

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **21 May 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 “Urgent Yekatom Defence Request for In-Court Protective Measures for Witness D29-P-5013”, 7 May 2024, ICC-01/14-01/18-2485-Conf

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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INTRODUCTION

1. Counsel for Mr Alfred Rombhot Yekatom (“Defence”) respectfully requests the Chamber to grant in-court protective measures, in the form of (i) the use of a pseudonym, (ii) face distortion, and (iii) voice distortion to Witness CAR-D29-P-5013 (“Sought Measures”).
2. The Defence submits that the expected testimony and personal circumstances of P-5013 demonstrate the existence of an objectively justifiable risk to the professional activities of this witness should her identity be disclosed to the public. The Sought Measures are both strictly proportionate to the identified risk and in furtherance of a fair trial.
3. Given P-5013’s [REDACTED] during 2012 and 2014 and [REDACTED], her public testimony may increase her risk profile. Likewise, given her current involvement with [REDACTED], which aims at providing [REDACTED]. Consequently, making public P-5013’s activities and those of her [REDACTED] could jeopardize both the operational feasibility of [REDACTED] and the physical security of its current and former staff in [REDACTED].

PROCEDURAL HISTORY

4. 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 received submissions on the request and to allow the VWU to fulfill its mandate*”.¹
5. On 17 November 2023, the Defence included witness P-5013 in its Final List of Witnesses,² and provided a summary of this witness’s anticipated testimony.³

¹ ICC-01/14-01/18-631, para. 68.

² ICC-01/14-01/18-2212-Conf-AnxB, page 3, witness #6.

³ ICC-01/14-01/18-2212-Conf-AnxC, pages 14-17.

6. On 8 April 2024 the Defence sent its anticipated block of witness for the 32nd hearing block and indicated that witness P-5013 would testify from 13 to 17 May 2024.⁴
7. On 25 April 2024, while coordinating travel arrangements with P-5013, the Defence discussed her anticipated leave from work and necessary employer authorization, and facilitated an initial joint call to introduce P-5013 to the VWU. P-5013 expressed the reluctance of her current employer for her to testify before the Court.
8. On 6 May 2024, during a phone call between the Defence and P-5013's employer after an exchange of correspondence, the latter explained to the Defence his concerns about the public association of P-5013 with [REDACTED]. He mentioned that such disclosure in open court could jeopardize [REDACTED], [REDACTED]. These concerns were also directly expressed by the employer to P-5013.

APPLICABLE LAW

9. Article 68(1) of the Statute provides *inter alia* that "[t]he Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses [...]".
10. Rule 87 (1) of the Rules of Procedure and Evidence states that :

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.

SUBMISSIONS

⁴ Email from the Defence to the Chamber and Parties titled "Yekatom Defence Witness Order and Schedule for Block 32" and dated 8 April 2024 at 15:36.

11. The Defence submits that the Sought Measures are necessary as P-5013 would be exposed to an objectively justifiable risk to her interests, which are protected pursuant to Article 68 of the Statute, should the witness be ordered to testify publicly.
12. It is recalled that P-5013 [REDACTED]. She is currently working for an [REDACTED], which aims, *inter alia*, at [REDACTED].
13. P-5013 arrived in CAR in 2012 [REDACTED] and was first based in [REDACTED]. She was subsequently transferred to Bangui after the Seleka coup where she was assigned as coordinator [REDACTED] .
14. Due to her work with the [REDACTED] P-5013 has become well-known in Bangui. Her regular interactions with [REDACTED]. Moreover, P-5013 continues to work permanently in Bangui, maintaining these interactions.
15. P-5013 is anticipated to testify about topics such as Mr Yekatom's assistance to the local Muslim population and [REDACTED] and the role of [REDACTED] in that meeting as well as for the overall social cohesion provided by [REDACTED].
16. As Mr Yekatom is portrayed publicly, in the context of the current proceedings, 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 P-5013 has expressed concerns about potential negative repercussions for [REDACTED]. She fears that her cooperation with the ICC and her role as a witness could jeopardize their staff and their ability to continue [REDACTED] and access local communities.

⁵ ICC-01/14-01/18-403-Red-Corr, page 103.

17. P-5013 has informed the Defence that immediately after she approached her employer to inform him of her intention to testify, she was warned that this would risk [REDACTED] continued cooperation and work with [REDACTED]. In particular, P-5013 was told that whilst her direct supervisor encouraged her cooperation with the Court, a more senior official [REDACTED] was concerned that her public testimony, given her current involvement with [REDACTED], could have negative repercussions on the [REDACTED]. Accordingly, P-5013 is apprehensive about the potential adverse reactions and consequences she, as well as the [REDACTED], might face if it becomes publicly known that she testified before the Court. Although the Defense had previously discussed protective measures with the witness a few months ago and deemed them unnecessary at the time, the situation has changed. This week, when P-5013 informed her employer that she would be absent from work for a little over a week to testify at the ICC, the immediate response was extremely negative.
18. Consequently, after further discussions with her colleagues and employer, P-5013 has articulated serious concerns about the potential impact on the accomplishment of their work. She has expressed a strong intention to keep her identity confidential, as it could be readily associated with either [REDACTED].
19. While the witness has not reported any security incidents related to her cooperation with the Court to date, the Defense asserts that, given her involvement with [REDACTED], her public testimony could compromise her current status, potentially hindering her ability to continue her work [REDACTED]. This concern is especially significant given [REDACTED].
20. During further discussions P-5013 outlined several reasons for maintaining her identity confidential: (i) her continuous and current involvement with [REDACTED]; (ii) her [REDACTED] with no plans to relocate in the foreseeable future; (iii) her well-known status within the country, [REDACTED]; and (iv)

her employer's specific concerns about the [REDACTED] with her cooperation with the Court.

