

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **24 March 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 of the “Yekatom Defence Response to the
Prosecution’s “Request for Reconsideration regarding In-Court Protective
Measures for Prosecution Witness P-0954”, ICC-01/14-01/18-1319-Conf-
Red”, 24 March 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-0954”, notified on 21 March 2022 (“Request”).¹
2. The Defence defers to the Chamber on the opportunity of the Prosecution’s Request. It nevertheless wishes to raise specific issues and information that should be taken into consideration when assessing whether or not P-0954 should be granted in-court protective measures.

PROCEDURAL HISTORY

3. On 7 December 2020, the Prosecution filed *ex parte* its request for in-court protective measures, a confidential redacted version of the filing was made available to the Defence on 18 December 2020 (“Original Request”). The Prosecution sought implementation of in-court protective measures for 72 witnesses,² including for P-0954.³
4. 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 forefront of the Chamber’s consideration”.⁴
5. On 9 March 2021, the Single Judge issued its “Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses” granting

¹ [ICC-01/14-01/18-1319-Conf-Red](#).

² [ICC-01/14-01/18-757-Conf-Red](#); Public redacted version: [ICC-01/14-01/18-757-Red2](#).

³ [ICC-01/14-01/18-757-Conf-Anx-Red](#), page 4, Witness #16.

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

protective measures for 46 witnesses and rejecting 27 applications including that of P-0954 ("Decision").⁵

6. On 21 March 2022, one week before his scheduled testimony, the Defence was notified of the, heavily redacted, Prosecution's Request for Reconsideration regarding In-Court Protective Measures for Prosecution Witness P-0954.⁶
7. On 22 March 2022, the Chamber shortened the deadline to respond to the Request to 24 March 2022.⁷

APPLICABLE LAW

8. 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
9. Any rejection of requests for protective measures ruled in advance of the trial is without prejudice to reconsideration at a later stage should be new or additional information be made available.⁹

⁵ [ICC-01/14-01/18-906-Conf-Red](#), paras 42, 45; Public redacted version: [ICC-01/14-01/18-906-Red2](#).

⁶ [ICC-01/14-01/18-1319-Conf-Red](#).

⁷ Email from the Chamber to the Parties dated 22 March 2022 10:39.

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 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](#).

SUBMISSIONS

10. In light of the Prosecution's Request, the Defence wishes to address the Chamber with several points which should be considered when ruling on the opportunity of whether or not in-court protective measures should be granted to P-0954.
11. *First*, the Defence wishes to raise its concern over the almost systemic pattern and timing of the reconsideration requests. Indeed, recently the Prosecution sought the implementation of in-court protective measures for P-0889,¹⁰ P-0888,¹¹ P-1416.¹² Those various reconsideration requests were filed shortly before the testimony of those witnesses which, in turn, prompted the Chamber to shorten the response deadline for the Parties. This pattern from the Prosecution, which does not seem to be justified by any concrete reasons, unduly affects the resources of the Defence when they should be concentrated on the preparation of its examination of the witness. The Prosecution should be instructed to timely file its reconsideration requests, sufficiently in advance to allow the Defence to properly respond.
12. *Second*, the Defence notes that the majority of the arguments raised by the Prosecution to support its position that protective measures for P-0954 are warranted is redacted.¹³ As the Defence is not in a position to make meaningful submissions on those arguments, it is respectfully requested that the Chamber exercise a particular scrutiny when assessing those *ex parte* information. High level of scrutiny is all the more necessary in light of the fact that those information have been in the Prosecution's possession before its Original Request, with the un-redacted parts suggesting that one argument was already

¹⁰ [ICC-01/14-01/18-1232-Conf-Red.](#)

¹¹ [ICC-01/14-01/18-1241-Conf-Red.](#)

¹² [ICC-01/14-01/18-1244-Conf-Red.](#)

¹³ [ICC-01/14-01/18-1319-Conf-Red.](#), paras 12-15.

present in “[REDACTED] 2020”¹⁴ while the location of residence of P-0954’s family does not appear to have changed with the use of the words “continue to reside in”.¹⁵

13. It is also recalled that the main particularity of P-0954’s security situation, [REDACTED], was already known and used by the Prosecution in its Original Request,¹⁶ and expressly mentioned by the Chamber in its Decision which rejected the protective measures for this witness.¹⁷
14. *Third*, [REDACTED]. This information was known by the Prosecution as it was the subject of an *inter partes* phone conversation between the Defence and the Prosecution [REDACTED].¹⁸ [REDACTED]. Therefore, it is the Defence respectful submission that absent any concrete incident this situation should not warrant protective measures.
15. *Fourth*, the Defence recalls by way of reference its previous submissions on the exceptional nature of in-court protective measures in light of the principle of publicity of the proceedings and of its particular importance for the public from the Central African Republic.¹⁹

CONFIDENTIALITY

16. This Response is filed on a confidential *ex parte* basis due to the mention [REDACTED]. Confidential and Public redacted versions of the Response are being filed simultaneously.

¹⁴ [ICC-01/14-01/18-1319-Conf-Red](#), para. 12.

¹⁵ [ICC-01/14-01/18-1319-Conf-Red](#), para. 15.

¹⁶ [REDACTED]

¹⁷ [ICC-01/14-01/18-906-Conf-Red](#), para. 45.

¹⁸ [REDACTED]

¹⁹ See [ICC-01/14-01/18-1257-Conf](#), paras 26-27.

RELIEF SOUGHT

17. Taking into consideration the information provided above, the Defence defers to the Chamber's discretion on the opportunity of the Prosecution's Request.

RESPECTFULLY SUBMITTED ON THIS 24th DAY OF MARCH 2022



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands