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

Date: 4 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-0888"', ICC-01/14-01/18-1241-Conf-Red, 11 January 2022**

**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 Proceedings<sup>1</sup> and its Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses ("Decision on In-Court Protective Measures"),<sup>2</sup> the Prosecution seeks the Chamber's reconsideration of the decision regarding P-0888,<sup>3</sup> and to grant protective measures in the form of voice and facial distortion, and the use of a pseudonym ("Requested Measures"). Reconsideration of the Requested Measures is necessary to secure the witness's testimony and to prevent an injustice.<sup>4</sup>

2. Since the Decision on In-Court Protective Measures was rendered: (i) the security situation in the Central African Republic ("CAR") has further deteriorated; and (ii) there are additional details concerning the witness's security concerns and situation which were not previously before the Chamber. The circumstances therefore justify the Chamber's reconsideration.

3. Granting the Requested Measures will ensure that P-0888 is able to give evidence 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.<sup>5</sup> As such, the measures would not unfairly prejudice the Accused.

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<sup>1</sup> ICC-01/14-01/18-631, paras. 68-69.

<sup>2</sup> ICC-01/14-01/18-906-Red2.

<sup>3</sup> See ICC-01/14-01/18-906-Red2, para. 42.

<sup>4</sup> 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]").

<sup>5</sup> 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 as soon as practicable.

## III. SUBMISSIONS

### A. Reconsideration is necessary and justified

i. There has been a marked change in circumstances

6. Reconsideration of protective measures for P-0888 is necessary and justified. As concerns the Chamber’s intention to advance the expedition of the 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.<sup>6</sup>

7. A substantial period has elapsed since 7 December 2020, when protective measures were originally sought for P-0888.<sup>7</sup> To this extent, the Prosecution relies on its previous submissions regarding the much deteriorated security situation in the Central African Republic (“CAR”) since the initial request was made<sup>8</sup> and the Decision on In-Court Protective Measures issued, providing the Chamber’s “advance rulings”.<sup>9</sup>

8. The changed circumstances, principally owing to the prevailing security conditions in the country together with P-0888’s personal situation, warrant in-Court protective measures. The situation in the CAR is unlikely to improve in the short to

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<sup>6</sup> ICC-01/14-01/18-1232-Conf-Red, paras. 6, 7.

<sup>7</sup> ICC-01/14-01/18-757-Conf-Anx-Red, p. 3, entry 10.

<sup>8</sup> See ICC-01/14-01/18-1232-Conf-Red, para. 9.

<sup>9</sup> ICC-01/14-01/18-906-Red2, para.19, *see also* paras.1 and 20 (noting “these rulings are *without prejudice* to reconsideration at a later time”) (emphasis added).

medium term,<sup>10</sup> and the present circumstances have exacerbated already substantial impediments at the national level to secure P-0888 and his family adequately, should he testify publicly.

- ii. Requiring P-0888's testimony without protective measures would result in an injustice

9. P-0888 faces an *objective* risk of harm arising from the impact of the changed national security situation on his ongoing personal circumstances. As more fully detailed below, there is every reason to believe that P-0888 will be marked for retaliation should his cooperation and testimony as a Prosecution witness become public. Absent reconsideration, requiring his testimony in these circumstances — the result of the Decision on In-Court Protective Measures — would impose a disproportionate negative consequence on him due to his cooperation in the proceedings.

## **B. Protective measures for Witness P-0888 are warranted**

- i. P-0888 faces an objective risk of harm

10. P-0888 continues to reside [REDACTED], an area well known to [REDACTED] supporters, former elements, and immediate family. The witness resides [REDACTED]. He is known to [REDACTED].<sup>11</sup> [REDACTED].<sup>12</sup> [REDACTED].<sup>13</sup>

11. Significantly, P-0888 still often encounters [REDACTED].

12. As P-0888'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

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

<sup>11</sup> [REDACTED].

<sup>12</sup> [REDACTED].

<sup>13</sup> [REDACTED].

already objectively elevated given the precarious state of instability prevailing in CAR. [REDACTED]. the risks P-0888 faces are nearly certain to be realised should his evidence against the Accused be given publicly. It is important to underscore that, like [REDACTED], have personal interests in the outcome of these proceedings. Those substantial interests are in diametric opposition to P-0888's continued cooperation as a Prosecution witness and, as such, jeopardise his safety and security and that of his family.

13. [REDACTED]

“[REDACTED].”<sup>14</sup>

[REDACTED] highlight the objective risks attendant to P-0888 which, given the deteriorated security situation in the country since they were made, are even greater now.

14. Aside from his direct contact with members of his community [REDACTED], P-0888 is also [REDACTED]. His association with [REDACTED] thus places him at risk, should his status as a Prosecution witness and the nature and content of his testimony become known. It is highly likely that [REDACTED] aware of this, will consider it [REDACTED] and be motivated to harm him or his family in retaliation.

15. Although the *risks* to P-0888 have not *yet* materialised, the circumstances described readily establish an objective risk, warranting the Chamber's action consistent with article 68(1). To the extent that this necessarily “encompasses refraining from actions ... that would in all likelihood entail negative consequences for the witness”,<sup>15</sup> requiring P-0888's public testimony without any mitigating protection whatsoever would undermine this fundamental tenet.

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<sup>14</sup> [REDACTED].

<sup>15</sup> 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”).

ii. The Requested Measures are strictly proportionate to the risk

16. The Requested Measures are necessary and proportionate to mitigate the risks arising from P-0888's prospective testimony. Given his participation in [REDACTED] affairs concerning the [REDACTED] and his being [REDACTED] individuals close to the Accused, 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.

iii. The Requested Measures do not unfairly prejudice the Accused

17. 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-0888 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-0888'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.

18. Finally, in respect of the right to publicity,<sup>16</sup> 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 accommodating and balancing the respective interests of articles 64(2), 68(1), and 67(1).

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<sup>16</sup> 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).

#### IV. RELIEF SOUGHT

19. 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-0888.

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

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**Karim A. A. Khan QC, Prosecutor**

Dated this 4<sup>th</sup> day of February 2022  
At The Hague, The Netherlands