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

Date: **13 September 2022**

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 “Request for Reconsideration regarding In-Court
Protective Measures for Prosecution Witness P-1077”,
ICC-01/14-01/18-1469-Conf-Red, 21 June 2022**

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I. INTRODUCTION

1. Pursuant to the Trial Chamber V's ("Chamber") Initial Directions on the Conduct of Proceedings¹ and the Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses ("Decision"),² the Prosecution seeks reconsideration of the Decision rejecting its request concerning P-1077,³ and to grant protective measures in the form of voice and facial distortion, and the use of a pseudonym ("Requested Measures").

2. Reconsideration of the Requested Measures is necessary to secure the witness's testimony and to prevent an injustice.⁴ In particular, new facts have arisen since the Decision was rendered: (i) the security situation in the Central African Republic ("CAR") has further deteriorated; and (ii) additional details regarding the witness's security concerns were not previously before the Chamber. These new circumstances therefore justify reconsideration.

3. Granting the Requested Measures will ensure that P-1077 is able to give evidence fully without fear for his own security, and without jeopardising that of his family.

4. The Requested Measures are the least restrictive means to appropriately balance the right to a public trial against the mandate to protect witnesses appearing before the Court, and to prevent a disproportionate risk of harm on account of those who assist it.⁵ As such, the measures do not unfairly prejudice the Accused.

II. CONFIDENTIALITY

5. Pursuant to regulation 23*bis* of the Regulations of the Court ("RoC"), this Request is filed as "Confidential, *ex parte* - only available to the Prosecution and the VWU", as

¹ ICC-01/14-01/18-631, paras. 68-69.

² ICC-01/14-01/18-906-Red2.

³ See ICC-01/14-01/18-906-Red2, paras. 46-48.

⁴ See ICC-01/12-01/18-734, para. 11 (noting that "[n]ew facts and arguments arising since the decision was rendered may be relevant to [assess whether reconsideration is necessary to prevent an injustice]"). See also, ICC-01/12-01/18-1335-Conf-Red, para. 5.

⁵ See e.g., ICC-01/05-01/13-1481-Red-Corr, para. 18.

it bears on confidential witness security issues, and concerns previous filings of the same classification. A confidential redacted version will be filed contemporaneously.

III. SUBMISSIONS

6. As the Chamber has confirmed, “any rejection of a request for protective measures in an initial ruling” is without prejudice to the Chamber reconsidering, upon request or *proprio motu*, the need for an order under Rule 87 of the Rules, should new or additional information be made available to it at a later stage.”⁶ The new and additional facts and information set out below warrant such reconsideration.⁷

A. Reconsideration is necessary and justified

7. Reconsideration of protective measures for P-1077 is necessary and justified given the security deterioration in the political and security situation current in CAR since the Prosecution’s initial application in December 2020, and the *objective* risk of harm to P-1077 as a result of this change. Furthermore, the fact that he had to [REDACTED] around December 2021 [REDACTED],⁸ [REDACTED], was not before the Chamber previously. The totality of these facts merit the Chamber’s attention in considering the Requested Measures.

- a. The security situation in CAR is inadequate to protect P-1077 and his immediate family

8. The security situation in CAR has deteriorated since 7 December 2020, when protective measures were first sought for P-1077.⁹ As confirmed in the Registry’s 25

⁶ ICC-01/14-01/18-1245-Conf-Corr, para. 5 *citing* ICC-01/14-01/18-906-Red2, para. 21.

⁷ Reconsideration is appropriate in a number of circumstances under the Court’s jurisprudence. *See* ICC-01/04-01/07-3833, para. 25; ICC-02/04-01/15-1547, para. 7; ICC-02/04-01/15-711, para. 4; ICC-02/04-01/15-468, para. 4 (when necessary to prevent an injustice); *see* ICC-01/04-01/06-2705, paras. 13-18; ICC-02/04-01/05-50, para. 18; ICC-01/04-01/06-772 OA4, paras. 36-39 (when the consequences of a decision are manifestly unsatisfactory) ; and *see* ICC-01/04-01/07-3833, para. 25; ICC-01/09-01/11-1813, para. 19; ICC-01/09-02/11-863, para. 11; ICC-02/04-01/15-1210, para. 6; ICC-02/04-01/15-1259, para. 12; and ICC-01/12-01/18-734, para. 11 (when new facts and arguments arise).

