

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **7 April 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-0954”, 21 March 2022”, ICC-01/14-01/18-1319-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-0954,³ 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, resulting in thin security measures in [REDACTED] where P-0954 currently [REDACTED] and increased risk for his family living in [REDACTED]. These new facts and arguments therefore justify the Chamber's reconsideration.

3. Granting the Requested Measures will ensure that P-0954 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, para. 45.

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 indicates P-0954’s family’s current residence. 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-0954 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-0954 is necessary and justified given the current security 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-0954 and his family as a result of this change.

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.

- a. The security situation in CAR and [REDACTED] is inadequate to protect P-0954 and his immediate family

9. The security situation in CAR has deteriorated since 7 December 2020 when protective measures were first sought for P-0954.⁹ 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 “continue[s] to be shaped by: (i) political tensions, with limited perspectives [*sic*] to date for tangible progress in the republican dialogue; (ii) on-going clashes across large swathes of the country between armed groups and the *Forces armées centrafricaines* (“FACA”) / Bilateral forces; and (iii) a dire socio-economic and humanitarian situation which has further deteriorated”.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, given the necessary deployment of a substantial portion of their limited resources to stabilise the country. Should his testimony be received publicly, the capacity from the CAR authorities to ensure that P-0954 and his family can be adequately protected in already difficult circumstances in [REDACTED], is clearly limited and further reduced relative to when the initial application for protective measures was made well over a year ago.

- b. Requiring P-0954’s testimony without protective measures would result in an injustice

11. P-0954 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-0954 will likely be marked for retaliation should his cooperation and

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. See also ICC-01/14-01/18-1245-Conf, para. 8, where the Chamber finds that “*the security situation in the CAR has further deteriorated since the Initial Decision was rendered*”, deciding upon the Prosecution’s similar argument in ICC-01/14-01/18-1232-Red2, para. 8.

¹¹ *Id.*; also incorporating for reference ICC-01/14-01/18-1232-Red2, para. 8.

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.

B. Protective measures for Witness P-0954 are warranted, as he faces an objective risk of harm

12. *First*, P-0954 provides evidence against YEKATOM. In March 2020, P-0954 [REDACTED].

13. [REDACTED].

14. [REDACTED].

15. *Second*, P-0954's partner and [REDACTED] children [REDACTED] continue to reside in [REDACTED]. It is an area well known to YEKATOM's supporters, former elements, and [REDACTED].

16. As P-0954'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 security [REDACTED], warranting the Chamber's action consistent with article 68(1). Requiring P-0954'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.¹²

C. The Requested Measures are strictly proportionate to the risk and do not unfairly prejudice the Accused

¹² 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").

17. The Requested Measures are necessary and proportionate to mitigate the risks arising from P-0954's prospective testimony. Given that P-0954, [REDACTED], is well-known amongst the Anti-Balaka, 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.

18. 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-0954 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-0954'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.

19. Finally, in respect of the right to publicity,¹³ 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).

¹³ 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

20. 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-0954.

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 7th day of April 2022
At The Hague, The Netherlands