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Date: 22 February 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 *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-2082”, 22 February 2023**

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-2082,³ 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-2082 has very recently, on 31 January 2023, informed the Prosecution of [REDACTED].⁵ This new fact justifies the Chamber's reconsideration, in particular given the poor security situation in the Central African Republic ("CAR").⁶

3. Granting the Requested Measures will ensure that P-2082 is able to give her evidence fully without fear for her own security.

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.⁷ 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. 104-105.

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 Annex A, investigation report summarising the relevant information provided by P-2082 on 31 January 2023.

⁶ See the reconsideration given to in-court protective measures based on new information about the need to travel for work, compounded by security considerations, in ICC-01/14-01/18-1025-Anx3-Red (in relation to P-1577), ICC-01/14-01/18-1025-Anx25-Red (in relation to P-2926), and ICC-01/14-01/18-1697-Conf, para. 6-8 (in relation to P-1858).

⁷ See e.g., ICC-01/05-01/13-1481-Red-Corr, para. 18.

5. The Prosecution submits this request on an urgent basis, as P-2082 is scheduled to testify in the current block of witnesses, from 1 March 2023.

II. CONFIDENTIALITY

6. 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-2082. A public redacted version will be filed simultaneously.

III. SUBMISSIONS

7. Reconsideration of the Requested Measures is necessary to secure the witness’s testimony and to prevent an injustice.⁸ 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.⁹ The Requested Measures are strictly proportionate to the risk P-2082 faces and do not unfairly prejudice the Accused.

A. Reconsideration of P-2082’s protective measures is necessary and justified to secure her testimony

8. P-2082 lives in [REDACTED]¹⁰ and works for [REDACTED]. [REDACTED]. She is therefore required to travel to the provinces of CAR to perform activities in collaboration with [REDACTED].

9. While P-2082 does not yet have details for her upcoming travel, it can reasonably be expected that she will have to travel to or through [REDACTED] in the near future. In the past, she has often travelled [REDACTED] to destinations in [REDACTED], or has had to travel through [REDACTED] to reach such destinations as [REDACTED]. Testifying publicly will make P-2082 known to all the former Anti-

⁸ See ICC-01/12-01/18-734, para. 11.

⁹ ICC-01/14-01/18-906-Red2, para. 20-21, 105.

¹⁰ [REDACTED].

Balaka members and their supporters along the routes that she travels, and particularly expose her to a risk of reprisal by Anti-Balaka militia in [REDACTED].

10. This risk is compounded by the nature of P-2082's expected testimony, including her evidence on YEKATOM and his Group, and [REDACTED], including her own participation in [REDACTED].

11. Additionally, reconsideration of protective measures for P-2082 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-2082 as a result of this change.

12. The security situation in CAR has deteriorated since 7 December 2020 when protective measures were first sought for P-2082.¹¹ As confirmed in the Tenth Periodic Report of the Registry on the Political and Security situation in the CAR ("Tenth Registry Report"), [REDACTED].¹²

13. The situation in the CAR is unlikely to improve in the short to medium term.¹³ Consequently, domestic authorities have a diminished capacity to protect and secure the interests of witnesses in this case, given the aforementioned [REDACTED] and therefore limited means and resources to stabilise the country. Should her testimony be received publicly, the capacity from the CAR authorities to ensure that P-2082 can be adequately protected in [REDACTED] and during her travels in the provinces, is clearly limited and further reduced relative to when the initial application for protective measures was made over two years ago.

B. Requiring P-2082's testimony without protective measures would result in an injustice

¹¹ ICC-01/14-01/18-757-Conf-Anx-Red, p. 12, entry 65.

¹² See ICC-01/14-01/18-1676-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.

¹³ See ICC-01/14-01/18-1676-Conf, para. 8.

14. P-2082 faces an *objective* risk of harm arising from the impact of the changed security situation on her ongoing personal and professional circumstances. P-2082 will likely be marked for retaliation should her cooperation and testimony as a Prosecution witness become public. Absent reconsideration, requiring her testimony in these circumstances would impose a disproportionate negative consequence on her due to her cooperation in the proceedings.

15. As P-2082'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 her [REDACTED], warranting the Chamber's action consistent with article 68(1). Requiring P-2082'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.¹⁴

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

16. The Requested Measures are necessary and proportionate to mitigate the risks arising from P-2082's prospective testimony. Given that P-2082, [REDACTED], is known to the Anti-Balaka, face distortion and the use of a pseudonym, are the minimum necessary to ensure the adequate and proportional protection of her safety and security.

17. 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-2082 is able to provide unfettered evidence. *Second*, they do not impede the Accused's opportunity

¹⁴ 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").

and ability to fully examine the witness and to test her evidence. *Third*, much of P-2082'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.

18. Finally, in respect of the right to publicity,¹⁵ 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).

IV. RELIEF SOUGHT

19. 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-2082.



Karim A. A. Khan KC, Prosecutor

Dated this 22nd day of February 2023
At The Hague, The Netherlands

¹⁵ 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).