

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/14-01/18**
Date: **13 February 2024**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. ALFRED YEKATOM AND
PATRICE-EDOUARD NGAÏSSONA***

Public

Public redacted version of “Prosecution’s Request for the Non-Publication of P-2467’s Prior Recorded Testimony”, ICC-01/14-01/18-2003-Conf, 24 July 2023

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. Pursuant to articles 64 and 68, rules 87 and 88 of the Rules of Procedure and Evidence (“Rules”), and Trial Chamber V’s 3 June 2021 Initial Decision on the Publishing of Prior Recorded Testimonies,¹ the Office of the Prosecutor (“Prosecution”) requests that the Chamber excepts P-2467’s Prior Statement from publication, or alternatively, authorise the redaction of any information identifying the witness and his professional affiliation.²

2. As explained below, the measures sought are the least restrictive means necessary to balance the right of the Accused to a fair and public trial against the Court’s competing statutory obligation to protect the physical and psychological well-being of witnesses and, importantly, innocent third parties. Moreover, they do not unfairly prejudice the Accused.

II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(1) of the Regulations (“RoC”), this Request is filed as “Confidential”, as it concerns witnesses and material not available to the public. A public redacted version of this request will be filed as soon as practicable.

III. SUBMISSIONS

4. As detailed below, publishing P-2467’s identity and [REDACTED] would create an objectively justified security risk, including for innocent third parties. Withholding such information is the only means of averting this risk. However, in any case, doing so would cause no serious prejudice to the Accused’s rights.

¹ See email Decision, 3 June 2021, at 15:58 (instructing the calling participants to propose a redacted version of the written record of each prior recorded testimony or indicate that it will be made public in its entirety).

² Hereinafter, “Prior Statement”; see ICC-01/14-01/18-1907-Conf (granting its submission).

A. The existence of an objectively justified security risk

i. Deterioration of the security situation in the Central African Republic

5. The current context and recent deterioration of the security situation in the Central African Republic (“CAR”) is a significant factor contributing to the risks associated with publishing the Prior Testimony.

6. As recently as 26 May 2023, the Registry’s Twelfth Report on the matter noted [REDACTED].³

7. [REDACTED].⁴ [REDACTED].

8. [REDACTED].⁵ [REDACTED].⁶

[REDACTED].⁷

9. [REDACTED] Chamber should consider in assessing the attendant risks in requiring the publication of the Prior Statement.

ii. Security concerns relating to P-2467’s personal situation

10. P-2467 has worked for [REDACTED].

11. The nature of P-2467’s work demands that he be able to travel [REDACTED], particularly in view of the deteriorating security trajectory in CAR.

12. [REDACTED].

13. [REDACTED].

³ See ICC-01/14-01/18-1889-Conf, para. 7.

⁴ See ICC-01/14-01/18-1889-Conf, para. 7.

⁵ [REDACTED].

⁶ Annex A, p. 1 (emphasis added).

⁷ Annex A, p. 4 (emphasis added).

14. In contrast to [REDACTED]— collaborating with criminal investigation and prosecutorial bodies is something apart. [REDACTED].

15. If P-2467's cooperation with the Court were to be made public, this would raise his risk profile and endanger his security [REDACTED], as well as potentially impact his activities [REDACTED].

16. This Chamber has previously recognised that a concrete *risk* of retaliation exists in similar circumstances; wherein a witness's livelihood and particular involvement [REDACTED].⁸

17. Granting the requested measures will ensure that P-2467 is able to continue exercising his functions [REDACTED] without fear for his own security, and without jeopardising that of [REDACTED].

iii. Security concerns related to [REDACTED]

18. Article 54(3)(f) authorises the Prosecutor to take or request necessary measures to ensure the protection of "any persons."⁹ As noted by the Appeals Chamber, this article enshrines the general principle according to which third parties should not be endangered as a consequence of the Court's activities.¹⁰ This notion extends to requests regarding 'innocent third parties'¹¹ under rule 87(1).¹² A such, the Statute imposes a duty on the Court and the Prosecution to do everything necessary to prevent witnesses and innocent third parties from being unjustifiably exposed to risk through the activities of the Court.

⁸Email Decision of the Trial Chamber V, 22 March 2021, at 15:08.

⁹ See ICC-01/04-01/07-475, para. 55.

¹⁰ See ICC-01/04-01/07-475, paras. 44, 47, 54 and 56.

¹¹ See ICC-01/04-01/07-475, para. 40 (noting that innocent third parties are individuals who may be placed at risk as a result of the activities of the Court, but who are not victims, current or prospective prosecution witnesses or sources, or members of their families).

¹² ICC-01/04-01/07-475, para. 51.

19. This was a key consideration [REDACTED].¹³ [REDACTED].¹⁴

20. If P-2467's identity and affiliation were to be disclosed to the public, [REDACTED].

21. In addition, the domestic authorities have only a minimal capacity to protect those citizens. [REDACTED] — is uncertain at best.

B. The Absence of prejudice for the Accused

22. Withholding P-2467's identity and professional affiliation from the public is justified. It does not seriously impact the overall public nature of the proceedings in this case.

23. *First*, the Defence have already had access to the Prior Statement in its entirety. They have not been prevented in any way from conducting their own enquiries to test the witness's evidence.

24. *Second*, the public [REDACTED]. There is therefore no real need to publish P-2467's Prior Statement and consequently, [REDACTED].

25. *Finally*, to the same extent that competing interests, such as the need to protect witnesses at risk of reprisal, can justify limiting an accused's entitlement to disclosure,¹⁵ the same logic and principle applies to curtailing the right of publicity.¹⁶

C. The proportionality of the measure

26. Given the content of his Prior Statement, [REDACTED]. Therefore, the most efficient and appropriate way to guarantee the safety and well-being of P-2467 [REDACTED], is to refrain from publishing P-2467's Prior Statement in its entirety. In

¹³ [REDACTED].

¹⁴ Annex B.

¹⁵ See ICC-01/04-01/07-475, para. 61 and reference cited.

¹⁶ See e.g. ICC-01/14-01/21-377-Red, para. 11; ICC-01/14-01/18-906-Red2, para. 14; ICC-02/04-01/15-612-Red, para. 5.

this way, any possible inference of cooperation with the Court and the Prosecution in this case as a whole would be definitively avoided.

27. The publication of the Prior Statement is not necessary to secure the Accused's right to a fair trial, nor does it materially affect the right to publicity – which should be assessed in respect of the proceedings as a whole. Thus, as the Chamber has previously acknowledged, the principle of the publicity of the proceedings “is not absolute and therefore subject to certain exceptions.”¹⁷

28. As there is no demonstrable prejudice to the Accused in withholding this Prior Statement from publication in particular, the measure is commensurate and proportionate to the competing statutory interests under article 68.

D. Alternative relief

29. In the alternative, if the Chamber determines that articles 64(7) and 67(1) warrant publication of the Prior Statement, it should authorise the application of such redactions as necessary to ensure that P-2647's identity and professional affiliation are not revealed. [REDACTED], it may at least generally mitigate the associated risks to the witness and to innocent third parties as explained above.

¹⁷ See ICC-01/14-01/18-906-Red2, para. 14.

IV. CONCLUSION

30. For the above reasons and those set out in Annex B, the Prosecution requests that the Chamber excepts P-2467's Prior Statement from publication, or alternatively, authorise the redaction of any information identifying the witness and his affiliation.

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 13th day of February 2024
At The Hague, The Netherlands