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

Date: **8 October 2024**

TRIAL CHAMBER VI

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

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

Public

Public redacted version of "Prosecution request for in-court protective measures for witnesses P-0529 and P-2239", 10 September 2024, ICC-01/14-01/21-853-Conf

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 articles 64 and 68 of the Rome Statute (“Statute”) and rules 87 and 134(3) of the Rules of Procedure and Evidence (“Rules”), the Prosecution requests in-court protective measures (“ICPM”) for witnesses P-0529 and P-2239 (“Request”), who are scheduled to testify in November.

2. The Prosecution requests that the following protective measures be applied to both witnesses : (i) the use of a pseudonym in lieu of each witnesses’ name; (ii) voice and face distortion; and (iii) the use of limited closed or private sessions for identifying portions of their testimony.

3. The protective measures are required because the witnesses’ profiles establish an objective and justifiable risk if their identities are exposed to the public and because of the ongoing security situation in the Central African Republic (“CAR”). The protective measures are requested to protect the witnesses from possible retaliation and to protect their privacy and dignity.

4. In-court protective measures for the witnesses will ensure that they can provide full accounts without fear for their personal safety and the safety of their family members. Withholding their identity from the public will also prevent them from facing judgment, stigma, questions, or remarks from people they know or members of the public more generally, who learn about their experiences as a result of their testimony.

5. The Prosecution submits that the requested measures will protect the privacy, physical and psychological well-being of witnesses P-0529 and P-2239. The requested measures are also necessary and proportionate and will ensure that both witnesses can fully participate without security concerns. They are the least restrictive means necessary to fairly balance Mr Said’s right to a fair and public hearing under articles

64(2) and 67(1) of the Statute, with the Court's obligation under articles 64(2), 68(1) and 68(2), to protect the interests of victims and witnesses who appear before it.

II. CONFIDENTIALITY

6. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, this submission is classified as confidential as it contains information that may identify witnesses P-0529 and P-2239. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

A. There is an objectively justifiable risk to P-0529

7. Witness P-0529's profile and anticipated evidence establish an objective and justifiable risk were his identity to be exposed.

8. P-0529 has a public profile linked to his professional activities, both as a [REDACTED] and [REDACTED] in the community, thus underscoring his identifiability. Witness P-0529 works as [REDACTED] is limited to P-0529 and [REDACTED]. P-0529 is the [REDACTED], a public position which raises his profile.

9. He is expected to testify about the [REDACTED] in the PK9 minibus incident, [REDACTED]. P-0529 is expected to testify how he learnt about the Incident, the steps he took afterwards to [REDACTED].

10. [REDACTED].¹ [REDACTED].² [REDACTED].³

¹ See CAR-OTP-00001310, p. 1: [REDACTED]

² CAR-OTP-2041-0031, paras 31-32, 34, 36.

³ CAR-OTP-2041-0031, paras. 37-39, 40, 43.

11. [REDACTED].⁴ [REDACTED].⁵

12. If P-0529's status as a Prosecution witness and the scope of his evidence were publicly known, he would be identifiable to persons belonging to the Seleka who may have an interest to retaliate against the witness out of fear of prosecution themselves. Given [REDACTED] of the PK9 minibus incident, [REDACTED], Witness P-0529's anticipated evidence generates an objective and justifiable risk from individuals and communities who may retaliate against him. In addition, P-0529 [REDACTED] which is easily accessible to supporters of Mr Said or other potential threat actor or anyone interested in harming them. Moreover, P-0529 does not have access to any additional protection linked to his profession or social status.

13. There is an objectively justifiable risk to his security, the security of [REDACTED], and to his future ability to earn his livelihood. The increased publicity of his testimony could have a deterrent effect [REDACTED]. It would have an impact on his daily work and would affect [REDACTED].

14. In the circumstances, protective measures are required to protect Witness P-0529 from being identified and possibly targeted. It also allows P-0529 to provide his testimony to the Court more fully without concern. The Prosecution submits that the application for protective measures at this stage will obviate the need for additional and more intrusive measures later should P-0529's identity be exposed.

B. There is an objectively justifiable risk to P-2239

15. The Prosecution requests in-court protective measures for Witness P-2239 on account of his professional role and expected testimony. Witness P-2239 is also a participating victim in the current proceedings.⁶

⁴ CAR-OTP-2041-0031, para. 64.

