

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14-01/21**

Date: **11 November 2022**

TRIAL CHAMBER VI

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

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

Public

Public Redacted Version of “Prosecution’s Response to the Defence’s Request to lift Redactions in the Statements of P-3053, P-3056 and P-3064”, ICC-01/14-01/21-492-Conf, dated 30 September 2022

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Defence's Request to lift redactions to the names of investigators in the statements of P-3053, P-3056 and P-3064 ("Request")¹ should be rejected. The redactions remain justified and proportionate in the circumstances. The redactions do not prejudice Mahamat Said Abdel Kani's ("Mr SAID") right to cross-examine the witnesses, including on their interview process, if permitted by the Chamber.

II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this Response is filed as confidential as it refers to a filing of the same designation. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

3. The Request should be rejected considering that the standard redactions to the names of the investigators are justified, necessary and proportionate in the circumstances. The investigators subject of the Request are involved in ongoing witness management activities and other sensitive investigative matters of the Office of the Prosecutor ("OTP") in the Central African Republic ("CAR"). Disclosing their identities to the Defence risks exposing the investigators and impacts their ability to conduct their obligations in the field.

A. There exists an objectively justifiable risk to the safety of the investigators

4. There exists an "objectively justifiable risk" to the safety of the investigators concerned, which may prejudice further or ongoing investigations of the OTP should their identities be disclosed at this time. The investigators, whose names are redacted

¹ ICC-01/14-01/21-483-Conf.

(three staff members),² pursuant to the redactions protocol³ are still active in the field and not permanently based there.⁴ Disclosure of their names could jeopardise the integrity of the OTP's ongoing witness management and investigative activities as a whole through the investigators being exposed, potential witnesses being interfered with or deterred, evidence destroyed and arrest opportunities compromised. This, in turn, may impact on the Prosecution's ability to obtain evidence, and on the Court's ability to secure in the future the presence of a suspect before the Court. For these reasons, it has been standard practice of the Court to allow for the names of staff members active in the field to be redacted. Of particular note, there are also a number of investigators assigned to the *Yekatom & Ngaissona* case, whose names remain redacted in those proceedings and whose names therefore also remain redacted in the case against Mr SAID.⁵

5. As the Defence is well aware, a second arrest warrant against the former high ranking member of the Seleka, Nouradine ADAM ("Mr ADAM"), was issued.⁶ The continued influence of Mr ADAM in the CAR and his involvement with an active armed group further exasperates the risk to the OTP staff in the field.⁷ The redactions are therefore adequate to eliminate, or at least reduce the risk to the investigators in the field.

² A.4 – 0016, A.4 – 0037 and A.4 – 0047.

³ ICC-01/14-01/21-50-Conf, para. 34; ICC-01/14-01/18-64-Red, paras. 23-32, specifically para. 25 ("Under rule 81(2) of the Rules, the Prosecutor may withhold information falling under (...) Category "A.4": Identifying and contact information of investigators, insofar as disclosure of this information could hinder their work in the field, thereby putting at risk the ongoing or future investigations of the Prosecutor").

⁴ ICC-01/09-02/11-495, para. 23 (« in view of the fact that investigators are not permanently based in the field, the Chamber is of the view that requests for redactions to the names of OTP investigators must be applied »).

⁵ See e.g. A.4 – 0004, A.4 – 0005, A.4 – 0006, and A.4 – 0010.

⁶ ICC-01/14-41-Red2.

⁷ Press article titled "Nourredine Adam prévient, Bangui va tomber bientôt : « Touadera et moi nous serons à la CPI »" by Corbeaunews, published on 15 September 2022 (<https://corbeaunews-centrafrique.org/nourredine-adam-previent-bangui-va-tomber-bientot-touadera-et-moi-nous-serons-a-la-cpi/>).

