

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **14 June 2019**

PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

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

Confidential Redacted
with Confidential, *EX PARTE*, only available to the Prosecution and VWU,
Annexes A and B

**Confidential Redacted version of "Prosecution's Request for the Non-Disclosure of
Witness Identities and Non-Standard Redactions", 18 April 2019,
ICC-01/14-01/18-179-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. The Office of the Prosecutor ("Prosecution") requests the Chamber's authorisation to withhold the identities of 11 Prosecution witnesses. While these Witnesses have information disclosable under article 67(2) and/or rule 77 of the Rules of Procedure and Evidence ("Rules"), withholding their identities before the confirmation hearing is necessary to protect their safety and preserve investigative integrity under rules 81(2) and 81(4).

2. The Prosecution thus seeks to withhold the identities of P-0458, P-0953, P-1402, P-1517, P-1791, P-1996, P-2028, P-2037 and P-2039 under rule 81(4); and the identities of P-1282 and P-2378 under rules 81(2) and 81(4).

3. In addition, the identities of two witnesses (P-2105 and P-0627) may be disclosed, but their statements and/or transcripts otherwise require redaction under rule 81(2), as requested herein.

II. CONFIDENTIALITY

4. This request and its Annexes are filed "*EX PARTE*, available only to the Prosecution and the VWU" as they contain sensitive information pertaining to witness security and the Prosecution's ongoing investigations which, if revealed, could jeopardise both. A confidential redacted version of this request will be filed when possible.

III. SUBMISSIONS

A. Eleven Witnesses require the withholding of their identities to protect their safety or preserve the integrity of the Prosecution's investigation

a. *The proposed restrictions on disclosure for nine witnesses are justified under rule 81(4)*

5. The proposed restrictions on disclosure are necessary to protect the safety of the witnesses P-0458, P-0953, P-1402, P-1517, P-1791, P-1996, P-2028, P-2037, and P-2039, identified in *Ex Parte* Annex A. These witnesses provide information that is disclosable under article 67(2) or rule 77.

6. The Prosecution has continually been assessing and implementing necessary security measures to ensure the protection of witnesses since prior to the submission of its Application for Warrants of Arrest. [REDACTED],¹ [REDACTED].

7. [REDACTED], the Prosecution requests that the identities of the following witnesses be withheld: P-0458, P-0953, P-1402, P-1517, P-1791, P-1996, P-2038, P-2037, and P-2039 ([REDACTED]). [REDACTED] of these [REDACTED] place them in a particularly high risk category for disclosure. [REDACTED]. [REDACTED] demonstrates that [REDACTED].²

8. The Prosecution [REDACTED], which it considers a necessary predicate to disclosing their materials and identities. [REDACTED].

¹ [REDACTED].

² [REDACTED].

b. The proposed restrictions on disclosure for two witnesses are justified under both rules 81(2) and 81(4)

9. With respect to Prosecution Witnesses P-1282 and P-2378, restrictions on disclosure are necessary to [REDACTED] and to limit the risks to the security of the witnesses and their families. The Prosecution does not intend to rely upon either witness for the confirmation proceedings, and both are assessed as providing disclosable information pursuant to rule 77 or under article 67(2).

10. The Prosecution has previously set out its justification for requesting measures under rule 81(2) to avoid [REDACTED].³ As these justifications apply here, they are incorporated by reference. In sum, any disclosure of highly confidential information pertaining to [REDACTED]—including to the Defence in this case—has the potential to prejudice [REDACTED] through the risk of leaks or inadvertent disclosure through channels outside the Prosecution's control. This risk is further heightened due to [REDACTED], [REDACTED].⁴ Given that these witnesses have information relevant to [REDACTED], withholding their identities is also required to limit the risk of interference with their safety or well-being.

11. The individual justifications for measures under rule 81(2) in respect of each of these two witnesses are set out in *Ex Parte* Annex A. For these witnesses, the Prosecution requests that their identities be withheld, and disclosable information contained in their respective statements be provided through excerpts, as further justified below.

³ [REDACTED].

