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Date: **2 November 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 “Request for Reconsideration regarding In-Court
Protective Measures for Prosecution Witness P-1858”, 2 November 2022**

Source: Office of the Prosecutor

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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-1858,³ and to grant protective measures in the form of 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, P-1858 informed the Prosecution of his professional activities within BANGUI and in the provinces, in areas where Anti-Balaka supporters are still present, as well as of his family's residence in [REDACTED]. These new facts and arguments therefore justify the Chamber's reconsideration, in particular given the poor security situation in the Central African Republic ("CAR").

3. Granting the Requested Measures will ensure that P-1858 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, paras. 41-42, p. 42.

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”, as it includes private information about P-1858 and his family. A public 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-1858 faces and do not unfairly prejudice the Accused.

A. Reconsideration of P-1858’s protective measures is necessary and justified to secure P-1858’s testimony

7. P-1858, who lives in [REDACTED]. In 2022, P-1858 informed the Prosecution that, as part of his work, he travels a few times a year to areas such as [REDACTED]. During these trips, he encounters check-points where his identity documents are sometimes checked.

8. *First*, former Anti-Balaka members are present around the locations of P-1858’s travel. Former Anti-Balaka members integrated into the rebel group Coalition of Patriots for Change (“CPC”)⁸ are actively engaged in violence throughout CAR. Since February 2022, the presence of the Anti-Balaka, faction pro-Touadera, was recorded

⁶ See ICC-01/12-01/18-734, para. 11.

⁷ ICC-01/14-01/18-906-Red2, paras. 20-21.

⁸ ICC-01/14-01/18-825-Conf-Anx (“Annex to Registry Second Periodic Report”), para. 13, indicating that the CPC comprises six former enemy rebel groups including the two Anti-Balaka branches; *see also* RFI, “Centrafrique: de quoi la coalition de groupes armés est-elle le nom?”, 20 December 2020, <https://webcache.googleusercontent.com/search?q=cache:OoGJChEjcNYJ:https://www.rfi.fr/fr/afrique/20201220-centrafrique-de-quoi-la-coalition-de-groupes-arm%25C3%25A9s-est-elle-le-nom&cd=6&hl=fr&ct=clnk&gl=nl> [Last accessed: 02/11/2022].

in BAMBARI,⁹ and are the origin of several attacks killing civilians around BAMBARI.¹⁰ Further, in April 2022, “A group of heavily-armed gang, identified by the local population as Anti-Balaka militia” killed several persons in ZAWA-YALOKÉ, among whom were women and children, and burnt down several houses.¹¹ More recently, in August 2022, the road to KABO, between BOUCA and BATANGAFO has been taken over by CPC elements identified as former Anti-Balaka under the leadership of Andjilo’s brother, who targeted and killed several civilians and FACA members.¹²

9. Testifying publicly will make P-1858 known to all the former Anti-Balaka members and their supporters along the routes that he travels and expose him to a risk of reprisal by Anti-Balaka militia around [REDACTED], and other villages in CAR where the witness needs to conduct his activities. P-1858’s public testimony, particularly as a Prosecution witness would therefore affect: (i) his security on the road in carrying out his activities in or around [REDACTED], where the presence of the former Anti-Balaka, now incorporated in the CPC, has been reported; and (ii) his ability to continue performing activities as [REDACTED].

10. *Second*, P-1858’s family [REDACTED] reside in [REDACTED]. It is an area well known to YEKATOM’s supporters, former elements, and [REDACTED].¹³

11. *Third*, the aforementioned factors are compounded by the nature of P-1858’s expected testimony, including his evidence on, *inter alia*: (i) the Anti-Balaka’s 5 December 2013 attack on BANGUI and YEKATOM’s participation therein; (ii) several

⁹ Corbeaunews, “A Bambari, les miliciens Anti-Balaka faction Touadera, manifestent et réclament leur paiement”, 15 February 2022, <https://corbeaunews-centrafrique.org/a-bambari-les-miliciens-anti-balaka-faction-touadera-manifeste-et-reclament-leur-paiement/> [Last accessed: 02/11/2022].

¹⁰ Corbeaunews, “Centrafrique : nouveau massacre des civils dans le centre, au moins une vingtaine des personnes tuées par les miliciens Anti-Balaka et les soldats FACA”, 9 May 2022, <https://corbeaunews-centrafrique.org/centrafrique-nouveau-massacre-des-civils-dans-le-centre-au-moins-une-vingtaine-des-personnes-tuees-par-les-miliciens-anti-balaka-et-les-soldats-faca/>, [Last accessed: 02/11/2022].

