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**International
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Court**

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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
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-ÉDOUARD
NGAISSONA***

Public

Public Redacted Version of the “Request of the Common Legal Representative of the Former Child Soldiers for in-court protective measures for victims a/20722/21 and a/65991/19” (No. ICC-01/14-01/18-2031-Conf, dated 18 August 2023)

Source: Office of Public Counsel for Victims (CLRV1)

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

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I. INTRODUCTION

1. The Common Legal Representative of the Former Child Soldiers (the “Legal Representative” or the “CLRV1”) respectfully requests that Trial Chamber V (the “Chamber”) grant in-court protective measures in form of face and voice distortion and the use of a pseudonym for the two victims former child soldiers authorised to testify as crime-base witnesses, namely a/20722/21 and a/65991/19, pursuant to articles 64(2) and 68(1)-(2) of the Rome Statute (the “Statute”) and rule 87 of the Rules of Procedure and Evidence (the “Rules”).

2. Victims a/20722/21 and a/65991/19 are expected to provide first-hand evidence about their own and other children’s experience as Anti-Balaka child soldiers under YEKATOM’s command, in particular, on the different roles they and other children played in the Anti-Balaka ranks, the various forms of physical and mental violence they and other children were subjected to, as well as on the resulting specific forms of harm they and other children suffered.

3. It is submitted that the requested in-court protective measures are necessary to protect the safety, security, well-being, dignity and privacy of the concerned victims, and furthermore to prevent, or at least mitigate, the risk of their re-traumatisation as well as of retaliation and stigmatization once they are back in their respective communities. The requested protective measures are the least intrusive measures available when compared, for instance, to recourse to closed session testimony. Finally, they are not prejudicial to the rights of the Accused, given that both Accused have been provided with the identity of the concerned victims and will be able to see them and have them cross-examined on their behalf.

4. Finally, the Legal Representative anticipates that, given the particularly traumatising experience the concerned victims suffered from in the Anti-Balaka ranks and also given that they still continue facing emotional and psychological issues, additional special measures under rule 88 of the Rules may be needed following the

respective pre-testimony assessment of the victims by the Victims and Witnesses Section (the “VWS”).

II. PROCEDURAL BACKGROUND

5. On 26 August 2020, the Presiding Judge of the Chamber issued the “Initial Directions on the Conduct of the Proceedings” providing for the possibility for the Common Legal Representatives of the Victims (the “CLRV”) to present evidence *“should leave to do so be granted”*.¹

6. On 29 May 2023, the Chamber issued the “Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)” (the “Further Directions”), *inter alia*, (i) ordering the CLRV to file any request for leave to present evidence, including, any witnesses they request leave to call with a summary of their anticipated testimony, no later than 7 July 2023; and (ii) directing the CLRV to disclose any evidence they intend to rely on during their presentation of evidence by 18 August 2023.²

7. On 1 June 2023, the CLRV1 and the Common Legal Representatives of the Victims of Other Crimes (the “CLRV2”) requested an extension of the time limit to file their respective requests for leave to present evidence and associated material, as well as of the deadline for disclosure of evidence.³

8. On 9 June 2023, the Chamber issued the “Decision on the CLRV Joint Request for Extension of Time to File a Request for Leave to Present Evidence”, rejecting the

¹ See the “Initial Directions on the Conduct of the Proceedings” (Trial Chamber V, Presiding Judge), [No. ICC-01/14-01/18-631](#), 26 August 2020, para. 16.

² See the “Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)” (Trial Chamber V), [No. ICC-01/14-01/18-1892](#), 29 May 2023, paras. 11-12.

³ See the “Joint Request for Extension of Time to File a Request for Leave to Present Evidence”, [No. ICC-01/14-01/18-1905-Conf](#), 1 June 2023. A public redacted version was filed on 6 June 2023 as [No. ICC-01/14-01/18-1905-Red](#).

