

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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TRIAL CHAMBER V

Before: Judge Beti Hohler , Presiding Judge
Judge Joanna Korner
Judge Keebong Paek

SITUATION IN CENTRAL AFRICAN REPUBLIC II

***IN THE CASE OF THE PROSECUTOR v. ALFRED YEKATOM AND
PATRICE-EDOUARD NGAÏSSONA***

**Public Document
with Confidential Annex**

**Public Redacted Version of "Defence Request for Disclosure of Materials
pursuant to Rule 77 of the Rules of Procedure and Evidence",
ICC-01/14-01/18-1998-Conf-Exp, 21 July 2023**

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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☒ Counsel for the Defence

D30

D29

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V44

V45

☐ Legal Representatives of the Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants
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☐ The Office of Public Counsel for Victims

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I. INTRODUCTION

1. The Defence of Mr Ngaïssona (the “Defence”) hereby requests Trial Chamber V (the “Chamber”) to order the disclosure of materials, as identified below, by Office of the Prosecutor (the “Prosecution”) to the Defence.
2. Following the disclosure by the Prosecution of an investigation report detailing the exchanges it had with P-2201, [REDACTED] Prosecution witness P-2200, to obtain official documentation confirming P-2200’s death (the Report),¹ and the subsequent ‘Prosecution’s Request for Submission of the Prior Recorded Testimony of P-2200 pursuant to Rule 68(2)(c)’ (the “Rule 68(2)(c) Request”),² the Defence hereby requests :
 - The disclosure, or otherwise inspection, of all the exchanges between the Prosecution and P-2201, including all voice-messages sent and received by the Prosecution from P-2201, both prior and after the production of the Report (“Item 1”);
 - The disclosure of all materials the Prosecution possesses or is in control of that corroborate and/or contradict P-2201’s account of [REDACTED] (“Item 2”);
 - The disclosure of P-2201’s refugee card he has provided to the Prosecution (“Item 3”);
 - The disclosure of P-0840’s identity, as he is the sole source for the Prosecution’s estimate of the required funds to obtain the Death Certificate and Certificate of Cause of Death (“Item 4”);
 - The disclosure, or otherwise inspection, of receipts and the breakdown of P-2201’s estimated costs (what funds were to cover official costs and what funds were intended for bribery) that may have been provided to the Prosecution that justify the 75.000XAF (“Item 5”);
 - The disclosure, or otherwise inspection, of all transfer of funds the Prosecution made to P-2201 and the reasons that prompted the Prosecution to agree to amount of 75.000XFA while its estimated costs to obtain the Death Certificate and Certificate of Cause of Death originally amounted to 30,000 XFA (“Item 6”);

¹ CAR-OTP-00001606 (the “Report”).

² ICC-01/14-01/18-1967-Conf.

- The disclosure, or otherwise inspection, of all communication that may have occurred between the Prosecution and P-2049 since his testimony before the Court (“Item 7”); and
- The disclosure, or otherwise inspection, of all communication and attempted exchanges between the Prosecution and P-2200 as mentioned in paragraphs 12 and 13 of the Rule 68(2)(c) Request (“Item 8”);

(altogether the “Items”)

3. The Items sought are in the possession of the Prosecution and are material to the preparation of Defence. As it will be detailed below, the present Request for disclosure of the Items (the “Request”) satisfies the criteria provided for under Rule 77 of the Rules of Procedure and Evidence (the “Rules”). However, *inter partes* communications with the Prosecution have failed in this regard, and the Defence therefore seizes the Chamber to make a determination and order the disclosure of the Items. The Defence contends that the material sought to be disclosed goes directly to the credibility of the witnesses, as it will be demonstrated below. Irregularities and questionable information provided by witness P-2201 cast a serious doubt as to the reliability of the material used in support of the Prosecution’s Rule 68(2)(c) application for P-2200.
4. Additionally, should the Request be granted, the Defence respectfully requests the Chamber to suspend the deadline to respond to the Prosecution’s Rule 68(2)(c) Request until the Items are disclosed or made available for inspection to the Defence.