⁴ [REDACTED].

c. *Non-standard redactions for two additional witnesses are justified under rule 81(2)*

12. With respect to an additional two witnesses, P-2105 and P-0627, the Prosecution requests authorisation to submit redacted versions of these witnesses' statements and/or transcripts pursuant to rule 81(2), set out in Annex B. P-0627 is assessed as providing incriminatory evidence, which the Prosecution intends to rely upon for the purposes of confirmation, subject to clearance by the Prosecution's Protections Strategies Unit (PSU). However, a substantial component of his evidence relates purely to [REDACTED] and redaction of that content is requested. P-2105 is assessed as providing rule 77 evidence and the Prosecution has assessed the risk of disclosing the identity of this witness as being manageable, but requests redaction of the components of his statement relevant only to [REDACTED].

d. *Disclosure of excerpts of statements*

13. The Prosecution request the Chamber's authorisation to submit excerpts of the disclosable portions of the statements for the 11 witnesses whose identities must be withheld at this stage. None of these Witnesses will be relied upon for confirmation. However, each provides information disclosable under article 67(2) or rule 77. The proposed excerpts thus fully comprise all of the disclosable information assessed—meaning those portions of 'true relevance' and materiality to the Suspects.⁵ Although abbreviated, they are self-contained, in that they include sufficient information fully to understand their context and content.

14. As reflected in Annex A, the potentially disclosable material associated with these Witnesses is minor and brief. Given that nine of these Witnesses [REDACTED], there is a heightened risk that disclosing their identities will pose security risks that neither the Prosecution nor the Court is in any position to mitigate. What is key now

⁵ ICC-01/14-01/18-64-Conf, para. 18.

is that the *material* information the Witnesses provide is divulged, which the proposed excerpts fully account for.

15. Other Chambers of this Court have endorsed this approach in similar circumstances. For instance, the Appeals Chamber in the *Ntaganda* case noted that the use of anonymous summaries for rule 77 material for rule 81(2) or 81(4) reasons was appropriate at the confirmation stage given that “in light of the limited scope of the confirmation of charges hearing, the anonymity is necessary and not prejudicial to or inconsistent with the rights of the Suspects and fair and impartial proceedings as the Defence will have access to the relevant information contained in the summary.”⁶ Similarly, the Appeals Chamber in the *Katanga* case confirmed that “it may be permissible to withhold the disclosure of certain information from the Defence prior to the hearing to confirm the charges that could not be withheld prior to trial.”⁷ The same legal reasoning is apt here.

16. The proposed excerpts are appended to Annex A. Once approved, the Prosecution will apply standard redactions to these excerpts and disclose them to the Defence.

e. Provision of excerpts does not prejudice the Suspects' rights

17. The provision of excerpts does not prejudice the Defence nor impede fair and impartial confirmation proceedings: the excerpts (1) provide the Defence with the necessary information in relation to article 67(2) or rule 77; (2) form only a small portion of the total disclosure the Defence will receive relating to potentially exonerating evidence or information material to its preparation; and (3) are temporary, since the complete statements or screenings, including identities, that contain the relevant excerpts will be disclosed once the Prosecution implements security measures for the affected witnesses.

⁶ ICC-01/04-02/06-248-Red2, para. 21.

⁷ ICC-01/04-01/07-475, para. 68.

18. Aside from the proposed excerpts, no other less intrusive and expeditious measures are available to mitigate the risk inherent in disclosing these materials. Less expeditious methods of withholding the 11 Witnesses' identities are available to the Chamber. For instance, the Chamber could direct the Prosecution to disclose all statements as "attorney-eyes only". In this way, the statements of witnesses for which security clearance is pending, including their identities, would be made available to the Suspects' Counsel and legal staff on condition that no putative witness' identifying information be revealed to the Suspect or others, pending the implementation of necessary security measures. This option is more labour-intensive than the provision of excerpts and more risky because of the potential for unintentional divulgence within the Defence team of restricted identifying information to the Suspects.⁸

19. The Chamber could also direct the Prosecution to disclose anonymized summaries or identity-redacted statements of all witnesses whose identities cannot be disclosed for the time-being. However, these processes are easily the most time-consuming and labour-intensive.

20. The provision of excerpts will best balance the interests in protecting the safety of witnesses and the integrity of the ongoing investigation and fairness and expeditiousness.

IV. RELIEF SOUGHT

21. For the above reasons, the Prosecution requests:

- a. Authorisation to withhold the identities of Witnesses P-0458, P-0953, P-1402, P-1517, P-1791, P-1996, P-2037, P-2028, and P-2039 under rule 81(4) and P-1282 and P-2378 under rules 81(2) and 81(4) and to provide excerpts of their statements instead.

⁸ ICC-01/14-01/18-174-Conf-Exp, para. 13.

- b. Authorisation to provide redacted statements / transcripts for witnesses 2105 and P-0627 under rule 81(2).



Fatou Bensouda, Prosecutor

Dated this 14th day of June 2019
At The Hague, The Netherlands