



Original: English

No. ICC-01/14-01/18
Date of original: 9 March 2021
Date: 19 April 2021

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 Requests for In-Court Protective Measures for
73 Trial Witnesses**

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

The Office of the Prosecutor

Fatou Bensouda
James Stewart
Kweku Vanderpuye

Counsel for Alfred Yekatom

Mylène Dimitri
Thomas Hannis

Counsel for Patrice-Edouard Ngaïssona

Geert-Jan Alexander Knoops
Richard Omissé-Namkeamaï
Marie-Hélène Proulx

Legal Representatives of Victims

Abdou Dangabo Moussa
Elisabeth Rabesandratana
Yaré Fall
Marie-Edith Douzima-Lawson
Paolina Massidda
Dmytro Suprun

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

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

TABLE OF CONTENTS

I.	Procedural history and submissions	4
II.	Analysis.....	6
A.	Request for Variation of Time	6
B.	Requests for Protective Measures	8
1.	Applicable law	8
2.	Assessment of individual requests	11
i.	Insider witnesses	12
a.	Submissions.....	12
b.	The Single Judge's determination	14
(i)	Insider witnesses in relation to whom protective measures are granted.....	15
(ii)	Insider witnesses in relation to whom protective measures are rejected.....	18
ii.	Witnesses in the ICCPP or [REDACTED].....	21
a.	Submissions.....	21
b.	The Single Judge's determination	21
iii.	Witnesses in the Camp.....	22
a.	Submissions.....	22
b.	The Single Judge's determination	22
iv.	Victims of sexual violence.....	23
a.	Submissions.....	23
b.	The Single Judge's determination	23
v.	Former child soldiers	25
a.	Submissions.....	25
b.	The Single Judge's determination	25
vi.	Witnesses in particular professional circumstances.....	27
a.	Witnesses in particular professional circumstances in relation to whom protective measures are granted.....	27
b.	Witnesses in particular professional circumstances in relation to whom protective measures are rejected	29
(i)	Witnesses P-1819 and P-1558	29
(ii)	Witness P-2926.....	31
(iii)	Witness P-0314	32
(iv)	Witness P-1577.....	33
vii.	Other vulnerable witnesses	34
a.	Submissions.....	34
b.	The Single Judge's determination	35
(i)	Other vulnerable witnesses in relation to whom protective measures are granted.....	36
(ii)	Other vulnerable witnesses in relation to whom protective measures are rejected.....	39
C.	Redactions of pseudonyms	41

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 and 68 of the Rome Statute (the ‘Statute’), Rules 87 and 88 of the Rules of Procedure and Evidence (the ‘Rules’), and Regulation 35 of the Regulations of the Court (the ‘Regulations’), issues this ‘Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses’.

I. Procedural history and submissions

1. On 26 August 2020, the Presiding Judge indicated that he wished to rule on applications for in-court protective measures in advance of trial whenever possible, without prejudice to reconsideration at a later time should this be warranted, and in particular in light of further information provided by the Victims and Witnesses Unit (the ‘VWU’).¹ He further set the deadline for applications pursuant to Rules 87 and 88 of the Rules to 7 December 2020 (the ‘Deadline’).²
2. On 7 December 2020, the Office of the Prosecutor (the ‘Prosecution’) requested in-court protective measures under Rule 87 of the Rules for a total of 72 out of the 96 witnesses it intends to call to testify live (the ‘Request’).³ In support of its Request, the Prosecution submits, generally, that a considerable number of these witnesses face security risks, given the current security situation in the Central African Republic (the ‘CAR’), the control of the Anti-Balaka over a substantial part of the territory, as well as the continuing influence of both accused over their supporters.⁴

¹ Initial Directions on the Conduct of the Proceedings, ICC-01/14-01/18-631 (the ‘Initial Directions’), paras 68-69.

² Initial Directions, ICC-01/14-01/18-631, para. 70.

³ Prosecution’s Request for in-court protective measures, ICC-01/14-01/18-757-Conf-Exp, confidential *ex parte*, only available to the Prosecution and the VWU (with one confidential *ex parte* annex, only available to the Prosecution and the VWU, ICC-01/14-01/18-757-Conf-Exp-Anx) (confidential redacted version notified on 18 December 2020, ICC-01/14-01/18-757-Conf-Red) (with one confidential redacted annex, ICC-01/14-01/18-757-Conf-Anx-Red) (public redacted version notified on 18 January 2021, ICC-01/14-01/18-757-Red2), paras 1, 6, 47.

⁴ Request, ICC-01/14-01/18-757-Red2, paras 6, 9-23.

3. On 15 January 2021, after having been granted an extension of time,⁵ the Ngaïssona Defence,⁶ the Yekatom Defence⁷ (collectively, the ‘Defence’) and the Common Legal Representatives of the Former Child Soldiers and the Common Legal Representatives of the Victims of Other Crimes (jointly, the ‘CLR’)⁸ responded to the Request (the ‘Ngaïssona Defence Response’, the ‘Yekatom Defence Response’, and the ‘CLR Response’, respectively).
4. The CLR request the Chamber to grant the Request, supporting in particular the requested protective measures for dual status witnesses P-2582, P-2620, P-2354, P-1666, and P-2389.⁹ They further request the Chamber to add the measure of voice distortion for P-2354, P-1666 and P-2389.¹⁰
5. The Ngaïssona Defence argues that the requested protective measures are disproportionate to the rights of the accused to a public trial and that the Prosecution has failed to demonstrate that these measures are necessary in light of an objectively justifiable risk.¹¹ It therefore requests the Chamber to reject the Request in relation to certain individual and categories of witnesses as set out in the analysis below.¹²
6. The Yekatom Defence requests the Chamber to (i) assess the Request on a case-by-case basis ‘in light of Mr Yekatom’s concern that his right to a public trial remain at the forefront of the Chamber’s consideration’; and (ii) reject the Request in relation to certain witnesses as set out in the analysis below.¹³

⁵ Email from the Chamber, 21 December 2020, at 16:40.

⁶ Defence response to “Confidential redacted version of ‘Prosecution’s Request for in-court protective measures’ 7 December 2020, (ICC-01/14-01/18-757-Conf-Exp)”, ICC-01/14-01/18-827-Conf (public redacted version notified on 3 February 2021, ICC-01/14-01/18-827-Red).

⁷ Yekatom Defence Response to the “Prosecution’s Request for in court protective measures”, 18 December 2020, ICC-01/14-01/18-757-Conf-Red, ICC-01/14-01/18-828-Conf (public redacted version notified on 26 January 2021, ICC-01/14-01/18-828-Red).

⁸ Corrigendum of the “Joint Response by the Common Legal Representatives of Victims to the Prosecution’s Request for in-court protective measures, ICC-01/14-01/18-821-Conf”, ICC-01/14-01/18-821-Conf-Corr (with confidential Annex A) (corrected version notified on 21 January 2021, and public redacted version notified on 22 January 2021, ICC-01/14-01/18-821-Corr-Red).

⁹ CLR Response, ICC-01/14-01/18-821-Conf-Corr, paras 2, 4, 33.

¹⁰ CLR Response, ICC-01/14-01/18-821-Corr-Red, paras 4, 20, 33.

¹¹ Ngaïssona Defence Response, ICC-01/14-01/18-827-Red, paras 1, 8-12.

¹² Ngaïssona Defence Response, ICC-01/14-01/18-827-Red, paras 2, 13-31.

¹³ Yekatom Defence Response, ICC-01/14-01/18-828-Red, para. 58.

7. On 21 January 2021, the Prosecution sought a variation of the Deadline to apply for protective measures for P-1577 (the ‘Request for Variation of Time’), and requested in-court protective measures in the form of use of a pseudonym and face distortion for P-1577 (the ‘P-1577 Request’, and jointly with the ‘Request for Variation of Time’, the ‘Additional Request’).¹⁴
8. On 1 February 2021, the Yekatom Defence¹⁵ and the Ngaïssona Defence¹⁶ responded to the Additional Request. The Yekatom Defence defers to the Chamber’s discretion regarding the Request for Variation of Time, but opposes the P-1577 Request.¹⁷ The Ngaïssona Defence opposes the Additional Request in its entirety.¹⁸

II. Analysis

A. Request for Variation of Time

9. The second sentence of Regulation 35(2) of the Regulations provides that when a request for variation of time limit is filed after the original time limit has elapsed, ‘an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control’.
10. The Prosecution submits that this standard is satisfied, as the Additional Request is ‘predicated on a substantial change in circumstances outside the Prosecution’s control, which arose well after the 7 December 2020 time limit’. This change in circumstances is, according to the Prosecution, based on the ‘serious deterioration of the security situation in the CAR’, triggered by the

¹⁴ Prosecution’s submission pursuant to regulation 35 to vary the time limit and request for in-court protective measures for Prosecution Witness P-1577, ICC-01/14-01/18-843-Conf (with one confidential annex, ICC-01/14-01/18-843-Conf-Anx) (public redacted version notified on 12 February 2021, ICC-01/14-01/18-843-Red), paras 1, 19.

¹⁵ Yekatom Defence Response to the “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, ICC-01/14-01/18-863-Conf (the ‘Yekatom Defence Additional Response’).

¹⁶ Ngaïssona Defence response to the “Prosecution’s submission pursuant to regulation 35 to vary the time limit and request for in-court protective measures for Prosecution Witness P-1577” (ICC-01/14-01/18-843-Conf), ICC-01/14-01/18-865-Conf (public redacted version notified on 12 February 2021, ICC-01/14-01/18-865-Red) (the ‘Ngaïssona Defence Additional Response’).

¹⁷ Yekatom Defence Additional Response, ICC-01/14-01/18-863-Conf, paras 2, 21.

