

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 6 May 2026

TRIAL CHAMBER V

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

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

Public Document

Public Redacted Version of “Consolidated Defence Response to the “Confidential redacted version of ‘Prosecution’s Request under Articles 64(6)(b) and 93 of the Rome Statute to Summon a Witness’” (ICC-01/14-01/18-1690-Conf-Red) and to the “Version confidentielle expurgée de la « Requête de l’Accusation sur le fondement des articles 64(6)(b) et 93 du Statut de Rome aux fins de délivrance d’une citation à comparaître au témoin P-2269, 15 décembre 2022”, (ICC-01/14-01/18-1701)”, 19 December 2022

Source: Defence of Patrice-Edouard Ngaïssona

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

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I. Introduction

1. On 8 December 2022, the Prosecution filed its “Confidential redacted version of “Prosecution’s Request under articles 64(6)(b) and 93 of the Rome Statute to Summon a Witness” (“Request”), requesting that Trial Chamber V (“Chamber”) compel the testimony of Witness P-2602 pursuant to article 64(6)(b) of the Rome Statute (“Statute”). The Prosecution also requested that the competent authorities of the Central African Republic (“CAR”) be requested to serve a summons on the witness, and to assist in his appearance pursuant to articles 93(1)(b) and 93(1)(d).¹
2. On 15 December 2022, the Prosecution filed essentially the same request for witness P-2269.² Given the similarities between the issues presented in the P-2602 and P-2269 Requests, the Defence hereby presents its consolidated response.
3. The Defence for Mr Ngaïssona (“Defence”) defers to the Chamber’s discretion on whether to compel Witness P-2602’s and P-2269’s appearances. It requests, however, that the Chamber order the lifting of redactions applied to the two requests, so that the Defence may be apprised of the circumstances surrounding P-2602’s and P-2269’s non-cooperation with the Prosecution, as this evidence is material to the Defence.

II. Relevant Procedural History

4. The Prosecution interviewed Witness P-2602, [REDACTED] after the confirmation of charges hearings. The Prosecution disclosed P-2602’s statement to the Defence on 20 July 2020.³

¹ ICC-01/14-01/18-1690-Conf-Red (hereinafter “The P-2602 Request”).

² “Version confidentielle expurgée de la « Requête de l’Accusation sur le fondement des articles 64(6)(b) et 93 du Statut de Rome aux fins de délivrance d’une citation à comparaître au témoin P-2269” 15 décembre 2022, ICC-01/14-01/18-1701-Conf-Red (hereinafter “The P-2269 Request”).

³ Pre-Trial INCRIM package 41, 20 July 2020.

5. On 31 August 2020, the Prosecution notified the Chamber and the parties of its intention to submit P-2602's prior recorded statement pursuant to rule 68(3) of the Rules of Procedure and Evidence ("Rules").⁴
6. Sometime afterwards, Witness P-2602 ceased to communicate with the Prosecution. The circumstances and reasons for this change in Witness P-2602's willingness to cooperate with the Prosecution are unknown to the Defence, as the Prosecution has redacted this information. The Prosecution also redacted the date upon which P-2602 ceased to collaborate with the Prosecution.⁵
7. The Prosecution interviewed Witness P-2269 [REDACTED], and disclosed his statement to the Defence on 7 August 2019. According to Defence investigations, P-2269 [REDACTED].⁶
8. On 8 December 2022, the Prosecution filed the P-2602 Request *ex parte*, only available to the Prosecution and VWU.⁷ On the same day, the Defence was notified of the confidential redacted version of the Request. Similarly, on 15 December 2022, the Prosecution filed the P-2269 Request, both the *ex parte* version, only available to the Prosecution and VWU, and the confidential redacted version, which the Defence received.
9. On 13 December 2022, the Defence for Mr Alfred Yekatom informed the Chamber, parties and participants that it did not intend to file a response to the P-2602 Request.⁸ On the same day, the Common Legal Representatives of Victims of the other crimes informed that it did not intend to respond this request as well.⁹

⁴ ICC-01/14-01/18-642-Conf-AnxA, page 6.

