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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 request for non-disclosure under rule 81(2) of materials collected during the investigation of potential offences under article 70", ICC-01/14-01/18-1016-Conf, 8 June 2021

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

[REDACTED]

[REDACTED]

[REDACTED]

Counsel for Alfred Yekatom

Counsel for Patrice-Edouard Ngaïssona

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

[REDACTED]

Counsel Support Section

Victims and Witnesses Unit

[REDACTED]

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests that Trial Chamber V (“Chamber”) authorise the non-disclosure of 19 items of material (“Materials”) obtained in the course of its investigation of potential article 70 offences in this case, pursuant to rule 81(2) of the Rules of Evidence and Procedure (“Rules”).¹ The Materials consist of information provided by [REDACTED], as well as [REDACTED] and other information provided by the [REDACTED]. Disclosure of this information at this stage would jeopardise the ongoing article 70 investigation.

II. CONFIDENTIALITY

2. This Request and its annex is filed “Confidential, EX PARTE, available only to the Prosecution and the VWU” as it contain sensitive information regarding ongoing investigations which could be jeopardised if exposed.

III. SUBMISSIONS

A. Background and Overview of Materials

3. In early April 2021, the Prosecution received information from [REDACTED] about conduct that may amount to offences against the administration of justice under article 70 in this case. As a result, the Prosecution initiated inquiries with a view to verifying the existence of potential article 70 offences.²

¹ The Materials, available in Ecourt, comprise: CAR-OTP-2127-8340, CAR-OTP-2127-8521, CAR-OTP-2127-8522, CAR-OTP-2127-8525, CAR-OTP-2127-9240, CAR-OTP-2127-9241, CAR-OTP-2127-9242, CAR-OTP-2130-4044, CAR-OTP-2130-4047, CAR-OTP-2130-4051, CAR-OTP-2130-4074, CAR-OTP-2130-4075, CAR-OTP-2130-4076, CAR-OTP-2130-4156, CAR-OTP-2130-4423, CAR-OTP-2134-0072, CAR-OTP-2134-0081, CAR-OTP-2134-0082, CAR-OTP-2134-0083.

² See *ex parte* Email of Prosecution to Trial Chamber V, dated 30 March 2021 at 13:18; see also Email of Prosecution to Trial Chamber V and the Parties and Participants, dated 2 April 2021 at 15:51 [REDACTED].

4. On 19 May 2021, Pre-Trial Chamber II granted the Prosecution's 29 April 2021 request³ for an order directing the Registry to provide [REDACTED] of Mr NGAISSONA.⁴ On 1 June 2021, it granted a second request⁵ for additional records encompassing an earlier time period.⁶

5. The Prosecution's investigation has to date produced 19 items that may contain disclosable material under rule 77. These consist of:

- i) Information obtained by investigators from [REDACTED], in the form of audio-recorded conversations,⁷ along with two related investigator reports [REDACTED].⁸ Notably, [REDACTED] told investigators that about two weeks before leaving the Central African Republic to testify, he was approached by a friend who told him that [REDACTED].⁹ Additionally, [REDACTED] was specifically asked about his contact with other persons while in the care of the Victims and Witnesses Unit ("VWU"), and he stated that he had only communicated with his wife as authorised by VWU, and did not have any method of communication beyond the phone provided to him by VWU.¹⁰
- ii) Information obtained by investigators [REDACTED], in the form of three investigator reports [REDACTED],¹¹ and a signed statement

³ ICC-01/14-01/18-972-Conf-Exp-Corr. Should the Chamber require access to this and the following filings before Pre-Trial Chamber II, the Prosecution will request CMS to provide it.

⁴ ICC-01/14-01/18-1000-Conf-Exp.

⁵ ICC-01/14-01/18-1004-Conf-Exp.

⁶ Decision issued by email of 1 June 2021, 9:05am, attached in the Confidential *Ex Parte* Annex.

⁷ CAR-OTP-2130-4044, [REDACTED]; CAR-OTP-2130-4074, [REDACTED]; and CAR-OTP-2130-4075, [REDACTED].

⁸ [REDACTED] CAR-OTP-2140-4047 [REDACTED] (relating to recording CAR-OTP-2130-4044); and [REDACTED] CAR-OTP-2130-4076 [REDACTED] (relating to recordings CAR-OTP-2130-4074 and CAR-OTP-2130-4075).

⁹ See CAR-OTP-2130-4047, at 4049.

¹⁰ See CAR-OTP-2130-4076, at 4076.

¹¹ [REDACTED] CAR-OTP-2130-4051 [REDACTED] CAR-OTP-2130-8430 [REDACTED] CAR-OTP-2127-8525 [REDACTED] with annexes CAR-OTP-2127-8521 and CAR-OTP-2127-8522.

