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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 “Prosecution’s submission pursuant to regulation 35 to vary the time limit and request for in-court protective measures for Witness P-1576”, ICC-01/14-01/18-1946-Conf, 26 June 2023

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I. INTRODUCTION

1. Pursuant to regulation 35(2) of the Regulations of the Court,¹ articles 64(2) and 68(1), and rule 87 of the Rules of Procedure and Evidence,² the Prosecution seeks a variation of the time limit to submit this request for in-court protective measures for Witness P-1576 in the form of facial and voice distortion and the use of a pseudonym ("Requested Measures").

2. The Requested Measures are substantiated by good cause, and are necessary to protect P-1576. As P-1576 was proposed to be called pursuant to Rule 68(2)(b), there was no necessity to apply for the Requested Measures within the time limit set. Moreover, the disposition of the 5 June 2023 Second Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b) of the Rules (the "Second Rule 68(2)(b) Decision")³ requiring the witness's appearance pursuant to rule 68(3), and the attendant logistics of planning his testimony comprise circumstances outside the Prosecution's control.

3. P-1576's public testimony [REDACTED] having experienced first-hand the events in the CAR during 2013 and 2014 puts him at risk, as well as the [REDACTED] the Central African Republic ("CAR") [REDACTED], engaging directly with multiple actors in the field. His association with the Prosecution in this case would be particularly prejudicial to his personal safety, as well as the safety of his known associates in CAR.

4. Granting the Requested Measures will ensure that P-1576 is able to give evidence without fear for his own security, and without jeopardising [REDACTED].

5. The Requested Measures are the least restrictive means to appropriately balance the Accused's right to a fair and public hearing under articles 64(2) and 67(1),

¹ ("RoC").

² ("Rules").

³ ICC-01/14-01/18-1907-Conf, paras. 75-84.

against the Court's mandate to protect witnesses under article 68 and rule 87, and to prevent a disproportionate risk of harm on account of those who assist it.⁴ The measures sought do not unfairly prejudice the rights of either Accused, as they have been provided P-1576's name and identifying information. He will remain anonymous to the public only.

II. CONFIDENTIALITY

6. This request is filed as "Confidential" pursuant to Regulation 23(1) of the RoC, as it contains material that is not available to the public. A public redacted version of this request will be filed as soon as possible.

III. SUBMISSIONS

A. A variation of the time limit for the Request is necessary and justified

7. Under Regulation 35(2) of the RoC, a Chamber may extend a time limit after it has elapsed if the participant seeking the extension can demonstrate that they were unable to file the application within the time limit for reasons outside their control.

8. These criteria are met. As noted, the Requested Measures are predicated on circumstances outside the Prosecution's control, which arose after the 7 December 2020 time limit.⁵ *First*, the Chamber's Second Rule 68(2)(b) Decision issued on 5 June 2023 required that P-1576 appear to provide his testimony pursuant to rule 68(3) of the Rules and warrants protection of P-1576's identity in accordance with the Prosecution's statutory obligations. *Second*, the logistics involved in organising and scheduling the Witness's testimony have not permitted the filing of the present

⁴ 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").

⁵ Pursuant to Trial Chamber V's ("Chamber") 26 August 2020 Initial Direction on the Conduct of Proceedings, the applications for in-court protective measures were due on 7 December 2020, see ICC-01/14-01/18-631, paras. 68-70.

request sooner,⁶ as the anticipated dates of P-1576's testimony are still not definitive. With that said, it now appears that his testimony could take place as early as Block 23.

B. Protective measures for P-1576 are necessary and justified

a. The Requested Measures are necessary to protect P-1576

9. The Prosecution refers to paragraphs 75 to 77 of the Second Rule 68(2)(b) Decision with regard to P-1576's [REDACTED].⁷

10. P-1576 [REDACTED].

(i) Degrading security situation in the CAR

11. In the past few weeks, the security situation in the CAR has seriously degraded, rendering even more fragile an already unstable political and security environment.

12. [REDACTED], clashes between armed groups part of the *Coalition des Patriotes pour le Changement* ("CPC") and the *Forces Armées Centrafricaines* ("FACA") and Russian and Rwandese bilateral forces, are ongoing. Clashes have been reported across the country.⁸ With local elections taking place in July 2023 (and in October 2023),⁹ [REDACTED],¹⁰ political tensions remain significant.¹¹

13. In addition, the conflict in Sudan, which started on 15 April 2023, has widespread regional impact including in CAR.¹² International observers fear "that the CAR may face 'another major crisis 10 years after the coup'."¹³ The CAR is "at its 'maximal alert level at its borders' with Chad and Sudan".¹⁴ [REDACTED].¹⁵

⁶ Initial Directions on the Conduct of the Proceedings, ICC-01/14-01/18-631, para. 69.

⁷ See Second Rule 68(2)(b) Decision, ICC-01/14-01/18-1907-Conf and P-1576's statement, [REDACTED].

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

[REDACTED].¹⁶ [REDACTED] at the Chadian and Cameroonian borders have also had potentially destabilising effects.¹⁷

14. Further, [REDACTED].¹⁸ [REDACTED].¹⁹ [REDACTED] continues to be reported, as shown by the arrests of internationals [REDACTED].²⁰ Among other security threats, kidnapping of national and international civilians continue to be reported.²¹ In BANGUI, the international community and civilians face ongoing criminal incidents, “likely due to the dire socio-economic situation”.²²

15. In addition, [REDACTED], are under increased threat in the CAR.²³

16. The extremely volatile security situation in CAR is not expected to improve in the short to medium term,²⁴ while [REDACTED].²⁵

17. As a result, and as shown below, the Requested Measures are necessary to mitigate the risks arising from P-1576’s anticipated trial testimony as a Prosecution witness.