CLRV's request for extension of time and maintaining the original deadlines, as set out in its Further Directions.⁴

9. On 7 July 2023, the CLRV submitted the "Request of the Common Legal Representative of the Former Child Soldiers for leave to present evidence",⁵ and the "Requête des Représentants Légaux Communs des Victimes des autres crimes aux fins de la Présentation des Preuves".⁶

10. On 24 July 2023, the Yekatom Defence submitted its consolidated response to said requests.⁷

11. On 3 August 2023, the Chamber issued its "Decision on the Common Legal Representatives of Victims Requests for Leave to Present Evidence and Further Order on the Remainder of the Prosecution Presentation of Evidence", whereby it (i) authorised victims a/20722/21, a/65991/19 and a/65010/19 to present evidence, and (ii) ordered to file a lesser redacted version of Annex A, ICC-01/14-01/18-1969-Conf-

⁴ See the "Decision on the CLRV Joint Request for Extension of Time to File a Request for Leave to Present Evidence" (Trial Chamber V, Single Judge), [No. ICC-01/14-01/18-1913](#), 9 June 2023.

⁵ See the "Request of the Common Legal Representative of the Former Child Soldiers for leave to present evidence", [No. ICC-01/14-01/18-1969-Conf](#), 7 July 2023 and the "Corrigendum to the "Request of the Common Legal Representative of the Former Child Soldiers for leave to present evidence", [No. ICC-01/14-01/18-1969-Conf-Corr](#), 11 July 2023; with a Corrigendum of Confidential Redacted Annex A (ICC-01/14-01/18-1969-Conf-AnxA-Red), [No. ICC-01/14-01/18-1969-Conf-AnxA-Red-Corr](#). Public redacted versions were filed on 7 August 2023 as [No. ICC-01/14-01/18-1969-Corr-Red](#) and [No. ICC-01/14-01/18-1969-AnxA-Red-Corr-Red](#).

⁶ See the "Requête des Représentants Légaux Communs des Victimes des autres crimes aux fins de la Présentation des Preuves", [No. ICC-01/14-01/18-1972-Conf-Red](#), 7 July 2023. A public redacted version was filed on 11 August 2023 as [No. ICC-01/14-01/18-1972-Red](#).

⁷ See the "Réponse consolidée à la version corrigée de la « Request of the Common Legal Representative of the Former Child Soldiers for leave to present evidence » et à la version confidentielle expurgée de la « Requête des Représentants Légaux Communs des Victimes des autres crimes aux fins de la Présentation des Preuves »", [No. ICC-01/14-01/18-2004-Conf](#), 24 July 2023. See also the "Rectificatif de la 'Réponse consolidée à la version corrigée de la « Request of the Common Legal Representative of the Former Child Soldiers for leave to present evidence » (7 juillet 2023, ICC-01/14-01/18-1969-Conf-Corr) et à la version confidentielle expurgée de la « Requête des Représentants Légaux Communs des Victimes des autres crimes aux fins de la Présentation des Preuves » (7 juillet, ICC- 01/14-01/18-1972-Conf-Red)", 24 juillet 2023, ICC-01/14-01/18-1-2004-Conf", [No. ICC-01/14-01/18-2004-Conf-Corr](#), 25 July 2023. A public redacted version was filed on 11 August 2023 as [No. ICC-01/14-01/18-2004-Corr-Red](#).

AnxA-Red-Corr, and of ICC-01/14-01/18-1972-Conf-Red, in relation to the victims authorised to testify.⁸

12. On 9 August 2023, following a Yekatom Defence's request,⁹ to which the Legal Representative responded,¹⁰ the Chamber decided that the first victim to be called to testify by the CLRV shall appear no earlier than 18 September 2023, and instructed the CLRV to file (i) a lesser redacted version of Annex A, ICC-01/14-01/18-1969-Conf-AnxA-Red-Corr, and of ICC-01/14-01/18-1972-Conf-Red, in relation to the victims authorised to testify, by 10 August 2023, and (ii) any request for in-court protective measures, by 18 August 2023.¹¹

13. On 10 August 2023, the CLRV filed a lesser redacted version of Annex A, ICC-01/14-01/18-1969-Conf-AnxA-Red-Corr,¹² and a lesser redacted version of ICC-01/14-01/18-1972-Conf-Red.¹³

III. SUBMISSIONS

A. Applicable Law

14. A Trial Chamber shall ensure that the trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses.¹⁴ A Trial Chamber shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and

⁸ See the "Decision on the Common Legal Representatives of Victims Requests for Leave to Present Evidence and Further Order on the Remainder of the Prosecution Presentation of Evidence", [No. ICC-01/14-01/18-2016-Conf](#), 3 August 2023.

⁹ See the Email correspondence from the Yekatom Defence dated 4 August 2023 at 12:42, and 8 August 2023 at 10:21.