¹¹ HumAngle Media, “Anti-Balaka Militia kill Civilians in Zawa-Yaloke Village, Central African Republic”, 11 April 2022, <https://humanglemedia.com/anti-balaka-militia-kill-civilians-in-zawa-yaloke-village-central-african-republic/> [Last accessed: 02/11/2022].

¹² Ndjoni Sango, “RCA: l’axe Bouca-Batangafo, un couloir de la mort pour les civils », 10 August 2022, <https://ndjonisango.com/2022/08/10/rca-laxe-bouca-batangafo-un-couloir-de-la-mort-pour-les-civils/> [Last accessed: 02/11/2022].

¹³ Single Judge took note of similar circumstances for witness P-0954 in ICC-01/14-01/18-1335-Conf-Exp, para. 9.

Anti-Balaka meetings in 2013 and 2014, some occurring at YEKATOM's base; (iii) the leadership roles of NGAISSONA and YEKATOM within the Anti-Balaka; (iv) the crimes committed by YEKATOM and his elements ("YEKATOM's Group") against the civilian population, including the Muslim population in his area of control and the "son of FACA General LAPO"; and (v) the displacement and security issues faced by the Muslim community due to the actions of YEKATOM and his Group.

12. *Finally*, reconsideration of protective measures for P-1858 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 elevated risk of harm to P-1858 and his family as a result of this change.

13. The security situation in CAR is inadequate to protect P-1858 and his immediate family. The security situation in CAR has deteriorated since 7 December 2020 when protective measures were first sought for P-1858.¹⁴ As confirmed in the Eight Periodic Report of the Registry on the Political and Security situation in the CAR ("Eight Registry Report"), the political and security context in the CAR "continue[s] to be shaped by: (i) political tensions which have remained significant (...); (ii) the volatile security environment, characterized by unabated clashes across several parts of the country between armed groups and the *Forces armées centrafricaines* ("FACA") / Bilateral forces; and (iii) a dire socio-economic and humanitarian situation which is exacerbated by the CAR government's alarming budgetary situation".¹⁵

14. The situation in the CAR is unlikely to improve in the short to medium term.¹⁶ Consequently, domestic authorities have a diminished capacity to protect and secure the interests of witnesses in this case, given the aforementioned "dire socio-economic and humanitarian situation which is exacerbated by the CAR government's alarming

¹⁴ ICC-01/14-01/18-757-Conf-Anx-Red, p. 8, entry 21.

¹⁵ See ICC-01/14-01/18-1434-Conf, para. 7. 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.

¹⁶ *Id.*, para. 8; also incorporating for reference ICC-01/14-01/18-1232-Red2, para. 8.

budgetary situation” and therefore limited means and resources to stabilise the country. Should his testimony be received publicly, the capacity from the CAR authorities to ensure that P-1858 and his family can be adequately protected in [REDACTED] and during his travels in the provinces, is clearly limited and further reduced relative to when the initial application for protective measures was made almost two years ago.

B. Requiring P-1858’s testimony without protective measures would result in an injustice

15. P-1858 faces an *objective* risk of harm arising from the impact of the changed security situation on his ongoing personal circumstances. P-1858 will likely be marked for retaliation should his cooperation and 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.

16. As P-1858’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 for him and his family [REDACTED], warranting the Chamber’s action consistent with article 68(1). Requiring P-1858’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.¹⁷

¹⁷ 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. Further, revealing his identity and insider testimony to the public, thus exposing him to the former Anti-Balaka and collaborators in CAR, will have a negative impact on his personal life [REDACTED].

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

18. The Requested Measures are necessary and proportionate to mitigate the risks arising from P-1858's prospective testimony. Given that P-1858, a former [REDACTED] within the group and who participated in several [REDACTED] meetings at the [REDACTED], and who later became [REDACTED], is well-known amongst the Anti-Balaka, 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.

19. 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-1858 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-1858'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.

20. Finally, in respect of the right to publicity,¹⁸ 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).

¹⁸ 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

21. 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 facial distortion and the use of a pseudonym for P-1858.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

Karim A. A. Khan KC, Prosecutor

Dated this 2nd day of November 2022

At The Hague, The Netherlands