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**International
Criminal
Court**

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TRIAL CHAMBER V

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

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

Public

with Confidential Annexes A, B, C and D

**Public redacted version of “Prosecution’s Request for the Non-Publication of P-0460, P-0732, P-1864, and P-1871’s Prior Recorded Testimonies, or in the alternative, Request for the Protection of their Identities in the Public Redacted Versions of their Prior Recorded Testimonies”, 22 December 2023,
ICC-01/14-01/18-2287-Conf-Exp**

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 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 excepts the Statements of P-0460, P-0732, P-1864, and P-1871 (“Prior Statements”)² from publication, or, alternatively, authorises the redaction of any identifying information contained therein.

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 Annexes³ 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.

III. SUBMISSIONS

4. As detailed below, publishing the witnesses’ identifying information would unjustifiably heighten risks to them, their family members, or innocent third parties.

¹ 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 ICC-01/14-01/18-1833-Conf-Corr, paras. 262, 117, 128 and 225 granting the introduction of P-0460’s statement (CAR-OTP-2013-0536), P-0732’s statement (CAR-OTP-2061-0003), P-1864’s statement (CAR-OTP-2064-0860), and P-1871’s statement (CAR-OTP-2064-0884).

³ Annexes A, B, C and D comprise proposed redacted versions of the statements/prior recorded testimony of P-0460, P-0732, P-1864, and P-1871.

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, the volatile security situation in the Central African Republic ("CAR") is a significant factor contributing to the risks associated with publishing the Prior Statements.⁴

6. Indeed, the Registry's Fourteenth Report on the matter noted that the general situation in CAR has remained complex and unpredictable during the period under review, and that the political and security situation in the CAR is unlikely to improve in the short and medium term and will continue to be impacted by

"(i) further tensions linked to the authoritarian drift and the increasing polarized context; (ii) on-going clashes between armed groups and the FACA/bilateral forces; (iv) [sic] the dire socio-economic situation, which will continue to fuel [REDACTED]."⁵

The Fourteenth Report also noted that "[REDACTED]"⁶

7. The general security situation in a country is a significant factor for the Chamber to take into consideration when 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."⁷

⁴ ICC-01/14-01/18-2170-Conf-Exp, paras. 15 and 19.

⁵ ICC-01/14-01/18-2239-Conf, paras.7 and 8.

⁶ [REDACTED].

⁷ ICC-01/14-01/21-605-Red, para. 19.

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

8. Article 54(3)(f) authorises the Prosecutor to take or request necessary measures to ensure the protection of “any persons.”⁸ It enshrines the general principle that third parties should not be endangered as a consequence of the Court’s activities,⁹ and particularly “innocent third parties”¹⁰ under rule 87(1).¹¹

9. The Court’s duty to do everything necessary to prevent unjustified exposure to risk¹² is also embodied in article 68(1)’s directive that it acts to protect witnesses’ safety, physical and psychological well-being, dignity, and privacy.¹³ This further obligates Chambers to:

“refrain [...] from actions [...] that would in all likelihood entail negative consequences for the witness”,¹⁴ in particular where the hardship that would follow from the Court’s actions is disproportionate to the purported significance of a witness’s evidence.¹⁵

B. The existence of personal security concerns

i. Security concerns related to P-0460

10. The Prosecution refers to paragraphs 255-262 of the Chamber’s corrected version of the First Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimony pursuant to rule 68(2)(b) of the Rules, (“First Rule 68(2)(b) Decision”) with regard to P-0460’s background and declarations.¹⁶

⁸ ICC-01/04-01/07-475, para. 44.

⁹ ICC-01/04-01/07-475, paras. 44, 47, 54, and 56.

¹⁰ 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).

¹¹ ICC-01/04-01/07-475, para. 51.

¹² 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”).

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

¹⁴ ICC-01/05-01/13-1481-Red-Corr, para. 18.

¹⁵ ICC-01/05-01/13-1481-Red-Corr, para. 18.

¹⁶ ICC-01/14-01/18-1833-Conf-Corr, paras. 255-262.

