules of Procedure and Evidence (“Rules”).<sup>2</sup> The objective risk to the investigation justifying non-disclosure continues to prevail. *Second*, non-disclosure of the Materials is proportionate. It is not prejudicial to or inconsistent with the rights of the Accused and a fair and impartial trial. The subject matter of the investigation does not go to substantive issues in the case or the merits of the charges. *Third*, the Defence fails to articulate any facts that would amount to a breach of NGAISSONA’s fair trial rights, and instead advances speculative and unfounded arguments.

## II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis* of the Regulations of the Court (“RoC”), this response is filed as “Confidential, *EX PARTE*, only available to the NGAISSONA Defence and Prosecution”, as it concerns a filing of the same designation. A public redacted version will be submitted as soon as practicable.

---

<sup>1</sup> ICC-01/14-01/18-1881-Conf-Exp.

<sup>2</sup> ICC-01/14-01/18-1869-Conf-Exp and ICC-01/14-01/18-1641-Conf-Exp. *See also*, ICC-01/14-01/18-1881-Conf-Exp-AnxA (email to the NGAISSONA Defence sent on 12 May 2023, at 18:17, noting that, “The investigation is still pending and we are not in a position to disclose the requested material, which is subject to rule 81(2)”).

### III. SUBMISSIONS

#### A. Rule 81(2) authorises non-disclosure of the Materials

4. The Defence's contention of "the absence of any information regarding the scope of the Prosecution investigation"<sup>3</sup> is unfounded. As the Defence is well aware, the Prosecution has consistently and diligently disclosed material information regarding its ongoing investigation.<sup>4</sup> However, given its nature, there remains an objectively justifiable risk of prejudice arising from disclosing the Materials at this time.<sup>5</sup> In fact, as the *inter partes* correspondence between the Prosecution and the Defence makes clear, the Prosecution informed the Defence that the Materials are subject to rule 81(2), and that redactions to the relevant filings relate to the course of the pending investigation.<sup>6</sup>

5. Additionally, it bears emphasis that the Prosecution only sought the temporary postponement of disclosure in respect of a limited number of materials.<sup>7</sup> Thus, the non-disclosure of these Materials, subject to a limited timeframe is reasonable and proportionate during the pendency of the article 70 investigation.<sup>8</sup>

6. Whilst the Prosecution intends to promptly disclose all material information upon concluding its article 70 investigation, this has been hampered by delays in State cooperation in the execution of pending Requests for Assistance ("RFA"). Indeed, the Chamber has similarly observed and noted the same in respect of its own directives.<sup>9</sup>

#### B. Non-disclosure of the Materials is proportionate to the rights of the Accused

---

<sup>3</sup> ICC-01/14-01/18-1881-Conf-Exp, para. 37.

<sup>4</sup> ICC-01/14-01/18-1444-Conf-Red, para. 2 (noting that, "[..] as of 31 May 2022, the Prosecution has disclosed all of the material evidence that it has collected to date in the course of its investigation").

<sup>5</sup> Rule 81(2).

<sup>6</sup> ICC-01/14-01/18-1881-Conf-Exp-AnxA.

<sup>7</sup> ICC-01/14-01/18-1588-Conf-Exp and ICC-01/14-01/18-1839-Conf-Exp.

<sup>8</sup> ICC-01/14-01/18-1063-Conf, para. 10, ICC-01/14-01/18-1869-Conf-Exp, and ICC-01/14-01/18-1641-Conf-Exp.

<sup>9</sup> See email from Chamber, dated 9 January 2023, at 14:37, [REDACTED]."

