

**Cour
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**International
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Court**

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

Date: **17 January 2022**

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 “Yekatom Defence Response to ‘Confidential Redacted Version of “Request for Reconsideration regarding In-Court Protective Measures for Prosecution Witness P-0889”, dated 31 December 2021’, ICC-01/14/01/18-1232-Conf-Red”, ICC-01/14-01/18-1236-Conf, 10 January 2022

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 representing Mr Alfred Rombhot Yekatom ('Defence') hereby respond to the 'Confidential Redacted Version of "Request for Reconsideration regarding In-Court Protective Measures for Prosecution Witness P-0889", dated 31 December 2021'.¹
2. The Defence opposes the request for reconsideration on the basis that the Prosecution does not provide any new or additional element justifying the request. Information provided by the Prosecution do not constitute an objective justifiable risk for witness P-0889 that would legitimate the granting of in-court protective measures. Moreover, the measures sought are inconsistent with Mr Yekatom's right to a fair and impartial trial and the principle of publicity of the proceedings.

PROCEDURAL BACKGROUND

3. On 26 August 2020, in the 'Initial Directions on the Conduct of the Proceedings', the Chamber instructed the Prosecution to submit its application for in-court protective measures by 7 December 2020.²
4. On 7 December 2020, the Prosecution filed *ex parte* its request for in-court protective measures ('First Request') and a confidential redacted version of the filing was made available to the Defence on 18 December 2020. The Prosecution sought implementation of in-court protective measures for 72 witnesses.³
5. On 15 January 2021, the Defence responded to the Prosecution's motion requesting the Chamber to assess each application on a case-by-case basis 'in light of Mr Yekatom's concern that his right to a public trial remain at the

¹ [ICC-01/14-01/18-1232-Conf-Red.](#)

² [ICC-01/14-01/18-631](#), para. 70.

³ [ICC-01/14-01/18-757-Conf-Anx-Red.](#)

forefront of the Chamber's consideration' and reject the implementation of in-court protective measures for specific witnesses.⁴

6. On 9 March 2021, the Single Judge issued its 'Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses' granting protective measures for 46 witnesses and rejecting 27 applications including that of P-0889.⁵
7. On 31 December 2021, the Prosecution submitted its 'Request for Reconsideration regarding In-Court Protective measures for Prosecution Witness P-0889' ('Second Request') seeking reconsideration of the First Request and implementation of in-court protective measures in the form of voice and facial distortion and the use of a pseudonym for P-0889.⁶
8. On 5 January 2022, considering that P-0889's testimony [REDACTED], the Single Judge shortened the deadline to respond and directed the participants to file their submissions by 11 January 2022.⁷

APPLICABLE LAW

9. The Court's jurisprudence recognizes the power of a Chamber to reconsider its own decisions. However, reconsideration is exceptional and should be granted if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice. New facts and arguments arising since the decision was rendered may be relevant to this assessment.⁸

⁴ [ICC-01/14-01/18-828-Conf](#); Public redacted version: [ICC-01/14-01/18-828-Red2](#).

⁵ [ICC-01/14-01/18-906-Conf-Red](#), p. 44-45; Public redacted version: [ICC-01/14-01/18-906-Red2](#).

⁶ [ICC-01/14-01/18-1232-Conf-Red](#).

⁷ Email sent by the Chamber to the parties and participants on 5 January 2022 at 10:37.

⁸ [ICC-01/14-01/18-206](#), para. 20; *Prosecutor v. Ntaganda*, [Decision on Defence request seeking partial reconsideration of the 'Decision on Defence request for admission of evidence from the bar table'](#), 22 February 2018, ICC-01/14-02/06-2241, para. 4; *Prosecutor v. Ruto, Kosgey and Sang*, [Decision on the 'Defence Request for Leave to Appeal the 'Urgent Decision on the 'Urgent Defence Application for Postponement of the Confirmation Hearing and Extension of Time to Disclose and List Evidence' \(ICC-01/09-01/11-260\)'](#)", 29 August 2011, ICC-01/09-01/11-301, paras 19-20; *Prosecutor v. Ongwen*, [Decision on Request for Reconsideration of the Order to Disclose Requests for Assistance](#), 15 June 2016, ICC-02/04-01/15-468, para. 4; *Prosecutor v. Ruto and*

10. Furthermore, Trial Chamber V stated that any rejection of requests for protective measures ruled in advance of the trial is without prejudice to reconsideration at a later stage should new or additional information be made available.⁹

SUBMISSIONS

I. The Prosecution fails to provide any new or additional information justifying the reconsideration of the decision

A. P-0889's [REDACTED] was already brought to the Chamber's attention

11. P-0889's request for [REDACTED] has been rejected by the [REDACTED] on 21 October 2019 and the decision issued by the [REDACTED] was provided to the Prosecution on 17 June 2020.¹⁰ The document was therefore in the possession of the Prosecution when it filed its First Request on 7 December 2020. It indeed specified that [REDACTED] 'where will likely continue to face threats'.¹¹
12. Both the [REDACTED] were brought to the Chamber's attention in the First Request.
13. The Defence also submits that, in any event, the Prosecution's failure to bring before the Chamber documents or information already in its possession when the First Request was filed, cannot be qualified as 'new fact' warranting reconsideration of the initial decision.¹²
14. The postponement of the [REDACTED] to a later date does not constitute *per se* a new fact. It is merely the extension of P-0889's pre-existing situation already

Sang, [Decision on the Sang Defence's Request for Reconsideration of Page and Time Limits](#), 10 February 2015, ICC-01/09-01/11-1813, para. 19.

⁹ [ICC-01/14-01/18-906-Conf-Red](#), paras 1 and 21; Public redacted version: [ICC-01/14-01/18-906-Red2](#).

