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

Date: 3 February 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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public

**Public redacted version of “ Confidential redacted version of “Request for
Reconsideration regarding In-Court Protective Measures for Prosecution Witness
P-1416””, 12 January 2022, ICC-01/14-01/18-1244-Conf-Red**

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. Pursuant to the Chamber's Initial Directions on the Conduct of Proceedings¹ and its Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses ("Decision on In-Court Protective Measures"),² the Prosecution seeks the Chamber's reconsideration of the decision regarding P-1416,³ and to grant protective measures in the form of voice and facial distortion, and the use of a pseudonym ("Requested Measures").

2. Reconsideration of the Requested Measures is necessary to secure the witness's testimony and to prevent an injustice.⁴ Since the Decision on In-Court Protective Measures was rendered in early 2021, the security situation in the Central African Republic ("CAR") has further deteriorated. Furthermore, additional details concerning the witness's security concerns were not previously before the Chamber. These new circumstances therefore justify the Chamber's reconsideration.

3. Granting the Requested Measures will ensure that P-1416 is able to give his evidence fully without fear for his own security, and without jeopardising that of his family.

4. The Requested Measures are the least restrictive means to appropriately balance the right to a public trial against the mandate to protect witnesses appearing before the Court, and to prevent a disproportionate risk of harm on account of those who assist it.⁵ As such, the measures would not unfairly prejudice the Accused.

¹ ICC-01/14-01/18-631, paras. 68-69.

² ICC-01/14-01/18-906-Red2.

³ See ICC-01/14-01/18-906-Red2, paras. 101-103.

⁴ See ICC-01/12-01/18-734, para. 11 (noting that "[n]ew facts and arguments arising since the decision was rendered may be relevant to [assess whether reconsideration is necessary to prevent an injustice]").

⁵ See e.g., ICC-01/05-01/13-1481-Red-Corr, para. 18.

II. CONFIDENTIALITY

5. Pursuant to regulation 23*bis* of the Regulations of the Court (“RoC”), this Request is filed as “Confidential, ex parte - only available to the Prosecution and the VWU”, as it bears on confidential witness security issues, and concerns previous filings of the same classification. A confidential redacted version will be filed simultaneously.

III. SUBMISSIONS

6. Reconsideration of the Requested Measures is necessary to secure the witness’s testimony and to prevent an injustice.⁶ As the Single Judge described in the Decision on In-Court Protective Measures, rulings on Requested Measures are without prejudice to reconsideration at a later time, upon request or *proprio motu*, should new or additional information be made available.⁷ The Requested Measures are strictly proportionate to the risk P-1416 faces and do not unfairly prejudice the Accused.

7. As concerns the Chamber’s intention to expedite proceedings by issuing ‘advance’ determinations on in-Court protective measures, the Prosecution incorporates by reference the submissions made in its 31 December 2021 Request for Reconsideration regarding In-Court Protective Measures for Prosecution Witness P-0889.⁸

A. Reconsideration is necessary and justified

8. Reconsideration of protective measures for P-1416 is necessary and justified given the deterioration in the political and security situation in CAR since the Prosecution’s initial application in December 2020, and the *objective* risk of harm to P-1416 as a result of this change. Furthermore, the physical proximity of P-1416 and his family to [REDACTED], was not previously before the Chamber previously. These

⁶ See ICC-01/12-01/18-734, para. 11.

⁷ ICC-01/14-01/18-906-Red2, paras. 20-21.

⁸ ICC-01/14-01/18-1232-Conf-Red, paras. 6, 7.

totality of these facts merit the Chamber's attention in considering the Requested Measures.

a. The security situation in CAR has deteriorated further

9. The security situation in CAR has deteriorated since 7 December 2020 when protective measures were first sought for P-1416.⁹ As confirmed in the Sixth Periodic Report of the Registry on the Political and Security situation in the CAR ("Sixth Registry Report"), the political and security context in the CAR "[REDACTED]".¹⁰

10. The situation in the CAR is unlikely to improve in the short to medium term.¹¹ Consequently, domestic authorities have a diminished capacity to protect and secure the interests of witnesses in this case, especially given the necessary deployment of a substantial portion of their limited resources to stabilise the country. The capacity to ensure that P-1416 and third-parties (such as his family) can be adequately protected in CAR, should his testimony be received publicly, is clearly reduced relative to when the initial application for protective measures was made well-over a year ago.

b. Requiring P-1416's testimony without protective measures would result in an injustice

11. P-1416 faces an *objective* risk of harm arising from the impact of the changed security situation on his ongoing personal circumstances. As more fully detailed below, P-1416 will [REDACTED] should his cooperation and testimony as a Prosecution witness become public. Absent reconsideration, requiring his testimony in these circumstances would impose a disproportionate negative consequence on him due to his cooperation in the proceedings.