7. The non-disclosure of the Materials is not prejudicial to or inconsistent with the rights of the Accused and a fair and impartial trial. The Request is premised on the flawed assumption<sup>10</sup> that the Chamber may consider such evidence absent its proper submission and discussion in the record of the case. This is, of course, unfounded. As the Appeals Chamber held in the *Ntaganda* case:

“Pursuant to article 74(2) of the Statute, the judges are expected to base their decision on the guilt or innocence of an accused person ‘only on evidence submitted and discussed [...] at the trial’. This provides a safeguard for the party excluded from *ex parte* proceedings because any material of which the judges may have become aware may not be used when determining the guilt or innocence of the accused person, unless it subsequently was submitted and discussed at trial. There is therefore no reason for a presumption of prejudice [...].”<sup>11</sup>

8. To the extent that the Material could be advanced before the Chamber for its consideration in respect of any issue in the case,<sup>12</sup> the appropriate procedural mechanisms would necessarily be followed. There is no founded basis to assume anything else. In any case, the Material does not go to the charges, and therefore would not be determinative of them to any extent.<sup>13</sup>

### **C. The Request is general and speculative**

9. The Defence fails to articulate any facts that would amount to a breach of NGAISSONA’s fair trial rights. Its contentions that the non-disclosure of the Materials and redactions “hamper the direction of the Defence’s investigations”<sup>14</sup> and “constitutes a fundamental violation of the principle of equality of arms” are both speculative and incorrect.<sup>15</sup>

<sup>10</sup> ICC-01/14-01/18-1881-Conf-Exp, para. 34.

<sup>11</sup> ICC-01/04-02/06-2666-Conf, para. 122.

<sup>12</sup> See article 69(3), and rule 140(2)(a) and (b).

<sup>13</sup> ICC-01/14-01/18-1016-Conf, para. 9 (noting that, “[...] it is out of abundance of caution, as prescribed by the Appeals Chamber, that the Prosecution brings the Materials before the Chamber for a determination under rule 81(2)”). See also, ICC-01/04-02/06-2666-Red, para. 177.

<sup>14</sup> ICC-01/14-01/18-1881-Conf-Exp, para. 42.

<sup>15</sup> ICC-01/14-01/18-1881-Conf-Exp, para. 34.

10. The Request identifies not a single concrete instance in which the Prosecution has used or attempted to use the information in a manner causing undue prejudice to NGAISSONA.<sup>16</sup> The Defence's claim that it can "only speculate as to the information the Prosecution has in its possession [..]"<sup>17</sup> is inapposite. The fact that the Defence does not know information to which it is not entitled, does not necessarily give rise to a risk that it would be used in the proceedings improperly by the Chamber. That implicit argument is nothing more than conjecture. Moreover, it disregards the Chamber's substantial role in regulating the fairness of the proceedings as well as ignores the fact that it is composed of professional judges.

11. It is self-evident that the Prosecution did not initiate an article 70 enquiry to obtain an 'advantage' *vis-à-vis* the Defence, but to address the possible undermining of the integrity of the proceedings. The Defence has been on notice of the article 70 investigation, the identities of those implicated, and its context since April 2021.<sup>18</sup> The Defence is free to determine its investigative and trial strategy,<sup>19</sup> within the context of assuring the proper administration of justice in these proceedings. There is nothing implicit in the protection of such a fundamental tenet of trials before the Court that amounts to "a fundamental violation of the principle of equality of arms".<sup>20</sup> Quite to the contrary, it upholds the statutory imperative enshrined under article 64(2), which applies equally to the Parties.<sup>21</sup>

<sup>16</sup> See ICC-01/04-02/06-1883, para. 43.

<sup>17</sup> ICC-01/14-01/18-1881-Conf-Exp, para. 42.

<sup>18</sup> ICC-01/14-01/18-1881-Conf-Exp-Exp, para. 3, ICC-01/14-01/18-1139-Conf-Corr-Red, para. 4 (noting that, "[..] the material acquired during the course of the Prosecution's investigation tends to implicate the actions of persons closely associated with the NGAISSONA Defence. These comprise [REDACTED]).

<sup>19</sup> *Contra*, ICC-01/14-01/18-1881-Conf-Exp, para. 38.

<sup>20</sup> ICC-01/14-01/18-1881-Conf-Exp, para. 34.

<sup>21</sup> See ICC-01/04-02/12-271-AnxA, paras. 6, 11 (Dissent).

#### IV. CONCLUSION

12. For the above reasons, the Chamber should dismiss the Request in its entirety.



---

**Mame Mandiaye Niang, Deputy Prosecutor**

Dated this 16<sup>th</sup> February 2026

At The Hague, The Netherlands