

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No.: ICC-01/14-01/21
Date: 13 September 2024**

TRIAL CHAMBER VI

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

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

Public Redacted

Decision on the Prosecution's Requests for In-Court Protective Measures for P-1563 and P-3114

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
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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
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**The Office of Public Counsel
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States Representatives

Amicus Curiae

REGISTRY

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Mr Osvaldo Zavala Giler

Counsel Support Section

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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’), and rule 87 of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Prosecution’s Requests for In-Court Protective Measures for P-1563 and P-3114’.

I. PROCEDURAL HISTORY

1. On 21 September 2022, the Chamber issued the Decision on the Prosecution’s Request for In-Court Protective Measures (the ‘First Protective Measures Decision’).¹
2. On 20 April 2023, the Chamber issued the Decision on the Prosecution’s Second Request for In-Court Protective Measures (the ‘Second Protective Measures Decision’).²
3. On 5 March 2024, the Chamber issued the Decision on the Prosecution’s Third Request for In-Court Protective Measures (the ‘Third Protective Measures Decision’).³
4. On 27 May 2024, the Registry filed its ‘Eighth Periodic Report of the Registry on the Security and Political Situation in the Central African Republic’ covering the period between 16 February to 15 May 2024 (the ‘Eighth Report’).⁴
5. On 26 July 2024, the Office of the Prosecutor (the ‘Prosecution’) requested in-court protective measures for Witness P-1563 (the ‘First Request’).⁵

¹ Decision on the Prosecution’s Request for In-Court Protective Measures, 21 September 2022, [ICC-01/04-01/21-481-Red](#). A confidential version was issued simultaneously (ICC-01/14-01/21-481-Conf).

² Decision on the Prosecution Second Request for In-Court Protective Measures, 4 May 2023, [ICC-01/14-01/21-605-Red](#). A confidential version was filed on 20 April 2023 (ICC-01/14-01/21-605-Conf).

³ Decision on the Prosecution’s Third Request for In-Court Protective Measures, 5 March 2024, [ICC-01/14-01/21-714-Red](#). A confidential version was issued simultaneously (ICC-01/14-01/21-714-Conf).

⁴ Eighth Periodic Report of the Registry on the Security and Political Situation in the Central African Republic, 27 May 2024, ICC-01/14-01/21-771-Conf.

⁵ Prosecution request for in-court protective measures for Witness P-1563, 26 July 2024, ICC-01/14-01/21-818-Conf.

6. On 23 August 2024, the Defence filed its response to the First Request (the ‘First Response’).⁶

7. On 26 August 2024, the Registry filed its ‘Ninth Periodic Report of the Registry on the Security and Political Situation in the Central African Republic’ covering the period between 16 May and 15 August 2024 (the ‘Ninth Report’).⁷

8. On 6 September 2024, the Prosecution filed a request for additional in-court protective measures for P-3114 (the ‘Second Request’).⁸

9. On 11 September 2024, the Defence filed its response to the Second Request (the ‘Second Response’).⁹

II. SUBMISSIONS

A. First Request

10. In the Request, the Prosecution seeks in-court protective measures for P-1563.¹⁰ Specifically, the Prosecution requests that P-1563 be granted: (i) the use of pseudonym in lieu of the witness’s name, (ii) voice and face distortion, and (iii) the use of limited closed or private sessions for identifying portions of his testimony.¹¹

11. In support of the Request, the Prosecution explains that P-1563 ‘worked as a [REDACTED] during the charged period’ and that ‘[h]e was present when the Seleka took over [REDACTED]’.¹² The Prosecution notes that P-1563 ‘regularly interacted with Seleka fighters, including senior members such as [REDACTED]’ and that many of these figures remain alive in P-1563’s local community.¹³ According to the

⁶ Réponse de la Défense à la « Prosecution request for in-court protective measures for Witness P-1563 » (ICC-01/14-01/21-818-Conf), 23 August 2024, ICC-01/14-01/21-818-Conf.

⁷ Ninth Periodic Report of the Registry on the Security and Political Situation in the Central African Republic, 26 August 2024, ICC-01/14-01/21-839-Conf.

⁸ Prosecution request for additional in-court protective measures for Witness P-3114, 6 September 2024, ICC-01/14-01/21-852-Conf.

⁹ Réponse de la Défense à la « Prosecution request for additional in-court protective measures for Witness P-3114 » (ICC-01/14-01/21-852-Conf), 11 September 2024, ICC-01/14-01/21-856-Conf.

