

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **03 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 ‘Confidential redacted version of ‘Prosecution’s Request for Non-Standard Redactions under Rule 81(2) for Materials Relating to Witnesses [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], 30 October 2020, ICC-01/14-0/18-706-Conf-Exp’”

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 9 November 2020, the Prosecution submitted the Confidential Redacted version of its “Prosecution’s Request for Non-Standard Redactions under Rule 81(2) for Materials Relating to Witnesses , [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], 30 October 2020, ICC-01/14-0/18-706-Conf-Exp” (“Request”), originally filed on an *ex parte* basis on 30 October 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 [REDACTED]. The Defence for Mr Ngaïssona (“the Defence”) hereby provides its response.
3. The confidential version of the Request is so extensively redacted that it gives minimal or sometimes no information to the Defence regarding the requested redactions. Therefore, the Defence is unable to ascertain whether the Prosecution’s requested redactions are in conformity with the Chamber’s decision (“First Decision”) on the Prosecution’s first request to apply non-standard redactions to Witness materials, which relate to [REDACTED].² In these circumstances, the Defence can only defer to the Chamber’s determination on whether the requested redactions for Witnesses [REDACTED], [REDACTED], [REDACTED] do indeed relate to specific incidents, which reveal [REDACTED], and if so, whether applying the redactions is consistent with the rights of Mr Ngaïssona.³ For witnesses, [REDACTED], [REDACTED], who are witnesses who are to testify in the

¹ ICC-01/14-01/18-706-Conf-Red.

² ICC-01/14-01/18-670-Conf-Red.

³ First Decision, paras 8-10, 15, 22-25, 27,33, 37.

present case, and for witness [REDACTED], the Defence is able to oppose certain requested redactions since on the basis of the limited information it has been provided the proposed redactions appear to go beyond the parameters set by the Chamber in its first Decision.

II. Confidentiality

4. The present Response is filed as confidential pursuant to regulation 23bis(2) of the Regulations of the Court as it refers to documents of the same classification.

III. Submissions

5. In the First Decision on non-standard redactions relating to [REDACTED], the Chamber rejected the Prosecution's request when the information it sought to redact information related to *inter alia*:

- (i) [REDACTED], where the information is (a) general in nature and does not reveal specific incidents, or (b) relates to events happening on 5 December (...)
- (ii) [REDACTED].⁴

A key consideration in authorising the redactions was whether the information contained in the redactions revealed [REDACTED].⁵

6. In balancing the interests of Mr Ngaïssona in the information contained in the proposed redactions against the Prosecution's interest [REDACTED], the Chamber further took into account the following : whether the information was relevant to a known issue in the case,⁶ whether it was information that could be

⁴ First Decision, para. 22.

⁵ Ibid., paras 15, 27, 33, 37.

⁶ Ibid., paras 19, 42.

potentially exculpatory under Article 67(2), or material to the preparation of the Defence under rule 77 of the Rules,⁷ and lastly, the fact that [REDACTED].⁸

7. Guided by this precedent, the Defence requests that the Chamber reject the proposed non-standard redactions to certain information contained in Witnesses [REDACTED], [REDACTED], and [REDACTED] statements, and defers to the Chamber's determination for the remaining redactions, which the Defence will not address in the present submissions.

Witness [REDACTED]

8. Witness [REDACTED] is a witness who is scheduled to testify in the present case. [REDACTED]. The Prosecution seeks to apply non-standard redactions to both his first and second statements.⁹ The Defence generally opposes the proposed redactions to both statements to the extent that the information contained therein [REDACTED]. This information has been made known to the general public or is accessible to it, and therefore its disclosure to the defence does not pose an objectively justifiable risk to [REDACTED]. This is especially true with respect to the second statement,¹⁰ which describes [REDACTED].
9. More specifically, the Defence strongly opposes the proposed redactions related to [REDACTED], contained both in Witness [REDACTED] first and second statements.¹¹ The Prosecution admits that the information is disclosable

⁷ Ibid., para. 9.

