

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No.: ICC-01/14-01/21
Date: 25 February 2025**

TRIAL CHAMBER VI

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

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF
*THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public

Decision on Disclosure Disputes

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

☒ **The Office of the Prosecutor**

☒ **Counsel for the Defence**

☒ **Legal Representatives of the Victims**

☐ **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**

☐ **Amicus Curiae**

REGISTRY

Registrar
Mr Osvaldo Zavala Giler

☐ **Counsel Support Section**

☐ **Victims and Witnesses Unit**

☐ **Detention Section**

☐ **Victims Participation and Reparations
Section**

☐ **Other**

TRIAL CHAMBER VI of the International Criminal Court, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, having regard to articles 64, 67 and 69 of the Rome Statute (the ‘Statute’), rules 76, 77, 81 and 83 of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on Disclosure Disputes’.

I. PROCEDURAL HISTORY

1. On 9 March 2022, the Chamber issued the first set of directions on the conduct of proceedings (the ‘First Directions’).¹

2. On 2 September 2022, the Chamber adopted the Protocol on the practices to be used to familiarise witnesses for giving evidence² and the Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses.³

3. On 16 September 2022, the Chamber issued a second set of directions (the ‘Second Directions’).⁴

4. On 8 October 2024, the Chamber issued the Third Directions on the Conduct of Proceedings (the ‘Third Directions’)⁵ in which it, *inter alia*, instructed the Defence to provide a preliminary list of witnesses no later than 17 January 2025; to submit the Final List of Witnesses and Evidence no later than 21 February 2025; and set 3 March 2025 as the deadline for any applications pursuant to rule 68(2) and 68(3) of the Rules.⁶

¹ Directions on the Conduct of Proceedings, 9 March 2022, [ICC-01/14-01/21-251](#); Witness Preparation Protocol, 9 March 2022, [ICC-01/14-01/21-251-AnxA](#), annexed to Directions on the Conduct of Proceedings.

² Protocol on the practices to be used to familiarise witnesses for giving testimony at trial, 9 August 2022, [ICC-01/14-01/21-446-AnxI](#), annexed to Registry’s Submissions of the Protocol on the practices to be used to familiarise witnesses for giving testimony at trial and of the Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses.

³ Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses, 9 August 2022, [ICC-01/14-01/21-446-AnxII](#), annexed to Registry’s Submissions of the Protocol on the practices to be used to familiarise witnesses for giving testimony at trial and of the Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses.

⁴ Additional Directions on the Conduct of Proceedings, 16 September 2022, [ICC-01/14-01/21-479](#).

⁵ Third Directions on the Conduct of Proceedings, 8 October 2024, [ICC-01/14-01/21-873](#) (hereinafter: Third Directions).

⁶ Third Directions, [ICC-01/14-01/21-873](#), para. 13-16.

5. On 15 November 2024, the Office of the Prosecutor (the ‘Prosecution’) formally closed the presentation of its evidence.⁷

6. On 17 January 2025, the Defence provided a preliminary list of seven witnesses, one of whom the Defence would call to testify *viva voce* with the remainder to be introduced pursuant to rule 68(2)(b) of the Rules (the ‘Notification’).⁸

7. On 24 January 2025, the Chamber ordered the parties to resolve any disputes regarding disclosure or lifting of redactions, or seize the Chamber no later than Thursday 30 January 2025 of any remaining disagreements concerning the disclosure of additional material and/or lifting of redactions.

8. On 30 January 2025, the Defence submitted a consolidated request for the disclosure of certain items of evidence as well as for the lifting of a number of redactions (the ‘Consolidated Request’).⁹

9. On 7 February 2025, the Prosecution submitted its response to the Consolidated Request (the ‘Prosecution Response’).¹⁰

II. SUBMISSIONS

10. The Defence submits that the Prosecution has been restrictively interpreting its disclosure obligations thereby blocking the Defence’s access to relevant information, which affects the Defence’s ability to conduct investigations and prepare its case.¹¹

⁷ Notification of the Conclusion of the Prosecution’s Presentation of Evidence, 15 November 2024, [ICC-01/14-01/21-895](#).

⁸ Confidential Annex A to Version publique expurgée de la « Notification de la Défense conformément à la « Third Directions on the Conduct of Proceedings » (ICC-01/14-01/21-873) rendue par la Chambre de première instance VI le 8 octobre 2024. », filed 17 January 2025 (ICC-01/14-01/21-908-Conf), 3 February 2025, [ICC-01/14-01/21-908-Red](#), (ICC-01/14-01/21-908-Conf-AnxA).

