

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/14-01/21
Date: 07 February 2025

TRIAL CHAMBER VI

Before: Judge Miatta Maria Samba, Presiding Judge
Judge María del Socorro Flores Liera Title
Judge Sergio Gerardo Ugalde Godinez Title
Judge Keebong Paek, Alternate Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI

Public
with Confidential Annexes A, B, C and D

Prosecution Response to Defence Consolidated Request
“Demande consolidée de la Défense visant à obtenir la divulgation d’éléments nécessaires à la préparation de la Défense conformément à la Règle 77 du Règlement de procédure et de preuve et visant à obtenir la levée d’un certain nombre d’expurgations” (ICC-01/14-01/21-913-Conf)

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**

☒ **Counsel for the Defence**

SAID Defence Team

☒ **Legal Representatives of the Victims**
Legal Representative of Victims - OPCV

☐ **Legal Representatives of the Applicants**

☐ **Unrepresented Victims**

☐ **Unrepresented Applicants**
(Participation/Reparation)

☐ **The Office of Public Counsel for Victims**

☐ **The Office of Public Counsel for the Defence**

☐ **States' Representatives**

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☐ **Counsel Support Section**

☐ **Victims and Witnesses Unit**

☐ **Detention Section**

☐ **Victims Participation and Reparations Section**

☐ **Other**

I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) submits this communication regarding the disclosure of evidence.

II. CONFIDENTIALITY

2. Pursuant to regulation 23bis(2) of the Regulations of the Court, the annexes appended to this submission are classified as confidential since they contain confidential information. Public redacted versions shall be filed as soon as practicable.

III. THE BACKGROUND

3. In December 2024, the Defence sent to the Prosecution, several requests for additional disclosures in relation to twenty (20) trial witnesses.
4. On 23 January 2025, the Prosecution sent a Consolidated Response to the Defence in relation to the above requests (ANNEX A).
5. On 28 January 2025, the Prosecution disclosed to the Defence of Mahamat Said Abdel Kani (“Mr Said”) “Trial INCRIM package 178” containing 56 items. “Trial INCRIM package 178” consists of additional identifying documents and lesser redacted versions of documents related to the twenty (20) trial witnesses, namely P-1970, P-2087, P-1277, P-2042, P-1523, P-1825, P-0100, P-2295, P-0966, P-0342, P-0882, P-1427, P-1424, P-1420, P-1297, P-2269, P-3053, P-1313, P-0881 and P-1004.
6. On the same date, the Prosecution also disclosed “Trial Rule 77 package 136” containing 15 items. “Trial Rule 77 package 136” consists of identifying documents and lesser redacted versions of documents related to six (6) trial witnesses P-2337, P-1427, P-0966, P-2269, P-3112 and P-2295.

7. On 30 January 2025, the Defence filed a consolidated request, comprising 38 annexes, hereinafter referred to as the (“Consolidated Request”) (ANNEX B),¹ requesting the Chamber to order the disclosure of materials. In Annex 7² of the Consolidated Request, the Defence lists items for disclosure, already addressed by the Prosecution in 2024 and the reasons for non-disclosure. In Annex 38³ of the Consolidated Request, the Defence seeks disclosure of nine (9) items.

IV. THE APPLICABLE LAW

8. The Prosecution's obligations on disclosure is set out under article 67(2) of the Rome Statute (the “Statute”) and Rule 77 of the Rules of Procedure and Evidence (the “Rules”). The Prosecution respectfully submits the duty lies with it to make a determination on the materiality of the items to be disclosed.⁴
9. In this vein, the Chamber found in *Bemba* that:⁵

“... the obligation of the prosecution is to permit inspection of any documents, and other items as listed in Rule 77 of the Rules, which are material to the preparation of the defence. The requirement, therefore, is not for the prosecution to offer everything in its possession on an issue to the defence for inspection, in order for the latter to make its own selection; it is, instead, to provide all the items that are material to the preparation of the defence. This inevitably involves an exercise of judgment on the part of the prosecution as to what is relevant (“material”), on the basis of all the available information, and including anything revealed to the accused. It is to be observed that similarly under Article 67(2) of the Statute

¹ Demande consolidée de la Défense visant à obtenir la divulgation d’éléments nécessaires à la préparation de la Défense conformément à la Règle 77 du Règlement de procédure et de preuve et visant à obtenir la levée d’un certain nombre d’expurgations.

² ANNEXE 7 – Confidentiel- Tableau récapitulatif des demandes présentées au cours du cas de l’Accusation et pour lesquelles la Défense maintient sa demande.

³ ANNEXE 38 - ConfidentielTableau récapitulatif des demandes ou relances envoyées depuis le 6 décembre 2024 et auxquelles l’Accusation n’a pas répondu.

⁴ Paragraph 7 of the decision in *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* (ICC-01/14-01/18-2474-Red 26-09-2024 4/5 T);

⁵ Situation in the Central African Republic in the case of the Prosecutor v. Jean-Pierre Bemba Gombo No. ICC-01/05-01/08-632 para. 20.

the Prosecutor must assess the material and disclose those items which "he [...] believes" satisfy the statutory criteria."

