

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **15 December 2023**

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 Request for In-Court Protective Measures for Witness D29-P-5014", ICC-01/14-01/18-2266-Conf

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 for Mr Alfred Rombhot Yekatom (“Defence”) respectfully requests the Chamber to grant in-court protective measures, in the form of (i) the use of a pseudonym, (ii) face distortion, and (iii) voice distortion to Witness CAR-D29-P-5014 (“Sought Measures”).
2. The Defence submits that the expected testimony and personal circumstances of P-5014 demonstrate the existence of an objectively justifiable risk to the safety, physical, psychological well-being and privacy of this witness should their identity be disclosed to the public. The Sought Measures are both strictly proportionate to the identified risk and in furtherance of a fair trial.

PROCEDURAL HISTORY

3. On 26 August 2020, in its “Initial Directions on the Conduct of the Proceedings”, the Chamber indicated that requests for protective measures shall be made “*as soon as possible to allow the Chamber to received submissions on the request and to allow the VWU to fulfill its mandate*”.¹
4. On 17 November 2023, the Defence included witness P-5014 in its Final List of Witnesses,² and provided a summary this witness’ anticipated testimony.³
5. On 4 December 2023, the Registry’s [REDACTED] was notified.⁴
6. On 6 December 2023, the Defence informed the Chamber and Parties that it anticipated that P-5014 would be the third Defence witness to testify.⁵

¹ [ICC-01/14-01/18-631](#), para. 68.

² ICC-01/14-01/18-2212-Conf-AnxB, page 6, witness #9.

³ ICC-01/14-01/18-2212-Conf-AncC, pages 23-25.

⁴ [REDACTED].

⁵ Email from the Defence to the Chamber and Parties titled “Yekatom Defence anticipated upcoming witness order” and dated 6 December 2013 at 11:27.

APPLICABLE LAW

7. Article 68(1) of the Statute provides *inter alia* that “[t]he Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses [...]”.
8. Rule 87 (1) of the Rules of Procedure and Evidence states that :

Upon the motion of the Prosecutor or the defence or upon the request of a witness or a victim or his or her legal representative, if any, or on its own motion, and after having consulted with the Victims and Witnesses Unit, as appropriate, a Chamber may order measures to protect a victim, a witness or another person at risk on account of testimony given by a witness pursuant to article 68, paragraphs 1 and 2.

SUBMISSIONS

9. The Defence submits that the Sought Measures are necessary as P-5014 would be exposed to an objectively justifiable risk to her interests, which are protected pursuant to Article 68 of the Statute, should the witness be ordered to testify publicly.
10. Indeed, it is recalled that P-5014 is [REDACTED]. P-5014’s religion is Islam. P-5014 currently resides [REDACTED]. P-5014 has been implicated in [REDACTED]. In addition, P-5014 travels regularly to the town of [REDACTED], the witness knows some Muslims who lives in the town.
11. P-5014 is anticipated to testify about topics such as Mr Yekatom’s confrontation of the local population who wanted to kill her due to her religious beliefs. P-5014 is also expected to provide a number of concrete and specific examples during which Mr Yekatom assisted the Muslim population.⁶
12. As Mr Yekatom is portrayed publicly, in the context of the current proceedings, as being responsible for crimes “*against the Muslim civilian population and those*

⁶ ICC-01/14-01/18-2212-Conf-AncC, pages 23-25.

*perceived as collectively responsible for, complicit with, or supportive of the Seleka, pursuant to or in furtherance of a criminal policy to primarily target the Muslim population in Bangui and in western CAR Prefectures in retribution for Seleka exactions”;*⁷ P-5014 has expressed fear of retaliation by other Muslims that will reproach her for having testified for the Defence of Mr Yekatom, while herself being a Muslim.

13. P-5014’s fear is compounded by the fact that she resides [REDACTED]. It should also be noted that due to P-5014’s [REDACTED], access to information as regards to her exact place of residence can be found more easily.
14. Moreover, the Defence highlights that P-5014 is an individual who travels regularly in [REDACTED], and in particular [REDACTED]. From P-5014’s account, she is also in contact with Muslims living in those localities. During those regular travels, [REDACTED] should an incident arise from her cooperation with the Court and the Defence of Mr Yekatom. This factor should also be taken into consideration when assessing the opportunity of the Sought Measures.⁸
15. The Defence also highlights that [REDACTED]⁹, and that [REDACTED].¹⁰ It can be inferred that the context surrounding the ICC proceedings is currently unfavorable, and that risks faced by witnesses are furthered by the limitations of CAR official authorities which might not have the mean to intervene, in a timely manner, should an incident occur.
16. This ongoing negative view of the activities of the Court is also a factor in line with P-5014’s concern regarding retaliation against her person due to her status as a witness who will provide a testimony which can be perceived by the

⁷ [ICC-01/14-01/18-403-Red-Corr](#), page 103.