II. CONFIDENTIALITY

5. Pursuant to Regulation 23(bis)(1) of the Regulations of the Court, the present Request is filed Confidential *EX PARTE* as it touches upon defence investigation and refers to submission of similar confidentiality level. A Confidential redacted version is filed simultaneously. The Annex A is filed as confidential as it covers confidential documents, information and exchanges. A public redacted version of the Request will be filed in due time.

III. PROCEDURAL HISTORY

6. On 23 June 2023, the Prosecution disclosed Trial Rule 77 package 104 comprising Report as well as pictures of P-2200's alleged 'carnet de santé' (Health Booklet) and Certificate of Cause of Death provided by [REDACTED], P-2201.
7. On 26 June 2023, the Defence sought through *inter partes* discussions the disclosure, or otherwise inspection, of the Item 1 to Item 7.³
8. On 5 July 2023, the Prosecution responded by asserting that it did not have any material in its possession regarding, *inter alia*, Item 2. In the same email, the Prosecution declined to provide the Item 1 to Item 7 "as [it] do not deem it to be material to Defence preparation or potentially exonerating." In particular, it did "not see that the actions of P-2201 have a bearing upon the credibility of P-2200".⁴
9. On 7 July 2023, the Prosecution filed its Rule 68(2)(c) Request, wherein the Prosecution wrote, *inter alia*, that "[i]n January 2022, [...] P-2200 complained principally of back pain",⁵ and after "several unsuccessful attempts to contact the witness in early May, on [REDACTED] 2022 Prosecution investigators were informed that the witness had died".⁶
10. On 10 July 2023, the Defence requested the Chamber to grant an additional 11 days to respond to the Rule 68(2)(c) Request.⁷
11. On the same day, the Defence requested the Prosecution to reconsider its position to disclose and/or allow the inspection of Item 1 to Item 7 by providing further arguments on the materiality of the Items sought. At the same occasion,

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 ICC-01/14-01/18-1967-Conf., para. 12.

⁶ ICC-01/14-01/18-1967-Conf., para. 13.

⁷ See Defence email to the Prosecution dated 10 July 2023, at 13:06.

the Defence further requested the disclosure, or otherwise inspection, of Item 8.⁸

12. On 11 July 2023, the Prosecution declined to reconsider its initial position, and asked for further explanation regarding the disclosure, or otherwise inspection, of Item 8.⁹ On the same day, the Defence provided clarifications in support of its request for disclosure, or otherwise inspection, of Item 8.¹⁰ The Prosecution declined once again to disclose or allow the inspection of Item 8 on the basis of the lack of materiality.¹¹

13. The entirety of the above-mentioned *inter partes* discussions are annexed to the present Request (*see* Confidential Annex A).

14. On 13 July 2023, the Chamber granted the additional 11 days to respond to the Rule 68(2)(c) Request, thereby extending the deadline to 1 August 2023.¹²

IV. APPLICABLE LAW

15. Article 67(1) of the Statute enshrines fundamental fair trial guarantees of suspects and accused persons, including the principle of equality of arms.

16. Article 67(2) of the Statute governs the Prosecution's obligation to disclose to the Defence "evidence in the Prosecutor's possession or control which he or she believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution

⁸ See Defence email to the Prosecution dated 10 July 2023, at 15:29.

⁹ See Prosecution email to the Prosecution dated 11 July 2023, at 10:34.

¹⁰ See Defence email to the Prosecution dated 11 July 2023, at 10:54.