¹⁸ Ngaïssona Defence Additional Response, ICC-01/14-01/18-865-Red, p. 10.

political events surrounding the 27 December 2020 presidential elections, and notably the formation of the Coalition of Patriots for Change (known as the ‘CPC’), who announced their intention to take control of the entire CAR territory and march on Bangui, and launched assaults on various places, including two in or around Bangui on 13 January 2021.¹⁹

11. While the Yekatom Defence defers to the Chamber’s discretion regarding the Request for Variation of Time,²⁰ the Ngaïssona Defence submits that the Prosecution failed to present reasons outside its control warranting a variation of time. Specifically, the Ngaïssona Defence argues that (i) the Prosecution was aware of the fragile security situation in the CAR well before the Deadline; (ii) the Prosecution could have foreseen that protective measures would be required for P-1577; and (iii) such an ‘oversight on the Prosecution’s part cannot be remedied by submitting a request under Regulation 35(2)’.²¹
12. At the outset, the Single Judge notes that P-1577 is a [REDACTED].²² The Additional Request is accompanied by a letter from [REDACTED] dated 15 January 2021 (the ‘Letter’), requesting the protection of P-1577’s identity to protect [REDACTED]. The Letter further argues that the rising instability ‘in recent weeks’ due to the formation of the CPC and the falling apart of the 2019 peace accord further heighten the risks to [REDACTED].²³ As a result, the Single Judge considers that the Additional Request appears to be based not only on the political events surrounding the 27 December 2020 presidential elections, but also the request made in the Letter.
13. Under these circumstances, the Single Judge is satisfied that the deteriorating security situation in the CAR after 7 December 2020, including the declarations and actions of the CPC, as well as the receipt of the Letter, amount to circumstances outside the Prosecution’s control. The Single Judge therefore

¹⁹ Additional Request, ICC-01/14-01/18-843-Red, paras 7-8.

²⁰ Yekatom Defence Additional Response, ICC-01/14-01/18-863-Conf, para. 2.

²¹ Ngaïssona Defence Additional Response, ICC-01/14-01/18-865-Conf, paras 2, 8-16.

²² Additional Request, ICC-01/14-01/18-843-Conf, para. 11.

²³ Annex to the Additional Request, ICC-01/14-01/18-843-Conf-Anx, pp. 2-3.

grants the Request for Variation of Time and will consider the Additional Request in the context of the present decision.

B. Requests for Protective Measures

1. Applicable law

14. Articles 64(7) and 67(1) of the Statute establish the principle of the publicity of the proceedings as a fundamental right of the accused and a necessary component of a fair and transparent trial. However, this general principle is not absolute and therefore subject to certain exceptions, including the protection of victims and witnesses.²⁴
15. Article 68(1) of the Statute provides for such an exception by requiring the Chamber to ‘take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses’, under the condition that these measures are not ‘prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial’. Article 68(2) of the Statute further authorises the Chamber to ‘conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means’, and provides that ‘such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness’.
16. Rule 87 of the Rules sets out the procedure for the request and approval of protective measures based on Article 68(1) and (2) of the Statute, and specifies that measures to protect the identity of a victim or witness from the public may include, *inter alia*, that (i) the participants in the proceedings be prohibited from disclosing to third parties the identity of a victim or a witness or any other identifying information; (ii) pseudonyms be used for a victim or a witness; (iii) testimony be provided with technical alteration of pictures or voice and/or

²⁴ For a similar approach, see Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on the ‘Prosecution’s application for in-court protective and special measures’, 29 November 2016, ICC-02/04-01/15-612-Conf (confidential and public redacted versions notified on 30 November 2016, ICC-02/04-01/15-612-Red) (the ‘Ongwen Protective Measures Decision’), para. 5.

by video-link; and (iv) part of the proceedings be conducted in private or closed session.²⁵

17. In determining whether in-court protective measures are warranted, the Chamber must ensure that any such measure is based on an ‘objectively justifiable risk’ and proportionate to the rights of the accused.²⁶ 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.²⁷
18. The need for protective measures must be assessed on a case-by-case basis, considering the specific circumstances of the witness. However, as more than one witness may share relevant circumstances, a chamber may identify factual circumstances warranting, in principle, protective measures for specific categories of witnesses. Unless there are other circumstances warranting further differentiation, protective measures can then be applied for the witnesses falling into the relevant category.²⁸
19. In the present decision, the Single Judge will provide advance rulings on the requested protective measures for the 73 witnesses covered by the Request and Additional Request. For the purpose of these rulings, the Single Judge has considered the information currently available to the Chamber, which is essentially limited to the information provided by the Prosecution in the

²⁵ See also *Ongwen* Protective Measures Decision, ICC-02/04-01/15-612-Red, para. 7.

²⁶ *Ongwen* Protective Measures Decision, ICC-02/04-01/15-612-Red, para. 8; Trial Chamber V(A), *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on ‘Prosecution’s First Request for In-Court Protective Measures for Trial Witnesses’, 3 September 2013, ICC-01/09-01/11-902-Red2 (public redacted version notified on 11 September 2013), para. 13; Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, 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), 9 December 2009, ICC-01/04-01/07-1667-Red-tENG (public redacted version notified on 29 November 2012), paras 8-9.

²⁷ See *Ongwen* Protective Measures Decision, ICC-02/04-01/15-612-Red, para. 8.

²⁸ See *Ongwen* Protective Measures Decision, ICC-02/04-01/15-612-Red, para. 9.

Additional Request, the Request and the Annex to the Request, consisting of a table listing relevant factors for each individual witness.

20. The Single Judge recalls that these rulings are without prejudice to reconsideration at a later time, should this be warranted.²⁹ He further notes that any granted protective measures are subject to (i) the relevant witness consenting to the protective measure;³⁰ (ii) the VWU supporting the relevant protective measure;³¹ and (iii) the absence of any further information communicated to the Chamber by the participants or the VWU in the meantime which would negate the basis on which such measures are granted in the present decision.
21. Similarly, any rejection of requests for protective measures in the present decision 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.³²
22. The Prosecution requests in-court protective measures in the form of pseudonyms as well as face and voice distortion for 46 witnesses, and in the form of pseudonyms and face distortion for 27 witnesses. The Single Judge emphasises that these requested measures exclusively concern the withholding of the witnesses' identity from the public, and therefore, if granted, do not compromise the Defence's ability to question the witnesses at trial.
23. The Single Judge is further mindful of the Ngaïssona Defence's argument that granting protective measures for such a high number of witnesses scheduled to testify live (73 out of 96 witnesses)³³ 'would have the effect of hiding the trial from the public' and thus prevent Mr Ngaïssona from availing himself of the

²⁹ Initial Directions, ICC-01/14-01/18-631, para. 69.

³⁰ See Rule 87(1) of the Rules, which provides that '[t]he Chamber shall seek to obtain, whenever possible, the consent of the person in respect of whom the protective measure is sought prior to ordering the protective measure'.

³¹ See Rule 87(1) of the Rules, which further provides that the Chamber's orders for protective measures shall be taken 'after having consulted with the Victims and Witnesses Unit, as appropriate'.

³² See *Ongwen* Protective Measures Decision, ICC-02/04-01/15-612-Red, para. 12.

³³ This includes P-1577, covered by the Additional Request, which was submitted after the filing of the Ngaïssona Defence Response.

protection inherent to a public trial.³⁴ However, the Single Judge recalls that he previously emphasised that witness testimony shall insofar as possible be given in public and, in order to reduce the need to go into private and/or closed session or to frequently switch between public and private session, directed the participants to group identifying questions and to provide advance notice on information that should not be discussed publicly.³⁵ As regards the number of witnesses who ought to be granted protective measures, the Single Judge recalls that the question whether protective measures should be granted for a specific witness depends on the specific circumstances of each individual witness. Accordingly, a determination as to how many witnesses shall be authorised to testify with protective measures cannot be made in the abstract.

24. Lastly, the Single Judge notes that, in its Request, the Prosecution did not seek any special measures pursuant to Rule 88 of the Rules. The CLRV submit that they ‘reserve their right to raise any issues’ related to, *inter alia*, special measures, and ‘stress the importance of granting specific measures to particularly vulnerable witnesses and advocate for a flexible approach by the Chamber allowing for reassessing and adapting the necessary measures shortly before the start of the testimony’.³⁶ In this regard, the Single Judge considers that the VWU is best placed to determine the appropriateness of special measures intended to provide support to a witness. Accordingly, the Single Judge decides as a general proposition to grant special measures in the manner to be determined by the VWU. This order is subject to any countervailing considerations which may justify a revised assessment.³⁷

2. *Assessment of individual requests*

25. In its Request and Additional Request, the Prosecution requests in-court protective measures for:

³⁴ Ngaïssona Defence Response, ICC-01/14-01/18-827-Red, paras 1, 8-9.

³⁵ Initial Directions, ICC-01/14-01/18-631, paras 45-46. *See also* email from the Chamber, 18 February 2021, at 09:20, instructing the calling party to provide, jointly with its list of material to be used during its witness examination, substantial anticipated summaries of the witnesses’ testimonies, highlighting in grey the portions which it plans to elicit in private and/or closed session.

³⁶ CLRV Response, ICC-01/14-01/18-821-Corr-Red, paras 4-5.

³⁷ For a similar approach, *see Ongwen* Protective Measures Decision, ICC-02/04-01/15-612-Red, paras 52, 54.

