

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **8 March 2023**

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 *THE PROSECUTOR v.*
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

**Public Redacted Version of “Yekatom Defence Response to the
Prosecution’s “Request for Reconsideration regarding In-Court Protective
Measures for Prosecution Witness P-2082”, ICC-01/14-01/18-1768-Conf, 22
February 2023”, ICC-01/14-01/18-1776-Conf, 27 February 2023**

Source: Defence for Mr. Alfred Rombhot Yekatom

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Mr Karim Asad Ahmad Khan
Mr Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Mr. Yekatom

Ms Mylène Dimitri
Ms Anta Guissé
Mr Thomas Hannis
Ms Yousra Lamqaddam

Counsel for Mr. Ngaïssona

Mr Geert-Jan Alexander Knoops
Mr Richard Omissé-Namkeamaï
Ms Marie-Hélène Proulx

Legal Representatives of Victims

Mr Dmytro Suprun

Legal Representatives of Applicants

Mr Abdou Dangabo Moussa
Ms Elisabeth Rabesandratana
Mr Yaré Fall
Ms Marie-Edith Douzima-Lawson
Ms Paolina Massidda

Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

Mr Xavier-Jean Keïta

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

INTRODUCTION

1. The Defence for Mr Alfred Rombhot Yekatom ('Defence') hereby responds to the Prosecution's "Request for Reconsideration regarding In-Court Protective Measures for Prosecution Witness P-2082" ('Request'), notified on 22 February 2023.¹
2. The Defence opposes the request for reconsideration on the basis that (i) the Prosecution does not provide new elements justifying the request; (ii) the Prosecution fails to demonstrate an objective justifiable risk for P-2082 should she testify publicly, and; (iii) the measures sought are inconsistent with Mr Yekatom's right to the publicity of the proceedings.

PROCEDURAL HISTORY

3. On 18 December 2020, the Defence was notified of the Confidential redacted version of the "Prosecution's Request for in-court protective measures", originally filed *ex parte* on 7 December 2020.² The Prosecution sought implementation of in-court protective measures for 72 witnesses, including P-2082 ('First Request').³
4. On 9 March 2021, the Single Judge rejected the Prosecution's First Request in relation to P-2082 in its "Decision on the Prosecution Request for In-Court Protective Measures for 73 Trial Witnesses" ('Decision').⁴
5. On 22 February 2023, the Defence was notified of the Prosecution's Request seeking the Chamber's reconsideration of the Decision in regards to P-2082. The Prosecution requests that the Chamber grants in-court protective measures in the form of facial distortion and the use of a pseudonym for P-2082.⁵

¹ ICC-01/14-01/18-1768-Conf.

² ICC-01/14-01/18-757-Conf-Red.

³ ICC-01/14-01/18-757-Conf-Anx-Red, pages 3-4, witness n°13.

⁴ ICC-01/14-01/18-906-Conf-Red, paras 41-42.

⁵ ICC-01/14-01/18-1768-Conf, para. 1.

APPLICABLE LAW

6. The standards which warrant the application of rule 68(1) and (2) of the Rules of Procedure and Evidence ('RPE') and the corollary restrictions to the accused's fundamental right to the publicity of proceedings have been clearly defined, and namely reiterated in detail in the Chamber's previous decision.⁶ Therein, the Chamber further reiterated that in-court protective measures will be warranted on the basis of an 'objectively justifiable risk' that public testimony would create or unduly increase an impermissible danger to the witness, based on the available information.⁷ This determination is subject to reconsideration in the situation where new or additional information were to be available to the Chamber at a later stage.⁸

I. The Prosecution fails to provide any new or additional information justifying reconsideration of the Decision

7. The Defence submits that the Prosecution has not provided any information additional to those presented to the Chamber in the First Request, and presents nearly identical arguments to those who were previously rejected in the Decision.

8. As acknowledged in the Request itself, the argument advanced by the Prosecution relative to the fact P-2082 presently lives in [REDACTED],⁹ was already presented to the Chamber in the First Request.¹⁰ This factor alone was not deemed sufficient in previous instances to warrant reconsideration of protective measures.¹¹ The Defence highlights that this is also true of the

⁶ ICC-01/14-01/18-906-Conf-Red, paras 14-17.

⁷ *Id.*, para. 17.

⁸ *Id.*, paras 20-21.

⁹ ICC-01/14-01/18-1768-Conf, para. 8.

¹⁰ ICC-01/14-01/18-757-Conf-Anx-Red, p. 12, entry 65.

¹¹ ICC-01/14-01/18-1268-Conf, para. 10.

arguments relative to P-2082's position within the [REDACTED],¹² which she has held since [REDACTED],¹³ as indicated in her statement.