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

¹² See email Decision on the Defence requests for extension of time, dated 13 July 2023, at 10:30.

evidence.”¹³ Such disclosure must be done “as soon as practicable”,¹⁴ which means, without undue delay.¹⁵ It also provides that “[i]n case of doubt as to the application of this paragraph, the Court shall decide.”¹⁶

17. Article 64(2) of the Statute provides that the “Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses”.
18. Rule 77 of the Rules provides that the Prosecution shall allow the Defence to inspect any item in its “possession or control”, “which are material to the preparation of the Defence or are intended for use by the Prosecutor as evidence for the purposes of the confirmation hearing or at trial, as the case may be, or were obtained from or belonged to the person.”
19. As held by the Appeals Chamber, any assessment of whether information is material to the preparation of the Defence pursuant to rule 77 should be made on a *prima facie* basis, which “places a low burden on the defence”.¹⁷ The Appeals Chamber further emphasised that it “may be that information that is material to the preparation of the defence is ultimately not used as evidence at the trial or may not turn out to be relevant to it. Yet the defence is still entitled to this information on the basis of a *prima facie* assessment.”¹⁸

¹³ In the *Lubanga* case, the Trial Chamber held the “The Trial Chamber reminds the prosecution that the test laid out in Article 67(2) (see paragraph 16 below) for disclosure is not, in fact, whether the information is accurate. Rather, the test required in Article 67(2) carries two main elements. The first element requires the prosecution to have evidence in its possession or control. Secondly, the Prosecutor must assess whether that evidence may affect the credibility of the prosecution evidence. If these two elements are met, it is the duty of the Prosecutor to disclose as soon as is practicable the information to the defence”, *Prosecutor v. Lubanga*, Redacted version of “Decision on the prosecution’s filing entitled “Prosecution’s provision of information to the Trial Chamber” filed on 3 September 2007”, ICC-01/04-01/06-963-Anx1, 26 September 2007, para. 12.

¹⁴ Article 67(2), Rome Statute.

¹⁵ *Prosecutor v. Muthaura et al.*, Decision Setting the Regime for Evidence Disclosure and Other Related Matters, ICC-01/09-02/11-48, 6 April 2011, para. 25.

¹⁶ See *Prosecutor v. Lubanga*, Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I entitled “Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008”, ICC-01/04-01/06-1486, 21 October 2008, para. 46.

¹⁷ *Prosecutor v. Banda and Jerbo*, 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”, ICC-02/05-03/09-501, 28 August 2013, para. 42

¹⁸ *Ibid.*

20. Further, the Prosecution's disclosure obligations under rule 77 are broad.¹⁹ The terms "material to the preparation of the defence" should "be understood as referring to *all objects that are relevant* for the preparation of the defence", while not directly linked to exonerating or incriminating evidence".²⁰ Therefore, the Prosecution's disclosure obligations encompass "any item that is relevant to the preparation of the defence, and including not only material that may undermine the prosecution case or support a line of argument of the defence but also anything substantive that is relevant, in a more general sense, to defence preparation."²¹

V. SUBMISSIONS

21. At the outset, the Defence submits the strict interpretation by the Prosecution of the concept of "materiality" for the purpose of Rule 77 of the Rules is not in accordance with the current jurisprudence of the Court.

22. The Appeals Chamber of this Court previously held that the Prosecution's duty to disclose exculpatory and relevant materials is an essential component of the fairness of the proceedings,²² and is one of the mechanisms by which the Court aims at promoting equality of arms.²³ The disclosure regime should allow the

¹⁹ *Prosecutor v. Lubanga*, Judgment on the appeal of Mr. Lubanga Dyilo against the Oral Decision of Trial Chamber I of 18 January 2008, ICC-01/04-01/06-1433, 11 July 2008, paras 76-82; *Prosecutor v. Lubanga*, Decision on the scope of the prosecution's disclosure obligations as regards defence witnesses, ICC-01/04-01/06-2624, 12 November 2010, para. 16; *Prosecutor v. Katanga and Ngudjolo*, Decision on Article 54(3)(e) Documents Identified as Potentially Exculpatory or Otherwise Material to the Defence's Preparation for the Confirmation Hearing, ICC-01/04-01/07-621, 20 June 2008, para. 28.

