



Original: English

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

Date: 1 September 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 *PROSECUTOR v. ALFRED YEKATOM AND
PATRICE-EDOUARD NGAÏSSONA***

Public

Public redacted version of “Prosecution’s submission pursuant to regulation 35 to vary the time limit and request for in-court protective measures for Witness P-0974”, 3 August 2023, ICC-01/14-01/18-2015-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

Counsel for Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoops
Mr Richard Landry Omissé-Namkeamaï
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 Massidda

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 regulation 35(2) of the Regulations of the Court,¹ articles 64(2) and 68(1), and rule 87 of the Rules of Procedure and Evidence,² the Prosecution seeks a variation of the time limit to submit this request for in-court protective measures for Witness P-0974 in the form of pseudonym and facial distortion ("Requested Measures").

2. The Requested Measures could not have been anticipated before the 6 April 2023 First Rule 68(2)(b) Decision, requiring the Witness's appearance pursuant to rule 68(3) of the Rules,³ and before reaching P-0974 to obtain additional details on his current personal circumstances.

3. The Requested Measures are necessary to protect P-0974's and his immediate family's legitimate interests. As an insider witness, P-0974's public testimony regarding the role of both Accused and other high-level Anti-Balaka members puts his BANGUI-based family at risk; jeopardises his and his dependents' [REDACTED] the Central African Republic ("CAR"); and would adversely affect his legitimate professional and financial interests. *First*, P-0974's [REDACTED] live [REDACTED] in BANGUI, [REDACTED]. *Second*, P-0974 is currently [REDACTED] BANGUI together with his wife and children [REDACTED].⁴ Testifying publicly against former Anti-Balaka figures [REDACTED], or on matters related to the State [REDACTED]. *Finally*, [REDACTED] expected to provide insider information on the Anti-Balaka activities increases his and his family security risk, in view of the existing tensions and the ongoing armed opposition between the FACA and the former Anti-Balaka (as part of the *Coalition des Patriotes pour le Changement* ("CPC")).

¹ ("RoC").

² ("Rules").

³ ICC-01/14-01/18-1833-Red, paras. 302-312 ("First Rule 68(2)(b) Decision").

⁴ As well as [REDACTED].

4. Granting the Requested Measures will ensure that P-0974 is able to give evidence without fear for his own safety [REDACTED], as well as the safety of his BANGUI-based family, and without jeopardising his financial security or [REDACTED] career.

5. The Requested Measures are the least restrictive means to appropriately balance the Accused's right to a fair and public hearing under articles 64(2) and 67(1), against the Court's mandate to protect witnesses under article 68 and rule 87, and to prevent a disproportionate risk of harm on account of those who assist it.⁵ The measures sought do not unfairly prejudice the rights of either Accused, as they have been provided with P-0974's name and identifying information. He will therefore remain anonymous to the public only.

II. CONFIDENTIALITY

6. Pursuant to regulation 23bis(1) of the RoC, this Request is filed as "Confidential, *ex parte* - only available to the Prosecution and the VWU" as it bears on, *inter alia*, confidential witness security issues, the witness's family, and their current residence. A confidential redacted version will be filed contemporaneously.

⁵ See *e.g.*, ICC-02/04-01/15-612-Red, para. 8.

III. SUBMISSIONS

A. A variation of the time limit for the Request is necessary and justified

7. Under regulation 35(2) of the RoC, a Chamber may extend a time limit after it has elapsed if the participant seeking the extension can demonstrate that they were unable to file the application within the time limit for reasons outside their control.

8. This criteria is met. The Requested Measures could not have been anticipated before the 7 December 2020 time limit.⁶ Rather, they could only be requested at this point, given: (i) the First Rule 68(2)(b) Decision,⁷ and (ii) the necessity for the Prosecution to reach P-0974 to determine his current personal circumstances, which could only be achieved in late July 2023. Specifically, after several failed contact attempts with P-0974 in April, May, and June 2023, contact with P-0974 was successfully re-established between 22 and 31 July 2023, upon obtaining new contact details for the Witness, [REDACTED].

B. Protective measures for P-0974 are necessary and justified

a. The Requested Measures are necessary to protect P-0974

9. As detailed below, P-0974's public testimony would create an unjustifiable risk⁸ to P-0974's physical security, career, and financial security. It would also adversely affect the security of his immediate family [REDACTED], as well as the security of his CAR-based family, all of whom are innocent third parties. The Requested Measures are the only means of averting these increased risks. This would cause no serious prejudice to the Accused's rights.

(i) *P-0974's and his family's current [REDACTED] residence in BANGUI*

⁶ See ICC-01/14-01/18-631, paras. 68-70 (requiring that applications for in-court protective measures be filed by 7 December 2020).

⁷ ICC-01/14-01/18-1833-Red, para. 311.

⁸ See ICC-01/14-01/18-906-Conf-Exp, para. 17 citing ICC-02/04-01/15-612-Red, para. 9.

