

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/14-01/21
Date: 10 October 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

Public redacted version of “Victims’ response to the ‘Prosecution request for in-court protective measures for witnesses P-0529 and P-2239’ (ICC-01/14-01/21-853-Conf)”, No. ICC-01/14-01/21-860-Conf, dated 23 September 2024

Source: Office of Public Counsel for Victims

Document 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 KC

Ms Holo Makwaia

Counsel for the Defence

Ms Jennifer Naouri

Mr Dov Jacobs

Legal Representatives of the Victims

Ms Sarah Pellet

Mr Tars Van Litsenborgh

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

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. Counsel representing the collective interests of future applicants and participating victims (the “Common Legal Representative”)¹ hereby submits her response in support of the “Prosecution request for in-court protective measures for witnesses P-0529 and P-2239” (the “Request”).²

2. The Common Legal Representative submits that the protective measures sought are necessary to protect the safety, security, well-being and dignity of the witnesses concerned. Moreover, they are proportionate, will not cause prejudice to the Defence and are consistent with Mahamat Said Abdel Kani’s (“Mr Saïd”) fundamental right to a fair and public trial, as enshrined in article 67 of the Rome Statute.

3. In particular, the Common Legal Representative supports the Prosecution’s Request for dual status individual P-2239.

II. PROCEDURAL BACKGROUND

4. On 8 March 2022, Trial Chamber VI (the “Chamber”) issued the Directions on the Conduct of Proceedings setting out the procedure to request protective or special measures pursuant to rules 87 and 88 of the Rules of Procedure and Evidence (the “Rules”).³

¹ See the transcript of the hearing held on 28 January 2022, [No. ICC-01/14-01/21-T-007-CONF-ENG](#) and [No. ICC-01/14-01/21-T-007-Red-ENG](#), p. 47, lines 12-24; the “Decision on matters relating to the participation of victims during the trial” (Trial Chamber VI), [No. ICC-01/14-01/21-278](#), 13 April 2022, para. 29; the “Decision authorising 20 victims to participate in the proceedings” (Trial Chamber VI), [No. ICC-01/14-01/21-331](#), 27 May 2022 (the “First Decision on Participation”); and the “Second Decision Authorising Victims to Participate in the Proceedings” (Trial Chamber VI), [No. ICC-01/14-01/21-640-Conf](#), 8 November 2023 (the “Second Decision on Participation”).

² See the “Prosecution request for in-court protective measures for witnesses P-0529 and P-2239”, [No. ICC-01/14-01/21-853-Conf](#), 10 September 2024 (the “Request”).

³ See the “Directions on the Conduct of Proceedings” (Trial Chamber VI), [No. ICC-01/14-01/21-251](#), 9 March 2022, paras. 47-48.

5. On 21 September 2022, the Chamber issued its first decision on in-court protective measures (the “First Protective Measures Decision”).⁴

6. On 20 April 2023 and on 5 March 2024, the Chamber issued its second and third decision on in-court protective measures respectively, referring to the applicable law contained in its First Protective Measures Decision.⁵

7. On 26 August 2024, the Registry submitted its ninth periodic report on the security and political situation in the Central African Republic (the “Ninth Registry Report” and the “CAR”, respectively),⁶ covering the period between 16 May and 15 August 2024.

8. On 10 September 2024, the Prosecution submitted the Request, seeking in-court protective measures for two of its witnesses.⁷

9. On 13 September 2024, the Chamber issued its decision on in-court protective measures for P-1563 and P-3114, adopting once again its findings in respect of the applicable law as set out in its First Protective Measures Decision.⁸

III. CLASSIFICATION

10. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, the present filing is classified as “confidential”, since it refers to a document filed with the same classification. A public redacted version will be filed in due course.

⁴ See the “Decision on the Prosecution’s Request for In-Court Protective Measure” (Trial Chamber VI), [No. ICC-01/14-01/21-481-Conf](#) and [No. ICC-01/14-01/21-481-Red](#), 21 September 2022 (“First Protective Measures Decision”).

⁵ See the “Decision on the Prosecution Second Request for In-Court Protective Measures” (Trial Chamber VI), [No. ICC-01/14-01/21-605-Conf](#) and [No. ICC-01/14-01/21-605-Red](#), 20 April 2023, para. 10; and the “Decision on the Prosecution’s Third Request for In-Court Protective Measures” (Trial Chamber VI), [No. ICC-01/14-01/21-714-Conf](#) and [No. ICC-01/14-01/21-714-Red](#), 5 March 2024 (“Third Protective Measures Decision”), para. 16.

⁶ See the Annex to the “Ninth Periodic Report of the Registry on the Security and Political Situation in the Central African Republic”, [No. ICC-01/14-01/21-839-Conf-Anx](#), 26 August 2024 (the “Ninth Registry Report”).

⁷ See the Request, *supra* note 2.

⁸ See the “Decision on the Prosecution’s Requests for In-Court Protective Measures for P-1563 and P-3114” (Trial Chamber VI), [No. ICC-01/14-01/21-857-Conf](#) and [No. ICC-01/14-01/21-857-Red](#), 13 September 2024, para. 24.

IV. SUBMISSIONS

11. *Applicable law* – The Common Legal Representative recalls her submissions in relation to the law applicable to protective measures,⁹ and also refers to the First Protective Measures Decision.¹⁰ In particular, she recalls that the Chamber found that “*protective measures are aimed at prevention of harm*”¹¹ and that, as a result, the existence of an objectively justifiable risk to the witnesses “*must be based on an assessment of the possibility of future harm*”.¹² In this regard, the Chamber considered that the general security situation in the area of residence of the witnesses and the activities of armed groups to which Mr Saïd may be linked are relevant considerations.¹³ More recently, the Chamber added that “*the general security situation can have an impact on how national authorities can act and provide assistance and may also have an exacerbating effect on the impact of risks or might influence the decision of potential threat actors on whether to act or not*”.¹⁴

12. *Protective measures* – The Prosecution requests the use of a pseudonym, voice and face distortion, and private and closed sessions for two witnesses, including one victim represented by the Common Legal Representative: P-2239.