⁹ Version publique expurgée de la « 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 », filed 30 January 2025 (ICC-01/14-01/21-913-Conf), 5 February 2025, [ICC-01/14-01/21-913-Red](#), with 38 confidential annexes (hereinafter: ‘Consolidated Request’).

¹⁰ 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), 7 February 2025, [ICC-01/14-01/21-914](#).

¹¹ Consolidated Request, [ICC-01/14-01/21-913-Red](#), para. 2.

11. According to the Defence, the Prosecutor must give the Defence access to all documents that are useful for the preparation of the defence and the manifestation of the truth, since this is the only manner in which the internationally recognized human rights of the accused can be respected.¹² The Defence notes, in this regard, that an assessment of whether information is material to the Defence should be conducted on a *prima facie* basis and places a low burden on the Defence.¹³ In particular, the Defence claims that, once it has taken the trouble to identify as precisely as possible the items it wishes to obtain disclosure of (in most cases by giving the ERN number of the requested document) and to explain the reason for its request, the Prosecution must disclose the requested items irrespective of its opinion on their supposed usefulness to the Defence. Allowing the Prosecution to have a restrictive understanding of its disclosure obligations to refuse to disclose relevant material to the Defence would undermine the balance of the proceedings, the equality of arms and, ultimately, the fairness of the trial.¹⁴

12. With respect to the lifting of redactions, the Defence further argues that the Prosecution must respect the principle of full disclosure, without redactions, and that it cannot justify the maintenance of a redaction simply because it believes that such information would not be useful to the Defence.¹⁵ Moreover, the Defence states that it is not obliged to justify a request for the lifting of a particular redaction. Even in relation to standard redactions that are authorised pursuant to the Redaction Protocol, it is incumbent upon the Prosecution to explain why the redaction is justified, and not for the Defence to provide a "justifiable reason to lift it", as the Prosecution has often asked the Defence to do.¹⁶

13. In the Response, the Prosecution submits that it has provided all items that are material to the preparation of the Defence case.¹⁷ The Prosecution argues, in this regard,

¹² Consolidated Request, [ICC-01/14-01/21-913-Red](#), paras 12-15.

¹³ Consolidated Request, [ICC-01/14-01/21-913-Red](#), para.11, 31-36; with reference to Appeals Chamber, *The Prosecutor v. Abdallah Banda Abakaer Nourain*, Judgment on the appeal of Mr Abdallah Banda Abakaer Nourain and Mr Saleh Mohammed Jerbo Jamus against the decision of Trial Chamber IV of 23 January 2013 entitled 'Decision on the Defence's Request for Disclosure of Documents in the Possession of the Office of the Prosecutor', 28 August 2013, [ICC-02/05-03/09-501](#), para. 42.

¹⁴ Consolidated Request, [ICC-01/14-01/21-913-Red](#), para. 20.

¹⁵ Consolidated Request, [ICC-01/14-01/21-913-Red](#), para. 21.

¹⁶ Consolidated Request, [ICC-01/14-01/21-913-Red](#), paras 43-45.

¹⁷ Prosecution Response, [ICC-01/14-01/21-914](#), para. 11.

that the responsibility for determining the materiality of the items lies with it.¹⁸ The Prosecution submits that it has carefully assessed demands made by the Defence in the Consolidated Request and disclosed or lifted redactions in accordance with its ongoing duty under the Statute and the Rules.¹⁹ Furthermore, the Prosecution stated that it is in the process of disclosing items related to witnesses 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 137.²⁰

III.ANALYSIS

14. As a preliminary remark, the Chamber observes that the parties do not appear to have complied with its instruction to endeavour to resolve their disclosure and redaction disputes prior to seizing the Chamber. The Chamber further finds that the format in which the dozens of disputes were presented to it was unnecessarily cumbersome. Indeed, it has taken the Chamber a disproportionate amount of time and effort to try and understand (i) which requests are still in dispute, and (ii) the nature of the pending disputes.

15. Going forward, the parties are instructed to indicate clearly what the object of the dispute is (i.e. request for disclosure or request for lifting of redaction). When the dispute concerns the lifting of redactions, the Chamber expects to be provided with at least the following information in a clear and concise format: (i) the ERN of the item containing the redacted information; (ii) each redaction that is requested to be lifted (if the same information is redacted in several places, one mention suffices); (iii) the justification for maintaining the redaction; (iv) any response to this justification.

16. In what follows, the Chamber has attempted to group the disputes in categories, based on its understanding of the information provided by the parties.

¹⁸ Prosecution Response, [ICC-01/14-01/21-914](#), paras 8-10.

¹⁹ Prosecution Response, [ICC-01/14-01/21-914](#), para. 12.

²⁰ Prosecution Response, [ICC-01/14-01/21-914](#), para. 17.

A. Resolved Disputes

17. The Chamber notes that the Prosecution has agreed to disclose to the Defence the following items:

- CAR-OTP-2036-0074
- A French translation of P-1640's statement

18. Moreover, the Prosecution agreed to lift certain redactions in the following items:

CAR-OTP-2059-1523	CAR-OTP-2079-0315
CAR-OTP-2105-0462	CAR-OTP-2127-1280
CAR-OTP-2046-0295	CAR-OTP-2041-0781
CAR-OTP-2080-0852	CAR-OTP-00001711
CAR-OTP-2039-0216	
CAR-OTP-2130-5284	

19. The Prosecution also took steps to obtain the confidential versions of the transcripts of P-2926's testimony in the *Yekatom and Ngaissona* case:

- ICC-01/14-01/18-T-031
- ICC-01/14-01/18-T-032

20. The Chamber assumes that the disputes concerning these items have now been resolved.

B. Defence requests for disclosure

1. Unavailable items

21. The Chamber notes that the Prosecution has indicated that it is not in possession of a number of items which the Defence requested to be disclosed. In particular, the Chamber understands that, although the following items were shown to the Prosecution during the course of its investigation, no copies were made or kept:

- Copies of the identity card and passport of P-0882

- Copy of the identity card of P-1297
- Copy of the birth certificate of P-1313 or any other identity document
- Copy of P-1247's driving licence

22. The Chamber obviously cannot order the Prosecution to disclose items which it does not possess. It therefore considers the disputes in relation to these items resolved.

2. *Refusal to disclose because the witness's identity was already established*

23. The Defence has requested that the Prosecution disclose information about any contact between the Prosecution and the following witnesses: P-0100, P-0881, P-0882, P-0966, P-1004, P-1277, P-1297, P-1313, P-1420, P-1424, P-1427, P-1432, P-1523, P-1825, P-1970, P-2042, P-2087, P-2295, P-2337, P-2386, and P-3053. In particular, the Defence seeks any records of contacts before and after the first screening of these witnesses, the recording of their prior recorded testimony, and, in relation to witnesses whose testimony was introduced pursuant to rule 68(2)(b) of the Rules, the re-reading and certification of their prior recorded testimony. The Defence further wishes to receive any documentation of contacts between Prosecution witnesses.

24. The Prosecution avers that it has fulfilled its disclosure obligations in relation to these witnesses. The Prosecution points out, in this regard, that the Chamber has already made rulings confirming the identities of these witnesses.²¹ Moreover, the Prosecution claims that it has already assessed each request made in respect of the individual witnesses and disclosed or provided lesser redacted material,²² but provides no further details in this regard.

25. The Chamber understands that the Prosecution considers that its disclosure obligations regarding witnesses whose prior recorded testimony was introduced pursuant to rule 68(2) of the Rules does not extend beyond the formal criteria for the introduction of this evidence. As the Chamber explained in its Decision on the Prosecution's first, Second, and Fourth Requests Pursuant to Rule 68(2)(b) of the

²¹ Prosecution Response, [ICC-01/14-01/21-914](#), para. 11.

²² Prosecution Response, [ICC-01/14-01/21-914](#), para. 12.

Rules, the Chamber's assessment of the reliability of the evidence at that stage was limited to the formal criteria of that provision.²³ The Chamber explicitly stated that it would only assess the substantive credibility and reliability of this evidence, as well as the evidentiary weight to be accorded to it, during the deliberation phase.²⁴ The Chamber understands that the Defence is now seeking additional information about these witnesses with a view to potentially articulating arguments about the trustworthiness of their testimony. This goes beyond the question of their identity and it thus cannot be said that the Prosecution has fulfilled its disclosure obligations simply because the Chamber has been satisfied that the witnesses' identity has been established or that the formal reliability of the statement has been demonstrated.

26. The Chamber can also see no justification, beyond the need to protect the safety and security of the witnesses, as to why the Prosecution would be entitled to withhold information about contact between the Prosecution and its witnesses or between the witnesses *inter se*. Accordingly, unless the Prosecution can establish that disclosing this information might jeopardise the safety and security of its staff and/or the witnesses, it shall disclose the requested information.

3. *Refusal to disclose items that fall under the internal work product exception*

27. The Defence requests that the Prosecution disclose any items that led the Prosecution in the *Mokom* case to abandon the allegation that Maxime Mokom would have financed the Anti-Balaka as well as any item that led the Prosecution to stop using P-2232's address book²⁵ in the *Mokom* case.²⁶

²³ Public Redacted Version of 'Decision on the Prosecution's first, Second, and Fourth Requests Pursuant to Rule 68(2)(b) of the Rules', filed 20 October 2022 (ICC-01/14-01/21-507-Conf), 21 October 2022, [ICC-01/14-01/21-507-Red](#), para. 27 (hereinafter: Decision on Second and Fourth Rule 68(2)(b) Requests). The same approach was taken in relation to prior recorded testimony introduced pursuant to rule 68(2)(c) of the Rules, see Public Redacted Version of 'Decision on the Prosecution's Request under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of Six Witnesses', filed on 20 October 2022 (ICC-01/14-01/21-506), 26 October 2022, [ICC-01/14-01/21-506-Red](#), paras 15-16 (hereinafter: Decision on Rule 68(2)(c) Request).

