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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 “Request for Reconsideration regarding In-Court
Protective Measures for Prosecution Witness P-2556”,
ICC-01/14-01/18-1464-Conf-Exp, 17 June 2022**

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I. INTRODUCTION

1. Pursuant to the Chamber's Initial Directions on the Conduct of Proceedings¹ and further to its Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses ("Decision"),² which, *inter alia*, rejected³ the Office of the Prosecutor ("Prosecution")'s request for P-2556,⁴ the Prosecution requests the Chamber to reconsider its Decision, and to grant protective measures for P-2556 in the form of voice and facial distortion, and the use of a pseudonym ("Requested Measures").

2. Reconsideration of the Requested Measures is necessary to secure the witness's testimony and to prevent an injustice.⁵ In particular, new facts have arisen since the Decision was rendered: (i) the security situation in the Central African Republic ("CAR") has further deteriorated; and (ii) additional details regarding the witness's security concerns were not previously before the Chamber. These new circumstances justify the Chamber's reconsideration.

3. Granting the Requested Measures will ensure that P-2556 is able to give evidence fully without fear for his own security, and without jeopardising that of his family.

4. The Requested Measures are the least restrictive means to appropriately balance the right to a public trial against the statutory mandate to protect witnesses appearing before the Court, and to prevent a disproportionate risk of harm on account of those who assist it.⁶ As such, the measures would not unfairly prejudice the Accused.

¹ ICC-01/14-01/18-631, paras. 68-69.

² ICC-01/14-01/18-906-Red2 ("Decision"),

³ Decision, paras. 41-42, p. 46.

⁴ ICC-01/14-01/18-757-Conf-Exp-Anx ("Prosecution First Request"), p. 5, entry 19.

⁵ See ICC-01/12-01/18-734, para. 11 (noting that "[n]ew facts and arguments arising since the decision was rendered may be relevant to [assess whether reconsideration is necessary to prevent an injustice]"). See also, ICC-01/12-01/18-1335-Conf-Red, para. 5.

⁶ See e.g., ICC-01/05-01/13-1481-Red-Corr, para. 18.

II. CONFIDENTIALITY

5. Pursuant to regulation 23*bis* of the Regulations of the Court (“RoC”), this Request is filed as “Confidential, ex parte - only available to the Prosecution and the VWU”, as it bears on confidential witness security issues, and concerns previous filings of the same classification. A confidential redacted version will be filed contemporaneously.

III. SUBMISSIONS

6. As the Chamber has confirmed, “any rejection of a request for protective measures in an initial ruling” is without prejudice to the Chamber reconsidering, upon request or *proprio motu*, the need for an order under Rule 87 of the Rules, should new or additional information be made available to it at a later stage.”⁷ The new and additional facts and information set out below warrant such reconsideration.⁸

A. Reconsideration is necessary and justified

7. Reconsideration of protective measures for P-2556 is necessary and justified. The fact that members of the Anti-Balaka, who live [REDACTED] and [REDACTED] was not known to the Chamber. Further, given the deterioration in the political and security situation in the CAR since the Prosecution’s First Request on 7 December 2020, the new circumstances merit the Chamber’s attention, as they are determinative of the current *objective* risk of harm to P-2556.

- a. The security situation in the CAR is inadequate to protect P-2556 and his immediate family

⁷ ICC-01/14-01/18-1245-Conf-Corr, para. 5 *citing* ICC-01/14-01/18-906-Red2, para. 21.

⁸ Reconsideration is appropriate in a number of circumstances under the Court’s jurisprudence. *See* ICC-01/04-01/07-3833, para. 25; ICC-02/04-01/15-1547, para. 7; ICC-02/04-01/15-711, para. 4; ICC-02/04-01/15-468, para. 4 (when necessary to prevent an injustice); *see* ICC-01/04-01/06-2705, paras. 13-18; ICC-02/04-01/05-50, para. 18; ICC-01/04-01/06-772 OA4, paras. 36-39 (when the consequences of a decision are manifestly unsatisfactory); and *see* ICC-01/04-01/07-3833, para. 25; ICC-01/09-01/11-1813, para. 19; ICC-01/09-02/11-863, para. 11; ICC-02/04-01/15-1210, para. 6; ICC-02/04-01/15-1259, para. 12; and ICC-01/12-01/18-734, para. 11 (when new facts and arguments arise).

