

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14-01/18**

Date: **30 July 2024**

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, D, E.

**Public redacted version of “Prosecution’s Request for the Protection of the Identity
of Witnesses P-0461, P-1779, P-1865, P-2416, and P-2472 in the Public Redacted
Versions of their Prior Recorded Testimonies”, 22 December 2023,
ICC-01/14-01/18-2286-Conf-Exp**

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 Omissé-Namkeamai
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 Massida

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 from the prior recorded testimonies of P-0461, P-1779, P-1865, P-2416, and P-2472 (“Prior Statements”).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, 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 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

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. 272, 199, 294, 357 and 205 granting the introduction of P-0461’s statement (CAR-OTP-2031-0190), P-1779’s statement (CAR-OTP-2087-9894), P-1865’s statement (CAR-OTP-2066-0134), P-2416’s statement (CAR-OTP-2106-0489), and P-2472’s statement (CAR-OTP-2110-0355).

³ Annexes A, B, C, D and E comprise proposed redacted versions of the Prior Statements of P-0461, P-1779, P-1865, P-2416, and P-2472.

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 the Chamber has recently , 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, [REDACTED]." ⁵ [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 [REDACTED].

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 relating to P-0461

10. The Prosecution refers to paragraphs 263-272 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-0461’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. 263-272.

11. P-0461 is a Muslim civilian who lived in BANGUI during the relevant period. [REDACTED].

12. [REDACTED]. Revealing P-0461's role as a Prosecution witness is inconsistent with [REDACTED]. Moreover, it would risk putting the witness through unnecessary psychological harm.

13. In view of the above, the Court's interest in the public dissemination of P-0461's identity is outweighed by its competing statutory obligation to ensure that his cooperation in this case does not subject him to any unnecessary or disproportionate harm.

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

ii. Security concerns related to P-1779

15. The Prosecution refers to paragraphs 200-205 of the First Rule 68(2)(b) Decision with regard to P-1779's background and declarations.¹⁷

16. P-1779 was an imam from [REDACTED] before and during the conflict. In his Prior Statement, P-1779 described the two Anti-Balaka attacks [REDACTED]. He explained how he fled with a group of Muslims from [REDACTED],¹⁸ describing his journey during which they were attacked by the Anti-Balaka.¹⁹

17. As detailed in the Prosecution's request to introduce P-1779's Prior Statement pursuant to rule 68(2)(c), the Prosecution has not been able to contact or locate him since 1 December 2021.²⁰

¹⁷ ICC-01/14-01/18-1833-Conf-Corr, paras. 200-205.

¹⁸ CAR-OTP-2087-9894, paras. 81-105.

¹⁹ CAR-OTP-2087-9894, paras. 94-100.

²⁰ ICC-01/14-01/18-2285-Conf, paras.34-43.

18. As a result, and because the Prosecution has not been able to discuss the publication of the Prior Statement with P-1779, it is not in a position properly to assess any associated security risks to him, his family, or to third parties. Given that the Prosecution does not know where P-1779 currently lives, it cannot evaluate the existence of threat actors related to that location. Revealing his role as a prosecution witness to the public, without this information and without prior notice, would be unfair and unwarranted.

19. In light of the Court's duty to protect and prevent unjustified exposure to the several risks set out in article 68, redacting any identifying information from P-1779's Prior Statement is the least restrictive measure which would manage and mitigate risks, including those yet unascertainable given the circumstances.

20. In view of the above, the Court's interest in the public dissemination of P-1779's identity is outweighed by its obligation to ensure that his cooperation in this case does not subject him to any unnecessary or disproportionate harm.

iii. Security concerns related to P-1865

21. The Prosecution refers to paragraphs 351-357 of the First Rule 68(2)(b) Decision with regard to P-1865's background and declarations.²¹

22. P-1865 is a Muslim woman who resided in [REDACTED].

23. In her Prior Statement, P-1865 described her rape by an Anti-Balaka element, while [REDACTED] was killed with a machete.²² Since then, she explained suffering from [REDACTED].²³

24. Although P-1865 does not oppose her Prior Statement and identity being made public on security grounds *per se*. However, the Prosecution believes that, given that

²¹ ICC-01/14-01/18-1833-Conf-Corr, paras. 351-357.

