

**Cour
Pénale
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**International
Criminal
Court**

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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
THE PROSECUTOR *v.* ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA**

PUBLIC

Public Redacted Version of "Ngaïssona Defence Request for In-Court Protective Measures for Witnesses D30-P-4720", ICC-01/14-01/18-2388-Conf

Source: Defence of Patrice-Edouard Ngaïssona

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

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I. INTRODUCTION

1. Pursuant to Article 64 and 68 of the Rome Statute (“Statute”) and Rule 87 of the Rules of Procedure and Evidence (“Rules”), the Defence for Mr Patrice-Edouard Ngaissona (“Defence”) respectfully requests Trial Chamber V (“Chamber”) to grant in-court protective measures, in the form of (i) face distortion, (ii) voice distortion, and (iii) use of pseudonym for Witness D30-P-4720 (“Sought Measures”).
2. The Defence submits that the Sought Measures are necessary since there is an objectively justifiable risk to the witness’ safety, physical and psychological well-being, as well as her dignity and privacy, should her identity become known to the public.

I. CONFIDENTIALITY

3. In accordance with regulation 23*bis*(1) of the Regulations of the Court (the “RoC”), this consolidated request is filed as confidential, as it contains information that identifies Witness D30-P-4720. The Defence will file a public redacted version in due course.

II. PROCEDURAL HISTORY

4. On 26 August 2020, the Chamber, issued the ‘Initial Directions on the Conduct of the Proceedings’ (“Initial Directions”), stating that “Any applications for in-court protective measures pursuant to Rules 87 and 88 of the Rules shall be made as soon as possible to allow the Chamber to receive submissions on the request and to allow the VWU to fulfil its mandate.”¹

¹ ICC-01/14-01/18-631, para. 68.

5. On 29 May 2023, the Chamber issued its 'Further Directions on the Conduct of the Proceedings' ("Further Directions") and directed the Defence to file its final list of witnesses and specify the expected in-court protective measures to be sought.²
6. On 17 November 2023, the Defence filed its Final List of Witnesses, where it indicated which witnesses would be needing in-court protective measures.³ Specifically, it indicated that it would seek to have Witness D30-P-4720 testifying under such measures.⁴

III. APPLICABLE LAW

7. Article 64(1) and 67(1) of the Statute establish the general principle that publicity of the proceedings is a fundamental right of the accused and a fair trial requirement. This principle is not absolute and subject to limitations provided in Article 64(2) of Statute. Specifically, this provision states that the Chamber should ensure that the trial is conducted in "due regard for the protection of victims and witnesses". Article 64(6)(e) further provides that:

"In performing its functions prior to trial or during the course of a trial, the Trial Chamber may, as necessary:

[...]

(e) Provide for the protection of the accused, witnesses and victims; [...]"

8. Article 68(1) of the Statute provides a legal framework for the provision of such measures and gives the Chamber power to "take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses".

² ICC-01/14-01/18-1892, para 21.

³ ICC-01/14-01/18-2215.

⁴ ICC-01/14-01/18-2215-Conf-Anx1.

9. Rule 87(1) of the Rules provides that the Defence can request measures to protect a witness at risk due to his or her testimony. In the event the Chamber grants such request, Rule 87(3) lays out the different types of measures that can be adopted:

“3. [...]

(a) That the name of the victim, witness or other person at risk on account of testimony given by a witness or any information which could lead to his or her identification, be expunged from the public records of the Chamber;

(b) That the Prosecutor, the defence or any other participant in the proceedings be prohibited from disclosing such information to a third party;

(c) That testimony be presented by electronic or other special means, including the use of technical means enabling the alteration of pictures or voice, the use of audiovisual technology, in particular videoconferencing and closed-circuit television, and the exclusive use of the sound media;

(d) That a pseudonym be used for a victim, a witness or other person at risk on account of testimony given by a witness; or

(e) That a Chamber conducts part of its proceedings in camera.”

10. The Court has consistently held that a case-by-case assessment must be made to determine whether in court protective measures are warranted “in light of an objectively justifiable risk to individual witnesses” and whether the granting of such measures is proportionate to the rights of the Accused.⁵ The Chamber has followed this consistent practice of the Court in the present case.⁶

11. To determine whether the existing risk to the witness necessitates such measures, the Chamber has held that:

“[...] the available information must still indicate the existence of circumstances for which in-court testimony, in the absence of adequate protective measures

⁵ *The Prosecutor v Dominic Ongwen*, Decision on the ‘Prosecution’s application for in-court protective and special measures, ICC-02/04-01/15-612-Red, 29 November 2016, para. 8; *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, 3 September 2013, para. 13; *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Order on protective measures for certain witnesses called by the Prosecutor and the Chamber, ICC-01/04-01/07-1667-Red-tENG, 9 December 2009, paras 8-9.

⁶ ICC-01/14-01/18-906-Conf-Red, para. 17.

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.”⁷

IV. SUBMISSIONS

12. The Sought Measures are necessary for D30-P-4720, since their absence would create an objectively justifiable risk to the legitimate interests of the witness, protected under Article 68 of the Statute.
13. D30-P-4720 is a Central African [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].
14. D30-P-4720 is expected to testify on: the contextual background of the conflict, the Seleka coup of 24 March 2013, the crimes committed by the Seleka against the civilian population [REDACTED].
15. Revealing D30-P-4720's identity to the public would create an objectively justifiable risk to her safety and well-being as substantiated below.

There is an objectively justifiable risk that D30-P-4720 could face retaliation from the authorities of the Central African Republic ('CAR')

16. *First*, D30-P-4720 has expressed concerns that she could be exposed to retaliation from the CAR government and its supporters [REDACTED]. The situation in CAR has increasingly deteriorated and is a significant factor contributing to risks of retaliation for witnesses. Recent events in CAR demonstrate that the current government has tightened the noose around its political opponents [REDACTED]. This recent trend has been highlighted by the Registry's Fourteenth Report which assesses the security situation in the Central African Republic.⁸ The report shows that the current government is actively targeting [REDACTED] through the

⁷ *Ibid*; See also *The Prosecutor v Dominic Ongwen*, Decision on the 'Prosecution's application for in-court protective and special measures, ICC-02/04-01/15-612-Red, 29 November 2016, para. 8.

⁸ ICC-01/14-01/18-2239-Conf-Anx, para. 49.

adoption of hostile measures. It describes that the Bangui Court of Appeal has tried and convicted *in absentia* former President Bozizé, as well as 23 co-defendants, including Maxime Mokom, to life imprisonment.⁹ Additionally, in the case *The Prosecutor v. Mokom*, the Defence for Mr Mokom filed an urgent request for an order regarding Olivier Feïssona, who was cooperating with the Defence, and was subsequently arbitrarily arrested by the Central African Authorities.¹⁰

17. Other destabilizing factors contribute to the deteriorating situation in CAR, such as the presence of the ‘Wagner group’, a paramilitary organization that originally was established in CAR to provide political assistance to the local authorities in return for access to natural resources.¹¹ This group is however now taking control of various institutions and groups, such as the Presidential Guard, the FACA, and the ‘*Requins*’.¹² The ‘*Requins*’ is another violent group, constituted of elements from the *Garde Présidentielle*, that has a destabilizing effect on the security situation in CAR. Wagner’s various groups aim at targeting political [REDACTED]¹³ operating through threats, unlawful arrests and torture. Human Rights Watch reports that the ‘*Requins*’ are responsible for harassing people opposed to the current regime by threatening people,¹⁴ and have been defined as Touadéra’s private militia.¹⁵
18. The increase in human rights violations caused by these paramilitary groups has been widely documented by UN experts and International Human Rights Organizations,¹⁶ as well as the Registry in its Security Assessment.¹⁷ In its Fifteenth

⁹ *Ibid.*

¹⁰ ICC-01/14-01/22-312-Red, para. 15.

¹¹ “Architects of Terror: The Wagner Group’s Blueprint for State Capture in the Central African Republic”, The Sentry, June 2023 (“[The Sentry June 2023 Architects of Terror report](#)”), pp. 20-23.

¹² [The Sentry June 2023 Architects of Terror report](#), pp. 12-14, 24, 36-41.

¹³ [The Sentry June 2023 Architects of Terror report](#), pp. 24.

¹⁴ « [République centrafricaine : Rétrécissement de l’espace civique](#) », Human Rights Watch, 4 April 2023.

¹⁵ [The Sentry June 2023 Architects of Terror report](#), pp. 12-14, 24, 36-41.

¹⁶ “[Central African Republic : Abuses by Russia-Linked Forces](#)” ; Human Rights Watch, 3 May 2022; “[RCA : l’ONU s’insurge des exactions commises par les rebelles et le groupe paramilitaire russe Wagner](#)”, ONU Info, 30 March 2022.

¹⁷ ICC-01/14-01/18-2239-Conf-Anx, para. 43.

report assessing the security situation in the Central African Republic, the Registry highlights that the Wagner group has been entrenched in CAR's affairs for many years,¹⁸ with elements taking control of various entities, such as the *Office Central pour la Répression du Banditisme*.¹⁹ The Registry's Fourteenth report illustrates a similar finding, and explains that Wagner has increasingly been infiltrating all spheres in CAR by placing various individuals in Touadéra's close circles,²⁰ [REDACTED],²¹ through kidnapping or forced disappearances.²²

19. D30-P-4720 faces an objectively justifiable risk [REDACTED]. Her giving evidence in public would therefore increase the risk of possible retaliation acts against her and her family by the current government in CAR [REDACTED]. As it will be demonstrated from paragraph 23 onwards, her public testimony would [REDACTED] expose her family [REDACTED] to possible reprisals.

