

ANNEX 25
PUBLIC

[REDACTED]

From: Trial Chamber V Communications
Sent: 10 May 2021 17:26
To: Vanderpuye, Kweku; [REDACTED] Trial Chamber V Communications; 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] Associate Legal Officer-Court Officer; Chamber Decisions Communication
Subject: RE: In-court protection measures for witness CAR-OTP-P-2926
Follow Up Flag: Follow up
Flag Status: Flagged
Categories: Yekatom and Ngaïssona

Dear Counsel,

The Single Judge takes note of the below VWU's in-court protective measures report for P-2926 (the 'VWU Report') as well as the related emails of the Ngaïssona Defence (the 'Ngaïssona Defence Response') and the Prosecution (the 'Prosecution Response').

As regards the Ngaïssona Defence Response and the Prosecution Response, the Single Judge recalls his previous guidance that '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' (email from the Chamber, 22 March 2021, at 15:08). In light of this guidance, the Single Judge will not consider or address these submissions any further.

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).

Turning to the substance of the VWU Report, the Single Judge recalls that he previously rejected the in-court protective measures requested by the Prosecution for P-2926. In this context, the Single Judge found the Prosecution's submission that 'the publicity of the witness's cooperation with the Court may affect [REDACTED] his safety, as well as the safety of third parties, as the witness [REDACTED] to be speculative and insufficient to demonstrate the existence of an objectively justifiable risk to the witness's legitimate interests protected under Article 68 of the Statute (Decision, ICC-01/14-01/18-906-Conf-Red, para. 84).

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

In this regard, the Single Judge notes first the VWU's conclusions on the witness's clear intention to return to [REDACTED]. According to the VWU, this intention is a consequence of the focus of the witness's work [REDACTED] which, in the past, prompted the witness [REDACTED] and is further based on a concrete offer for an assignment [REDACTED].

Second, the Single Judge notes the VWU's observation that the [REDACTED]

[REDACTED]
[REDACTED]

Further, the Single Judge notes the VWU's observation that the nature of the witness' work prevents the adoption of 'robust personal security measures' [REDACTED]

Lastly, the Single Judge notes the VWU's conclusion that under all these circumstances, compounded by the prevailing security situation in the CAR, the application of in-court protective measures may prevent a future escalation in risk for the witness.

The Single Judge therefore grants protective measures in the form of use of a pseudonym and face distortion for witness P-2926.

Kind regards,

TC V

From: Vanderpuye, Kweku

Sent: 10 May 2021 14:24

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]; Associate Legal Officer-Court Officer [REDACTED]
[REDACTED]

Subject: RE: In-court protection measures for witness CAR-OTP-P-2926

Dear Trial Chamber V,

Dear All,

The Prosecution considers that the recommendations of VWS are appropriate, and are fully consistent with the Section's previous recommendations and the Chamber's subsequent decisions on in-Court protective measures concerning both P-2841 and P-1577.

Although P-2926 is designated an expert as a witness, as is clear from his expert report and the documents which he provided and were disclosed [REDACTED] both his livelihood and physical security may be placed at risk with the public revelation of his participation in these proceedings as a Prosecution witness.

The Prosecution disagrees with the Ngaissona Defence's assertion that this is an argument that every expert appearing before this Court could assert. However, it is equally clear that the volatile and unpredictable security situation in CAR is an aggravating factor, and one a salient one which the Chamber must take into account in reasonably assessing not only the risks facing any given witness – particularly one who remains involved in activities there, but also the sufficiency of the available mitigation measures which the Court [REDACTED] can provide and enforce.

In this case, we consider that the VWS' recommendation merits implementation, as recommended. Thank you.

Kind regards,

Kweku Vanderpuye

From:

Sent: 10 May 2021 13:34

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-2926

Dear Trial Chamber V,

Dear all,

Although there is no formal application before the Chamber by the Prosecution for reconsideration of the Chamber's Decision of 9 March 2021, the Defence observes that the VWU's observations have already been addressed and disposed of by the Chamber in its Decision on in-court protective measures of 9 March, especially the argument that the witness may in the future [REDACTED] which is speculative in nature.

Respectfully, if this logic were to be followed, every expert appearing before this Court could raise the same argument in order to obtain protective measures, whereas they are meant to be applied exceptionally, as such an exception significantly curtails an accused' fundamental right to a public trial. The VWU's observations do not raise anything which could disturb the Chamber's conclusion that there is no "objectively justifiable risk to the witness's legitimate interests protected under Article 68 of the Statute" (ICC-01/14-01/18-906-Conf-Red, para 84.) For instance, the observation that the witness "fears that they will be motivated to harm him as a result" is highly speculative.

Kind regards,

[REDACTED]

Legal Assistant, Defence team of Mr Ngaissona

From: [REDACTED]

Sent: 10 May 2021 10:53

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; V44 LRV Team OPCV; V45 LRV Team

Cc: [REDACTED]

[REDACTED] Associate Legal Officer-Court Officer

Subject: In-court protection measures for witness CAR-OTP-P-2926

Dear colleagues,

Dear counsels,

Please find below the in-court protection measures report in relation to CAR-OTP-P-2926.

Witness's Background

The witness is [REDACTED]
[REDACTED]
[REDACTED]

Witness's 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.

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

In explaining his concerns, the witness identified members and associates of armed groups as being the primary threat actors. Some of those [REDACTED]. If he testifies publicly, the witness fears that they will be motivated to harm him as a result. [REDACTED]. The witness indicated that in contrast to the security protocols adopted by international organisations, he does not benefit from any additional security support during [REDACTED].

Protection Analysis

It is clear that the witness has a good understanding of issues likely to impact on his security. As [REDACTED] the VWU is of the view that the witness's professional experience adds considerable weight to the rationale he provided in expressing his concerns.

The witness' ability [REDACTED]

[REDACTED] Based on these factors, VWU considers that the risk to the witness would increase in CAR if threat actors would learn of the content of the witness's evidence as it may implicate them in the commission of crimes. This would provide sufficient motivation of threat actors to take action and target the witness upon [REDACTED].

Significantly, during VWU's assessment, the witness remained adamant as to his [REDACTED] in a professional capacity. Although the witness did not specify any intended dates [REDACTED] he indicated that his future work [REDACTED]. It is important to note that the focus of his work is the conflict in CAR, thereby involving [REDACTED]. VWU is conscious that the nature of the witness's work prevents the adoption of robust personal security measures. Although this approach facilitates his chosen vocation, it acts contrary to sound security advice. VWU considers the witness's work is undertaken in an already escalated risk environment so is, therefore, supportive of any measures that prevent any further escalation to that risk environment. Limiting public disclosure of the witness's testimony would assist in not aggravating or escalating the risk to the witness. The VWU also notes that the witness' evidence may implicate those [REDACTED] in the commission of crimes which could have security implications for the witness upon his return to CAR.

Given the witness' stated [REDACTED] inability to employ extensive security during [REDACTED] and the prevailing 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 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-2926. However, 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.
- redaction of any identifying information from any record that may be disseminated to the public.

Kind regards,



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