²² CAR-OTP-2066-0134, paras. 25-29.

²³ CAR-OTP-2066-0134, paras. 56 and 61.

she is a vulnerable person and victim of sexual violence, her identity should be withheld from the public as a matter of protecting the witness's dignity and/or privacy under article 68(1). The Prosecution therefore requests the Chamber to authorise the redaction of any identifying information for three main reasons.

25. *First*, revealing P-1865's role as a Prosecution witness would put her at risk of re-traumatisation. Indeed, P-1865 currently [REDACTED], which implies that her direct surroundings affected in one way or another by the CAR conflict. The chances of them reading and discussing P-1865's Prior Statement while following the ongoing case are high. It is therefore foreseeable that P-1865 will be approached and questioned, thus forcing her to be confronted with her past experiences.

26. *Second*, revealing her role as a prosecution witness would put her at risk of being stigmatized and harassed by her community. Indeed, rape and sexual abuse still causes stigma and shame in CAR. Disclosing P-1865's identity could therefore negatively affect her mental health and the way she is perceived and treated in her community.

27. *Third*, it cannot be excluded that the witness or her relatives would face retaliation from former Anti-Balaka and/or supporters of the Accused should her identity become public.

28. In light of the Court's statutory duty to protect and prevent unjustified exposure to the several risks set out in article 68, redacting any identifying information from P-1865's Prior Statement is the least restrictive measure which would manage and mitigate the risks outlined above.

29. In view of the above, the Court's interest in the public dissemination of P-1865's identity is outweighed by its obligation to ensure that her cooperation in this case does not subject her to any unnecessary or disproportionate harm.

iv. Security concerns relating to P-2416

30. The Prosecution refers to paragraphs 192-199 of the corrected version of the First Rule 68(2)(b) Decision with regard to P-2416's background and declarations.²⁴

31. P-2416 is a Muslim civilian who used to live in [REDACTED]. Before the conflict, P-2416 was a merchant [REDACTED].²⁵ In 2008, he was appointed [REDACTED] and remained in that position until 2013.²⁶ P-2416 used to own properties [REDACTED] but most of his houses were destroyed during the conflict. [REDACTED], and important Anti-Balaka leader.²⁷

32. In his Prior Statement, P-2416 explained that he was one of the last 20 Muslims to leave [REDACTED]²⁸ and that he was evacuated by [REDACTED].²⁹ According to P-2416, he could not leave [REDACTED] because of his strong attachment to the city where he was "born and raised".³⁰

33. P-2416 now [REDACTED].

34. Although P-2416 does not know [REDACTED], he expressed concerns about his cooperation with the Prosecution being revealed to the public. P-2416 fears that this would put him at risk of retaliation [REDACTED].

²⁴ ICC-01/14-01/18-1833-Conf-Corr, paras. 192-199.

²⁵ CAR-OTP-2106-0489, para. 17.

²⁶ CAR-OTP-2106-0489, para. 18.

²⁷ CAR-OTP-2106-0489, paras. 37-39 and 114-116.

²⁸ CAR-OTP-2106-0489, para. 78 (the witness mentions that there were about 20 Muslims left in [REDACTED] at that time).

²⁹ CAR-OTP-2106-0489, paras. 75-80.

³⁰ CAR-OTP-2106-0489, para. 77.

35. The risk is all the more serious [REDACTED].³¹ [REDACTED]³²; REDACTED]³³; [REDACTED]³⁴. [REDACTED].³⁵ [REDACTED].³⁶

36. [REDACTED].

37. In view of the above, the Prosecution requests the Chamber to authorize the redaction of any information identifying the Witness from his Prior Statement for two main reasons.

