

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No: *ICC-01/14-01/18*  
Date: **31 August 2022**

**TRIAL CHAMBER V**

**Before:** Judge Bertrand 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 AND PATRICE-  
EDOUARD NGAÏSSONA***

**PUBLIC**

**Public Redacted Version of "Defence Response to 'Confidential Redacted Version of "Request for Reconsideration regarding In-Court Protective Measures for Prosecution Witness P-1077", 21 June 2022' (ICC-01/14-01/18-1469-Conf-Red)", 4 July 2022, ICC-01/14-01/18-1496-Conf**

**Source:** Defence of Patrice-Edouard Ngaïssona

**Document to be notified in accordance with regulation 31 of the *Regulations of the******Court to:*****The Office of the Prosecutor**

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## I. Introduction

1. The Defence for Mr Ngaissona (“the Defence”) hereby responds to the Prosecution’s ‘Confidential Redacted Version of “Request for Reconsideration regarding In-Court Protective Measures for Prosecution Witness P-1077”’ of 21 June 2022 (“Request”).<sup>1</sup>
2. The Defence opposes the Request as the Prosecution has failed to demonstrate exceptional circumstances which would warrant reconsideration by Trial Chamber V (“Chamber”) of its assessment of P-1077’s security situation in the “Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses” (“Original Decision”).<sup>2</sup> The Prosecution has also failed to show the existence of an objectively justifiable risk as it concerns Witness P-1077.

## II. Applicable Law

3. Article 67(1) of the Rome Statute (“Statute”) lays out the fundamental right of accused persons to a public hearing. The principle of publicity is further enshrined in regulation 20 of the Regulations of the Court (“RoC”), which provides that “[a]ll hearings shall be held in public, unless otherwise provided in the Statute, Rules, these Regulations or ordered by the Chamber”.
4. Limited exceptions to this principle are provided in article 68(1) and (2) of the Statute which is to be read together with article 64 (2) and (6)(e), as well as rule 87 of the Rules of Procedure and Evidence (“RPE”). Article 68(1) grants power to the Trial Chamber to implement protective measures “to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses”. Protective measures, however, “shall not be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial”.<sup>3</sup> According to the jurisprudence

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<sup>1</sup> ICC-01/14-01/18-1469-Conf-Red (“Request”).

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

<sup>3</sup> Article 68(1) of the Rome Statute.

of the Court, protective measures “should be granted only on an exceptional basis, following a case-by-case assessment of whether they are necessary in light of an objectively justifiable risk and are proportionate to the rights of the accused”.<sup>4</sup>

5. While the Court’s jurisprudence recognises the power of a Chamber to reconsider its own decisions, reconsideration is exceptional and should be granted only in the event that there was a clear error of reasoning, or if it is necessary to prevent an injustice. New facts and arguments arising since the decision was rendered may be relevant to this assessment.<sup>5</sup>

### III. Confidentiality

6. This response is filed as confidential pursuant to regulation 23(1)*bis* of the RoC, as it responds to a confidential document. The Defence will file a public redacted version of the present response as soon as practicable.

### IV. Submissions

7. The Prosecution has failed to present new facts and circumstances which would warrant reconsideration of the Original Decision. The Prosecution argues that “the security situation in the Central African Republic (“CAR”) has further deteriorated” since 7 December 2020, warranting reconsideration of the Original

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<sup>4</sup> *Prosecutor v. Ruto and Sang*, Public redacted version of Decision on 'Prosecution's First Request for In-Court Protective Measures for Trial Witnesses', ICC-01/09-01/11-902-Red2, 3 September 2013, para 13; see also *Prosecutor v. Katanga and Ngudjolo Chui*, Public redacted version of 'Order on protective measures for certain witnesses called by the Prosecutor and the Chamber (Rules 87 and 88 of the Rules of Procedure and Evidence)', ICC-01/04-01/07-1667-Red-t-ENG, 9 December 2009, paras 8-9.

<sup>5</sup> ICC-01/14-01/18-206, para 20; *Prosecutor v. Ongwen*, Decision on Request for Reconsideration of the Order to Disclose Requests for Assistance, ICC-02/04-01/15-468, 15 June 2016, para 4; *Prosecutor v. Ruto and Sang*, Decision on the Sang Defence's Request for Reconsideration of Page and Time Limits, ICC-01/09-01/11-1813, 10 February 2015, para. 19.