¹⁰ See the Email correspondence from the CLRV1 dated 4 August 2023 at 14:37, and 8 August 2023 at 16:43.

¹¹ See the Email correspondence from the Chamber dated 9 August 2023 at 10:35.

¹² See the "Lesser Redacted Version of Corrigendum of Annex A (ICC-01/14-01/18-1969-Conf-AnxA-Red-Corr)", [No. ICC-01/14-01/18-1969-Conf-AnxA-Red-Corr](#), 10 August 2023.

¹³ See the "Version moins expurgée de la "Requête des Représentants légaux communs des victimes des autres crimes aux fins de la présentation des preuves", ICC-0114-0118-1972-Conf-Red, 7 juillet 2023", [No. ICC-01/14-01/18-1972-Conf-Red2](#), 10 August 2023.

¹⁴ See article 64(2) of the Statute.

privacy of victims and witnesses, and in doing so, it shall have regard to all relevant factors, including age, health and the nature of the crime.¹⁵ Article 68(2) of the Statute expressly provides the possibility for a Chamber to derogate from the principle of public hearings by ordering measures in order to protect victims and witnesses.¹⁶ Rule 87 of the Rules confers upon a Chamber the possibility to order in-court protective measures in form of face and voice distortion and the use of a pseudonym¹⁷ for the duration of the trial, while rule 88 of the Rules empowers a Chamber to order “*special measures*” in order to “*facilitate the testimony of a traumatized victim or witness, a child or an elderly person or a victim of sexual violence*”,¹⁸ prevent “*violations of the privacy of a witness or victim*”, and “*avoid any harassment or intimidation*”.¹⁹

15. In determining whether in-court protective measures are warranted, a Chamber must ensure that any such measures are based on an “*objectively justifiable risk*” and are proportionate to the rights of the accused.²⁰ While the concept of “risk” necessarily involves a certain level of speculation and prediction, the available information must still indicate the existence of circumstances for which in-court testimony, in the absence of adequate protective measures under rule 87 of the Rules, creates or unduly increases an impermissible danger to any of the legitimate interests of witnesses protected under article 68 of the Statute.²¹ The need for protective measures must be

¹⁵ See article 68(1) of the Statute.

¹⁶ See the “Decision on the Prosecution Request for In-Court Protective Measures” (Trial Chamber III), [No. ICC-01/09-01/20-276-Red](#), 3 February 2022, para. 11; the “Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses” (Trial Chamber V), [No. ICC-01/14-01/18-906-Red2](#), 9 March 2021, para. 14; and the “Decision on the ‘Prosecution’s application for in-court protective and special measures’” (Trial Chamber IX), [No. ICC-02/04-01/15-612-Red](#), 29 November 2016, para. 6.

¹⁷ See rule 87(3)(c)-(d) of the Rules.

¹⁸ See rule 88(1) of the Rules.

¹⁹ See rule 88(5) of the Rules.

²⁰ See the “Decision on the ‘Prosecution’s Application for In-Court Protective and Special Measures’”, *supra* note 16, para. 8. See also the “Decision on ‘Prosecution’s First Request for In-Court Protective Measures for Trial Witnesses’” (Trial Chamber V(A)), [No. ICC-01/09-01/11-902-Red2](#), 3 September 2013, para. 13; the “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)” (Trial Chamber II), [No. ICC-01/04-01/07-1667-Red-tENG](#), 9 December 2009, paras. 8-9.

²¹ See the “Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses”, *supra* note 16, para. 17; and the “Decision on the ‘Prosecution’s application for in-court protective and special measures’”, *supra* note 16, para. 8.

assessed on a case-by-case basis, considering the specific circumstances of the witness.²²

16. Different chambers of the Court, including this Chamber, have consistently granted in-court protective measures in form of face and voice distortion and the use of a pseudonym to witnesses who testified on their experience as former child soldiers on account of the fact that the witnesses were particularly vulnerable,²³ and also faced the concrete risk of stigmatisation and retaliation.²⁴

17. Chambers of the Court consistently found that (i) *"the Defence's right to have evidence disclosed – essential as this may be – cannot be considered to be absolute. Where the protection of victims and witnesses is at stake, the Chamber must seek a solution which strikes a fair balance between the equally legitimate rights of the accused, on the one hand, and the victims and witnesses on the other"*;²⁵ (ii) *"putting in place arrangements to enable [witnesses'] voices and faces to be distorted does not jeopardise the interests of the accused persons any more than it is prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial"*;²⁶ (iii) *"[protective measures in form of face and voice distortion and the use of a pseudonym] would entail minimal restrictions which do not affect the rights of the Defence in any substantive way"*;²⁷ and (iv) *"these protective measures are necessary to ensure adequate protection and do not cause undue prejudice to the Defence or undermine the fairness of the trial"*.²⁸

²² See the "Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses", *supra* note 16, para. 18; and the "Decision on the 'Prosecution's application for in-court protective and special measures'", *supra* note 16, para. 9.