⁵ CAR-OTP-2041-0031, para. 65.

⁶ [REDACTED], see application at CAR-OTP-2135-3826.

16. Witness P-2239 is currently [REDACTED]. At the time of the interview,⁷ he still held the [REDACTED]. Given his functions and proximity to places where the alleged crimes occurred, protective measures are required to preserve witness P-2239's ability to perform his work and not to be targeted in case his identity were to be known.

17. As regards his expected testimony, P-2239 is an OCRB detainee [REDACTED] P-2241, and P-2400. [REDACTED].⁸ [REDACTED].⁹ [REDACTED].¹⁰ [REDACTED].¹¹ [REDACTED].¹² [REDACTED].¹³

18. His testimony implicates high level Seleka officials and the risk of reprisals in case his identity were to be known cannot be discarded. Moreover [REDACTED] were granted ICPMs,¹⁴ public disclosure of P-2239's identity and related evidence could compromise the protective measures granted by the Chamber on disclosure of the identities of these witnesses.

19. Witness P-2239 is a participating victim,¹⁵ thus he faces a heightened risk of reprisal and stigmatisation should his cooperation with the Prosecution become public. The OPCV communicated in the past that "regarding the volatile security situation in the CAR, victims continue to indicate that they are living in permanent fear".¹⁶ He is a victim of crimes allegedly committed at the OCRB in 2013 while Mr Said was in charge and Mr ADAM was his superior. If left unprotected, he would be identifiable to Mr ADAM and other co-perpetrators of the charged crimes. Such

⁷ The last day of the interview was [REDACTED].

⁸ CAR-OTP-2104-0918, para. 31

⁹ CAR-OTP-2104-0918, paras. 34-63.

¹⁰ See CAR-OTP-2104-0918, para. 33.

¹¹ CAR-OTP-2104-0918, para. 71.

¹² See CAR-OTP-00001495, para. 44.

¹³ In French : [REDACTED].

¹⁴ ICC-01/14-01/21-481.

¹⁵ See CAR-OTP-2135-3826.

¹⁶ ICC-01/14-01/21-336, para.18.

potential threat actors would have an interest to interfere with him as they may fear prosecution themselves.

20. The risks associated with witnesses P-0529 and P-2239's profiles and anticipated evidence are exacerbated by the current political and security situation in CAR, which is a factor that must be taken into consideration.¹⁷ The Chamber has underlined that the general security situation has an impact on how national authorities can act and provide assistance. This might have an exacerbating effect on the impact of risks or might influence the decision of potential threat actors on whether to act or not.¹⁸

21. The "Seventeenth Periodic Report of the Registry on the Political and Security situation in the Central African Republic"¹⁹, covering the period from 16 May to 15 August 2024, reported that "the general situation in the Central African Republic (CAR) has remained complex and unpredictable with multiple and overlapping challenges".²⁰ It further reported that "[t]he security situation has remained particularly volatile throughout the country with armed clashes involving armed groups and the 'Forces Armées Centrafricaines'".

C. The measures requested do not prejudice Mr Said

22. The factors listed above justify the imposition of protective measures. They are not inconsistent with the rights of Mr Said and do not result in any prejudice. On the contrary, the measures sought are fair and proportionate and will have only a limited impact on the public nature of the proceedings.

23. In particular, Mr Said will have the same opportunity and ability to question these witnesses as if their identities were publicly known. He is also not prevented from conducting his own enquiries to test the prospective evidence. Moreover, the

¹⁷ See e.g ICC-01/14-01/21-605-Conf, para. 21.

¹⁸ See e.g ICC-01/14-01/21-605-Red, para. 19.

¹⁹ ICC-01/14-01/21-2656-Conf.

²⁰ ICC-01/14-01/21-2656-Conf, para. 6.

public will still be able to listen to significant portions of the testimony from these witnesses. Under the requested measures, private sessions will be used only for limited portions of the testimony to protect the identities of witnesses or information that is particularly private or sensitive and therefore likely to affect the psychological well-being, dignity, or privacy of the witness if broadcast publicly.

IV. RELIEF REQUESTED

24. For the reasons set out above, the Prosecution requests that the Chamber grants its Request.



Karim A. A. Khan KC, Prosecutor

Dated this 8th day of October 2024
At The Hague, The Netherlands