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No.: ICC-01/14-01/18  
Date: 25 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 third request for non-disclosure under rule 81(2) of materials collected during the investigation of potential offences under article 70", 17 April 2023, ICC-01/14-01/18-1839-Conf-Exp

**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**

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**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 seven items of evidence critical to its investigation of potential article 70 offences, pursuant to rule 81(2) of the Rules of Evidence and Procedure (“Rules”).<sup>1</sup> The items consist of an Investigator’s Report detailing [REDACTED], originating from [REDACTED]; as well as a corroborating statement of [REDACTED] and its associated exhibits (“Materials”). For the reasons elaborated below, withholding the Materials is warranted and justified at this stage. Their disclosure would jeopardise the investigation, as well as potentially the safety and security of former and prospective witnesses.

## II. CONFIDENTIALITY

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

## III. SUBMISSIONS

### A. Background

3. From [REDACTED].<sup>2</sup> [REDACTED]<sup>3</sup> [REDACTED],<sup>4</sup> [REDACTED]<sup>5</sup> [REDACTED]<sup>6</sup> [REDACTED];<sup>7</sup> and [REDACTED].<sup>8</sup> [REDACTED].

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<sup>1</sup> The Materials, available in its Annex comprise: [REDACTED].

<sup>2</sup> [REDACTED].

<sup>3</sup> [REDACTED].

<sup>4</sup> [REDACTED].

<sup>5</sup> [REDACTED].

<sup>6</sup> [REDACTED].

<sup>7</sup> See Annex, p. 9, CAR-OTP-00001364-000005, paras. 23-24. [REDACTED].

<sup>8</sup> See below, para. 4.

## B. Summary of Materials

4. The Materials contain disclosable information under rule 77 of the Rules, consisting of:

a) Information obtained by investigators on 23 March 2023 from [REDACTED] relating to a prior security incident following his testimony. For this purpose, the information was recorded in an Investigator Report.<sup>9</sup>

- As the Investigator Report describes, [REDACTED],<sup>10</sup> [REDACTED].<sup>11</sup> [REDACTED].<sup>12</sup> [REDACTED].

b) Information obtained by investigators between 29 March 2023 and 3 April 2023 from [REDACTED]<sup>13</sup> [REDACTED] [REDACTED],<sup>14</sup> [REDACTED].<sup>15</sup>

- [REDACTED].<sup>16</sup> [REDACTED];<sup>17</sup> and [REDACTED],<sup>18</sup> [REDACTED],<sup>19</sup> [REDACTED];<sup>20</sup> and [REDACTED].<sup>21</sup> [REDACTED].<sup>22</sup> [REDACTED].<sup>23</sup>

- Notably, there is precedent for such conduct by [REDACTED] in this case from as far back as June 2021. In [REDACTED] of 21 June 2021,

<sup>9</sup> See Annex, p. 3-4: CAR-OTP-00001430.

<sup>10</sup> See Annex, p. 3: CAR-OTP-00001430, at 000001, paras. 2-3; see also CAR-OTP-00001364, at 000006, para. 27, [REDACTED].

<sup>11</sup> See Annex, p. 3: CAR-OTP-00001430, at 000001, para. 2.

<sup>12</sup> See Annex, p. 4: CAR-OTP-00001430, at 000002, para. 6.

<sup>13</sup> See Annex, p. 5-12: CAR-OTP-00001364.

<sup>14</sup> CAR-OTP-00001366. This audio file is not annexed to the present filing. The Prosecution is prepared to provide the Chamber with the Sango audio file and, upon finalisation, its transcript and translation, as the Chamber may deem necessary.

<sup>15</sup> See Annex, p. 13, 14: CAR-OTP-00001365; CAR-OTP-00001368.

<sup>16</sup> See Annex, p. 8: CAR-OTP-00001364, at 000004, para. 16.

<sup>17</sup> ICC-01/14-01/18-1335-Conf-Exp.

<sup>18</sup> See Annex, p. 13: CAR-OTP-00001365.

<sup>19</sup> See Annex, p. 8: CAR-OTP-00001364, at 000004, paras. 18, 19.

<sup>20</sup> [REDACTED].

<sup>21</sup> [REDACTED].

<sup>22</sup> See Annex, p. 9: CAR-OTP-00001364, at 000005, para. 21.

<sup>23</sup> See Annex, p. 8: CAR-OTP-00001364, at 000004, para. 20 (emphasis added).

