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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 “Confidential redacted version of “Request for
Reconsideration regarding In-Court Protective Measures for Prosecution Witness
P-1786”, 27 September 2022”, ICC-01/14-01/18-1585-Conf-Red**

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 the Chamber's Initial Directions on the Conduct of Proceedings¹ and further to its Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses ("Decision"),² which, *inter alia*, rejected³ the Office of the Prosecutor ("Prosecution")'s request for P-1786,⁴ the Prosecution requests the Chamber to reconsider its Decision, and to grant protective measures for P-1786 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.⁵ 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 current situation and security concerns were not previously before the Chamber. These new circumstances justify the Chamber's reconsideration.

3. Granting the Requested Measures will ensure that P-1786 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 statutory mandate to protect witnesses appearing before the Court, and to prevent a disproportionate risk of harm on account of those who assist it.⁶ As such, the measures would not unfairly prejudice the Accused.

¹ ICC-01/14-01/18-631, paras. 68-69.

² ICC-01/14-01/18-906-Red2 ("Decision"),

³ Decision, paras. 41-42, p. 46.

⁴ ICC-01/14-01/18-757-Conf-Exp-Anx ("Prosecution First Request"), p. 4, entry 13.

⁵ 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.

⁶ See e.g., ICC-01/05-01/13-1481-Red-Corr, para. 18.

II. CONFIDENTIALITY

5. Pursuant to regulation 23*bis*(1) of the Regulations of the Court ("RoC"), this Request is filed as "Confidential, *ex parte* - only available to the Prosecution and the VWU", as 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."⁷ The new and additional facts and information set out below warrant such reconsideration.⁸

A. Reconsideration is necessary and justified

7. Reconsideration of protective measures for P-1786 is necessary and justified given the continuous deterioration in the political and security situation in the CAR since the Prosecution's First Request on 7 December 2020, the new circumstances merit the Chamber's attention, as they are determinative of the current *objective* risk of harm to P-1786 and his family as a result of this change. The fact that, [REDACTED], an area where members of the Anti-Balaka loyal to YEKATOM still live, was not known to the Chamber.

⁷ ICC-01/14-01/18-1245-Conf-Corr, para. 5 *citing* ICC-01/14-01/18-906-Red2, para. 21.

⁸ 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).

- a. The security situation in the CAR is inadequate to protect P-1786 and his immediate family

8. The security situation in the CAR has considerably deteriorated since protective measures were first sought for P-1786.⁹ As confirmed in the ninth Periodic Report of the Registry on the Political and Security situation in the CAR (“Ninth Registry Report”), the political and security context in the CAR:

“continues to be shaped by: (i) political tensions which are likely to remain significant with the preparation of the Constitutional referendum and the January 2023 local elections amidst little progress in the peace process; (ii) the volatile security environment, characterised by unabated clashes across several parts of the country between armed groups and the *Force armée centrafricaine*/Bilateral forces; (iii) a dire socioeconomic and humanitarian situation, which is exacerbated by the CAR government’s alarming budgetary situation.”¹⁰

9. The security situation in the CAR is particularly obstructed by the involvement of Anti-Balaka elements in recent violent attacks throughout the country. As outlined in the Ninth Registry Report and in the 16 June 2022 Report of the UN Secretary General to the Security Council, Anti-Balaka elements are being recruited as proxies by the FACA and have been heavily involved in the commission of crimes as up to June 2022.¹¹ As further noted in the Ninth Registry Report, ANDJILO and PINO-PINO, two well-known Anti-Balaka leaders who had been convicted and sentenced

⁹ Prosecution First Request, p. 5, entry 19.

¹⁰ See ICC-01/14-01/18-1556-Conf, para. 7,. See also ICC-01/14-01/18-1245-Conf-Corr, 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-01/14-01/18-1556-Conf-Anx, para. 38; Report of the UN Secretary-General to the Security Council on the situation in the CAR, S/2022/491, 16 June 2022 ([N2237546.pdf \(un.org\)](#)), paras. 20-21, 23, 25, last accessed 27/09/2022). See also Office of the High Commissioner for Human Rights, “Central African Republic: UN reports detail serious violations, some possibly amounting to war crimes and crimes against humanity”, 25 July 2022 ([Central African Republic: UN reports detail serious violations, some possibly amounting to war crimes and crimes against humanity | OHCHR](#), [last accessed 27/09/2022] referring to an attack against unarmed civilians carried out by the Anti-Balaka on the village of BOYO in OUAKA Prefecture from 6 to 13 December 2021 resulting in the killing, rape, destruction of properties, and the force displacement of over 1,000 villagers.

to life prison, are being trained to be integrated into the FACA.¹² This affiliation of members of the Anti-Balaka with the CAR national defence forces increases the risk of P-1786, [REDACTED], being recognized and targeted if he were to testify publicly against the interest of the Anti-Balaka.

10. Additionally, as reiterated in recent submissions, witnesses in CAR continue to be the target of attacks, threats, and interference.¹³ When P-1786 [REDACTED].¹⁴ [REDACTED],¹⁵ he could easily recognize P-1786 and mark him for retaliation if the witness were to testify publicly.

11. The situation in the CAR is unlikely to improve in the short to medium term.¹⁶ 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-1786 and third-parties (such as his family) can be adequately protected in the CAR, should his testimony be received publicly, is clearly reduced relative to when the initial application for protective measures was made more than a year ago.

b. Requiring P-1786's testimony without protective measures would result in an injustice

12. Given the changed security situation and in light of P-1786's ongoing personal circumstances described below, he will likely be marked for retaliation, should his cooperation and testimony as a Prosecution witness become public. Absent reconsideration, requiring his testimony under P-1786's current circumstances would

¹² ICC-01/14-01/18-1556-Conf-Anx, para. 27.