²⁴ Decision on Second and Fourth Rule 68(2)(b) Requests, [ICC-01/14-01/21-507-Red](#), para. 27; Decision on Rule 68(2)(c) Request, [ICC-01/14-01/21-506-Red](#), paras 15-16.

²⁵ Although the Defence does not provide the ERN of P-2232's address book, the Chamber assumes that it refers to Notebook, CAR-OTP-2100-2602 (also disclosed as CAR-OTP-2093-1559 to 1567).

²⁶ Annex 31 to Consolidated Request, ICC-01/14-01/21-913-Conf-Anx31.

28. According to the Prosecution, the requested materials fall under rule 81(1) of the Rules, which exempts documents that are internal to the Prosecution from disclosure.²⁷ The Prosecution further points out that the Defence had the opportunity to examine P-2232.²⁸

29. The Chamber notes that there appears to be a misunderstanding between the parties. As far as the Chamber is able to understand, the Defence is not asking the Prosecution to disclose any internal documents. Instead, it asks the Prosecution to disclose *items of evidence* that may have informed two specific decisions by the Prosecution in *Mokom*: (i) to withdraw the allegation that Maxime Mokom financed the Anti-Balaka; and (ii) to no longer rely on P-2232's notebook in that case.

30. The Defence's request is based on the assumption that these two decisions were based on items that have not been disclosed yet. To the extent that they do indeed exist, the Chamber orders the Prosecution to disclose them. Indeed, even though the Prosecution has not requested the formal submission of P-2232's address book, the Prosecution appears to be relying on P-2232's evidence in support of the proposition that funds were provided to the 'pro-Bozize forces'.²⁹ Accordingly, the general credibility of P-2232's testimony or any evidence he may have provided is clearly relevant to the Defence and any element that might cast doubt on it is subject to disclosure.³⁰

4. *Refusal to disclose transcripts from Bemba case*

31. The Defence has requested the Prosecution to disclose the unredacted transcripts of witness P-0119's testimony in the *Bemba* case.³¹ The Defence argues that it needs

²⁷ Annex 37 to Consolidated Request, ICC-01/14-01/21-913-Conf-Anx37.

²⁸ Annex B to Prosecution Response, ICC-01/14-01/21-914-Conf-AnxB.

²⁹ Public Redacted Version of 'Prosecution's Trial Brief', filed 13 June 2022 (ICC-01/14-01/21-359-Conf), 28 July 2022, [ICC-01/14-01/21-359-Red](#), para. 37, n. 114.

³⁰ The Chamber observes, in this regard, that Pre-Trial Chamber II noted that the Defence had pointed out 'inconsistencies and contradictions' in P-2232's evidence. See Pre-Trial Chamber II, *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, Public Redacted Version of 'Decision on the Defence's requests for disclosure and rectification of disclosure metadata', filed 5 June 2023 (ICC-01/14-01/22-219-Conf), 3 July 2023, [ICC-01/14-01/22-219-Red](#), para. 33.

³¹ Transcript of hearing, 18 March 2011, ICC-01/05-01/08-T-82; Transcript of hearing, 21 March 2011, ICC-01/05-01/08-T-83; Transcript of hearing, 22 March 2011, ICC-01/05-01/08-T-84; Transcript of hearing, 23 March 2011, ICC-01/05-01/08-T-85; Transcript of hearing, 23 March 2011, ICC-01/05-01/08-T-86; Transcript of hearing, 24 March 2011, ICC-01/05-01/08-T-87;

these items in order to establish the credibility of the witness, to verify her contacts with the Prosecution and the Court, and to evaluate the information previously provided in the *Bemba* case in the context of the current case. Moreover, according to the Defence, P-0119 possesses important information about the Boy-Rabe neighbourhood, which is relevant to establishing the contextual elements of the current case.³²

32. The Chamber recalls that the Defence had already seized the Chamber with a request to be given access to the unredacted testimony of P-0119 in the *Bemba* case in May 2024.³³ Thereupon the Chamber expressed the view that it was in the first instance for the Prosecution to make a determination as to whether P-0119's testimony in the *Bemba* case is subject to disclosure.³⁴