¹⁰ First Request, ICC-01/14-01/21-818-Conf, para. 1.

¹¹ First Request, ICC-01/14-01/21-818-Conf, para. 1.

¹² First Request, ICC-01/14-01/21-818-Conf, para. 5.

¹³ First Request, ICC-01/14-01/21-818-Conf, para. 5.

Prosecution, this generates an objective and justifiable risk of him and his family ([REDACTED]) being targeted by individuals who may seek to retaliate.¹⁴

12. The Prosecution also submits that P-1563 has first-hand knowledge of the commission of crimes, including ‘allegations of sexual and gender based crimes such as the rape of women and children which are culturally sensitive within religious communities in CAR’.¹⁵ The Prosecution argues that P-1563 may face a risk of stigmatisation due to the sensitive nature of his anticipated testimony.¹⁶

13. The Prosecution further avers that the risks associated with P-1563’s profile and his anticipated evidence are exacerbated by the current political and security situation in Central African Republic, making reference to the Eighth Report, which notes, *inter alia*, that ‘[t]ensions with the opposition and the civil society are likely to be exacerbated around the preparation of the upcoming elections’.¹⁷ Finally, the Prosecution submits that measures sought are fair and proportionate and do not result in any prejudice against the accused.¹⁸

B. First Response

14. In the First Response, the Defence submits that the First Request should be rejected.¹⁹ First, the Defence makes reference to the principle of publicity of proceedings, and notes that the exceptions to this principle must be justified on a case-by-case basis, such that an evaluation involves a particularised analysis of the risk for each witness rather than an assessment in light of the general security situation.²⁰ The Defence argues that the court’s case-law enshrines the obligation on the party requesting the protective measures to justify the special circumstances that may affect the safety of the witness.²¹

¹⁴ First Request, ICC-01/14-01/21-818-Conf, para. 7.

¹⁵ First Request, ICC-01/14-01/21-818-Conf, para. 6.

¹⁶ First Request, ICC-01/14-01/21-818-Conf, para. 2.

¹⁷ First Request, ICC-01/14-01/21-818-Conf, para. 8 referring to the Eighth Report, ICC-01/14-01/21-771-Conf, para. 4.

¹⁸ First Request, ICC-01/14-01/21-818-Conf, para. 11.

¹⁹ First Response, ICC-01/14-01/21-838-Conf, para. 28.

²⁰ First Response, ICC-01/14-01/21-838-Conf, paras 9, 10.

²¹ First Response, ICC-01/14-01/21-838-Conf, paras 9, 10.

15. The Defence avers that, after hearing the first forty-four witnesses, it has been difficult to maintain the public nature of the testimony when a witness is benefiting from protective measures.²² The Defence submits that the content of the testimony inherently creates a risk that the witness will provide identifying information.²³ Therefore, the Defence argues, the Chamber's rationale in the First Protective Measures Decision that 'the impact of these measures on the public nature of the proceedings will be limited and proportionate to the need to protect the witnesses in question'²⁴ can reasonably be called into question and justifies a more limited approach to granting protective measures.²⁵ The Defence also submits that respect for the public nature of the trial allows it to more easily conduct its investigative work, which would be more complex if the identities of the witnesses are concealed.²⁶

16. Furthermore, the Defence submits that the Prosecution has not demonstrated how the security situation in the Central African Republic would create a real, objective and personal risk for P-1563.²⁷ In this respect, the Defence notes that the general security situation in a country cannot in and of itself justify the granting of protective measures without demonstrating such a risk to the witness.²⁸ The Defence submits that everyone is free to comment on the proceedings underway at the Court, and that it is not possible to equate any critical opinion on the Court with a risk to the proceedings, as the Prosecution does.²⁹ The Defence notes that, absent a link between the current security situation in the Central African Republic and P-1563, the Prosecution does not demonstrate how the risk to P-1563 would be personal.³⁰

17. Finally, the Defence submits that protective measures are exceptional measures and cannot be granted without any justification of a personal and real risk.³¹ The

²² First Response, ICC-01/14-01/21-838-Conf, para. 15.

²³ First Response, ICC-01/14-01/21-838-Conf, para. 15.

²⁴ First Protective Measures Decision, [ICC-01/04-01/21-481-Red](#), para. 107.

²⁵ First Response, ICC-01/14-01/21-838-Conf, para. 16.

²⁶ First Response, ICC-01/14-01/21-838-Conf, para. 17.