21. Based on these factors, P-5013 concluded that not disclosing her identity or affiliations with these organizations would be the best way to protect her work and the work being conducted by [REDACTED].
22. Consequently, there exists an objectively justifiable risk to the witness's legitimate interests and more specifically, [REDACTED], warranting protection under Article 68 of the Statute.
23. A similar situation was previously encountered with Prosecution witness P-2050, for whom protective measures were successfully granted by the Chamber to safeguard the witness's interests as provided under Article 68 of the Statute.⁶ The same applies to P-1576 for whom protective measures were granted notably on the basis that "a public testimony identifying the witness as a journalist might prevent him from continuing to perform his work in other countries".⁷
24. In addition, the recent Registry report on the situation in the Central African Republic indicated that "[REDACTED]",⁸ and that "[REDACTED]".⁹ It can be inferred that the context surrounding the ICC proceedings is currently unfavorable, and that risks faced by witnesses are furthered by the limitations of CAR official authorities which might not have the mean to intervene, in a timely manner, should an incident occur.
25. P-5013 highlighted that [REDACTED] generally discourage public testimonies. The witness expressed concern that she risks being stigmatized, due to her

⁶ ICC-01/14-01/18-2022-Conf.

⁷ ICC-01/14-01/18-1974-Conf, para. 13.

⁸ ICC-01/14-01/18-2239-Conf-Anx, para. 53.

⁹ ICC-01/14-01/18-2239-Conf-Anx, para. 54.

cooperation with the Court. While the Victim and Witness Unit (VWU) can provide immediate protective responses in Bangui, it is unable to protect the witness from stigmatization, adverse employment consequences, diminished cooperation from the government, restricted access to communities, or the risks associated with traveling in remote areas of the country.

26. The Defence recalls that the *“the Single Judge agrees that retaliation on account of a witness’s cooperation with the Court is a risk from which witnesses shall be protected in accordance with Article 68 of the Statute”* and that *“[w]hile a direct threat is not required, there must exist factual circumstances which make the Chamber believe that public knowledge of the witness’s identity would impermissibly risk an undue infringement of their legitimate interests protected”*.¹⁰
27. Moreover, P-5013’s professional activities, conducted through the [REDACTED] for which she currently works, could be jeopardized as certain [REDACTED], [REDACTED] may criticize her cooperation with the Court.
28. Given the critical nature of her work in CAR, her professional activities should receive protection similar to that afforded to journalists like P-2050¹¹ and P-1576¹² or professional working in the field in CAR like P-2082,¹³ for whom protective measures were granted. This is also consistent with the treatment of P-1577,¹⁴ who worked for an NGO.
29. The fact that P-5013 [REDACTED], contrary to the above-mentioned witnesses, is an additional crucial element to what the Chamber already assessed as an objectively justifiable risk. These interests need to be safeguarded pursuant to the Court’s obligations as set out in Article 68(1) of the Statute.

¹⁰ ICC-01/14-01/18-906-Red2, para. 32.

¹¹ ICC-01/14-01/18-2022-Conf, paras. 10-11.

¹² ICC-01/14-01/18-1974-Conf, paras. 13-14 ; ICC-01/14-01/18-1974-Red, paras. 13-14.

¹³ ICC-01/14-01/18-1779-Conf, ; ICC-01/14-01/18-1779-Red,

¹⁴ See Email from Trial Chamber V to Parties and Participants dated 22 March 2021, at 15:08.

30. The Defence submits that the proposed protective measures are the least restrictive necessary given P-5013's personal circumstances and recent developments following her announcement of her intention to testify and yesterday's discussions with both the witness and her employer.
31. The Defence particularly notes that the voice distortion for P-5013 is sought because her direct interactions with various entities [REDACTED] make it likely that her voice be recognized if heard.
32. Moreover, reports [REDACTED] mention P-5013's [REDACTED]. In particular, the involvement of P-5013 with [REDACTED] for the period relevant to the charges which will be the core of her testimony [REDACTED]. Therefore, having her testify publicly, even with a closed session authorized for mentioning [REDACTED], will not suffice. Moreover, the Defence highlights that P-5013 was [REDACTED] in [REDACTED] and would be easily identified as [REDACTED].
33. The publicity of the proceedings would not be unduly impaired by the Sought Measures as the Defence would organize its questioning in a manner that would limit as much as possible private session. Moreover, the Sought Measures would not impede the opportunity for the Chamber, Prosecution and Parties to question P-5013.

CONCLUSION

34. In light of P-5013's personal circumstances, as described above, the Defence respectfully requests the Chamber to grant the Sought Measures in order to protect the witness's interests pursuant to Article 68(1) of the Statute.

CONFIDENTIALITY AND URGENCY

35. The present request is filed on a confidential basis due to the references to the confidential information related to the security situation of witness P-5013. A public redacted version will be filed forthwith.
36. The present request is filed on an urgent basis considering the upcoming testimony of P-5013 scheduled on 13 May 2024. Due to the recent developments and communications up to yesterday regarding this matter, the Defence could not have seized the Chamber prior to today.
37. The Defence would therefore be grateful if the Chamber were mindful to shorten the deadline for any response.

RELIEF SOUGHT

38. In light of the above, the Defence respectfully requests Trial Chamber V to:
- GRANT** Witness P-5013 protective measures in the form of (i) pseudonym, (ii) face distortion, and (iii) voice distortion.

RESPECTFULLY SUBMITTED ON THIS 21ST DAY OF MAY 2024



Me Mylène Dimitri
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