- (i) 29 insider witnesses who are alleged to be at risk and susceptible to retaliation from other Anti-Balaka members or supporters;
- (ii) Nine witnesses who are in the Court's protection programme (the 'ICCPP') and one witness [REDACTED];
- (iii) Three witnesses residing in a specific refugee camp (the 'Camp');
- (iv) Three victims of sexual violence, one of whom is also a former child soldier and two of whom also reside in the Camp;
- (v) Two former child soldiers;
- (vi) Seven witnesses in particular professional circumstances;³⁸ and
- (vii) 19 other vulnerable witnesses.

i. Insider witnesses

a. Submissions

26. The Prosecution requests in-court protective measures in the form of use of a pseudonym, and face and voice distortion for the following 29 insider witnesses: P-2251, P-1521, P-2841, P-2673, P-0966, P-1847, P-0458, P-0306, P-2233, P-0888, P-0627, P-0487, P-1786, P-2027, P-0975, P-0954, P-1042, P-2602, P-2556, P-1647, P-1858, P-1077, P-0876, P-0446, P-0808, P-0889,³⁹ P-0884, P-1193 and P-2843.
27. According to the Prosecution, these witnesses are at risk of and susceptible to retaliation from other Anti-Balaka members and supporters, on the basis that (i) their testimony will be seen as a betrayal of the group; (ii) they are known to the accused and other Anti-Balaka members who know how and where to locate

³⁸ This includes six witnesses in the Request, ICC-01/14-01/18-757-Red2, and one witness in the Additional Request, ICC-01/14-01/18-843-Red.

³⁹ The Single Judge notes that in relation to P-0889, the request for voice distortion is not included in the Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 5, entry 26. However, noting that in the Request, the Prosecution requests the use of a pseudonym and face and voice distortion for the 29 insider witnesses (Request, ICC-01/14-01/18-757-Conf-Red, para. 24), the Single Judge considers this omission to be due to an oversight and considers that the request for voice distortion also applies to P-0889.

them and their families; (iii) the subject-matters of their testimonies will attract attention; (iv) in the current security context of the CAR, their cooperation with the Prosecution risks being seen as contrary to the peace process; and (v) the majority of these witnesses conditioned their cooperation with the Court on the premise that it does not expose their identities to the local communities in the CAR.⁴⁰

28. The Ngaïssona Defence requests the Chamber to reject the Request pertaining to the 29 insider witnesses. It argues that the Prosecution failed to demonstrate the existence of an objectively justifiable risk, advancing that the supporting arguments are ‘generic and speculative’ and do not ‘relate to the individualised circumstances of the witnesses’.⁴¹
29. Specifically, the Ngaïssona Defence submits that (i) arguments that the witness testimonies might be perceived by the Anti-Balaka as betrayal and may have an impact on the peace process are speculative;⁴² (ii) the argument that a witness is known by the accused and/or the Anti-Balaka cannot be a reason to grant protective measures, especially where the accused is in detention, as it would lead to an ‘absurd outcome’ where all insider witnesses might fall into that bracket;⁴³ (iii) alleged threats against witnesses, even if proven, do not amount to an objectively justifiable risk unless substantiated and related to the case;⁴⁴ (iv) a witness’s potential subjective fears and concerns or preferences are not objectively justifiable risks unless substantiated;⁴⁵ (v) the fact that a witness lives within the area of influence of the Anti-Balaka is not an objectively justifiable risk;⁴⁶ and (vi) having a public profile does not justify the granting of protective measures, but is rather a factor against granting protective measures.⁴⁷ It further argues that witnesses should not condition their

⁴⁰ Request, ICC-01/14-01/18-757-Red2, paras 24-25. *See also* Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, pp. 2-6, entries 1-29.

⁴¹ Ngaïssona Defence Response, ICC-01/14-01/18-827-Red, paras 2, 13-14, 31.

⁴² Ngaïssona Defence Response, ICC-01/14-01/18-827-Red, para. 15.

⁴³ Ngaïssona Defence Response, ICC-01/14-01/18-827-Red, paras 16, 19-20.

⁴⁴ Ngaïssona Defence Response, ICC-01/14-01/18-827-Red, paras 21-22.

⁴⁵ Ngaïssona Defence Response, ICC-01/14-01/18-827-Red, paras 23-24.

⁴⁶ Ngaïssona Defence Response, ICC-01/14-01/18-827-Conf, para. 25.

⁴⁷ Ngaïssona Defence Response, ICC-01/14-01/18-827-Red, paras 26-28.

appearance on the granting of protective measures because the decision to grant protective measures is at the Chamber's discretion.⁴⁸

30. The Yekatom Defence objects to the requested protective measures in relation to a number of specific witnesses under this category for the reasons set out below, as relevant.⁴⁹

b. The Single Judge's determination

31. At the outset, the Single Judge considers that a number of factors relied upon by the Prosecution are, by themselves, insufficient to justify granting in-court protective measures. These factors notably include the fact that (i) a witness lives in an area of influence of the Anti-Balaka and its supporters; (ii) a witness is known by the accused or the Anti-Balaka, which is a characteristic of almost all insider witnesses and, in the Single Judge's view, is, without further explanation, irrelevant to the question of whether a witness's identity should be withheld from the public;⁵⁰ (iii) an accused knows how to contact a witness; and (iv) a witness has a high public profile or is or has been subject to increased media exposure. Nonetheless, the Single Judge acknowledges that these circumstances may constitute compounding factors to be considered on a case-by-case basis, in conjunction with other relevant factors.
32. As regards a witness's reported fear of retaliation from the accused or their supporters, the Single Judge agrees that retaliation on account of a witness's cooperation with the Court is a risk from which witnesses shall be protected in accordance with Article 68 of the Statute. However, the Single Judge emphasises that such risks need to be objectively justified and, ordinarily, this cannot be exclusively based on the witness's own perception. While a direct threat is not required, there must exist factual circumstances which make the Chamber believe that public knowledge of the witness's identity would impermissibly risk an undue infringement of their legitimate interests protected

⁴⁸ Ngaïssona Defence Response, ICC-01/14-01/18-827-Red, para. 17.

⁴⁹ Yekatom Defence Response, ICC-01/14-01/18-828-Red, paras 2, 18, 58.

⁵⁰ For a similar approach, see *Ongwen* Protective Measures Decision, ICC-02/04-01/15-612-Red, para. 26.

under Article 68 of the Statute.⁵¹ The determination of whether a risk exists necessarily involves a degree of prediction and speculation,⁵² and is to be performed on a case-by-case basis, taking into account the individual circumstances of each witness.

(i) Insider witnesses in relation to whom protective measures are granted

33. For witnesses P-2251, P-1521, P-2673, P-1847, P-0306, P-0487, P-0876, P-0884, P-1193 and P-2843, the Single Judge is satisfied that the granting of the requested protective measures is justified by the existence of an objectively justifiable risk to the witnesses' legitimate interests under Article 68 and is not prejudicial to the rights of the accused.
34. In this regard, the Single Judge notes that the abovementioned witnesses all report having experienced security incidents that appear to be related to their cooperation with the Court. Specifically, and according to the Prosecution, the witnesses reported the following security incidents:
 - P-2251 reported that [REDACTED].⁵³
 - P-1521 reported [REDACTED].⁵⁴
 - P-2673 [REDACTED].⁵⁵
 - P-1847 reported a first security incident [REDACTED], and a second security incident [REDACTED].⁵⁶
 - P-0306, [REDACTED], reported 'several security incidents, including [REDACTED]'.⁵⁷

⁵¹ For a similar approach, see *Ongwen* Protective Measures Decision, ICC-02/04-01/15-612-Red, para. 29. See also Trial Chamber V(A), *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on 'Prosecution's First Request for In-Court Protective Measures for Trial Witnesses', ICC-01/09-01/11-902-Red2, para. 14 (providing that a direct threat is not required).

⁵² *Ongwen* Protective Measures Decision, ICC-02/04-01/15-612-Red, para. 35.

⁵³ Annex to the Request, ICC-01/14-01/18-757-Conf-Exp-Anx, p. 2, entry 1.

⁵⁴ Annex to the Request, ICC-01/14-01/18-757-Conf-Exp-Anx, p. 2, entry 2.

⁵⁵ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 2, entry 4.

⁵⁶ Annex to the Request, ICC-01/14-01/18-757-Conf-Exp-Anx, p. 3, entry 6.

- P-0487 reported, *inter alia*, [REDACTED].⁵⁸
- P-0876 reported that ‘between 2014-2016, [REDACTED].⁵⁹
- P-0884 reported [REDACTED].⁶⁰
- P-1193 reported several prior security incidents, including [REDACTED].⁶¹
- P-2843 reported that [REDACTED].⁶²

35. The Single Judge is not persuaded by the Yekatom Defence’s arguments to reject the requested protective measures for a number of the abovementioned witnesses, namely witnesses P-0876, P-0884, P-2673, P-0487 and P-1521.

36. Specifically, with regard to the argument that the incidents mentioned by P-0876 occurred in ‘the 2014-2016 period’,⁶³ the Single Judge notes that these incidents appear, nevertheless, to relate to the witness’s prospective cooperation with the Court. The Single Judge further notes that the witness allegedly continued to experience security incidents [REDACTED], some of which appear related to his prospective cooperation with the Court. The Single Judge is of the view that these incidents, compounded by the individual circumstances of this witness, notably his prior role within the Anti-Balaka, his public profile and the fact that he resides in an area of influence of former Anti-Balaka and supporters,⁶⁴ demonstrate the existence of an objectively justifiable risk to the witness’s legitimate interests protected under Article 68 of the Statute.

37. As regards P-0884, the Single Judge notes the Yekatom Defence’s argument that [REDACTED], and that the isolated past episode of [REDACTED] is

⁵⁷ Annex to the Request, ICC-01/14-01/18-757-Conf-Exp-Anx, p. 3, entry 8.

⁵⁸ Annex to the Request, ICC-01/14-01/18-757-Conf-Exp-Anx, p. 4, entry 12.

⁵⁹ Annex to the Request, ICC-01/14-01/18-757-Conf-Exp-Anx, p. 5, entry 23.

⁶⁰ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 5, entry 27.

⁶¹ Annex to the Request, ICC-01/14-01/18-757-Conf-Exp-Anx, p. 6, entry 28.

⁶² Annex to the Request, ICC-01/14-01/18-757-Conf-Exp-Anx, p. 6, entry 29.

