

**Cour
Pénale
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**International
Criminal
Court**

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Date: **18 January 2024**

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 CAR-D29-P-6036”, 15 December 2023,
ICC-01/14-01/18-2268-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. The Defence for Mr. Alfred Rombhot Yekatom (“Defence”) hereby requests in-court protective measures, in the form of face and voice distortion, as well as the use of a pseudonym, to be granted for witness CAR-D29-P-6036 (“Witness”) pursuant to Articles 64 and 68 of the Rome Statute (“Statute”), and Rule 87 of the Rules of Procedure and Evidence (“Rules”).
2. The measures are necessary to protect the legitimate interests of the Witness and his family, as there exists an objectively justifiable risk for their safety, physical or psychological well-being, dignity, or privacy.

PROCEDURAL HISTORY

3. On 26 August 2020, the Trial Chamber V (“Chamber”) issued the Initial Directions on the Conduct of the Proceedings (“Initial Directions”) and stated that “[a]ny applications for in-court protective measures pursuant to Rules 87 and 88 of the Rules shall be made as soon as possible [...]”¹
4. On 29 May 2023, the Chamber issued the Further Directions on the Conduct of the Proceedings and held that “the presentation of evidence by the CLRV and the Defence, if any, will be governed by the Initial Directions and amendments or additions thereto.”² This included paragraphs 68 and 69 of the Initial Directions.³ The Chamber further held that the Defence’s final list of witnesses should include “expected in-court protective measures to be sought”.⁴
5. On 17 November 2023, the Defence provided its final list of witnesses, in which it indicated that face distortion, voice distortion, and the use of pseudonyms would be sought for the Witness.⁵

¹ ICC-01/14-01/18-631, para. 68.

² ICC-01/14-01/18-1892, para. 28.

³ ICC-01/14-01/18-1892, para. 28, fn. 25.

⁴ ICC-01/14-01/18-1892, para. 21.

⁵ ICC-01/14-01/18-2212-Conf-AnxB, p. 5.

APPLICABLE LAW**6. Article 64 (2) and (6)(e) of the Statute:**

2. The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses

[...]

6. In performing its functions prior to trial or during the course of a trial, the Trial Chamber may, as necessary:

[...]

(e) Provide for the protection of the accused, witnesses and victims; and

7. Article 68 (1) and (2) of the Statute:

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

2. As an exception to the principle of public hearings provided for in article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.

8. Rule 87 (1) and (3) of the Rules:

1. 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. The Chamber shall seek to obtain, whenever possible, the consent of the person in respect of whom the protective measure is sought prior to ordering the protective measure

[...]

3. A Chamber may, on a motion or request under sub-rule 1, hold a hearing, which shall be conducted in camera, to determine whether to order measures to prevent the release to the public or press and information agencies, of the identity or the location of a victim, a witness or other person at risk on account of testimony given by a witness by ordering, inter alia:

(a) That the name of the victim, witness or other person at risk on account of testimony given by a witness or any information which could lead to his or her identification, be expunged from the public records of the Chamber;

(b) That the Prosecutor, the defence or any other participant in the proceedings be prohibited from disclosing such information to a third party;

(c) That testimony be presented by electronic or other special means, including the use of technical means enabling the alteration of pictures or voice, the use of audiovisual technology, in particular videoconferencing and closed-circuit television, and the exclusive use of the sound media;

(d) That a pseudonym be used for a victim, a witness or other person at risk on account of testimony given by a witness; or

(e) That a Chamber conducts part of its proceedings in camera.

9. The Chamber has previously interpreted Rule 87 of the Rules in the present case as follows:

In determining whether in-court protective measures are warranted, the Chamber must ensure that any such measure is based on an 'objectively justifiable risk' and proportionate to the rights of the accused. While the concept of 'risk' necessarily involves a certain level of speculation and prediction, the available information must still indicate the existence of circumstances for which in-court testimony, in the absence of adequate protective measures under Rule 87 of the Rules, creates or unduly increases an impermissible danger to any of the legitimate interests of witnesses protected under Article 68 of the Statute.⁶

10. It further indicated the types of measures which could be granted:

Rule 87 of the Rules sets out the procedure for the request and approval of protective measures based on Article 68(1) and (2) of the Statute, and specifies that measures to protect the identity of a victim or witness from the public may include, inter alia, that (i) the participants in the proceedings be prohibited from disclosing to third parties the identity of a victim or a witness or any other identifying information; (ii) pseudonyms be used for a victim or a witness; (iii) testimony be provided with technical alteration of pictures or voice and/or by video-link; and (iv) part of the proceedings be conducted in private or closed session.⁷

⁶ ICC-01/14-01/18-906-Conf-Red, para. 17; see also *The Prosecutor v. Dominic Ongwen*, Decision on the 'Prosecution's application for in-court protective and special measures', 29 November 2016, ICC-02/04-01/15-612-Red, para. 8.

