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No.: ICC-01/14-01/18
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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 Prosecution
Witness P-1577”,
21 January 2021, (ICC-01/14-01/18-843-Conf)**

Source: Office of the Prosecutor

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

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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-1577 in the form of facial distortion and the use of a pseudonym (“Requested Measures”).

2. The Requested Measures are substantiated by good cause, as it is necessitated by the unpredictable and rapidly deteriorating security situation in Central African Republic (“CAR”). The scope of the present circumstances in CAR could not reasonably have been anticipated before the initial deadline of 7 December 2020. However, as it currently stands, P-1577’s public testimony [REDACTED], may raise the Witness’s risk profile and moreover, put at risk [REDACTED].

3. Granting the Requested Measures will ensure that Witness P-1577 is able to give evidence without fear for his own security, and without jeopardising that of [REDACTED].

4. 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), against the mandate to protect witnesses appearing before the Court under article 68 and rule 87, and to prevent a disproportionate risk of harm on account of those who assist it.³ The measures sought do not unfairly prejudice the rights of either of the Accused, as they have been provided with the name and identifying information of P-1577 and he will remain anonymous to the public only.

¹ (“RoC”).

² (“Rules”).

³ 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”).

II. CONFIDENTIALITY

5. This request and its Annex are filed “Confidential” as they 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

6. Under regulation 35(2) of the Regulations, 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.

7. This criteria is met. As noted, the Requested Measures are predicated on a substantial change in circumstances outside the Prosecution’s control, which arose well after the 7 December 2020 time limit.⁴ That change, namely the serious deterioration of the security situation in CAR warrant a variation to protect P-1577, as necessary, and in accordance with the Prosecution’s statutory obligations.

8. The recent political events in CAR surrounding the 27 December 2020 presidential election, in which President Faustin-Archange TOUADERA has won a second term,⁵ has led to a serious degradation of the security situation in the country. As confirmed by the Second Periodic Report of the Registry on the Political and Security situation in the CAR (“Second Registry Report”), a coalition of rebels called Coalition of Patriots for Change (“CPC”), comprising six former enemy rebel groups

⁴ 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. The Prosecution submitted its request on that date, *see* ICC-01/14-01/18-757-Conf-Exp.

⁵ France 24, “Centrafrique : la réélection du président Touadéra validée par la Cour constitutionnelle”, 18 January 2021, <https://www.france24.com/fr/afrique/20210118-centrafrique-la-r%C3%A9%C3%A9lection-du-pr%C3%A9sident-touad%C3%A9ra-valid%C3%A9e-par-la-cour-constitutionnelle> [Last accessed: 18/01/2021].

including the two Anti-Balaka branches,⁶ announced their intention to (i) take control of the entire territory of CAR,⁷ in furtherance of which they attacked numerous villages, including BOZOUM, YALOKÉ, MBAIKI, BOSSANGOA, BAMBARI,⁸ BOUAR,⁹ BANGASSOU,¹⁰ as well as (ii) march on BANGUI.¹¹ On 13 January 2021, after the period covered in the Second Registry Report, elements of the CPC launched two assaults around PK11, PK12, and BIMBO, adjacent to BANGUI, killing one UN peacekeeper.¹²

9. The unstable situation in CAR underpins this request, and granting a variance to seek the Requested Measures given the recent violence and instability, would in no way derail the proceedings or unduly prejudice the Accused.

B. Protective measures for Witness P-1577 are necessary and justified

a. The Requested Measures are necessary to protect P-1577 and third parties [REDACTED]

10. The extremely volatile security situation in CAR is not expected to improve in the immediate future. As a result, the Requested Measures are now necessary to mitigate the risks arising from P-1577's anticipated trial testimony.

⁶ ICC-01/14-01/18-825-Conf-Anx, para. 13; RFI, "Centrafrique: de quoi la coalition de groupes armés est-elle le nom ?", 20 December 2020, <https://www.rfi.fr/fr/afrique/20201220-centrafrique-de-quoi-la-coalition-de-groupes-arm%C3%A9s-est-elle-le-nom> [Last accessed: 18/01/2021].

⁷ ICC-01/14-01/18-825-Conf-Anx, para. 13; Le Tsunami, "CPC, Déclaration n°2", 19 December 2020, <https://letsunami.net/centrafrique-declaration-n2-de-la-coalition-des-patriotes-pour-le-changement/> [Last accessed: 19/01/2021] ("La Coalition des Patriotes pour le Changement (C.P.C) annonce à la population Centrafricaine la grande marche inexorable de ses colonnes vers le contrôle total du territoire").