⁹ ICC-01/14-01/18-757-Conf-Anx-Red, p. 9, entry 56.

¹⁰ See ICC-01/14-01/18-1192-Conf, para. 8.

¹¹ *Id.*

12. Protective measures for Witness P-1416 are warranted

- a. P-1416 faces an objective risk of harm

13. P-1416 is a [REDACTED] crime-base witness who will provide evidence against YEKATOM and who continues to reside [REDACTED], an area well known to YEKATOM's supporters, former elements, and immediate family. As mentioned in the Prosecution's previous request, P-1416 reported a big presence of Anti-Balaka there, and that is an area known for the influence of Anti-Balaka members and supporters.¹² As further elaborated in that request, P-1416 has [REDACTED].¹³ [REDACTED].

14. This information, when combined with specific additional information not put before the Chamber in the previous request, demonstrates an objective risk of harm to P-1416, especially in light of the further deterioration of the security situation in CAR such that local law enforcement cannot provide adequate assurances that P-1416 can be protected. In particular, P-1416's evidence includes [REDACTED],¹⁴ [REDACTED].¹⁵ [REDACTED].¹⁶ [REDACTED]¹⁷ [REDACTED].

15. As P-1416's status in this case appears to have remained confidential for the moment, there have been no intervening security incidents. However, the absence of a security incident does not mean that the *risks* thereof are in any way diminished, once the witness's cooperation becomes known. On the contrary, the risks of harm are already objectively elevated given the precarious state of instability prevailing in CAR.

16. Aside [REDACTED].

¹² ICC-01/14-01/18-757-Conf-Anx-Red, p. 9, entry 56.

¹³ ICC-01/14-01/18-757-Conf-Anx-Red, p. 9, entry 56.

¹⁴ CAR-OTP-2045-0150, at 0161, paras. 88-97.

¹⁵ CAR-OTP-2045-0150, at 0161, para. 94.

¹⁶ CAR-OTP-2040-0778 at 0780; *see also* CAR-OTP-2116-0304 at 0319, para. 81.

¹⁷ CAR-OTP-2045-0150, at 0162, para. 101.

17. Although the *risks* to P-1416 have not *yet* materialised, the circumstances described readily establish an objective risk, warranting the Chamber's action consistent with article 68(1). Requiring P-1416's public testimony without any mitigating protection would undermine the Court's duty under that article to refrain from actions that would in all likelihood entail negative consequences for the witness.¹⁸

b. The Requested Measures are strictly proportionate to the risk

18. The Requested Measures are necessary and proportionate to mitigate the risks arising from P-1416's prospective testimony. Given that P-1416 [REDACTED], voice and face distortion, and the use of a pseudonym, are the minimum necessary to ensure the adequate and proportional protection of his and his family's safety and security.

a. The Requested Measures do not unfairly prejudice the Accused

19. The impact of the Requested Measures on the publicity of the proceedings is mitigated and justified. *First*, as noted, they are needed to ensure that P-1416 is able to provide unfettered evidence. *Second*, they do not impede the Accused's opportunity and ability to fully examine the witness and to test his evidence. *Third*, much of P-1416's testimony will be given in public in any event, with the Chamber duly moderating the use of Private Sessions within the sound exercise of its discretion, as it has done effectively and fairly with other protected witnesses.

20. Finally, in respect of the right to publicity,¹⁹ the Prosecution notes that the Requested Measures would remain in effect to the extent necessary to protect the witness. However, should the risks abate, the possibility of releasing lesser redacted material into the public domain may be appropriate in the future, thus

¹⁸ See e.g., ICC-01/05-01/13-1481-Red-Corr, para. 18 (noting that the Chamber's duty under article 68(1) also "encompasses refraining from actions ... that would in all likelihood entail negative consequences for the witness").

¹⁹ See article 67(1) (qualifying the right as an "entitle[ment] to a public hearing, *having regard to the provisions of this Statute...*") (emphasis added); see also article 68(2).

accommodating and balancing the respective interests of articles 64(2), 68(1), and 67(1).

IV. RELIEF SOUGHT

21. For the above reasons, the Prosecution seeks reconsideration of the Decision on In-Court Protective Measures, and requests that the Chamber grant in-Court protective measures in the form of voice and facial distortion, and the use of a pseudonym for P-1416.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

Karim A. A. Khan QC, Prosecutor

Dated this 3rd day of February 2022
At The Hague, The Netherlands