⁷ ICC-01/14-01/18-906-Conf-Red, para. 16; See also Ongwen Case Protective Measures Decision, ICC-02/04-01/15-612-Red, para. 7.

SUBMISSIONS

11. The Defence requests in-court protective measures for the Witness, in the form of face and voice distortion, as well as the use of a pseudonym.
12. Should the Witness's identity be revealed, it would expose him and his family to an objectively justifiable risk, endangering his physical or psychological safety and well-being, or privacy (A). The fact that the Witness has not yet identified the potential impact that his testimony could have on his security and safety should not be interpreted as an inexistence of risk (B). In any event, the impact on the overall publicity of the case is insignificant as large parts of the Witness's testimony will relate to information on protected witnesses called by the Prosecution and the Legal Representatives of Victims of the Former Child Soldiers' ("CLRV1") or their intermediaries and would therefore have to be held in private session in order to avoid revealing confidential and identifying information (C).

A. The Existence of an Objectively Justifiable Risk for the Witness and his Family

13. The Witness is expected to testify about both CAR-V45-P-0002 and CAR-OTP-P-2475. The Witness is [REDACTED], who resides in [REDACTED], including during the period of the charged crimes.⁸ Moreover, the Witness is [REDACTED]. They met when the Witness moved to [REDACTED] during the events and they stayed in contact [REDACTED].⁹
14. The expected testimony of the Witness supports the Defence's position that both CAR-OTP-P-2475 and CAR-D29-P-0002 lied and voluntarily provided false evidence about their alleged forced recruitment and involvement in Mr Yekatom's group. More broadly, the Witness is expected to testify about the fraudulent nature of [REDACTED].

⁸ ICC-01/14-01/18-T-247-CONF-ENG CT, from [12:58:59] to [13:59:15], and Email from the Legal Representative of the Former Child Soldiers to the Defence on 29 August 2023, at 10:55.

⁹ See [REDACTED].

15. The Defence recalls that [REDACTED] (P-2580), acting as a Prosecution intermediary, provided them with the falsified baptism certificate of CAR-OTP-P-2475.¹⁰ The same individual, employed as CLRV1 intermediary, also acted as CAR-V45-P-0002's *point focal*,¹¹ and [REDACTED].¹² [REDACTED] (P-2580) was also working for [REDACTED]. He currently resides and works in [REDACTED] and appears to be [REDACTED] in the village.¹³
16. The Defence has made various submissions on the fabrication of evidence by [REDACTED] (P-2580)¹⁴ and [REDACTED] (P-2638),¹⁵ while being involved as intermediaries with different sections of the Court.¹⁶ [REDACTED].¹⁷ [REDACTED]¹⁸
17. Additionally, it has been revealed that, [REDACTED],¹⁹ [REDACTED].²⁰ [REDACTED]²¹
18. Previous incidents illustrate that Defence witnesses who provided information regarding the fabrication of evidence by Prosecution witnesses and Prosecution and/or CLRV1 intermediaries thereby exposed themselves to retaliatory actions. For instance, [REDACTED].²² This occurred slightly over a week after [REDACTED],²³ and revealed that [REDACTED] was aware about issues and

¹⁰ See metadata of CAR-OTP-2128-1197.

¹¹ ICC-01/14-01/18-T-248-CONF-ENG CT, at [10:14:39].

¹² ICC-01/14-01/18-T-247-CONF-ENG ET, at [13:59:15].

¹³ See CAR-D29-0016-0171 and CAR-OTP-00001381.

¹⁴ ICC-01/14-01/18-1728-Conf-Exp, para. 35; ICC-01/14-01/18-1790-conf-exp, paras. 38 to 40; ICC-01/14-01/18-1959-Conf, para. 27; see also ICC-01/14-01/18-2111, para. 27.

¹⁵ ICC-01/14-01/18-1728-Conf-Exp, paras.9, and 28 to 32; ICC-01/14-01/18-1790-conf-exp, paras. 22 to 32; ICC-01/14-01/18-1959-Conf, para. 27; see also ICC-01/14-01/18-2111.

¹⁶ See CAR-OTP-00001073 and CAR-OTP-2135-4188.