Decision.<sup>6</sup> To support its claim, the Prosecution relies on the Registry's 25 May 2022 Eighth Periodic Report on the Political and Security situation in the CAR.<sup>7</sup>

8. The report concludes, however that the political and security context in CAR “continued to be shaped” by [REDACTED].<sup>8</sup> The consistently tense security context in CAR was known to the Chamber at the time it issued the Original Decision. In the Request, the Prosecution also relies on the CAR authorities’ alleged diminished capacity to protect and secure the interests of witnesses in this case.<sup>9</sup> This factor too, was taken into account by the Chamber in the Original Decision. Namely, it considered the Prosecution’s argument of 18 December 2020 that the “absence of strong state structures leave most of its territory insecure and prone to control by various rebel groups”.<sup>10</sup> The Chamber nevertheless rejected protective measures for P-1077.<sup>11</sup> The Prosecution also asserts that “witnesses in CAR continue to be the target of attacks, threats, and interference”.<sup>12</sup> In support of this claim, the Prosecution relies in footnote 11 on its own previous filing, which itself contains no footnote or source and is largely redacted.<sup>13</sup> This argument appears wholly unsubstantiated.
9. Absent new facts and circumstances, there is no basis warranting reconsideration of the Original Decision.
10. Moreover, the Prosecution has not shown that reconsideration of the Original Decision is necessary to prevent an injustice. In support of its claim that P-1077 faces an objective risk of harm arising from the alleged changed circumstances in

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<sup>6</sup> Request, paras 7-10.

<sup>7</sup> Request, para. 8.

<sup>8</sup> Emphasis added. ICC-01/14-01/18-1434-Conf, para. 7, relied on by the Prosecution in the Request, para. 8.

<sup>9</sup> Request, para. 10.

<sup>10</sup> ICC-01/14-01/18-757-Conf-Red, paras 9-11.

<sup>11</sup> ICC-01/14-01/18-906-Conf-Red, para. 41.

<sup>12</sup> Request, para. 9.

<sup>13</sup> Request, para. 9, referring in footnote 11 to its own previous submissions ICC-01/14-01/18-1441-Conf-Red, paras. 13, 15, 17 (which contain no footnotes), as well as the Chamber’s decision taking note of the Prosecution submissions: ICC-01/14-01/18-1460-Conf-Red, para. 5.

CAR, the Prosecution raises several factors which were already considered by the Chamber in its Original Decision. In the Request, the Prosecution argues *inter alia*, that P-1077 was [REDACTED].<sup>14</sup> These factors had already been put forward by the Prosecution in its initial 18 December 2020 request for protective measures and were considered by the Chamber in the Original Decision.<sup>15</sup> In rejecting protective measures for P-1077, the Chamber also considered an alleged incident reported by P-1077. The Chamber noted however that it was unknown if the incident was related to his cooperation with the ICC, and concluded there was an absence of an objectively justifiable risk.<sup>16</sup>

11. The Prosecution puts forward several speculative claims in the Request. For instance, the Prosecution concedes that the alleged risks faced by P-1077 “have not *yet* materialised”.<sup>17</sup> It also argues that testifying without in-court protective measures [REDACTED].<sup>18</sup> These claims are speculative in nature and should be rejected.
12. The Prosecution presents further allegations in paragraphs 7, 15-17 of the Request which are significantly redacted and partly unintelligible to the Defence. The Defence is therefore not in a position to provide submissions on the particular details put forward in this portion of the Request.

## V. Relief sought

13. In light of the above, the Defence respectfully requests the Chamber to **REJECT** the Request.

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<sup>14</sup> Request, para. 12.

<sup>15</sup> ICC-01/14-01/18-757-Conf-Anx-Red, entry 22.

<sup>16</sup> ICC-01/14-01/18-906-Conf-Red, paras 47-48.

<sup>17</sup> Emphasis in original. Request, para. 18.

<sup>18</sup> Request, para. 13.

Respectfully submitted,



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Mr. Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

The Hague, 31 August 2022