

ANNEX 3
PUBLIC

From: Trial Chamber V Communications
Sent: 22 March 2021 15:08
To: Dimitri, Mylene; [REDACTED] Trial Chamber V Communications; OTP CAR IIB Managers; OTP CAR IIB Case Management; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; [REDACTED] V44 LRV Team OPCV
Cc: [REDACTED]
 [REDACTED]; Associate Legal Officer-Court Officer
Subject: RE: In-court protection measures for witness CAR-OTP-P-1577
Follow Up Flag: Follow up
Flag Status: Flagged
Categories: Yekatom and Ngaissona

Dear Counsel,

The Single Judge takes note of the below VWU's in-court protective measures report for P-1577 (the 'VWU Report'). He also takes note of the related email of the Yekatom Defence, requesting 'an opportunity to respond' to the VWU Report (the 'Request for Leave to Respond') and 'seek[ing] the Chamber's guidance as to future reconsideration of rulings on protective measures and stand[ing] ready to respond by email or by way of formal filing, in response to a Prosecution request for reconsideration, if any' (the 'Request for Guidance').

First, with reference to the Request for Leave to Respond, the Single Judge considers that the available information is sufficient for him to determine whether reconsideration of his ruling related to P-1577 is warranted, and that no further submissions from the participants are necessary for that purpose. The Request for Leave to Respond is therefore rejected.

The Single Judge recalls that he wished to rule on applications for in-court protective measures in advance of trial whenever possible, without prejudice to reconsideration at a later time should this be warranted, and in particular in light of further information provided by the VWU (*see* Initial Directions on the Conduct of the Proceedings, ICC-01/14-01/18-631, para. 69). The Single Judge further recalls that any rejection of requests for protective measures 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 (*see* Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses, ICC-01/14-01/18-906-Conf-Red, paras 1, 21).

Turning to the substance of the VWU Report, the Single Judge recalls that he previously rejected the requested protective measures for P-1577, noting, *inter alia*, that (i) most of the arguments provided in support of the request were 'based on hypothetical risks to the security of individuals associated with [REDACTED] or to [REDACTED] operational viability'; (ii) the Prosecution 'merely submit[ted] that "it is likely" that [REDACTED], and that his public cooperation with the Prosecution may therefore affect his security [REDACTED] and (iii) 'absent any further concrete information as to how P-1577's testimony without protective measures could affect the safety or physical or psychological well-being of the witness or any other individual at risk on account of P-1577's testimony', the Prosecution's submissions 'are hypothetical and insufficient to warrant the granting of protective measures for P-1577'. He further indicated that his ruling was without prejudice to the Chamber reconsidering the need for protective measures should new or additional information be made available to it at a later stage (ICC-01/14-01/18-906-Conf-Red, para. 91).

The Single Judge is satisfied that the new and additional information provided in the VWU Report, and notably the VWU's conclusions on the witness's [REDACTED] in order to continue his work and finalise his [REDACTED], his prior engagement with threat actors and [REDACTED] his inability to employ adequate security [REDACTED] and the deterioration of the security situation in the CAR, warrant

reconsideration of his previous ruling and implementation of in-court protective measures as recommended by the VWU. The Single Judge therefore grants protective measures in the form of use of a pseudonym and face distortion for witness P-1577.

As regards the Request for Guidance, and unless otherwise ordered, the Single Judge does not consider it necessary to receive submissions from the participants for any future reconsideration of rulings on protective measures.

Kind regards,
TC V

From: Dimitri, Mylene

Sent: 19 March 2021 18:12

To: [REDACTED] Trial Chamber V Communications
[REDACTED] OTP CAR IIB Managers [REDACTED] OTP CAR IIB Case Management [REDACTED] D29 Yekatom Defence Team
[REDACTED] D30 Ngaissona Defence Team
[REDACTED] V44 LRV Team OPCV [REDACTED];
V45LRV [REDACTED] V44 LRV Team OPCV [REDACTED]

Cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Associate Legal Officer-Court Officer [REDACTED]
[REDACTED]

Subject: RE: In-court protection measures for witness CAR-OTP-P-1577

Dear Trial Chamber V,

The Yekatom Defence takes note of the VWU's analysis and recommendations regarding protective measures for witness P-1577. Bearing in mind the "Initial Directions on the Conduct of the Proceedings" (ICC-01/14-01/18-631) (par. 69) as well as the "Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses" issued on 9 March 2021 (ICC-01/14-01/18-906-Conf-Red), the Defence respectfully requests the Chamber to be given an opportunity to respond to the VWS's email. The Defence seeks the Chamber's guidance as to future reconsideration of rulings on protective measures and stands ready to respond by email or by way of formal filing, in response to a Prosecution request for reconsideration, if any.

