

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **25 January 2024**

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 the “Yekatom Defence Request for In-Court
Protective Measures for Witness CAR-D29-P-6025”, 5 January 2024, ICC-
01/14-01/18-2288-Conf**

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
Mr Thomas Hannis
Ms Anta Guissé
Ms Sarah Bafadhel
Ms Alexandra Baer

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 Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

INTRODUCTION

1. Counsel for Mr Alfred Rombhot Yekatom (“Defence”) respectfully requests the Chamber to grant in-court protective measures, in the form of (i) face distortion, and (ii) voice distortion to Witness CAR-D29-P-6025 (“Sought Measures”).
2. The Sought Measures are related and necessary in order to continue the implementation of the Trial Chamber’s order for protective measures in the form of a pseudonym for CAR-D29-P-6025 (“Witness”)¹ and as a result of the continued existence of an objectively justifiable risk to the safety, physical and psychological well-being, and privacy of this witness should his identity be disclosed to the public. The Sought Measures are both strictly proportionate to the identified risk and in furtherance of a fair trial.

PROCEDURAL HISTORY

3. On 26 August 2020, in its Initial Directions on the Conduct of the Proceedings, the Chamber indicated that requests for protective measures shall be made *“as soon as possible to allow the Chamber to receive submissions on the request and to allow the VWU to fulfill its mandate”*.²
4. On 29 May 2023, the Chamber issued its Further Directions on the Conduct of the Proceedings and held that *“the presentation of evidence by the CLRV and the Defence, if any, will be governed by the Initial Directions and amendments or additions thereto.”*³ The Chamber further indicated that the Defence’s final list of witnesses should include the expected in-court protective measures to be sought.⁴

¹ ICC-01/14-01/18-2205-Conf-Red, para. 13.

² ICC-01/14-01/18-631, para. 68.

³ ICC-01/14-01/18-1892, para. 28.

⁴ ICC-01/14-01/18-1892, para. 21.

5. On 21 and 22 September 2023, V45-P-0001 testified before the Chamber.⁵
6. On 2 October 2023, the Witness reported two security incidents to the Defence, [REDACTED].⁶
7. On 3 October 2023, the Defence informed the Victims and Witnesses Unit (“VWU”) of the incidents reported by the Witness.
8. On 16 October 2023, the Defence requested the protection of the Witness to the VWU.⁷
9. On 23 October 2023, the Defence requested *inter alia*, protective measures in the form of use of a pseudonym for seven witnesses, including the Witness, “pending determination on their status as 68(2), 68(3) or live witnesses” (“Request”).⁸
10. On 13 November, the VWU informed the Defence that the Witness was placed in interim protection.⁹
11. On 15 November 2023, the Chamber issued its decision on the Defence Request and, *inter alia*, granted protective measures to the Witness in the form of a pseudonym having been “satisfied that there is an objectively justifiable risk to [P-6025’s] legitimate interests”.¹⁰
12. On 17 November 2023, the Defence included the Witness in its Final List of Witnesses, in which it indicated: (i) the mode of testimony as ‘Rule 68(3)’ and (ii) that it intended to request the Sought Measures.¹¹ An application to

⁵ See ICC-01/14-01/18-T-245-CONF-ENG CT and ICC-01/14-01/18-T-246-CONF-ENG CT.

⁶ See mention of those incidents in the Witness’s signed statement dated 13 October 2023, CAR-D29-0009-0280-R01, paras. 86-95.

⁷ Email from the Defence to VWU sent on 16 October 2023, at 14:49 (available upon request).

⁸ ICC-01/14-01/18-2161-Conf-Red, para. 45.

⁹ Email from VWU to the Defence sent on 13 November 2023, at 12:35 (available upon request).

¹⁰ ICC-01/14-01/18-2205-Conf-Red, para. 13.

¹¹ ICC-01/14-01/18-2212-Conf-AnxB, page 2, witness #3.

introduce the Witness's prior recorded testimony pursuant to Rule 68(3) was filed on the same day ("Rule 68(3) Request").¹²

13. On 18 December 2023, the Trial Chamber granted the Rule 68(3) Request subject to the fulfilment of the legal requirements of Rule 68(3).¹³
14. On 19 December 2023, the Defence informed the Chamber and Parties and Participants that the Witness would be called to testify in Block 28.¹⁴

APPLICABLE LAW

15. Article 64 (2) and (6)(e) of the Statute:

2. The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses

[...]

6. In performing its functions prior to trial or during the course of a trial, the Trial Chamber may, as necessary:

[...]

(e) Provide for the protection of the accused, witnesses and victims; and

16. Article 68 (1) and (2) of the Statute:

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

¹² ICC-01/14-01/18-2210-Conf.

¹³ ICC-01/14-01/18-2272-Conf.

¹⁴ Email from the Defence to the Chamber and Parties and Participants titled "Yekatom Defence's Witness Order and Schedule for Block 28" dated 19 December 2023 at 12:18.

