

**Cour
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**International
Criminal
Court**



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No: **ICC-01/14-01/18**
Date: **28 August 2020**

TRIAL CHAMBER V

Before:

**Judge Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

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

Public

**Public Redacted Version of Ngaïssona Defence Response to the “Yekatom Defence
Motion to Lift Non-Standard Redactions: Seleka Investigation”, 28 August 2020**

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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(Participation/Reparation)**

Applicants

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I. Introduction

1. The Defence team for Mr Ngaïssona (“Defence”) fully joins the “Yekatom Defence Motion to Lift Non-Standard Redactions: Seleka Investigation” (“Motion”) filed on 17 August 2020, respectfully requesting that Trial Chamber V (“Chamber”) lift the non-standard redactions granted by the Pre-Trial Chamber for Prosecution Witnesses P-0291, P-0567 and P-0627 based on the Prosecution’s ongoing investigation into Seleka crimes.¹

II. Confidentiality

2. The present Response is filed confidentially pursuant to regulation 23bis(2) of the Regulations of the Court as it refers to documents of the same classification. A public redacted version is filed simultaneously.

III. Submissions

3. The Defence for Mr Ngaïssona formally joins and fully supports the arguments put forth by the Defence for Mr Yekatom in its Motion.
4. *First*, the underlying reasoning which initially led the Pre-Trial Chamber to grant the Prosecution’s request to apply non-standard redactions to the statements of Witnesses P-0291, P-0567 and P-0627 in the context of the limited scope of the confirmation of charges, no longer applies at this stage of trial proceedings, warranting the lifting of the redactions.²
5. The overriding principle of full disclosure, a fundamental right afforded to Mr Ngaïssona by the Rome Statute cannot be lightly disturbed.³ The withholding of portions of witness statements whom the Prosecution intends to call live is

¹ ICC-01/14-01/18-626-Conf. For the relevant procedural history, see paras 2-15.

² ICC-01/14-01/18-232-Conf-Red; ICC-01/14-01/18-249-Conf-Red; *See* ICC-01/14-01/18-626-Conf, paras 17-18.

³ ICC-01/14-01/18-169, para. 16; Article 67(2), Rome Statute.

particularly egregious in that it impedes the Defence's ability to analyse and challenge the credibility of witnesses.⁴ This prejudice is heightened at the current trial stage of the proceedings, where the Trial Chamber is tasked with evaluating witnesses' credibility, in order to eventually make a final determination on Mr Ngaïssona's individual responsibility.⁵

6. *Second*, with respect to the first prong of the test under rule 81(2) of the Rules of Procedure and Evidence,⁶ as argued by the Defence for Mr Yekatom, the Prosecution has already disclosed extensive evidence describing Seleka-related crimes and which implicates high-level Seleka leaders. It is therefore inconceivable that the disclosure of the redacted material for Witnesses P-0291, P-0567 and P-0627, would reveal the direction and targets of the Seleka investigation "when viewed in the context of all of the disclosures that have already been made", in particular in view of the specific nature of the three witnesses' testimony.⁷ In any event, at this stage of the proceedings, these justifications do not warrant that the Prosecution's non-standards redactions be maintained.

7. *Third*, the Prosecution's discretionary decision to launch parallel investigations into Seleka crimes cannot justify the violation of its obligations and Mr Ngaïssona's right to full disclosure.⁸ Non-disclosure of information in the statements and transcripts of Prosecution Witnesses P-0291, P-0567 and P-0627 is inconsistent with the rights of the accused and a fair and impartial trial. Information and material which relate to the Prosecution's investigation into Seleka crimes are by their nature disclosable to the Defence, in particular

⁴ [REDACTED]; ICC-01/14-01/18-553-Conf-AnxA.

⁵ See ICC-01/14-01/18-626-Conf, paras 17-19.

⁶ *Prosecutor v Katanga and Ngudjolo*, Judgment on the Appeal of the Prosecutor against the Decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Request for Authorisation to Redact Witness Statements", 13 May 2008, ICC-01/04-01/07-475, paras 61, 70.

⁷ ICC-01/14-01/18-626, paras 25-29.

⁸ ICC-01/14-01/18-169, para. 16; Article 67(2), Rome Statute.

material which relates to the timeframe of the confirmed charges. The Presiding Judge during the first status conference acknowledged the potentially exonerating nature of this material.⁹

8. *Fourth*, with respect to the second prong of the test, namely, that an objectively justifiable risk must arise from disclosing the particular information to the receiving party, no such risk exists.¹⁰ The assumption that the Defence cannot be trusted with sensitive and confidential information is without substance or any underlying fact.¹¹ As recalled by Trial Chamber I in the *Gbagbo and Blé Goudé* case, in rejecting the Prosecution's request to apply non-standard redactions to protect its parallel investigations in Côte d'Ivoire:

(...) The Chamber recalls that both accused remain in detention and that their respective defence teams are bound by high standards of professional conduct. To the Chamber's knowledge, there have not been any substantiated incidences of unauthorised disclosure of confidential information by the Defence.¹²

9. The Defence is bound by the code of professional conduct to not disclose such information.¹³ To rely on this "risk" in order to continue withholding vital information from the Defence would negate any accused person's fundamental right to disclosure in instances where the Prosecution exercises its discretion to conduct parallel investigations.

⁹ ICC-01/14-01/18-T-012-ENG ET, page 14, lines 6-13. See ICC-01/14-01/18-625-Conf, para. 5.

¹⁰ *Prosecutor v Katanga and Ngudjolo*, Judgment on the Appeal of the Prosecutor against the Decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Request for Authorisation to Redact Witness Statements", 13 May 2008, ICC-01/04-01/07-475, paras. 61, 70.

¹¹ ICC-01/14-01/18-625-Conf, para. 8.

¹² ICC-02/11-01/15-1109-Red, para. 5; ICC-01/14-01/18-625-Conf, para. 8.

¹³ Article 8 "Respect for professional secrecy and confidentiality", ICC Code of Professional Conduct for Counsel, ICC-ASP/4/Res.1.

RELIEF SOUGHT

10. The Defence joins the Defence for Mr Yekatom in respectfully requesting the Chamber to:

- **LIFT** the redactions in the statements and transcripts of Prosecution Witnesses P-0291, P-0567 and P-0627 in their entirety.

Respectfully submitted,



Mr Knoops, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 28 August 2020,
At The Hague, the Netherlands.