13. The Common Legal Representative concurs with the Prosecution that the protective measures requested are necessary and appropriate in view of the objectively justifiable risk faced by the witnesses if their identity became known to the public. As submitted by the Prosecution, in light of the witnesses’ particular profiles, as well as their expected testimonies, there is a real risk of retaliation should their cooperation

⁹ See the “Victims’ response to the ‘Prosecution’s Request for In-Court Protective Measures (ICC-01/14-01/21-356-Red)’”, [No. ICC-01/14-01/21-377-Conf](#) and [No. ICC-01/14-01/21-377-Red](#), 27 June 2022.

¹⁰ See the First Protective Measures Decision, *supra* note 4, paras. 12-19.

¹¹ *Idem*, para. 19.

¹² *Ibid.* (emphasis added). See also, more recently, the “Decision on the Prosecution’s Requests for In-Court Protective Measures for P-1563 and P-3114”, *supra* note 8, para. 29.

¹³ *Ibid.*

¹⁴ See the Third Protective Measures Decision, *supra* note 5, para. 18; and the “Decision on the Prosecution’s Requests for In-Court Protective Measures for P-1563 and P-3114”, *supra* note 8, para. 27.

with the Court become public, especially considering the current security and political situation in the CAR.¹⁵

14. In this regard, the Common Legal Representative notes that the situation has not improved since the First Protective Measures Decision, and is “[REDACTED]”.¹⁶ The Registry reports that “[REDACTED]”,¹⁷ and that “[REDACTED]”.¹⁸ Throughout the present proceedings, victims have repeatedly stressed their vulnerable position and the permanent fear they are living in,¹⁹ and they continue to do so considering the unchanged security situation. P-2239 still resides and works in the CAR, making him easily reachable by potential threat actors,²⁰ thus justifying the adoption of protective measures.

15. Furthermore, the Common Legal Representative recalls that the need for protective measures applies even more forcefully to dual status individuals, like P-2239, whose trauma has been left untreated and in many instances has aggravated over time, leaving them in an ongoing state of extreme vulnerability.²¹ As underlined by the Prosecution, P-2239, as a participating victim, faces a heightened risk of reprisal and stigmatisation should his cooperation with the Court become public.²² Even though P-2239 might not be required to recount all details of his detention at the OCRB, in the event the Chamber allows his prior recorded testimony into evidence under rule 68(3) of the Rules, he could still be exposed to re-traumatisation through cross-examination by the Defence. Protective measures are therefore required to avoid any unnecessary additional re-traumatisation that might occur if the Court does not address the risks

¹⁵ See the Request, *supra* note 2, paras. 3, 7-20.

¹⁶ See the Ninth Registry Report, *supra* note 6, para. 49.

¹⁷ *Idem*, para. 40.

¹⁸ *Idem*, para. 50.

¹⁹ See, *inter alia*, the “Victims’ response to the ‘Prosecution’s Request for In-Court Protective Measures (ICC-01/14-01/21-356-Red)’, *supra* note 9, para. 19; and the “Victims’ response to the “*Demande d’autorisation d’interjeter appel de la ‘Decision on the Prosecution Second Request for In-Court Protective Measures’ (ICC-01/14-01/21-605-Conf)” (ICC-01/14-01/21-607-Conf)”, [No. ICC-01/14-01/21-609-Conf](#) and [No. ICC-01/14-01/21-609-Red](#), 5 May 2023, para. 22.*

²⁰ See the Request, *supra* note 2, paras. 16, and 19.

²¹ See the “Victims’ response to the ‘Prosecution’s Request for In-Court Protective Measures (ICC-01/14-01/21-356-Red)”, *supra* note 9, para. 27.

²² See the Request, *supra* note 2, para. 19.

for his personal safety, as well as for the safety of his family and co-detainees who were granted protective measures during their testimony ([REDACTED], P-2241, and P-2400).²³

16. In addition to being justified and necessary, the Common Legal Representative agrees with the Prosecution that the requested measures are not prejudicial to, disproportionate, or inconsistent with Mr Saïd's rights and a fair and impartial trial as they would have only a limited impact on the public nature of the proceedings.²⁴

17. Regarding the fairness of the proceedings, the Common Legal Representative recalls her previous submissions,²⁵ particularly that the measures sought seek to protect the witnesses' identities solely with regard to the general public, and do not curtail the Defence's knowledge, nor its ability to listen to and see the witnesses without any distortions, and to question them. As for the publicity of the proceedings, she notes that the Chamber has held, on several occasions, that it "*cannot neglect its duty with regard to the protection of witnesses' safety and well-being*", and that "*while it has been difficult to maintain the public nature of testimony during hearings, this cannot be a reason to refuse protective measures*".²⁶

FOR THESE REASONS, the Common Legal Representative respectfully requests the Chamber to grant the Request.



Sarah Pellet

Dated this 10th day of October 2024

At The Hague, The Netherlands

²³ See the Request, *supra* note 2, para. 18.

²⁴ *Idem*, paras. 22-23.

²⁵ See the "Victims' response to the 'Prosecution's Request for In-Court Protective Measures (ICC-01/14-01/21-356-Red)', *supra* note 9, para. 25.

²⁶ See the "Decision on the Prosecution's Requests for In-Court Protective Measures for P-1563 and P-3114", *supra* note 8, para. 26; and the Third Protective Measures Decision, *supra* note 5, para. 21.