33. The Prosecution currently refuses to disclose the unredacted transcripts on the ground that the events of the *Bemba* case concerned a different time period (2003-2006), which falls outside the temporal scope of the charges against Mr Said.³⁵

34. The Chamber finds that the mere fact that P-0119's testimony in the *Bemba* case pertains to a different time period does not automatically render it irrelevant in the current case.³⁶ Indeed, items which are not directly linked to exonerating or incriminating evidence may nevertheless be material to the defence's preparation.³⁷

³² Annex 1 to Consolidated Request, ICC-01/14-01/21-913-Conf-Anx1; Version publique expurgée de la « Requête de la Défense de Monsieur Mahamat Said Abdel Kani aux fins d'accéder aux transcrits confidentiels du témoin P-0119 dans l'affaire ICC-01/05-01/08 », filed on 31 May 2024 (ICC-01/14-01/21-776-Conf), 12 June 2024, [ICC-01/14-01/21-776-Red](#), paras 12-14,

³³ Version publique expurgée de la « Requête de la Défense de Monsieur Mahamat Said Abdel Kani aux fins d'accéder aux transcrits confidentiels du témoin P-0119 dans l'affaire ICC-01/05-01/08 », filed on 31 May 2024 (ICC-01/14-01/21-776-Conf), 12 June 2024, [ICC-01/14-01/21-776-Red](#).

³⁴ Email from the Chamber to the parties, dated 3 June 2024 at 14:43.

³⁵ Annex 31 to Consolidated Request, ICC-01/14-01/21-913-Conf-Anx31; Annex B to Prosecution Response, ICC-01/14-01/21-914-Conf-AnxB.

³⁶ See, e.g., Trial Chamber V, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Public redacted version of 'Decision on Motions on the Scope of the Charges and the Scope of the Evidence at Trial', filed 29 October 2020 (ICC-01/14-01/18-703-Conf), 30 October 2020, [ICC-01/14-01/18-703-Red](#), para. 51.

³⁷ Trial Chamber III, *The Prosecutor v. Paul Gicheru*, Public Redacted Version of 'Decision on the Request for Disclosure of Video-Recording of P-0800's Witness Preparation Session in the Ruto and Sang Case', filed 4 February 2022, (ICC-01/09-01/20-278-Conf), 4 February 2022, [ICC-01/09-01/20-278-Red](#), para. 8.

35. Accordingly, the Chamber instructs the Prosecution to take the necessary steps to disclose the confidential versions of P-0119's testimony in the *Bemba* case.

5. *Refusal to disclose on the basis of internal Prosecution policy*

(a) Request for disclosure of reports by Cyber Forensic Unit

36. The Defence has requested the disclosure of the following reports prepared by the Prosecution's Cyber Forensic Unit, pertaining to devices related to P-0349:

CAR-OTP-2135-0922	CAR-OTP-2135-0981
CAR-OTP-2135-0933	CAR-OTP-2135-0996
CAR-OTP-2135-0946	CAR-OTP-2135-1028
CAR-OTP-2135-0958	CAR-OTP-2135-1059
CAR-OTP-2135-0970	CAR-OTP-2135-1090

37. The Chamber notes that the items in question are forensic reports produced by the Cyber Forensic Unit of the Prosecution's Forensic Services Section³⁸ that were used by the Prosecution to attribute phone numbers to particular individuals.³⁹

38. The Defence has requested the aforementioned documents, claiming that having access to all the elements relevant to P-0349 is crucial in order to proceed with the necessary verifications in relation to this witness.⁴⁰

39. In its Response, the Prosecution claims that '[t]he OTP policy is not to disclose [Pre-Registration Forms], contents of which are disclosed to the Defence if material to the case'.⁴¹

40. The Chamber does not consider this a satisfactory justification for the Prosecution's refusal to disclose materials that were specifically requested by the Defence. Whatever policies the Prosecution may adopt internally must conform to the rules on disclosure laid down in the Court's statutory framework. The Chamber also notes that the Prosecution appears to be rather inconsistent in its invocation of this

³⁸ REPORT: Assessment of seized handsets and associated devices, CAR-OTP-2135-3402, at 3404-3405.

³⁹ REPORT: Assessment of seized handsets and associated devices', CAR-OTP-2135-3402, at 3405.

⁴⁰ Annex 2 to Consolidated Request, ICC-01/14-01/21-913-Conf-Anx2, p. 17.

⁴¹ Annex B to Prosecution Response, ICC-01/14-01/21-914-Conf-AnxB, p. 2.

undefined policy. As noted, the Prosecution lists ‘OTP Policy’ as its reason for refusing to disclose Pre-Registration Forms [PRFs] in the case of P-0349. However, in relation to P-3112, the Defence has equally requested the disclosure of a particular ‘PRF’ (#15578) but the Prosecution has not invoked the aforementioned policy as a justification for its refusal to disclose the item.

