

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **13 October 2023**

TRIAL CHAMBER V

Before: 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 ‘Defence Response to the “Prosecution Request for Submission of the Prior Recorded Testimony of P-2200 pursuant to Rule 68(2)(c)”, (ICC-01/14-01/18-2013-Conf), filed on 1 August 2013

Source: Defence of Patrice-Edouard Ngaißsona

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. INTRODUCTION

1. The Defence for Mr Patrice-Edouard Ngaïssona ("Defence") hereby submits that the "Prosecution's Request for Submission of the Prior Recorded Testimony of P-2200 pursuant to Rule 68(2)(c)", dated 7 July 2023 (the "Request"),¹ should be rejected. As detailed below, the Defence argues that the procedural pre-condition for submitting a request pursuant to Rule 68(2)(c) of the Rules of Procedure and Evidence (the "Rules") has not been met.
2. The only documentary evidence upon which the Office of the Prosecutor (the "Prosecution") is relying to substantiate that P-2200 is deceased, and therefore unavailable to testify, is an alleged Medical Certificate of the Cause of Death ("MCCD"). The provided MCCD lacks authenticity, reliability and is devoid of probative value, such that the allegation that P-2200 is deceased cannot be supported by it alone.
3. The Request should therefore be rejected as P-2200's death and resulting unavailability has not been sufficiently substantiated by the Prosecution.

II. PROCEDURAL HISTORY

4. On 23 June 2023, the Prosecution disclosed Trial Rule 77 package 104 comprising the Investigation Report on *Inquiries about the alleged death of CAR-OTP-P-2200*² as well as pictures of P-2200's alleged 'carnet de santé' (Health Booklet) and MCCD provided by [REDACTED], P-2201.
5. On 26 June 2023, the Defence sought through *inter partes* discussions the disclosure, or otherwise inspection, of material relating to the above-mentioned documents, the circumstances regarding their procurement, and the methods used by the Prosecution. The sought material included, *inter alia*, the alleged X

¹ ICC-01/14-01/18-1967-Conf. (the "Request")

² CAR-OTP-00001606.

rays supposedly contained in P-2200's Health Booklet, all the information that allowed Dr [REDACTED] to certify P-2200's cause of death, and P-2200's Death Certificate issued by the Town Hall (or the Mayor's Office).³

6. On 5 July 2023, the Prosecution informed the Defence that it has nothing further in its possession that is responsive to the Defence request relating to the alleged X-rays, the information that allowed [REDACTED] to certify P-2200's cause of death, and P-2200's Death Certificate.⁴
7. On 7 July 2023, the Prosecution filed the Request, with the picture of the MCCD as the sole documentary piece of evidence to support the allegation that P-2200 is deceased, thus unavailable to testify.
8. On 10 July 2023, the Defence requested the Chamber to grant an additional 11 days to respond to the Request.⁵
9. On the same day, the Defence requested the Prosecution to disclose all communication and attempted exchanges between the Prosecution and P-2200 as mentioned in paragraphs 12 and 13 of the Request.⁶ The Prosecution declined the disclosure request, contending the lack of materiality of the sought materials.⁷
10. On 13 July 2023, the Chamber granted the additional 11 days to respond to the Request, thereby extending the deadline to 1 August 2023.⁸
11. On 21 July 2023, the Defence filed its "Defence Request for Disclosure of Materials pursuant to Rule 77 of the Rules of Procedure and Evidence" (the "Disclosure Request"), seeking, *inter alia*, the disclosure or the inspection of all

³ See Defence email to the Prosecution dated 26 June 2023, at 14:04.

⁴ See Prosecution email to the Defence dated 5 July 2023, at 09:17.

⁵ See Defence email to the Prosecution dated 10 July 2023, at 13:06.

⁶ See Defence email to the Prosecution dated 10 July 2023, at 15:29.

⁷ See Prosecution email to the Defence dated 11 July 2023, at 12:48.

⁸ See email Decision on the Defence requests for extension of time, dated 13 July 2023, at 10:30.

communications and attempted exchanges between the Prosecution and P-2200, and documentation related to the funds transferred to P-2201 by the Prosecution to obtain the picture of the MCCD. The Defence also requested that the deadline to respond to the Request be suspended until the sought materials are made available to the Defence.⁹

12. Absent the Prosecution's Response to and the Chamber's ruling on the Disclosure Request, the Defence hereby submits the following response to the Request. The Defence however reserves its right to make further submissions in the event the sought materials are disclosed.

III. CONFIDENTIALITY

13. In accordance with regulation 23*bis*(1) of the Regulations of the Court, this response is filed confidentially as it responds to documents of the same classification. A public redacted version will be filed in due time.