²³ See the "Decision on the 'Prosecution's application for in-court protective and special measures'", *supra* note 16, paras. 33-47.

²⁴ See the "Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses", *supra* note 16, paras. 63-67.

²⁵ See the "Public redacted version of the Decision on the Protection of Prosecution Witnesses 267 and 353 of 20 May 2009" (Trial Chamber II), [No. ICC-01/04-01/07-1179-tENG](#), 28 May 2009, para. 31.

²⁶ See the "Decision on the Prosecutor's Application for Protective Measures Pursuant to Article 54(3)(f) of the Statute and Rule 81(4) of the Rules" (Trial Chamber II), [No. ICC-01/04-01/07-989-tENG](#), 25 March 2009, para. 7.

²⁷ See the "Decision Granting Protective Measures for Witness 323 during In-Court Testimony" (Trial Chamber II), [No. ICC-01/04-01/07-1795-Red-tENG](#), 27 January 2010, para. 13.

²⁸ See the "Decision on 'Prosecutor's First Request for In-Court Protective Measures for Trial Witnesses'", *supra* note 20, para. 27.

18. The Court's said practice is fully consistent with domestic laws and the practice of international courts and tribunals.²⁹

19. In particular, as pointed out by the International Criminal Tribunal for the former Yugoslavia, "*protective measures sought which allow a witness's testimony to take place in open session, but with methods designed to conceal his identity from the public (such as the use of pseudonym, face and voice distortion), are considered less of an infringement on the public nature of the proceedings*",³⁰ as opposed to closed session, which has been deemed as more restrictive and "*extraordinary*".³¹ In any instance, where any kind of protective measures are sought, a "*Trial Chamber must consider whether it is appropriate that such measures be granted on the basis of whether the witness's fears are legitimate and well founded and the right of the accused to a fair and public trial*".³²

B. Submissions regarding victims a/20722/21 and a/65991/19

1) The requested in-court protective measures are warranted

20. The requested in-court protective measures are warranted to ensure the security, safety, well-being, privacy and dignity of the concerned victims. They are also

²⁹ See SCSL, *The Prosecutor v. Sesay et al.*, Case No. SCSL-04-15-T, [Decision on the Prosecution Motion for Modification of Protective Measures for Witnesses](#) (Trial Chamber), 5 July 2004, para. 32. See also ICTY, *The Prosecutor v. Tadić*, Case No. IT-94-1-T, [Decision on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses](#) (Trial Chamber), 10 August 1995, paras. 55 and 47. In particular, the ICTY Trial Chamber found that "*the interest in the ability of the defendant to establish facts must be weighed against the interest in the anonymity of the witness. The balancing of these interests is inherent in the notion of a 'fair trial'. A fair trial means not only fair treatment to the defendant but also to the prosecution and to the witnesses*". See also, ECtHR, *B. and P. v. UK*, Applications Nos. 36337/97 and 35974/97, [Judgment](#), 24 April 2001, para. 36. In particular, ECtHR emphasised that "*it is established in the Court's case-law that, even in a criminal-law context where there is a high expectation of publicity, it may on occasion be necessary under Article 6 to limit the open and public nature of proceedings in order, for example, to protect the safety or privacy of witnesses*". The ECtHR specifically underscored on numerous occasions the importance of witnesses' and victims' protection and stressed in particular that "*principles of fair trial also require that in appropriate cases the interests of the defence are balanced against those of witnesses or victims called upon to testify*". See ECtHR, *Doorson v. The Netherlands*, Application No. 20524/92, [Judgment](#), 26 March 1996, para. 70. See also ECtHR, *R.R. and others v. Hungary*, Application No. 19400/11, [Judgment](#), 4 December 2012, para. 32; ECtHR, *Ahuregeze v. Sweden*, Application No. 37075/09, [Judgment](#), 27 October 2011, para. 121.