⁵ See The P-2602 Request, para. 16.

⁶ ICC-01/14-01/18-1273, para. 9.

⁷ The P-2602 Request, para. 4.

⁸ Email from the Defence team of Mr Yekatom to the Chamber, parties and participants, 13 December 2022, at 15:20.

⁹ Email from the CLRV to the Chamber, parties and participants, 13 December 2022, at 16:08.

III. Confidentiality

10. In accordance with regulation 23*bis*(1) of the Regulations of the Court, the response is filed confidentially as it responds to a document of the same classification.

IV. Applicable Law

11. Article 67(1) of the Statute enshrines fundamental fair trial guarantees of suspects and accused persons, including the principle of equality of arms. Article 67(2) 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 evidence."¹⁰ Such disclosure must be done "as soon as practicable",¹¹ which means, without undue delay.¹²
12. Article 64(2) 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".
13. Rule 77 of the Rules provides that the Prosecution shall permit 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." As held by the Appeals Chamber,

¹⁰ In *Lubanga*, the Trial Chamber held "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.

¹¹ Article 67(2), Rome Statute.

¹² *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.

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”.¹³ 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.”¹⁴

14. Pursuant to article 64(6)(b) of the Statute, a trial chamber may, as necessary “require the attendance and testimony of witnesses and production of documents and other evidence by obtaining, if necessary, the assistance of States”.¹⁵ To this end, a trial chamber may also, pursuant to articles 93(1)(b) and (d) of the Statute, request a State Party to cooperate in serving the summon upon a witness and in compelling a witness to appear before the Court whether *in situ* or by way of video-link.¹⁶ Any cooperation request to a State Party must satisfy the tripartite principles of (i) relevance, (ii) specificity and (iii) necessity.¹⁷ In

¹³ *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.

¹⁴ *Ibid.*

¹⁵ *Prosecutor v Ruto and Sang*, Judgment on the appeals of William Samoei Ruto and Mr Joshua Arap Sang against the decision of Trial Chamber V (A) of 17 April 2014 entitled “Decision on Prosecutor’s Application for Witness Summonses and resulting Request for State Party Cooperation”, ICC-01/09-01/11-1598, 9 October 2014, paras 107 and 113; *Prosecutor v. Bemba et al.*, Decision on the ‘Prosecution’s Requests under Articles 64(6)(b) and 93 of the Rome Statute to Summon Witnesses’, ICC-01/05-01/13-1343-Red, 3 December 2015, para. 17.

¹⁶ *Prosecutor v Ruto and Sang*, Judgment on the appeals of William Samoei Ruto and Mr Joshua Arap Sang against the decision of Trial Chamber V (A) of 17 April 2014 entitled “Decision on Prosecutor’s Application for Witness Summonses and resulting Request for State Party Cooperation”, ICC-01/09-01/11-1598, 9 October 2014, ICC-01/09-01/11-1598, paras 128 and 132.

¹⁷ *Prosecutor v Ruto and Sang*, Decision on Prosecutor’s Application for Witness Summonses and resulting Request for State Party Cooperation, ICC-01/09-01/11-1274-Corr2, 17 April 2014, para. 181; *Prosecutor v Kenyatta*, Decision on Prosecution’s applications for a finding of non-compliance pursuant to Article 87(7) and for an adjournment of the provisional trial date, ICC-01/09-02/11-908, 31 March 2014, para. 100, fn 216; *Prosecutor v Banda and Jerbo*, Decision on the third defence application pursuant to Articles 57(3)(b) and 64(6)(a) of the Statute, 12 September 2013, ICC-02/05-03/09-504-Red, para. 4; *Prosecutor v. Bemba et al.*, Public redacted version of Decision on the ‘Prosecution’s Requests under Articles 64(6)(b) and 93 of the Rome Statute to Summon Witnesses’, ICC-01/05-01/13-1343-Red, 3 December 2015, para. 18.

evaluating necessity, the Chamber will consider both (i) whether the anticipated testimony of the witness is potentially necessary for the determination of the truth and (ii) whether a summons, as a compulsory measure, is necessary to obtain the testimony of the witness.¹⁸

V. Submissions

A. Relevance, specificity and necessity

15. The Defence defers to the Chamber's discretion in evaluating whether the Prosecution has met the aforementioned criteria of specificity, relevance and necessity for compelling Witnesses P-2602 and P-2269's testimonies.