9. The Request does not provide additional information on P-2082 travels that would indicate a risk to her security. P-2082 potential journeys to the provinces of CAR [REDACTED] do not constitute new information as they were already [REDACTED] as submitted in the First Request.¹⁴
10. While the Defence acknowledges reports raised by the Prosecution on the security situation in the Central African Republic, it submits that such generalities are insufficient to establish 'new' facts absent practical developments in the circumstances which can be shown to have direct repercussions on the witness. Furthermore, its concern towards the number of similar requests principally grounded in general observations on the security situation of CAR bears to be reiterated.¹⁵ In the present case, the Prosecution fails to present such link. Provided P-2082's role and position, the link to [REDACTED] is tenuous at best.¹⁶
11. On this last point, the Defence notes that the Prosecution has advanced no tangible information that the authorities' capacity to specifically protect P-2082 has changed in any way since 2021. In this regard, the Prosecution's argument on the capacity of the authorities to ensure P-2082's security amounts to speculation, as it is solely predicated on [REDACTED] raised by the Registry in its Tenth Report.¹⁷

¹² ICC-01/14-01/18-1268-Conf, para. 10.

¹³ *Id.*, see also CAR-OTP-2109-0452-R02, para. 17.

¹⁴ ICC-01/14-01/18-757-Conf-Anx-Red, p. 12, entry 65.

¹⁵ ICC-01/14-01/18-1257-Conf, para. 31.

¹⁶ ICC-01/14-01/18-1768-Conf, paras 11-12.

¹⁷ ICC-01/14-01/18-1768-Conf, para. 13.

12. Therefore, the Defence submits that provided the failure to prove a change in the circumstances considered by the Chamber in its Decision, the Request should be rejected.

II. The Prosecution does not identify an objectively justifiable risk

13. In the absence of new facts or circumstances warranting reconsideration from the Decision, the Defence submits that the reasoning found therein is still as valid now as it was then. As such, the Defence recalls the Chamber's findings that "having a public profile or living in an area of Anti-Balaka influence do not, without more, constitute factors demonstrating the existence of an objectively justifiable risk."¹⁸
14. Further to this point, the subjective fears or concerns towards the risk of retaliation expressed by witnesses are equally insufficient, bar objective justification of the nature and extent of these risks.¹⁹
15. It is argued in the Request that should her testimony become public, "P-2082 will likely be marked for retaliation".²⁰ The Defence considers that the grounds advanced by the Prosecution towards the existence of an impermissible risk are thus entirely devoid of objective indicators.
16. Firstly, the Defence notes the admitted absence of any security incident relating to P-2082.²¹ Contrary to the Prosecution's argument that this fact does not diminish the risks to the witness, the Defence contends that this factual assessment provides a strong indicator of the objective risks to the witness, *a contrario* to purely subjective and/or speculative factors such as the levels of Anti-Balaka influence in the person's neighborhood.

¹⁸ ICC-01/14-01/18-906-Conf-Red, para. 96.

¹⁹ *Id.*, para. 97.

²⁰ ICC-01/14-01/18-1768-Conf, para. 14.

²¹ ICC-01/14-01/18-1768-Conf, para. 15.

17. Secondly, the Defence submits that the evidence on which P-2082 is expected to testify, [REDACTED], remains indirect evidence remote from the crimes and the alleged conduct of the Anti-Balaka and does not imply an inherent risk of reprisals. In any event, even when an upcoming witness 's anticipated testimony touched upon the acts and conduct of the accused, it was an insufficient argument to warrant protective measures.²²
18. While the Prosecution presents P-2082's testimony [REDACTED] as determinative of future Anti-Balaka reprisals,²³ the Defence notes that testimonies on the same topic have already been heard publicly from witnesses such as [REDACTED] and [REDACTED], and that the Defence has not been made aware of subsequent security incidents on these persons relating to their testimony on this event or in general. Furthermore, P-2082's [REDACTED] is already a matter of public knowledge, especially provided [REDACTED].²⁴
19. Thirdly, the Defence submits that the arguments raised towards the upcoming travel of P-2082 are not different in nature from those on the 'Anti-Balaka influence' of their neighbourhood of residence, and are predicated on the hypothesis that the content of their testimony would inexorably drive former Anti-Balaka members and their supporters to retaliation. While unspoken, this assumption underlies the whole of the Request's argumentation, despite the fact it is the point that needs proving in the first place.

III. The implementation of the measures would prejudice Mr Yekatom's right to the publicity of the proceedings

20. The Defence submits that in the evaluation of proportionality between the interests of P-2082 and Mr Yekatom's fundamental right to the publicity of the

²² ICC-01/14-01/18-1734-Conf, para. 10.

²³ ICC-01/14-01/18-1768-Conf, paras 9-10, 16.

²⁴ [REDACTED]

proceedings, special consideration has to be given to the nature and contents of P-2082's upcoming testimony.

21. Indeed, [REDACTED] was subject to press attention and publicity, which has an important effect on public perception of the existence and extent of [REDACTED]. Considering that [REDACTED], the Defence believes that P-2082 [REDACTED] is one of few witnesses capable of providing public testimony on this count without potential self-incrimination, which makes its public nature all the more crucial to the public's understanding and perception of the events.

CONFIDENTIALITY

22. The present response is filed on a confidential basis corresponding to the classification of the Request. A public redacted version of the response will be filed in due course.

RELIEF SOUGHT

23. In light of the above, the Defence respectfully requests Trial Chamber V to:
- REJECT** the Prosecution's Request.

RESPECTFULLY SUBMITTED ON THIS 8th DAY OF MARCH 2023²⁵



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands

²⁵ The Defence thanks Legal Intern Mr. Tobie Raphael Godue for his precious assistance in the drafting of this filing.