

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/14-01/18

Date: 15 September 2022

**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-ÉDOUARD NGAÏSSONA**

**Public**

**Public Redacted Version of “Response by the Common Legal Representative of dual-status individual P-2353 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-2353” (ICC-01/14-01/18-1512-Conf)”, 18 July 2022, ICC-01/14-01/18-1516-Conf**

**Source: Common Legal Representatives of Victims of Other Crimes**

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

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## I. INTRODUCTION

1. The Common Legal Representative of dual-status individual P-2353 (also a/15305/20) (the “Common Legal Representative” or the “CLRV”) submits that the Prosecution’s request for in-court protective measures (the “Request”)<sup>1</sup> satisfies the requirements of article 68(1) and (2) of the Rome Statute (the “Statute”) and rule 87 of the Rules of Procedure and Evidence (the “Rules”) and should therefore be granted.

2. In particular, the Common Legal Representative agrees that the in-court protective measures of pseudonym and face distortion should be granted in order to protect the safety and well-being of dual-status individual P-2353.

## II. CONFIDENTIALITY

3. Pursuant to regulation 23bis(2) of the Regulations of the Court, this response is filed confidentially following the classification chosen by the Prosecution. A public redacted version of this response will be filed in due course.

## III. PROCEDURAL BACKGROUND

4. On 26 August 2020, Trial Chamber V (the “Chamber”) issued the “Initial Direction on the Conduct of the Proceedings”,<sup>2</sup> which, *inter alia*, set the date of 7 December 2020 as deadline for the submission of applications for in-court protective measures.<sup>3</sup>

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<sup>1</sup> See the “Prosecution’s submission pursuant to regulation 35 to vary the time limit and request for in-court protective measures for Prosecution Witness P-2353”, No. ICC-01/14-01/18-1512-Conf, 13 July 2022 (the “Request”).

<sup>2</sup> See the “Decision on Protocols at Trial” (Trial Chamber V), [No. ICC-01/14-01/18-677](#), 8 October 2020.

<sup>3</sup> See the “Initial Directions on the Conduct of the Proceedings” (Trial Chamber V), [No. ICC-01/14-01/18-631](#), 26 August 2020, para. 70.

5. On 7 December 2020, the Prosecution submitted its request for in-court protective measures, which did not refer to dual-status individual P-2353.<sup>4</sup>

6. On 13 July 2022, the Prosecution submitted the Request, seeking for dual-status individual P-2353 in-court protective measures in the form of the use of a pseudonym and facial distortion (the “Requested Measures”).<sup>5</sup>

7. On 15 July 2022, the Chamber shortened the deadline to respond to the Request, instructing that any responses should be filed by 18 July 2022.<sup>6</sup>

8. Pursuant to rule 87(2)(c) of the Rules and regulation 24(2) of the Regulations of the Court, the CLRV files her response to the Request.

#### IV. SUBMISSIONS

##### 1. The Requested Measures are timely

9. The CLRV has maintained regular contact with dual-status-individual P-2353 and has met with him recently to reassure him in light of his eventually upcoming testimony. On that occasion, P-2353 informed the CLRV that his trading activities to sustain his family and [REDACTED] now require [REDACTED].

10. As argued by the Prosecution, the recent change in circumstances related to the activities of dual-status individual P-2353 justify an extension of the time limit set by the Chamber to request protective measures.<sup>7</sup> Indeed, protective measures are meant to respond to the current situation of witnesses appearing before the Court.

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<sup>4</sup> See the “Confidential redacted version of “Prosecution’s Request for in-court protective measures” 7 December 2020, (ICC-01/14-01/18-757-Conf-Exp)”, No. ICC-01/14-01/18-757-Conf-Red, 18 December 2020.

<sup>5</sup> See the Request, *supra* note 1, para. 1.

<sup>6</sup> See the email received from the Chamber on 15 July 2022 at 9:45.

<sup>7</sup> See the Request, *supra* note 1, paras. 7-8.

**2. The Requested Measures are justified and necessary to protect dual-status individual P-2353**

11. The CLRV submits that the Request demonstrates that in-court protective measures are justified and necessary for dual-status-individual P-2353.

12. P-2353's change in personal circumstances, as recently shared with the CLRV, shows a concrete and objectively justifiable risk to his safety. As explained by P-2353 during his recent meeting with his counsel, he is now [REDACTED]. As a consequence, P-2353 has become known [REDACTED] to many individuals, including former Anti-Balaka members and their supporters.

13. As indicated in the Request,<sup>8</sup> the locations where dual-status individual P-2353 [REDACTED] are exposed to violence at the moment by former and current Anti-Balaka members. Since P-2353 is expected to testify *inter alia* about the displacement of Muslim civilians due to Anti-Balaka actions, his public testimony as a Prosecution witness is likely to affect his security [REDACTED] in carrying out his trading activities [REDACTED]. In fact, during dual-status individual P-2353's latest contact with the CLRV, he detailed his concerns about his safety and shared his fears of reprisals by Anti-Balaka militias for testifying in public.

