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No. ICC-01/14-01/18

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TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public redacted version of

**Decision on the Prosecution Request for Reconsideration regarding In-Court
Protective Measures for P-2556**

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

The Office of the Prosecutor

Counsel for Alfred Yekatom

Counsel for Patrice-Edouard Ngaïssona

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

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Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 64(2), 6(e) and (7), 67(1) and 68(1), (2) and (4) of the Rome Statute (the ‘Statute’), and Rule 87 of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Prosecution Request for Reconsideration regarding In-Court Protective Measures for P-2556’.

I. Procedural history

1. On 9 March 2021, the Single Judge rejected the Office of the Prosecutor’s (the ‘Prosecution’) request for in-court protective measures for P-2556 (the ‘Initial Decision’).¹
2. On 17 June 2022, the Prosecution sought reconsideration of the Initial Decision, requesting the Chamber to grant in-court protective measures in the form of voice and facial distortion, and the use of a pseudonym, for P-2556 (the ‘Request’).²
3. On 23 and 24 June 2022,³ respectively, the Yekatom Defence and the Common Legal Representative of Victims of Other Crimes (the ‘CLRV2’) indicated that they do not intend to respond to the Request and defer to the Chamber’s discretion.⁴
4. On 24 June 2022, the Ngaïssona Defence (the ‘Defence’) opposed the Request.⁵

¹ Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses, ICC-01/14-01/18-906-Conf-Exp, confidential *ex parte*, only available to the Prosecution and the Registry (confidential redacted version notified the same day, ICC-01/14-01/18-906-Conf-Red; public redacted version notified on 19 April 2021, ICC-01/14-01/18-906-Red2), paras 41-42, p. 46.

² Request for Reconsideration regarding In-Court Protective Measures for Prosecution Witness P-2556, ICC-01/14-01/18-1464-Conf-Exp, confidential *ex parte*, only available to the Prosecution and the Registry (confidential redacted version notified on 20 June 2022, ICC-01/14-01/18-1464-Conf-Red), paras 1, 22.

³ Noting that P-2556 was scheduled to start testifying on 15 July 2022, the Single Judge instructed the participants to file responses, if any, by 24 June 2022 (email from the Chamber, 20 June 2022, at 10:32).

⁴ Email from the Yekatom Defence, 23 June 2022, at 17:10; email from the CLRV2, 24 June 2022, at 09:12.

⁵ Ngaïssona Defence Response to ‘Confidential redacted version of “Request for Reconsideration regarding In-Court Protective Measures for Prosecution Witness P-2556”’ (ICC-01/14-01/18-1464-Conf-Red), ICC-01/14-01/18-1481-Conf (the ‘Response’), paras 2, 24.

5. On 14 July 2022,⁶ the Chamber received the report by the Victims and Witnesses Unit (the ‘VWU’), which recommends ‘granting in-court protective measures such as face distortion, voice distortion, use of a pseudonym and redaction of any identifying information from any records that may be disseminated to the public’ (the ‘Report’).⁷

II. Analysis

6. The Single Judge recalls the applicable law for protective measures, as set out in the Initial Decision.⁸ In particular, he recalls that any rejection of a request for protective measures in an initial ruling ‘is without prejudice to the Chamber reconsidering, upon request or *proprio motu*, the need for an order under Rule 87 of the Rules, should new or additional information be made available to it at a later stage’.⁹
7. The Single Judge further recalls that he previously rejected the in-court protective measures requested by the Prosecution for P-2556 because, on the basis of the information available at the time, it had not been established that the witness would face an objectively justifiable risk in case he were to testify without protective measures. Specifically, the Single Judge considered that, absent any information on specific threats or security incidents suffered by the witness or other individual circumstances demonstrating an objectively justifiable risk, the fears expressed by P-2556 appeared subjective.¹⁰

⁶ Noting that P-2556 was scheduled to start testifying on 18 July 2022, the Single Judge instructed the Victims and Witnesses Unit to file observations latest by 14 July 2022 (email from the Chamber, 29 June 2022, at 10:21).

⁷ Victims and Witnesses Unit’s Observations on the Prosecution’s “Request for Reconsideration regarding In-Court Protective Measures for Prosecution Witness P-2556” (ICC-01/14-01/18-1464-Conf-Exp and ICC-01/14-01/18-1464-Conf-Red), ICC-01/14-01/18-1513-Conf-Exp, confidential *ex parte*, only available to the Prosecution and the VWU (confidential redacted version notified the same day, ICC-01/14-01/18-1513-Conf-Red), para. 12.

⁸ Initial Decision, ICC-01/14-01/18-906-Red2, paras 14-21.

⁹ Initial Decision, ICC-01/14-01/18-906-Red2, para. 21. *See also e.g.* email from the Chamber, 22 March 2021, at 15:08.

