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**International
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Court**



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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 Third Request for the Protection of the Identity of Witnesses P-0289, P-2325, P-2377, P-2422, P-2269 and P-2602 in the Public Redacted Versions of their Statements”, ICC-01/14-01/18-2208-Conf-Exp, 17 November 2023

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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-0289,² P-2325,³ P-2377⁴ and P-2422⁵ (“Prior Statements”) and in the Rule 68(2)(c) Prior Statements of P-2269⁶ and P-2602.⁷

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 Annexes⁸ 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 shortly.

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-01/14-01/18-1833-Conf-Corr, para. 139, granting the introduction of P-0289’s statement (CAR-OTP-2024-0288).

³ See ICC-01/14-01/18-1833-Conf-Corr, para. 88, granting the introduction of P-2325’s statement (CAR-OTP-2100-2386).

⁴ See ICC-01/14-01/18-1833-Conf-Corr, para. 364, granting the introduction of P-2377’s statement (CAR-OTP-2108-0609).

⁵ See ICC-01/14-01/18-1833-Conf-Corr, para. 191, granting the introduction of P-2422’s statement (CAR-OTP-2110-0801).

⁶ See ICC-01/14-01/18-2127-Conf, para. 38, granting the introduction of P-2269’s statement (CAR-OTP-2111-0336).

⁷ See ICC-01/14-01/18-2127-Conf, para. 60, granting the introduction of P-2602’s prior recorded testimony.

⁸ Annexes A-F comprise proposed redacted versions of the statements/prior recorded testimony of: P-0289 (Annex A), P-2269 (Annex B), P-2325 (Annex C), P-2377 (Annex D), P-2422 (Annex E), and P-2602 (Annex F).

III. SUBMISSIONS

4. As detailed below, publishing the witnesses identifying information would unjustifiably heighten risks to them, their family members, or innocent third parties. Withholding such information is the least intrusive measure to manage and mitigate these risks. Furthermore, 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 recently acknowledged by the Chamber, [REDACTED].⁹

6. Indeed, as set out in the Prosecution's first and second Request for the Protection of the Identity of Witnesses in the Public Redacted Versions of their Statements,¹⁰ the Registry's Thirteenth Report on the matter [REDACTED].¹¹

7. The Registry also notes that the [REDACTED],¹² [REDACTED].¹³ [REDACTED].¹⁴

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."¹⁵

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

⁹ See ICC-01/14-01/18-2003-Conf, [REDACTED].

¹⁰ See ICC-01/14-01/18-2072-Conf-Red, paras. 6-8; ICC-01/14-01/18-2106-Conf-Red paras. 6-8.

¹¹ See ICC-01/14-01/18-2063-Conf, para. 8.

¹² ICC-01/14-01/18-2063-Conf, para. 7.

¹³ ICC-01/14-01/18-2063-Conf-Anx, para. 49.

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

¹⁵ ICC-01/14-01/21-605-Red, para. 19.

9. Article 54(3)(f) authorises the Prosecutor to take or request necessary measures to ensure the protection of “any persons.”¹⁶ It enshrines the general principle that third parties should not be endangered as a consequence of the Court’s activities,¹⁷ and particularly “innocent third parties”¹⁸ under rule 87(1).¹⁹

10. The Court’s duty to do everything necessary to prevent unjustified exposure to risk²⁰ is also embodied in article 68(1)’s directive that it acts to protect witnesses’ safety, physical and psychological well-being, dignity, and privacy.²¹ This further obligates Chambers to:

“refrain [...] from actions [...] that would in all likelihood entail negative consequences for the witness”,²² in particular where the hardship that would follow from the Court’s actions is disproportionate to the purported significance of a witness’s evidence.”²³

B. Security concerns

i. Security concerns relating to P-0289

11. The Prosecution refers to paragraphs 129-139 of the First Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b) of the Rules (“First Rule 68(2)(b) Decision”) with regard to P-0289’s background and declarations.

¹⁶ See ICC-01/04-01/07-475, para 55.

¹⁷ See ICC-01/04-01/07-475, paras. 44, 47, 54 and 56.

¹⁸ 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).

¹⁹ ICC-01/04-01/07-475, para. 51.

²⁰ 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”).

²¹ ICC-01/05-01/13-1481-Red-Corr, para. 18.

²² ICC-01/05-01/13-1481-Red-Corr, para. 18.

²³ ICC-01/05-01/13-1481-Red-Corr, para. 18.

12. P-0289 is a [REDACTED] in CARNOT during the 2013-2014 conflict (“the conflict”). [REDACTED] during this time. His Statement describes how this [REDACTED].²⁴ [REDACTED].²⁵

13. [REDACTED].

14. [REDACTED]. The witness also explained that any new arrests of (former) Anti-Balaka could lead to unforeseen consequences, and endanger anyone viewed as having provided evidence against them.

15. [REDACTED].

16. [REDACTED]. In addition to the risks to the witness’ physical security, there is also the risk of psychological harm based on a justifiable fear of vengeance.