Kind regards,

Mylène Dimitri

From: [REDACTED]

Sent: 19 March 2021 17:20

To: Trial Chamber V Communications; OTP CAR IIB Managers; OTP CAR IIB Case Management; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; [REDACTED] V44 LRV Team OPCV

Cc: [REDACTED] Associate Legal Officer-Court Officer

Subject: In-court protection measures for witness CAR-OTP-P-1577

Dear colleagues,
Dear counsels,

Please find below the in-court protection measures report in relation to CAR-OTP-P-1577.

Witness's Background

The witness is a [REDACTED]
[REDACTED]
[REDACTED] In this capacity, he has operated [REDACTED] and the Central African Republic (CAR). [REDACTED] The witness has also conducted a [REDACTED]
[REDACTED]

Witness's Concerns

On 10 March 2021, the VWU interviewed the witness to assess the necessity of in-court protection measures. The process was explained; the witness understood the protection measures and requested their application during his testimony.

The witness indicated that although he has no current security issues [REDACTED] he expressed serious concerns for his safety [REDACTED], if his testimony becomes known publicly. Additionally, the witness expressed similar concerns for the safety of [REDACTED] These colleagues are [REDACTED] and have limited capacity to enhance their own personal security in the wake of his testimony.

During the discussion with VWU, the witness also indicated that he [REDACTED] [REDACTED] Although the witness provided no definitive timeframe, he was clear in his need [REDACTED] in the future.

In explaining his concerns, the witness identified members and associates of the armed groups involved in conflict, as being the primary threat actors. The witness reasoned his concerns based on [REDACTED], which involved him [REDACTED] According to the witness, these members and associates of armed groups will be able to identify him [REDACTED] including [REDACTED] These persons would also be able to identify his close colleagues mentioned previously, as all had extended involvement.

Additionally, the witness stated that he considered his testimony might have an adverse impact to the work of the [REDACTED] and the safety of [REDACTED] that continue to operate in CAR.

The witness indicated that in contrast to the security protocols adopted by [REDACTED] he does not benefit from any additional security support [REDACTED]

Protection Analysis

The fact that the witness was able [REDACTED] through the assistance of associates, supports his concerns of being recognisable to the threat actors. The VWU considers that the likelihood that he would be recognisable is amplified [REDACTED] occurred [REDACTED]
[REDACTED]

Based on these factors, the VWU is of the view that the witness will be identifiable by the threat actors, which would increase his risk in CAR. The VWU also notes that the witness' evidence may implicate [REDACTED] in the commission of crimes and this would provide sufficient motivation of threat actors to take action and target the witness upon [REDACTED] Furthermore, due to their association, the witness's colleagues that assisted in [REDACTED] will also likely experience an increase in risk by the same reasoning. The deterioration of the security situation in CAR will inevitably exacerbate risk levels.

During the assessment, the witness expressed his strong intention of [REDACTED] in a professional capacity. Although the witness did not specify any intended [REDACTED] he indicated that [REDACTED] [REDACTED] The VWU is conscious that being [REDACTED] [REDACTED] combined with the nature of the witness's work, does not allow the adoption of robust personal security measures. Furthermore, the VWU considers that the witness's work will be undertaken in an already escalated risk environment and therefore is supportive of any measures that would prevent any further escalation to that risk environment. Limiting public disclosure of the witness's testimony would therefore assist in preventing the escalation of the risk to the witness.

Consequently, given the witness's [REDACTED]

[REDACTED] his inability to employ adequate security during mission and the deterioration of the security situation in CAR, the VWU is of the view that the application of in-court protective measures would assist in preventing any further escalation of risk to the witness.

Recommendation

The VWU takes note of the "Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses" issued on 9 March 2021 (ICC-01/14-01/18-906-Conf-Exp and ICC-01/14-01/18-906-Conf-Red) rejecting the Office of the Prosecutor's request for in-court protective measures for witness CAR-OTP-1577.

Nevertheless, in light of the additional information gleaned through its interview, the VWU considers that the application of in-court protection measures may prevent a future escalation in risk. Based on this, the VWU recommends the following in-court protection measures:

- Image distortion;
- use of pseudonym;
- use of closed and/or private session for identifying information;
- redaction of any identifying information from any record that may be disseminated to the public.

Kind regards,

[REDACTED]

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