¹⁰ Initial Decision, ICC-01/14-01/18-906-Conf-Red, paras 41-42. *See also* Annex to the Confidential redacted version of “Prosecution’s Request for in-court protective measures” 7 December 2020, (ICC-01/14-01/18-757-Conf-Exp), 18 December 2020, ICC-01/14-01/18-757-Conf-Anx-Red (the ‘Annex to the Initial Request’), p. 4, entry 19.

8. However, the Single Judge is satisfied that the information provided in the Request and the Report warrant reconsideration of his previous ruling.
9. The Single Judge notes that the fact that P-2556 [REDACTED] and that he [REDACTED] [REDACTED] has already been considered in the context of the Initial Decision.¹¹
10. However, the Single Judge notes [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]¹²
11. Furthermore, the Single Judge notes the VWU's submissions regarding the witness's fears, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]¹³
12. Moreover, the Single Judge observes that, according to the Report, [REDACTED] [REDACTED]

¹¹ See Annex to the Initial Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 4, entry 19. See also Request, ICC-01/14-01/18-1464-Conf-Red, paras 11-12; Response, ICC-01/14-01/18-1481-Conf, para. 15.

¹² Report, ICC-01/14-01/18-1513-Conf-Red, para. 9.

¹³ Report, ICC-01/14-01/18-1513-Conf-Red, paras 5-7.

- [REDACTED]
[REDACTED]¹⁴
13. The Single Judge notes that, in light of the above, the VWU considers that ‘should the witness testify without in-court protective measures, there is an objective risk for him [REDACTED]
[REDACTED]¹⁵
14. In addition, the Single Judge takes note of the additional information provided by the Prosecution, according to which P-2556 reportedly indicated that recently a number of Anti-Balaka [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹⁶
15. The Single Judge takes note of the Defence’s submission that granting protective measures to P-2556 on the ground that his prospective testimony may implicate Mr Ngaïssona in the alleged financing and provision of weapons to the Anti-Balaka ‘would make the right to a public hearing one in name only since the overwhelming majority of Prosecution insider witnesses would benefit from in-court protective measures as most [of these witnesses] are expected to present incriminating evidence against the accused’.¹⁷ The Single Judge is also mindful of the Defence’s submission that any incriminating evidence that P-2556 could provide against Maxime Mokom ‘is not a legal basis to deny Mr Ngaïssona’s right to a public hearing’ and that any security concerns in this context remain at this stage ‘purely speculative’.¹⁸
16. The Single Judge notes that the fact that the witness’s prospective testimony may incriminate Mr Ngaïssona is not as such sufficient to warrant granting of in-court

¹⁴ Report, ICC-01/14-01/18-1513-Conf-Exp, para. 11.

¹⁵ Report, ICC-01/14-01/18-1513-Conf-Red, para. 10.

¹⁶ Request, ICC-01/14-01/18-1464-Conf-Exp, para. 12.

¹⁷ Response, ICC-01/14-01/18-1481-Conf, para. 21.

¹⁸ Response, ICC-01/14-01/18-1481-Conf, para. 22.

protective measures in reconsideration of the Initial Decision. However, the Single Judge takes into account the risk that P-2556 faces, if he testifies without in-court protective measures, based on the information provided in the Request and the Report, as noted above. He further observes that the witness's prospective testimony may also implicate other Anti-Balaka elements, [REDACTED]

[REDACTED]¹⁹

17. Furthermore, the Single Judge notes that the accused's right to a public trial needs to be weighed against the Chamber's obligation to ensure the safety of P- 2556. In this context, the Single Judge considers the Prosecution submission that 'much of P-2556's testimony will be given in public in any event'.²⁰
18. Considering all of the above, in particular the available information in combination with the nature of the witness's prospective testimony, the Single Judge is of the view that there exists an objectively justifiable risk to the witness's legitimate interests protected under Article 68 of the Statute. The Single Judge thus considers it appropriate to grant in-court protective measures in the form of use of a pseudonym, face and voice distortion. At the same time, the Single Judge reminds the participants to organise their questioning in such a manner that use of private sessions be as limited as possible.

¹⁹ See Fourteenth Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-2556 and P-1077, 14 June 2022, ICC-01/14-01/18-1457-Conf, para. 8. *See also* Report, ICC-01/14-01/18-1513-Conf-Exp, para. 8.

²⁰ Request, ICC-01/14-01/18-1464-Conf-Red, para. 20.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Request; and

ORDERS the Prosecution, the Defence and the VWU to file public redacted versions of the Request, the Response and the Report, namely ICC-01/14-01/18-1464-Conf-Exp, ICC-01/14-01/18-1481-Conf and ICC-01/14-01/18-1513-Conf-Exp, respectively, within one week of notification of this decision.

Done in both English and French, the English version being authoritative.

/Signed/

Judge Bertram Schmitt

Single Judge

Dated 13 April 2026

At The Hague, The Netherlands