⁸ Ibid., paras 24, 27.

⁹ Request, para. 25.

¹⁰ [REDACTED].

¹¹ First statement, [REDACTED]. The Request also seeks to redact [REDACTED], which immediately follow [REDACTED]. Since these paragraphs are completely redacted, it is unknown to the Defence if they refer to [REDACTED]. In the event they are related to this incident, the Defence requests the Chamber to reject the Prosecution's request. The Defence makes a similar request for the Witness' second statement, [REDACTED]. From the unredacted paragraphs contained in the statement, it appears that these redacted paragraphs could refer or be related to [REDACTED], and in that event the Defence requests that the Chamber reject the Prosecution's request to redact [REDACTED].

under rule 77 of the Rules, a consideration that tips the balance in favour of rejecting the requested redaction.

10. The Defence further submits that this event also relates to live issues in the case, thereby further justifying that the Defence have access to the entirety of [REDACTED] statement relating to this incident. First, in the Prosecution's Trial Brief, the Prosecution alleges that [REDACTED].¹² While the proposed redactions relate to the [REDACTED], the event is relevant to this allegation in that it tends to show that Mr Ngaïssona [REDACTED]. Second, since the witness [REDACTED]. The circumstances of Mr Ngaïssona's flight to Cameroon and activities there are at the core of the present case.¹³

11. With respect to [REDACTED], the Defence defers to the Chamber's determination since the Prosecution submits that the Chamber authorized redactions to the same incident contained in the Prosecution's first request on non-standard redactions to Witness materials.

Witness [REDACTED]

12. Witness [REDACTED] is similarly scheduled to testify in the present case. The Defence is unable to make submissions on whether the proposed redactions identify [REDACTED] and thus defers to the Chamber's determination on the matter. However, to the extent that the proposed redacted information may relate to information that is in the public domain, the Defence submits that no concrete objectively justifiable risk exists in disclosing it to the Defence, and therefore, requests the Chamber to reject the Prosecution request with respect

¹² Prosecution's Trial Brief, ICC-01/14-01/18-723-Conf, para. 181.

¹³ Confirmation Decision, ICC-01/14-01/18-403-Red-Corr, para. 101.

to redactions contained in [REDACTED].¹⁴ It appears these paragraphs relate to [REDACTED].¹⁵

Witness [REDACTED]

13. The Defence is unable to make submissions on whether the proposed redactions identify [REDACTED] and thus defers to the Chamber's determination on the matter. However, the Defence opposes redactions to information contained in [REDACTED]¹⁶ since it appears these paragraphs refer to incidents occurring on 5 December 2013. In its First Decision, the Chamber rejected certain redactions to information relating to events occurring on 5 December 2013, even though "[REDACTED]."¹⁷ The Chamber found that allowing the redactions would be disproportionate to the rights of Mr Ngaïssona since "the crimes occurred on the same day as the alleged Anti-Balaka attack on Bangui, which is at the core of the present case." Therefore, in order to not unduly prejudice the rights of Mr Ngaïssona, the Defence should have access to the entirety of the statement relating to events occurring on 5 December 2013, even if it were to identify [REDACTED].

RELIEF SOUGHT

14. The Defence respectfully,

– **DEFERS** to the Chamber's determination regarding the Prosecution's requested redactions with respect to Witnesses

¹⁴ [REDACTED].

¹⁵ Ibid.

¹⁶ [REDACTED].

¹⁷ Decision, para. 25

[REDACTED], [REDACTED], [REDACTED], [REDACTED],
[REDACTED], and [REDACTED];

– Requests the Chamber to **REJECT** the Prosecutions’ redaction requests with respect to Witnesses [REDACTED], [REDACTED], and [REDACTED] as specified above.

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 03 March 2021,

At The Hague, the Netherlands.