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No.: ICC-01/14-01/21
Date: 18 November 2022

TRIAL CHAMBER VI

Before: Judge Miatta Maria Samba, Presiding Judge
Judge Maria del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godínez

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public

Public Redacted Version of “Prosecution's request for reconsideration of the Decision on the Prosecution’s Request for In-Court Protective Measures (ICC-01/14-01/21-481-Conf) for Prosecution Witness P-0435”, ICC-01/14-01/21-530-Conf, dated 4 November 2022

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. Pursuant to the Directions on the Conduct of Proceedings¹ and the Decision on the Prosecution's Request for In-Court Protective Measures ("ICPM Decision"),² the Prosecution hereby urgently requests the Trial Chamber VI ("Chamber") to reconsider its determination in the ICPM Decision not to grant protective measures for P-0435.

2. On 3 November 2022, the VWS informed the Prosecution that [REDACTED]. In light of the changed circumstances, the Prosecution requests, on an urgent basis, that the Chamber orders the use of pseudonym, voice and facial distortion, and use of private and closed sessions for P-0435 ("Requested Measures") ("Request").

II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis* of the Regulations of the Court ("Regulations"), this Request is filed as confidential as it relates to confidential witness security issues, and previous filings of the same classification. A public redacted version will be filed as soon as practical.

III. URGENCY

4. This Request is filed urgently as P-0435 is scheduled to travel to the Hague for testimony on 8 November 2022.

IV. SUBMISSIONS

A. Reconsideration is necessary and justified in light of changed circumstances

5. In the ICPM Decision, the Chamber did not grant protective measures for P-0435. In doing so, the Chamber noted that "[n]otwithstanding the fact that this witness is subject to the same general risk as the other witnesses, the Chamber notes that the witness [REDACTED] This is without prejudice to the Chamber reconsidering, upon

¹ ICC-01/14-01/21-251, paras. 47- 48.

² ICC-01/14-01/21-481-Conf, paras. 15, 43.

request or *proprio motu*, the need for an order under rule 87 of the Rules, should this be warranted".³

6. The Prosecution submits that the current circumstances surrounding the security situation of P-0435 warrant the Chamber's reconsideration of its ICPM Decision in respect of P-0435. [REDACTED].⁴ [REDACTED].

7. The view expressed by P-0435 on 3 November 2022 is supported by facts and circumstances surrounding the witness's current security situation. [REDACTED]⁵ [REDACTED]⁶ [REDACTED]⁷ [REDACTED]⁸ [REDACTED].

8. [REDACTED]⁹ [REDACTED]¹⁰ [REDACTED].¹¹

B. Requested Measures are proportionate and do not prejudice the Accused

9. The Requested Measures are proportionate under the current circumstances. These measures are crucial in providing a safe environment for P-0435 to testify before the Chamber without any fear of retaliation or threat, and assist the Court in establishing the truth. As [REDACTED], there are no other less restrictive measures to mitigate the risks.

10. The Requested Measures do not prejudice the Accused. The identity of P-0435 is known to the Accused and his Defence team, and the Requested Measures in no way impede the Accused's opportunity to cross-examine the witness.

³ ICC-01/14-01/21-481-Conf, para. 43.

⁴ [REDACTED].

⁵ ICC-01/14-01/21-356-Conf.

⁶ ICC-01/14-41-Red2

⁷ See e.g., **P-0435**: CAR-OTP-2017-0036 at 0043-0044, 0048, 0052, 0060, paras. 40-42, 46, 74, 98, 102, 144-145.

⁸ See ICC-01/14-01/21-481-Conf, para. 17.

⁹ ICC-01/14-01/21-463-Conf-Anx, p. 9-10, paras. 23-24.

¹⁰ ICC-01/14-01/21-463-Conf-Anx, p. 15, para. 41.

¹¹ [REDACTED].

V. RELIEF SOUGHT

21. For the above reasons, the Prosecution urgently requests for the Chamber's reconsideration of its ICPM Decision in respect of P-0435, and further urgently requests that the Chamber orders the use of pseudonym, voice and facial distortion, and use of private and closed sessions for P-0435.



Karim A. A. Khan KC, Prosecutor

Dated this 18th day of November 2022
At The Hague, The Netherlands