

**ANNEX 24**  
**PUBLIC**

[REDACTED]

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**From:** Trial Chamber V Communications  
**Sent:** 06 May 2021 13:09  
**To:** Vanderpuye, Kweku; [REDACTED]; OTP CAR IIB Managers; OTP CAR IIB Case Management; D29 Yekatom Defence Team; D30 Ngaïssona Defence Team; V44 LRV Team OPCV; V44 LRV Team OPCV; V45 LRV Team  
**Cc:** [REDACTED]  
 [REDACTED] Trial Chamber V Communications; Chamber Decisions Communication; Associate Legal Officer-Court Officer  
**Subject:** RE: In-court protection measures for witness CAR-OTP-P-2841  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged  
**Categories:** Information, Yekatom and Ngaïssona

Dear Counsel,

The Single Judge takes note of the report by the Victims and Witnesses Unit (the 'VWU') regarding in-court protection measures for P-2841 (the 'VWU Report').

With regard to the Ngaïssona Defence's and the Prosecution's observations to the VWU Report, the Single Judge considers that the available information is sufficient for him to determine whether reconsideration of his ruling related to P-2841 is warranted, and that no further submissions from the participants are necessary for that purpose.

The Single Judge recalls his previous directions regarding the ruling on applications for in-court protective measures and possible reconsideration thereof (*see* email from the Chamber, 22 March 2021, at 15:08 *referring to* Initial Directions on the Conduct of the Proceedings, ICC-01/14-01/18-631, para. 69; Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses, ICC-01/14-01/18-906-Conf-Red (the 'Decision'), paras 1, 21).

The Single Judge recalls that he previously rejected the in-court protective measures requested by the Prosecution for P-2841 because it had not been established that the witness 'would face an objectively justifiable risk in case [he] were to testify without protective measures'. Specifically, the Single Judge considered that, despite the Prosecution's submission that P-2841 had expressed fear of retaliation, 'on the basis of the information in his possession, and absent any information on specific threats or security incidents suffered by th[e] witnes[s] or other individual circumstances of th[e] witnes[s] demonstrating an objectively justifiable risk, these fears appear subjective and insufficient to warrant granting the requested protective measures' (Decision, ICC-01/14-01/18-906-Red2, paras 41-42).

The Single Judge is satisfied that the additional and more specific information provided in the VWU Report warrant reconsideration of his previous ruling and implementation of in-court protective measures as recommended by the VWU.

At the outset, the Single Judge notes that, according to the Prosecution's summary of anticipated testimony, P-2841 is expected to testify about, *inter alia*, the information he received from [REDACTED] during the relevant period for the charges, including about Mr Ngaïssona's role and activities.

The Single Judge also notes that P-2841, in addition to being [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED] He also notes that, according to the

VWU Report, [REDACTED] have 'close ties with Mr Ngaissona' and that P-2841 himself [REDACTED]  
[REDACTED]  
[REDACTED] The Single Judge therefore notes that, due to his professional and personal circumstances, P-2841 interacts with individuals [REDACTED] on a daily basis, in a highly unstable and tense political context (see Annex to the Third Periodic Report of the Registry on the Political and Security Situation in the Central African Republic, 26 February 2021, ICC-01/14-01/18-893-Conf-Anx-Red).

Further, the Single Judge notes the VWU's views that testifying without in-court protective measures (i) 'will likely expose the witness towards Mr Ngaissona supporters'; (ii) risks [REDACTED] see his testimony, consider it a betrayal and will 'likely be motivated to harm him as a result'; and (iii) might further expose him to the families of Anti-Balaka victims who 'may also see the witness as representing those that caused harm to their community and families' and may be 'motivated to take action' against him. In this regard, while mindful of his previous finding that having a [REDACTED] alone does not justify the granting of protective measures (see Decision, ICC-01/14-01/18-906-Red2, paras 80, 87), the Single Judge considers that P-2841's [REDACTED] (as 'a [REDACTED] in the CAR) heightens his exposure to the reported risk of retaliation against him by the abovementioned groups of individuals.

The Single Judge is of the view that the abovementioned factors, compounded by other circumstances, notably P-2841's [REDACTED] and the nature of his expected testimony, are sufficient to establish the existence of an objectively justifiable risk to the witness's legitimate interests protected under Article 68 of the Rome Statute. Noting the VWU's conclusion that 'limiting public disclosure of his testimony would assist in managing the threat and subsequent risk once the witness [REDACTED] the Single Judge considers it appropriate to grant the measures in the form of use of a pseudonym and face and voice distortion for P-2841.

Kind regards, TC V

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**From:** Vanderpuye, Kweku

**Sent:** 05 May 2021 21:00

**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] V44 LRV Team  
OPCV [REDACTED]; V45 LRV Team [REDACTED]

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

**Subject:** RE: In-court protection measures for witness CAR-OTP-P-2841

Dear Trial Chamber V,

Dear Counsel,

The Prosecution supports VWU's assessment and recommendations concerning the proposed in-Court protective measures for P-2841.

The right to a public trial must be fairly balanced against assessed risks to the safety and security of victims and witnesses under article 68. The Chamber should err on the side of caution, particularly where countervailing risks of physical harm, retaliation, and/or interference concerning witnesses before the Court cannot be effectively mitigated, and the Court's ability to secure such persons clearly restricted. Such is the case here.