²⁷ First Response, ICC-01/14-01/21-838-Conf, para. 21.

²⁸ First Response, ICC-01/14-01/21-838-Conf, para. 22.

²⁹ First Response, ICC-01/14-01/21-838-Conf, para. 23.

³⁰ First Response, ICC-01/14-01/21-838-Conf, para. 24.

³¹ First Response, ICC-01/14-01/21-838-Conf, para. 25.

Defence notes that the Prosecution makes generic allegations about the knowledge of P-1563 and a risk of “retaliation”, without identifying any specific risk to P-1563.³²

C. Second Request

18. In the Second Request, the Prosecution requests additional in-court protective measures for P-3114, specifically use of pseudonym, voice distortion and the use of limited closed or private session.³³ The Prosecution notes that the Chamber previously rejected such protective measures in the First Protective Measures Decision, but indicated this was without prejudice to reconsidering its decision in the future.³⁴

19. The Prosecution submits that there are ‘several new and compelling factors’ which ‘warrant reconsideration and strongly support the need for additional protective measures’.³⁵ In this regard, the Prosecution notes that ‘the security environment at the Court, particularly for Prosecution staff and investigators, has changed significantly’ resulting in ‘an increased objective and justifiable risk to Witness P-3114 who has been involved in other sensitive investigations within the Office’.³⁶ The Prosecution makes reference to the cyber-attack against the Court, which in its view justifies the imposition of additional protective measures for P-3114, which are ‘required in order to preserve ongoing investigations and Witness P-3114’s ability to safely perform his core investigative functions.’³⁷

20. The Prosecution further avers that reconsideration is warranted because the Chamber’s earlier decision was based, in part, on the fact that P-3114’s name and role in the Prosecution was publicly available including his responsibility as lead investigator in the present situation.³⁸ The Prosecution submits that P-3114 has ‘renewed efforts to minimise his internet footprint’, including ‘submitting a formal request to the internet search engine Google, requesting to be “forgotten”’, the latter of

³² First Response, ICC-01/14-01/21-838-Conf, para. 25.

³³ Second Request, ICC-01/14-01/21-852-Conf, para. 1.

³⁴ Second Request, ICC-01/14-01/21-852-Conf, para. 2 referring to First Protective Measures Decision, [ICC-01/04-01/21-481-Red](#), para. 91.

³⁵ Second Request, ICC-01/14-01/21-852-Conf, para. 3.

³⁶ Second Request, ICC-01/14-01/21-852-Conf, paras 4, 10.

³⁷ Second Request, ICC-01/14-01/21-852-Conf, paras 11-12.

³⁸ Second Request, ICC-01/14-01/21-852-Conf, para. 13 referring to First Protective Measures Decision, [ICC-01/04-01/21-481-Red](#), para. 91.

which has informed him that he has been ‘delisted from a limited number of websites within Europe’.³⁹

21. The Prosecution indicates that, notwithstanding these steps, the new security environment and risks persist and ‘were Witness P-3114’s name to be exposed, malicious actors may be able to research and identify him, his location and professional activities.’⁴⁰ In this regard, the Prosecution submits that face distortion alone is insufficient to mitigate the objective risk to P-3114 and additional protective measures are now required.⁴¹

D. Second Response

22. In the Second Response, the Defence submits that the Second Request should be rejected. The Defence reiterates that protective measures should only be granted in exceptional cases.⁴² In this regard, the Defence submits that the Prosecution has not demonstrated any change in circumstances which would justify a new decision on the protective measures already ordered by the Chamber for P-3114, noting that P-3114’s role at the Court is still publicly available online.⁴³

23. In addition, the Defence avers that without demonstrating an objective risk to this specific witness, a generic reliance on the cyber-attack does not justify the granting of new protective measures.⁴⁴ The Defence submits that the Court is a public judicial institution and on each hearing day team members of each party and participant are presented in a public manner, as well as many people publicly presenting themselves as working for the Court on professional social media.⁴⁵

III. APPLICABLE LAW

24. The Chamber recalls that in the First Protective Measures Decision it set out the applicable law regarding its approach to requests for in-court protective measures.⁴⁶

³⁹ Second Request, ICC-01/14-01/21-852-Conf, para. 14.

⁴⁰ Second Request, ICC-01/14-01/21-852-Conf, para. 15.

⁴¹ Second Request, ICC-01/14-01/21-852-Conf, para. 16.

⁴² Second Response, ICC-01/14-01/21-856-Conf, para. 14.

