

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/14-01/18
Date: 24 February 2026

TRIAL CHAMBER V

Before: Judge Beti Hohler, Presiding Judge
Judge Joanna Korner
Judge Keebong Paek

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 Request for Partial Reconsideration of the "Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(c) of the Rules concerning Witnesses P-0460, P-0732, P-1779, P-1864 and P-1871", (ICC-01/14-01/18-2605)", ICC-01/14-01/18-2613-Conf, 2 August 2024

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The Office of the Prosecutor

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Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

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Counsel Support Section

Victims and Witnesses Unit

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Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Prosecution seeks Trial Chamber V's ("Chamber") partial reconsideration of the "Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(c) of the Rules concerning Witnesses P-0460, P-0732, P-1779, P-1864 and P-1871."¹ Specifically, the formal submission of P-1864's written statement pursuant to Rule 68(2)(c)² warrants reconsideration to prevent an injustice.

2. Having rejected P-1864's Rule 68(2)(c) Request on finding that article 56 measures could have been anticipated, the Decision does not assess further whether they could have been viably implemented, particularly given the substantiated and serious risk of P-1864's re-traumatisation inherent in any attempt to do so.³ Moreover, the Decision does not identify which (if any) article 56 measures may have been implemented without harming the witness's well-being. It thus demonstrates a clear error of reasoning which led to the preclusion of significant and admissible evidence of sexual violence committed by the Anti-Balaka in its targeting of the Muslim population in the Central African Republic.

3. Reconsideration is justified and warranted. It is necessary to avoid an unsound and unsatisfactory consequence,⁴ and it is in the interests of justice and consistent with the Chamber's statutory duty to establish the truth.

¹ ICC-01/14-01/18-2605, paras. 43-46 ("Decision").

² *Ibid.* See also, ICC-01/14-01/18-2285-Conf, paras. 49-61 ("P-1864's Rule 68(2)(c) Request").

³ ICC-01/14-01/18-1975-Red, paras. 30, 31 (noting that, "[t]he Chamber finds illustrative that trial chambers have previously considered situations sufficient to satisfy this criterion where [...] measures were contemplated but could not be implemented due to concerns about the security or well-being of the witness falling under Article 68(1) of the Statute"). See also, ICC-01/05-01/13-1481-Red-Corr, para. 19.

⁴ ICC-01/04-01/06-2705, para. 18.

II. CONFIDENTIALITY

4. Pursuant to regulation 23*bis*(2) of the RoC, this submission is filed as “Confidential”, as it relates to filings of the same designation. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

5. The Chamber’s rejection of P-1864’s Rule 68(2)(c) Request was based on its analysis of the requirement concerning the anticipation of article 56 measures. The Decision held that,

“[...] measures under Article 56 of the Statute could have been anticipated for this witness. [...] in light of the apparent vulnerability of the witness and the strong physical and emotional distress caused by discussions surrounding her evidence, the Prosecution could have reasonably foreseen that P-1864 might cease to engage in a process that caused her to relive her victimisation over long periods of time.”⁵

However, rule 68(2)(c) provides, in relevant part: “[p]rior recorded testimony falling under sub-rule (c) may only be introduced if the Chamber is satisfied ... that the *necessity of measures under article 56 could not be anticipated*.”⁶ This precondition is not abstract. Rather, insofar as it turns on whether the *necessity* of resorting to any such measures could have been reasonably anticipated, it is inextricably and practically tied to the prospective viability of any such measure. The provision does not require that a Party anticipate resorting to a procedure under article 56 that *prima facie* cannot work in the circumstances.

6. As the Chamber has previously acknowledged, the requirement of rule 68(2)(c)(i) is meant to “avoid introducing evidence ... when measures under Article 56 of the

⁵ Decision, para. 45.

⁶ Rule 68(2)(c) (emphasis added).

Statute *could have been a viable alternative* at an earlier stage.”⁷ However, the Decision makes no finding that any given article 56 measure could have been (even potentially) viable, such that any ‘*necessity*’ to resort to it should have been reasonably anticipated. Instead, it conflates whether the witness’s potential unavailability could have been foreseen, and the question of whether any article 56 measure capable of preserving their evidence without risking disproportionate harm could have been anticipated. It is the latter that is dispositive under rule 68(2)(c).

7. Here, it is clear that any attempt to subject P-1864 to an article 56 procedure — one even more demanding than the [REDACTED] would very likely have foreclosed (even earlier) the already limited chance that she might remain cooperative. In any event, to conclude that an article 56 procedure would have succeeded at an earlier point is speculative and, as such, it cannot reasonably demonstrate a failure to anticipate a *viable* measure.

8. The Decision does not address the fact that P-1864’s participation in a prospective article 56 proceeding *at any time* would have required that she recounts the re-traumatising events comprising her evidence, placing her psychological well-being in serious jeopardy. Thus, even if the application of article 56 measures could have been anticipated in the abstract, their *necessity* could not have been. No foreseeable measure would have been capable of preserving the witness’s evidence without causing her undue harm by subjecting her to further proceedings in the case.⁸

9. In view of P-1864’s vulnerability, any attempt to implement article 56 measures would inherently cause her to relive [REDACTED]. The Decision itself acknowledges the witness’s demonstrated “strong physical and emotional distress caused by discussions surrounding her evidence.”⁹ Thus, invoking article 56 — at any point —

⁷ ICC-01/14-01/18-1975-Red, para. 27 (emphasis added).

⁸ *Contra*, ICC-01/05-01/13-1481-Red-Corr, para. 19 (noting that, “[a]s Article 56 measures would have been incapable of ameliorating the situation of P-263, the Chamber considers the requirement in Rule 68(2)(c)(i) of the Rules to be met”). See also, ICC-01/14-01/18-1975-Red, para. 31.

⁹ Decision, para. 45.

would have risked inflicting significant hardship on P-1864, potentially resulting in permanent psychological damage.¹⁰

10. Given that the dangerous risk of causing severe and lasting harm far outweighed the significance of the evidence to have been preserved,¹¹ the implementation of article 56 measures were never *viable* in this case. Chambers of the Court have previously recognised its duty to refrain from actions that would in all likelihood entail negative consequences for a witness. However, the Decision does not address the feasibility of any article 56 measures potentially to have been applied in this instance when evaluating whether their *necessity* could have been anticipated. Partial reconsideration of the Decision is therefore justified and warranted.

IV. REQUESTED RELIEF

11. For the above reasons, the Prosecution seeks partial reconsideration of the relevant parts of the Decision, and requests that the Chamber grants the Rule 68(2)(c) Request with regard to P-1864.



Mame Mandiaye Niang, Deputy Prosecutor

Dated this 24th day of February 2026

At The Hague, The Netherlands

¹⁰ On 18 August 2023, [REDACTED]. See also, P-1864's Rule 68(2)(c) Request, paras. 50-55.

¹¹ ICC-01/05-01/13-1481-Red-Corr, para. 18 (noting that, "Pursuant to Article 68(1) of the Statute, the Chamber has the duty to protect the safety, physical and psychological well-being, dignity and privacy of witnesses. This encompasses refraining from actions (in this case calling or summoning witness P-263 to testify) that would in all likelihood entail negative consequences for the witness[...]").