¹³ 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.

¹⁴ See CAR-OTP-2058-0200, at 0209-0210, paras. 52, 55. See also P-1647: CAR-OTP-2050-0654, at 0662-0663, paras. 53-56. P-1839 also attested that Alban GOLIATHA was part of YEKATOM's close circle. See CAR-OTP-2072-1010, at 1016-1018, 1.214-290, CAR-OTP-2072-1134, at 1150, 1.523-527.

¹⁵ See CAR-OTP-2058-0200, at 0209, para. 52; P-1792: CAR-OTP-2069-0003, at 0011, para. 56; P-1839: CAR-OTP-2072-1134, at 1150, 1.523-532.

¹⁶ See ICC-01/14-01/18-1556-Conf, para. 8; ICC-01/14-01/18-1192-Conf, para. 8; also incorporating for reference ICC-01/14-01/18-1232-Red2, para. 8.

impose disproportionate negative consequences on him due to his cooperation with the Court.

B. Protective measures for P-1786 are warranted, as he faces an objective risk of harm

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

13. P-1786 is [REDACTED]. He is expected to provide evidence implicating YEKATOM, including as mentioned above, his direct commission of crimes and his control over his elements who committed crimes against Muslims. He also described (i) YEKATOM's authority over the Anti-Balaka at the YAMWARA school, in BIMBO, and MBAIKI to whom he issued orders which were obeyed, (ii) the structure and organisation of YEKATOM's Group, (iii) the planning of the attacks in BIMBO and PK9, (iv) and the method of discipline imposed on members of the group. As mentioned in the Prosecution's First Request, P-1786 [REDACTED].¹⁷ Additionally, P-1786 and his family [REDACTED], which remains under the influence of Anti-Balaka members and supporters.

14. Testifying publicly would expose P-1786 to YEKATOM's supporters and Anti-Balaka's supporters and members. It is most likely that those Anti-Balaka's members, who watch his testimony or become aware of it would be motivated to retaliate against P-1786 or his family. In addition, testifying without in-court protectives measures might expose P-1786 to victims of Anti-Balaka's crimes, who may easily associate the witness with the perpetrators of the serious crimes committed against their community and families. Similarly they may be motivated to take revenge against him or his family. P-1786's public testimony would therefore adversely affect his ability to live safely within his community.

¹⁷ Prosecution First Request, p. 4, entry 13.

15. These circumstances, coupled with the security situation in the CAR, where the domestic law enforcement institutions cannot provide adequate protection to P-1786 and his family, demonstrate that his testimony without appropriate in-court protective measures would create an impermissible *risk* of harm.

- b. In requiring P-1786 to testify without protective measures, the Court would expose him to a disproportionate risk of negative consequences in view of his current situation

16. On 12 September 2022, P-1786 reported to the Prosecution that he has returned to the FACA and [REDACTED], which during the relevant period, formed the core of the Anti-Balaka movement; and as mentioned above¹⁸ remains tied to the Anti-Balaka. P-1786's public testimony would therefore affect his ability [REDACTED].

17. P-1786 has also informed the Prosecution that due to his current position, [REDACTED], an area still under the influence of YEKATOM¹⁹ and where his supporters still reside. Accordingly, P-1786 has expressed fear for retaliation if he were to testify publicly against YEKATOM. As conceded by the Victims and Witnesses Unit ("VWU") at least twice,²⁰ and noted by the Chamber,²¹ [REDACTED], a public testimony against YEKATOM will unnecessarily expose the witness to risk of reprisals from YEKATOM's **supporters in the LOBAYE** or any other town in the provinces where the Anti-Balaka are still active and dedicated to acts of violence.

18. The risk to P-1786's and his family's safety is all the more important as, about two years ago, [REDACTED].

19. Although the risks to P-1786 have not *yet* materialised, the circumstances described above establish an *objective risk* of harm to P-1786 and his family, warranting appropriate measures pursuant to rule 87 of the Rules to protect the safety of the

¹⁸ See above para. 9.

¹⁹ See namely the Chamber's findings in its Decision ICC-01/14-01/18-495-Conf-Red, para. 25.

²⁰ ICC-01/14-01/18-1513-Conf-Exp, para. 11; ICC-01/14-01/18-1567-Conf, para. 8.

²¹ ICC-01/14-01/18-1514-Conf-Exp, para. 12; ICC-01/14-01/18-1570-Conf, para. 12.

witness, in compliance with article 68(1). The Chamber has noted with concern some reported witness interference incidents and their impact in deterring Prosecution witnesses from testifying, as well as the Registry's reports regarding the CAR's volatile security situation.²² These circumstances are crucially important and should be taken into account when assessing whether in-court protective measures should be granted.

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

20. The Requested Measures are necessary and proportionate to mitigate the risks arising from P-1786's prospective testimony. Given that P-1786, who was [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.

21. 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-1786 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-1786'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.

22. Finally, in respect of the right to publicity,²³ the Prosecution notes that the Requested Measures would remain in effect to the extent necessary to protect the witness. However, should the risks abate, releasing lesser redacted material into the

²² ICC-01/14-01/18-1460-Conf, para. 5.

²³ 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).

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

23. For the above reasons, the Prosecution seeks reconsideration of the Decision and requests that the Chamber grant in-Court protective measures in the form of voice and facial distortion and the use of a pseudonym for P-1786.

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 2nd day of February 2023
At The Hague, The Netherlands