20. *Second*, D30-P-4720 is also potentially exposing herself to retaliation by testifying for the Defence of Mr Ngaïssona, who is apparently viewed by the public as an opponent by the Touadéra government. Potential threats existing on Defence witnesses are caused by their real or perceived association [REDACTED]. This risk has been illustrated by the inhumane treatment faced by Mr Feïssona, a Defence Witness in *The Prosecutor v. Mokom*, who was arrested, tortured and subject to ill-treatment in the days following his cooperation with the Defence.²³ The Mokom Defence investigated the matter and issued a report concluding that Mr Feïssona's

¹⁸ ICC-01/14-01/18-2380-Conf-Anx, para. 14.

¹⁹ ICC-01/14-01/18-2380-Conf-Anx, para. 13.

²⁰ "[CAR: Who are President Touadéra's Russian guardian angels?](#)", Mathieu Olivier, The Africa Report, 17 March 2021.

²¹ [REDACTED].

²² [The Sentry June 2023 Architects of Terror report](#), pp. 24.

²³ *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, Public Redacted Version of 'Decision on "Defence Urgent Request for an Order Concerning the Arrest of P-0405"', ICC-01/14-01/22-290-Red, para. 2.

arrest was organized by the Wagner group due to his interactions with the Defence.²⁴

21. A similar risk exists for Defence witnesses testifying for Mr Ngaïssona. Mr Ngaïssona is publicly portrayed by the current CAR government, and by the Prosecution, as being associated with Bozizé. Close associates of President Touadéra formed a group that became hostile to Mr Ngaïssona before his arrest in 2018 as the Defence will demonstrate during its Defence case. [REDACTED].²⁵ [REDACTED]. Therefore, publicly supporting Mr Ngaïssona is dangerous and can expose those associated with him to reprisals.²⁶

22. For the above reasons, Defence witnesses coming to testify during the presentation of Mr Ngaïssona's case are at heightened risk of reprisals by the current government. D30-P-4720 is doubly exposed to this risk of retaliation, since her testimony [REDACTED].

There is an objectively justifiable risk to D30-P-4720 [REDACTED]

23. *First*, D30-P-4720 [REDACTED].

24. The fact that D30-P-4720 [REDACTED] does not impede the granting of the Sought Measures. This Chamber has previously awarded protective measures for P-0889, who was [REDACTED].²⁷ The Chamber considered that, due to the risk of retaliation existing against him, and the concerns for his family's safety in CAR, protective measures were appropriate.²⁸ Protective measures were also granted to P-1577, [REDACTED].²⁹ [REDACTED]. In deciding that such measures were

²⁴ *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, Annex I Public Redacted Version, ICC-01/14-01/22-307-AnxI-Red.

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ ICC-01/14-01/18-1245-Conf, para. 10.

²⁸ ICC-01/14-01/18-1245-Conf, paras. 8-10.

²⁹ Decision Email from Trial Chamber V Communications, Monday 3/22/2021, 3:08 PM, 'RE : In-Court protection measures for witness CAR-OTP-P-1577'.

necessary, the Chamber considered other factors, such as the fact that [REDACTED], and that the security situation in CAR had deteriorated.³⁰ D30-P-4720 [REDACTED]. Her public testimony would negatively impact [REDACTED].

25. *Second*, [REDACTED]. D30-P-4720's giving evidence in public risks exposing several individuals to threats and potential reprisals. Her testimony will reveal information about many individuals, including some of her family members [REDACTED] and could expose them to a risk of stigmatization, should D30-P-4720's identity be revealed. She will also provide detailed information about the commission of crimes by Seleka elements, which will expose her to further risks of reprisals.

26. D30-P-4720's expected testimony, [REDACTED] support the Defence's position that her public testimony would expose her to an objectively justifiable risk of retaliation.

27. *Lastly*, the Sought Measures are proportionate to the accused's rights, since they are the least restrictive option possible, given the existing risk against the witness, and that Mr Ngaïssona agrees with the Sought Measures. Moreover, the publicity of the proceedings would not be greatly impacted, as the Defence will do its best to limit the impact of the measures by conducting its examination-in-chief as much as possible in open session, should circumstances allow it.

V. RELIEF SOUGHT

28. For the foregoing reasons, the Defence respectfully requests the Chamber to:

- **GRANT** the present request for in-court protective measures, in the form of (i) face distortion, (ii) voice distortion, and (iii) use of pseudonym for Witness D30-P-4720.

³⁰ *Ibid.* See also other witnesses that were granted protective measures for similar reasoning : P-1576, ICC-01/14-01/18-1974-Conf; P-2050, ICC-01/14-01/18-2022-Conf.

Respectfully submitted,

A handwritten signature in black ink, appearing to be a stylized name, possibly 'Mr. Knoop', written over a horizontal line.

Mr Knoop, Lead Counsel for Patrice-Edouard Ngaissona

Dated this 25 April 2024

At The Hague, the Netherlands