11. P-0460 is a Muslim woman, born in [REDACTED], Central African Republic (“CAR”). In her Prior Statement, P-0460 described that her husband, [REDACTED] son, and [REDACTED] nephew were killed on [REDACTED] in front of her house, while she was hiding [REDACTED]. [REDACTED], she discover their bodies.¹⁷ P-0460 also explained that her [REDACTED] niece was raped by [REDACTED] Anti-Balaka elements, and died of her injuries.¹⁸

12. As detailed in the Prosecution’s request to introduce P-0460’s Prior Statement pursuant to Rule 68(2)(c),¹⁹ several unsuccessful attempts were made to speak meaningfully with P-0460 directly and/or through [REDACTED]. In the course of these attempts, it also became clear that P-0460 is highly vulnerable and at risk of re-traumatization.

13. In particular, P-0460’s [REDACTED] stressed that the Prosecution’s attempts to contact P-0460 were a source of anxiety for P-0460 and negatively affected her health, as they were bringing back traumatic memories. Despite several further attempts, no further contact was successfully established after 18 September 2023. In this context, the Chamber should except P-0460’s Prior Statement from publication for three main reasons.

14. *First*, because the Prosecution has not been able to discuss the publication of P-0460’s Prior Statement with her, it is not in a position to properly assess the attendant security risks to her, her family or third parties. Revealing her Prior Statement to the public, without this information and without prior notice, is imprudent and unwarranted.

15. *Second*, the Chamber acknowledged that testifying about her rapes and the killing of her family members, would put P-0460 at risk of re-traumatisation.²⁰

¹⁷ CAR-OTP-2013-0536, paras. 36-37.

¹⁸ CAR-OTP-2013-0536, para. 45.

¹⁹ ICC-01/14-01/18-2285-Conf, paras.9-14.

²⁰ ICC-01/14-01/18-1833-Conf-Corr, para. 261.

Likewise, confronting P-0460 with her past experiences, including through the publication of her Prior Statement, would negatively affect her physical and psychological health, and should be avoided. Given that the Prosecution has not been able to engage with P-0460 after September 2023, it has not been able to assess the further damage such publication would cause to her health and well-being.

16. *Third*, from the Prosecution's exchanges with [REDACTED].

17. Given these specific circumstances, and the Court's duty to protect and prevent unjustified exposure to risk, but also to protect witnesses' physical and mental health, excepting P-0460's Prior Statement from publication is the best option to manage and mitigate the risks outlined.

18. Alternatively, the Prosecution requests that the Chamber authorises the redaction of any identifying information in P-0460's Prior Statement. The Court's interest in the public dissemination of P-0460's identity is outweighed by its obligation to ensure that her cooperation in this case does not subject her to unnecessary or disproportionate harm. Granting the redaction of the witness's identity is the least intrusive measure to prevent, manage, and mitigate the serious risks outlined above.

ii. Security concerns related to P-0732

19. The Prosecution refers to paragraphs 219-225 of the First Rule 68(2)(b) Decision with regard to P-0732's background and declarations.²¹

20. P-0732 is a Muslim woman, [REDACTED]. In her Prior Statement, P-0732 explained that, following the Anti-Balaka attacks [REDACTED] during which her husband was killed,²² she was displaced by the Anti-Balaka [REDACTED].²³ There, she

²¹ ICC-01/14-01/18-1833-Conf-Corr, paras. 219-225.

²² CAR-OTP-2061-0003, paras 49-54.

²³ CAR-OTP-2061-0003, para. 57.

was held captive for about two months [REDACTED] and other Muslim women.²⁴ During her captivity, P-0732 was raped on two occasions.²⁵

21. As detailed in the Prosecution's request to introduce P-0732's Prior Statement pursuant to rule 68(2)(c),²⁶ despite numerous attempts, the Prosecution has not been able to localise her since 2 September 2019.

22. In this context, the Chamber should except P-0732's Prior Statement from publication for two main reasons.

23. *First*, because the Prosecution has not been able to discuss the publication the Prior Statement with P-0732, it is not in a position to properly assess the attendant security risks to her, her family or third parties. Revealing her Prior Statement to the public without this information and without prior notice, is imprudent and unwarranted.

