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

Date: 18 July 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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-  
EDOUARD NGAÏSSONA***

**Public**

**Public redacted version of “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, 13 July 2022**

**Source:** Office of the Prosecutor

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

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**Victims Participation and Reparations  
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## I. INTRODUCTION

1. Pursuant to regulation 35(2) of the Regulations of the Court,<sup>1</sup> articles 64(2) and 68(1) of the Rome Statute, and rule 87 of the Rules of Procedure and Evidence,<sup>2</sup> the Office of the Prosecutor (“Prosecution”) seeks a variation of the time limit of Trial Chamber V’s (“Chamber”) 26 August 2020 Initial Direction on the Conduct of Proceedings,<sup>3</sup> to submit a request for in-court protective measures for Witness P-2353 in the form of facial distortion and the use of a pseudonym (“Requested Measures”).

2. The Requested Measures are substantiated by good cause, justified and warranted because of the serious risks of P-2353’s prospective public testimony that arise as a result of his trading activities (i.e., making his livelihood) in areas where Anti-Balaka supporters are still present, as well as by the poor security situation in the Central African Republic (“CAR”). P-2353’s [REDACTED] in view of his trading activities, could not have reasonably been anticipated before the initial deadline of 7 December 2020.<sup>4</sup>

3. Granting the Requested Measures will ensure that Witness P-2353 is able to give evidence without fear for his own security, and without jeopardising his professional trading activity.

4. The Requested Measures are the least restrictive means to appropriately balance the Accused’s right to a fair and public hearing under articles 64(2) and 67(1), against the mandate to protect witnesses appearing before the Court under article 68 and rule 87, and to prevent a disproportionate risk of harm on account of those who assist it.<sup>5</sup> The measures sought do not unfairly prejudice the rights of either of the

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<sup>1</sup> (“RoC”).

<sup>2</sup> (“Rules”).

<sup>3</sup> ICC-01/14-01/18-631, paras. 68-70.

<sup>4</sup> ICC-01/14-01/18-631, para. 70.

<sup>5</sup> See e.g., ICC-01/05-01/13-1481-Red-Corr, para. 18 (noting that the Chamber’s duty under article 68(1) also “encompasses refraining from actions ... that would in all likelihood entail negative consequences for the witness”).

Accused, as they have been provided with the name and identifying information of P-2353 and he will remain anonymous to the public only.

## II. CONFIDENTIALITY

5. This request is filed “Confidential” as it contains material that is not available to the public. A public redacted version of this request will be filed as soon as possible.

## III. SUBMISSIONS

### A. A variation of the time limit for the Request is necessary and justified

6. Under regulation 35(2) of the Regulations, a Chamber may extend a time limit after it has elapsed, if the participant seeking the extension can demonstrate that they were unable to file the application within the time limit for reasons outside their control.

7. This criteria is met. As noted, the Requested Measures are predicated on a change in circumstances outside the Prosecution’s control, which arose after the 7 December 2020 time limit.<sup>6</sup> P-2353 earns his livelihood as a trader. His trading activities, initially assessed by the Prosecution to be limited to [REDACTED], now require the witness to [REDACTED]. [REDACTED], P-2353 [REDACTED] and carries out his trading activities in [REDACTED]. [REDACTED], P-2353 is also required to [REDACTED]. This change warrants a variation to P-2353’s protection.

8. Granting a variation to seek the Requested Measures given this change in [REDACTED], in a country where violence and instability is still present, would in no way derail the proceedings or unduly prejudice the Accused.

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<sup>6</sup> Pursuant to Trial Chamber V’s (“Chamber”) 26 August 2020 Initial Direction on the Conduct of Proceedings, the applications for in-court protective measures were due on 7 December 2020, *see* ICC-01/14-01/18-631, paras. 68-70. The Prosecution submitted its request on that date, *see* ICC-01/14-01/18-757-Conf-Exp.

**B. Protective measures for Witness P-2353 are necessary and justified**

*a. The Requested Measures are necessary to protect P-2353*

*i. P-2353 [REDACTED]*

9. The Requested Measures are necessary to mitigate the risks arising from P-2353's anticipated trial testimony.

10. P-2353 is a Muslim civilian trader from MBAIKI. He is expected to testify, *inter alia*, about: (a) the displacement of Muslim civilians along the PK9 – MBAIKI road due to fear of being targeted by the Anti-Balaka; (b) YEKATOM's role and participation in a meeting with MBAIKI's local authorities, his authority over Anti-Balaka elements along the PK9 – MBAIKI road, their threats and crimes against the Muslim population, as well as [REDACTED]; (c) the difficult living conditions of the displaced Muslim civilians in MBAIKI; and (d) the evacuation of Muslims from MBAIKI.

