

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **02 March 2021**

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 the “Ngaïssona Defence Response to the Prosecution
Request for non-standard redactions”**

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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I. Introduction

1. On 5 August 2020, the Prosecution submitted the Confidential Redacted version of its “Prosecution’s Request for Non-Standard Redactions under Rule 81(2) for Trial Witnesses [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]” (“Request”), originally filed on an *ex parte* basis on 30 July 2020.¹
2. In its Request, the Prosecution seeks authorization from Trial Chamber V (“Chamber”) to apply extensive non-standard redactions pursuant to rule 81(2) of the Rules of Procedure and Evidence (“Rules”) which in its view are necessary to protect [REDACTED]. On 13 August 2020, the Defence for Mr Alfred Rombhot Yekatom filed its response, requesting the Chamber to deny the Prosecution’s motion in its entirety (“Response”).²

II. Confidentiality

3. 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.

III. Submissions

4. The Defence for Mr Ngaïssona formally joins and fully supports the arguments put forth by the Defence for Mr Yekatom in its Response.³
5. The non-disclosure of evidence to the Defence is an exception to the overriding principle of full disclosure, a fundamental right guaranteed to ICC

¹ ICC-01/14-01/18-609-Conf-Red.

² ICC-01/14-01/18-623-Conf, para. 39

³ ICC-01/14-01/18-623-Conf, paras 9-39.

defendants under the Rome Statute.⁴ The Prosecution's discretionary decision [REDACTED] cannot justify the violation of its obligations and Ngaïssona's right to full disclosure.⁵ Information and material which relate to the Prosecution's [REDACTED] are by their nature disclosable to the Defence, in particular material which relates to the timeframe of the confirmed charges. The Prosecution's obligation to disclose [REDACTED] should be interpreted broadly. The Presiding Judge during the first status acknowledged the potentially exonerating nature of this material.⁶

6. In its Request, the Prosecution seeks to withhold information from the defence which relates specifically to the time frame of the charges brought against Mr Ngaïssona.⁷ For instance, the Prosecution alleges that [REDACTED] statement "provides relevant information in relation to the linkage between the National Coordination and the Provinces, the Com-Zones, the organization of the movement, meetings, logistics and arming" as well as evidence about "[Mr] Ngaïssona's roles representing the Anti-Balaka" and his alleged "financial contributions" made to the Anti Balaka prior to 2014.⁸ Despite this, the Prosecution seeks to redact significant portions of [REDACTED] testimony, which is antithetical to its statutory obligations towards Mr Ngaïssona.⁹

⁴ ICC-01/14-01/18-169, para. 16; Article 67(2), Rome Statute.

⁵ As argued by the Defence for Mr Yekatom, in demonstrating the Prosecution's failure to explore less restrictive protective measures, "[w]hen faced with a decision between the Prosecution's discretion and the accused's rights, the Trial Chamber should come down on the side of the rights of the accused to a fair trial", ICC-01/14-01/18-623-Conf, para. 29.

⁶ ICC-01/14-01/18-T-012-ENG ET, page 14, lines 6-13.

⁷ ICC-01/14-01/18-609-Conf-Red, paras 12, 37.

⁸ ICC-01/14-01/18-609-Conf-Red, para. 25.

⁹ ICC-01/14-01/18-609-Conf-Red, paras 29-30.

7. Moreover, the Prosecution's Request is overly broad and falls squarely short of meeting the test for non-disclosure.¹⁰ For instance, with respect to the fourth prong of the test – whether the proposed non-disclosure is consistent with the rights of the accused and a fair and impartial trial – the Prosecution merely states that its proposed non-standard redactions would not prejudice the fair trial rights of Mr Ngaïssona, without elaborating or providing cogent argumentation.¹¹
8. Additionally, the Prosecution's Request is based on the assumption that the Defence cannot be trusted with sensitive and confidential information.¹² First, this assumption is without substance or any underlying fact. Second, the Defence is bound by the code of professional conduct to not disclose such information.¹³ Third, such an argument is not only speculative, but also disconcerting; brought to its logical conclusion, this argument would negate any accused person's fundamental right to disclosure in instances where the Prosecution exercises its discretion to conduct parallel investigations.

RELIEF SOUGHT

9. The Defence respectfully requests the Chamber to:

– **REJECT** the Prosecution's Request in its entirety.

Respectfully submitted,

¹⁰ *Prosecutor v Bemba et al*, Decision on Modalities of Disclosure, 22 May 2015, ICC-01/05-01/13-959, para. 11; ICC-01/14-01/18-623-Conf, para. 9.

¹¹ ICC-01/14-01/18-609-Conf-Red, paras 10, 17, 22, 27, 34, 39.

¹² ICC-01/14-01/18-609-Conf-Red, para. 4; ICC-01/14-01/18-623-Conf, paras 19-25.

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



Mr Knoops, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 02 March 2021,

At The Hague, the Netherlands.