²⁰ ICC-01/14-01/18-1578-Red, para. 24 (emphasis added); *Prosecutor v. Lubanga*, Judgment on the appeal of Mr. Lubanga Dyilo against the Oral Decision of Trial Chamber I of 18 January 2008, ICC-01/04-01/06-1433, 11 July 2008, para. 77; *Prosecutor v. Gaddafi*, Decision on the "Request for Disclosure of Memorandum on Burden Sharing between the ICC Office of the Prosecutor and the Government of Libya", ICC-01/11-01/11-578, 4 February 2015, para. 4.

²¹ *Prosecutor v. Lubanga*, Decision on the scope of the prosecution's disclosure obligations as regards defence witnesses, ICC-01/04-01/06-2624, 12 November 2010, para. 16.

²² *Prosecutor v. Lubanga*, Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I entitled "Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008", ICC-01/04-01/06-1486, 21 October 2008 at para 42.

²³ *Prosecutor v. Katanga and Ngudjolo*, Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 22 January 2010 Entitled "Decision on the Modalities of Victim Participation at Trial", ICC01/04-01/07-2288, 16 July 2010, at footnote 125, citing the United Nations General Assembly, "Draft Report of the Preparatory Committee", 23 August 1996, A/AC.249/L.15, p. 14: "Given the fact that the Prosecutor would have earlier access to evidence and other information, it was recommended that a mechanism be found that would neutralize any potential advantage to the Prosecutor over the defence".

Defence to benefit from the broad investigative powers of the Prosecution, that is most often in a better position than the Defence to obtain cooperation and access key information in a case.²⁴

23. As such, the Appeals Chamber of this Court consequently held that the Prosecution's disclosure obligations under rule 77 must be interpreted in a broad manner.²⁵ It is noteworthy that the terms "material to the preparation of the defence" should "be understood as referring to *all objects that are relevant* for the preparation of the defence, while not directly linked to exonerating or incriminating evidence".²⁶

24. The Defence therefore submits that information and items that would assist the Defence in the proper assessment of a Prosecution's request and subsequently provide a meaningful response thereto fall within the scope of "materiality" under Rule 77 of the Rules. This is even more true when the purpose of the Prosecution's request is to introduce a witness's Prior Statement pursuant to Rule 68(2) which is an exception to the right of the Defence to examine witnesses against them pursuant to Article 67(1)(e) of the Statute. Since the Defence cannot test the veracity of the evidence with a testifying witness, the prejudice of not having full disclosure is greater.

25. The interpretation put forward by the Prosecution and its failure to abide by his disclosure obligations result in the Defence being prevented from meaningfully respond to the Rule 68(2)(c) Request. As it will be explained

²⁴ *Prosecutor v. Katanga and Ngudjolo*, Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 22 January 2010 Entitled "Decision on the Modalities of Victim Participation at Trial", ICC-01/04-01/07-2288, 16 July 2010 at para 75.

²⁵ *Prosecutor v. Lubanga*, Judgment on the appeal of Mr. Lubanga Dyilo against the Oral Decision of Trial Chamber I of 18 January 2008, ICC-01/04-01/06-1433, 11 July 2008, paras 76-82; *Prosecutor v. Lubanga*, Decision on the scope of the prosecution's disclosure obligations as regards defence witnesses, ICC-01/04-01/06-2624, 12 November 2010, para. 16; *Prosecutor v. Katanga and Ngudjolo*, Decision on Article 54(3)(e) Documents Identified as Potentially Exculpatory or Otherwise Material to the Defence's Preparation for the Confirmation Hearing, ICC-01/04-01/07-621, 20 June 2008, para. 28.

