



Original: English

**No. ICC-01/14-01/18
Date: 23 January 2024**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

**Decision on the Yekatom Defence Request for In-Court Protective Measures for
D29-6025**

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

The Office of the Prosecutor

Karim A. A. Khan
Mame Mandiaye Niang
Kweku Vanderpuye

Counsel for Alfred Yekatom

Mylène Dimitri
Thomas Hannis
Anta Guissé
Sarah Bafadhel

Counsel for Patrice-Edouard Ngaïssona

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

Legal Representatives of Victims

Abdou Dangabo Moussa
Elisabeth Rabesandratana
Yaré Fall
Marie-Edith Douzima-Lawson
Paolina Massidda
Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 64(2), (6)(e) and (7), 67(1) and 68(1), (2) and (4) of the Rome Statute (the ‘Statute’), and Rule 87 of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Yekatom Defence Request for In-Court Protective Measures for D29-6025’.

I. Procedural history

1. The Single Judge recalls the procedural history as set out in its ‘Decision on the Yekatom Defence Request for Delayed Disclosure and Protective Measures for Certain Witnesses’ in which the Chamber, *inter alia*, granted protective measures to D29-6025 in the form of a pseudonym, pending determination on his status as a Rule 68(2), Rule 68(3) or fully live witness (the ‘First Decision’).¹
2. On 17 November 2023, the Yekatom Defence (the ‘Defence’) included D29-6025 in its final List of Witnesses, in which it indicated: (i) the mode of testimony as ‘Rule 68(3)’ of the Rules; and (ii) that it intended to request further in-court protective measures for D29-6025 in the form of face and voice distortion (the ‘Sought Measures’).²
3. On the same day, the Defence filed an application to introduce D29-6025’s prior recorded testimony pursuant to Rule 68(3) of the Rules (the ‘Rule 68(3) Request’).³

¹ Decision on the Yekatom Defence Request for Delayed Disclosure and Protective Measures for Certain Witnesses, ICC-01/14-01/18-2205-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Victims and Witnesses Unit, the Ngaïssona Defence and the Yekatom Defence, 15 November 2023, ICC-01/14-01/18-2205-Conf-Exp (confidential redacted version notified the same day, ICC-01/14-01/18-2205-Conf-Red), paras 1-4, 16.

² See Yekatom Defence’s List of Witnesses and Evidence, ICC-01/14-01/18-2212-Conf (with confidential Annexes A, B, C and D); Annex B to the Yekatom Defence’s List of Witnesses and Evidence, ICC-01/14-01/18-2212-Conf-AnxB, p. 2.

³ Yekatom Defence Application for the Introduction of P-6025 prior recorded testimony pursuant to Rule 68(3), ICC-01/14-01/18-2210-Conf (with confidential Annex A, ICC-01/14-01/18-2210-Conf-AnxA) (public redacted version notified on 28 December 2023, ICC-01/14-01/18-2210-Red; amended confidential version notified on 8 January 2024, ICC-01/14-01/18-2210-Conf-Corr with an updated annex ICC-01/14-01/18-2210-Conf-Anx and an explanatory note thereto).

4. On 18 December 2023, the Chamber granted the Rule 68(3) Request subject to the fulfilment of the legal requirements of Rule 68(3) of the Rules.⁴
5. On 5 January 2024, the Defence requested the Sought Measures (the ‘Request’).⁵
6. On 8 January 2024, the Office of the Prosecutor (the ‘Prosecution’) informed the Chamber that it does not intend to file a response to the Request and that it defers to the Chamber’s discretion.⁶
7. On 22 January 2024,⁷ the Victims and Witnesses Unit (the ‘VWU’) filed its report, in which it recommends that the Chamber ‘consider granting the witness in-court protective measures in the form of voice and face distortion, use of closed and/or private session for identifying information, use of a pseudonym and redaction of any identifying information from any records that may be disseminated to the public’ (the ‘Report’).⁸

II. Analysis

8. The Single Judge recalls the applicable law for protective measures.⁹
9. The Single Judge also recalls the Chamber’s findings in the First Decision that in light of the individual circumstances of D29-6025, there is an objectively justifiable risk to the witness’s legitimate interests as protected under Article 68 of the Statute, which warranted it granting protective measures in the form of a pseudonym.¹⁰ He further takes note of the Defence’s submissions that as ‘the

⁴ Decision on Yekatom Defence Requests for Formal Submission of Prior Recorded Testimonies Pursuant to Rule 68(2)(b) and 68(3), ICC-01/14-01/18-2272-Conf, para. 33, p. 12.

⁵ Yekatom Defence Request for In-Court Protective Measures for Witness CAR-D29-P-6025, ICC-01/14-01/18-2288-Conf, paras 1, 36.

⁶ Email from the Prosecution, 8 January 2024, at 15:13.

⁷ The Single Judge initially instructed the VWU to provide its observations on the Request by 23 January 2024; following a scheduling change, this deadline was amended to 22 January 2024 (*see, respectively*, emails from the Chamber, 9 January 2024, at 14:36 and 16 January 2024, at 16:36).

⁸ Victims and Witnesses Unit’s Observations on the “Yekatom Defence Request for In-Court Protective Measures for Witness CAR-D29-P-6025” (ICC-01/14-01/18-2288-Conf), ICC-01/14-01/18-2318-Conf, para. 14.

⁹ Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses, ICC-01/14-01/18-906-Conf-Exp, confidential *ex parte*, only available to the Prosecution and the Registry (confidential redacted version notified the same day, ICC-01/14-01/18-906-Conf-Red; public redacted version notified on 19 April 2021, ICC-01/14-01/18-906-Red2), paras 14-21.

¹⁰ *See* First Decision, ICC-01/14-01/18-2205-Conf-Exp, paras 12-14.

Witness's personal circumstances have not altered', there is a continued existence of an objectively justifiable risk which, in light of the witness's upcoming testimony, requires the Sought Measures to be instated 'in order to continue the effective implementation of the Chamber's prior determination'.¹¹

10. In addition, the Single Judge notes the information contained in the Report, that the witness 'was able to provide objective reasons warranting the grant of [in court protective measures]' and 'identif[ied] a perceived threat actor'.¹² He further notes that whilst the VWU 'was not able to establish any imminent threat against the witness', it also notes that 'this may change due to the nature of his testimony' and thus 'the VWU considers the adoption of [in court protective measures] as a justifiable mitigation measure that will prevent more intrusive protection measures post testimony'.¹³
11. Considering all of the above and noting the lack of objections from the other participants, the Single Judge is of the view that there exists an objectively justifiable risk to the witness's legitimate interests protected under Article 68 of the Statute. He thus considers it appropriate to grant the Sought Measures. The Request is therefore granted.
12. Lastly, the Single Judge reminds the participants to organise their questioning in such a manner that the use of private sessions be as limited as possible.

¹¹ Request, ICC-01/14-01/18-2288-Conf, paras 19-31.

¹² Report, ICC-01/14-01/18-2318-Conf, paras 5-7.

¹³ Report, ICC-01/14-01/18-2318-Conf, paras 10-13.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Request; and

ORDERS the Defence and the VWU to file a public redacted version of the Request, ICC-01/14-01/18-2288-Conf, and the Report, ICC-01/14-01/18-2318-Conf, respectively, within one week of notification of this decision.

Done in both English and French, the English version being authoritative.

A handwritten signature in black ink, appearing to read 'BS', is written over a horizontal line.

Judge Bertram Schmitt

Single Judge

Dated 23 January 2024

At The Hague, The Netherlands