

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **15 December 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 the redactions in the Prosecution’s preparation logs of P-2607 and P-2692”, ICC-01/14-01/21-573-Conf, dated 12 December 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 the redactions to the names of the Prosecution team members present during the preparation sessions of witness P-2607 and P-2692 ("Request")¹ should be rejected on the premise that the requirements to authorise non-disclosure of the investigator's identity are met. The redactions to [REDACTED] identity remain justified and proportionate in the circumstances. The redactions also 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 given that these standard redactions to names of investigators not permanently based in the field, but still active in the field, are justified, necessary and proportionate in the circumstances. This investigator who is the subject of this Request is involved in the Prosecution's ongoing witness management activities and [REDACTED], from the Central African Republic ("CAR"), the preparation sessions of Prosecution witnesses authorised to testify via audio-video link ('AVL')² in the SAID trial. Disclosing [REDACTED] identity therefore risks exposing the investigator [REDACTED] as well Prosecution witnesses that will testify via AVL from the CAR. It will also impact on the investigator's ability to conduct [REDACTED] obligations in the field.

¹ ICC-01/14-01/21-569-Conf.

² ICC-01/14-01/21-442.

A. The requirements to authorise non-disclosure are met.

4. There exists an “objectively justifiable risk” to the safety of the investigator concerned, and that of the witnesses whose AVL preparation sessions [REDACTED] is facilitating from the CAR, should [REDACTED] identity be disclosed at this time. The investigator concerned is a part of a small group of investigators currently deployed in the CAR for the specific purpose of witness management activities. Thus if lifted, the redactions to [REDACTED] name and initials in the annexes to the witness preparation logs of P-2607 and P-2692 will expose [REDACTED], the witnesses whose AVL preparation sessions [REDACTED] is facilitating in the future and risk those witnesses being interfered with or being deterred from testimony.

5. In the *Bemba* trial the Chamber considered that disclosing the names and signatures of the Prosecutor’s limited pool of interpreters and stenographers involved in the investigations, some of whom emanated from the CAR at the time, would pose an objectively justifiable risk to the Prosecutor’s further and ongoing investigations.³ In the *Banda* case, the Single Judge agreed with the Prosecutor that “...it is reasonable to believe that in some instances the presence of OTP investigators and interpreters in the field, should their identities be disclosed to the Defence, could be easily traced, thus possibly putting at risk their safety and security and therefore prejudicing ongoing investigations...”⁴ It is the Prosecution’s submission in this instance that the risk observed by the Chambers in *Bemba* and *Banda* are comparable to the case at hand, particularly in light of the specific role for which the investigator is currently deployed in the field.

6. The risk arises from disclosing the identity of the investigator to the Accused. Even though the Defence is bound by the confidentiality protocol⁵ and Mr SAID’s communications are subject to contact restrictions,⁶ there remains a risk that the

³ ICC-01/05-01/08-135-Conf, paras. 84-85; ICC-01/05-01/08-215-Conf, para.88

⁴ ICC-02-05-03/09-58, 29 July 2010, para. 4.

⁵ 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.

⁶ ICC-01/14-01/21-247-Red, para. 45; ICC-01/14-01/21-382, paras. 36-38.

information may inadvertently be leaked. It is reasonable to believe that in some instances the presence of OTP investigators in the 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.⁷ Since in this case, the Investigator is largely tasked with witness management and facilitating witness preparation, the risk [REDACTED] is subject to extends to the witnesses [REDACTED] takes care of to facilitate trial testimony. While these witnesses are known to the Defence and the Accused, their personal safety ahead of their testimony has to be safeguarded.

7. The Defence is aware that a second arrest warrant against the former high ranking member of the Seleka, Nouradine ADAM (“Mr ADAM”), was issued.⁸ 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.⁹ The redactions are therefore adequate to eliminate, or at least reduce the risk to the investigators in the field.

8. While the investigation against Mr SAID is completed, the three investigators continue to perform important witness management functions. [REDACTED]¹⁰ [REDACTED].¹¹ [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.¹²

⁷ ICC-02/05-03/09-58, para. 4.

⁸ ICC-01/14-41-Red2.

⁹ 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/>).

¹⁰ See e.g., ICC-01/14-01/21-481-Conf, para. 17; ICC-01/14-01/21-236-Conf, para. 21.

¹¹ ICC-01/14-01/21-236-Conf, paras. 21, 27, 28.

¹² 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 »).

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 this specific investigator remain overall proportionate in the circumstances. There are no less intrusive alternative measures than redacting the investigator's names and initials in order 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 have ample opportunity to cross-examine both P-2607 and P-2692 as they have demonstrated today.
11. Decision ICC-01/14-01/21-497 is not a blanket decision in relation to all investigators in the case, but rather specific to the staff members OTP who were present during the interviews of witnesses P-3053, P-3056 and P-3064 at the time their statements were taken.
12. The Single Judge in the *Al Faqi* case noted that while the authorisation of non-disclosure of information is viewed as an exception, the Court has also an obligation not to jeopardise the security of witnesses and other persons at risk, and that decisions on non-disclosure shall be taken on a case-by-case basis, in accordance with the principles established by the Appeals Chamber.¹³ It is the Prosecution's submission that disclosing the investigator's name in this scenario would jeopardise [REDACTED] security and that of the witnesses in respect of whom [REDACTED] is currently - and in the future will be - deployed in the field.

¹³ ICC-01/12-01/15-61, para.1

C. RELIEF SOUGHT

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



Karim A. A. Khan KC, Prosecutor

Dated this 15th day of December 2022

At The Hague, The Netherlands