6. In principle, investigations are conducted confidentially and *ex parte* until the investigation concludes.⁸ For as long as investigative activities continue, the OTP is allowed to protect the identity of their investigators. While the investigation against Mr SAID is closed, the three investigators continue to perform important witness management functions and are involved in other ongoing investigations of the OTP. [REDACTED]⁹ [REDACTED].¹⁰ [REDACTED]. In such instances, it is standard and accepted practice to delay the disclosure of the names of the OTP staff members if they remain active in the field on ongoing investigations.¹¹

7. OTP periodically reviews the ongoing need to maintain standard redactions and lifts them when circumstances change. The A.4 category redactions lifted thus far only concern persons who do not currently travel or only minimally travel to the CAR. This has been the case for a number of investigators who worked on the *Said* case but who have since been reassigned to other situations. [REDACTED].¹²

8. The risk also arises from disclosure of the investigators' names to the Defence rather than to the public at large. Even though the Defence is bound by the confidentiality protocol¹³ and Mr SAID's communications are subject to contact restrictions,¹⁴ there remains a risk that the information may inadvertently be leaked. It is reasonable to believe that in some instances the presence of OTP investigators in the

⁸ See e.g. by analogy Chamber's Practice Manual, 29 November 2019, paras. 3, 15 [referring to arrest warrant applications being submitted and issued *ex parte* and to the proceedings before the initial appearance conducted *ex parte*].

⁹ See e.g., ICC-01/14-01/21-481-Conf, para. 17; ICC-01/14-01/21-236-Conf, para. 21.

¹⁰ ICC-01/14-01/21-236-Conf, paras. 21, 27, 28.

¹¹ See also ICC-01/04-01/07-475, para. 91 (« The Appeals Chamber notes that it is mandatory to record the date, the time and the place of the statement, as well as the persons present - such information shall be contained in any record of a formal statement that has been made. However, the Appeals Chamber considers that such information can be withheld from the Defence in appropriate circumstances »).

¹² See e.g., ICC-01/14-01/21-483-Conf, para. 3 (“[REDACTED]”).

¹³ ICC-01/14-01/21-50-Conf, para. 37; Annex to Chambers Practice Manual, 29 November 2019; see also Annex 2 to the Abd-Al-Rahman First Disclosure Order, ICC-02/05-01/20-116-Anx2.

¹⁴ ICC-01/14-01/21-247-Red, para. 45; ICC-01/14-01/21-382, paras. 36-38.

field, should their identities be disclosed to the Defence, could be easily traced, thereby risking their safety and security and also prejudicing ongoing OTP investigations.¹⁵

B. The redactions are proportionate in the circumstances and do not prejudice Mr SAID's rights

9. While the Prosecution recognises that redactions should be the exception, the standard redactions to these specific investigators remain overall proportionate in the circumstances. There are no less intrusive alternative measures than redacting the investigators' names to achieve protection and safeguard the investigations at this stage of the proceedings.

10. The redactions are not prejudicial to or inconsistent with the rights of the Accused and a fair and impartial trial. Mr SAID has access to all substantial information in the witness statements and about the witnesses. The Defence will have ample opportunity to cross-examine both P-3056 and P-3064, which if permitted by the Chamber, can include questioning about their interview process. None of the investigators are on the List of Witnesses of the Prosecution¹⁶ because all witness statements they have interviewed contain direct evidence and witnesses P-3056 and P-3064 are called to testify.

11. Given the Defence has not substantiated their allegations that the investigators acted with a lack of integrity in conducting the interviews of the witnesses, there are no additional reasons apparent why the redactions would prejudice Mr SAID.¹⁷ The mere fact that witnesses were interviewed on the same day does not suffice to allege misconduct, which seems to lie at the heart of this Request.¹⁸ Nor is the Defence

¹⁵ ICC-02/05-03/09-58, para. 4.

¹⁶ ICC-01/14-01/21-354-Conf-AnxA.

¹⁷ See ICC-01/14-01/21-483-Conf, paras. 13-14, 16-18.

¹⁸ ICC-01/14-01/21-483-Conf, para. 2 (*"en particulier concernant P-3053 et P-3056 qui ont été interrogés le même jour [REDACTED]"*).

suspicion that these witnesses were interviewed in an inappropriate manner substantiated by the citation of another witness's interview transcripts (example of a transcript of P-1019).¹⁹

IV. RELIEF SOUGHT

12. For the above reasons, the Prosecution respectfully requests the Chamber to reject the Defence's Request.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

Karim A. A. Khan KC, Prosecutor

Dated this 11th day of November 2022
At The Hague, The Netherland

¹⁹ ICC-01/14-01/21-483-Conf, para. 18.