²⁶ ICC-01/14-01/18-1578-Red, para. 24 (emphasis added); *Prosecutor v. Lubanga*, Judgment on the appeal of Mr. Lubanga Dyilo against the Oral Decision of Trial Chamber I of 18 January 2008, ICC-01/04-01/06-1433, 11 July 2008, para. 77; *Prosecutor v. Gaddafi*, Decision on the "Request for Disclosure of Memorandum on Burden Sharing between the ICC Office of the Prosecutor and the Government of Libya", ICC-01/11-01/11-578, 4 February 2015, para. 4.

below, without access to the Items, the Defence will only be able to resort to speculative arguments. As such, the Prosecution's erroneous interpretation effectively deprives the Defence of critical information necessary to ensure an efficient legal representation of Mr Ngaïssona and compromised the fairness of the proceedings.

26. Therefore, the disclosure, or otherwise inspection, of the Items is necessary as they are: (A) material to the preparation of the Defence in providing a meaningful response to the Rule 68(2)(c) Request; and/or (B) to undermine the Prosecution case or support a line of argument of the Defence.

A. Item 1 to Item 6 and Item 8 are material to providing meaningful response to the Prosecution's Rule 68(2)(c) Request

27. The Defence is seeking the disclosure and/or inspection of Items 1 to 6 and Item 8 to assess the credibility, reliability and authenticity of the information and materials communicated by P-2201, which constitute the sole basis for the Prosecution to confirm that P-2200 is deceased, and to subsequently file its Rule 68(2)(c) Request.²⁷

i. Item 1

28. To establish the unavailability of P-2200 to testify by proving that the witness died and justify the Rule 68(2)(c) Request, the Prosecution solely relies on the Health Booklet and Certificate of Cause of Death provided by P-2201.

29. *First*, P-2201's narrative around the provenance of these documents, as transcribed in the Report, lacks continuity crucial to the understanding of where the documents were stored or could have been retrieved from, hence affecting the reliability of the documents and the chain of custody.

30. With regard to the Cause of Death Certificate, the explanation provided by P-2201 is, to say the least, puzzling. First, P-2201 states that it needs to be retrieved

²⁷ ICC-01/14-01/18-1967-Conf, paras. 12-13.

from the hospital, without further details as to which hospital.²⁸ Nonetheless, P-2201 later says that he would have to go to a [REDACTED] to ask a doctor for the “medical death certificate”.²⁹ Surprisingly, P-2201 then states that a Death Certificate will be provided by the [REDACTED], but first needs to have access to P-2200’s Health Booklet.³⁰ During the following conversations with the Prosecution, P-2201 again changes his mind and says that he needs to go to [REDACTED] to obtain the Death Certificate.³¹ Later, P-2201 once more changes his mind and says that the Death Certificate has to be retrieved from [REDACTED],³² then [REDACTED] again.³³ In regard to P-2200’s alleged Health Booklet, P-2201 first says that it is in a suitcase along with P-2200’s other belongings,³⁴ which was later dispatched.³⁵ P-2201 then tells the Prosecution that only half of the Health Booklet was in the suitcase and the other half was with [REDACTED].³⁶ Finally, the Health Booklet provided to the Prosecution comprises a header from the [REDACTED].

31. *Second*, P-2201 seems to have been hiding behind several excuses for months before sending pictures of [REDACTED] alleged Certificate of Cause of Death and Health Booklet. As outlined, P-2201 reads the Prosecution’s various messages and reminders but does not reply.³⁷ And when P-2201 does reply, he provides excuses as to why he did not answer them or send them pictures of the documents, “which [he] promised repeatedly”.³⁸ Then, as will be detailed below, P-2201 made several requests for funds that far exceeded the OTP’s costs estimate, without proper justification other than to bribe several individuals or because “it is hot out [t]here and life is difficult”.³⁹ From the

²⁸ The Report, para. 3.

²⁹ The Report, para. 19.

³⁰ *Ibid.*

³¹ The Report, para. 4.

³² The Report, para. 14.

³³ The Report, para. 19.

³⁴ The Report, para. 3.

³⁵ The Report, paras. 4 and 9.

