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**No. ICC-01/14-01/18
Date: 26 August 2020**

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 Witness [REDACTED] Request for Protective Measures

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

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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 43(6), 54(1)(b), 54(3)(f), 64(2) and 68(1) of the Rome Statute (the ‘Statute’), Rules 17 and 87 of the Rules of Procedure and Evidence (the ‘Rules’) and Regulation 23bis(3) of the Regulations of the Court, issues this ‘Decision on Witness [REDACTED] Request for Protective Measures’.

I. Procedural history and submissions

1. On 16 July 2020, the duty counsel for witness [REDACTED] (the ‘Witness’) filed a request for protective measures (the ‘Request’).¹ The Request seeks in particular that: (i) the Witness testifies under a pseudonym and that any prior recorded testimony equally does not reveal his identity to the public (the ‘First Measure’); (ii) security measures are increased with the aid of the local authorities [REDACTED] (the ‘Second Measure’); (iii) psychological support is provided until the end of the trial (the ‘Third Measure’); and (iv) the identity of the Witness is redacted from any public version of the Request (the ‘Fourth Measure’).²
2. The Request references several incidents related to the security situation of the Witness. First, the Witness explains having received an encrypted file containing a copy of his first interview [REDACTED] (the ‘First Interview’) taken by the Office of the Prosecutor (the ‘Prosecution’).³ According to the Witness, [REDACTED].⁴ The Witness submits that [REDACTED].⁵
3. Second, the Witness submits that [REDACTED]. The Witness informs the Chamber that [REDACTED].⁶
4. The Witness further submits that [REDACTED].⁷

¹ Requête aux fins de mesures de protections de témoin, ICC-01/14-01/18-590-US.

² Request, ICC-01/14-01/18-590-US, para. 10, p. 12.

³ Request, ICC-01/14-01/18-590-US, para. 12.

⁴ Request, ICC-01/14-01/18-590-US, paras 12, 19.

⁵ Request, ICC-01/14-01/18-590-US, paras 12, 19.

⁶ Request, ICC-01/14-01/18-590-US, paras 16-17.

5. As a reaction to these events, the Witness [REDACTED].⁸ The Request states that [REDACTED].⁹
6. Further, the Witness was interviewed a second time by the Prosecution [REDACTED] (the ‘Second Interview’)¹⁰ and submits that, [REDACTED].¹¹ The Witness submits that these events [REDACTED].¹²
7. On 23 July 2020, the Ngaïssona Defence (the ‘Defence’) filed a request for extension of time to respond to the Request (the ‘Extension of Time Request’).¹³ It submitted that it would only be able to make meaningful submissions on the Request after having received the Second Interview and requested that it be allowed to submit a response 10 days after its disclosure.¹⁴
8. On 28 July 2020, the Single Judge denied the Extension of Time Request.¹⁵ The Single Judge, *inter alia*, reasoned that, while the Defence did not have the Second Interview, it knows the Witness’s identity, the exact measures requested by the Witness and has access to the First Interview. The Single Judge found that this was sufficient to file a response.¹⁶
9. On 28 July 2020, after having been instructed by the Chamber,¹⁷ the Victims and Witnesses Unit (the ‘VWU’) filed observations on the Request (the ‘Observations’).¹⁸ The VWU submits that the Witness is not known to the unit and that it could not verify ‘any particular risk’ through the publicly available information.¹⁹ The VWU invites the Prosecution to convey any information on

⁷ Request, ICC-01/14-01/18-590-US, para. 18.

⁸ Request, ICC-01/14-01/18-590-US, para. 21.

⁹ Request, ICC-01/14-01/18-590-US, para. 23.

¹⁰ Request, ICC-01/14-01/18-590-US, para. 30.

¹¹ Request, ICC-01/14-01/18-590-US, para. 32.

¹² Request, ICC-01/14-01/18-590-US, para. 33.

¹³ Request for Extension of time pursuant to Regulation 35(2) of the Regulations of the Court, ICC-01/14-01/18-596-Conf.

¹⁴ Extension of Time Request, ICC-01/14-01/18-596-Conf, paras 6, 11.

¹⁵ Decision on the Ngaïssona Defence Request for Extension of Time, ICC-01/14-01/18-604-US, para. 8, p. 5.

¹⁶ Decision on the Ngaïssona Defence Request for Extension of Time, ICC-01/14-01/18-604-US, para. 6.

¹⁷ Email from the Chamber, 21 July 2020, at 12:09; email from the Chamber, 23 July 2020, at 17:29.

¹⁸ Victims and Witnesses Unit’s Observations on the « Requête aux Fins de Mesures de Protection de Témoin » (ICC-01/14-01/18-590-US), ICC-01/14-01/18-605-US.

