

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: **27 August 2024**

**TRIAL CHAMBER V**

**Before:**

**Judge Bertram Schmitt, Presiding Judge**

**Judge Péter Kovács**

**Judge Chang-ho Chung**

**Judge Beti Hohler, Alternate Judge**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II**

**IN THE CASE OF**

***THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD  
NGAISSONA***

**PUBLIC**

**Public Redacted Version of '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**

**Source: Defence of Patrice-Edouard Ngaißsona**

**Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**

**The Office of the Prosecutor**

Mr Karim Asad Ahmad Khan KC  
Mr Mame Mandiaye Niang  
Mr Kweku Vanderpuye

**Counsel for the Defence of Mr Ngaïssona**

Mr Geert-Jan Alexander Knoops  
Ms Marie-Hélène Proulx  
Ms Lauriane Vandeler

**Counsel for the Defence of Mr Yekatom**

Ms Mylène Dimitri  
Mr Thomas Hannis  
Ms Anta Guissé  
Ms Sarah Bafadhel

**Legal Representatives of the Victims**

Mr Dmytro Suprun  
Mr Abdou Dangabo Moussa  
Ms Elisabeth Rabesandratana  
Mr Yaré Fall  
Ms Marie-Edith Douzima-Lawson  
Ms Paolina Massidda

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for Victims**

**The Office of Public Counsel for the Defence**

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Osvaldo Zavala Giler

**Counsel Support Section**

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations Section Other**

## **I. INTRODUCTION**

1. Pursuant to Article 64 and 68 of the Rome Statute (“Statute”) and Rule 87 of the Rules of Procedure and Evidence (“Rules”), the Defence for Mr Patrice-Edouard Ngaïssona (“Defence”) respectfully requests Trial Chamber V (“Chamber”) to grant in-court protective measures, in the form of (i) face distortion, (ii) voice distortion, and (iii) use of pseudonym for Witnesses D30-P-4914, D30-P-4197, D30-P-4504 and D30-P-4608 (“Sought Measures”).
2. The Sought Measures are necessary since there is an objectively justifiable risk to the witnesses’ safety, physical and psychological well-being, as well as their dignity and privacy should their identity become known to the public.

## **II. CONFIDENTIALITY**

3. In accordance with regulation 23*bis*(1) of the Regulations of the Court (the “RoC”), this consolidated request is filed as confidential, as it contains information that identifies Defence witnesses. The Defence will file a public redacted version in due course.

## **III. PROCEDURAL HISTORY**

4. On 26 August 2020, the Chamber, issued the ‘Initial Directions on the Conduct of the Proceedings’ (“Initial Directions”), stating that “[a]ny applications for in-court protective measures pursuant to Rules 87 and 88 of the Rules shall be made as soon as possible to allow the Chamber to receive submissions on the request and to allow the VWU to fulfil its mandate.”<sup>1</sup>
5. On 29 May 2023, the Chamber issued its ‘Further Directions on the Conduct of the Proceedings’ (“Further Directions”) and directed the Defence to file its final list of witnesses and specify the expected in-court protective measures to be sought.<sup>2</sup>
6. On 17 November 2023, the Defence filed its Final List of Witnesses, where it indicated which witnesses would be needing in-court protective measures.<sup>3</sup> Specifically, it indicated that it would seek to have Witnesses D30-P-4914, D30-P-4197 and D30-P-4608 testifying

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<sup>1</sup> ICC-01/14-01/18-631, para. 68.

<sup>2</sup> ICC-01/14-01/18-1892, para. 21.

<sup>3</sup> ICC-01/14-01/18-2215.

under such measures.<sup>4</sup> Upon deciding to submit the evidence of D30-P-4504 pursuant to Rule 68(3), the Defence has ascertained that protective measures are also warranted for this witness.

#### IV. APPLICABLE LAW

7. The Defence incorporates by reference the applicable law set out in the Defence's Request for In-Court Protective Measures for Witness D30-P-4720.<sup>5</sup>

#### V. SUBMISSIONS

##### A. An objectively justifiable risk due to the general security situation in Central African Republic ("CAR") and the government's recent positions