IV. APPLICABLE LAW

14. The Defence incorporates by reference the summary of the applicable law set out by the Chamber in the "First Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(c) of the Rules" ("First Decision on Rule 68(2)(c)"),¹⁰ in paragraphs 17 to 39. The Defence reiterates that the burden of proof falls on the Prosecution to establish every factual requirement of Rule 68(2)(c) of the Rules and that the applying party must sufficiently establish their allegations and provide adequate documentation to substantiate such allegations.¹¹

⁹ ICC-01/14-01/18-1998-Conf.

¹⁰ ICC-01/14-08-1975-Conf.

¹¹ ICC-02/04-01/15-1288, para. 9.

V. SUBMISSIONS

15. The Prosecution argues that P-2200 is unavailable to testify due to his alleged passing on the sole basis of a picture of P-2200's alleged MCCD.¹² This certificate, provided to the Prosecution by P-2201, P-2200's alleged [REDACTED], is unreliable. The unreliability of the so-called certificate stems from (i) the circumstances surrounding its procurement and collection by the Prosecution, (ii) the lack of information available to Dr [REDACTED] upon which he certified P-2200's alleged cause of death, and (iii) the structure and information contained in the document itself.

i. The circumstances surrounding the procurement of the picture of the MCCD cast doubts on its authenticity and reliability

16. Regarding the methods used by P-2201 and the Prosecution to obtain the so-called MCCD, the Defence incorporates by reference its arguments and concerns raised in its Disclosure Request. The Defence recalls, in particular, P-2201's apparent financial motives behind his reluctant cooperation with the Prosecution to provide the picture of the MCCD, and the excessive amount of money (around 42.000CFA)¹³ seemingly dedicated to bribery that the Prosecution knowingly transferred to P-2201 for the purpose of obtaining the MCCD and its picture.¹⁴

17. The excuses and confusing narrative provided by P-2201 on obtaining the MCCD and the methods used by the Prosecution to obtain a self-taken picture of it cast serious doubts on the authenticity and reliability of the MCCD.

¹² Annex B to the Request.

¹³ See the Defence breakdown of the costs in ICC-01/14-01/18-1998-Conf., paras. 36 and 37.

¹⁴ ICC-01/14-01/18-1998-Conf., paras 28-39.

ii. A MCCD without an examination of a body bears no probative value

18. Dr [REDACTED] is said to have certified the cause of P-2200's alleged death. The Defence submits that Dr [REDACTED] could not have certified the cause of P-2200's death diligently and according to medical standards. According to the recommendations of the World Health Organisation (WHO) – to which CHAD is a Member State

[a] careful and respectful external examination of the deceased's body is an important part of the medical certification process, being frequently essential for the determination of the cause and manner of death" and "[...] an accurate determination of the cause and manner of death [...] is nearly always impossible without it [...].¹⁵

The recommendations carry on to explain that "[n]ot only can the external examination exclude or identify signs of injury and violence, but it can also aid in the evaluation of the circumstances surrounding death".¹⁶

19. Dr [REDACTED] did not have access to P-2200's body, as it was allegedly buried in a cemetery near [REDACTED] ([REDACTED])¹⁷ with no record of it being exhumed for further post-mortem examination. Therefore, Dr [REDACTED] certified P-2200's cause of death without having examined P-2200's body. Absent prior external examination, Dr [REDACTED]'s medical certification bears no value, whether medical or legal, and seemingly goes against the rules of ethics that govern medical practice.

¹⁵ [WHO Recommendations for conducting an external inspection of a body and filling in the Medical Certificate of Cause of Death](#), p. 21.

¹⁶ *Ibid.*

¹⁷ CAR-OTP-00001606, para. 2.

iii. *The structure of the MCCD does not reflect any regulatory standards or standard requirements*

20. At the outset, the provided MCCD fails to conform with the structure of a regulatory MCCD. According to the WHO, a MCCD should have different sections,¹⁸ including one (1) devoted to the reporting of causes of death that distinguishes the underlying cause of death¹⁹ from the contributory causes of death,²⁰ and (2) another to details that are relevant to a more complete understanding of the death such as the manner of death, or other circumstantial data. The so-called MCCD pictured by P-2201 does not have sections, period. It therefore lacks *prima facie* authenticity, credibility and reliability.

iv. *The content of the MCCD does not meet the regulatory regime or standards*

21. The purpose of a MCCD is to provide documentation on the chain of events and medical conditions that ultimately resulted in death.²¹ As such, a MCCD based upon regulatory standards should disclose specific information about the underlying cause of death and the contributory causes of death. Indeed, it should outline the “sequence of diseases, injuries, complications and/or conditions that ultimately resulted in the death”,²² associated with a time interval indicating the elapsed time between the presentation of each condition and the date of death.²³ Finally, the “[u]se of etiologically specific terminology is particularly important

¹⁸ [WHO Recommendations for conducting an external inspection of a body and filling in the Medical Certificate of Cause of Death](#), p. 27 (“Although the precise structure and content of the MCCD form varies between countries, reflecting country-specific data collection needs, the section devoted to the reporting of causes of death (Frame A) usually follows the 2016 WHO-recommended international MCCD form in most if not all countries (Annex 2).”).