⁶³ Yekatom Defence Response, ICC-01/14-01/18-828-Red, para. 33.

⁶⁴ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 5, entry 23.

insufficient to trigger the requested protective measures.⁶⁵ However, the Single Judge is of the view that the security incident reported by the witness, compounded by his individual circumstances, notably his prior role within the Anti-Balaka, his ‘high public profile’ and the fact that he resides in an area within the influence of Anti-Balaka members and supporters,⁶⁶ is sufficient to establish the existence of an objectively justifiable risk. He further notes [REDACTED]. Under these circumstances, the Single Judge is of the view that testifying without protective measures would reveal the witness’s cooperation with the Court to the public as a whole, and thereby increase the risk to the witness.

38. Consequently, the Single Judge is satisfied that testifying without protective measures would entail an objectively justifiable risk to the abovementioned witnesses’ legitimate interests protected under Article 68 of the Statute. This risk outweighs, in the view of the Single Judge, the Defence’s concern that, due to these witnesses’ specific positions, granting protective measures would require disproportionate recourse to closed session.⁶⁷ In addition, the Single Judge recalls his position that witness testimony shall insofar as possible be given in public,⁶⁸ and is confident that the Prosecution will organise its questioning in a way to reduce recourse to closed session to a minimum.
39. P-2673 is reported to [REDACTED]. While it is not clear whether these incidents are directly linked to the witness’s cooperation with the Court, the Single Judge notes that the witness is reported to have [REDACTED].⁶⁹ Consequently, and compounded by the individual circumstances of this witness, notably the fact that he lives in an area of influence of Anti-Balaka and supporters, and that [REDACTED],⁷⁰ the Single Judge considers that there is an objectively justifiable risk to the witness’s security that warrants granting in-court protective measures. Furthermore, the need to protect the witness’s

⁶⁵ Yekatom Defence Response, ICC-01/14-01/18-828-Conf, para. 34.

⁶⁶ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, pp. 5-6, entry 27.

⁶⁷ Yekatom Defence Response, ICC-01/14-01/18-828-Conf, paras 30-32.

⁶⁸ See above paragraph 23.

⁶⁹ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 2, entry 4.

⁷⁰ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 2, entry 4.

interests under Article 68 of the Statute outweighs the concern raised regarding the disproportionate recourse to private session, which, the Single Judge trusts, will be limited to the necessary minimum.⁷¹

40. Lastly, the Single Judge notes the Yekatom Defence's objections to the protective measures requested for P-1521 and P-0487, mainly on the basis that [REDACTED].⁷² However, the Single Judge considers that the aforementioned security incidents, in combination with these witnesses' individual circumstances, notably the fact that they live in an area of influence of the Anti-Balaka and their supporters,⁷³ demonstrate the existence of an objectively justifiable risk to the witnesses' legitimate interests protected under Article 68 of the Statute. Accordingly, the Single Judge dismisses the Yekatom Defence's objections in this regard.

(ii) Insider witnesses in relation to whom protective measures are rejected

41. On the basis of the available information, the Single Judge concludes that for witnesses P-2841, P-0966, P-0888, P-1786, P-2027, P-0975, P-0954, P-2602, P-2556, P-1647, P-1858, P-0458, P-2233, P-0627, P-1042, P-1077, P-0446, P-0808 and P-0889, it has not been established that they would face an objectively justifiable risk in case they were to testify without protective measures.
42. As regards P-2841, P-0966, P-0888, P-1786, P-2027, P-0975, P-0954, P-2602, P-2556, P-1647 and P-1858, the Prosecution submits that they have expressed fear of retaliation and/or security concerns if they were to testify publicly.⁷⁴ However, in the Single Judge's view, on the basis of the information in his possession, and absent any information on specific threats or security incidents suffered by these witnesses or other individual circumstances of the witnesses

⁷¹ Yekatom Defence Response, ICC-01/14-01/18-828-Conf, paras 20-21, 23.

⁷² Yekatom Defence Response, ICC-01/14-01/18-828-Conf, paras 25-26, 30.

⁷³ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 2, entry 2; p. 3, entry 12.

⁷⁴ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, pp. 2-4.

demonstrating an objectively justifiable risk, these fears appear subjective and insufficient to warrant granting the requested protective measures.

43. In relation to P-1647, the Single Judge is of the view that the fact that the witness is expected to testify about [REDACTED]⁷⁵ does not, without further explanation as to the timing or reasons of this incident, constitute an objectively justifiable risk to the witness's legitimate interests protected under Article 68 of the Statute. Similarly, the fact that the witness indicated not wanting to testify unless [REDACTED]⁷⁶ is immaterial to the question whether in-court protective measures are justified by the existence of an objectively justifiable risk.
44. As regards P-0975, the Single Judge notes the Prosecution's submission that the witness lives in an area [REDACTED], and that [REDACTED].⁷⁷ While, under these circumstances, the Single Judge is unable to determine the existence of an objectively justifiable risk and, as such, grant in-court protective measures for this witness, he emphasises that this ruling is without prejudice to reconsideration should additional information become available at a later stage.
45. Turning to P-0954, the Single Judge notes that he expressed security concerns related, in particular, to [REDACTED].⁷⁸ Specifically, the Single Judge notes that the Prosecution indicates that [REDACTED].⁷⁹ However, absent any more detailed relevant information on the witness's individual circumstances or details on any incidents underlying the witness's safety concerns, the Single Judge is of the view that the expressed fears are mostly subjective, which is insufficient to amount to an objectively justifiable risk warranting the granting of the requested protective measures.
46. In relation to P-0458, P-2233, P-0627, P-1042, P-1077, P-0446, P-0808 and P-0889, the Single Judge notes the reported threats or security incidents, and is mindful of the witnesses' concerns in that regard.

⁷⁵ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 4, entry 20.

⁷⁶ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 4, entry 20.

⁷⁷ Annex to the Request, ICC-01/14-01/18-757-Conf-Exp-Anx, p. 4, entry 15.

⁷⁸ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 4, entry 16.

⁷⁹ Annex to the Request, ICC-01/14-01/18-757-Conf-Exp-Anx, p. 4, entry 16.

47. Specifically, and according to the Prosecution, the witnesses experienced the following security incidents:

- P-0458 reported ‘a number of security incidents, some of which may be linked to the Anti-Balaka[,] at least one incident involved a [REDACTED]’.⁸⁰
- P-2233 reported a security incident [REDACTED].⁸¹
- P-0627 reported ‘a number of security incidents [REDACTED]’.⁸²
- P-1042 reported [REDACTED].⁸³
- P-1077 reported [REDACTED], an incident which is ‘unknown if related to his cooperation to the ICC’.⁸⁴
- P-0446 reported ‘prior security incidents [REDACTED] from Anti-Balaka’ which are ‘not related to his cooperation with the Prosecution’.⁸⁵
- P-0808 reported receiving [REDACTED] ‘before his cooperation with the OTP’.⁸⁶
- P-0889 reported that [REDACTED]’.⁸⁷

48. However, with regard to these incidents, the Single Judge notes that there is either no indication that they are related to the witnesses’ cooperation with the Court or the Prosecution itself has confirmed that such incidents are not related to such cooperation. Accordingly, the Single finds that no objectively justifiable risk exists to the witnesses’ legitimate interests protected under Article 68 of the Statute.

⁸⁰ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 3, entry 7.

⁸¹ Annex to the Request, ICC-01/14-01/18-757-Conf-Exp-Anx, p. 3, entry 9.

⁸² Annex to the Request, ICC-01/14-01/18-757-Conf-Exp-Anx, p. 3, entry 11.

⁸³ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 4, entry 17.

⁸⁴ Annex to the Request, ICC-01/14-01/18-757-Conf-Exp-Anx, p. 5, entry 22.

⁸⁵ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 5, entry 24.

⁸⁶ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 5, entry 25.

⁸⁷ Annex to the Request, ICC-01/14-01/18-757-Conf-Exp-Anx, p. 6, entry 26.

49. Lastly, with regard to P-0458, the Single Judge notes that he is reported to have expressed security concerns in respect of his cooperation with the Prosecution and reported a number of security incidents, [REDACTED]. According to the Prosecution, some of these incidents ‘may be linked to the Anti-Balaka’. The Prosecution further reports that [REDACTED].⁸⁸ Absent any information as to the nature of these [REDACTED] security concerns, and as to whether they are linked to the witness’s cooperation with the Court, the Single Judge finds that it cannot be established, at this stage, that testifying without protective measures would entail an objectively justifiable risk to the witness’s legitimate interests protected under Article 68 of the Statute. This decision is without prejudice to the Chamber reconsidering the need for protective measures for P-0458 should new or additional information be made available to it at a later stage.

ii. Witnesses in the ICCPP or [REDACTED]

a. Submissions

50. The Prosecution requests protective measures in the form of use of a pseudonym, and face and voice distortion for nine witnesses in the ICCPP and one witness [REDACTED], namely witnesses P-0965, P-1339, P-1704, P-1719, P-1839, P-1962, P-2232, P-2475, P-2582 and P-2620.⁸⁹ According to the Prosecution, the risks to the witnesses’ personal safety have been carefully and objectively assessed by the VWU, and further in-court protective measures will ensure that the witnesses can give evidence without fear for their personal safety and without compromising the security afforded by the ICCPP.⁹⁰
51. The CLRV add in relation to P-2582 and P-2620, who are dual status witnesses, that they were children under the age of 15 at the time of their conscription in the Anti-Balaka group and were in addition [REDACTED] and, as such, classify as particularly vulnerable witnesses.⁹¹

b. The Single Judge’s determination

⁸⁸ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 3, entry 7.

⁸⁹ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 6.

⁹⁰ Request, ICC-01/14-01/18-757-Red2, para. 26.

⁹¹ CLRV Response, ICC-01/14-01/18-821-Conf-Corr, para. 29.