⁸ ICC-01/14-01/18-825-Conf-Anx, para. 14.

⁹ ICC-01/14-01/18-825-Conf-Anx, paras. 14, 35; France 24, "Centrafrique : nouvelle attaque des rebelles, deux avions français dépêchés", 9 January 2021, <https://www.france24.com/fr/afrique/20210109-centrafrique-des-avions-fran%C3%A7ais-ont-%C3%A0-nouveau-survol%C3%A9-le-pays> [Last accessed: 18/01/2021].

¹⁰ Reuters, "Central African rebels attack and enter town before election results announced", 3 January 2021, <https://www.reuters.com/article/us-centralafrica-election/central-african-rebels-attack-and-enter-town-before-election-results-announced-idUSKBN2980KG> [Last accessed: 19/01/2021].

¹¹ ICC-01/14-01/18-825-Conf-Anx, para. 33.

¹² RFI, "Centrafrique: attaque des groupes armés à la périphérie de Bangui", 13 January 2021, <https://www.rfi.fr/en-bref/20210113-centrafrique-attaque-des-groupes-arm%C3%A9s-%C3%A0-la-p%C3%A9riph%C3%A9rie-de-bangui> [Last accessed: 18/01/2021]; RFI, "UN Security Council condemns CAR rebel attack on Bangui", 13 January 2021, <https://www.rfi.fr/en/afrika/20210114-un-security-council-condemns-car-rebel-attack-on-bangui> [Last accessed: 18/01/2021].

11. P-1577 [REDACTED].¹³ [REDACTED]. His evidence describes crimes committed by the Anti-Balaka in (i) BOSSANGO and surroundings areas, [REDACTED]; (ii) BANGUI [REDACTED]; and (iii) SIBUT, BOALI, BOYALI, BODA, YALOKÉ, and BOSSEMPTELE, throughout 2014, [REDACTED].¹⁴ His evidence also covers the Anti-Balaka organisation and structure in BOSSANGO, BANGUI, and BODA.

12. P-1577 travelled to numerous cities in western CAR [REDACTED]. The publicity of P-1577's cooperation with the Prosecution in the current climate raises heightened security concerns which now require the Requested Measures. [REDACTED].

13. *First*, as a [REDACTED]. His public cooperation with the Prosecution may thus affect (i) his security in CAR, in the context of the rising influence of the CPC coalition, of which the Anti-Balaka are part; as well as (ii) his ability to continue performing professional activities in CAR, since individuals in the field are likely to be more reluctant to interact with him.

14. *Second*, [REDACTED].

15. *Third*, [REDACTED].

16. Granting the use of a pseudonym alone for Witness P-1577 would not suffice to protect his safety and interests, or those of third parties. Rather, face distortion is also required given that unprotected images of witnesses during their testimony are easily accessible, and the witness is [REDACTED], thus augmenting the risk of public identification [REDACTED]. The dissemination of the video image of Witness P-1577 would increase the risk [REDACTED]. This requires the use of a pseudonym in combination with face distortion.

¹³ CAR-OTP-2081-0770, para. 1.

¹⁴ See ICC-01/14-01/18-403-Conf-Corr, paras. 64, 70, *et seq.*, and pp. 111, 107, where the Pre-trial Chamber held that the widespread Anti-Balaka attack was carried out between September 2013 and December 2014 in the western CAR.

17. Accordingly, the Requested Measures are minimally necessary to ensure the adequate and proportional protection of the witness, as well as the safety, security and professional interests of [REDACTED]. Further information [REDACTED] are set forth in the Annex.

b. Absence of prejudice to the Defence

18. The impact of the Requested Measures on the publicity of the proceedings is mitigated and justified in the circumstances of this case. *First*, the Requested Measures are needed to ensure that P-1577 is able to provide unfettered evidence, and in so doing, assist the Court in establishing the truth. The identity of P-1577 is known to both Accused and their Defence teams since 2019. The Accused will have the same opportunity and ability to question these witnesses as if their identities were publicly known and are not prevented from conducting its own enquiries to test the prospective evidence. *Second*, although the public will not know the identity of P-1577, most of his testimony (albeit limited) 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-1577 and [REDACTED]. *Finally*, the requested protective measures are a direct consequence of the deteriorated security situation in CAR, which is not expected to improve in the immediate future.

IV. RELIEF SOUGHT

19. 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 distortion for Witness P-1577.

A handwritten signature in black ink that reads "James K. Stewart." The signature is written in a cursive, flowing style.

James Stewart, Deputy Prosecutor

Dated this 12th day of February 2021
At The Hague, The Netherlands