³⁰ See ICTY, *The Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, [Decision on Prosecution Motion for Trial Related Protective Measures for Witnesses \(Bosnia\)](#) (Trial Chamber), 30 July 2002, para. 7.

³¹ *Idem*, para. 6.

³² *Idem*, para. 7.

needed to ensure that the victims are able to provide unfettered evidence and, thus, meaningfully assist the Chamber in its truth-seeking function. The reasons why in-court protective measures for victims a/20722/21 and a/65991/19 are needed are provided below under the following three main grounds.

a. The concerned victims are vulnerable and are expected to provide sensitive evidence

21. [REDACTED].³³ Even for those that survive, the repercussions of child soldiering are devastating: serious injuries, psychological troubles, loss of schooling, social and economic integration difficulties, drug consumption, and sexual violence, just to name a few.³⁴ [REDACTED]³⁵ [REDACTED].³⁶ [REDACTED].³⁷ [REDACTED].³⁸ [REDACTED].³⁹

22. Against this background, the Chamber has already found that victimisation at a young age is a factor of vulnerability to be taken into account even in case of adult witnesses.⁴⁰ According to the practice of the Court in other cases, witnesses who are still young, and/or who were of a young age at the time of the events, are considered to be “vulnerable” simply because of their age.⁴¹ Former child soldiers, in particular, constitute a particularly vulnerable group.⁴² Once conscripted or enrolled in an armed group, children typically witness extreme violence and are directly subjected to various forms of violence and threats. Risks to the children’s life and well-being,

³³ [REDACTED]

³⁴ See P-2927, the “Ceux qui combattent beaucoup sans peur, qui tuent sans pitié. Effets du recrutement d’enfants de moins de 15 ans par les Anti-Balaka (2013-2014)”, CAR-OTP-2122-9155, pp. 35 and 50.

³⁵ [REDACTED]

³⁶ [REDACTED]

³⁷ [REDACTED]

³⁸ [REDACTED]

³⁹ [REDACTED]

⁴⁰ See the “Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses”, *supra* note 16, para. 63.

⁴¹ See the “Decision on the ‘Prosecution’s application for in-court protective and special measures’” *supra* note 16, paras. 16 and 28. See also, *e.g.*, the transcript of the hearing held on 20 May 2010, [No. ICC-01/04-01/07-T-144-Red2-ENG WT](#), p. 3, line 13 to p. 6, line 11.

⁴² See *e.g.* the “Sentencing Judgment” (Trial Chamber VI), [No. ICC-01/04-02/06-2442](#), 7 November 2019, paras. 193 and 195.

including being wounded and killed when participating in hostilities, have an effect of increasing the vulnerability of the children concerned,⁴³ often resulting in long-term traumatization and other consequences, including PTSD, drug addiction, depression and suicidality, dissociation and derealization, cognitive and educational impairment, and social stigma.⁴⁴ The vulnerability of children entails a need for an enhanced protection, going beyond what applies to the general population.⁴⁵

23. Victims a/20722/21 and a/65991/19 are former child soldiers. During their childhood, they were subjected to extremely traumatising experiences, which resulted in serious and long-lasting harm that the victims are still suffering. Although the testifying victims are now young adults, they are still to be considered highly vulnerable witnesses. Victim a/65991/19, in particular, after his leaving the Anti-Balaka ranks, suffered severe depression and other psychological disorders, including increased aggression to perceived threats. He still suffers from intrusive thoughts and other symptoms indicative of a depressive status. Likewise, victim a/20722/21 is also still facing emotional and psychological troubles due to his experience in the Anti-Balaka ranks.

24. Furthermore, victims a/20722/21 and a/65991/19 are expected to provide evidence on sensitive matters. In particular, victim a/20722/21 is expected to testify on his experience as [REDACTED] within the Anti-Balaka group under YEKATOM's command, tasked, [REDACTED]. He was [REDACTED] and eye-witnessed different forms of violence other children were subjected to. Victim a/65991/19 is expected to testify on violent acts [REDACTED]. He also eye-witnessed different forms of violence the other children were subjected to.

25. Given the extremely sensitive nature of the expected testimonies, it is legitimate to expect that, if the concerned victims were testifying without their identity being

⁴³ *Idem*, para. 179.