52. Noting that the witnesses in this category have been assessed by the VWU as requiring protection within the framework of the ICCPP, the Single Judge considers that the requested protective measures are justified in order not to compromise the protection provided through the ICCPP. He therefore grants protective measures in the form of a pseudonym, and face and voice distortion for the witnesses in this category.
53. While the above finding also applies to the witness [REDACTED], the Prosecution is directed to inform the Chamber of any new information in this regard, enabling the Chamber to assess whether reconsideration of the present ruling is warranted.

iii. Witnesses in the Camp

a. Submissions

54. The Prosecution requests in-court protective measures in the form of use of a pseudonym and face distortion for three witnesses residing in the Camp, namely P-2049, P-2453 and P-2200. According to the Prosecution, they are at risk and susceptible to retaliation, noting that (i) the Camp [REDACTED]; (ii) one witness reported security incidents [REDACTED];⁹² and (iii) the witnesses are vulnerable as they have been displaced from their communities [REDACTED], are unable to leave the Camp or return to their respective home towns, and face a heightened risk of stigmatisation upon their return, should their cooperation with the Prosecution become public.⁹³

b. The Single Judge's determination

55. The Single Judge notes that the witnesses in this category are vulnerable on account of being [REDACTED] living in a confined camp [REDACTED], and from which they are unable to leave.⁹⁴ He further notes the Prosecution's submission that, if their cooperation with the Prosecution was to become public, they would face a heightened risk of stigmatisation upon their return to their

⁹² Request, ICC-01/14-01/18-757-Conf-Exp, para. 28.

⁹³ Request, ICC-01/14-01/18-757-Conf-Red, para. 28.

⁹⁴ Annex to the Request, ICC-01/14-01/18-757-Conf-Exp-Anx, p. 7-8, entries 40-42.

communities.⁹⁵ Lastly, he notes that one of these witnesses, P-2049, faced a security incident that appears to be linked to his cooperation with the Court.⁹⁶ Under these circumstances, the Single Judge considers that the requested protective measures are justified by the existence of an objectively justifiable risk to the witnesses' physical and psychological well-being, and potentially their safety. He therefore grants the protective measures in the form of use of a pseudonym and face distortion for the witnesses in this category.

iv. Victims of sexual violence

a. Submissions

56. The Prosecution requests in-court protective measures in the form of use of a pseudonym, and face and voice distortion for three alleged victims of sexual violence, namely P-2462, P-2657 and P-2442. In support of its request, the Prosecution notes that (i) some of the witnesses have requested protective measures or specifically indicated that public disclosure of their identities would stigmatise them and compromise their security, dignity and privacy; and (ii) the requested measures will minimise re-traumatisation, protect the privacy of the witnesses and their family members and avoid stigmatisation.⁹⁷

b. The Single Judge's determination

57. Under Article 68(2) of the Statute, protective measures which constitute exceptions to the principle of publicity shall be implemented in relation to victims of sexual violence unless otherwise ordered by the Court. As such, the Statute provides a presumption that protection of the legitimate interests of victims of sexual violence, due to the inherent nature of such crimes and the regrettable but persisting associated stigma, constitutes in and of itself a proportionate and justified exception to the principle of publicity of the proceedings.⁹⁸ This presumption is however not absolute, as the Chamber,

⁹⁵ Request, ICC-01/14-01/18-757-Red2, para. 28.

⁹⁶ Annex to the Request, ICC-01/14-01/18-757-Conf-Exp-Anx, p. 7, entry 40.

⁹⁷ Request, ICC-01/14-01/18-757-Red2, para. 29.

⁹⁸ See also *Ongwen* Protective Measures Decision, ICC-02/04-01/15-612-Conf, para. 16 referring to ICTY, Trial Chamber, *Prosecutor v. Duško Tadić*, Decision on the Prosecutor's motion requesting protective measures for victims and witnesses, IT-94-1-T, 10 August 1995, para. 46.

‘having regard to all the circumstances, particularly the views of the victim or witness’, may still order otherwise.⁹⁹

58. In relation to the three witnesses in this category, the Single Judge notes that, in addition to being victims of sexual violence, a number of other circumstances exist that are relevant to his determination.
59. In particular, the Single Judge notes that P-2462 and P-2657 live in the Camp,¹⁰⁰ and are therefore subject to the same security concerns as the witnesses falling under category (iii) as discussed above. In addition, P-2657 is [REDACTED].¹⁰¹ As regards P-2442, the Single Judge notes that this witness was [REDACTED].¹⁰² Moreover, the Single Judge notes that, in addition to expressing security concerns, the three witnesses expressed fears that testifying without protective measures could cause stigmatisation and ostracism by their communities as well rejection by potential partners. In this regard, P-2462 indicated [REDACTED].¹⁰³
60. In light of the available information, the Single Judge is satisfied that the nature of the crimes suffered, compounded by the individual circumstances of the witnesses concerned and the absence of circumstances otherwise negating the basis for the requested protective measures, make it appropriate that the identity of the witnesses under this category be withheld from the public. He therefore grants the protective measures of use of a pseudonym, face and voice distortion for these witnesses.
61. The Single Judge recalls that the need for these measures may be reconsidered at a later stage. Article 68(2) of the Statute expressly states that the Chamber may order that victims of sexual violence testify fully in open session having regard to all circumstances and in particular the views of the victims themselves. This is particularly important in this case as the in-court protective measures are taken with a view to protecting primarily the witnesses’

⁹⁹ See *Ongwen* Protective Measures Decision, ICC-02/04-01/15-612-Conf, para. 16.

¹⁰⁰ Annex to the Request, ICC-01/14-01/18-757-Conf-Exp-Anx, p. 8, entries 43-44.

¹⁰¹ See *above* paragraph 55.

¹⁰² Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 7, entry 45.

¹⁰³ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 7, entry 45.

psychological well-being, dignity and privacy. The implementation of these measures is therefore subject to each witness explicitly confirming the desire to conceal their identities from the public. The VWU shall ensure that the witnesses are properly informed of the possibility to testify without protective measures – notably, with their identity revealed – and that they are aware of all possible beneficial and adverse consequences that such public testimony could bring.¹⁰⁴

v. Former child soldiers

a. Submissions

62. The Prosecution requests in-court protective measures in the form of use of a pseudonym and face and voice distortion for two former child soldiers, namely P-2511 and P-2476. According to the Prosecution, these measures will enable the witnesses, whom it has determined to be ‘highly vulnerable’, to provide full accounts with minimal re-traumatisation, protect the privacy of the witnesses and their family members, and avoid the witnesses ‘having to face judgment, stigma, questions or remarks from members of the public or friends’. In addition, the Prosecution submits that both witnesses expressed fear of retaliation if they had to testify publicly, especially since they live within the area of influence of supporters of both accused.¹⁰⁵

b. The Single Judge’s determination

63. At the outset, the Single Judge clarifies that the presumption in favour of an exception to the principle of publicity stipulated in Article 68(2) of the Statute is applicable to individuals who are children at the time when they appear as witnesses before the Court, and not more broadly to all witnesses who testify to facts which occurred when they were children. Therefore, while victimisation at a young age is a factor of vulnerability to be taken into account even in case of adult witnesses, the applicable regime for protective measures is the general one which requires a case-by-case determination of the existence of an objectively

¹⁰⁴ In this regard, *see also Ongwen Protective Measures Decision*, ICC-02/04-01/15-612-Red, para. 22.

¹⁰⁵ Request, ICC-01/14-01/18-757-Red2, para. 30.

justifiable risk to any legitimate interest protected under Article 68(1) of the Statute.¹⁰⁶

64. The Single Judge further notes the Prosecution's argument that the requested protective measures are necessary to minimise the risk of re-traumatisation for these witnesses. While the Single Judge acknowledges the need to avoid re-traumatisation, he notes that this is unfortunately not an unknown issue in criminal proceedings, in particular before this Court where victims regularly testify about heinous crimes which they have experienced. It is also true that victimisation suffered by witnesses at a young age makes them particularly vulnerable. However, in the Single Judge's view, this is not sufficient, without more, to grant in-court protective measures. The Single Judge will therefore examine whether other relevant factors exist.¹⁰⁷
65. In this regard, the Single Judge notes the Prosecution's submission that P-2511 and P-2476's testimony without protective measures regarding their role in an armed group which targeted civilian from the communities to which they will return 'will likely result in [their] stigmatisation' within their respective communities.¹⁰⁸ The Single Judge finds that such stigmatisation is indeed likely to arise, and be of considerable degree, as the witnesses are expected to testify about having directly committed or participated in the commission of crimes against civilians from the communities to which they will return. Consequently, the Single Judge considers that the concrete risk of considerable stigmatisation justifies that the identities of these witnesses, who are already vulnerable on account of their victimisation at a young age, be concealed from the public.¹⁰⁹
66. In addition, the Single Judge notes that in [REDACTED], P-2511 expressed fear of retaliation, and in [REDACTED], P-2476 expressed concerns, if they were to 'testify publicly'.¹¹⁰ The Single Judge is therefore satisfied that the in-court

¹⁰⁶ In this regard, *see also* Ongwen Protective Measures Decision, ICC-02/04-01/15-612-Red, para. 24.

¹⁰⁷ For a similar approach, *see* Ongwen Protective Measures Decision, ICC-02/04-01/15-612-Red, para. 25.

¹⁰⁸ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, pp. 7-8, entries 46-47.

¹⁰⁹ For a similar approach, *see* Ongwen Protective Measures Decision, ICC-02/04-01/15-612-Red, para. 27.

¹¹⁰ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, pp. 7-8, entries 46-47.

protective measures requested for these witnesses are justified by the existence of an objectively justified risk to the witnesses' legitimate interests protected under Article 68 of the Statute. The Single Judge therefore grants protective measures in the form of use of a pseudonym, and face and voice distortion for witnesses P-2511 and P-2476.

