

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **24 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 'Ngaissona Defence  
Request for In-Court Protective Measures for Witness D30-P-4720'  
(ICC-01/14-01/18-2388-Conf)",  
ICC-01/14-01/18-2398-Conf, 8 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 dismiss the ‘Ngaissona Defence Request for In-Court Protective Measures for Witness D30-P-4720 (“Request”).<sup>1</sup> 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 objectifiable risk to D30-P-4720 warranting protection pursuant to article 68(1). Moreover, the Request rests entirely on unsubstantiated assertions and speculation.

## II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis*(2) of the Regulations of the Court (“RoC”), this Response and its Annexes are filed as “Confidential” because they respond to a filing of the same classification, and contain confidential information. A public redacted version will be filed as soon as practicable.

## III. SUBMISSIONS

### A. The Request is Unsubstantiated and Protective Measures are not Warranted

*D30-P-4720’s [REDACTED] and they do not amount to a cognisable risk factor that arises from her prospective public testimony*

3. D30-P-4720’s concerns that she could be exposed to retaliation from the Central African Republic (“CAR”) government and its supporters because of [REDACTED] are unpersuasive. Further, the Defence’s argument that giving evidence publicly increases the risk of “possible” retaliation fails.<sup>2</sup>

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<sup>1</sup> ICC-01/14-01/18-2388-Conf.

<sup>2</sup> ICC-01/14-01/18-2388-Conf, paras. 16-19.

4. *First*, as the Defence acknowledges, D30-P-4720 is [REDACTED].<sup>3</sup> [REDACTED],<sup>4</sup> [REDACTED].<sup>5</sup> [REDACTED]<sup>6</sup> [REDACTED].<sup>7</sup>

5. D30-P-4720's [REDACTED],<sup>8</sup> [REDACTED].

6. [REDACTED],<sup>9</sup> [REDACTED].<sup>10</sup> [REDACTED],<sup>11</sup> [REDACTED].<sup>12</sup>

7. It is undisputable that [REDACTED].<sup>13</sup> [REDACTED] testifies publicly in this case.

8. *Second*, the Defence's argument relies entirely on the witness's subjective apprehension "[REDACTED]."<sup>14</sup> The Request does not provide any objective justification for the witness's concern in respect of [REDACTED]. Other than speculation, the Request is silent on the matter.

#### D30-P-4720's prospective testimony does not focus on NGAISSONA

9. The Defence's contention that "[REDACTED] ",<sup>15</sup> is speculative and unsubstantiated. While the Request asserts that D30-P-4720 is "[REDACTED]", it asserts nothing concrete in this respect. The same is true for the unsubstantiated claim that "[REDACTED]."<sup>16</sup> Thus, the argument fails. And, even if true — which it is not

<sup>3</sup> ICC-01/14-01/18-2388-Conf, paras. 13, 19.

<sup>4</sup> A transcript of which is attached to the present filing as Annexes A, B, and C (i.e., part 1, 2, and 3 of the interview).

<sup>5</sup> Annex A, p. 7, l. 24-p. 8, l. 14.

<sup>6</sup> Annex A, p. 8, l. 20- p. 9, ln. 4.

<sup>7</sup> Annex A, p. 5, lns. 4-11.

<sup>8</sup> [REDACTED].

<sup>9</sup> [REDACTED].

<sup>10</sup> [REDACTED]: *see* Annex A, p. 24, lns. 22-28.

<sup>11</sup> *See e.g.*, [REDACTED].

<sup>12</sup> *See e.g.*, [REDACTED].

<sup>13</sup> *See e.g.*, [REDACTED].

<sup>14</sup> ICC-01/14-01/18-2388-Conf, para. 16.

<sup>15</sup> ICC-01/14-01/18-2388-Conf, para. 21.

<sup>16</sup> ICC-01/14-01/18-2388-Conf, para. 20.

— it fails to meet the threshold for protective measures under the Court’s jurisprudence.

10. *First*, as already mentioned, [REDACTED]. They neither create, nor amount to, a cognisable risk *arising from* her prospective public testimony regarding NGAISSONA.

11. *Second*, D30-P-4720 is not expected to testify about [REDACTED], to the contrary. According to the Defence, D30-P-4720 will testify about the alleged [REDACTED].<sup>17</sup> In addition, no other subject identified in her expected testimony<sup>18</sup> confirms or even suggests [REDACTED]. In her interview with the Prosecution, D30-P-4720 clarified in fact that [REDACTED].<sup>19</sup> Whilst confirming NGAISSONA was a KNK representative, she stated [REDACTED].<sup>20</sup> [REDACTED]<sup>21</sup> [REDACTED].<sup>22</sup> [REDACTED],<sup>23</sup> [REDACTED].<sup>24</sup>

12. In other words, [REDACTED]. Moreover, it is unclear as to why the witness’s limited prospective evidence regarding NGAISSONA would objectively result in a risk that cannot be adequately addressed in a conventional manner, including by eliciting certain testimony in private session – if the Chamber considers it appropriate.