2. As an exception to the principle of public hearings provided for in article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.

17. Rule 87 (1) and (3) of the Rules:

1. Upon the motion of the Prosecutor or the defence or upon the request of a witness or a victim or his or her legal representative, if any, or on its own motion, and after having consulted with the Victims and Witnesses Unit, as appropriate, a Chamber may order measures to protect a victim, a witness or another person at risk on account of testimony given by a witness pursuant to article 68, paragraphs 1 and 2. The Chamber shall seek to obtain, whenever possible, the consent of the person in respect of whom the protective measure is sought prior to ordering the protective measure

[...]

3. A Chamber may, on a motion or request under sub-rule 1, hold a hearing, which shall be conducted in camera, to determine whether to order measures to prevent the release to the public or press and information agencies, of the identity or the location of a victim, a witness or other person at risk on account of testimony given by a witness by ordering, *inter alia*:

(a) That the name of the victim, witness or other person at risk on account of testimony given by a witness or any information which could lead to his or her identification, be expunged from the public records of the Chamber;

(b) That the Prosecutor, the defence or any other participant in the proceedings be prohibited from disclosing such information to a third party;

(c) That testimony be presented by electronic or other special means, including the use of technical means enabling the alteration of pictures or voice, the use of audiovisual technology, in particular videoconferencing and closed-circuit television, and the exclusive use of the sound media;

(d) That a pseudonym be used for a victim, a witness or other person at risk on account of testimony given by a witness; or

(e) That a Chamber conducts part of its proceedings in camera.

18. The Chamber has previously interpreted Rule 87 of the Rules in the present case as follows:

In determining whether in-court protective measures are warranted, the Chamber must ensure that any such measure is based on an ‘objectively justifiable risk’ and proportionate to the rights of the accused. While the concept of ‘risk’ necessarily involves a certain level of speculation and prediction, the available information must still indicate the existence of circumstances for which in-court testimony, in the absence of adequate protective measures under Rule 87 of the Rules, creates or unduly increases an impermissible danger to any of the legitimate interests of witnesses protected under Article 68 of the Statute.¹⁵

SUBMISSIONS

A. The continued existence of an objectively justifiable risk

19. At the outset, the Defence recalls that the Trial Chamber has already determined that there is an objectively justifiable risk to the Witness’s legitimate interests as protected under Article 68 of the Statute.¹⁶ In doing so the Trial Chamber paid particular regard to the personal circumstances of P-6025,¹⁷ as well as the fact that *inter alia*, these circumstances “[made it easier] to have access to their private information and intimidate them or their family members” due to the Witness’ cooperation with the Defence.¹⁸
20. It was on this basis that the Witness was granted protective measures in the form of a pseudonym as per the Defence’s request pending its determination on the mode of testimony.¹⁹
21. In the intervening period, the Defence has successfully sought the introduction of the Witness’s prior recorded testimony pursuant to Rule 68(3).²⁰ The Witness is expected to testify in the week commencing 25 January 2024 in which he will appear before the Court via video-link. His physical appearance will necessarily

¹⁵ ICC-01/14-01/18-906-Conf-Red, para. 17; see also *The Prosecutor v. Dominic Ongwen*, Decision on the ‘Prosecution’s application for in-court protective and special measures’, 29 November 2016, ICC-02/04-01/15-612-Red, para. 8.

¹⁶ ICC-01/14-01/18-2205-Conf-Red, para. 13.

¹⁷ ICC-01/14-01/18-2205-Conf-Exp, para. 14.

¹⁸ ICC-01/14-01/18-2205-Conf-Red, para. 14.

¹⁹ ICC-01/14-01/18-2205-Conf-Red, para. 16.

²⁰ ICC-01/14-01/18-2272-Conf.

expose the Witness's identity to the public despite the continued use of a pseudonym.

22. The Chamber, when it rejected the request for delayed disclosure of the Witness's identity, observed that "the disclosure of the Witnesses' identities to the CLRVs and VPRS does not, ergo, mean that this information will be disseminated".²¹ However, the appearance of the Witness without face and voice distortion would necessarily confirm to [REDACTED] (P-2638), [REDACTED] that the Witness has been a source of information for the Defence.²² This would greatly increase, in light of past incidents,²³ the likelihood of threats and/or violence against the Witness.
23. In this regard, the Defence submits that the Witness continues to be subject to an objectively justifiable risk to his safety should his identity be disclosed to the public, and that the circumstances as set out in the initial Request remain the same. As such, the Sought Measures are necessary in order to continue the effective implementation of the Chamber's prior determination.
24. First, the scope of the Witness's testimony remains the same: he is [REDACTED].²⁴ It is in this capacity that he [REDACTED].²⁵ The Witness is well acquainted with [REDACTED].²⁶ [REDACTED].²⁷
25. The Witness's testimony supports the Defence's position that: i) V45-P-0001 lied about [REDACTED] ²⁸ ; ii) [REDACTED] ²⁹ ; and iii) more broadly, [REDACTED].³⁰

²¹ ICC-01/14-01/18-2205-Conf-Red, para. 10.