VWU's neutral assessment is substantiated and, in the circumstances, entitled to a degree of deference. The witness's concerns are *prima facie* founded, especially given the particularities of the prevailing security situation in CAR wherein, not only is the Court's reach and ability to protect witnesses limited, but so is [REDACTED]. The Chamber has recognised this critical limitation and serious risk to witnesses on several prior occasions.

Further contrary to Ngaissona's contentions, the witness's proximity to [REDACTED] does not militate in favour of his public testimony, but rather, directly against it.

For the reasons advanced by VWU as well as those in the Prosecution's initial application, the recommended protective measures are appropriate, proportionate, and necessary to protect against the assessed risks to the witness. Moreover, the measures are fully consonant with the Chamber's obligations under articles 64(2), 67, and 68. Their implementation is conducive to eliciting the witness's evidence unencumbered by fear of retaliation or interference in respect of himself or his family, and to advancing the Chamber's fundamental obligation to search for the truth.

Kind regards,

Kweku Vanderpuye

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**From:**

**Sent:** 05 May 2021 18:38

**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]; V44 LRV Team OPCV [REDACTED]; V45 LRV Team [REDACTED]

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

**Subject:** RE: In-court protection measures for witness CAR-OTP-P-2841

Dear Honorable Judges,  
 Dear colleagues,

The Defence for Mr Ngaissona respectfully wishes to make the following observations with respect to VWU's recommendations to the Chamber as it concerns Witness P-2841.

*First*, the VWU's analysis of the risk associated with Witness P-2841's, [REDACTED] is purely speculative, in particular as it relates to the alleged risk emanating from P-2841's [REDACTED]  
 [REDACTED]

*Second*, the observations put forth by the VWU do not differ substantively from the arguments put forth by the Prosecution in its request for in-court protective measures (ICC-01/14-01/18-757-Conf-Anx-Red, page 2). They essentially replicate those same observations which were explicitly rejected by the Chamber (ICC-01/14-01/18-906-Conf-Red, para. 41 and page 44).

*Third*, the VWU's observations fall significantly short of outweighing the fundamental importance of an accused' right to a public trial, as enshrined in Articles 64(7), 67(1), 68(1) and of the Rome Statute and regulation 20 of the Regulations of the Court. The publicity of proceedings remains the general principle and a cornerstone of trials before the Court and implementing the VWU's recommendation would unreasonably curtail this fundamental right.

Kind regards,

On behalf of Counsel

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**From:** [REDACTED]  
**Sent:** 05 May 2021 16:03  
**To:** 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] V44 LRV Team OPCV [REDACTED]; V45 LRV Team [REDACTED]  
**Cc:** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]; Associate Legal Officer-Court Officer [REDACTED]  
[REDACTED]  
**Subject:** In-court protection measures for witness CAR-OTP-P-2841

Dear colleagues,  
Dear counsels,

Please find below the in-court protection measures report in relation to CAR-OTP-P-2841.

**Witness' Background**

The witness is [REDACTED]  
[REDACTED] He lives in CAR and currently works [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Witness' Concerns**

On 3 May 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 he held genuine concerns for his safety while residing in CAR, especially if he testifies publicly. The witness qualified this by saying that he has taken the precautionary measures of [REDACTED] because of the fear he has about being associated with the Court and because of his role [REDACTED]

During the ensuing discussion, the witness explained that [REDACTED]  
[REDACTED] In addition, he is [REDACTED]  
[REDACTED] The witness is aware that [REDACTED] also have close ties with Mr. Ngaissona.

**Protection Analysis**

The witness is [REDACTED] with [REDACTED] This is due to his function [REDACTED]

The VWU understands that the witness will testify about the internal structures and sensitive dealings of the anti-Balaka brigades in 2013-2014.

Public broadcast of his testimony will likely generate more interest and [REDACTED] will likely expose the witness towards Mr. Nguissona supporters in that case. When combined with his already [REDACTED] risk to his safety inevitably increases. Therefore, should he testify publicly as a prosecution witness [REDACTED] will see this as a betrayal and will likely be motivated to harm him as a result.

The VWU also notes that the witness' evidence may implicate prominent members of the Anti-Balaka in the commission of crimes which could have security implications for the witness upon his return to CAR.

Additionally, as [REDACTED] of the anti-Balaka movement, the VWU cannot rule out the possibility that the family of Anti-Balaka victims may also see the witness as representing those that caused harm to their community and families. Should the victims be motivated to take action against the witness, [REDACTED] will provide an abundance of opportunity to take action.

Given that the witness maintains [REDACTED] and is likely to provide evidence that implicates others or the Anti-Balaka group, the VWU is of the view that limiting public disclosure of his testimony would assist in managing the threat and subsequent risk once the witness returns to CAR. The VWU considers this in the context of the prevailing security situation in CAR and, in particular, the frequency with which violence occurs.

### **Recommendation**

The VWU takes note of the decision issued by Trial Chamber V on 9 March 2021 (ICC-01/14-01/18-906-Conf-Exp and ICC-01/14-01/18-906-Conf-Red) for witness CAR-OTP-P-2841.

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:

- use of pseudonym;
- Image distortion;
- Voice distortion;
- 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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