

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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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 Second Request for the Protection of the Identity of Witnesses P-0567 and P-2324 in the Public Redacted Versions of their Statements”, ICC-01/14-01/18-2106-Conf-Exp, 20 September 2023

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Mr Karim A. A. Khan KC
Mr Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Ms Mylène Dimitri
Mr Thomas Hannis
Ms Anta Guissé
Ms Sarah Bafadhel

Counsel for Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoops
Mr Richard Landry Omissé-Namkeamaï
Ms Marie-Hélène Proulx

Legal Representatives of Victims

Mr Dmytro Suprun
Mr Abdou Dangabo Moussa
Ms Elisabeth Rabesandratana
Mr Yaré Fall
Ms Marie-Edith Douzima-Lawson
Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. Pursuant to articles 54(3)(f), 64 and 68, rules 87 and 88 of the Rules of Procedure and Evidence (“Rules”), and Trial Chamber V’s (“Chamber”) 3 June 2021 Initial Decision on the Publishing of Prior Recorded Testimonies,¹ the Office of the Prosecutor (“Prosecution”) requests that the Chamber authorise the redaction of any identifying information in the Rule 68(2)(b) statements of P-0567² and P-2324³ (“Prior Statements”).

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, their family members and 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 and its Annexes⁴ are filed as “Confidential EX PARTE”, as they concern information not available to other parties to the proceedings. A Confidential Redacted version of this Request will be filed contemporaneously.

III. SUBMISSIONS

4. As detailed below, publishing the witnesses’ identifying information would unjustifiably heighten security risks to them, their family members, or innocent third parties. Withholding such information is the least intrusive measure to manage and

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 See ICC-01/14-01/18-1907-Conf, para.53, granting the introduction of P-0567’s statement (CAR-OTP-2059-0084).

³ ICC-01/14-01/18-1833-Conf-Corr, para. 81, granting the introduction of P-2324’s statement (CAR-OTP-2100-2002).

⁴ Annexes A and B comprise proposed redacted versions of the witnesses’ Prior Statements.

mitigate these risks. And, doing so would cause no serious prejudice to the Accused's rights.

A. The existence of an objectively justified security risk

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

5. As detailed in a recent filing, the current context and deterioration of the security situation in the Central African Republic ("CAR") is a significant factor contributing to the risks associated with publishing the Prior Statements.⁵

6. Moreover, as set out in the Prosecution's (first) Request for the Protection of the Identity of Witnesses in the Public Redacted Versions of their Statements,⁶ as recently as 28 August 2023, the Registry's Thirteenth Report on the matter notes that the [REDACTED].⁷

7. The Registry also notes that the [REDACTED],⁸ [REDACTED].⁹ [REDACTED].¹⁰

8. The general security situation in-country is a significant factor for the Chamber to take into consideration in assessing security risks. As other Chambers of the Court have observed, this is because such circumstances have "an impact on how national authorities can act and provide assistance. This might have an exacerbating effect on the impact of risks or might influence the decision of threat actors on whether or not to act."¹¹

⁵ See ICC-01/14-01/18-2003-Conf, paras. 5-7.

⁶ See ICC-01/14-01/18-2072-Conf-Red, paras.6-8.

⁷ See ICC-01/14-01/18-2063-Conf, para. 8.

⁸ ICC-01/14-01/18-2063-Conf, para. 7.

⁹ ICC-01/14-01/18-2063-Conf-Anx, para. 49.

¹⁰ ICC-01/14-01/18-2063-Conf-Anx, para. 41.

¹¹ ICC-01/14-01/21-605-Red, para. 19.

ii. Articles 54(3)(f) and 68

9. As set out in the Prosecution's (first) Request for the Protection of the Identity of Witnesses in the Public Redacted Versions of their Statements,¹² Article 54(3)(f) authorises the Prosecutor to take or request necessary measures to ensure the protection of "any persons."¹³ It enshrines the general principle that third parties should not be endangered as a consequence of the Court's activities,¹⁴ and particularly 'innocent third parties'¹⁵ under rule 87(1).¹⁶

10. The Court's duty to do everything necessary to prevent unjustified exposure to risk¹⁷ is also embodied in article 68(1)'s directive that it act to protect witnesses' safety, physical and psychological well-being, dignity, and privacy.¹⁸ This further obligates Chambers to:

"refrain [] from actions [...] that would in all likelihood entail negative consequences for the witness",¹⁹ in particular where the hardship that would follow from the Court's actions is disproportionate to the purported significance of a witness's evidence."²⁰

iii. Specific security concerns relating to the Witnesses

a. Security concerns relating to P-0567

11. The Prosecution refers to paragraphs 48 to 59 of the Second Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant

¹² See ICC-01/14-01/18-2072-Conf-Red, paras.9-10.