⁴³ Second Response, ICC-01/14-01/21-856-Conf, paras 15-17.

⁴⁴ Second Response, ICC-01/14-01/21-856-Conf, para. 18.

⁴⁵ Second Response, ICC-01/14-01/21-856-Conf, para. 18.

⁴⁶ First Protective Measures Decision, [ICC-01/04-01/21-481-Red](#), paras 12-19.

The Chamber adopts its findings in respect of the applicable law as set out in the First Protective Measures Decision for the purpose of the present decision.

IV. ANALYSIS

A. Analysis of request in respect of P-1563

25. At the outset, the Chamber notes that the Registry has filed an updated report on the security and political situation in the Central African Republic since the First Request and the First Response were filed.⁴⁷ For the present decision, the Chamber will have regard to both reports in order to determine whether protective measures should be granted. Before turning to the specific protective measures sought by the Prosecution, the Chamber will address a number of the Defence's objections.

26. First, in respect of the Defence's general submissions regarding the publicity of proceedings, the Chamber notes that it has already addressed these objections in its Third Protective Measures Decision.⁴⁸ The Chamber reiterates that the publicity of proceedings is a factor to be taken into consideration on whether to grant protective measures but that it cannot neglect its duty with regard to the protection of witnesses' safety and well-being.⁴⁹ The Chamber further notes that, while it has been difficult to maintain the public nature of testimony during hearings, this cannot be a reason to refuse protective measures. Accordingly, this submission is rejected.

27. Turning to the Defence's submission regarding the objectively justifiable risk for P-1563, the Chamber takes note of the Defence's argument that the security situation in the Central African Republic cannot in and of itself justify granting protective measures for witnesses without demonstrating a real, personal and objective risk to a witness.⁵⁰ Nevertheless, the Chamber reiterates its finding in earlier decisions⁵¹ that the security situation may still be a relevant consideration in assessing whether an objectively justifiable risk exists.

⁴⁷ Ninth Report, ICC-01/14-01/21-839-Conf.

⁴⁸ Third Protective Measures Decision, [ICC-01/14-01/21-714-Red](#), para. 21.

⁴⁹ First Protective Measures Decision, [ICC-01/14-01/21-481-Red](#), paras 12 and 14; Second Protective Measures Decision, [ICC-01/14-01/21-605-Red](#), para. 31.

⁵⁰ First Response, ICC-01/14-01/21-838-Conf, para. 22.

⁵¹ First Protective Measures Decision, [ICC-01/04-01/21-481-Red](#), para. 19; Third Protective Measures Decision, [ICC-01/14-01/21-714-Red](#), para. 18.

28. In respect of the security situation in the Central African Republic, the Chamber notes from the Eighth Report that ‘the political and security situation in the Central African Republic (CAR) has remained unpredictable and complex’.⁵² The Chamber observes from the Ninth Report that this continues to be the case. Specifically, the Chamber notes from the Ninth Report that ‘[p]olitical tensions have continued to escalate due to further government crackdowns and the preparation of the local elections’, that ‘[t]he security situation has remained particularly volatile throughout the country with armed clashes’⁵³ and that ‘the political and security situation is unlikely to improve in the short and medium term’.⁵⁴ Considering the foregoing, the Chamber finds that the security situation in the Central African Republic is a factor that must be taken into consideration for the purposes of determining whether protective measures should be granted for P-1563.

29. In respect of the Defence’s argument that the Prosecution has not identified a specific risk to P-1563, the Chamber notes that, as previously explained,⁵⁵ protective measures are a preventive instrument – aimed at protecting witnesses from the possibility of physical or psychological harm in light of all the general and specific circumstances. In this regard, it is unnecessary to demonstrate that a risk has already manifested in the form of a specific and concrete threat against a witness due to their cooperation with the Court, and decisions to grant protective measures will inherently require a degree of prediction and uncertainty. For these reasons, the Defence’s submission in this respect are rejected.

30. The Chamber will now turn to the specific measures requested by the Prosecution for P-1563. First, in respect of the P-1563’s position as a [REDACTED] during the charged period, the Chamber observes that P-1563 was [REDACTED] when the Seleka [REDACTED].⁵⁶ The Chamber accepts the Prosecution’s submissions in this respect and considers that this makes P-1563’s anticipated evidence unique and increases the risk that his identity is revealed. The Chamber further observes that P-1563 regularly

⁵² Eighth Report, ICC-01/14-01/21-771-Conf, para. 3.