67. That notwithstanding, and also in light of Rule 87 of the Rules, the need for these protective measures may be reconsidered at a later stage following discussion with the witnesses themselves. In particular, the VWU shall discuss with the witnesses concerned the possibility that testifying publicly about the details of their experiences within an armed group may possibly be conducive to removing the stigma and suspicion associated therewith, rather than increasing it.¹¹¹

vi. *Witnesses in particular professional circumstances*

a. Witnesses in particular professional circumstances in relation to whom protective measures are granted

68. The Prosecution requests in-court protective measures in the form of use of a pseudonym and face distortion for witnesses P-1974 and P-2018, who work [REDACTED]. According to the Prosecution, the requested measures are necessary to preserve the physical safety and professional interests of the witnesses and [REDACTED],¹¹² noting that (i) their ability to perform professional activities [REDACTED] in the CAR may be affected if they were publicly identified as Prosecution witnesses; (ii) prior to his cooperation with the Prosecution, P-1974 experienced security incidents related to his work; (iii) in this period, [REDACTED]; and (iv) in [REDACTED], P-2018 was subject to a security incident (in particular, [REDACTED]).¹¹³
69. The Yekatom Defence opposes the Request, arguing, *inter alia*, that (i) Mr Yekatom's right to have a public trial should prevail over the witnesses'

¹¹¹ For a similar approach, see *Ongwen* Protective Measures Decision, ICC-02/04-01/15-612-Red, para. 28.

¹¹² Request, ICC-01/14-01/18-757-Conf-Red, paras 32, 34.

¹¹³ Request, ICC-01/14-01/18-757-Conf-Exp, paras 32-33; Annex to the Request, ICC-01/14-01/18-757-Conf-Exp-Anx, p. 9, entries 48-49.

preferences due to their professional activities, which should not be taken into consideration by the Chamber; (ii) no clear link has been shown between [REDACTED] and P-1974's cooperation with the Prosecution; and (iii) P-1974 also mentions that P-2018 has been [REDACTED] but this event has not been mentioned by P-2018 himself.¹¹⁴

70. The Single Judge agrees with the Yekatom Defence that the Prosecution's submissions on the potential impact of public testimony on the witnesses' professional activities are speculative and do not, without more, justify the requested protective measures. He therefore needs to determine, in light of the remaining individual circumstances of these witnesses, whether there is an objectively justifiable risk to their legitimate interests protected under Article 68 of the Statute.
71. As regards P-2018, the Single Judge notes that in addition to having experienced 'several security incidents' related to his work, he was subject to a security incident that appears to be directly related to his cooperation with the Court. The Single Judge is therefore satisfied that there exists an objectively justifiable risk to the witness's safety, warranting protective measures. He therefore grants the measures in the form of use of a pseudonym and face distortion for P-2018.
72. Turning to P-1974, the Single Judge agrees with the Yekatom Defence's observation that no clear link has been shown between the [REDACTED] reported by P-1974 and his cooperation with the Prosecution. The Single Judge further notes the Prosecution's submission that the witness stated not foreseeing any issues with testifying without protective measures, but that the Prosecution considers that this would expose him and P-2018 to 'undue risk of physical harm'.¹¹⁵
73. However, the Single Judge considers that granting protective measures to P-1974 is necessary to ensure the effectiveness of the measures granted to P-2018,

¹¹⁴ Yekatom Defence Response, ICC-01/14-01/18-828-Conf, paras 41-45.

¹¹⁵ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 8, entries 48-49.

as both witnesses are expected to testify about the same subject-matter ([REDACTED]),¹¹⁶ which will likely enable the public to make a connection between the two witnesses as [REDACTED]. Under these circumstances, the Single Judge finds it appropriate to grant P-1974 the same protective measures as granted for P-2018.

b. Witnesses in particular professional circumstances in relation to whom protective measures are rejected

(i) Witnesses P-1819 and P-1558

74. The Prosecution requests protective measures in the form of use of a pseudonym and face distortion for two freelance journalists who are called to testify about their work with armed groups in the CAR during the conflict.¹¹⁷
75. With regard to P-1819, the Prosecution submits that [REDACTED]. In these circumstances, the Prosecution submits that the publicity of her cooperation with the Prosecution may have an impact on her [REDACTED] security in the CAR and her access to information which largely depends on the trust she builds with different actors, [REDACTED].¹¹⁸
76. P-1558 is [REDACTED].¹¹⁹ The Prosecution submits that the publicity of the witness's cooperation with the Prosecution may have an impact on his capacity to work [REDACTED] in the CAR, and further notes that the witness expressed concerns regarding the need to protect his professional opportunities, sources and reputation.¹²⁰
77. The Ngaïssona Defence submits that potential loss of future professional opportunities is not a category of interests to be protected by the requested

¹¹⁶ Request, ICC-01/14-01/18-757-Conf-Red, para. 32.

¹¹⁷ Request, ICC-01/14-01/18-757-Conf-Red, para. 35.

¹¹⁸ Request, ICC-01/14-01/18-757-Conf-Red, para. 36.

¹¹⁹ Request, ICC-01/14-01/18-757-Conf-Red, para. 37; Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 8, entry 51.

¹²⁰ Request, ICC-01/14-01/18-757-Red2, para. 37.

measures.¹²¹ It further submits that having a public profile does not justify the granting of such protective measures.¹²²

78. The Yekatom Defence opposes the Request for P-1819, arguing that (i) it is based on her concern regarding future professional opportunities, which, in addition to being speculative in this instance, should not be taken into account when assessing whether protective measures are warranted; (ii) the witness does not claim, nor does the Prosecution demonstrate, an objectively justifiable risk to her safety; and (iii) given that the principal purpose of the witness's testimony is a video [REDACTED], protecting her identity would require disproportionate recourse to private session.¹²³
79. With regard to P-1819, the Single Judge notes the Prosecution's submission that she is [REDACTED] and that publicity of her cooperation with the Prosecution may adversely affect her [REDACTED] security in the CAR and access to information. However, the Single Judge also notes that the last time the witness travelled to [REDACTED] appears to date back to [REDACTED],¹²⁴ and that the Prosecution does not provide any further details as regards the witness's [REDACTED]. Under these circumstances, the Single Judge considers that these alleged risks are speculative and do not amount to an objectively justifiable risk to any of the witness's legitimate interests protected under Article 68 of the Statute.
80. Concerning P-1558, the Single Judge recalls that having a public profile is not a factor, in and of itself, to support protective measures. The Single Judge further considers that the witness's reported concerns about his capacity to work as a journalist in the CAR and the need to protect his sources and his reputation are speculative. Lastly, on the basis of the information available, the Single Judge does not find the Prosecution's submissions on [REDACTED],¹²⁵ to contribute

¹²¹ Ngaïssona Defence Response, ICC-01/14-01/18-827-Red, para. 24.

¹²² Ngaïssona Defence Response, ICC-01/14-01/18-827-Red, para. 27.

¹²³ Yekatom Defence Response, ICC-01/14-01/18-828-Red, paras 46-51.

¹²⁴ See Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 8, entry 50.

¹²⁵ See Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 8, entry 51.

to the existence of an objectively justifiable risk to the witness's legitimate interests protected under Article 68 of the Statute.

81. In view of the above, and in the absence of any concrete information on how testifying without protective measures would impact the security of P-1819 and P-1558 when carrying out their work, the Single Judge rejects the protective measures requested for P-1819 and P-1558. This ruling is without prejudice to the Chamber reconsidering the need for protective measures should new or additional information be made available to it at a later stage.

(ii) Witness P-2926

82. The Prosecution requests protective measures in the form of use of a pseudonym and face distortion to 'preserve [the] physical safety and professional interests' of expert witness P-2926, who works [REDACTED] on matters related to the CAR. The Prosecution submits that [REDACTED]. Under these circumstances, the Prosecution submits that the publicity of the witness's cooperation with the Court may affect (i) the witness's ability to perform his professional activities in the CAR, (ii) his safety, as well as (iii) the safety of third parties, as P-2926 [REDACTED]. In addition, P-2926 is reported to have expressed concerns that public disclosure of his identity would compromise his future professional opportunities in the CAR.¹²⁶
83. The Ngaïssona Defence submits that potential loss of future professional opportunities is not a category of interests to be protected under Article 68(1) of the Statute.¹²⁷ The Yekatom Defence opposes the requested protective measures in light of the absence of any objectively justifiable risk. It further argues that the witness's concern about professional opportunities should not be taken into account, especially in light of the witness's status as an expert overview witness, and that the fact that his testimony is not expected to directly relate to the accused favours that his identity be made public.¹²⁸

¹²⁶ Request, ICC-01/14-01/18-757-Conf-Red, paras 38-39.

¹²⁷ Ngaïssona Defence Response, ICC-01/14-01/18-827-Red, para. 24

¹²⁸ Yekatom Defence Response, ICC-01/14-01/18-828-Red, paras 52-56.

84. The Single Judge notes the Prosecution's submission that publicity of the witness's cooperation with the Court may affect the witness's ability to perform his professional activities in the CAR, his safety, as well as the safety of third parties, as the witness [REDACTED].¹²⁹ In the view of the Single Judge, these submissions are speculative. Accordingly, the Single Judge finds that the Prosecution has not demonstrated the existence of an objectively justifiable risk to the witness's legitimate interests protected under Article 68 of the Statute. The protective measures requested for P-2926 are therefore rejected.

