

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/14-01/21

Date: 24 May 2024

TRIAL CHAMBER VI

Before:

**Judge Miatta Maria Samba, Presiding Judge
Judge María del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godínez**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF

THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI

Public

**Decision on the Prosecution's Request for Continued In-Court Protective
Measures for Witness P-0119**

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

The Office of the Prosecutor Mr Karim A. A. Khan Ms Holo Makwaia	Counsel for the Defence Ms Jennifer Naouri Mr Dov Jacobs
Legal Representatives of Victims Ms Sarah Pellet	Legal Representatives of Applicants
Unrepresented Victims	Unrepresented Applicants for Participation/Reparations
The Office of Public Counsel for Victims	The Office of Public Counsel for the Defence
States Representatives	Amicus Curiae
REGISTRY	
Registrar Mr Osvaldo Zavala Giler	Counsel Support Section
Victims and Witnesses Unit	Detention Section
Victims Participation and Reparations Section	Other

TRIAL CHAMBER VI of the International Criminal Court, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, having regard to articles 64(2), 64(6)(e), 64(7), 67(1), and 68 of the Rome Statute (the ‘Statute’), rule 87 of the Rules of Procedure and Evidence (the ‘Rules’), and regulation 42 of the Regulations of the Court (the ‘Regulations’), issues this ‘Decision on the Prosecution’s Request for Continued In-Court Protective Measures for Witness P-0119’.

I. PROCEDURAL HISTORY

1. On 17 May 2024, the Office of the Prosecutor (the ‘Prosecution’) requested that the Chamber continue with ‘full force and effect’ the in-court protective measures granted to Witness P-0119 by Trial Chamber V in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* (the ‘Yekatom and Ngaïssona Case’) (the ‘Request’).¹
2. On 20 May 2024, the Defence requested, via email, the Chamber to order the Prosecution to grant it access to the Victims and Witnesses Unit’s (the ‘VWU’) recommendations underpinning P-0119’s protective measures.²

II. SUBMISSIONS

3. In the Request, the Prosecution notes that Trial Chamber V granted P-0119 in-court protective measures in the form of the use of a pseudonym, face distortion, and closed sessions when P-0119 testified as a witness in the *Yekatom and Ngaïssona Case*³ and requests that the Chamber continue said protective measures in the present case.⁴ The Prosecution points to regulation 42(1) of the Regulations which provides that, ‘once ordered in any proceedings in respect of a victim or witness, protective measures shall continue to have full force and effect in relation to any other proceedings’ and ‘shall continue after proceedings have been concluded’.⁵

¹ Prosecution’s Request for Continued In-Court Protective Measures for Witness P-0119, 17 May 2024, ICC-01/14-01/21-762-Conf (the ‘Request’), with one confidential annex.

² Email from the Defence to the Chamber, dated 20 May 2024 at 11:42 (the ‘Defence Request’).

³ Request, ICC-01/14-01/21-762-Conf, para. 5.

⁴ Request, ICC-01/14-01/21-762-Conf, para. 6.

⁵ Request, ICC-01/14-01/21-762-Conf, para. 6.

4. The Prosecution submits that several factors support the continuation of the in-court protective measures previously granted to P-0119, including the fact that: (i) the *Yekatom and Ngaïssona* Case and the present proceedings arise from the same situation; (ii) P-0119's profile presents similar objectively justifiable risks that Trial Chamber V found present in *Yekatom and Ngaïssona* Case; and (iii) the Chamber has previously recognised that the security situation in the Central African Republic ('CAR') may be a factor when assessing the existence of an objectively justifiable risk, and the latest Registry report on the political and security situation in CAR demonstrates that the country's security situation remains precarious and justifies in-court protective measures for P-0119.⁶

5. The Prosecution submits that the abovementioned factors are not inconsistent with the rights of the accused in the present case and do not result in prejudice, furthering arguing that the 'measures sought are fair and proportionate and will only have a limited impact on the public nature of the proceedings'.⁷

6. In the Defence Request, the Defence submits that it is unable to file a full and proper response to the Request because the Request's Annex⁸ contains insufficient information.⁹ In particular, the Defence submits that the Request's Annex does not include the specific recommendations made by the VWU, which Trial Chamber V relied upon when deciding to grant in-court protective measures to P-0119. The Defence argues that it needs this information in order to respond to the Request, and requests that the Chamber order the Prosecution to provide it with access to the VWU's recommendations and order that the time limit for the Defence to respond to the Request begin running only once the Defence has received said information.

⁶ Request, ICC-01/14-01/21-762-Conf, paras 8-10.

⁷ Request, ICC-01/14-01/21-762-Conf, para. 11.

⁸ ICC-01/14-01/21-762-Conf-AnxA.

⁹ Defence Request.

III. ANALYSIS

7. At the outset, the Chamber notes that regulation 42 of the Regulations ensures that victims and witnesses whose identities are protected from the public have the assurance that their protection will be taken seriously in future cases.¹⁰ The Chamber observes that the language of regulation 42(1) of the Regulations clearly states that, once ordered in any proceedings before this Court, protective measures ‘shall continue to have full force and effect in relation to any other proceedings before the Court and shall continue after proceedings have been concluded [...]’.¹¹ There was thus no need for the Prosecution to make a formal request for the continued application of the protective measures ordered by Trial Chamber V in relation to P-0119.¹² It suffices for the calling party to inform the Chamber of the protective measures ordered in different proceedings. Accordingly, there is also no need for the Chamber to hear submissions from the Defence. This is without prejudice to the Defence seeking a variation of the protective measures from Trial Chamber V pursuant to regulation 42(3) of the Regulations in accordance with the established procedure.

8. In light of the foregoing, the Chamber considers the Request moot.

9. Last, the Chamber notes that the Prosecution has not filed a public redacted version of the Request and is ordered to file one forthwith.

¹⁰ Trial Chamber VIII, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Decision on Prosecution’s Requests for Variation of Protective Measures, 10 February 2020, [ICC-01/12-01/15-344](#), para. 7.

¹¹ Regulation 42(1) of the Regulations of the Court.

¹² Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Decision on Prosecution Request for In-Court Protective Measures, 10 August 2015, [ICC-01/04-02/06-774-Red](#), para. 4.

FOR THESE REASONS, THE CHAMBER HEREBY

TAKES NOTE of the protective measures ordered by Trial Chamber V in relation to P-0119, which shall remain in place for the purposes of the present proceedings; and

ORDERS the Prosecution to file a public redacted version of the Request.



Judge Miatta Maria Samba
Presiding Judge



Judge Maria del Socorro Flores Liera



Judge Sergio Gerardo Ugalde Godínez

Done in both English and French, the English version being authoritative.

Dated 24 May 2024

At The Hague, The Netherlands