B. The lifting of redactions in paragraphs 1, 15, 16 and 18 of the P-2602 Request and in paragraph 25 of the P-2269 Request is warranted pursuant to article 67(2) of the Statute and rule 77 of the Rules

16. Preliminarily, the Defence is mindful of the Chamber's ruling that disclosure requests should be first discussed *inter partes*. The extent of the Defence's current response, however, is limited to requesting the lifting of redactions applied to the P-2602 Request and the P-2269 Requests, rather than material in the Prosecution's possession. The Defence will liaise directly with the Prosecution as it concerns disclosure of specific items or material relating to P-2602's non-cooperation, and the investigative report indicating P-2269's non-cooperation, namely CAR-OTP-00000017-000001.
17. For Witness P-2269, the Prosecution never provided the Defence with any information that P-2269 [REDACTED]. Indeed, the P-2269 Request is the first time the Prosecution, albeit with sweeping redactions, provided some concrete

¹⁸ *Prosecutor v. Bemba et al.*, Public redacted version of Decision on the 'Prosecution's Requests under Articles 64(6)(b) and 93 of the Rome Statute to Summon Witnesses', ICC-01/05-01/13-1343-Red, 3 December 2015, ICC-01/05-01/13-1343-Red, para. 18; *Prosecutor v. Ruto and Sang*, Decision on Prosecutor's Application for Witness Summonses and resulting Request for State Party Cooperation, ICC-01/09-01/11-1274-Corr2, 17 April 2014, para. 181.

information indicating that the Defence's conclusion regarding [REDACTED].¹⁹ It appears there are other reasons to believe that P-2269 refuses to cooperate; however, they are so extensively redacted that the Defence is not in a position to make any submissions thereon.²⁰

18. The Prosecution argues that the redactions to the P-2602 Request are warranted since they refer "to information to which the Defence has no procedural right or interest".²¹ The Prosecution argues that the redactions to the P-2269 Request are warranted because it reveals the current location of Witness P-2269.²²
19. The Defence fundamentally disagrees with this assessment of the Prosecution's disclosure obligations. The redacted information refers to the circumstances of P-2602's and P-2269's alleged non-cooperation with the Prosecution and is therefore material to the Defence's preparation.
20. In the P-2602 Request, the Prosecution provides details, *ex parte*, as to P-2602's apparent deliberate avoidance of any contact with the Prosecution. This information led the Prosecution to conclude that "the witness will not testify in this trial unless compelled".²³ For witness P-2269, the Prosecution provides a different justification for redactions, namely that the redactions pertain to his current location. However, for both witnesses, the circumstance surrounding their avoidance of contact with the Prosecution, including the frequency and dates of attempted contacts by the Prosecution, have been unduly redacted.
21. *First*, the circumstances of P-2602's and P-2269's non-cooperation, despite their initial provision of a statement in the course of 2019 to the Prosecution, are material to the Defence. They may inform further investigative avenues and lines of questioning, and affect P-2602's, P-2269's and other witnesses' credibility.

¹⁹ The P-2269 Request, para. 25.

²⁰ Ibid.

²¹ The P-2602 Request, paras 1, 8-14.

²² The P-2269 Request, para. 5.

²³ See The P-2602 Request, para. 18.

Given the dearth of information provided with respect to Witness P-2602, the Defence is limited in its ability to provide more detail with respect to materiality. With respect to P-2269, the Defence had credible information that [REDACTED]. The Prosecution should have provided the Defence with a report, redacting Witness P-2269's current location if necessary, indicating the reasons why it believed Witness P-2269's was [REDACTED].