[REDACTED] informed [REDACTED] that he had reliable and corroborated (by an independent source) [REDACTED] information regarding [REDACTED] confidential testimony in this case.<sup>24</sup> This conversation occurred after [REDACTED] had been contacted the previous day by one [REDACTED].<sup>25</sup>

- *Second*, as [REDACTED] statement describes, [REDACTED] also explained that [REDACTED] had been instructed by NGAISSONA to ‘call all witnesses that provided *favourable* testimonies to congratulate them’.<sup>26</sup> Again, there is other evidence that this instruction had been followed through. About ten days after his testimony [REDACTED],<sup>27</sup> [REDACTED] (P-2843) mentioned [REDACTED] that he had been contacted by NGAISSONA, through a “third-party” in BANGUI, to ‘thank him’ for everything that he did for him (during his testimony),<sup>28</sup> perceived as *favourable* to the Accused. However, commending the witnesses’ loyalty to NGAISSONA and implicitly encouraging such future witness behaviour breaches the Familiarisation Protocol,<sup>29</sup> and is moreover, consistent with the existence of a prior understanding or agreement, as well as unauthorised contact or corrupt influence.<sup>30</sup>

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

<sup>24</sup> See Annex, p. 48-50: CAR-OTP-00000079, at 000034-000036.

<sup>25</sup> See Annex, p. 48: CAR-OTP-00000079, at 000034 [REDACTED].

<sup>26</sup> See Annex, p. 8-9: CAR-OTP-00001364, at 000004-000005, para. 20 (emphasis added).

<sup>27</sup> [REDACTED].

<sup>28</sup> See Annex, p. 71: CAR-OTP-00000080, at 000013, [REDACTED] (emphasis added).

<sup>29</sup> ICC-01/14-01/18-677-Anx1, para. 101, which lifts the prohibition on discussions once the testimony is completed only between the witness and the party introducing the evidence (“Once the witness’ evidence in court is completed, the prohibition on discussions between the party introducing the evidence and the witness is lifted, unless the Chamber directs otherwise.”).

<sup>30</sup> See *Bemba et al.* Judgement, ICC-01/05-01/13-1989-Red, paras. 123, 170, 293, 298, 305, 586, 591-592 (finding that Bemba’s thanking D-55 pre-testimony and D-15 post-testimony was part of his and Kilolo’s conduct and understanding reached with the witness to provide favourable testimony, and amounted to a corrupt influence).

5. Non-disclosure is necessary to address an objectively justifiable risk of prejudice arising from providing the Materials to the Defence at this stage. It is the least intrusive means available to safeguard the article 70 investigation. Moreover, it is manifestly proportionate and not prejudicial to or inconsistent with the rights of the Accused and a fair and impartial trial.<sup>31</sup>

6. *First*, there is an objectively justifiable risk of prejudice to the article 70 enquiry which would arise from disclosing the Materials. The Material acquired during the course of the Prosecution's investigation tends to implicate persons associated with NGAISSONA [REDACTED], or a [REDACTED] for his Defence [REDACTED], [REDACTED]. It further tends to show that [REDACTED] improper actions have been continuing since 2021, when he, together with [REDACTED] and in breach of NGAISSONA's contact restrictions, facilitated a call between NGAISSONA and [REDACTED], by placing the call on speakerphone, moreover, in the presence of [REDACTED].<sup>32</sup> It also appears that NGAISSONA has been able to relay information directly to [REDACTED].<sup>33</sup> In such circumstances, the objective risk to the investigation is heightened. [REDACTED].<sup>34</sup>

7. *Second*, non-disclosure of the Materials is necessary and the least intrusive measure available to the Prosecution to safeguard the continuing investigation pending its conclusion.<sup>35</sup> Disclosure of the Materials even with warnings or guarantees to maintain their confidentiality would be insufficient to address the risk of prejudice to the investigation. This is particularly so where the Accused and persons linked to the Defence are implicated in the activities under investigation.

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<sup>31</sup> 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.

<sup>32</sup> CAR-OTP-2130-4051, at 4052, para. 6; CAR-OTP-2127-8340, at 8341.

<sup>33</sup> ICC-01/14-01/18-1536-Conf-Exp, para. 8 [REDACTED] (emphasis added).

<sup>34</sup> ICC-01/14-01/18-1732-Conf-Red, paras. 2 [REDACTED] and 8, referring to the Registry's report ICC-01/14-01/18-1719-Conf-Exp, paras. 12-20, [REDACTED].

<sup>35</sup> The Prosecution is still awaiting the execution of several Requests for Assistance to obtain [REDACTED].

8. *Third*, non-disclosure of the Materials is proportionate at this stage, as it is not prejudicial to or inconsistent with the rights of the Accused and a fair and impartial trial. The relevant information does not go to substantive issues and has minimal ‘material’ value in the case being tried before the Chamber. It is again 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).<sup>36</sup>

#### IV. CONCLUSION

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



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**Mame Mandiaye Niang, Deputy Prosecutor**

Dated this 25<sup>th</sup> day of February 2026

At The Hague, The Netherlands

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<sup>36</sup> See the guidance provided by the Appeals Chamber in the *Ntaganda* Appeals Judgment: ICC-01/04-02/06-2666-Red, para. 177.