41. Moreover, it not clear to the Chamber that the reports requested by the Defence can be considered as PRF’s. Under these circumstances, and without further information, the Chamber is not in a position to determine whether the reports concerned fall under rule 81(1) or (2) of the Rules or whether there is any other justification for refusing to disclose the items in question. The Chamber further observes that the Defence has adequately explained why these reports are *prima facie* relevant. Consequently, the Chamber orders the Prosecution to either disclose the reports or to provide additional justification for its refusal to disclose them.

(b) Request for disclosure of expenses paid to P-2563

42. The Defence requested the disclosure of CAR-OTP-2114-0343, a document mentioned in an Investigation Report⁴² purportedly listing travel expenses for which P-2563 was compensated.⁴³

43. The Prosecution denied this request, claiming that trial witnesses’ expenses are not disclosed according to its internal policy, unless the Defence has concrete information relevant to the witness’ credibility to justify such a request.⁴⁴

44. As noted above, the Chamber considers that the Prosecution’s internal policies, as such, are irrelevant for the purpose of determining whether certain information is subject to disclosure. Nevertheless, the Chamber agrees with Trial Chamber VI in the case of *The Prosecutor v. Bosco Ntaganda*, that material pertaining to reasonable expenses paid by the Prosecution does not automatically fall under rule 77 of the Rules

⁴² INVESTIGATION REPORT / Interviews and subsequent interactions with P-2563, CAR-OTP-2127-7739.

⁴³ Annex 6 of Consolidated Request, ICC-01/14-01/21-913-Conf-Anx6, p. 4.

⁴⁴ Annex B to Prosecution Response, ICC-01/14-01/21-914-Conf-AnxB, p. 4.

or article 67(2) of the Statute and is thus not *per se* disclosable.⁴⁵ The Chamber further understands that the item in question pertains to the reimbursement of transportation costs for P-2563 to attend a meeting for a screening interview.⁴⁶ The Chamber considers this to be a routine expense. Consequently, in the absence of any indication of irregularity or specific materiality to the Defence, the Chamber does not consider it necessary to order the Prosecution to disclose the document to the Defence.

45. Additionally, the Chamber notes that the Defence had the opportunity to cross-examine the witness in relation to any ‘routine’ and other payments or reimbursements he may have received. The Chamber observes, in this regard, that the Defence did not appear to pursue the matter during its cross examination of witness P-2563.⁴⁷

C. Requests for lifting of redactions

46. The Chamber notes that, in relation to the pending disputed Defence requests for the lifting of redactions, the Prosecution has invoked a number of vague, confusing and/or unsubstantiated justifications for refusing to provide the information to the Defence. In particular, the Prosecution has argued that it would not lift certain redactions on the ground that: (i) the information was already available to the Defence; (ii) that doing so would jeopardise the safety or privacy of the individuals concerned; (iii) that the Prosecution does not disclose information about ‘innocent third parties’; and (iv) that the redacted information is not subject to disclosure.

1. Information already available to the Defence

47. The Defence has asked the Prosecution to lift a number of redactions in the following documents:

- CAR-OTP-2041-0376 (P-1297’s telephone numbers)

⁴⁵ Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Public redacted version of ‘Decision on Defence requests seeking disclosure orders in relation to witness P-0901 and seeking the postponement of the witness’s cross-examination’, filed 18 September 2015 (ICC-01/04-02/06-840-Conf), 5 October 2015, [ICC-01/04-02/06-840-Red](#), para. 57.

⁴⁶ See INVESTIGATION REPORT / Interviews and subsequent interactions with P-2563, CAR-OTP-2127-7739, at 7739, para. 2.

⁴⁷ Transcript of hearing, 18 September 2024, ICC-01/14-01/21-T-112-CONF-ENG; Transcript of hearing, 18 September 2024, ICC-01/14-01/21-T-113-CONF-ENG; Transcript of hearing, 18 September 2024, ICC-01/14-01/21-T-114-CONF-ENG; Transcript of hearing, 18 September 2024, ICC-01/14-01/21-T-115-CONF-ENG.

- CAR-OTP-2050-0172 (P-1432's telephone number, the name of his parents, the number of his military identity card, and the telephone number of a person mentioned in paragraph 45)
- CAR-OTP-00025569 (P-1432's telephone numbers)
- CAR-OTP-2059-0598 (P-1825's telephone number and address)
- CAR-OTP-2041-0423 (P-2042's telephone number and address)
- CAR-OTP-2130-2320 (telephone number of a person mentioned in paragraph 66 of P-2087's prior recorded testimony)

48. The Prosecution has refused to lift these redactions on the ground that the information is already available to the Defence, either in a different language version of the same item or in different items.