(iii) Witness P-0314

85. The Prosecution requests protective measures in the form of use of a pseudonym and face and voice distortion in order to 'preserve [the] physical safety, neutrality, and professional interests' of P-0314. In support of its request, the Prosecution submits that P-0314 is [REDACTED]. The Prosecution further notes that P-0314 expressed concerns regarding public testimony, as he fears retaliation against him and the people working for him as well as that his [REDACTED] could be compromised.¹³⁰
86. The Ngaïssona Defence opposes the request, arguing that the potential loss of future professional opportunities is not a category of interests protected under Article 68 of the Statute.¹³¹
87. The Single Judge recalls his finding that having a public profile alone does not justify the granting of protective measures. The Single Judge acknowledges the witness's concerns of retaliation against him and the people working for him as well as with regard to his [REDACTED]. However, absent any concrete information as to how public testimony would impact the witness's safety, physical or psychological well-being, dignity or privacy, the Single Judge does

¹²⁹ Request, ICC-01/14-01/18-757-Conf-Red, para. 38; Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 9, entry 52.

¹³⁰ Request, ICC-01/14-01/18-757-Conf-Red, paras 40-41; Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 9, entry 53. The Single Judge notes that in relation to P-0314, the request for voice distortion is not included in the Request. However, noting that the request for voice distortion is included in the Annex to the Request, the Single Judge considers this omission to be due to an oversight and considers that the requested protective measures include voice distortion.

¹³¹ Ngaïssona Defence Response, ICC-01/14-01/18-827-Red, para. 24.

not consider these concerns to amount to an objectively justifiable risk to the witness's legitimate interests protected under Article 68 of the Statute. The Single Judge therefore rejects the protective measures requested for P-0314. However, this ruling is without prejudice to the Chamber reconsidering the need for protective measures should new or additional information be made available to it at a later stage.

(iv) Witness P-1577

88. P-1577 is a [REDACTED]. According to the Prosecution, protective measures for this witness are necessary and justified on the basis that publicity of P-1577's cooperation with the Court (i) would affect the witness's security in the CAR as well as his ability to continue performing professional activities there; (ii) [REDACTED]; and (iii) [REDACTED].¹³² The Single Judge further notes that in the Letter, [REDACTED] submits that the protection of P-1577's identity is needed to protect individuals [REDACTED] in the CAR in the past, [REDACTED].¹³³
89. The Yekatom Defence opposes the P-1577 Request for failure to demonstrate the existence of an objectively justifiable risk.¹³⁴ In this regard, the Yekatom Defence submits that (i) the P-1577 Request aims for the protection of [REDACTED] rather than P-1577 himself; (ii) it appears that P-1577 does not plan to return to the CAR in the foreseeable future; (iii) the argument that P-1577's testimony could present a misconception of [REDACTED] is unfounded, particularly in light of [REDACTED]; and (iv) P-1577's [REDACTED] are at odds with a request to testify anonymously.¹³⁵
90. The Ngaïssona Defence also opposes the P-1577 Request. First, it argues that the Prosecution's submissions based on the current security situation in the CAR are of 'a very general, vague, and speculative nature' and do not identify any objectively identifiable risk. In this regard, it further submits that potential

¹³² Additional Request, ICC-01/14-01/18-843-Conf, paras 10-17.

¹³³ See Annex to the Additional Request, ICC-01/14-01/18-843-Conf-Anx, pp. 2-3.

¹³⁴ Yekatom Defence Additional Response, ICC-01/14-01/18-863-Conf, paras 2, 9.

¹³⁵ Yekatom Defence Additional Response, ICC-01/14-01/18-863-Conf, paras 10-18.

loss of future professional opportunities is not a category protected under Article 68(1) of the Statute.¹³⁶ Second, the Ngaïssona Defence avers that the witness's [REDACTED] is not a factor to be considered for in-court protective measures since (i) [REDACTED] are not protected under Article 68(1) of the Statute and even excluded from the scope of Article 68(5) of the Statute; and (ii) the alleged risk to [REDACTED] is speculative and hypothetical in nature.¹³⁷

91. The Single Judge notes that most of the arguments provided in support of the P-1577 Request are based on hypothetical risks to the security of individuals [REDACTED]. In relation to P-1577, the Prosecution merely submits that [REDACTED], and that his public cooperation with the Prosecution may therefore affect his security in the CAR. These submissions, absent any further concrete information as to how P-1577's testimony without protective measures could affect the safety or physical or psychological well-being of the witness or any other individual at risk on account of P-1577's testimony, are hypothetical and insufficient to warrant the granting of protective measures for P-1577. The P-1577 Request is therefore rejected. This ruling is without prejudice to the Chamber reconsidering the need for protective measures should new or additional information be made available to it at a later stage.

vii. Other vulnerable witnesses

a. Submissions

92. Lastly, the Prosecution requests protective measures in the form of use of a pseudonym and face distortion for 19 crime-based witnesses, namely P-2658, P-2682, P-1416, P-1705, P-1716, P-1490, P-1654, P-2083, P-2196, P-2354, P-1437, P-2082, P-2041, P-1666, P-1823, P-0475, P-0967, P-2389 and P-1811.¹³⁸ In relation to one of these witnesses, P-1490, the Prosecution additionally requests voice distortion.¹³⁹ According to the Prosecution, these witnesses meet a number of objective risk factors, in combination with their fear

¹³⁶ Ngaïssona Defence Additional Response, ICC-01/14-01/18-865-Red, paras 17-19.

¹³⁷ Ngaïssona Defence Additional Response, ICC-01/14-01/18-865-Conf, paras 20-22.

¹³⁸ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, pp. 9-12, entries 54-72.

¹³⁹ See Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 10, entry 59.

of retaliation, especially since they live within an area of influence of the accused's supporters.¹⁴⁰

93. The CLRV 'support in particular' the requested protective measures for dual status witnesses P-2354, P-1666 and P-2389. They further request the Chamber to additionally grant the measure of voice distortion for these witnesses, on the basis that they are all included in the 'vulnerable witnesses' category and the Prosecution's assessment that the risks to these witnesses are 'substantial'. In addition, the CLRV note the Prosecution's submission that [REDACTED].¹⁴¹
94. The Yekatom Defence defers to the Chamber's discretion regarding the requested protective measures for this category of witnesses,¹⁴² while the Ngaïssona Defence specifically objects to the requested protective measures for P-2682, on the grounds that living in an area of influence of the Anti-Balaka does not amount to an objectively justifiable risk, nor is the foreseeable 'considerable' media coverage that the witness's testimony will receive a basis for granting such protective measures.¹⁴³

b. The Single Judge's determination

95. The Single Judge agrees with the Ngaïssona Defence that the expected media coverage which a witness is expected to receive on account of being the first witness to be called at trial is not a factor warranting protective measures.¹⁴⁴ Rather, the Single Judge finds that it is the Prosecution's responsibility to organise its presentation of evidence in a way to allow for as much public testimony as possible, whilst ensuring the safety and well-being of witnesses.
96. Turning to the arguments relied upon by the Prosecution in support of the requested protective measures for the witnesses in this category, the Single Judge recalls that having a public profile or living in an area of Anti-Balaka

¹⁴⁰ Request, ICC-01/14-01/18-757-Red2, para. 42.

¹⁴¹ CLRV Response, ICC-01/14-01/18-821-Conf-Corr, paras 4, 20, 33.

¹⁴² Yekatom Defence Response, ICC-01/14-01/18-828-Red, para. 2.

¹⁴³ Ngaïssona Defence Response, ICC-01/14-01/18-827-Conf, paras 2, 25, 29, 31.

¹⁴⁴ For a similar approach, see Trial Chamber I, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, transcript of hearing on 17 October 2016, ICC-02/11-01/15-T-86-Red-ENG, p. 18, lines 1-5.

influence do not, without more, constitute factors demonstrating the existence of an objectively justifiable risk.

97. Further, noting the Prosecution's submission that the witnesses under this category expressed fears or are considered at risk of retaliation against themselves and/or their families, the Single Judge considers that while retaliation on account of testimony before the Court is in fact a risk from which witnesses shall be protected in accordance with Article 68 of the Statute, such risks need to be objectively justified and, ordinarily, cannot be exclusively based on the witness's own perception.

- (i) Other vulnerable witnesses in relation to whom protective measures are granted

98. Having considered the submissions on the individual circumstances of the witnesses, including the content of their anticipated testimony, the Single Judge is satisfied that an objectively justifiable risk to the witnesses' legitimate interests protected under Article 68 of the Statute has been demonstrated in relation to witnesses P-2658, P-2682, P-1705, P-1716, P-1490, P-1654, P-2196, P-2354, P-1437, P-2041, P-1666, P-1823, P-0475, P-0967, P-2389 and P-1811.
99. In reaching this conclusion, the Single Judge has considered the Prosecution's general submission that these witnesses are crime-based witnesses and vulnerable. He has also considered that these witnesses live in, or regularly visit, an area of influence of the accused and/or the Anti-Balaka, which, as set out above, can be considered as a compounding factor in conjunction with other factors. In addition, when balancing the risks to the witnesses' interests against the right of the accused to a fair and public trial, the Single Judge has noted that, with the exception of the Ngaïssona Defence's submissions on P-2682, the requested measures are not specifically opposed by the Defence. Lastly, with regard to the individual circumstances of each witness, the Single Judge has notably considered the following factors, as set out by the Prosecution:

- P-2658 [REDACTED].¹⁴⁵ The witness is further reported to [REDACTED].¹⁴⁶
- P-2682 is reported to be ‘particularly vulnerable’ because [REDACTED]. She is further reported to frequently visit areas under Anti-Balaka influence.¹⁴⁷
- P-1705 is expected to testify about a sensitive matter, namely his [REDACTED]. He further reported a security incident in [REDACTED]. In addition, he lives within an area of influence of Anti-Balaka members and supporters.¹⁴⁸
- P-1716 was [REDACTED]. Considering that [REDACTED]. Further, the witness lives within the area of influence of Anti-Balaka members and supporters.¹⁴⁹
- P-1490 is reported to [REDACTED]. [REDACTED] lives within an area of influence of Anti-Balaka members and supporters.¹⁵⁰
- P-1654 is expected to testify about [REDACTED]. He lives within an area of influence of the Anti-Balaka [REDACTED].¹⁵¹
- P-2196 is expected to provide evidence against Mr Yekatom. He is reported to be ‘particularly vulnerable’ [REDACTED]. In [REDACTED] experienced a security incident, which, however, does not appear to be related to his cooperation with the Court. P-2196 has further expressed concerns ‘if he would testify publicly’, particularly because of [REDACTED].¹⁵²

¹⁴⁵ The Single Judge recalls that the Camp [REDACTED] (*see above* paragraph 54).