⁸ [REDACTED].

⁹ ICC-01/14-01/18-757-Conf-Exp-Anx, p. 5, entry 22.

May 2022 Eighth Periodic Report on the Political and Security situation in the CAR, the political and security context in CAR:

“continue[s] to be shaped by: (i) political tensions which have remained significant, with the main coalition of opposition parties (the ‘Democratic Opposition’) having declined to participate in the Republican Dialogue in March 2022; (ii) the volatile security environment, characterised by unabated clashes across several parts of the country between armed groups and the FACA/Bilateral forces; and (iii) a dire socio-economic and humanitarian situation, which is exacerbated by the CAR government’s alarming budgetary situation.”¹⁰

9. In addition, as reiterated in recent submissions, witnesses in CAR continue to be the target of attacks, threats, and interference.¹¹

10. The situation in CAR is unlikely to improve in the short to medium term.¹² Consequently, domestic authorities have a diminished capacity to protect and secure the interests of witnesses in this case, given the necessary deployment of a substantial portion of their limited resources to stabilise the country. The capacity to ensure that P-1077 and third-parties (such as his family) can be adequately protected in CAR, should his testimony be received publicly, is clearly reduced relative to when the initial application for protective measures was made well-over a year ago.

b. Requiring P-1077’s testimony without protective measures would result in an injustice

11. P-1077 faces an *objective* risk of harm arising from the impact of the changed security situation on his ongoing personal circumstances. As more fully detailed below, P-1077 will likely be [REDACTED] should his cooperation and testimony as a Prosecution witness become public. Absent reconsideration, requiring his testimony

¹⁰ See ICC-01/14-01/18-1434-Conf, para. 7. See also ICC-01/14-01/18-1245-Conf, para. 8, where the Chamber finds that “the security situation in the CAR has further deteriorated since the Initial Decision was rendered”, deciding upon the Prosecution’s similar argument in ICC-01/14-01/18-1232-Red2, para. 8.

¹¹ See ICC-01/14-01/18-1441-Conf-Red, in particular paras. 13, 15, 17. See also ICC-01/14-01/18-1460-Conf-Red, para. 5.

¹² *Id*; also incorporating for reference ICC-01/14-01/18-1232-Red2, para. 8.

in these circumstances would impose a disproportionate negative consequence on him and his family due to his cooperation with the Court.

B. Protective measures for P-1077 are warranted, as he faces an objective risk of harm

i. Pre-existing risks are heightened by the weakened security infrastructure in CAR

12. P-1077 was the ComZone of BERBERATI before becoming the Anti-Balaka Coordinator for the MAMBERE KADEI prefecture following the July 2014 BRAZZAVILLE Summit. His prospective evidence bears on the roles of NGAISSONA and [REDACTED]. He attended numerous Coordination meetings held by NGAISSONA and further attended the NAIROBI peace talks with [REDACTED]. As mentioned in the Prosecution's previous request, P-1077 [REDACTED] due to his prior role as a ComZone within the Anti-Balaka and his participation in the BRAZZAVILLE Summit in July 2014 on behalf of the Anti-Balaka.¹³ In addition, P-1077's children live in [REDACTED] and [REDACTED], [REDACTED]. Accordingly, he has [REDACTED] should he testify publicly.¹⁴

13. Testifying without in-court protective measures will [REDACTED]. In addition, testifying publicly might further expose P-1077 to Anti-Balaka *victims*, who may also see the witness as representing the perpetrators of the crimes committed against their community and families. They similarly may be motivated to take action against him or his family.