22. The Prosecution's disclosure obligations pursuant to rule 77 are broad.²⁴ As held by the Appeals Chamber, 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".²⁵ This includes information relating to the Witness' sudden non-cooperation with the Prosecution, which in turn, may affect his credibility.
23. *Second*, the lifting of redactions would provide the Defence with crucial information affecting P-2602's and P-2269's credibility. As provided in article 67(2) of the Statute, "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 evidence*" must be disclosed.²⁶ This obligation encompasses information relating to the circumstances of a witness' sudden refusal to cooperate with the Prosecution, including potential reasons for the refusal, and relevant dates, as well as the attempts by the Prosecution to secure cooperation. With respect to

²⁴ *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.

²⁵ 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.

²⁶ Emphasis added.

Witness P-2269, the Defence submits that [REDACTED] raises significant doubts as to their willingness to tell the truth in these proceedings and goes to the heart of their credibility. As held by the Chamber on a previous disclosure request, which, similarly, dealt with the non-cooperation of a Prosecution witness:

9. Turning to the Defence Disclosure Request, the Chamber reminds the Prosecution of its obligation to effect disclosure in a diligent and timely manner, as required by Article 67(2) of the Statute and Rule 77 of the Rules. In addition, and to the extent that the Prosecution considers the reasons behind P-2625's refusal to testify in this case material to the preparation of the defence, any material containing information thereon, including any correspondence, investigative report, or refugee applications, should be disclosed to the defence immediately.²⁷

24. *Third*, the redacted information relating to P-2602's and P-2269's non-cooperation is all the more material given the Prosecution's recognition that their evidence goes to the heart of the charges.²⁸ Regarding P-2602's prospective testimony, the Prosecution claims it will be "deprived of important evidence going to the heart of the charged crimes in [REDACTED]" and "the Chamber's truth-finding function may be impeded" if P-2602 does not testify in the case.²⁹ As argued by the Prosecution, P-2602:

[REDACTED].³⁰

25. With respect to Witness P-2269, the Prosecution submits that [REDACTED], he has unique evidence that touches upon Mr Ngaïssona's alleged criminal responsibility.³¹ The Prosecution goes on to quote several passages, which are not in evidence, of P-2269 detailing [REDACTED].³² According to the Prosecution,

²⁷ ICC-01/14-01/18-1627-Conf, para. 9.

²⁸ The P-2602 Request, paras 1-2; The P-2269 Request, paras 2, 8.

²⁹ The P-2602 Request, para. 1.

³⁰ The P-2602 Request, para. 2.

³¹ The P-2269 Request, paras 2-3.

³² The P-2269 Request, para 14.

these passages could constitute direct evidence of Mr Ngaïssona's alleged contributions to the charged crimes.³³

26. Therefore, the materiality of the circumstances of P-2602's and P-2269's non-cooperation is heightened by the alleged centrality of P-2602's and P-2269's prospective evidence in relation to the charges confirmed against Mr Ngaïssona, and thus unredacted version of the requests should be disclosed.

VI. Conclusion

27. The information redacted in the Request, which relates to the circumstances of Witness P-2602's and P-2269's apparent unwillingness to cooperate with the Prosecution is material to the Defence's preparations for trial and "may affect the credibility of the prosecution evidence".³⁴ It is therefore disclosable pursuant to article 67(2) of the Statute and rule 77 of the Rules. Therefore, the Defence requests the Chamber to lift redactions applied to the P-2602 Request at paragraphs 1, 15, 16 and 18, and to lift redactions applied to paragraph 25 of the P-2269 Request. The Defence recognizes that P-2269's current location is a protected category of information, and therefore requests a lesser redacted version of the P-2269 Request, if such information is contained therein.

VII. Relief Sought

28. The Defence defers to the Chamber's discretion with respect to the Prosecution's request to compel Witness P-2602. The Defence respectfully requests the Chamber to:

– **ORDER** the lifting of redactions applied in paragraphs 1, 15, 16 and 18 of the P-2602 Request.

–**ORDER** the lifting of redactions in so far as they do not relate to the current location of Witness P-2269 in the P-2269 Request

³³ Ibid., para. 13.

³⁴ Article 67(2), Rome Statute.

Respectfully submitted,



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

Dated this 6 May 2026

At The Hague, the Netherlands