¹⁴⁶ Annex to the Request, ICC-01/14-01/18-757-Conf-Exp-Anx, p. 10, entry 54.

¹⁴⁷ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 9, entry 55.

¹⁴⁸ Annex to the Request, ICC-01/14-01/18-757-Conf-Exp-Anx, p. 10, entry 57.

¹⁴⁹ Annex to the Request, ICC-01/14-01/18-757-Conf-Exp-Anx, pp. 10-11, entry 58.

¹⁵⁰ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 10, entry 59.

¹⁵¹ Annex to the Request, ICC-01/14-01/18-757-Conf-Exp-Anx, p. 11, entry 60.

¹⁵² Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 10, entry 62.

- P-2354 is expected to provide evidence against Mr Yekatom. He is reported to be ‘particularly vulnerable’ on account of [REDACTED], and to face ‘an increased risk of retaliation’. Due to [REDACTED], he is further frequently exposed to the influence of the Anti-Balaka and supporters and is ‘expected to be known and recognisable’.¹⁵³
- P-1437 is a [REDACTED] witness who, [REDACTED] expressed fears of retaliation against her relatives living in an area under the influence of the Anti-Balaka and their supporters, especially since [REDACTED].¹⁵⁴
- P-2041 is expected to provide evidence against Mr Yekatom. He is reported to be ‘particularly vulnerable’ on account of [REDACTED], and to face ‘an increased risk of retaliation’. He is further regularly exposed to Anti-Balaka members and supporters due to his [REDACTED].¹⁵⁵
- P-1666 is expected to provide evidence against Mr Yekatom. He is reported to be ‘particularly vulnerable’ on account of [REDACTED], and to face ‘an increased risk of retaliation’. His vulnerability is further increased by [REDACTED]. Due to [REDACTED], he regularly visits neighbourhoods where he is exposed to Anti-Balaka members and supporters.¹⁵⁶
- P-1823 is expected to provide evidence against Mr Yekatom. He is reported to be ‘particularly vulnerable’ on account of [REDACTED], and to face ‘an increased risk of retaliation’. The witness [REDACTED], and he reported security incidents, including [REDACTED], but it is ‘unclear whether it was related to the cooperation with the OTP’. He lives within the area of influence of Anti-Balaka members and supporters.¹⁵⁷
- P-0475 is reported to be ‘particularly vulnerable’ on account of [REDACTED], and to face ‘an increased risk of retaliation’. He

¹⁵³ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 10, entry 63.

¹⁵⁴ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 11, entry 64.

¹⁵⁵ Annex to the Request, ICC-01/14-01/18-757-Conf-Exp-Anx, p. 12, entry 66.

¹⁵⁶ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 11, entry 67.

¹⁵⁷ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 11, entry 68.

[REDACTED] has expressed not being ‘comfortable testifying publicly’. He lives within the area of influence of Anti-Balaka members and supporters.¹⁵⁸

- P-0967 is reported to be ‘particularly vulnerable’ on account of [REDACTED], and to face ‘an increased risk of retaliation’. The witness is expected to testify about [REDACTED]. Considering that [REDACTED]. Further, she [REDACTED] and lives within the area of influence of Anti-Balaka members and supporters.¹⁵⁹
- P-2389 is expected to provide evidence against Mr Yekatom. He is reported to be ‘particularly vulnerable’ on account of [REDACTED], and to face ‘an increased risk of retaliation’. He is expected to be [REDACTED] living in his area, which is within the area of influence of Anti-Balaka members and supporters. Further, for [REDACTED], he visits other areas where he faces ‘similar exposure’.¹⁶⁰
- P-1811 is reported to be ‘particularly vulnerable’ on account of [REDACTED], and to face ‘an increased risk of retaliation’. The witness is expected to testify about, [REDACTED]. Considering that [REDACTED]. Further, [REDACTED] and lives within the area of influence of Anti-Balaka members and supporters.¹⁶¹

100. In light of the above, the Single Judge grants the protective measures requested for P-2658, P-2682, P-1705, P-1716, P-1490 (including voice distortion), P-1654, P-2196, P-2354, P-1437, P-2041, P-1666, P-1823, P-0475, P-0967, P-2389 and P-1811. In addition, noting the CLRV’s submissions in this regard, the Single Judge further grants the additional measure of voice distortion for P-2354, P-1666 and P-2389.

(ii) Other vulnerable witnesses in relation to whom protective measures are rejected

¹⁵⁸ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 11, entry 69.

¹⁵⁹ Annex to the Request, ICC-01/14-01/18-757-Conf-Exp-Anx, p. 13, entry 70.

¹⁶⁰ Annex to the Request, ICC-01/14-01/18-757-Conf-Exp-Anx, p. 13, entry 71.

¹⁶¹ Annex to the Request, ICC-01/14-01/18-757-Conf-Exp-Anx, p. 13, entry 72.

101. The Single Judge considers that no objectively justifiable risk has been established for witnesses P-1416, P-2083 and P-2082.
102. P-1416 is expected to provide evidence against Mr Yekatom, reports [REDACTED], lives within an area known for the influence of Anti-Balaka members and supporters, and has expressed fear of retaliation if he was to testify publicly. Further, he told the Prosecution that [REDACTED].¹⁶²
103. Absent any information as to the details of [REDACTED], the Single Judge is unable to determine whether this incident is related to the witness's cooperation with the Court. As a consequence, and noting the information on the other individual circumstances of this witness, the Single Judge considers that no objectively justifiable risk to the witness's protected interests under Article 68 of the Statute exists. The requested protective measures are therefore rejected. This ruling is without prejudice to reconsideration should additional information become available at a later stage.
104. P-2083 is expected to provide evidence against Mr Yekatom on a 'sensitive charge (child-soldiers)' and the Prosecution links this charge with 'prior behaviour by Anti-Balaka members and supporters', without providing further details. The Prosecution also submits that the witness was [REDACTED]. It further reports that she has expressed fear of retaliation and lives within the area of influence of Anti-Balaka members and supporters.¹⁶³ P-2082 was [REDACTED] and, as such, is expected to be [REDACTED]. The Prosecution submits that she was 'hesitant' to testify openly and she lives within the area of influence of Anti-Balaka members and supporters.¹⁶⁴
105. The Single Judge is of the view that, noting the limited reasons provided for the requested protective measures for P-2083 and P-2082, the witnesses' concerns appear entirely subjective. No information is provided that an objective risk to the witnesses' safety exists and there is no indication that these witnesses are particularly vulnerable. The requested measures are therefore rejected. This

¹⁶² Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 9, entry 56.

¹⁶³ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 10, entry 61.

¹⁶⁴ Annex to the Request, ICC-01/14-01/18-757-Conf-Anx-Red, p. 11, entry 65.

ruling is without prejudice to reconsideration should additional information become available at a later stage.

C. Redactions of pseudonyms

106. The Single Judge notes that in the public redacted versions of the filings underlying the present decision, the majority of the pseudonyms of the witnesses have been redacted. In the view of the Single Judge, redactions to pseudonyms should only be applied in exceptional circumstances where the pseudonym could lead to a witness's identification. Therefore, and absent any justification within five days of notification of the present decision as to why the redactions ought to be maintained, the Single Judge will issue a public redacted version of this decision without applying any redactions to pseudonyms. Likewise, the participants are instructed to file, within five days of notification of the present decision, lesser redacted versions of their underlying filings, lifting the redactions to the pseudonyms of the witnesses subject to the present decision.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Request for Variation of Time;

ORDERS that the following witnesses be referred, in their capacity as witnesses in these proceedings, only by their respective pseudonyms in public filings and public sessions of the trial, and provide their testimony before the Chamber with face and voice distortion *vis-à-vis* the public: P-2251, P-1521, P-2673, P-1847, P-0306, P-0487, P-0876, P-0884, P-1193, P-2843, P-0965, P-1339, P-1704, P-1719, P-1839, P-1962, P-2232, P-2475, P-2582, P-2620, P-2462, P-2657, P-2442, P-2511, P-2476, P-1490; P-2354, P-1666 and P-2389;

ORDERS that the following witnesses be referred, in their capacity as witnesses in these proceedings, only by their respective pseudonyms in public filings and public sessions of the trial, and provide their testimony before the Chamber with face distortion *vis-à-vis* the public: P-2049, P-2453, P-2200, P-1974, P-2018, P-2658, P-2682, P-1705, P-1716, P-1654, P-2196, P-1437, P-2041, P-1823, P-0475, P-0967, and P-1811;

REJECTS the Prosecution's request for in-court protective measures for witnesses P-2841, P-0966, P-0888, P-1786, P-2027, P-0975, P-0954, P-2602, P-2556, P-1647, P-1858, P-0458, P-2233, P-0627, P-1042, P-1077, P-0446, P-0808, P-0889, P-1819, P-1558, P-2926, P-0314, P-1577, P-2083, P-2082 and P-1416;

ORDERS the VWU, should it consider it appropriate to provide for special measures under Rule 88 of the Rules, to inform the Chamber of its determination in accordance with the Witness Familiarisation Protocol (ICC-01/14-01/18-677-Anx1); and

ORDERS the participants to file lesser redacted versions of their underlying submissions in line with paragraph 106 above.

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



Judge Bertram Schmitt
Single Judge

Dated this 19 April 2021

At The Hague, The Netherlands