(ii) P-1576’s [REDACTED] the CAR

18. P-1576 is a [REDACTED]. He is [REDACTED] planned in the short and medium term, [REDACTED].

19. Based on his statement, P-1576 travelled to the CAR [REDACTED]. He travelled throughout the country in collaboration with various individuals including [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ [REDACTED].

²² [REDACTED].

²³ [REDACTED].

²⁴ [REDACTED].

²⁵ [REDACTED].

20. The parts of his evidence indicated as of particular interest to the Chamber²⁶ involve the conduct of the Anti-Balaka, their numbers, as well as specific Anti-Balaka figures, including the Accused [REDACTED]. Notably, [REDACTED],²⁷ [REDACTED].

21. *First*, it is highly likely that P-1576 will return to the CAR [REDACTED]. P-1576 has stressed that BANGUI is a small place, where every presence is known, in particular that of [REDACTED]. Considering the heightened security risks to [REDACTED], any perceived association of P-1576 as a result of his cooperation with the Prosecution would escalate his security risk. This is true not only for BANGUI, but other places in the CAR [REDACTED].

22. *Second*, at the end of 2014, P-1576 was [REDACTED] in BANGUI. One of the [REDACTED], who, according to the witness had previously been associated with an armed group, recognized him; later on, the same individual threatened [REDACTED]. [REDACTED] left CAR for several years as a result, but has since returned. In addition to the risk of facing retaliation personally, [REDACTED], public disclosure of P-1576's identity, witness status and testimony may engender retaliatory actions against [REDACTED].

23. Thus, given his first-hand experiences in the CAR, in particular as regards Anti-Balaka exactions, [REDACTED], should his testimony as a Prosecution witness in the trial be known and, even more so, if the contents of his testimony are entirely and permanently publicly linked to him.

24. *Third*, [REDACTED], P-1576 is unprotected when [REDACTED]. Nevertheless, [REDACTED] requires him to meet, speak, and engage with, *inter alia*, members of the belligerent groups. Testifying openly would clearly jeopardise his ability to do this [REDACTED]. Further, [REDACTED]; the situation is even worse than [REDACTED],

²⁶ Second Rule 68(2)(b) Decision, ICC-01/14-01/18-1907-Conf, para. 77.

²⁷ [REDACTED], para. 30; Statement, [REDACTED], at 0287, para. 41.

P-1576 may not be able to access law enforcement to protect him, should a threat to his safety arise because of his perceived association – by elements of the [REDACTED] – with the ICC.

25. The above-mentioned concrete and objective risks are heightened in the current security and political situation where [REDACTED] is predominant.

(iii) Requested Measures

26. Granting the use of a pseudonym alone for P-1576 would not suffice to protect his safety and interests, or those of third parties. Rather, face and voice distortion is also required given that unprotected images of witnesses during their testimony are easily accessible. The dissemination of the video image of P-1576 would increase the risk that he could be identified as collaborating with the Court, which could be highly damageable given the current situation in the CAR, specifically considering (i) the [REDACTED], the results of which are still uncertain, and (ii) P-1576's expected testimony on the implication of YEKATOM, NGAISSONA [REDACTED] with the Anti-Balaka at the time relevant to the charges. Further, the security incident of 2014 which resulted in [REDACTED] leaving the country for years, could resurface, if P-1576's image were to circulate in the CAR and affiliates of armed groups who know [REDACTED] recognized him, or his voice, [REDACTED].

27. This requires the use of a pseudonym in combination with face and voice distortion.

b. Absence of prejudice to the Defence

28. The impact of the Requested Measures on the publicity of the proceedings is mitigated and justified in the circumstances of this case.

29. *First*, the Requested Measures are needed to ensure that P-1576 is able to provide unfettered evidence, and in so doing, assist the Court in establishing the truth.

The identity of P-1576 is known to both Accused and their Defence teams since 2019. The Accused will have the same opportunity and ability to question him, as if his identity were publicly known. The Defence teams are in no way prevented from conducting their own enquiries to test the prospective evidence.

30. *Second*, although the public will not know the identity of P-1576, the contents of his testimony will be given in public session. Under the Requested Measures, closed or private session will be used only for limited portions of testimony to protect the identity of P-1576, and to avoid that the public transcript, which will be permanently published online, be directly and easily linked to his identity and to his role within these proceedings. The only limitation to publicity is related to P-1576's *identification* as a Prosecution witness at the ICC *by the public*, in particular by threat actors in the CAR.

31. Accordingly, the Requested Measures are minimally necessary to ensure the adequate and proportional protection of the witness, as well as his safety and security, taking the requirements of [REDACTED] into account. The Requested Measures are very limited in scope, directed to the public, and not prejudicial to the Defence's right to a fair trial. There exists an objectively justifiable risk to the witness's legitimate interests protected under Article 68 of the Statute, which outweighs the accused's right to the publicity of the proceedings.

32. *Finally*, and importantly, requiring [REDACTED] who take [REDACTED] personal risks, to testify publicly as Prosecution witnesses, when they are objectively not in a position to do so, is certain to jeopardize [REDACTED] and, by extension, jeopardize the Court's capacity to secure their cooperation as witnesses. Should such reasonable requests be rejected, [REDACTED] will not continue to provide important evidence [REDACTED] to the Court – the public interest of which should also be balanced with the Accused's right to public proceedings.

IV. RELIEF SOUGHT

33. For the above reasons, the Prosecution seeks the Chamber's leave to extend the time limit to submit the Requested Measures and requests the in-court protective measures of pseudonym and face and voice distortion for P-1576.

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 13th day of July, 2023
At The Hague, The Netherlands