²² See further paragraphs 27 and 28 below.

²³ Supra., fn 6 and infra, para. 27.

²⁴ CAR-D29-0009-0280-R01, para. 14.

²⁵ CAR-D29-0009-0280-R01, paras. 27-29.

²⁶ CAR-D29-0009-0280-R01, para. 19.

²⁷ CAR-D29-0009-0280-R01, para. 18.

²⁸ CAR-D29-0009-0280-R01, paras. 27-29.

²⁹ CAR-D29-0009-0280-R01, paras. 30-37.

³⁰ CAR-D29-0009-0280-R01, paras. 38-74 and 80-83.

26. The Defence recalls that it has consistently made various submissions on the fabrication of evidence by [REDACTED] (P-2638)³¹ for the purpose of this case while acting as [REDACTED].
27. Second, the safety risk as a result of the Witness's cooperation with the Court is not a hypothetical one: as previously considered by the Trial Chamber, the Witness was the subject of two security incidents [REDACTED] that appear to be directly related to his cooperation with the Court. Specifically, the Witness has reported the following :
- [REDACTED].³²
 - [REDACTED].³³ This incident is corroborated by D29-P-6017 who was present and informed the Defence separately that she was directly threatened for [REDACTED].³⁴
 - [REDACTED].³⁵
28. These incidents illustrate how the Witness is exposed to retaliatory actions further to providing information regarding [REDACTED]. The Defence recalls that these events [REDACTED],³⁶ [REDACTED], and reveal the leaking of confidential information and documents discussed by the Defence in private session during his examination.³⁷ This supports the necessity of granting protective measures since the Witness's testimony directly relates to this matter.
29. Third, the Witness's personal circumstances have not altered: [REDACTED], the scenario in which he would carry out the threats and intimidate the Witness's familial and community life is not an unlikely nor speculative one.

³¹ ICC-01/14-01/18-2240-Conf.

³² CAR-D29-0009-0280-R01, paras. 86-89.

³³ CAR-D29-0009-0280-R01, para. 92.

³⁴ CAR-D29-0009-0260-R01, paras. 20-21.

³⁵ CAR-D29-0009-0280-R01, paras. 93-94.

³⁶ See CAR-D29-0013-0254, CAR-D29-0013-0265, and CAR-V45-00000004, p. 006.

³⁷ ICC-01/14-01/18-T-246-CONF-ENG CT, at [11:35:16] and [11:38:22].

30. The risk to the Witness is further compounded by the fact that the information given by the witness is [REDACTED].³⁸ The Witness's well-being would be in danger should his collaboration with the Defence become known as it would be perceived as [REDACTED]. [REDACTED].³⁹ [REDACTED], the Defence submits that voice distortion is particularly necessary since [REDACTED].
31. The Defence is of the view that the security incidents, compounded by the individual circumstances of this Witness, [REDACTED] demonstrate the continued existence of an objectively justifiable risk to the Witness's legitimate interests protected by Article 68 of the Statute. Under these circumstances, testifying without the Sought Measures would reveal the Witness's cooperation with the Court and endanger his safety, physical or psychological well-being, and privacy.

B. The minimal impact on the publicity of proceedings

32. The Defence submits that the Sought Measures are the least restrictive possible in the current circumstances noting: (i) the unique placement of the Witness and his expected testimony concerning [REDACTED] and P-2638's involvement in [REDACTED] and (ii) [REDACTED]. Moreover, the Sought Measures would not impede on the Chamber, Parties and Participants' ability to question the Witness.
33. The publicity of the proceedings would not be unduly impaired by the Sought Measures. Given that the Witness's expected testimony is intimately linked to [REDACTED]⁴⁰ and to the actions of [REDACTED], most of his testimony will have to be held in private session to avoid revealing confidential and identifying information. The Defence will nevertheless organize its questioning in a manner to reduce recourse to private session to a minimum.

³⁸ See CAR-D29-0009-0280-R01, paras. 35, 54-56, 60, 70-74, and 85.

³⁹ CAR-D29-0009-0280-R01, paras. 84-85.

⁴⁰ ICC-01/14-01/18-2105-Conf, para. 11.

CONCLUSION

34. In light of the above, the Defence respectfully requests the Chamber to grant the Sought Measures in order to protect the Witness's legitimate interests enshrined in Article 68(1) of the Statute.

CONFIDENTIALITY

35. The present request is filed on a confidential basis due to references to the confidential information related to the testimony and security situation of the Witness. A public redacted version will be filed forthwith.

RELIEF SOUGHT

36. In light of the above, the Defence respectfully requests the Trial Chamber V to:
GRANT the in-court protective measures sought for witness CAR-D29-P-6025, namely face and voice distortion.

RESPECTFULLY SUBMITTED ON THIS 25th DAY OF JANUARY 2024



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands