

ANNEX 28

Public Redacted

Version

From: Trial Chamber V Communications
Sent: 18 June 2024 16:07
To: D30 Ngaïssona Defence Team; D29 Yekatom Defence Team; OTP CAR IIB; 'V44 LRV Team'; V44 LRV Team OPCV; V45 LRV Team; VWS Legal
Cc: Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber V Communications
Subject: RE: Order on Ngaïssona Defence Request for Reconsideration of ICC-01/14-01/18-2532-Conf

[ICC] RESTRICTED

Dear Counsel,
 dear colleagues from the Registry,

The Single Judge takes note of the VWU's observations (email from the VWU, 18 June 2024, at 12:23), as well as the responses from the Prosecution (email from the Prosecution, 18 June 2024, at 12:45) and the Ngaïssona Defence (email from the Ngaïssona Defence, 18 June 2024, at 13:23).

Further noting the witness's request to address the Chamber in closed session at the start of his testimony, the Single Judge will rule on the Ngaïssona Defence's reconsideration request orally, after hearing the witness.

Kind regards, TC V

From: [REDACTED]
Sent: Tuesday, June 18, 2024 1:23 PM
To: [REDACTED] Trial Chamber V Communications
 [REDACTED]; VWS Legal [REDACTED] D30 Ngaïssona Defence Team
 [REDACTED]; D29 Yekatom Defence Team [REDACTED]
 OTP CAR IIB [REDACTED]; V44 LRV Team [REDACTED]; V44 LRV Team OPCV
 [REDACTED] V45 LRV Team [REDACTED] >
Cc: Associate Legal Officer-Court Officer [REDACTED] Chamber Decisions Communication [REDACTED]
Subject: Re: Order on Ngaïssona Defence Request for Reconsideration of ICC-01/14-01/18-2532-Conf

[ICC] RESTRICTED

[ICC] RESTRICTED

Dear Trial Chamber V,

The Defence for Mr Ngaïssona (the "Defence") attended the courtesy meeting with D30-4608 this morning. At this occasion, the witness informed the Defence that he was told, by the Victims and Witnesses Section ("VWS") over the phone, that there was nothing VWS can do about the protective measures and that testifying publicly can actually be the safer option.

Hearing this, D30-4608 was worried and told the Defence that he does not agree with VWS's assessment. He mentioned that in the Central African culture, [REDACTED]. "He is therefore fearful that giving public testimony will expose him and his family to reprisals.

The Defence therefore renews its request for use of pseudonym, voice and image distortion and recourse to private sessions during the testimony of the witness.

Should in-court Protective Measures not be granted, the witness has requested to start his testimony in closed session and address the Chamber with his safety and security concerns.

Kind regards,

[REDACTED]

On behalf of the Ngaïssona Defence

From: [REDACTED]
Sent: 18 June 2024 12:23 PM
To: Trial Chamber V Communications [REDACTED]; VWS Legal [REDACTED]
 D30 Ngaïssona Defence Team <[REDACTED]> D29 Yekatom Defence Team
 [REDACTED]; OTP CAR IIB [REDACTED] V44 LRV Team
 [REDACTED]; V44 LRV Team OPCV [REDACTED]; V45 LRV Team
 [REDACTED]
Cc: Associate Legal Officer-Court Officer [REDACTED]; Chamber Decisions
 Communication [REDACTED]
Subject: RE: Order on Ngaïssona Defence Request for Reconsideration of ICC-01/14-01/18-2532-Conf

[ICC] RESTRICTED

[ICC] RESTRICTED

Dear colleagues,
 Dear counsel,

The VWU confirms its previous "Observations on the Ngaïssona Defence Consolidated Request for In-Court Protective Measures for Witness D30-P-4608 (ICC-01/14-01/18-2395-Conf)" (ICC-01/14-01/18-2529-Conf) dated 13 June 2024. During the interview that took place on 18 June, the witness did not identify any threat actor except the Muslim community and stated that he did not experience any security issue.

The incident that took place [REDACTED] was not reported by the witness to the VWU as a threat.

The witness was reminded about [REDACTED]
 [REDACTED].

Kind regards,

[REDACTED]

From: Trial Chamber V Communications [REDACTED]
Sent: Friday, June 14, 2024 5:11 PM
To: VWS Legal [REDACTED]; D30 Ngaïssona Defence Team [REDACTED]
 D29 Yekatom Defence Team [REDACTED] OTP CAR IIB [REDACTED] V44
 LRV Team' [REDACTED] V44 LRV Team OPCV [REDACTED]; V45 LRV Team
 [REDACTED]
Cc: Associate Legal Officer-Court Officer [REDACTED] Chamber Decisions
 Communication [REDACTED] Trial Chamber V Communications
 [REDACTED]
Subject: Order on Ngaïssona Defence Request for Reconsideration of ICC-01/14-01/18-2532-Conf

[ICC] RESTRICTED

Dear Counsel,
dear colleagues from the Registry,

The Single Judge takes note of the request below.

He instructs the VWU to provide further observations on in-court protective measures by email on 18 June 2024, as soon as possible following its meeting with D30-4608, and latest by 15:30. Responses by the rest of participants, if any, are to be sent also by email by 16:30.

Kind regards, TC V

From: [REDACTED]
Sent: Friday, June 14, 2024 4:18 PM
To: Trial Chamber V Communications [REDACTED]
Cc: D30 Ngaïssona Defence Team [REDACTED] D29 Yekatom Defence Team [REDACTED]; OTP CAR IIB [REDACTED]; V44 LRV Team OPCV [REDACTED]; V44 LRV Team [REDACTED] V45 LRV Team [REDACTED]
Subject: D30 Urgent Defence Request for Reconsideration of ICC-01/14-01/18-2532-Conf
Importance: High

[ICC] RESTRICTED

Dear Trial Chamber V,

The Defence for Mr Ngaïssona (the "Defence") hereby urgently requests reconsideration of the "Decision on the Ngaïssona Defence Request for In-Court Protective Measures for D30-4608 (ICC-01/14-01/18-2532-Conf)" (the "Decision"), issued on 14 June 2024 . The urgency of the present request stems from the imminence of D30-4608's testimony, scheduled to begin on 19 June 2024.

The Defence respectfully seeks reconsideration of the Decision to prevent an injustice (ICC-01/14-01/18-2182, para. 8).

D30-4608, to whom in-court protective measures ("ICPMs") were denied :

- is a [REDACTED] in the Central African Republic;
- vastly [REDACTED];
- now resides [REDACTED];
- [REDACTED]; and
- [REDACTED].

The Chamber denied ICPMs on the basis that 1) the [REDACTED] and 2) that he can [REDACTED] (ICC-01/14-01/18-2532-Conf, para. 7).

By contrast, the Defence recalls that P-1576 was granted ICPMs (ICC-01/14-01/18-1974-Conf.) when:

- [REDACTED];
- [REDACTED]; (ICC-01/14-01/18-1966-Conf, para 7)
- [REDACTED];

• [REDACTED]
[REDACTED]

In denying ICPMs to D30-4608, the Chamber interpreted the rules governing ICPMs more strictly than it has in the past. As such, the Defence requests the Chamber to reconsider its Decision and grant ICPMs to D30-4608 in order to guarantee Mr Ngaïssona's right to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses brought against him by the Prosecution, as enshrined under Article 67(1)(e).

Reconsideration of the Decision is further warranted by the lack of adherence by the Victims and Witnesses Unit ("VWU") to its normal practices. Indeed, the VWU did not talk with the witness about his security concerns, and thus submitted its recommendations without having conducted an assessment on the witness' security and safety (ICC-01/14-01/18-2529-Conf, para.3), in deviation of accustomed practices. In its Decision, the Chamber did not take into account the absence of such final assessment, which has shown to be crucial in providing new information that were determinative in the Chamber's previous decisions on requests for ICPMs (e.g., ICC-01/14-01/18-1779, para. 9; ICC-01/14-01/18-1514, paras 10-11; ICC-01/14-01/18-1245, para. 7).

As such, and alternatively, the Defence requests that a new assessment be made promptly upon the witness' arrival at the Court, thereby allowing the Chamber to revise its Decision in light of the assessment, keeping in mind that the witness may withdraw his cooperation with the Defence should he be obliged to testify publicly.

Kind regards,

[REDACTED]
On behalf of the Defence for Mr Ngaïssona

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