24. *Second*, the Chamber acknowledged that testifying about her rapes and the killing of her family members would put P-0732 at risk of re-traumatisation.²⁷ Likewise, confronting P-0732 with her past experiences, including through the publication of her Prior Statement, would negatively affect her physical and psychological health, and should be avoided. Given that the Prosecution has not been able to engage with P-0732 since September 2019, it has not been able to assess the further damage such publication would cause to her health and well-being.

25. Given these specific circumstances, and the Court's duty to protect and prevent unjustified exposure to risk but also to protect witnesses' physically and mental health, excepting P-0732's Prior Statement from publication is the best option to manage and mitigate the serious risks noted.

²⁴ CAR-OTP-2061-0003, paras. 60 and 102.

²⁵ CAR-OTP-2061-0003, paras. 78-79 and 85-87.

²⁶ ICC-01/14-01/18-2285-Conf, paras.22-28.

²⁷ ICC-01/14-01/18-1833-Conf-Corr, para. 224.

26. Alternatively, the Prosecution requests that the Chamber authorises the redaction of any identifying information in P-0732's Prior Statement. The Court's interest in the public dissemination of P-0732's identity is outweighed by its obligation to ensure that her cooperation in this case does not subject her to unnecessary or disproportionate harm. As such, granting the redaction of the witness's identity is the least intrusive measure to prevent, manage, and mitigate the serious risks noted.

iii. Security concerns related to P-1864

27. The Prosecution refers to paragraphs 106-117 of the First Rule 68(2)(b) Decision with regard to P-1864's background and declarations.²⁸

28. P-1864 is a Muslim woman who resided [REDACTED]. In her Prior Statement, P-1864 described her rape by a group of Anti-Balaka elements whilst they killed [REDACTED].²⁹ She lost conscious during the assault.³⁰

29. As detailed in the Prosecution's request to introduce P-0460's Prior Statement pursuant to Rule 68(2)(c),³¹ after engaging with the witness regarding the certification of her Prior Statement, it became obvious that the witness was highly vulnerable and heavily traumatised by the events. After 21 August 2023, the witness refrained from any further contact, and did not attend the meetings set up [REDACTED]. Attempts to contact [REDACTED] have also failed.

30. In this context, the Prosecution request that the Chamber excepts P-1864's Prior Statement from publication for three main reasons.

31. *First*, because the Prosecution has not been able to discuss the publication of the Prior Statement with P-1864's, it is not in a position to properly assess the attendant security risks to her, her family or third parties. Revealing her Prior Statement to the

²⁸ ICC-01/14-01/18-1833-Conf-Corr, paras. 106-117.

²⁹ CAR-OTP-2064-0860, paras. 32-42.

³⁰ CAR-OTP-2064-0860, paras. 42-43.

³¹ ICC-01/14-01/18-2285-Conf, paras.50-55.

public without this information and without prior notice, is imprudent and unwarranted.

32. *Second*, the Chamber acknowledged that testifying about her rapes and the killing of her family members, would put P-1864 at risk of re-traumatisation.³² Likewise, confronting P-1864 with her past experiences, including through the publication of her Prior Statement, would negatively affect her physical and psychological health, and should be avoided. Given that the Prosecution has not been able to engage with P-1864 after August 2023, it has not been able to assess the further damage such publication would cause to her health and well-being.

33. *Third*, from the exchanges that the Prosecution has had with P-1864's [REDACTED].

34. Given these specific circumstances, and the Court's duty to protect and prevent unjustified exposure to risk but also to protect witnesses' physically and mental health, excepting P-1864's Prior Statement from publication is the best option to manage and mitigate the risks outlined.

35. Alternatively, the Prosecution requests that the Chamber authorizes the redaction of any information identifying P-1864 from her Prior Statement. The Court's interest in the public dissemination of P-1864's identity is outweighed by its obligation to ensure that her cooperation in this case does not subject her to unnecessary or disproportionate harm. As such, granting the redaction of the witness's identity is the least intrusive measure to prevent, manage, and mitigate the serious risks noted.