38. *First*, revealing P-2416's role as a witness in the present case would put him at risk of retaliation [REDACTED].

39. *Second*, P-2416's collaboration with the Court should not be a source of anxiety and stress for him, [REDACTED]. Disclosing P-2416's identity to the public would therefore risk harming the Witness's psychological and physical health, and wellbeing.

40. In light of the Court's duty to statutory protect and prevent unjustified exposure to the several risks set out in article 68, redacting any identifying information from P-2416's Prior Statement is the least restrictive measure which would manage and mitigate the risks outlined above.

41. In view of the above, the Court's interest in the public dissemination of P-2416's identity is outweighed by its obligation to ensure that his cooperation in this case does not subject him to any unnecessary or disproportionate harm.

³¹ CAR-OTP-2106-0489, paras. 17-18.

³² CAR-OTP-2106-0489, paras. 37-39.

³³ CAR-OTP-2106-0489, para. 91.

³⁴ CAR-OTP-2106-0489, para. 114.

³⁵ CAR-OTP-2106-0489, para. 78.

³⁶ CAR-OTP-2106-0489, paras. 86-89.

v. Security concerns related to P-2472

42. The Prosecution refers to paragraphs 286-294 of the First Rule 68(2)(b) Decision with regard to P-2472's background and declarations.³⁷

43. P-2472 is a Muslim civilian who worked at [REDACTED] during the conflict. In his Prior Statement, he shared valuable information, including about how the Anti-Balaka were organized in BANGUI during the 5th of December attack.³⁸

44. As detailed below, revealing P-2472's role as a Prosecution witness would put him, and/or his family at risk of retaliation. The Prosecution requests the Chamber to authorise the redaction of any identifying information from his Prior Statement for three main reasons.

45. *First*, the Witness is a [REDACTED] throughout the country. During the conflict, P-2472 was active on social media, reporting about the crimes committed by the Anti-Balaka. He mentioned three main Facebook accounts in his Prior Statement with respectively [REDACTED]. The first two Facebook accounts are [REDACTED], P-2472 has provided trustworthy and reliable information about contemporaneous attacks against Muslims.³⁹ [REDACTED].

46. [REDACTED].

47. [REDACTED].

48. [REDACTED].⁴⁰ [REDACTED].

³⁷ ICC-01/14-01/18-1833-Conf-Corr, paras. 286-294.

³⁸ CAR-OTP-2110-0355, paras. 18-49.

³⁹ CAR-OTP-2110-0355, paras. 51-52.

⁴⁰ CAR-OTP-2110-0355, para. 26.

49. In sum, revealing P-2472's identity to the public would be a source of stress and anxiety for the witness, who clearly expressed that he did not want his name to be made public for his own security and that of his close relatives.

50. In light of the Court's duty to protect and prevent unjustified exposure to the several risks set out in article 68, redacting any identifying information from P-2472's Prior Statement is the least restrictive measure which would manage and mitigate the risks outlined above.

51. In view of the above, the Court's interest in the public dissemination of P-2472's identity is outweighed by its obligation to ensure that his cooperation in this case does not subject him to retaliation or any other unnecessary or disproportionate harm.

C. The measures sought for are proportional

52. The Prosecution requests that the Chamber authorises the redaction of any identifying information from the Prior Statements of P-0461, P-1779, P-1865, P-2416, and P-2472. In each instance, redacting the witness's identity is the least intrusive measure which would prevent, manage, and mitigate the attendant risks outlined above.

53. Moreover, 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 the Prior Statements, albeit in redacted form.

IV. CONCLUSION

54. For the above reasons, the Prosecution requests that the Chamber authorises the redaction of any identifying information from the Prior Statements of P-0461, P-1779, P-1865, P-2416, and P-2472 as proposed in annexes A, B, C, D, and E.



Karim A. A. Khan KC, Prosecutor

Dated this 30th July 2024

At The Hague, The Netherlands