14. This information, when combined with specific additional information unavailable to the Chamber in the previous request, demonstrates an objective risk of harm to P-1077, especially in light of the further deterioration of the security situation

¹³ ICC-01/14-01/18-757-Conf-Exp-Anx, p. 5, entry 22.

¹⁴ ICC-01/14-01/18-757-Conf-Exp-Anx, p. 5, entry 22.

in CAR such that local law enforcement cannot provide adequate assurances that P-1077 can be protected.

- ii. In requiring the witness to testify without protective measures the Court would expose him to a disproportionate risk of negative consequences in view of his current situation**

15. In particular, P-1077 reported to the Prosecution that he fled CAR in December 2021 [REDACTED].¹⁵ P-1077's public testimony would therefore adversely affect his ability to live safely within his community in CAR.

16. In addition, P-1077 informed the Prosecution that he is presently living in [REDACTED]. The Victims and Witnesses Unit ("VWU") has confirmed that [REDACTED], it would be impossible to arrange P-1077's testimony via video-link [REDACTED]. Even if VWU could organise his testimony [REDACTED]. This would expose him [REDACTED].¹⁶

17. To cooperate with the Court, P-1077's only option is thus to [REDACTED] the purposes of providing his testimony in [REDACTED]. If he were further made to testify publicly however, he would expose himself to [REDACTED].

18. Although the risks to P-1077 have not *yet* materialised, the circumstances described readily establish an objective risk, warranting the Chamber's action consistent with article 68(1). Requiring P-1077's public testimony without any mitigating protection would undermine the Court's duty under that article to refrain from actions that would in all likelihood entail negative consequences for the witness.

¹⁵ [REDACTED].

¹⁶ See e.g., ICC-01/05-01/13-1481-Red-Corr, para. 18 (Furthermore, the Chamber finds that [REDACTED] are such that the reasonably foreseeable consequences of her testifying before the Court, whether in answer to a summons or otherwise, would place her under unnecessary hardship that is disproportionate to the purported significance of her evidence (discussed further at paragraph 22 below). Pursuant to Article 68(1) of the Statute, the Chamber has the duty to protect the safety, physical and psychological well-being, dignity and privacy of witnesses. This encompasses refraining from actions (in this case calling or summoning witness P-263 to testify) that would in all likelihood entail negative consequences for the witness, [REDACTED]).

C. The Requested Measures are strictly proportionate to the risk and do not unfairly prejudice the Accused

19. The Requested Measures are necessary and proportionate to mitigate the risks arising from P-1077's prospective testimony. Given that P-1077, a former leader within the group, is [REDACTED], voice and face distortion, and the use of a pseudonym, are the minimum necessary to ensure the adequate and proportional protection of his and his family's safety and security.

20. The impact of the Requested Measures on the publicity of the proceedings is mitigated and justified. *First*, as noted, they are needed to ensure that P-1077 is able to provide unfettered evidence. *Second*, they do not impede the Accused's opportunity and ability to fully examine the witness and to test his evidence. *Third*, much of P-1077's testimony will be given in public in any event, with the Chamber duly moderating the use of Private Sessions within the sound exercise of its discretion, as it has done effectively and fairly with other protected witnesses.

21. Finally, in respect of the right to publicity,¹⁷ the Prosecution notes that the Requested Measures would remain in effect to the extent necessary to protect the witness. However, should the risks abate, the possibility of releasing lesser redacted material into the public domain may be appropriate in the future, thus accommodating and balancing the respective interests of articles 64(2), 68(1), and 67(1).

IV. RELIEF SOUGHT

22. For the above reasons, the Prosecution seeks reconsideration of the Decision on In-Court Protective Measures, and requests that the Chamber grant in-Court

¹⁷ See article 67(1) (qualifying the right as an "entitle[ment] to a public hearing, *having regard to the provisions of this Statute...*") (emphasis added); see also article 68(2).

protective measures in the form of voice and facial distortion, and the use of a pseudonym for P-1077.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

Karim A. A. Khan KC, Prosecutor

Dated this 13th day of September 2022
At The Hague, The Netherlands