8. The security situation in the CAR has deteriorated since protective measures were first sought for P-2556.⁹ As confirmed in the Eighth Periodic Report of the Registry on the Political and Security situation in the CAR (“Eighth Registry Report”), the political and security context in the CAR “continue[s] to be shaped by: (i) political tensions which have remained significant, with the main coalition of opposition parties (the ‘Democratic Opposition’) having declined to participate in the Republican Dialogue in March 2022; (ii) the volatile security environment, characterised by unabated clashes across several parts of the country between armed groups and the FACA/Bilateral forces; and (iii) a dire socio-economic and humanitarian situation, which is exacerbated by the CAR government’s alarming budgetary situation.”¹⁰

9. The situation in the CAR is unlikely to improve in the short to medium term.¹¹ Consequently, domestic authorities have a diminished capacity to protect and secure the interests of witnesses in this case, given the necessary deployment of a substantial portion of their limited resources to stabilise the country. The capacity to ensure that P-2556 and third-parties (such as his family) can be adequately protected in the CAR, should his testimony be received publicly, is clearly reduced relative to when the initial application for protective measures was made more than a year ago.

b. Requiring P-2556’s testimony without protective measures would result in an injustice

10. Given the changed security situation and in light of the ongoing personal circumstances that will be described below, P-2556 will likely be marked for retaliation, should his cooperation and testimony as a Prosecution witness become public. Absent reconsideration, requiring his testimony under P-2556’s current

⁹ Prosecution First Request, p. 5, entry 19.

¹⁰ See ICC-01/14-01/18-1434-Conf, para. 7. See also ICC-01/14-01/18-1245-Conf, para. 8, where the Chamber finds that “the security situation in the CAR has further deteriorated since the Initial Decision was rendered”, deciding upon the Prosecution’s similar argument in ICC-01/14-01/18-1232-Red2, para. 8.

¹¹ *Id*; also incorporating for reference ICC-01/14-01/18-1232-Red2, para. 8.

circumstances would impose disproportionate negative consequences on him, as explained below.

B. Protective measures for P-2556 are warranted, as he faces an objective risk of harm

11. P-2556, a Gbaya civilian and [REDACTED], joined the Anti-Balaka in CARNOT under the leadership of Barthélémy NAMSENMO (P-1042) and Sylvain SINAKOLO (“Anti-Balaka Leadership in CARNOT”). He is expected to provide evidence implicating NGAISSONA, including in the financing and provision of weapons to the Anti-Balaka in BOSSANGO and ‘BENZABE’ (BENZAMBE). He describes the direct ties between the Anti-Balaka Leadership in CARNOT and NGAISSONA. As mentioned in the Prosecution’s First Request, P-2556 is [REDACTED], due to his prior role within the Anti-Balaka.¹²

12. [REDACTED], which remains under the influence of Anti-Balaka members and supporters, as such having an interest in [REDACTED]. On 8 June 2022, P-2556 reported that [REDACTED]. This leads to the conclusion that their interest [REDACTED] above stem from the support they still lend to NGAISSONA and MOKOM.

13. Moreover, in the period subsequent to the Prosecution’s First Request,¹³ the Coalition of Patriots for Change (“CPC”), has been active and dedicated to acts of violence throughout CAR. Several Anti-Balaka leaders including former members of the National Coordination, among them MOKOM, Sylvain BEOROFEI and allegedly, Dieudonné NDOMATE, joined the CPC.¹⁴ The Second Periodic Report of the Registry

¹² Prosecution First Request, p. 5, entry 19.

¹³ Prosecution First Request, p. 5, entry 19.

¹⁴ Jeune Afrique, “Centrafrique : ce que contient l’enquête qui vise François Bozizé et l’opposition”, 12 April 2021, <https://www.jeuneafrique.com/1153176/societe/centrafrique-ce-que-contient-lenquete-qui-vise-francois-bozize-et-lopposition/>, [last accessed: 17/06/2022]; Le Potentiel Centrafricain.com, “Sébastien WENEZOU dénonce la complicité de MOKOM et NDOMATE avec le groupe armé de la Coalition des Compatriotes pour le Changement”, 1 January 2021, <https://lepotentielcentrafricain.com/sebastien-wenezoui-denonce-la-complicite-de-mokom-et-ndomate-avec-le-groupe-arme-de-la-coalition-des-compatriotes-pour-le-changement/> [last accessed: 17/06/2022]

on the Political and Security situation in the CAR (“Second Registry Report”), further notes that the CPC comprises six former enemy rebel groups including the two Anti-Balaka branches.¹⁵

14. Since announcing on 19 December 2020 its intention to (i) take control of the entire territory of CAR,¹⁶ the CPC has carried out attacks in numerous villages and towns.¹⁷ Significantly, this includes [REDACTED],¹⁸ and at a village located between [REDACTED].¹⁹

15. To the extent that P-2556’s evidence may incriminate Anti Balaka National Coordination members and in particular MOKOM, public testimony would expose the witness to the reaction of members and supporters of the Anti Balaka and the CPC that, as stated above, is currently active and dedicated to acts of violence.

16. These circumstances, coupled with the security situation in the CAR, where the domestic law enforcement institutions cannot provide adequate protection to P-2556 and his family, demonstrate that his testimony without appropriate in-court

¹⁵ ICC-01/14-01/18-825-Conf-Anx (“Annex to Registry Second Periodic Report”), 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: 17/06/2022].