⁸ ICC-01/14-01/18-1697-Conf, para. 7.

⁹ [REDACTED].

¹⁰ [REDACTED].

population as being “in favor” of an accused. The gravity of the offences judged by the International Criminal Court heavily stigmatize the individuals accused of committed them, even if the “presumed innocent until found guilty” principle should apply. As such, witnesses called by the Defence are also at risk of being stigmatized, threatened or violented due to the perception that they are on the side of the accused.

17. The Defence notes, in this regard, that a witness on behalf of the Defence of Mr Maxime Mokom was arrested and tortured – it is suspected that this was a result of their association with this Defence team.¹¹ While this situation might be specific to the case of Mr Mokom, the Defence nevertheless submits that this context should be taken into account when assessing the necessity of the protective measures. Indeed, this incident demonstrates that association with a Defence team of an accused before the ICC may lead to serious retaliation.
18. The Defence recalls that the *“the Single Judge agrees that retaliation on account of a witness’s cooperation with the Court is a risk from which witnesses shall be protected in accordance with Article 68 of the Statute”* and that *“[w]hile a direct threat is not required, there must exist factual circumstances which make the Chamber believe that public knowledge of the witness’s identity would impermissibly risk an undue infringement of their legitimate interests protected”*.¹² While P-5014’s fears have not materialised up to now, the Defence highlights that its contacts with the witness were carefully conducted in order to minimize exposure. The Defence understands that P-5014’s cooperation with the Court, and in particular with the Defence of Mr Yekatom, is presently unknown, partly because of the precautions taken so far and the VWU’s general directions that were followed

¹¹ *Prosecutor v. Mokom*, Public Redacted Version of ‘Decision on “Defence Urgent Request for an Order Concerning the Arrest of P-0405”’, 10 November 2023, [ICC-01/14-01/22-290-Red](#). See also the latest public filing from the Defence of Mr Mokom, ‘Public Redacted Version of “Defence Submissions Further to the “Registry’s Report pursuant to the ‘Decision on ‘Defence Urgent Request for an Order Concerning the Arrest of P-0405”’’, ICC-01/14-01/22-304-Conf, 29 November 2023”, 1 December 2023, [ICC-01/14-01/22-304-Red](#).

¹² [ICC-01/14-01/18-906-Red2](#), para. 32.

to avoid exposure of the witness when meeting with the Defence. The Defence argues that while no direct threats have been made yet, the factual circumstances regarding P-5014 demonstrate that this witness is at risk should her identity be disclosed to the public.

19. In light of the above, the Defence submits that, as voiced by P-5014 herself, the witness' interests would be at risk should she testify publicly. Indeed, due to her anticipated testimony and place of residence, the witness could be subject to reprisals due to a perceived negative association with the Defence of Mr Yekatom. Moreover, P-5014's professional activities [REDACTED], could be negatively impacted [REDACTED]; this [REDACTED].¹³ Both of those interests need to be protected pursuant to the Court's obligation set out in Article 68(1) of the Statute.
20. The Defence submits that the Sought Measures are the least restrictive possible given the personal situation of P-5014. The Defence particularly notes that the voice distortion of P-5014 is sought as the witness [REDACTED].
21. The publicity of the proceedings would not be unduly impaired by the Sought Measures as the Defence would organize its questioning in a manner that would limit as much as possible private session. Moreover, the Sough Measures would not impede the opportunity for the Chamber, Prosecution and Parties to question P-5014.

CONCLUSION

22. In light of P-5014's personal circumstances, as described above, the Defence respectfully requests the Chamber to grant the Sought Measures in order to protect the witness' interests pursuant to Article 68(1) of the Statute.

¹³ See as an example [REDACTED].

CONFIDENTIALITY

23. The present request is filed on a confidential basis due to the references to the confidential information related to the security situation of witness P-5014. A public redacted version will be filed forthwith.

RELIEF SOUGHT

24. In light of the above, the Defence respectfully requests Trial Chamber V to:
- GRANT** Witness P-5014 protective measures in the form of (i) a pseudonym, (ii) face distortion, and (iii) voice distortion.

RESPECTFULLY SUBMITTED ON THIS 15th DAY OF DECEMBER 2023



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