³⁶ The Report, para. 9.

³⁷ The Report, paras. 5, 7, 8.

³⁸ The Report, para. 8.

³⁹ The Report, para. 11.

Report, it even reads as if P-2201 is extorting the Prosecution for money : “if we could receive a bit of support, we could send the requested pictures”.⁴⁰ Yet, the Prosecution does not give any reason as to why it finally decided to transfer the requested funds.

32. Given the evasiveness of P-2201 in cooperating with the Prosecution as outlined in the Report, Item 1 goes directly to the credibility of P-2201 and the reliability of the information and documents provided by him. The sought material and inspection are relevant to assess the genuine motive behind P-2201’s reluctant cooperation with the Prosecution. As such, the Defence seeks access to the exchanges between the Prosecution and P-2201 in order to assess P-2201’s tone and the words he uses to better understand his ulterior motive, which is apparent. The Defence therefore requests the Chamber to allow the inspection by Defence Linguistic Assistant, a qualified Sango interpreter, of attempted calls, voice-messages, texts messages. The inspection is necessary to assess P-2201’s credibility as well as to assess the authenticity and reliability of the said documentation. To meaningfully assist the Chamber in its truth finding mission and in submitting its response to Rule 68(2) Request, the Defence must be in a position to assess these documents and establish if the witness had reasons to potentially provide false information or suspicious documents to support the allegation that [REDACTED] had passed away.

ii. Item 3 to Item 6

33. Item 3 to Item 6 pertain to financial expenses allegedly incurred by the said steps taken by P-2201 in obtaining the alleged death certificate and the alleged Health Booklet.
34. While material pertaining to reasonable expenses paid by the Prosecution do not automatically fall under Rule 77, the Defence submits that the exceptional amounts that the Prosecution has transferred to P-2201 for the purpose of

⁴⁰ The Report, para. 11.

securing the said documents warrant the disclosure of documents related to such expenses. As held by Trial Chamber VI in the case of *The Prosecutor v. Bosco Ntaganda*, there are “particular circumstances which render information on such expenses *prima facie* material to the preparation of the defence, potentially exculpatory, or otherwise falling under Article 67(2) of the Statute.”⁴¹ Additionally, the international criminal jurisprudence has established the principle that information pertaining to payments, benefits or other forms of assistance that go beyond the ordinary requirements of subsistence may affect the credibility of witnesses and information related thereto may be material to the preparation of the defence and are therefore disclosable to the defence.⁴² Finally, the Defence emphasises that the assessment of materiality on a *prima facie* basis places a low burden of the Defence and that “Rule 77 concerns material that the defence is entitled to have disclosed to it in order to prepare its defence” regardless of whether such material “is ultimately not used as evidence at the trial or may not turn out to be relevant to it.”⁴³

35. The Report details several demands in payments that P-2201 formulated over time, allegedly to cover various costs needed to obtain the documents including those covering transportation and bribes. At the outset, P-2201 plainly stated that obtaining a Certificate of Cause of Death and a Death certificate will require funds for bribes.⁴⁴ P-2201 also insists on the fact that he

⁴¹ *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', ICC-01/04-02/06-840-Conf-Exp, issued on 18 September 2015, para.60; see also *The Prosecutor v. Bosco Ntaganda*, “Decision on Defence request seeking disclosure of expenses provided to Witness P-0113”, ICC-01/04-02/06-1497, 8 September 2016, para. 4.

⁴² *Bemba* case, Trial Chamber: Decision on Defence Motion concerning Information on Contacts of Witnesses 169 and 178 with Other Witnesses (11 December 2014) at para. 19; *Bemba* case, Trial Chamber: Decision on the Defence Request for Modification of Redactions (28 June 2016), at para. 13.

⁴³ *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, 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”, ICC-02/05-03/09-501, The Appeals Chamber, 28 August 2013, para. 42.

⁴⁴ The Report, para. 3.

needs funds to get P-2200's Health Booklets that was in the possession of [REDACTED].⁴⁵

36. P-2201 first mentioned that he needed 25,000CFA to bribe and obtain the Certificate of Cause of Death from the [REDACTED] and the Death Certificate from the [REDACTED].⁴⁶ Then, P-2201 asked 4,000CFA for transportation to go and obtain the Death Certificate at [REDACTED], arguing that the [REDACTED] is situated at [REDACTED].⁴⁷ When asked by the Prosecution to provide an estimation of the costs to travel to [REDACTED] and to bribe [REDACTED] ("motivate", "grease the wheels"), P-2201 mentioned that the "amount to be foreseen should start from 75,000CFA".⁴⁸ After being asked several times about the breakdown of such an estimated costs of 75,000CFA⁴⁹ and subsequently confronted by the Prosecution's total estimates of 30,000CFA (15,000CFA for the Certificate of Cause of Death and 15,000CFA for the Death certificate),⁵⁰ P-2201 provides the following breakdown:⁵¹

- Travels to [REDACTED] (round trip) : 3,000CFA
- Medical Certificate at the [REDACTED]: 15,000CFA + Bribe
- Travels from [REDACTED] : N.S.
- Death certificate at [REDACTED] : 15,000 CFA + Bribe
- Phone credit spent : N.S.

37. Seemingly satisfied, the Prosecution decided to transfer 75,000CFA to P-2201.⁵² Further, despite the transfer of such an amount, the Prosecution is yet to receive the Death Certificate.⁵³ As it stands, the Defence can only speculate on the fact that the Prosecution knowingly provided 42,000CFA – which is 127% of its

⁴⁵ The Report, para. 4.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ The Report paras. 11, 14, and 19.

⁴⁹ The Report paras. 13, 18.

⁵⁰ The Report paras. 12 and 18.

⁵¹ The Report, para. 19.

⁵² The Report, para. 20.

⁵³ The Report, para. 26; See also Prosecution email dated 5 July 2023, at 09:17.

initial estimated costs – to bribe [REDACTED]. Such conduct goes directly to the methods used by the Prosecution to collect evidence and has therefore a direct impact onto the reliability and authenticity of the alleged Certificate of Cause of Death and the Health Booklet it produces to support its Rule 68(2)(c) Request.

38. Paying P-2201 an additional 42,000CFA over the estimated costs by the Prosecution constitutes “particular circumstances which render information on such expenses *prima facie* material to the preparation of the defence”. More specifically, the disclosure, or otherwise inspection, of items 5, 6 will allow the Defence to meaningfully respond to the Rule 68(2)(c) Request and prevent it from resorting to speculative arguments in its response thereto. Item 3 will not only allow the Defence to confirm P-2201’s identity as provided by the Prosecution,⁵⁴ but also goes to the reasons, amounts and destination of the funds transferred by the Prosecution.⁵⁵ Item 4 is warranted since P-0840 is the one who provided the Prosecution’s estimated cost of 30,000CFA.⁵⁶

39. Therefore, as they are all related to the funds transferred by the Prosecution to P-2201, Items 3, 4, 5, and 6, are material to the preparation of the Defence and their disclosure and/or inspection is necessary to meaningfully challenge the evidence that constitute the factual ground for the Rule 68(2)(c) Request.

iii. Item 2 and Item 8

40. The Report and the pictures provided by P-2201 are the first and only documents in the case record that refer to P-2200 [REDACTED].

41. The Defence sought the disclosure of all materials that corroborate and/or contradict P-2201’s account of P-2200 [REDACTED]. Despite the Prosecution’s assertion that it has “nothing further in [its] possession that is responsive” to

⁵⁴ See Prosecution email dated 5 July 2023, at 09:17.

⁵⁵ The Report, para. 17.