¹⁹ [WHO Recommendations for conducting an external inspection of a body and filling in the Medical Certificate of Cause of Death](#), p. 27 (“[...] a causally related sequence of the diseases, injuries, complications and/or conditions that ultimately resulted in the death”).

²⁰ [WHO Recommendations for conducting an external inspection of a body and filling in the Medical Certificate of Cause of Death](#), p. 28 (“[...] significant diseases, injuries, or conditions that contributed to death”).

²¹ [WHO Recommendations for conducting an external inspection of a body and filling in the Medical Certificate of Cause of Death](#), p. 15.

²² [WHO Recommendations for conducting an external inspection of a body and filling in the Medical Certificate of Cause of Death](#), pp. 27-28.

²³ Ibid.

when describing the underlying cause of death”.²⁴ All of the above information is absent from the provided MCCD and no medical terminology is used therein. As described by the Prosecution, the MCCD “provides that “[REDACTED]” (P-2200) died on [REDACTED] March 2022, as a result of a firearm wound”, with no further information.²⁵ The MCCD therefore lacks *prima facie* authenticity, credibility and reliability.

22. P-2200 allegedly passed away in March 2022, following three gunshot wounds sustained during the [REDACTED] attack [REDACTED].²⁶ The Prosecution further relays that the gunshot “wound became infected” and suggests that such infection would have been the cause of P-2200’s death.²⁷ Given that P-2200 allegedly died almost a decade after allegedly sustaining three gunshot wounds, the cause of death cannot reasonably be an “injury”. Dr [REDACTED]’s assessment of P-2200’s cause of death as “*blessure par arme à feu*”, without mentioning the injured area as he did not examine the body, is unspecific and lacks proper medical terminology and characterisation.
23. Therefore, the picture of the MCCD provided in Annex C of the Request fails to disclose several information necessary to understand the circumstances surrounding P-2200’s alleged death. As such, Dr [REDACTED]’s assessment is etiologically incorrect and non-specific.

VI. CONCLUSION

24. In light of the above, the picture of P-2200’s so-called MCCD does not bear any probative value in establishing P-2200’s death. The Defence is not legally burdened to provide proof of life; it is for the Prosecution to provide adequate

²⁴ [WHO Recommendations for conducting an external inspection of a body and filling in the Medical Certificate of Cause of Death](#), p. 28.

²⁵ The Request., para. 14.

²⁶ CAR-OTP-00001606, para. 26.

²⁷ The Request, para. 13.

documentation to substantiate the death of the witness. Yet, the only document provided by the Prosecution to support P-2200's death, and ultimate unavailability to testify, is

- (1) a picture of a "Medical Certificate of Cause of Death";
- (2) seemingly obtained through bribery with the intentional contribution of the Prosecution;
- (3) certified by a doctor who did not examine the body of the deceased;
- (4) that neither follows the standard structure nor discloses the correct information;
- (5) that lacks etiologically specific terminology, and
- (6) that was provided by a third party whose reluctant cooperation with the Prosecution seems to be financially motivated.

25. The Defence submits that the picture of the MCCD does not display any *indicia* of authenticity and reliability and is thus devoid of probative value. Absent any other corroborative documentary evidence, the allegation that P-2200 has died is not substantiated by the Prosecution.
26. Therefore, the Request should be rejected. Nonetheless, this would be without prejudice for the Prosecution to request anew the submission of P-2200's Prior Statement pursuant to Rule 68(2)(c) of the Rules, should it provide an official Death Certificate – not a picture of it – from the Mayor's Office or the Town Hall.²⁸ Should that be the case, the Defence reserves its right to provide further observations on the merits.

²⁸ CAR-OTP-00001606, para. 26.

VII. RELIEF SOUGHT

27. The Defence hereby respectfully requests the Chamber to:

REJECT the Prosecution's Request for Submission of the Prior Recorded Testimony of P-2200 pursuant to Rule 68(2)(c).

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 13 October 2023

At The Hague, the Netherlands.