¹⁰ [CAR-OTP-2127-0655-R01](#).

¹¹ [ICC-01/14-01/18-757-Conf-Anx-Red](#), p. 5, row 26.

¹² *Prosecutor v. Ntaganda*, [Decision on Prosecution's requests relating to in-court protective and special measures for Witness P-0039](#), 10 December 2015, ICC-01/04-02/06-1049-Red, para. 13.

introduced in the First Request and cannot be considered as a new information that would illustrate a deterioration of the witness' status.

B. The current situation in CAR was similar to the previous one at the time of the First Request

15. The Defence submits that the political and security context may have further evolved but was already unstable when the Prosecution submitted its First Request. Therefore, the hypothetical alleged risk that P-0889 and his family would face in CAR already existed and could have been raised in the First Request.
16. As cited by the Prosecution, the Sixth Registry Report on the Political and Security situation in CAR explains that the political and security context in the country “continued to be shaped by: (i) political tensions, with limited perspectives to date for tangible progress in the republican dialogue; (ii) on-going clashes across large swathes of the country between armed groups and the *Forces armées centrafricaines* (“FACA”)/Bilateral forces; and (iii) a dire socio-economic and humanitarian situation which has further deteriorated”.¹³
17. This clearly indicates that the situation persists and is comparable to the one described when the First Request was submitted. The *First Periodic Report of the Registry on the Political and Security situation in the CAR* (‘First Registry Report’) filed by the Registry on 7 December 2020 was indeed already depicting political, security and socioeconomic tensions affecting and deteriorating the security environment in the country.¹⁴

¹³ [ICC-01/14-01/18-1192-Conf](#), para.8.

¹⁴ [ICC-01/14-01/18-755-Conf-Anx.](#)

II. The Prosecution does not identify an objectively justifiable risk

18. The Defence alternatively affirms that the elements provided by the Prosecution do not demonstrate that the measures sought are necessary in light of an objectively justifiable risk.
19. *Firstly*, as described above, the Prosecution does not provide the Chamber with new or additional information compared to the First Request.
20. In its initial decision, the Single Judge took into consideration the incidents and threats reported by the Prosecution in relation to P-0889 and concluded that ‘no objectively justifiable risk exists to the witnesses’ legitimate interests protected under Article 68 of the Statute’.¹⁵
21. Being provided today with the same information by the Prosecution, the Defence respectfully submits that the findings of the Chamber should be similar.
22. *Secondly*, the jurisprudence of the Court determined that generic references to the social context in the State, including its alleged polarisation is unsuitable to trigger the application of Rule 87.¹⁶
23. Therefore, general reference to the deterioration of the social, economic, political and security situation in CAR cannot be considered as a factor to justify the grant of protective measures for P-0889.
24. *Thirdly*, the risk identified by the Prosecution concerning the witness’ security in CAR is not valid as P-0889 [REDACTED].

¹⁵ [ICC-01/14-01/18-906-Conf-Red](#), paras 46-48; Public redacted version: [ICC-01/14-01/18-906-Red2](#).

¹⁶ *Prosecutor v. Gbagbo & Blé Goudé*, [Decision on the Prosecutor’s application for protective measures for Witness P-0428](#), 20 April 2018, ICC-02/11-01/15-1155-Red.

25. It is speculative for the Prosecution to argue that it is not unlikely that the [REDACTED]. The Prosecution cannot anticipate the outcome [REDACTED] especially since, contrary to what is argued in the request, [REDACTED].¹⁷
26. The Defence also emphasizes that the [REDACTED] denying P-0889's [REDACTED] request is in line with the rejection of the implementation of protective measures for the testimony of P-0889 as it states that [REDACTED]¹⁸
- III. The implementation of the measures would prejudice Mr Yekatom's right to a fair and impartial trial and affect the fundamental principle of publicity of the proceedings**
27. The principle of publicity of the proceedings, enshrined in Article 64(7) of the Statute and Regulation 20(1) of the Regulations of the Court and consecrated as a right of the accused in article 67(1), being the norm, in-court protective measures must remain implemented only in exceptional cases.
28. Furthermore, fair trial-related concerns generally lie in favor of the identity made known to the public¹⁹ and witnesses 'are neutral and only expected to tell the truth and appearing in public is part of the responsibilities attached to the role'.²⁰
29. Protective measures cannot be presented by the Prosecution as a guarantee that the witness will provide unfettered evidence that would assist the Court in establishing the truth. To the contrary, the publicity of the witness' identity may increase his commitment to tell truth and his feeling of public accountability.
30. The Defence remains also concerned of the number of Prosecution's witnesses entitled to protective measures since the beginning of the Trial (out of 24

¹⁷ [REDACTED].

¹⁸ [CAR-OTP-2127-0655-R01](#) at 0658.

¹⁹ *Prosecutor v. Ntaganda*, [Decision on request for in-court protective measures relating to the first Prosecution witness](#), ICC-01/04-01/06-824-Red, 16 September 2015, para. 16.

²⁰ *Prosecutor v. Gbagbo & Blé Goudé*, [Decision on the Prosecutor's application for protective measures for Witness P-0428](#), ICC-02/11-01/15-1155-Red, 20 April 2018, para. 8.

witnesses, only 7 testified without protective measures) and of the direct impact that this have on Mr Yekatom's right to a public and fair trial.

CONFIDENTIALITY

31. The response is filed on a confidential basis corresponding to the classification of the Request. A public redacted version will be filed in due course.

RELIEF SOUGHT

32. In light of the above, the Defence respectfully requests the Chamber to:

REJECT the Prosecution's request for reconsideration; and

DENY the implementation of in-court protective measures for P-0889.

RESPECTFULLY SUBMITTED ON THIS 17th DAY OF JANUARY 2022



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