8. Witnesses D30-P-4914, D30-P-4197, D30-P-4504 reside in the Central African Republic. Although Witness D30-P-4608 [REDACTED]. As such, the four witnesses are put at significant risk by the general security situation which prevails in CAR.
9. The situation in CAR has increasingly deteriorated and became a significant factor contributing to risks of retaliation for witnesses. Recent events in CAR demonstrate that the current government has tightened the noose around its political opponents. This recent trend has been highlighted by the Registry's Fourteenth Report on the Political and Security Situation in the Central African Republic ("Fourteenth Report").<sup>6</sup> The report shows that the current government has been actively targeting real or perceived supporters of former President Bozizé. It describes that the Bangui Court of Appeal has tried and convicted *in absentia* former President Bozizé, as well as 23 co-defendants, including Maxime Mokom, to life imprisonment.<sup>7</sup>
10. The Registry's Fifteenth Report dated 26 February 2024 also notes "increased political tensions around on-going allegations of arbitrary arrests and searches as well over the influence of the main stakeholders and the on-going related disinformation and misinformation."<sup>8</sup>

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<sup>4</sup> ICC-01/14-01/18-2215-Conf-Anx1.

<sup>5</sup> ICC-01/14-01/18-2388-Conf.

<sup>6</sup> ICC-01/14-01/18-2239-Conf-Anx, para. 49.

<sup>7</sup> *Ibid.*

<sup>8</sup> ICC-01/14-01/18-2380-Conf-Anx, para. 5 ("Fifteenth Report").

11. Other destabilizing factors contribute to the deteriorating situation in CAR, such as the presence of the ‘Wagner group’, a paramilitary organization that originally established in CAR to provide political assistance to the local authorities in return of access to natural resources.<sup>9</sup> This group is however now taking control of various institutions and groups, such as the Presidential Guard, the FACA, the ‘*Requins*’,<sup>10</sup> and more recently, it has been predicted that Wagner would take full control of the *Office Central pour la Répression du Banditisme* (“OCRB”).<sup>11</sup>
12. Wagner’s objective is to target political opponents to Touadéra and his regime,<sup>12</sup> operating through threats, unlawful arrests and torture. Human Rights Watch explains that the ‘*Requins*’ are responsible for harassing people opposed to the current regime by threatening people,<sup>13</sup> and have been defined as Touadéra’s private militia<sup>14</sup>.
13. The increase in human rights violations caused by these groups has been widely documented by UN experts and International Human Rights Organizations,<sup>15</sup> as well as the Registry in its Security Assessment,<sup>16</sup> which shows the impact on the CAR security situation. In its Fourteenth report assessing the security situation in the Central African Republic, the Registry highlights that the Wagner group has been entrenched in CAR’s affairs for years, with Russians advisors strengthening Russian influence in the region.<sup>17</sup> Wagner has increasingly been infiltrating all spheres in CAR including by having various individuals in Touadéra’s close circles,<sup>18</sup> and targeting individuals perceived to be ‘faithful to Bozizé’,<sup>19</sup> through kidnapping or forced disappearances attacks.<sup>20</sup> The Registry has

<sup>9</sup> “Architects of Terror: The Wagner Group’s Blueprint for State Capture in the Central African Republic”, The Sentry, June 2023 (“[The Sentry June 2023 Architects of Terror report](#)”), pp. 20-23.

<sup>10</sup> [The Sentry June 2023 Architects of Terror report](#), pp. 12-14, 24, 36-41.

<sup>11</sup> Fifteenth Report, ICC-01/14-01/18-2380-Conf-Anx, para. 13.

<sup>12</sup> [The Sentry June 2023 Architects of Terror report](#), p.24.

<sup>13</sup> “[République centrafricaine : Rétrécissement de l’espace civique](#)”, Human Rights Watch, 4 April 2023.

<sup>14</sup> [The Sentry June 2023 Architects of Terror report](#), pp. 12-14, 24, 36-41.

<sup>15</sup> “[Central African Republic : Abuses by Russia-Linked Forces](#)”, Human Rights Watch, 3 May 2022; “[RCA : l’ONU s’insurge des exactions commises par les rebelles et le groupe paramilitaire russe Wagner](#)”, ONU Info, 30 March 2022.

<sup>16</sup> ICC-01/14-01/18-2239-Conf-Anx, para. 43.

<sup>17</sup> ICC-01/14-01/18-2239-Conf-Anx, paras 29-30.

<sup>18</sup> “[CAR: Who are President Touadéra’s Russian guardian angels?](#)”, Mathieu Olivier, The Africa Report, 17 March 2021.

<sup>19</sup> [The Sentry June 2023 Architects of Terror report](#), p. 17.