10. The Chamber further stated that:

*"Furthermore, for the reasons set out above, the Chamber rejects the defence submission that the prosecution has an obligation to provide the defence with all the material relating to an issue that is in its possession, to enable the accused to analyse it and to assess for himself whether or not it is relevant to the submissions he wishes to advance. The prosecution does not have the obligation of "handing the defence the keys to the warehouse" in this way."*⁶

V. SUBMISSIONS

(a) Basis for non-disclosure by the Prosecution for Rules 68(2)(b) and (c) witnesses

11. The Prosecution respectfully submits that it has provided all the items that are material to the preparation of the Defence case. Additionally, nineteen (19) witnesses referred to in the Consolidated Request have been admitted by the Chamber pursuant to Rules 68(2)(b) or 68(2)(c), after the requisite criteria set out in the Rules were met. In light of this procedure, the Prosecution considers its obligations under the Statute and Rules fulfilled. These witnesses and their identities were the subject of rulings by the Trial Chamber, as listed below:

- (i) In relation to Witnesses P-0881, P-1004, P-1297, P-1313, P-1420, P-3053 - Decision on the Prosecution's Request under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of Six Witnesses, dated 20 October 2022;

⁶ No. ICC-01/05-01/08 –632 para. 26.

- (ii) In relation to Witnesses P-0100, P-1277, P-1424, P-1427, P 1523, P-1825, P-1970, P-2042, P-2087, P-0529, P-0882 and P-0966 – (a) Decision on the Prosecution’s First, Second and Fourth Requests Pursuant to Rule 68(2)(b) of the Rules, dated 20 October 2022, and (b) Decision on the Certification of Accompanying Declarations Made by Witnesses Pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence dated 2 August 2024;
- (iii) In relation to P-2386 - a) Decision on the Prosecution’s First, Second and Fourth Requests Pursuant to Rule 68(2)(b) of the Rules, dated 20 October 2022, and (b) Decision on the Certification Procedure pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence concerning Witness P-2386, dated 3 October 2024;
- (iv) In relation to Witness P-1432- (a) Decision on the Prosecution’s Sixth Request Pursuant to Rule 68(2)(b) of the Rules dated 21 November 2022 and (b) Decision on the Certification of Accompanying Declarations Made by Witnesses Pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence dated 2 August 2024; and
- (v) In relation to Witness P-2295 - Decision on the Prosecution Requests pursuant to Rule 68(2)(b) to Introduce the Prior Recorded Testimony of P-0358, P-1180, P-2263 and P-2295 dated 21 November 2022.

12. In accordance with its ongoing duty under the Statute and the Rules, the Prosecution has carefully assessed each request made in respect of the individual witnesses and disclosed or provided lesser redacted material.

(b) Call Date Record Reports

13. Additionally, the Defence has been provided with relevant Call Data Record reports to inform the disclosure process. The material was provided to the Defence

since August 2021, with additional disclosures from May 2022 to December 2022, as detailed in ANNEX C. The Prosecution is hence, not obliged to perform further analysis to assist the Defence in its consideration of the attribution process. The Prosecution respectfully submits that the Defence can conduct its own analysis and/or investigations as deemed fit based on the data provided.

(c) Prosecution position on Annexes 7 and 38 of the Consolidated Request

14. The Prosecution response is provided in ANNEX B for items listed in Annexes 7 and 38 of the Consolidated Request.

(d) Other matters raised in the Consolidated Request

P-2872

15. The Prosecution notes that with respect to P-2872, the Defence was provided with the two requested items ⁷ on 12 May 2022⁸ and 28 January 2025.⁹ However, the names of his parents and his place of residence were redacted in these two items. The Prosecution maintains these redactions to ensure safety of the parents and of the witness himself. Additionally, P-2872 previously informed he should be contacted through his legal counsel.

P-2926

16. The Prosecution respectfully submits that the confidential versions of the transcripts of P-2926's testimony in *Yekatom and Ngaissona* require prior authorisation of Trial Chamber V before disclosure. The authorisation of Trial Chamber V was sought by the Prosecution for the transcripts of thirty-four (34)

⁷ CAR-OTP-2131-0401 and CAR-OTP-2131-0397.

⁸ Pre-Trial Rule 77 package 033, 12 May 2022.

⁹ Trial Rule 77 package 136, 28 January 2025.

witnesses,¹⁰ excluding that of P-2926, because he was not a witness in the case. The Prosecution seized Trial Chamber V for access to the confidential transcripts of P-2926 and shall disclose them once available.

(e) Disclosure of items arising out of the Consolidated Request

17. The Prosecution is in the process of disclosing items for P-1339, P-1825, P-1297, P-0882 and P-1313, in Trial INCRIM package 179, and items for P-0100 in Trial Rule 77 package 137, which will be received by the Defence early next week.

18. The Prosecution respectfully submits that it has complied with its disclosure obligations providing material evidence underpinning the charges against Mr Said. A total of 19308 items has been disclosed between 2 March 2021 and January 2025, detailed in ANNEX D, allowing the Defence to effectively prepare its case.

VI. RELIEF SOUGHT

19. For the above reasons, the Prosecution respectfully requests the Chamber to reject the remainder of the Defence requests.



Karim A. A. Khan KC, Prosecutor

Dated this 7th day of February 2025

At The Hague, The Netherlands

¹⁰ See ICC-0114-0118-1129 in relation to P-0291, P-0884, P-0965, P-1847, P-2027, P-2251, P-2328 and P-2841; ICC-0114-0118-1448 in relation to P-0287, P-0801, P-0808, P-0876, P-0889, P-0992, P-0966, P-0975, P-1339, P-1521, P-1719, P-2232, P-2269, and P-2843; ICC-0114-0118-1465 in relation to P-0291, P-0884, P-0966, P-0975, P-1339, P-2232, P-2251, P-2269, and P-2328; ICC-0114-0118-1736 in relation to P-1339 ; and ICC-0114-0118-1840 in relation to P-2625; ICC-01/14-01/18-2487 in relation to D30-4756.