

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **22 April 2024**

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 Response to the 'Ngaißsona Defence Consolidated Request for In-Court Protective Measures for Witnesses D30-P-4914, D30-P-4197, D30-P-4504 and D30-P-4608' (ICC-01/14-01/18-2395-Conf)", ICC-01/14-01/18-2413-Conf, 18 March 2024

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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I. INTRODUCTION

1. Trial Chamber V (“Chamber”) should reject the Ngaissona Defence’s Consolidated Request for In-Court Protective Measures¹ in respect of all four witnesses, *in limine*. The Request fails to satisfy the requirements of Rule 87(1) of the Rules of Procedure and Evidence (“Rules”), or to otherwise substantiate any concrete and objective risks warranting protection pursuant to article 68(1).

II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis*(2) of the Regulations of the Court (“RoC”), this document is filed as “Confidential” because it responds to a filing of the same classification. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

Protective Measures are not Warranted

i. The grounds advanced are speculative and unsubstantiated

a) D30-P-4914

3. *First*, as concerns D30-P-4914, the Request does not establish any concrete relationship between the witness’s testimony and any identifiable risk to his security. Instead, the Request relies on the unsubstantiated impressions of the witness regarding *pre-existing* security issues, such as allegedly being “[REDACTED].”² These associations however, clearly do not arise from his prospective testimony in this case, nor from his cooperation with the Court or the Defence in that regard.

¹ ICC-01/14-01/18-2395-Conf (“Request”).

² ICC-01/14-01/18-2395-Conf, para. 21.

4. *Second*, while the Request attempts to attribute a risk of retaliation against the witness to his closeness with [REDACTED], it fails to explain how this risk is substantiated. The suggestion that P-2673 and P-1719 “[REDACTED]” is both self-serving and unsupported.³ Moreover, given that both witnesses testified in this case with protective measures themselves, it is unlikely that the [REDACTED] expressed by the witness relate to these specific individuals, but have been instead extrapolated by the Ngaissona Defence without foundation. In any event, any such basis is absent in the Request.

5. *Third*, contrary to the Defence’s assertions the witness’s concerns regarding Seleka supporters are similarly speculative. The statement that such supporters “*could try to exert revenge on him for his role in the Anti-Balaka during the conflict and for testifying on the crimes committed by the Seleka group at the time of the events*”⁴ is, without more, insufficient to establish an objective risk of harm so as to justify the protective measures sought.

b) D30-P-4197

6. The Request demonstrates no objective basis for the protective measures sought regarding D30-P-4197.

7. *First*, as the Warrant of Arrest, Document Containing the Charges, Confirmation Decision, the numerous witnesses, and the quantum of evidence adduced during the course of this trial amply demonstrate, there is a founded legal basis for NGAISSONA’s arrest and trial before this Court. The witness’s subjective opinions – incorrect as they are – cannot reasonably support the assertion of a cognisable risk of harm, lest his ignorance be the basis for protecting him from public testimony.

³ ICC-01/14-01/18-2395-Conf, para. 22.

⁴ ICC-01/14-01/18-2395-Conf, para. 23 (emphasis added).

8. *Second*, the alleged “[REDACTED]”⁵ received by P-2673 is also unsubstantiated. The basic circumstances under which [REDACTED] are omitted from the Request — such as the time, place, or manner of the alleged occurrence. Without this, the Chamber is not in a position even to assess whether the witness’s perception of the ‘[REDACTED]’ is accurate or reasonable. And, given that P-2673 was [REDACTED] in relation to his appearance in this case by former prospective Ngaissona Defence witness [REDACTED] — notwithstanding having testified with protective measures⁶ — it is equally plausible that, even if such a [REDACTED] was provided, it may simply have been [REDACTED] based on firsthand experience.

9. *Third*, the witness’s perception of the potential government reaction to his prospective public testimony is not dispositive, or persuasive. His concerns are wholly speculative, and further, the circumstances of NGAISSONA’s arrest and transfer to the ICC are already a matter of public record and an established legal fact. The CAR government would have no reason to concern itself with the witness’s version of events. Accordingly, the purported risk to the witness’s security is neither linked to his testimony, nor necessarily rationally related to its prospective subject matter.

c) D30-P-4504

10. *First*, the Request fails to even approach the requisite threshold showing to warrant the protective measures sought for D30-P-4504. The assertion that the witness “could face consequences, should his identity be known, and his cooperation with the Defence be revealed to the public”⁷ is conclusory and unsupported. Nor, does the subject matter of the witness’s prospective testimony give rise to any such inference.⁸

⁵ ICC-01/14-01/18-2395-Conf, para. 27.

