

**Cour
Pénale
Internationale**



**International
Criminal
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 Request for the Protection of the Identity of Witnesses P-2546, P-2393, P-1964, P-2132, P-1654 in the Public Redacted Versions of their Statements", ICC-01/14-01/18-2072-Conf-Exp, 31 August 2023

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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 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-2546,² P-2393,³ P-2132,⁴ and P-1964,⁵ and the Rule 68(2)(c) statement of P-1654⁶ (“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 Annexes⁷ 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.

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, paras. 175-183 granting, *inter alia*, the introduction of P-2546’s statement (CAR-OTP-2114-0402).

³ See ICC-01/14-01/18-1833-Conf-Corr, paras. 149-161, granting, *inter alia*, the introduction of P-2393’s statement (CAR-OTP-2108-0140).

⁴ See ICC-01/14-01/18-1833-Conf-Corr, paras. 140-148, granting, *inter alia*, the introduction of P-2132’s statement (CAR-OTP-2080-0884).

⁵ See ICC-01/14-01/18-1833-Conf-Corr, paras. 233-239, granting, *inter alia*, the introduction of P-1964’s statement (CAR-OTP-2094-1755).

⁶ See ICC-01/14-01/18-1975-Red, granting, *inter alia*, the introduction of P-1654’s statement (CAR-OTP-2053-0112).

⁷ Annexes A-E comprise proposed redacted versions of the witnesses’ Prior Statements.

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 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.⁸

6. As recently as 28 August 2023, the Registry's Thirteenth Report on the matter [REDACTED].⁹

7. The Registry also notes that the [REDACTED],¹⁰ [REDACTED].¹¹ [REDACTED].¹²

8. The general security situation in-country is a significant factor for the Chamber to take into consideration in assessing security risks here. 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."¹³

⁸ See ICC-01/14-01/18-2003-Conf, paras. 5-7.

⁹ See ICC-01/14-01/18-2063-Conf, para. 8.

¹⁰ ICC-01/14-01/18-2063-Conf, para. 7.

¹¹ ICC-01/14-01/18-2063-Conf-Anx, para. 49.

¹² ICC-01/14-01/18-2063-Conf-Anx, para. 41.

¹³ ICC-01/14-01/21-605-Red, para. 19.

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

9. Article 54(3)(f) authorises the Prosecutor to take or request necessary measures to ensure the protection of “any persons.”¹⁴ It enshrines the general principle that third parties should not be endangered as a consequence of the Court’s activities,¹⁵ and particularly ‘innocent third parties’¹⁶ under rule 87(1).¹⁷

10. The Court’s duty to do everything necessary to prevent unjustified exposure to risk¹⁸ is also embodied in article 68(1)’s directive that it act to protect witnesses’ safety, physical and psychological well-being, dignity, and privacy.¹⁹ This further obligates Chambers to:

“refrain [] from actions [...] that would in all likelihood entail negative consequences for the witness”,²⁰ in particular where the hardship that would follow from the Court’s actions is disproportionate to the purported significance of a witness’s evidence.”²¹

iii. *Specific security concerns relating to the Witnesses*

a. *Security concerns relating to P-2546*

11. The Prosecution refers to paragraphs 175 to 183 of the Chamber’s 6 April 2023 First Rule 68(2)(b) Decision with regard to P-2546’s background and declarations.²²

12. P-2546, a priest currently [REDACTED].²³

¹⁴ See ICC-01/04-01/07-475, para 55.

¹⁵ See ICC-01/04-01/07-475, paras. 44, 47, 54 and 56.

¹⁶ 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).

¹⁷ ICC-01/04-01/07-475, para. 51.

¹⁸ 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”).

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

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

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

²² ICC-01/14-01/18-1833-Conf-Corr, paras. 175-183 (“First Rule 68(2)(b) Decision”).

²³ CAR-OTP-2114-0402 at 0430-0431, para. 99.