49. As the information is already available to the Defence in certain items, there clearly is no justification for keeping it redacted in other items.⁴⁸ The Prosecution is therefore ordered to lift these redactions.

2. *Unsubstantiated invocation of concerns about safety and/or privacy*

50. In relation to a number of documents that were already disclosed by the Prosecution, the latter rejected several of the Defence's requests for the lifting of redactions on the basis that doing so would jeopardise the safety or privacy of the individuals involved.⁴⁹ However, the Prosecution did not make any effort to explain why disclosing the requested information to the Defence would endanger the individuals concerned.

51. For example, in relation to a number of *procès-verbaux d'audition de garde à vue* of P-2872, the Defence has asked to lift redactions pertaining to the identity of the witness' parents as well as to his place of residence.⁵⁰ The Prosecution argues that this

⁴⁸ The Chamber notes that in relation to CAR-OTP-2130-2320, the Prosecution appears to be giving two reasons for refusing to lift the redaction: on the one hand, the Prosecution seems to be arguing that the Defence already has the requested information, whereas on the other hand it also suggests that this information may relate to 'innocent third parties'. To the extent that the latter is the actual justification for maintaining the redaction, the Chamber will deal with it below. See III.C.3 Information related to innocent third parties.

⁴⁹ Annex A to Prosecution Response, ICC-01/14-01/21-914-Conf-AnxA; Annex B to Prosecution Response, ICC-01/14-01/21-914-Conf-AnxB.

⁵⁰ Annex 35 of Consolidated Request, ICC-01/14-01/21-913-Conf-Anx 35.

information should remain redacted ‘to ensure safety of the parents and of the witness himself. Additionally, P-2872 previously informed he should be contacted through his legal counsel’.⁵¹ However, the Prosecution does not provide any information about the current whereabouts of the parents (or indeed whether they are still alive). It is also not explained whether the witness still resides at the same address as he did when he gave the statements or why providing the address would expose the witness, whose identity is already known to the Defence, to any greater danger. The Chamber notes, in this regard, that the witness appears to have had an address in outside of the CAR at the time. Finally, it is not clear why it is relevant that P-2872 has expressed the wish to be contacted through his legal representative. The fact that the Defence is given the phone number of a particular witness does not automatically give it licence to contact the witness against his will. Moreover, the Chamber notes that the witness’ email address does not appear to have been redacted.

52. The Chamber recalls the Appeals Chamber’s jurisprudence that ‘a careful assessment will need to be made, in each case, to ensure that any measures restricting the rights of the Defence that are taken to protect individuals at risk are strictly necessary and sufficiently counterbalanced by the procedures taken by the [C]hamber’.⁵² In making this assessment, the Chamber should consider whether disclosure of the information concerned would pose a danger to the particular person’ and, in the affirmative, consider the following factors in relation to the alleged risk of danger: (i) whether there is ‘an objectively justifiable risk to the safety of the person concerned’ which arises from disclosing the particular information to the Defence, as opposed to disclosing the information to the public at large; (ii) whether the non-disclosure of the information is ‘necessary’, namely that there is no alternative measure short of redaction which is available and feasible in the circumstances; and (iii) whether the non-disclosure of the information is ‘proportionate’, in that it is not

⁵¹ Prosecution Response, [ICC-01/14-01/21-914](#), para. 15.

⁵² Appeals Chamber, *The Prosecutor v. Germain Katanga*, 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](#), para. 59 (hereinafter: ‘Katanga Redactions Appeal’).

prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.⁵³

53. It is clear that the Chamber cannot make these assessments without a minimum of relevant information. The Prosecution's failure to provide any information therefore prevents the Chamber from resolving these disputes. Since it cannot be excluded that disclosing the information to the Defence might cause genuine concerns about the safety and or privacy of certain individuals, the Chamber cannot simply grant the Defence's requests on the ground that the Prosecution has failed to meet its burden. The Chamber therefore orders the Prosecution to provide a sufficiently detailed justification for all of the redactions which it believes should be maintained.

3. Information related to innocent third parties

54. The Prosecution has also refused to lift certain redactions because the redacted information may relate to innocent third parties. It is unclear to the Chamber whether the Prosecution considers that information about 'innocent third parties' does not fall under its disclosure obligations or whether it is of the view that revealing this information would expose these individuals to certain undue risks. Whatever the case may be, the Chamber is not in a position to make a determination and orders the Prosecution to provide additional justification for the redactions in question.