14. In this regard, it must be noted that several Trial Chambers have found that “[t]he 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 – be it their physical security and safety or

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<sup>8</sup> *Ibid.*, para. 12.

*their psychological well-being, privacy and dignity”<sup>9</sup> and that “[e]vidence of prior direct threats to a witness, or his/her family, are not required in order to determine that they face an objectively justifiable risk sufficient to support the granting of protective measures”<sup>10</sup>*

15. In light of the factual circumstances described above and the limited capacity of the CAR authorities to protect witnesses who testify in public, the CLRV supports the Requested Measures. As argued by the Prosecution,<sup>11</sup> the use of a pseudonym in combination with face distortion is required to ensure that dual-status individual P-2353 is not identifiable amongst Anti-Balaka members and their supporters who may seek reprisal for his testimony before the Court.

16. This approach is consistent with the constant jurisprudence of the Court, according to which several factors should be taken into consideration when deciding on whether in-court protective measures should be granted. Said factors include the security situation in the territory concerned, the risk of reprisals from supporters of the Accused, and the need to protect the privacy of witnesses and to safeguard their psychological well-being.<sup>12</sup>

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<sup>9</sup> See the “Decision on the ‘Prosecution’s application for in-court protective and special measures” (Trial Chamber IX, Single Judge), [No. ICC-02/04-01/15-612-Red](#), 30 November 2016, para. 8.

<sup>10</sup> See the “Second redaction of: Decision on ‘Prosecutor’s First Request for In-Court Protective Measures for Trial Witnesses” (Trial Chamber V(A)), [No. ICC-01/09-01/11-902-Red2](#), 3 September 2013, para. 14. See also the transcript of the hearing held on 21 June 2016 (Trial Chamber VI), [No. ICC-01/04-02/06-T-106-Red-ENG WT](#), 21 June 2016, p. 89, lines 15-21, and the “Public redacted version of ‘Decision on Prosecution request for in-court protective measures for Witness P 0863” (Trial Chamber VI), [No. ICC-01/04-02/06-1714-Red](#), 12 January 2017, para. 10.

<sup>11</sup> See the Request, *supra* note 1, paras. 15-16.

<sup>12</sup> See the “Public redacted version of the Decision on the Protection of Prosecution Witnesses 267 and 353 of 20 May 2009” (Trial Chamber II), [No. ICC-01/04-01/07-1179-tENG](#), 28 May 2009, paras. 35-36, 38 and 44; the “Decision Granting Protective Measures for Witness 323 during in-Court Testimony” (Trial Chamber II), [No. ICC-01/04-01/07-1795-Red-tENG](#), 27 January 2010, paras. 9-10 and 12; the “Decision on the application for the institution of protective measures for Witnesses a/0381/09, a/0018/09, a/0191/08, pan/0363/09 and Victim a/0363/09, issued on 27 January 2011” (Trial Chamber II), [No. ICC-01/04-01/07-2663-Red-tENG](#), 22 February 2011, paras. 10-11 and 15-16; and the transcript of the hearing held on 3 March 2011 (Trial Chamber III), [No. ICC-01/05-01/08-T-79-Red2-ENG CT2WT](#), pp. 44-45. See also the “Second redaction of: Decision on ‘Prosecutor’s First Request for In-Court Protective Measures for Trial Witnesses” (Trial Chamber V(A)), [No. ICC-01/09-01/11-902-Red2](#), 3 September 2013, paras. 13-14 and 26-27; and the transcript of the hearing held on 21 June 2016 (Trial Chamber VI), [No. ICC-01/04-02/06-T-106-Red-ENG WT](#), 21 June 2016, p. 89, lines 22-24.

17. The need for in-court protective measures applies even more forcefully to a dual-status individual. As underscored by Trial Chamber I in the *Lubanga* case, “[p]rotective and special measures for victims are often the legal means by which the Court can secure the participation of victims in the proceedings, because they are a necessary step in order to safeguard their safety, physical and psychological well-being, dignity and private life in accordance with article 68(1) of the Statute [and thus] protective measures are not favours but are instead the rights of victims, enshrined in article 68(1) of the Statute”.<sup>13</sup>

18. Lastly, the CLRV agrees with the Prosecution that the Requested Measures will not unfairly prejudice the Defence.<sup>14</sup> The Accused have been provided with the name and identifying information of dual-status individual P-2353 and he will remain anonymous to the public only.

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<sup>13</sup> See the “Decision on victims’ participation” (Trial Chamber I), [No. ICC-01/04-01/06-1119](#), 18 January 2008, paras. 128-129. See also the “Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties’ observations on applications for participation by 86 applicants” (Trial Chamber III), [No. ICC-01/05-01/08-699](#), Trial Chamber III, 22 February 2010, para. 24.

<sup>14</sup> See the Request, *supra* note 1, para. 18.

## V. CONCLUSION

19. For the foregoing reasons, the Common Legal Representative of dual-status individual P-2353 (also a/15305/20) respectfully requests the Chamber to grant the Request.



Paolina Massidda

Common Legal Representative  
Victims of Other Crimes

Dated this 15<sup>th</sup> day of September 2022

At The Hague (The Netherlands)