10. P-0974 is a [REDACTED] who joined the Anti-Balaka during the Relevant Period.⁹ He [REDACTED].¹⁰ P-0974 is expected to testify on the conduct of the Anti-Balaka as well as on specific Anti-Balaka figures, including both the Accused and Sebastian WENEZOUÏ (“WENEZOUÏ”).¹¹ The Prosecution refers to paragraphs 302 to 312 of the First Rule 68(2)(b) Decision on further relevant portions of P-0974’s expected testimony.¹²

11. P-0974 reports that, since he left the Anti-Balaka [REDACTED], P-0974 will [REDACTED]. [REDACTED].

12. For [REDACTED], continue to be based in BANGUI, in [REDACTED].

13. *First*, the [REDACTED] where P-0974’s [REDACTED] currently live [REDACTED]. P-0974 described that [REDACTED]. P-0974 explained he was no longer on good terms with the Anti-Balaka. [REDACTED] the Anti-Balaka were unhappy about him leaving the group. Consequently, requiring P-0974’s public testimony regarding the Anti-Balaka leadership and activities increases the security risk for P-0974’s family, currently living in [REDACTED], and the likelihood for a [REDACTED] incident to occur.

14. *Second*, as noted, P-0974, his wife, and his children will [REDACTED]. P-0974 expects to [REDACTED]. P-0974 and his immediate family will [REDACTED]. Given the [REDACTED], and the fact that NGAISSONA¹³ and YEKATOM supporters¹⁴ are still present in BANGUI, P-0974’s public testimony regarding the Accused and his association with the Prosecution will heighten his and his family’s security risk.

⁹ From September 2013 through December 2014 (“Relevant Period”).

¹⁰ CAR-OTP-2058-0165, at 0173, paras. 50-52.

¹¹ CAR-OTP-2058-0165, at 0176, paras. 67, 77, 81, 91-96.

¹² See ICC-01/14-01/18-1833-Red, paras. 302-312, referring *inter alia* to P-0974’s Prior Statement, CAR-OTP-2058-0165.

¹³ According to P-0974, President BOZIZE’s and NGAISSONA’s supporters are still to be found in BANGUI, in BOEING and BOY-RABE neighbourhoods.

¹⁴ According to P-0974, YEKATOM’s supporters are still to be found in BANGUI, in PK9, PÉTÉVO, FATIMA, and CATTIN neighbourhoods.

15. *Third*, P-0974's testimony will touch upon the conduct of WENEZOU, who P-0974 portrays to have [REDACTED].¹⁵ Notably, WENEZOU [REDACTED],¹⁶ [REDACTED].¹⁷ In these circumstances, P-0974's public testimony on WENEZOU's affiliation with the former Anti-Balaka and his role in the group's 5 December 2013 attempted *coup d'Etat*, increases the risks of retaliation against P-0974. As indicated, P-0974 [REDACTED], [REDACTED]. Granting the Requested Measures will ensure that P-0974 is able to give evidence without fear for his own professional and financial security or that of his dependents.

(ii) *Degraded security situation in the CAR and ongoing opposition between the FACA and ex-Anti-Balaka, as part of the CPC*

16. As set out in previous filings and incorporated here by reference, the Twelfth Periodic Report of the Registry on the Political and Security situation in the CAR ("Twelfth Registry Report") sets out the recent [REDACTED] security situation in the CAR.¹⁸

17. Importantly, the Twelfth Registry Report notes [REDACTED]¹⁹ [REDACTED].²⁰ [REDACTED].²¹

18. [REDACTED].²²

¹⁵ CAR-OTP-2058-0165, at 0175, para. 67.

¹⁶ ICC-01/14-01/18-1889-Conf-Anx, para. 30.

¹⁷ ICC-01/14-01/18-1889-Conf-Anx, paras. 3-4, 6-11; *see also* paragraph 20 below.

¹⁸ *See* Prosecution's submission pursuant to regulation 35 to vary the time limit and request for in-court protective measures for Witness P-1576, ICC-01/14-01/18-1946-Conf, paras. 11-17; [REDACTED], ICC-01/14-01/18-2003-Conf, paras. 5-9.

¹⁹ International Crisis Group, "Ten Years After the Coup, Is the Central African Republic Facing Another Major Crisis?", 22 March 2023, <https://www.crisisgroup.org/africa/central-africa/central-african-republic/dix-ans-apres-le-coup-detat-la-republique> [last accessed on 03/08/2023] which indicates that the CPC is a heterogeneous coalition of ex-Seleka and former Anti-Balaka elements.

²⁰ ICC-01/14-01/18-1889-Conf-Anx, paras. 4, 34.

²¹ *See* ICC-01/14-01/18-1889-Conf-Anx, para. 34.

²² ICC-01/14-01/18-1889-Conf-Anx, para. 42.

19. [REDACTED]²³ [REDACTED],²⁴ the public testimony of P-0974, [REDACTED], regarding Anti-Balaka insider operations, activities, and figures, as well as regarding his current location and family ties, would significantly increase the security risks to P-0974, his wife, and his children [REDACTED] and, more immediately, to his family currently living in [REDACTED].

