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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 Ngaiissona Defence Request for Extension of Time

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 Article 68 of the Rome Statute (the ‘Statute’) and Regulation 35 of the Regulations of the Court (the ‘Regulations’), issues this ‘Decision on the Ngaïssona Defence Request for Extension of Time’.

1. On 17 July 2020, the Chamber received the ‘Requête aux fins de mesures de protection de témoin’, whereby Counsel for Witness P-0889 (the ‘Counsel’) requests the Chamber, pursuant to Rule 87 of the Rules of Procedure and Evidence, to order a set of protective measures for Witness P-0889 (the ‘Application for Protective Measures’, or the ‘Application’).¹ According to Counsel, the witness has provided two statements to the Office of the Prosecutor (the ‘Prosecution’), [REDACTED].²
2. On 23 July 2020, the Chamber received the ‘Request for Extension of time pursuant to Regulation 35(2) of the Regulations of the Court’ (the ‘Request’), whereby the Ngaïssona Defence (the ‘Defence’) requests to be allowed to respond to the Application for Protective Measures within ten days of the ‘full disclosure’ of the witness’s statement, in the event that the Prosecution calls the witness to testify.³ The Defence submits, in essence, that it cannot meaningfully respond to the Application for Protective Measures because the statement taken by the Prosecution in [REDACTED] remains undisclosed and Counsel’s submissions on the content of this statement lack in detail.⁴
3. The Single Judge recalls that, according to Regulation 35(2) of the Regulations, a chamber may extend a time limit at the request of a participant ‘if good cause is shown’ and, ‘where appropriate’, after having given the participants an opportunity to be heard.
4. At the outset, the Single Judge finds it unnecessary for the proper determination of the Request to receive responses from the parties and participants.

¹ ICC-01/14-01/18-590-US.

² Application for Protective Measures, ICC-01/14-01/18-590-US, paras 11, 30.

³ ICC-01/14-01/18-596-Conf, paras 3, 10.

⁴ Request, ICC-01/14-01/18-596-Conf, para. 6.

5. Turning to the Request, the Single Judge considers that, for the reasons set out below, the Defence has not shown ‘good cause’ within the meaning of Regulation 35(2) of the Regulations.
6. First, the Single Judge notes that the witness’s identity and his first statement have been disclosed to the Defence in 2019, during the confirmation of charges proceedings.⁵ In his first statement, the witness provided detailed information about his personal background, [REDACTED].⁶ In addition, the Application for Protective Measures provides information about the witness’s further activities, [REDACTED] and his present personal circumstances, including his current whereabouts.⁷ The Application also contains a list of specific protective measures that the witness is seeking.⁸ In light of the above, the Single Judge considers that the Defence is in possession of sufficient information to enable it to respond to the Application.
7. Second, the Single Judge recalls that, under Article 68 of the Statute, the Court is duty-bound to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of witnesses. The Single Judge has a responsibility to balance the different interests at stake and to ensure that the proceedings are conducted with due regard to both the rights to the accused and the protection of witnesses. The Single Judge considers that deferring the Chamber’s determination on the Application for Protective Measures until after the witness’s second statement is disclosed to the Defence would be disproportionate and inconsistent with the Chamber’s duty under Article 68 of the Statute.
8. In light of the above, the Single Judge finds that an extension of time is not warranted and rejects the Request.

⁵ CAR-OTP-2027-2290-R01; Annex to the Prosecution’s Communication of the Disclosure of Evidence, 27 March 2019, ICC-01/14-01/18-159-Conf-Anx, p. 4.

⁶ CAR-OTP-2027-2290-R01.

⁷ Application for Protective Measures, ICC-01/14-01/18-590-US, paras 11-33.

⁸ Application for Protective Measures, ICC-01/14-01/18-590-US, p. 12.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Request.

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



Judge Bertram Schmitt
Single Judge

Dated 28 January 2021

At The Hague, The Netherlands