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

Date: **15 January 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 Response to the ‘Yekatom Defence Request for In-Court Protective Measures for Witness D29-P-5014’ (ICC-01/14-01/18-2266-Conf)”, ICC-01/14-01/18-2276-Conf, 20 December 2023

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The Office of the Prosecutor

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I. INTRODUCTION

1. Trial Chamber V (“Chamber”) should dismiss the ‘Yekatom Defence Request for In-Court Protective Measures for Witness D29-P-5014’ (“Request”).¹ The Request fails to satisfy the requirements of Rule 87(1) of the Rules of Procedure and Evidence (“Rules”), or to otherwise substantiate any concrete and objectifiable risk to D29-P-5014 warranting protection pursuant to article 68(1). Moreover, the Request rests entirely on unsubstantiated assertions and speculation.

II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis*(2) of the Regulations of the Court (“RoC”), this document is filed as “Confidential” because it responds to a filing of the same classification. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

A. The Request is Unsubstantiated and Protective Measures are not Warranted

3. As the Defence acknowledges, P-5014 is [REDACTED]² Although she is known to [REDACTED]³ who live in areas wherein she carries out her activities, this does not in itself amount to a cognisable risk factor that arises from her prospective public testimony.

4. As such, the Request relies entirely on the witness’s subjective apprehension, namely that she [REDACTED]⁴ The Defence contends that this concern arises from the perception of others in respect of the public portrayal of YEKATOM characterised, thus:

¹ ICC-01/14-01/18-2266-Conf.

² ICC-01/14-01/18-2266-Conf, para. 10.

³ ICC-01/14-01/18-2266-Conf, para. 10 (noting the witness’s travels to Boda, in particular).

⁴ ICC-01/14-01/18-2266-Conf, para. 12.

“as being responsible for crimes ‘against the Muslim civilian population and those perceived as collectively responsible for, complicit with, or supportive of the Seleka, pursuant to or in furtherance of a criminal policy to primarily target the Muslim population in Bangui and in western CAR Prefectures in retribution for Seleka exactions’.”⁵

5. *First*, the Request is misleading as to the public nature of the case against YEKATOM in omitting the preface to the quote above *i.e.*, that the charged crimes were committed “as part of a widespread attack conducted by the Anti-Balaka against the Muslim civilian population [...]”.⁶ It also omits that the charges also comprise war crimes — separate to crimes committed pursuant to the Anti-Balaka criminal policy.⁷ These charges thus include, *inter alia*, the murder of [REDACTED] incident, and the alleged recruitment of child soldiers in YEKATOM’s Anti-Balaka Group — a charge which the Defence has disputed as publicly as possible.

6. *Second*, the Request is unclear as to why the witness’s prospective evidence regarding YEKATOM’s conduct would objectively result in a risk that cannot be adequately addressed in a conventional manner. In this sense, the witness’s [REDACTED].

7. *Third*, the Request does not explain the basis of the witness’s subjective concern. Indeed, there is no objective reason provided for why the witness considers that Muslims (whether in general or a discrete few) would necessarily be inclined to harm her for testifying for the YEKATOM Defence. Other than speculation, the Request is silent on the matter. Further, this concern does not align with, and ultimately casts doubt on, the witness’s claim [REDACTED]⁸ [REDACTED].⁹

⁵ ICC-01/14-01/18-2266-Conf, para. 12.

⁶ ICC-01/14-01/18-403-Corr-Red, p. 106.

⁷ ICC-01/14-01/18-403-Corr-Red, p. 105.

⁸ ICC-01/14-01/18-2212-Conf-AnxC, para. 12.

⁹ ICC-01/14-01/18-2212-Conf-AnxC, paras. 13-17.

8. The legal threshold to grant an application for protective measures is not met by the mere assertion of the *possibility* of a risk, but by concretely demonstrating an existing risk. The contention that the witness [REDACTED] or [REDACTED],¹⁰ is unavailing. Yet, the Defence relies on this speculation to support the witness's apparent impression that [REDACTED]¹¹ – a conclusion that cannot be objectively drawn from the facts pleaded.

9. Moreover, the Defence's reliance on the assumption that [REDACTED]¹² is equally unsubstantiated. It is pure conjecture and cannot reasonably serve as a basis for the Chamber to grant the protective measures sought without more.

B. Several Factors Militate against Protective Measures

10. By contrast, the Defence has had to concede several unfavourable facts which collectively are fatal to the Request.

11. The Defence acknowledges that [REDACTED].¹³ [REDACTED].¹⁴ In fact, the Request does not establish that previous threats of any kind – whether direct, indirect, express or implied, have ever been made. This further underscores that the basis for the requested measures derives entirely subjectively.

12. The Defence's invocation of the circumstances [REDACTED] for the Chamber's consideration in assessing the context regarding *this* case,¹⁵ if anything, undermines the basis for the protective measures sought.

¹⁰ ICC-01/14-01/18-2266-Conf, para. 19 (emphasis added).

¹¹ ICC-01/14-01/18-2266-Conf, para. 19.

¹² ICC-01/14-01/18-2266-Conf, para. 16.

¹³ ICC-01/14-01/18-2266-Conf, para. 18.

¹⁴ ICC-01/14-01/18-2266-Conf, para. 18.

¹⁵ ICC-01/14-01/18-2266-Conf, paras. 5, 17.

13. Contrary to the contentions advanced in the Request, there is a stark contrast in the circumstances here [REDACTED]. Moreover, the inference that the Defence seeks to draw – that the same risks attend D29-P-5014 as that regarding a [REDACTED] – is speculative and, in any event, does not hold. At least one clear distinction is that the alleged [REDACTED] At the end of the day, that is not known. What is known, is that such ‘context’ does not apply to the situation involving *this* witness, subjectively or objectively. As such, the comparison is not apt, inappropriate, and does not speak to the prevailing or salient circumstances in respect of the risks to D29-P-5014 as a result of public testimony.

14. The Request fails to justify the granting of any of the three measures sought, namely (i) the use of a pseudonym, (ii) face distortion, and (iii) voice distortion. None is warranted, much less proportionate here. On the basis of the assertions advanced in the Request, whether discretely or cumulatively, there exists no objectively justifiable risk to the witness’s legitimate interests protected under article 68.

IV. CONCLUSION

15. For the foregoing reasons, the Prosecution requests that the Chamber dismiss the Request in all respects.

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 15th day of January 2024
At The Hague, The Netherlands