¹³ See ICC-01/04-01/07-475, para 55.

¹⁴ See ICC-01/04-01/07-475, paras. 44, 47, 54 and 56.

¹⁵ 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).

¹⁶ ICC-01/04-01/07-475, para. 51.

¹⁷ See ICC-01/14-01/21-605-Red, para. 29 (noting that "protective measures are ... aimed at protecting witnesses from the *possibility* of physical and psychological harm ... it is not required that any harm has already manifested itself because the precise purpose of such measures is to prevent potential" harm from occurring").

¹⁸ ICC-01/05-01/13-1481-Red-Corr, para. 18

¹⁹ ICC-01/05-01/13-1481-Red-Corr, para. 18

²⁰ ICC-01/05-01/13-1481-Red-Corr, para. 18

to Rule 68(2)(b) of the Rules (“Second Rule 68(2)(b) Decision”) with regard to P-0567’s background and declarations.²¹

12. P-0567 is [REDACTED].

13. [REDACTED].

14. [REDACTED].

15. [REDACTED].

16. [REDACTED].

17. Exposure of the Witness’s identity [REDACTED].

18. The Chamber has previously recognised that a concrete *risk* of retaliation exists [REDACTED].²²

19. P-0567 has shared information [REDACTED].²³ [REDACTED].

20. Granting the redaction of the Witness’s identity is the least intrusive measure which would protect his legitimate interests and allow him to [REDACTED] without fear of retaliation due to his cooperation with the Court, whatever [REDACTED].

b. Security concerns relating to P-2324

21. The Prosecution refers to paragraphs 70 to 81 of the First Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2) of the Rules with regard to P-2324’s background and declarations.²⁴

22. P-2324 resides in **13 February 2024**.

²¹ See ICC-01/14-01/18-1907-Conf, paras. 48-59.

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

²³ Reports S/2014/373 of 26 June 2014, S/2014/928 of 22 Dec. 2014.

²⁴ See ICC-01/14-01/18-1833-Conf-Corr, paras. 70-81.

23. P-2324 has had numerous [REDACTED].
24. P-2324 has told the Prosecution that although [REDACTED].
25. [REDACTED].²⁵ [REDACTED]. The Court's interest in the public dissemination of his identity is greatly outweighed by its obligation to ensure that his cooperation in this case does not subject him to retaliation or any other harm. Moreover, the Accused's right to publicity is limited given that P-2324's evidence does not relate to a charged incident, does not mention YEKATOM, and contains references to NGAISSONA only "of limited and peripheral nature".²⁶
26. [REDACTED].²⁷ [REDACTED].

B. Proportionality and absence of prejudice

27. As noted in the Prosecution's (first) Request for the Protection of the Identity of Witnesses in the Public Redacted Versions of their Statements,²⁸ Withholding the Witnesses' identity from the public is justified. It does not seriously impact the overall public nature of the proceedings in this case.

28. 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,²⁹ the same logic and principle applies to curtailing the right of publicity.³⁰ As the Chamber has previously acknowledged, the principle of the publicity of the proceedings "is not absolute and therefore subject to certain exceptions."³¹

29. Here, the Defence have the Prior Statements, and have not been prevented in any way from conducting their own inquiries to test the Witnesses' evidence. In addition,

²⁵ See paras. 5-8.

²⁶ See ICC-01/14-01/18-1833-Conf-Corr, paras. 72 and 74.

²⁷ ICC-02/04-01/15-1498, para.10.

²⁸ See ICC-01/14-01/18-2072-Conf-Red, paras.42-45.

²⁹ See ICC-01/04-01/07-475, para. 61 and reference cited.

³⁰ See e.g. ICC-01/14-01/21-377-Red, para. 11ICC-01/14-01/18-906- Red2, para. 14; ICC-02/04-01/15-612-Red, para. 5.

³¹ See ICC-01/14-01/18-906-Red2, para. 14.

the publication of the Witnesses' identifying information 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.

30. As shown above, the Witnesses' security concerns in these circumstances outweigh the need to publicise their identities through their Prior Statements. Moreover, the proposed measures present no demonstrable prejudice to the Accused and are commensurate and proportionate to the Court's competing statutory interests.

IV. CONCLUSION

31. For the above reasons, the Prosecution requests that the Chamber authorise the redaction of any identifying information of the Witnesses in the public redacted versions of their Prior Statements, as proposed in Annexes A and B.

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

Karim A. A. Khan KC, Prosecutor

Dated this 13th day of February 2024

At The Hague, The Netherlands