4. Redactions in documents that have already been disclosed.

55. In a significant number of instances, the Prosecution does not offer a specific reason for refusing to lift particular redactions, but rather restricts itself to stating that it has determined that there is no ongoing obligation to disclose any further materials under the Statute or Rules. Although the Prosecution is right in asserting that the primary responsibility for determining whether a particular item is subject to disclosure lies with it, this does not mean that it is entitled to make unmotivated and therefore unreviewable decisions.

⁵³ Katanga Redactions Appeal, [ICC-01/04-01/07-475](#), paras 71-73. See also e.g. Pre-Trial Chamber II, *The Prosecutor v. Bosco Ntaganda*, Public Redacted Version of 'First Decision on the Prosecutor's Requests for Redactions and Other Related Requests', 1 October 2013 (ICC-01/04-02/06-117-Conf-Exp), 3 July 2014, [ICC-01/04-02/06-117-Red3](#), para. 21.

56. Moreover, the Chamber observes that the Prosecution appears to rely on its discretion to decide what needs to be disclosed in responding to Defence requests to lift particular redactions. This is inapposite, since the Prosecution's discretion pursuant to article 67(2) of the Statute and rule 77 of the Rules applies to whether or not a particular item is subject to disclosure. Once it has been determined that an item is subject to disclosure, it should, in principle, be disclosed in its entirety unless there is a justification for applying redactions pursuant to article 68 of the Statute and/or rule 81 of the Rules.⁵⁴ As the Prosecution well knows, redactions do in principle require the prior authorisation of a Chamber, unless the information falls within one of the presumptively authorised categories listed in the Chamber Practice Manual. However, even in such cases, the burden to justify the redactions remains with the Prosecution. In fact, when the Defence requests the lifting of a particular redaction, the Prosecution and the Defence must consult in good faith to resolve the matter. In case the *inter partes* consultations fail, the Prosecution is required to seize the Chamber within five days and offer its justification for maintaining the redaction.⁵⁵ Regrettably, the Prosecution appears to have completely ignored this procedure.

57. The Prosecution is therefore ordered to either lift the redactions or to provide a sufficiently detailed justification for the redactions it wishes to maintain.

⁵⁴ See discussion above at para. 52.

⁵⁵ Chambers Practice Manual, 8th edition (2024), p. 25, para. 4.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Defence request in part;

ORDERS the Prosecution to disclose the following items, unless the Prosecution can demonstrate that disclosing this information, possibly with redactions, would jeopardise the safety and security of its staff, the witnesses, or other persons, in which case it must propose adequate countermeasures:

- (i) Any records of contacts between the Prosecution and the following witnesses:

P-0100	P-1313	P-1970
P-0881	P-1420	P-2042
P-0882	P-1424	P-2087
P-0966	P-1427	P-2295
P-1004	P-1432	P-2337
P-1277	P-1523	P-2386
P-1297	P-1825	P-3053

as well as any information about contacts between these witnesses;

- (ii) Any items pertaining to P-2232's credibility and/or the reliability of any of the documents he provided;
- (iii) The confidential transcripts of P-0119's testimony in the case of *The Prosecutor v. Jean-Paul Bemba Gombo*;

- (iv) Items

CAR-OTP-2135-0922	CAR-OTP-2135-0981
CAR-OTP-2135-0933	CAR-OTP-2135-0996
CAR-OTP-2135-0946	CAR-OTP-2135-1028
CAR-OTP-2135-0958	CAR-OTP-2135-1059
CAR-OTP-2135-0970	CAR-OTP-2135-1090

ORDERS the Prosecution to either disclose any remaining items requested by the Defence or to provide a clear and sufficiently detailed justification for its refusal to do so by no later than one week from the date of this decision.

ORDERS the Prosecution to lift redactions in the following documents of information that is already available to the Defence:

CAR-OTP-2041-0376

CAR-OTP-2059-0598

CAR-OTP-2050-0172

CAR-OTP-2041-0423

CAR-OTP-0002-5569

CAR-OTP-2130-2320

ORDERS the Prosecution to either lift the remaining redactions identified by the Defence or to provide a clear and sufficiently detailed justification for the need to maintain particular redactions in accordance with paragraph 15 of the present decision, by no later than two weeks from the date of this decision.

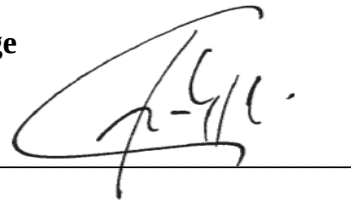


Judge Miatta Maria Samba

Presiding Judge



Judge María del Socorro Flores Liera



Judge Sergio Gerardo Ugalde Godínez

Done in both English and French, the English version being authoritative.

Dated 25 February 2025

At The Hague, The Netherlands