20. In addition, with local elections taking place in July 2023 (and in October 2023),²⁵ and [REDACTED] President TOUADERA²⁶ currently seeking to obtain a third presidential mandate,²⁷ [REDACTED].²⁸ In the current climate, [REDACTED],²⁹ testifying publicly [REDACTED],³⁰ [REDACTED],³¹ will create or unduly increase the danger of retaliation against P-0974. The Requested Measures would ensure that P-0974 is able to give evidence freely in the above-mentioned political climate, without fear for his and his family's physical or financial security.

21. Should his testimony be received publicly, P-0974 requested that the Court protect him and his family. However, [REDACTED].

22. The Requested Measures are thus essential to adequately protect P-0974's physical safety, [REDACTED] career, and financial security, as well as the safety of his family. Requiring P-0974's public testimony without any mitigating protection would

²³ Xinhua News, "Centrafrique : 4 militaires tués par les rebelles de la CPC dans le nord-ouest du pays", 16 May 2023, <https://french.news.cn/20230516/b632a72f8b4b4200b80f15719f633bb7/c.html> [last accessed on 03/08/2023].

²⁴ RFI, "Centrafrique: les rebelles de la CPC libèrent 19 militaires enlevés mi-février", 05 April 2023, <https://www.rfi.fr/fr/afrique/20230405-centrafrique-les-rebelles-de-la-cpc-lib%C3%A8rent-19-militaires-enlev%C3%A9s-mi-f%C3%A9vrier> [last accessed on 03/08/2023].

²⁵ ICC-01/14-01/18-1889-Conf-Anx, para. 12.

²⁶ ICC-01/14-01/18-1889-Conf-Anx, paras. 3-4, 6-11.

²⁷ Le Monde, "Centrafrique : début du référendum constitutionnel qui vise à permettre au président de briguer un troisième mandat", 30 July 2023, https://www.lemonde.fr/afrique/article/2023/07/30/centrafrique-debut-du-referendum-constitutionnel-qui-vise-a-permettre-au-president-de-briguer-un-troisieme-mandat_6183885_3212.html [last accessed on 03/08/2023].

²⁸ ICC-01/14-01/18-1889-Conf-Anx, paras. 10-11.

²⁹ ICC-01/14-01/18-2003-Conf-AnxA, ICC-01/14-01/18-2003-Conf, paras. 8-9.

³⁰ CAR-OTP-2058-0165, at 0177, paras. 11, 58, 79, 82.

³¹ See CAR-OTP-2058-0165, at 0168, para. 16 : [REDACTED].

undermine the Court's duty under article 68(1) to refrain from actions that would in all likelihood entail negative consequences for the Witness.³²

(iii) Requested Measures

23. Granting the use of a pseudonym alone for P-0974 would not suffice to protect his security and interests, or those of his family. Rather, face distortion is also necessary given that unprotected images of witnesses during their testimony are easily accessible. The dissemination of such images of P-0974 would significantly increase the danger to his security and legitimate interests by identifying him as a Prosecution witness, in an increasingly precarious and fragile security environment in CAR. Given the nature of his expected testimony on YEKATOM's, NGAISSONA's, and WENEZOU's involvement with the Anti-Balaka in the Relevant Period, the associated risks to his security would be impermissible under the Statute.

b. Absence of prejudice to the Defence

24. The impact of the Requested Measures on the publicity of the proceedings is mitigated and justified in the circumstances of this case.

25. *First*, the Requested Measures are needed to ensure that P-0974 is able to provide unfettered evidence, and in so doing, assist the Court in establishing the truth. The identity of P-0974 is known to both Accused and their Defence teams since August 2019. The Accused will have the same opportunity and ability to question him, as if his identity were publicly known. The Defence teams are in no way prevented from conducting their own enquiries to test the prospective evidence.

26. *Second*, although the public will not know P-0974's identity, his testimony will be given largely in public session. Private session will be used only for limited portions of testimony to protect the identity of P-0974, and to avoid that the transcript to be

³² See e.g., ICC-01/05-01/13-1481-Red-Corr, para. 18 (noting that the Chamber's duty under article 68(1) also "encompasses refraining from actions ... that would in all likelihood entail negative consequences for the witness").

published online can be directly and easily linked to his identity and to his role within these proceedings. The only limitation to publicity is related to P-0974's *identification* as a Prosecution witness *by the public*, in particular, by threat actors in the CAR.

27. Accordingly, the Requested Measures are minimally necessary to ensure the adequate and proportional protection of the Witness' safety, security, and related professional and financial interests, as well as the security of his family. The Requested Measures are very limited in scope, directed to the public, and not prejudicial to the Defence's right to a fair trial. As described above, there exists an objectively justifiable risk to the Witness's legitimate interests protected under article 68, which outweighs the right to publicity of the proceedings.

IV. RELIEF SOUGHT

28. For the above reasons, the Prosecution seeks the Chamber's leave to extend the time limit to submit the Requested Measures and requests the in-court protective measures of pseudonym and face distortion for P-0974.



Karim A. A. Khan KC, Prosecutor

Dated this 1st day of September, 2023

At The Hague, The Netherlands