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ CAR-OTP-2135-4188-R02, para. 15.

²² CAR-D29-0009-0260-R01, paras. 20-22. See also Email from the Defence to VWU sent on 4 October 2023, at 16:16

²³ See CAR-D29-0013-0254, CAR-D29-0013-0265, and CAR-V45-00000004, p. 006.

information used by the Defence in private session [REDACTED].²⁴ This incident, which was referred to VWU, was corroborated by [REDACTED].²⁵

19. The fact that highly confidential information, discussed in private session,²⁶ reached [REDACTED] and was repeated to [REDACTED] shows that certain individuals have access to the content of these proceedings and are following them closely, increasing the necessity of granting protective measures to witnesses who plan on testifying on related matters.
20. The information above, combined with [REDACTED],²⁷ [REDACTED],²⁸ [REDACTED],²⁹ [REDACTED],³⁰ [REDACTED],³¹ make it clear that an objectively justifiable risk exists, for the Witness and his family, of witness interference prior to the testimony and retaliatory action afterwards, on account of testimony before the Court.
21. Given the nature of the expected testimony, [REDACTED], the [REDACTED], [REDACTED],³² public testimony would inevitably expose the Witness and his family to actions endangering their safety, physical or psychological well-being, or privacy.

B. The Witness's Own Assertion of the Risk Incurred

22. The protective measures are necessary and should be granted notwithstanding that the Witness did not himself express any safety concerns. In fact, the Witness is not aware of the involvement as witness in these proceedings of CAR-OTP-P-2475 and CAR-V45-P-0002. Likewise, the witness is not aware that his testimony will serve to expose the above-described scheme. Therefore, the Witness is not himself in a

24 [REDACTED].

25 [REDACTED].

26 [REDACTED].

27 See CAR-D29-0016-0171 and CAR-OTP-00001381.

28 CAR-OTP-2135-4188-R02, para. 15.

29 See CAR-D29-0020-1347, p. 1417.

30 [REDACTED].

31 ICC-01/14-01/18-2212-Conf-AnxC, Summary of Witness P-6036's anticipated testimony, para. 30.

³² See Email from the Prosecution to the Defence on 7 December 2023, at 14:35.

position to express any concern nor to identify the source of a potential threat should his testimony be public. However, this should not be a reason for him to be put in a situation which might endanger his safety. A witness's own perception (or non-perception) of risk is not determinative of whether an objectively justifiable risk exists; instead, the former is one factual circumstance among others that may be taken into account by the Chamber in its case-by-case determination of the latter.³³ It is the Defence's position that specific circumstances surrounding the Witness's expected testimony warrant in-court protective measures to be accorded.

C. Minimal Impact on Publicity of Proceedings

23. Given that the Witness's expected testimony is intimately linked to those of CAR-OTP-P-2475 and CAR-V45-P-0002, who are both protected witnesses,³⁴ and to the actions of [REDACTED] (P-2580), [REDACTED],³⁵ most of his testimony would have to be held in private session to avoid revealing confidential and identifying information. As a result, the requested measures' impact on the publicity of proceedings will be very limited and will not prejudice the Prosecution's ability to fully examine the Witness.

CONCLUSION

24. The Defence therefore submits that, in the balancing act between the publicity of proceedings³⁶ and the protection of the Witness's legitimate interests,³⁷ the objectively justifiable risks to the safety, physical or psychological well-being, or privacy of the Witness and his family members should tilt the scale in favour of granting the requested protective measures.

³³ ICC-01/14-01/18-906-Conf-Red 09-03-2021, para. 32.

³⁴ ICC-01/14-01/18-906-Conf-Red and ICC-01/14-01/18-T-247-CONF-ENG CT, at [9:37:16].

³⁵ [REDACTED].

³⁶ Art. 67(1) of the Statute.

³⁷ Art. 68 of the Statute.

CONFIDENTIALITY

25. The present request is filed on a confidential basis due to the references to confidential and sensitive information about the Witness. A public redacted version will be filed forthwith.

RELIEF SOUGHT

26. In light of the above, the Defence respectfully requests Trial Chamber V to:

GRANT the in-court protective measures sought for witness CAR-D29-P-6036, namely face and voice distortion, as well as the use of a pseudonym.

RESPECTFULLY SUBMITTED ON THIS 18th DAY OF JANUARY 2024³⁸



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³⁸ The Defence is thankful to legal intern Mr. Narek Chakhalyan for his precious assistance in the drafting of this filing.