11. The Prosecution understood that since his [REDACTED], P-2353 continued his trading activities in [REDACTED]. In July 2022, P-2353 informed the Legal Representative of Victims, and subsequently the Prosecution, that his trading activities [REDACTED]. P-2353 explained that he [REDACTED] to buy and sell goods. He also [REDACTED], where he also conducts his trading activities. P-2353 is known [REDACTED] to many individuals, including former Anti-Balaka members and their supporters.

ii. *Former Anti-Balaka members are present around the locations of P-2353's [REDACTED]*

12. Former Anti-Balaka members integrated into the rebel group Coalition of Patriots for Change ("CPC")<sup>7</sup> are actively engaged in violence throughout CAR. [REDACTED].<sup>8</sup> [REDACTED].<sup>9</sup>

13. Testifying publicly will expose P-2353 to a risk of reprisal by Anti-Balaka militia around [REDACTED] where the witness needs to conduct his trading activities. P-2353's public testimony, particularly as a Prosecution witness would therefore affect: (i) his security [REDACTED] in carrying out his trading activities in or around [REDACTED]; and (ii) his ability to continue performing professional activities in CAR.

iii. *The capacity of the CAR authorities remains diminished*

14. The witness's work-related [REDACTED] occur in the context of violence and instability in the country,<sup>10</sup> already exposing the witness to a higher degree of risk. 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:

"[REDACTED]."<sup>11</sup>

<sup>7</sup> ICC-01/14-01/18-825-Conf-Anx ("Annex to Registry Second Periodic Report"), para. 13, indicating that the CPC comprises six former enemy rebel groups including the two Anti-Balaka branches; *see also* 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: 07/07/2022].

<sup>8</sup> [REDACTED]

<sup>9</sup> [REDACTED]

<sup>10</sup> *See* ICC-01/14-01/21-389-Conf, para. 14-15 where Trial Chamber VI decided that the current security situation in Bangui would not allow for part of the trial to be held there.

<sup>11</sup> *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.

15. The situation in the CAR is unlikely to improve in the short to medium term.<sup>12</sup> 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-2353 can be adequately protected in the CAR, should his testimony be received publicly, is clearly reduced.

16. Granting the use of a pseudonym alone for Witness P-2353 would not suffice to protect his safety, welfare, and interests. Rather, face distortion is also required given that unprotected images of P-2353 during his testimony are easily accessible on the Court's online platform and may lead to P-2353's identification amongst Anti-Balaka members and their supporters. Therefore, the use of a pseudonym in combination with face distortion is required.

17. Accordingly, the Requested Measures are minimally necessary to ensure the adequate and proportional protection of the Witness's safety, security and professional interests.

*b. Absence of prejudice to the Defence*

18. The impact of the Requested Measures on the publicity of the proceedings is mitigated and justified in the circumstances of this case. *First*, the Requested Measures are needed to ensure that P-2353 is able to provide unfettered evidence, and in so doing, assist the Court in establishing the truth. The identity of P-2353 is known to both Accused and their Defence teams since June 2020. The Accused will have the same opportunity and ability to question P-2353 as if his identity was publicly known and are not prevented from conducting their own enquiries to test the prospective evidence. *Second*, although the public will not know the identity of P-2353, most of his testimony will be given in public session. Under the Requested Measures, closed or

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<sup>12</sup> *Idem*.

private sessions will be used only for limited portions of testimony to protect the identity of P-2353. *Finally*, the requested protective measures are a direct consequence of P-2353's trading activities in [REDACTED] areas where Anti-Balaka are still present and active, as well as the deteriorated security situation in CAR, which is not expected to improve in the immediate future.

#### **IV.RELIEF SOUGHT**

19. For the above reasons, the Prosecution seeks the Chamber's leave to extend the time limit to submit the Requested Measures and requests the in-court protective measures of pseudonym and face distortion for Witness P-2353.

A handwritten signature in blue ink, appearing to be 'Karim A. A. Khan', followed by a horizontal line and a period.

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**Karim A. A. Khan QC, Prosecutor**

Dated this 18<sup>th</sup> day of July 2022  
At The Hague, The Netherlands