⁴⁴ See the "Report of Ms. Elisabeth Schauer following the 6 February 2009 'Instructions to the Court's Expert on Child Soldiers and Trauma'", [No. ICC-01/04-01/06-1729-Anx1](#), 25 February 2009, pp. 10-29.

⁴⁵ See the "Sentencing Judgment", *supra* note 42, para. 179.

concealed from the public, their testimonies will affect their dignity and privacy as well as the ones of their family members.

26. It is thus submitted that the nature of the witnesses' victimisation and the extremely sensitive nature of the expected testimonies are crucial factors for the Chamber to consider in assessing the potential impact the public testimony of the concerned victims may have on their dignity, privacy and – ultimately – psychological well-being and mental health. The need for protective measures for these victims is thus justified under the present ground.

b. The concerned victims face the risk of stigmatization on account of their testimony

27. Former child soldiers are generally both recipients and perpetrators of violence.⁴⁶ For this reason, child soldiering disrupts the social roles of these victims in their community: [REDACTED].⁴⁷ Former child soldiers are therefore very much affected in their social and relational life within and outside their family by their experience as child soldiers.⁴⁸ In particular, they are blamed, discriminated against and stigmatized by their families and larger communities for their participation in the activities of armed groups, which compounds the effects of the trauma suffered by these children: [REDACTED].⁴⁹ More in general, [REDACTED].⁵⁰

28. Different Chambers of the Court have recognized justified that the identities of witnesses who are already vulnerable on account of their serious victimisation at a

⁴⁶ See P-2927, the “Ceux qui combattent beaucoup sans peur, qui tuent sans pitié. Effets du recrutement d’enfants de moins de 15 ans par les Anti-Balaka (2013-2014)”, *supra* note 34, p. 43.

⁴⁷ [REDACTED]

⁴⁸ See P-2927, the “Ceux qui combattent beaucoup sans peur, qui tuent sans pitié. Effets du recrutement d’enfants de moins de 15 ans par les Anti-Balaka (2013-2014)”, *supra* note 34, pp. 38-43.

⁴⁹ [REDACTED]

⁵⁰ [REDACTED]

young age is concealed from the public based on the concrete risk of considerable stigmatization.⁵¹

29. Victims a/20722/21 and a/65991/19 have both been subjected to stigmatization within their community since the moment they left the Anti-Balaka ranks. In particular, victim a/65991/19 has reported having suffered stigmatization both within his family and his community since [REDACTED]. His [REDACTED] refused to have any contact with him for some time and his entire family reproached him for his activities within the armed group. He is also labelled as a “killer” and a “bad person” within his village. Victim a/20722/21 has been stigmatized for [REDACTED] in the Anti-Balaka group under YEKATOM’s command.

30. Since both victims are expected to testify about [REDACTED], aggravated stigmatization, marginalization and ostracism from their families and larger communities are likely to follow in this case for both victims and their family members if the testimonies are provided without protective measures. This, in turn, is likely to result in the re-traumatization of the concerned victims, who are, still today (and even though ten years have elapsed) vulnerable and psychologically instable. Not to protect the victims’ identity would put them at a higher risk.

31. It is thus submitted that the objectively justifiable risk of stigmatization is a determinant factor for the Chamber to consider in assessing the potential impact the public testimony of the victims concerned may have on their psychological well-being and mental health. The need for protective measures for these victims is also justified under the present ground.

⁵¹ See the “Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses”, *supra* note 16, para. 65. For a similar approach, see also the “Decision on the ‘Prosecution’s application for in-court protective and special measures’”, *supra* note 16, para. 27.

c. Additional risks to the physical security and safety of victims testifying and protection from further risks of retaliation

32. Former child soldiers, as former “insiders”, are particularly prone to be subject to risks to their physical security and safety in the form of retaliation, on account of their cooperation with the Court from former members of the armed group they were associated with and/or from supporters or loyalists of the accused.

33. Retaliation on account of a witness’ cooperation with the Court has already been considered by the Chamber as a risk from which witnesses shall be protected, in accordance with article 68 of the Statute.⁵² Moreover, the Chamber has also already deemed as relevant compounding factors to be considered on a case-by-case basis the fact that the witnesses live in an area of influence of the Anti-Balaka and its supporters, and are known by the Accused and the Anti-Balaka.⁵³

34. In the present case, both victims have reported having experienced security incidents and received specific threats on account of their cooperation with the Court.