⁵³ Ninth Report, ICC-01/14-01/21-839-Conf-Anx, para. 2.

⁵⁴ Ninth Report, ICC-01/14-01/21-839-Conf-Anx, para. 49.

⁵⁵ First Protective Measures Decision, [ICC-01/04-01/21-481-Red](#), para. 19; Second Protective Measures Decision, [ICC-01/14-01/21-605-Red](#), para. 29.

⁵⁶ Request, ICC-01/14-01/21-818-Conf, para. 5.

interacted with Seleka fighters, many of whom remain alive and present in P1563's local community, and considers that this places him at an increased risk of retaliation should his identity become public. In this regard, the Chamber recalls that it has previously found that it is 'reasonable to conclude that Mr Said can still count on the support of former comrades, some of whom still occupy senior positions'.⁵⁷

31. Taking the foregoing together, the Chamber is satisfied the protective measures sought are warranted in this particular instance. Specifically, the Chamber takes note of: (i) the security situation in the Central African Republic; (ii) the content and nature of P-1563's anticipated testimony; and (iii) the fact that P-1563 worked as a [REDACTED] during the charged period and was present when the Seleka (many of which remain in P-1563's local community) took it over, and finds that there is an objectively justifiable risk to this witness and his family should his identity become public. Accordingly, the Chamber grants the protective measures sought by the Prosecution for P-1563.

B. Analysis of the request in respect of P-3114

32. The Chamber has taken note of the Prosecution's submissions regarding additional in-court protective measures for P-3114. The Prosecution makes reference to the new security environment which the Court faces, particularly following the recent cyber-attack, and the need to preserve the security of ongoing investigations.⁵⁸ The Chamber notes that the security situation which the Court faces has indeed changed since the First Protective Measures Decision was taken in that the threat faced by those who work for and interact with the Court, in particular the Prosecution, has increased. The Chamber finds that this constitutes a new fact which warrants reconsideration. In particular, the Chamber finds that, in light of the new security situation facing the Court, increased measures are required to ensure that P-3114 maintains a level of anonymity necessary to protect his safety and especially the safety of others he may interact with when carrying out his functions for the Prosecution.

⁵⁷ See Second Protective Measures Decision, [ICC-01/14-01/21-605-Red](#), para. 25 referring to the Public Redacted version of the Decision on the Defence Application for Interim Release of Mahamat Said Abdel Kani and Contact Restrictions, 3 March 2022, [ICC-01/14-01/21-247-Red](#), para. 27. A confidential version was filed simultaneously (ICC-01/14-01/21-247-Conf).

⁵⁸ See Second Request, ICC-01/14-01/21-852-Conf, paras 4, 10-12.

33. Accordingly, the Chamber grants the requested additional protective measures to P-3114. In respect of the use of private sessions, the Chamber will allow the limited use of private sessions for portions of P-3114's testimony which deal with investigative practices which, if revealed publicly, could undermine the safety of victims and witnesses or jeopardise the Prosecution's ongoing investigations.

34. Last, the Chamber notes that both the Prosecution and Defence have not filed public redacted versions of the their filings and are instructed to do so forthwith.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the First Request;

AUTHORISES in court-protective measures in the form of the use of pseudonym, face and voice distortion, and the use of private and closed sessions as and when necessary for P-1563;

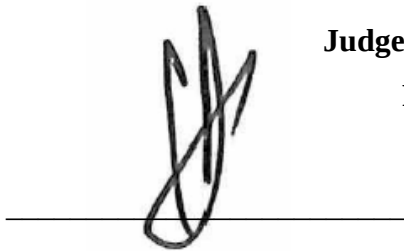
GRANTS the Second Request;

AUTHORISES additional in court-protective measures in the form of the use of pseudonym, voice distortion, and the use of private sessions in line with paragraph 33 above for P-3114; and

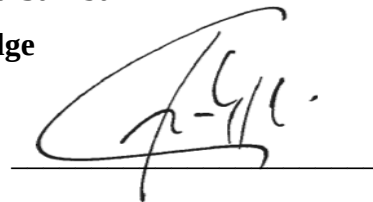
ORDERS the Prosecution and Defence to file public redacted versions of the their filings as soon as possible.



Judge Miatta Maria Samba
Presiding Judge



Judge María del Socorro Flores Liera



Judge Sergio Gerardo Ugalde Godínez

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

Dated 13 September 2024

At The Hague, The Netherlands