[REDACTED].¹² In his statement, [REDACTED] makes reference to various instances of concern to the integrity of the proceedings. *First*, he describes attending a meeting with a [REDACTED] and [REDACTED] in BANGUI in late February or early March 2021. He says that during this meeting, [REDACTED] called Mr NGAISSONA and then passed the phone to [REDACTED] to speak to him.¹³ *Second*, he recounts a conversation with [REDACTED], in which [REDACTED] told him [REDACTED] that he [REDACTED] had been told by [REDACTED].¹⁴ [REDACTED]¹⁵ [REDACTED]¹⁶. [REDACTED].¹⁷

iii) Information obtained by investigators from [REDACTED], in the form of two investigator reports [REDACTED].¹⁸ [REDACTED]¹⁹ – [REDACTED].²⁰ [REDACTED].²¹

iv) Two sets of [REDACTED],²² with some additional information,²³ provided by the Registry's [REDACTED], upon Pre-Trial Chamber II's two orders. The [REDACTED] show almost daily calls between Mr NGAISSONA and [REDACTED] between 26 February and 15 March 2021.²⁴ The Registry also provided information that Mr NGAISSONA had submitted a request in April 2019 to add

¹² Statement CAR-OTP-2134-0072 of 19 May 2021, with annexes CAR-OTP-2134-0081 (reproducing CAR-OTP-2127-8521), CAR-OTP-2134-0082 (reproducing CAR-OTP-2127-8522) and CAR-OTP-2134-0083.

¹³ See CAR-OTP-2134-0072, at 0076-0077, paras. 27-30.

¹⁴ See CAR-OTP-2134-0072, at 0075, para. 23. See also at 0078, para. 39.

¹⁵ See CAR-OTP-2134-0072, at 0077, para. 33.

¹⁶ [REDACTED].

¹⁷ See CAR-OTP-2134-0072, at 0077, para. 34.

¹⁸ [REDACTED] CAR-OTP-2130-4156[REDACTED]; [REDACTED]CAR-OTP-2130-4423 [REDACTED].

¹⁹ [REDACTED].

²⁰ CAR-OTP-2130-4156, at 4156-4157.

²¹ CAR-OTP-2130-4423, at 4423.

²² CAR-OTP-2127-9241 and CAR-OTP-2127-9242.

²³ CAR-OTP-2127-9240.

²⁴ CAR-OTP-2127-9241 (spreadsheet contained therein) and CAR-OTP-2127-9242 (spreadsheet contained therein).

[REDACTED] to his non-privileged telephone list, which was denied.²⁵

B. Non-disclosure is Necessary and Proportionate to the Rights of the Accused

6. The non-disclosure of the Materials is necessary to address an objectively justifiable risk of prejudice arising from disclosure of the information to the Defence. It is the least intrusive measure available to safeguard the article 70 investigation, and is proportionate, in that it is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.²⁶

7. *First*, there is an objectively justifiable risk of prejudice to the article 70 investigation which would arise from disclosing the Materials. The information contained therein reveals the direction of the investigation, as well as salient lead information. By its nature, an article 70 investigation requires the greatest discretion possible to prevent the [REDACTED], and the concealment or destruction of evidence. In this case, the implication of [REDACTED] and other members of the Defence in the activities under investigation make this all the more crucial.

8. *Second*, non-disclosure of the Materials would overcome this risk and is necessary, in that it is the least intrusive measure available to the Prosecution to safeguard the continuing investigation. Disclosure of the Materials, accompanied by warnings and/or guarantees would be insufficient to address the risk of prejudice to the investigation. Again, this is particularly so when members of the Defence are implicated in the activities under investigation.

²⁵ CAR-OTP-2127-9240, at 9240.

²⁶ See ICC-01/14-01/18-670-Conf, para. 8 and ICC-01/14-01/18-790-Conf, para. 6, and the jurisprudence incorporated therein.

9. *Third*, the non-disclosure of the information is proportionate, in that it is not prejudicial to or inconsistent with the rights of the Accused and a fair and impartial trial. The information contained in the Materials does not go to substantive issues and has minimal material value in the case being tried before the Chamber. Indeed, 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).²⁷

IV. CONCLUSION

10. For the foregoing reasons, the Prosecution seeks the Chamber's authorisation for non-disclosure of the Materials at this time under rule 81(2), pending the completion of the article 70 investigation.



Mame Mandiaye Niang, Deputy Prosecutor

Dated this 20th day of February 2026
At The Hague, The Netherlands

²⁷ See the guidance provided by the Appeals Chamber in the *Ntaganda* Appeals Judgment: ICC-01/04-02/06-2666-Red, para. 177.