⁵⁶ The Report, para. 12.

this request on 5 July 2023, the Rule 68(2)(c) Request, filed on 7 July 2023, mentions that P-2200 complained about back pain that could impact his travel to testify.⁵⁷

42. Considering this appearance of corroborative information, the Defence hereby reiterates before the Chamber its initial request to be provided with materials that corroborate and/or contradict P-2201's account of the alleged incident involving P-2200. Item 2 is material to the preparation of Defence as the alleged BOSSANGO attack is linked to twelve different counts, i.e., counts 30 to 35 and 37 to 42, all of which are brought against Mr Ngaïssona. Its disclosure is therefore necessary to guarantee Mr Ngaïssona's fair trial rights.

43. Additionally, the Prosecution argues in its Rule 68(2)(c) Request that it made several unsuccessful attempts to contact P-2200 before being informed that he had died.⁵⁸ In order to assess whether the Prosecution exercised reasonable diligence as argued, the Defence submits that the inspection of all attempted calls is material to the Defence in ensuring a meaningful forthcoming response to the Rule 68(2)(c) Request on grounds of reasonable diligence.

44. Therefore Item 2 and Item 8 are material to the preparation of the Defence, and are as such disclosable pursuant to Rule 77 of the Rules.

B. Item 7 is material to undermine the Prosecution case and support a line of argument of the Defence

45. The Defence is currently investigating all evidence originating from BOSSANGO in order to undermine the Prosecution case on BOSSANGO-related charges and to support a line of Defence that is P-2049 is involved in the production and collection of evidence. As such, all communication that may have occurred between the Prosecution and P-2049 since his testimony before the Court (Item 7) is relevant to the Defence as it directly impacts a

⁵⁷ ICC-01/14-01/18-1967-Conf., para. 12.

⁵⁸ ICC-01/14-01/18-1967-Conf., para. 13.

Defence's line of argument to challenge the Prosecution's case. It should therefore be disclosable under Rule 77.

46. As the Chamber is aware, P-2049 is the focus of Defence investigations regarding BOSSANGOA-related incidents and charges. As outlined in the Defence Cooperation requests to the Kingdom of Netherlands, the Defence is highly concerned with P-2049's bias towards the Anti-Balaka, and overall ethics during the conflicts.⁵⁹ It is the Defence's position that P-2049, [REDACTED] (P-2200) during the conflict, and P-2201, [REDACTED], coordinated the production of the Health Booklet and the Certificate of Cause of Death – if not their fabrication. The Defence believes that their coordination is the reason why it took P-2201 a year and 75,000CFA to produce pictures of the Health Booklet and the Certificate of Cause of Death. The provision of pictures by P-2201 indeed follows a pattern identified by the Defence : all documentary evidence in the case record provided by individuals linked to [REDACTED] are self-photographed pictures of so-called official documentation sent to the Prosecution after their in-person interviews, without the Prosecution ever being provided with their corresponding hard-copies, in spite of in-person meetings with investigators.

47. The Defence therefore submits that having access to the exchanges between the Prosecution and P-2049 will allow it to compare the timeline of their exchanges against that of the exchanges between P-2201 and the Prosecution (Item 1). The disclosure of such exchanges is therefore necessary to support a major line of Defence argument that would greatly undermine the credibility of BOSSANGOA witnesses called by the Prosecution. As such, Item 7 should be disclosed pursuant to Rule 77 of the Rules.

⁵⁹ ICC-01/14-01/18-1844-Conf-Exp.

VI. RELIEF SOUGHT

48. Given the above, the Defence respectfully requests the Chamber to

ORDER the Prosecution to disclose or otherwise allow the inspection of the Items as enumerated in paragraphs 2 ;

SUSPEND the deadline to respond to the Rule 68(2)(c) Request until the Items are made available to the Defence ; and

REMIND the Prosecution of its disclosure obligations under Rule 77 of the Rules.

Respectfully submitted,



G. J. Alexander Knoop
on behalf of
Patrice-Edouard Ngaïssona

Dated this 19 January 2026

At The Hague, the Netherlands