13. [REDACTED].
14. [REDACTED].
15. Publicly exposing P-2546 as a Prosecution witness [REDACTED].
16. Should P-2546 [REDACTED], particularly in light of the complex security situation outlined above.²⁴ 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, [REDACTED].

b. Security concerns relating to P-2393

17. The Prosecution refers to paragraphs 149 to 161 of the First Rule 68(2)(b) Decision with regard to P-2393's background and declarations.²⁵
18. P-2393 [REDACTED].
19. P-2393 [REDACTED].
20. P-2393 also reports [REDACTED].
21. [REDACTED], P-2393 noted that [REDACTED].
22. As a [REDACTED], P-2393 has explained to [REDACTED].
23. Due to the difficult security situation in CAR, [REDACTED].
24. [REDACTED].²⁶ [REDACTED].

²⁴ See paras. 5-8.

²⁵ See ICC-01/14-01/18-1833-Conf-Corr, paras. 149-161.

²⁶ ICC-02/04-01/15-1498, para.10.

c. Security concerns relating to P-2132

25. The Prosecution refers to paragraphs 140 to 148 of the First Rule 68(2)(b) Decision with regard to P-2132's background and declarations.²⁷

26. P-2132, a Christian [REDACTED],²⁸ [REDACTED].

27. P-2132 has expressed [REDACTED].

28. P-2132's [REDACTED].²⁹ [REDACTED].

29. [REDACTED].³⁰ [REDACTED]. Conversely, the Court's competing 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 a public trial is limited given that P-2132's evidence does not relate to a charged incident and "does not go to proof of the accused's acts and conduct."³¹

30. [REDACTED].

d. Security concerns relating to P-1964

31. The Prosecution refers to paragraphs 233 to 239 of the First Rule 68(2)(b) Decision with regard to P-1964's background and declarations.³²

32. P-1964 [REDACTED].

33. P-1964 [REDACTED].

²⁷ See ICC-01/14-01/18-1833-Conf-Corr, paras. 140-148, granting, *inter alia*, the introduction of P-2132's statement (CAR-OTP-2080-0884).

²⁸ CAR-OTP-2080-0884, at 0884.

²⁹ CAR-OTP-2080-0884, at, e.g., 0893-0897.

³⁰ See paras. 5-8.

³¹ ICC-01/14-01/18-1833-Conf-Corr, paras. 143-144.

³² See ICC-01/14-01/18-1833-Conf-Corr, paras. 233-239.

34. Additional security issues may arise for the witness in the future, [REDACTED].³³ [REDACTED].

35. [REDACTED].³⁴ [REDACTED].

36. [REDACTED].

37. [REDACTED].

38. [REDACTED].

e. Security concerns relating to P-1654

39. The Prosecution refers to paragraphs 41 to 58 of the Chamber's 12 July 2023 First Rule 68(2)(c) Decision with regard to P-1654's background and declarations.³⁵

40. P-1654 is [REDACTED] with protective measures.³⁶ His Prior Statement refers to the Anti-Balaka's December 2013 [REDACTED].

41. If P-1654's identity is made public along with the content of his Prior Statement, [REDACTED], whose security situation remains unchanged [REDACTED]. It should also be noted that all references made [REDACTED] were made in private session.

B. Proportionality and absence of prejudice

42. Withholding the Witnesses' identity from the public is justified. It does not seriously impact the overall public nature of the proceedings in this case.

43. 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,³⁷ the same

³³ See eg. CAR-OTP-2094-1755 at 1765, para. 83; ICC-01/14-01/18-2063-Conf-Anx, para. 45 with references.

³⁴ See paragraph 24 above; ICC-02/04-01/15-1498, para.10.

³⁵ See ICC-01/14-01/18-1975-Red, paras. 41-58 ("First "Rule 68(2)(c) Decision").

³⁶ [REDACTED]; see ICC-01/14-01/18-T-211-CONF-ENG and ICC-01/14-01/18-T-212-CONF-ENG.

³⁷ See ICC-01/04-01/07-475, para. 61 and reference cited.

logic and principle applies to curtailing the right of publicity.³⁸ As the Chamber has previously acknowledged, the principle of the publicity of the proceedings “is not absolute and therefore subject to certain exceptions.”³⁹

44. Here, the Defence have had the Prior Statements, and have not been prevented in any way from conducting their own enquiries to test the witnesses’ evidence. In addition, 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.

45. 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

46. 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 to E.



Karim A. A. Khan KC, Prosecutor

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

³⁸ 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.

³⁹ See ICC-01/14-01/18-906-Red2, para. 14.