17. In view of the above, 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.

18. Granting the redaction of the witness’ identity is the least intrusive measure which would allow him to [REDACTED] without fear of retaliation due to his cooperation with the Court, [REDACTED].

ii. Security concerns relating to P-2269

19. The Prosecution refers to paragraphs 27 to 32 of the Third Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(c) of the Rules with regard to P-2269’s background and declarations.²⁶

²⁴ CAR-OTP-2024-0288, para. 56.

²⁵ CAR-OTP-2024-0288, para. 85.

²⁶ See ICC-01/14-01/18-2127-Conf, paras. 27-32.

20. P-2269 is an insider witness who was a member of the [REDACTED].²⁷ He fled to ZONGO after the Seleka seized power in the country, and stayed for [REDACTED].²⁸

21. P-2269 then fled to [REDACTED] and GOBERE where he joined [REDACTED]. He later took part in the 5 December attack on BANGUI.²⁹

22. Given his close ties with key Anti-Balaka figures, and the details he shared in his statement, P-2269 is an important witness, both in the case against NGAISSONA and YEKATOM,³⁰ and in that against Mahamat SAID ABDEL KANI ("SAID").³¹

23. In [REDACTED], it was reported by the NGAISSONA Defence that P-2269 was deceased [REDACTED].³² Further investigations by the Prosecution were unable to confirm P-2269's death,³³ which was also echoed in the Chamber's findings that it was unable to conclude that P-2269 was in fact dead.³⁴

24. On 6 October 2023, the Chamber granted the introduction of P-2269's statement pursuant to Rule 68(2)(c),³⁵ due to his unavailability as a witness.

25. In view of the Court's obligation to protect the physical and psychological well-being of witnesses and, importantly, their family members and innocent third parties, the Prosecution submits that the identity of P-2269 should not be shared with the public for four reasons.

26. *First*, as the Chamber has acknowledged, it is not certain that P-2269 is deceased.³⁶ [REDACTED].

²⁷ See ICC-01/14-01/18-2127-Conf, para. 27.

²⁸ See ICC-01/14-01/18-2127-Conf, para. 27.

²⁹ See ICC-01/14-01/18-2127-Conf, para. 28; ICC-01/14-01/21-628-Conf, para. 20.

³⁰ See ICC-01/14-01/18-1957-Conf, paras. 23-32.

³¹ See ICC-01/14-01/21-628-Conf, paras. 21-23.

³² See ICC-01/14-01/18-1273-Conf, para. 9.

³³ See ICC-01/14-01/18-1957-Conf, paras. 10-14.

³⁴ See ICC-01/14-01/18-2127-Conf, para. 31.

³⁵ See ICC-01/14-01/18-2127-Conf, para. 38.

³⁶ See ICC-01/14-01/18-2127-Conf, para. 31.

27. [REDACTED]. In those circumstances, the Prosecution believes it is obliged to request the current protective measures in line with its duty to protect the integrity and security of its witnesses. [REDACTED].

28. [REDACTED].

29. *Fourth*, P-2269 is a prospective witness in the SAID case. [REDACTED].

30. In view of the specificities of P-2269's situation and the uncertainty regarding his whereabouts and status, 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 or his family to retaliation or any other harm.

31. Granting the redaction of the witness' identity is the least intrusive measure which would manage and mitigate the risks outlined above.

iii. Security concerns relating to P-2325

32. The Prosecution refers to paragraphs 82 to 92 of the First Rule 68(2)(b) Decision with regard to P-2325's background and declarations.³⁷

33. P-2325 is a [REDACTED].

34. [REDACTED],³⁸ [REDACTED].³⁹ [REDACTED] Muslims from their homes in BERBERATI [REDACTED].⁴⁰

35. P-2325 was [REDACTED].⁴¹

³⁷ See ICC-01/14-01/18-1833-Conf-Corr, paras. 82-92.

³⁸ See CAR-OTP-2100-2386 (P-2325's Prior Statement), para. 73.

³⁹ See CAR-OTP-2100-2386, paras. 26-27 and 34-38.

⁴⁰ See CAR-OTP-2100-2386, paras. 37-38.

⁴¹ See CAR-OTP-2100-2386, paras. 29 and 50.

36. From 2014 onwards, P-2325 was [REDACTED],⁴² [REDACTED],⁴³ [REDACTED],⁴⁴ [REDACTED]⁴⁵ [REDACTED].⁴⁶ [REDACTED].

37. [REDACTED].

38. [REDACTED].⁴⁷ [REDACTED].⁴⁸

39. [REDACTED].

40. [REDACTED].

41. [REDACTED].

42. [REDACTED].⁴⁹

43. [REDACTED].

44. In view of the above, 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.

45. Granting the redaction of the witness' 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.

⁴² See CAR-OTP-2100-2386, paras. 47-61.

⁴³ See CAR-OTP-2100-2386, paras. 38 and 62-65.

⁴⁴ See CAR-OTP-2100-2386, para. 66.

⁴⁵ See CAR-OTP-2100-2386, paras. 24-28.

⁴⁶ See CAR-OTP-2100-2386, para. 24.

⁴⁷ See paras. 5-9.

⁴⁸ See ICC-01/14-01/18-2170-Conf-Exp, para. 19.