<sup>20</sup> [The Sentry June 2023 Architects of Terror report](#), p. 24.

recently opined that “the growing influence and control of Russian Wagner paramilitary group [...] may impact the cooperation with the Court [...]”.<sup>21</sup>

14. Defence witnesses are potentially exposing themselves to increase risks of retaliation by testifying for the Defence of Mr Ngaïssona, who is considered an opponent to the Touadéra government. The potential threats existing on witnesses increase for Defence witnesses, as they will be publicly seen as supporting people publicly associated with Bozizé. This risk has been illustrated by the hardship faced by a Witness in *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*. Mr Feïssona, whose evidence was relied upon by the Mokom Defence team, was arrested, tortured and subject to ill-treatment in the days following his cooperation with the Court.<sup>22</sup> The Mokom Defence investigated the matter and issued a report concluding that his arrest was organized by the Wagner group due to his interactions with the Defence.<sup>23</sup>

15. A similar risk exists for Defence witnesses testifying for Mr Ngaïssona. Mr Ngaïssona is publicly portrayed by the current CAR government as being associated with Bozizé. [REDACTED]. Defence witness D30-P-4197 explained [REDACTED]. In addition, D30-P-4197 explained to the Defence [REDACTED].<sup>24</sup>

**B. The personal circumstances of the witnesses warrant the granting of in-court protective measures**

16. The Sought Measures are necessary for the witnesses subject to the present Request, and their absence would create an objectively justifiable risk to the legitimate interests of the witnesses, protected under Article 68 of the Statute. They are proportionate to the accused’s rights, since they are the least restrictive option possible, given the existing risk against the witness. Moreover, the publicity of the proceedings would not be greatly impacted, as the Defence will do its best to mitigate the measures by conducting its examination-in-chief as much as possible in open session, should circumstances allow it.

17. The individual risk assessment for each witness is set out below.

<sup>21</sup> Fifteenth Report, ICC-01/14-01/18-2380-Conf-Anx, para. 35.

<sup>22</sup> *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, ‘Public Redacted Version of ‘Decision on “Defence Urgent Request for an Order Concerning the Arrest of P-0405”’, ICC-01/14-01/22-290-Red, para. 2.

<sup>23</sup> *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, ‘Annex I Public Redacted Version’, ICC-01/14-01/22-307-AnxI-Red.

<sup>24</sup> [REDACTED].

i. **D30-P-4914**

18. D30-P-4914 is currently [REDACTED]. Before the Seleka coup, he was [REDACTED]. After the Seleka took Bangui, he was stationed near the border with Cameroon, more precisely, [REDACTED].

19. D30-P-4914 will testify on the events that took place on the Central African side of the border in 2013 and early 2014. [REDACTED]. D30-P-4914 will also give evidence on:

- a. the background of the conflict;
- b. the crimes committed by the Seleka in Bangui and at the border, [REDACTED];
- c. the Seleka's persecutions against perceived Bozizé supporters;
- d. the witness' [REDACTED] and the control of the area by the Seleka, including their attacks;
- e. the strict control of any cross-border mobility by the Cameroonian authorities;
- f. the very difficult living conditions of the FACA in Cameroon;
- g. the origin of the Anti-Balaka, including the resistance in Bouar;
- h. the composition and functioning [REDACTED];
- i. the lack of provision of money and weapons;
- j. Mr Ngaïssona's lack of contribution in structuring, instructing and financing the Anti- Balaka [REDACTED]; and
- k. his contacts with [REDACTED].<sup>25</sup>

20. D30-P-4914 will face several security threats, should his identity and his cooperation with the Defence and the Court be known to the public.

21. The witness is already being harassed by [REDACTED]. He has reported threats from the [REDACTED]. He has also reported encountering armed men outside of his home,

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<sup>25</sup> [REDACTED].

sometimes very late at night [REDACTED]. For this reason, D30-P-4914 is currently living in fear and hiding from the authorities.

22. The witness believes that the harassment he is facing is due to [REDACTED]. D30-P-4914 fears [REDACTED], should he testify in the case against Mr Ngaïssona. Some of the individuals he is set to testify about, such as P-2673 and P-1719, [REDACTED]. The witness also fears that [REDACTED] should it be known that he testified in the proceedings. The witness is widely known [REDACTED].
23. Similarly, supporters of the Seleka could try to exert revenge on him [REDACTED] during the conflict and for testifying on the crimes committed by the Seleka group at the time of the events. This demonstrates the existence of an objectively justifiable risk for D30-P-4914 to be the victim of retaliation if he were to testify publicly.

**ii. D30-P-4197**

24. D30-P-4197 is currently unemployed [REDACTED]. Between 2018 and June 2022, he was [REDACTED]. He is politically active [REDACTED]. He lives in Bangui [REDACTED].