³² ICC-01/14-01/18-1833-Conf-Corr, para.115.

iv. Security concerns related to P-1871

36. The Prosecution refers to paragraphs 118-128 of the First Rule 68(2)(b) Decision with regard to P-1871's background and declarations.³³

37. P-1871 is a Muslim woman who used to reside [REDACTED] during the relevant period. In her Prior Statement, P-1871 described how she was raped by [REDACTED] Anti-Balaka elements whilst they killed her [REDACTED] with a machete.³⁴ She eventually managed to reach BANGUI and received medical treatment.³⁵ She remained at the Central Mosque in BANGUI for 2 years with her children.³⁶

38. As detailed in the Prosecution's request to introduce P-1871's Prior Statement pursuant to Rule 68(2)(c),³⁷ despite numerous attempts, the Prosecution has not been able to localize her since 14 October 2020.

39. In this context, the Prosecution request that the Chamber excepts P-1871's Prior Statement from publication for two main reasons.

40. *First*, because the Prosecution has not been able to discuss the publication of P-1871's Prior Statement with her, it is not in a position to assess properly the security risks associated therewith to her, her family or third parties. Revealing her Prior Statement to the public, without this information and without prior notice, is imprudent and unwarranted.

41. *Second*, the Chamber acknowledged that testifying about her rapes and the killing of her family members, would put P-1871 at risk of re-traumatization.³⁸ Likewise, confronting P-1871 with her past experiences, including through the publication of her Prior Statement, would negatively affect her physical and

³³ ICC-01/14-01/18-1833-Conf-Corr, paras. 118-128.

³⁴ CAR-OTP-2064-0884, paras. 34-39.

³⁵ CAR-OTP-2064-0884, para. 46.

³⁶ CAR-OTP-2064-0884, para. 48.

³⁷ ICC-01/14-01/18-2285-Conf, paras. 64-70.

³⁸ ICC-01/14-01/18-1833-Conf-Corr, para. 126.

psychological health, and should be avoided. Given that the Prosecution has not been able to engage with P-1871 after October 2020, it has not been able to assess the further damage such publication would cause to her health and well-being.

42. Given these specific circumstances, and the Court's duty to protect and prevent unjustified exposure to risk but also to protect witnesses' physically and mental health, excepting P-1871's Prior Statement from publication is the best option to manage and mitigate the risks outlined.

43. Alternatively, the Prosecution requests that the Chamber authorizes the redaction of any information identifying P-1871 from her Prior Statement. The Court's interest in the public dissemination of P-1871's identity is outweighed by its obligation to ensure that her cooperation in this case does not subject her to unnecessary or disproportionate harm. As such, granting the redaction of the witness's identity is the least intrusive measure to prevent, manage, and mitigate the serious risks noted.

C. The measure sought for are proportional

44. The Prosecution requests that the Chamber excepts P-0460, P-0732, P-1864, and P-1871's Prior Statements from publication, or alternatively, that it authorizes the redaction of any identifying information from their Prior Statements.

45. Such measures do not unfairly prejudice the Accused and do not seriously impact the overall public nature of the proceedings. *First*, the Defence has access to the Prior Statements in their entirety. They have not been prevented in any way from conducting their own enquiries to test the witnesses' evidence. *Second*, the public will have access to most of the Prior Statements filed in the current case. In this respect, the extreme vulnerability of the witnesses and the fact that their declarations relate to sexual violence are factors that need to be taken into account by the Court when assessing of the overall proportionality of the present Request.

IV. CONCLUSION

46. For the above reasons, the Prosecution requests that the Chamber excepts the Prior Statements of P-0460, P-0732, P-1864, and P-1871 from publication, or, alternatively, authorises the redaction of any identifying information, as proposed in Annex A, B, C, and D.



Karim A. A. Khan KC, Prosecutor

Dated this 30th July 2024
At The Hague, The Netherlands