⁴⁹ See ICC-01/14-01/18-2170-Conf-Exp, para. 16.

iv. Security concerns relating to P-2377

46. The Prosecution refers to paragraphs 358 to 366 of the First Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b) of the Rules ("First Rule 68(2)(b) Decision") with regard to P-2377's background and declarations.

47. P-2377 is a [REDACTED].

48. [REDACTED].

49. [REDACTED],⁵⁰[REDACTED].

50. [REDACTED].

51. [REDACTED].

52. [REDACTED].

53. In view of the above, 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, [REDACTED], or cause him psychological harm.

54. Granting the redaction of the witness' 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.

⁵⁰ See ICC-01/14-01/18-2170-Conf, para. 19.

v. Security concerns relating to P-2422

55. The Prosecution refers to paragraphs 184 to 191 of the First Rule 68(2)(b) Decision with regard to P-2422's background and declarations.⁵¹

56. P-2422 [REDACTED], [REDACTED] YALoke during the conflict. [REDACTED].

57. [REDACTED].

58. [REDACTED].

59. [REDACTED].

60. [REDACTED].

61. [REDACTED].

62. [REDACTED].⁵²

63. [REDACTED].

64. For the foregoing reasons, the Prosecution considers that its obligations under the Statute and Rules, as outlined at paragraph 9 above, prevail. Granting the redaction of the witness's identity is in line with the Court's obligations under article 68(1) to protect witnesses' psychological well-being, dignity and privacy, [REDACTED]. It is also the least intrusive measure which would protect her [REDACTED].

⁵¹ See ICC-01/14-01/18-1833-Conf-Corr, paras. 184-191.

⁵² ICC-01/14-01/18-1833-Conf-Corr, para. 190

vi. Security concerns related to P-2602

65. The Prosecution refers to paragraphs 45 to 60 of the Third Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(c) of the Rules with regard to P-2602's background and declarations.⁵³

66. P-2602 is an insider witness [REDACTED].

67. P-2602's Prior Statement provides important evidence on the Anti-Balaka in GOBERE, including its structure and leadership, and the recruitment and training of people from the surrounding villages. He provides evidence on the 5 December BOSSANGO and BANGUI attacks, and his contacts [REDACTED] leaders.⁵⁴

68. Whilst the Chamber found that it cannot conclude whether P-2602 is in fact dead, it granted the introduction of P-2602's prior recorded testimony pursuant to Rule 68(2)(c),⁵⁵ due to his unavailability as a witness.

69. As with P-2269, and in view of the Court's obligation to protect the physical and psychological well-being of witnesses and, importantly, their family members and innocent third parties, the Prosecution submits that the identity of P-2602 should not be shared with the public for three main reasons.

70. *First*, as the Chamber has acknowledged, it is not certain that P-2602 is deceased.⁵⁶ The NGAISSONA Defence has provided evidence that P-2602 may have [REDACTED].⁵⁷ [REDACTED].

⁵³ See ICC-01/14-01/18-2127-Conf, paras. 27-32.

⁵⁴ See ICC-01/14-01/18-2127-Conf, paras. 46-47.

⁵⁵ See ICC-01/14-01/18-2127-Conf, paras. 51-52.

⁵⁶ See ICC-01/14-01/18-2127-Conf, para. 51.

⁵⁷ See ICC-01/14-01/18-2127-Conf, para. 51.

71. [REDACTED]. In those circumstances, the Prosecution believes it is obliged to request the current protective measures, in line with its duty to protect the integrity and security of its witnesses. [REDACTED].

72. [REDACTED].

73. In view of the specificities of P-2602's situation and the uncertainty regarding his whereabouts and status, 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 or his family to retaliation or any other harm.

74. Granting the redaction of the witness' identity is the least intrusive measure which would manage and mitigate the risks outlined above.

C. Proportionality and absence of prejudice

75. Withholding witnesses' identity from the public can be justified in case it does not seriously impact the overall public nature of the proceedings.

76. In the same way that competing interests, such as the need to protect witnesses at risk of reprisal, can justify limiting an Accused's entitlement to disclosure,⁵⁸ the same logic and principle applies to curtailing the right of publicity.⁵⁹ As expressed by the Chamber, the principle of the publicity of the proceedings "is not absolute and therefore subject to certain exceptions."⁶⁰

77. Here, the Defence have access to the Prior Statements and have not been prevented in any way from conducting their own inquiries to test the witnesses' evidence. The publication of the witnesses' identifying information is not necessary to

⁵⁸ See ICC-01/04-01/07-475, para. 61 and reference cited.

⁵⁹ 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.

⁶⁰ See ICC-01/14-01/18-906-Red2, para. 14.

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.

78. As demonstrated above, the Witnesses' issues in these circumstances outweigh the need to publicise their identities. 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

79. For the above reasons, the Prosecution requests that the Chamber authorise the redaction of any identifying information of P-0289, P-2325, P-2377, P-2422, P-2269 and P-2602 in the public redacted version of their Prior Statements, as proposed in Annexes A, B, C, D, E and F.



Karim A. A. Khan KC, Prosecutor

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