35. In particular, victim a/65991/19 resides in [REDACTED]. He has declared having received, [REDACTED], systematic and numerous threats, including death threats, from former Anti-Balaka elements under YEKATOM’s command, namely [REDACTED], because of his participation in the present proceedings as a victim. On several occasions, said Anti-Balaka elements accused victim a/65991/19 of being a traitor of the group and warned him that he would “*have problems*” in case he would continue cooperating with the Court. The victim’s reports are specific to the point he provided the names of the authors of the threats. The victim has been living for years in a situation of continuous stress and fear of being aggressed, harmed and even killed at any time. Other victims represented by the Legal Representative also reported having receiving threats from the same individuals.

⁵² See the “Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses”, *supra* note 16, para. 32.

⁵³ *Idem*, para. 31.

36. Victim a/20722/21, when still being in the Anti-Balaka ranks, [REDACTED]. Since leaving the group, the victim [REDACTED] because of his cooperation with the Court. The victim reported in particular that in [REDACTED] a [REDACTED] tried to reach the victim as well as other former child soldiers [REDACTED].

37. The fact that both victims live in an area [REDACTED] and have neither resources nor family support to leave the area is to be considered by the Chamber as compounding elements shedding light on the overall situation of the concerned victims who will testify before the Court.

38. Given the already precarious security situation they are living in, both victims expressed concerns about their security and safety should their identity be disclosed to the public. An open testimony at the Court would bring their identities into the public eye. After their testimonies, the concerned victims are expected to return to their original localities, more specifically, in the area [REDACTED]. Their testimony may be seen as a betrayal of the group and is extremely likely to trigger retaliation from former Anti-Balaka elements and/or YEKATOM's supporters or loyalists. Should the concerned victims' identities be made public, they will be easily located.

39. These risks are exacerbated by the current particularly fluid and fragile security situation in the Central African Republic (the "CAR"). As confirmed by [REDACTED].⁵⁴ Rebel groups, including the ones composed of former Anti-Balaka elements, continue to control a substantial part of the territory of the country. The former Anti-Balaka elements were also associated to attacks during the last months.⁵⁵ Furthermore, in the context of the ongoing crisis, domestic authorities have a

⁵⁴ [REDACTED]

⁵⁵ See UN Security Council, the "Final report of the Panel of Experts on the Central African Republic Extended Pursuant to Security Council Resolution 2648 (2022)", [S/2023/360](#), 18 May 2023, paras. 28 and 31.

diminished capacity to protect and secure the interest of victims.⁵⁶ These risks may be accrued by the integration of former Anti-Balaka elements into the FACA.⁵⁷

40. [REDACTED].⁵⁸ In particular, the political and social tensions surrounding the constitutional referendum held on 30 July 2023 could result in further violence and human rights violations in the upcoming weeks, as stressed by the Independent Expert on the Situation of Human Rights in the CAR.⁵⁹

41. In granting in-court protective measures, the Trial Chambers in the *Ntaganda* case⁶⁰ and in the *Ruto and Sang* cases⁶¹ held that the security situation in the region is a relevant factor to take into consideration when determining whether in-court protective measures for witnesses are needed.

42. It is submitted that information on specific threats and security incidents suffered by the concerned victims, compounded by their individual circumstances and the security situation in the CAR, clearly demonstrate an objectively justifiable risk to the victims' legitimate interests as protected under article 68 of the Statute.⁶² In-court protective measures are hence justified also on the present ground.

⁵⁶ See the "Public Redacted version of "Confidential redacted version of "Request for Reconsideration regarding In-Court Protective Measures for Prosecution Witness P-1786", 27 September 2022", ICC-01/14-01/18-1585-Conf-Red", [No. ICC-01/14-01/18-1585-Red](#), 2 February 2023, para. 11.

⁵⁷ See the "Final Report of the Panel of Experts on the Central African Republic Extended Pursuant to Security Council Resolution 2648 (2022)", *supra* note 55, paras. 28 and 31.

⁵⁸ [REDACTED]

⁵⁹ See UN Human Rights Office of the High Commissioner Press Release, "[UN Expert Warns Constitutional Referendum in Central African Republic Poses Human Rights Risks](#)", Geneva, 16 June 2023.