⁶ See CAR-OTP-00000077.

⁷ ICC-01/14-01/18-2395-Conf, para. 31.

⁸ ICC-01/14-01/18-2395-Conf, para. 30 (noting testimony concerning “the background of the conflict”; “the youth’s activities and living conditions while in exile [REDACTED]”; and “[REDACTED] P-1719”).

11. The fact that D30-P-4504 may be “very scared of the repercussions of a public testimony”⁹ clearly does not amount to a showing of a concrete risk warranting protective measures under the Court’s established jurisprudence. Moreover his concerns about his employer’s reaction to his public testimony is unclear at best,¹⁰ and in any event, too opaque for the Chamber to conclude that they are reasonable.

12. *Second* the Defence’s assertion that the witness “feels that a public testimony in favour of Mr Ngaïssona would expose him as a political opponent of the regime and lead his employer, friends and even family to want to disassociate themselves from him, thereby isolating him from his community”¹¹ is equally unavailing. None of these claims are substantiated in the Request, nor does it logically follow from the nature of the witness’s affiliations and the limited subject matter of his proposed testimony. Nor, does the witness’s intention to withdraw his cooperation in anyway establish or concretise the risk to his security that is necessary to warrant the extension of the protections sought. In short, it does not save an otherwise fatal Request.

d) D30-P-4608

13. D30-P-4608 resides in [REDACTED]. Although the Defence assert that this fact makes him “easily locat[able]”,¹² it also provides him with access to a level of security that is locally available and fully competent to protect his interests. The Request does not suggest that the security apparatus available in [REDACTED] is in any way compromised. Moreover, there is no indication that the witness intends to travel to CAR anytime soon.

14. Although the Request asserts that the witness’s public testimony could endanger his relatives residing in [REDACTED], it is silent on why this would be the case. As

⁹ ICC-01/14-01/18-2395-Conf, para. 32.

¹⁰ ICC-01/14-01/18-2395-Conf, para. 32.

¹¹ ICC-01/14-01/18-2395-Conf, para. 33.

¹² ICC-01/14-01/18-2395-Conf, para. 38.

the Defence notes, the witness has “openly criticized the Seleka for committing crimes and creating chaos in [REDACTED]”.¹³ Moreover, he is of high profile. To the extent that he advances concerns about the perception of the Muslim population returning to the [REDACTED] area, the basis thereof does not arise from his prospective participation in this trial. Rather, as the Request sets out, any such concerns exist independently of the witness’s prospective testimony. Even if they were connected, it is speculative to assume that the Muslim “population” returning to [REDACTED] would target the witness for testifying to a well-worn narrative of their complicity in the conduct of the Seleka. In essence, there is nothing new in the prospective testimony of the witness that many people in CAR and indeed, in this trial have not already said publicly. Accordingly, there is no heightened risk for D30-P-4608 in particular.

15. *Second*, D30-P-4608’s encounter with former Seleka members in [REDACTED] is not sufficiently elaborated in the Request to draw any connection with the witness’s cooperation in the case or the Defence. Even the circumstances related concerning the witness being “[REDACTED]” are wholly unclear.

ii. The Request does not otherwise meet the legal threshold

16. The legal threshold to grant an application for protective measures is not met by a witness’s subjective assertions of the *possibility* of a risk, but by the proponent of the Request concretely demonstrating an actual — not theoretical — one.¹⁴ A witness’s subjective view that a risk might exist is insufficient. Notwithstanding the existing jurisprudence, the Request advances nothing more in respect of each of the prospective witnesses.

¹³ ICC-01/14-01/18-2395-Conf, para. 38.

¹⁴ See ICC-01/14-01/18-906-Conf-Red, para. 32 (noting that “such risks need to be objectively justified and, ordinarily, *this cannot be exclusively based on the witness’s own perception* [...] there must exist factual circumstances which make the Chamber believe that public knowledge of the witness’s identity would impermissibly risk an undue infringement of their legitimate interests”) (emphasis added).

17. Thus, as shown above, the Request fails to justify granting any of the three measures sought, namely, face and voice distortion, and the use of a pseudonym for any of the witnesses. Indeed, none is warranted or proportionate. On the assertions advanced in the Request, whether discretely or cumulatively, there exists no objectively justifiable risk to the witnesses' legitimate interests as protected under article 68.

IV. CONCLUSION

18. For the foregoing reasons, the Prosecution requests that the Chamber dismiss the Request in all respects.

A handwritten signature in black ink, appearing to be 'K.A.K.', with a horizontal line underneath it. The signature is centered on the page.

Karim A. A. Khan KC, Prosecutor

Dated this 22nd day of April 2024
At The Hague, The Netherlands