25. D30-P-4197 will testify on :

- a. the events preceding and those following the arrest of Mr Ngaïssona in December 2018;
- b. his knowledge of [REDACTED]; and
- c. the close relationship between key insider witnesses in the present case, including P-1847, P-0801 and P-2673, [REDACTED].<sup>26</sup>

26. The witness will face several security risks, should his identity be known, and his cooperation with the Defence be revealed to the public.

27. D30-P-4197 is fearful that he could suffer reprisals from individuals [REDACTED]. For example, Prosecution witness P-2673, [REDACTED]. The witness was [REDACTED], seemingly as reprisals [REDACTED].

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<sup>26</sup> [REDACTED].

28. D30-P-4197 fears that by giving evidence in public regarding [REDACTED]. In the current context and the harassment faced by real or perceived political opponents, a public testimony would threaten the witness and his family's security and wellbeing. For this reason, the witness does not even want to meet with the Defence in person in the CAR, fearing to be associated with the Defence and the Court in general.
29. This demonstrates the existence of an objectively justifiable risk for D30-P-4197 to be the victim of retaliation if he were to testify publicly.

**iii. D30-P-4504**

30. D30-P-4504 is a [REDACTED], and living in Bangui. After the Seleka coup, the witness fled to Cameroon [REDACTED]. He is set to testify on:
- a. the background of the conflict;
  - b. the youth's activities and living conditions while in exile in Douala; and
  - c. his contacts with P-1719.<sup>27</sup>
31. D30-P-4504 could face consequences, should his identity be known, and his cooperation with the Defence be revealed to the public.
32. Although the witness [REDACTED], he is very scared of the repercussions of a public testimony. In particular, D30-P-4504 has expressed the fear that his employer may exert reprisals against him, by firing him and depriving him of his only source of income. The witness relies on this income to provide for [REDACTED], and thus, would greatly suffer from any negative measures taken by his employer.
33. The witness's fears mostly stem from the current political climate and the targeting of the political opposition and their supporters by the ruling party. He feels that a public testimony in favour of Mr Ngaïssona would expose him as [REDACTED]. If forced to testify in public, the witness indicated that he would most likely withdraw his cooperation with the Court.

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<sup>27</sup> See CAR-D30-0023-0001-R01.

34. This demonstrates the existence of an objectively justifiable risk for D30-P-4504 to be the victim of retaliation if he were to testify publicly.

**iv. D30-P-4608**

35. D30-P-4608 currently lives [REDACTED]. In 2013, he was [REDACTED]. He played a central role [REDACTED].

36. D30-P-4608 will testify on:

- a. the background of the conflict;
- b. the arrival and crimes of the Seleka in Bossangoa;
- c. the origin of the Anti-Balaka;
- d. the events preceding the 5 December attack in Bossangoa;
- e. the mediations between the [REDACTED] communities in 2013 and 2014;
- f. [REDACTED];
- g. the 5 December attack in Bossangoa and life in Bossangoa thereafter; and
- h. the voluntary departure of the Muslims from Bossangoa.<sup>28</sup>

37. D30-P-4608 could face threats should his identity and his cooperation with the Defence and the Court be known to the public.

38. The witness is [REDACTED]. At the time of the events, [REDACTED]. Because of [REDACTED] his pivotal role, [REDACTED]. It is also widely known that the witness [REDACTED].

39. The witness believes [REDACTED], already suspects that he will be a witness [REDACTED]. He is fearful that this will endanger his relatives [REDACTED], since his testimony will detail the complicity of the Muslim civilians with the Seleka in 2013. There is also a risk that the witness himself will suffer reprisals [REDACTED].

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<sup>28</sup> See CAR-D30-0017-0004-R01.

40. Before he first met with the Defence, D30-P-4608 had an encounter with former Seleka members [REDACTED]. The latter individuals tried to corner the witness, but he managed to leave unharmed. This episode has understandably shaken the witness, who is fearful that the same or other individuals could try to harm him if it was known that he is cooperating with the Court in general, and the Defence in particular.
41. This demonstrates the existence of an objectively justifiable risk for D30-P-4608 to be the victim of retaliation if he were to testify publicly.

## **VI. RELIEF SOUGHT**

42. For the foregoing reasons, the Defence respectfully requests the Chamber to:
- **GRANT** the present request for in-court protective measures, in the form of (i) face distortion, (ii) voice distortion, and (iii) use of pseudonym for Witnesses D30-P-4914, D30-P-4197, D30-P-4504 and D30-P-4608.

Respectfully submitted,



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Mr Knoops, Lead Counsel for Patrice-Edouard Ngaissona

Dated this 27 August 2024

At The Hague, the Netherlands