⁶⁰ See the "Decision on Request for In-Court Protective Measures relating to the First Prosecution Witness" (Trial Chamber VI), [No. ICC-01/04-02/06-824-Red](#), 15 September 2015, para. 14. See also the "Public Redacted Version of Decision on Prosecution's Request for In-Court Protective Measures for Witness P-0859", (Trial Chamber V(A)), No. [ICC-01/09-01/11-902-Red2](#), 3 September 2013, para. 5.

⁶¹ See the "Public Redacted Version of Decision on Prosecution's Request for In-Court Protective Measures for Witness P-0859", *supra* note 60, para. 14.

⁶² See the "Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses", *supra* note 16, paras. 32 and 36.

2) The requested in-court measures are the least restrictive and intrusive ones available

43. The Legal Representative submits that the requested in-court protective measures are the least restrictive and intrusive measures available to appropriately balance the Accused's right to a fair and public trial against the Court's competing obligation to protect the security, safety, well-being, dignity and privacy of victims and witnesses who appear before it.

44. Granting the requested in-court protective measures will substantially diminish the need for additional and more intrusive measures, such as the recourse to closed session testimony, allowing hearing most part of the victims' testimonies in open session without putting them at risk. The questioning of the concerned victims will be organised in a way to reduce the recourse to private session to instances when the victims' account can lead to their identifications.

3) The requested in-court protective measures are not prejudicial to the Accused

45. The requested in-court protective measures are necessary to ensure adequate protection of the concerned victims, and do not cause undue prejudice to the Defence or undermine the fairness of the trial. The impact on the public nature of the proceedings is mitigated and justified in the circumstances of this case.

46. As recognized by the case law, "[protective measures in form of face and voice distortion and the use of a pseudonym] *would entail minimal restrictions which do not affect the rights of the Defence in any substantive way*"⁶³ and "*these protective measures are necessary to ensure adequate protection and do not cause undue prejudice to the Defence or undermine the fairness of the trial*".⁶⁴

⁶³ See the "Decision Granting Protective Measures for Witness 323 during In-Court Testimony", *supra* note 27, para. 13.

⁶⁴ See the "Decision on 'Prosecutor's First Request for In-Court Protective Measures for Trial Witnesses'", *supra* note 20, para. 27.

47. It is submitted that the requested in-court protective measures do not unfairly prejudice the rights of the Accused, given that both Accused have been provided with the identity of the concerned victims and will be able to see them and have them cross-examined on their behalf.

4) Additional special measures may be needed

48. The present Request addresses the in-court protective measures that are objectively justifiable at this moment. The Legal Representative nevertheless anticipates already at this stage that additional special measures under rule 88 of the Rules may also be needed for the concerned victims depending on the level of their vulnerability, to be assessed and established by the VWS prior to their appearance. He notes in this regard that special measures may include (i) the restriction of visual contact between the witness and the accused (the witness enters and exits the courtroom in the absence of the accused); (ii) the presence of a VWS psychologist in the courtroom; (iii) the use of simple and easy-to-understand questions; (iv) the use of segmented hearings (duration of 50 minutes, with 10 minute breaks) and (v) in court assistance in writing or reading.⁶⁵

49. While the VWS is best placed to assess whether and when such measures are necessary, and which measures are the most appropriate ones, the Legal Representative stresses the importance of implementing special measures for particularly vulnerable witnesses, including the presence of a support person during the witness' testimony. The need for these kinds of additional special measures may become evident shortly before the start of the testimony or even later during the testimony of the concerned witness. Therefore, the Legal Representative advocates for a flexible approach by the Chamber allowing for amending and adapting the necessary measures to the evolving circumstances.

⁶⁵ See the transcript of the hearing held on 14 June 2010, [No. ICC-01/04-01/07-T-155-Red2-ENG WT](#), p. 3, line 16 to p. 5, line 18.

IV. CONFIDENTIALITY

50. Pursuant to regulation 23bis(1) of the Regulations of the Court, the present submissions are classified as confidential, *ex parte* – only available to the CLRV1 and the VWS, as they refer to specific security incidents reported by the victims. A confidential redacted version is filed simultaneously. A public redacted version will be filed in due course.

FOR THE FOREGOING REASONS, the Legal Representative respectfully requests the Chamber to:

- **GRANT** the requested in-court protective measures for victims a/20722/21 and a/65991/19 in form of face and voice distortion and the use of a pseudonym during the presentation of their testimonies.



Dmytro Suprun
Common Legal Representative of the Former Child Soldiers

Dated this 28th Day of September 2023
At The Hague, The Netherlands