¹⁹ Observations, ICC-01/14-01/18-605-US, paras 6, 8-9.

‘specific security risk[s]’ to the unit in order to conduct any necessary assessment.²⁰

10. On the same day, the Prosecution submitted its response (the ‘Response’).²¹ The Prosecution submits, *inter alia*, that some of the information provided in the Request seems inaccurate. It explains that it never provided the Witness with an encrypted electronic copy of the First Interview.²² Further, the Prosecution informs the Chamber that [REDACTED].²³
11. The Prosecution considers that [REDACTED]. It does not state whether it supports the Request, but defers generally to the Chamber whether and to which extent protective measures should be granted.²⁴

II. Classification

12. As a preliminary matter, the Single Judge notes that numerous filings related to the Request are classified as ‘under seal’. First, this level of confidentiality is not justified by the content of the Request or any of the other related filings. Second, since these filings were notified to all parties and participants in the case, there is no practical purpose in maintaining this classification. Accordingly, the Single Judge instructs the Registry to reclassify the Request, decision ICC-01/14-01/18-604-US, the Observations and the Response as confidential.

III. Analysis

13. At the outset, the Single Judge assures the Witness that his identity and involvement with the Prosecution and the Court are, at this point in time, only known to the parties and participants and not to the public at large. In this regard, the Single Judge notes that a pseudonym is being used for the Witness.

²⁰ Observations, ICC-01/14-01/18-605-US, para. 10.

²¹ Prosecution’s Observations on the « Requête aux fins de mesures de protection de témoin, ICC-01/14-01/18-590-US », ICC-01/14-01/18-607-US.

²² Response, ICC-01/14-01/18-607-US, para. 6.

²³ Response, ICC-01/14-01/18-607-US, para. 7.

²⁴ Response, ICC-01/14-01/18-607-US, paras 3, 11-12.

14. The Single Judge notes that there seem to be a number of aspects which are unclear at this point in time. The fact whether the Witness received an electronic version of his First Interview, [REDACTED] and the specifics of his contact with the Prosecution have been described differently by the Witness and the Prosecution. Further, the Witness seems to be under the impression [REDACTED],²⁵ which is denied by the Prosecution.²⁶
15. The Single Judge also remarks that – [REDACTED] – the Prosecution takes no clear position on the security concerns voiced by the Witness and merely ‘does not oppose’ the Request²⁷ and ‘defers to the Chamber’s considered assessment’.²⁸
16. Considering the above, the Single Judge is of the view that there is insufficient communication between the Prosecution and the Witness. Having regard to the Second and Third Measures requested by the Witness and Articles 54(1)(b), 54(3)(f) and 68(1) of the Statute, the Single Judge expects the Prosecution to liaise with the Witness, discuss any security concerns and follow up with him and the VWU on any future development.
17. The Single Judge trusts that the Prosecution will fully inform the Witness about [REDACTED] and the existing possibilities to protect his safety and physical and psychological well-being. In line with Article 43(6) of the Statute and Rule 17 of the Rules, this is to be done with the involvement of the VWU, as appropriate.
18. Regarding the First Measure requested, should the Witness testify, as currently anticipated by the Prosecution in its Preliminary Witness List,²⁹ the Chamber will take a decision on the appropriate protective measures. This will be done after receiving substantive submissions from the VWU, the Prosecution as the

²⁵ Request, ICC-01/14-01/18-590-US, para. 25.

²⁶ Response, ICC-01/14-01/18-607-US, para. 9.

²⁷ Response, ICC-01/14-01/18-607-US, para. 3.

²⁸ Response, ICC-01/14-01/18-607-US, para. 12.

²⁹ See Annex A to the Prosecution’s Submission in Compliance of the Single Judge’s “Order to provide a Preliminary Witness List”, ICC-01/14-01/18-528, 15 June 2020, ICC-01/14-01/18-553-Conf-AnxA p. 3, entry 56.

calling party and the other parties and participants, should they wish to provide any.

19. Lastly, with regard to the Fourth Measure requested, the Chamber decides that the Request shall remain confidential at this point.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

ORDERS the Registry to reclassify the Request (ICC-01/14-01/18-590-US), decision ICC-01/14-01/18-604-US, the Observations (ICC-01/14-01/18-605-US) and the Response (ICC-01/14-01/18-607-US) as ‘confidential’;

INSTRUCTS the Prosecution to liaise with the Witness in accordance with paragraphs 16-17 above; and

REJECTS the remainder of the Request.

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



Judge Bertram Schmitt

Single Judge

Dated 26 August 2020

At The Hague, The Netherlands