13. *Third*, NGAISSONA actually [REDACTED].<sup>25</sup> [REDACTED].<sup>26</sup> [REDACTED] is equally unsubstantiated. It is pure conjecture and cannot reasonably serve as a basis for the Chamber to grant the protective measures sought without more.

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<sup>17</sup> ICC-01/14-01/18-2388-Conf, para. 14.

<sup>18</sup> ICC-01/14-01/18-2388-Conf, para. 14.

<sup>19</sup> Annex B, p. 2, l. 5-p. 3, l. 8.

<sup>20</sup> Annex B, p. 5, lns. 10-18.

<sup>21</sup> Annex B, p. 22, lns. 1-5.

<sup>22</sup> Annex A, p. 11, l. 23; p. 14, l. 7;

<sup>23</sup> Annex C, p. 11, l. 23-p. 12, l. 3. *See also* p. 22, lns. 19-23.

<sup>24</sup> Annex C, p. 25, lns. 12-16.

<sup>25</sup> *See e.g.*, [REDACTED].

<sup>26</sup> ICC-01/14-01/18-2388-Conf, para. 20.

14. *Fourth*, the legal threshold to grant an application for protective measures is not met by the mere assertion of the *possibility* of a risk, but by concretely demonstrating an *existing* one. The contention that the witness is “*potentially*” exposing herself to retaliation by testifying, or that “*potential*” threats exist for [REDACTED],<sup>27</sup> is unavailing. Yet, the Defence relies completely on speculation to support the witness’s concerns of possible exposure to retaliation<sup>28</sup> should she testify publicly. No view of the facts pleaded in the Request provides any objective basis for this conclusion.

15. *Finally*, the Defence’s invocation of the circumstances in the *Mokom* case for the Chamber’s consideration in assessing the context regarding *this* case,<sup>29</sup> if anything, undermines the basis for the protective measures sought.

16. Contrary to the contentions advanced in the Request, there is a stark contrast in the circumstances here and in the *Mokom* case. Moreover, the inference that the Defence seeks to draw – that the same risks attend D30-P-4720 as those [REDACTED] – is speculative and, in any event, does not hold. At least one clear distinction is that [REDACTED] – than it has to do with his ICC case. At the end of the day, that is not known. What is known, is that such ‘context’ does not apply to the situation involving *this* witness, subjectively or objectively. As such, the comparison is not apt, inappropriate, and does not speak to the prevailing or salient circumstances in respect of the risks to D30-P-4720 as a result of her public testimony.

## **B. Several Factors Militate against Protective Measures**

17. The Defence concedes several unfavourable facts which collectively are fatal to the Request.

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<sup>27</sup> ICC-01/14-01/18-2388-Conf, paras. 20-22.

<sup>28</sup> ICC-01/14-01/18-2388-Conf, para. 16.

<sup>29</sup> ICC-01/14-01/18-2388-Conf, para. 20.

18. *First*, D30-P-4720 has been residing in [REDACTED] since [REDACTED],<sup>30</sup> where she can rely on law enforcement should there be any fall-out from her prospective testimony.

19. *Second*, as already mentioned, D30-P-4720's [REDACTED].<sup>31</sup> Despite this, the Defence fails to identify any direct threats against her. [REDACTED] would have to account for this reality, independently of D30-P-4720's public testimony.

20. In fact, the Request does not establish that previous threats of any kind – whether direct, indirect, express, or implied, have ever been made. This further underscores that the basis for the requested measures derives entirely subjectively.

21. *Finally*, and in respect of the potential exposure of other individuals as a result of D30-P-4720's prospective testimony which may reveal information about individuals [REDACTED],<sup>32</sup> the Request again fails. There is no substantiated risk arising from the possible exposure; and even if so, the Defence fails to identify why eliciting such information in private session would be inadequate.

22. In sum, the Request fails to justify the granting of any of the three measures sought, namely (i) the use of a pseudonym, (ii) face distortion, and (iii) voice distortion. None is warranted, much less proportionate here. On the basis of the assertions advanced in the Request, whether discretely or cumulatively, there exists no objectively justifiable risk to the witness's legitimate interests protected under article 68.

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<sup>30</sup> ICC-01/14-01/18-2388-Conf, para. 23.

<sup>31</sup> ICC-01/14-01/18-2388-Conf, paras. 13, 19.

<sup>32</sup> ICC-01/14-01/18-2388-Conf, para. 25.

#### IV. CONCLUSION

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

A handwritten signature in blue ink, consisting of a stylized initial 'K' followed by a horizontal line and a dot.

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**Karim A. A. Khan KC, Prosecutor**

Dated this 24<sup>th</sup> day of April 2024  
At The Hague, The Netherlands