¹⁶ Annex to Registry Second Periodic Report, para. 13 ; Le Tsunami, “CPC, Declaration n°2”, 19 December 2020, <https://letsunami.net/centrafrique-declaration-n2-de-la-coalition-des-patriotes-pour-le-changement/> [Last accessed: 17/06/2022] (“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”).

¹⁷ Annex to Registry Second Periodic Report, paras. 14, 35 (referring to BOZOU, YALOK, MBAIKI, BOSSANGOA, BAMBARI, BOUAR; para. 33 (referencing the group’s intention to march on BANGUI). See also France 24, “Centrafrique : nouvelle attaque des rebelles, deux avions français dépêchés”, 9 January 2021 (referring to BOUAR), <https://www.france24.com/fr/afrique/20210109-centrafrique-des-avions-fran%C3%A7ais-ont-%C3%A0-nouveau-survol%C3%A9-le-pays> [Last accessed: 17/06/2022]; Reuters, “Central African rebels attack and enter town before election results announced”, 3 January 2021 (referring to BANGASSOU) <https://www.reuters.com/article/us-centralafrica-election/central-african-rebels-attack-and-enter-town-before-election-results-announced-idUSKBN2980KG> [Last accessed: 17/06/2022]; see also Aljazeera, “Central African Republic: Six soldiers killed in rebel attack”, 29 April 2022 (referencing BAKOUMA), <https://www.aljazeera.com/news/2022/4/29/central-african-republic-six-soldiers-killed-in-rebel-attack> [last accessed: 17/06/2022]; and see HumAngle, “CPC Releases Video Of Captured Central African Republic Soldiers”, 14 June 2022 (referencing NZAKO), <https://humanglemedia.com/cpc-releases-video-of-captured-central-african-republic-soldiers/> [last accessed: 17/06/2022].

¹⁸ UN News, “Central African Republic: Displacement reaches 120,000, as another deadly attack leaves one UN peacekeeper dead”, 15 January 2021, <https://news.un.org/en/story/2021/01/1082192#:~:text=%E2%80%99CWorsening%E2%80%99D%20election%20violence%20in%20the,dead%2C%20and%20two%20others%20wounded>. [last accesses: 16/06/2022]

¹⁹ [REDACTED].

protective measures would create an impermissible *risk* of harm. P-2556 in fact would be exposed to NGAISSONA's and MOKOM's supporters, and Anti-Balaka and CPC supporters and members. Should they watch his testimony or otherwise become aware of it, P-2556 and his family would most likely become the target of their revenge.

17. Furthermore, testifying publicly might expose P-2556 to victims of Anti-Balaka crimes, who may easily associate the witness with the perpetrators of the serious crimes committed against their community and families. Similarly they may be motivated to take revenge against him or his family. P-2556's public testimony would therefore adversely affect his ability to live safely within his community in [REDACTED].

18. The circumstances described establish an objective risk of harm to P-2556, warranting appropriate measures pursuant to rule 87 of the Rules to protect the safety of the witness, in compliance with article 68(1). The Chamber has noted with concern some reported witness interference incidents and their impact in deterring Prosecution witnesses from testifying, as well as the Registry's reports regarding the CAR's volatile security situation.²⁰ These circumstances are crucially important and should be taken into account when assessing whether in-court protective measures should be granted.

C. The Requested Measures are strictly proportionate to the risk and do not unfairly prejudice the Accused

19. The Requested Measures are necessary and proportionate to mitigate the risks arising from P-2556's prospective testimony. Given that P-2556 is [REDACTED], voice and face distortion, and the use of a pseudonym are the minimum necessary to ensure the adequate and proportional protection of his and his family's safety and security.

²⁰ ICC-01/14-01/18-1460-Conf, para. 5.

20. The impact of the Requested Measures on the publicity of the proceedings is mitigated and justified. *First*, as noted, they are needed to ensure that P-2556 is able to provide unfettered evidence. *Second*, they do not impede the Accused's opportunity and ability to fully examine the witness and to test his evidence. *Third*, much of P-2556's testimony will be given in public in any event, with the Chamber duly moderating the use of private sessions within the sound exercise of its discretion, as it has done effectively and fairly with other protected witnesses.

21. Finally, in respect of the right to publicity,²¹ the Prosecution notes that the Requested Measures would remain in effect to the extent necessary to protect the witness. However, should the risks abate, releasing lesser redacted material into the public domain may be appropriate in the future, thus accommodating and balancing the respective interests of articles 64(2), 68(1), and 67(1).

IV. RELIEF SOUGHT

22. For the above reasons, the Prosecution seeks reconsideration of the Decision and requests that the Chamber grant in-Court protective measures in the form of voice and facial distortion and the use of a pseudonym for P-2556.



Karim A. A. Khan QC, Prosecutor

Dated this 21st day of July 2022
At The Hague, The Netherlands

²¹ See article 67(1) (qualifying the right as an “entitle[ment] to a public hearing, *having regard to the provisions of this Statute...*”) (emphasis added); see also article 68(2).