

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 30 June 2022

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

**Public Redacted Version of “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, dated 27 June 2022**

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

Mr Mame Mandiaye Niang

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 Peter Lewis

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 as well as of applicants in the proceedings and participating victims (the “Legal Representative”),¹ hereby submits her response in support of the “Prosecution’s Request for In-Court Protective Measures” (the “Application”).²

2. The Legal Representative submits that the in-court protective measures sought are necessary to protect the safety, security, well-being and dignity of the witnesses concerned, and are not prejudicial to or inconsistent with the rights of Mahamat Said Abdel Kani (“Mr Saïd” or the “Accused”).

3. The personal circumstances of the witnesses concerned, as described in the Application, show a concrete and objectively justifiable risk to their security and well-being and/or to the safety of their family members, as well as specific risk of re-traumatisation in relation to particular vulnerable individuals.

4. In particular, the Legal Representative supports the Prosecution’s request for protective measures for dual status individuals P-0547, P-3056, P-2400, P-2241, P-1762, P-1429, P-2931, and P-2692. She respectfully requests the Chamber to also grant the use of a pseudonym, voice and facial distortion, and use of private and closed sessions to the benefit of P-1743. Moreover, the Legal Representative reserves her right to raise any issues related to in-court protective measures and/or special measures if necessary to respond to the evolving security situation or personal circumstances of dual status individuals she represents.

¹ See the transcript of the hearing held on 28 January 2022, [No. ICC-01/14-01/21-T-007-CONF-ENG CT](#) and [No. ICC-01/14-01/21-T-007-Red-ENT CT WT](#), p. 47, lines 12-24; the “Decision on matters relating to the participation of victims during the trial”, [No. ICC-01/14-01/21-278](#), 13 April 2022, para. 29; and the “Decision authorising 20 victims to participate in the proceedings”, [No. ICC-01/14-01/21-331](#), 27 May 2022.

² See the “Prosecution’s Request for In-Court Protective Measures”, with Confidential, *EX PARTE*, only available to the Prosecution and the VWU Annex A, [No. ICC-01/14-01/21-356-Conf](#) and [No. ICC-01/14-01/21-356-Red](#), 13 June 2022 (dated 10 June 2022) (the “Application”).

5. Finally, noting the Prosecution's approach to special measures, the Legal Representative stresses the importance of granting specific measures to particularly vulnerable witnesses and advocates for a flexible approach by the Chamber allowing for reassessing and adapting the necessary measures shortly before the start of the testimony.

II. PROCEDURAL BACKGROUND

6. On 8 March 2022, Trial Chamber VI (the "Chamber") issued the Directions on the Conduct of Proceedings (the "Directions").³ The Defence filed a request for reconsideration or leave to appeal said Directions on 15 March 2022,⁴ which was rejected on 8 April 2022.⁵

7. On 13 June 2022, the Application was notified.⁶

8. On 14 June 2022, following an email from the Defence,⁷ the Chamber informed the parties and participants that the deadline for responses to the Application would not start running until the confidential redacted version of Annex A to the Application had been notified.⁸

9. On 15 June 2022, the Prosecution filed a public redacted version of the Application, along with the confidential redacted version of Annex A.⁹

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

⁴ See the "*Demande de reconsidération ou, subsidiairement, demande d'autorisation d'interjeter appel des 'Directions on the Conduct of Proceedings' (ICC-01/14-01/21-251) déposées le 9 mars 2022*", [No. ICC-01/14-01/21-259-Conf](#) and [No. ICC-01/14-01/21-259-Red](#), 15 March 2022.

⁵ See the "Decision on Defence Request for Reconsideration or Leave to Appeal the 'Directions on the Conduct of Proceedings' (ICC-01/14-01/21-251)" (Trial Chamber VI), [No. ICC-01/14-01/21-275](#), 8 April 2022.

⁶ See the Application, *supra* note 2.

⁷ See the email from the Defence to Trial Chamber VI entitled "*Requête en mesure de protection/annexe*", 14 June 2022 at 12:02.

⁸ See the email from Trial Chamber VI to the parties and participants entitled "*RE: Requête en mesure de protection/annexe*", 14 June 2022 at 12:55.

⁹ See the "Public Redacted Version of the 'Prosecution's Request for In-Court Protective Measures', 10 June 2022, ICC-01/14-01/21-356-Conf", with [Confidential Redacted Annex A](#), [No. ICC-01/14-01/21-356-Red](#), 15 June 2022.

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 documents which were filed with the same classification and contains sensitive information which is not available to the public. A public redacted version will be filed in due course.

IV. SUBMISSIONS

11. Articles 64(7) and 67(1) of the Rome Statute (the “Statute”) establish the principle of the publicity of the proceedings as a fundamental right of the accused and a necessary component of a fair and transparent trial. However, this general principle is not absolute and therefore subject to certain exceptions, including the protection of victims and witnesses.¹⁰

12. Pursuant to article 68(1) and (2) of the Statute, read in conjunction with article 64(2) and (6)(e) and rules 87 and 88 of the Rules of Procedure and Evidence, a Chamber shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, while ensuring that said measures are not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.¹¹ As such, protective and special measures should only be granted on an exceptional basis, following a case-by-case assessment of whether they are necessary in light of an objectively justifiable risk, and should be proportionate to the rights of the Accused.¹² However, as more than one witness may share relevant

¹⁰ See, *inter alia*, the “Public redacted version of ‘Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses’” (Trial Chamber V, Single Judge), [No. ICC-01/14-01/18-906-Red2](#), 19 April 2021, para. 14 ; and the “Decision on the ‘Prosecution’s application for in-court protective and special measures’” (Trial Chamber IX, Single Judge), [No. ICC-02/04-01/15-612-Red](#), 30 November 2016 (dated 29 November 2016), para. 5.

¹¹ See, *inter alia*, the “Public redacted version of ‘Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses’”, *idem*, para. 15; the “Decision on the ‘Prosecution’s application for in-court protective and special measures’”, *idem*, paras. 8-10; and the “Decision on ‘Prosecution’s First Request for In-Court Protective Measures for Trial Witnesses’” (Trial Chamber V), [No. ICC-01/09-01/11-902-Red2](#), 3 September 2013, paras. 10-11.

¹² See, *inter alia*, the “Public redacted version of the Decision on in-court protective measures” (Trial Chamber I), [No. ICC-02/05-01/20-645-Red2](#), 25 April 2022, para. 9; the “Public redacted version of ‘Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses’”, *supra*

circumstances, a chamber may identify factual circumstances warranting, in principle, protective measures for specific categories of witnesses. Unless there are other circumstances warranting further differentiation, protective measures can then be applied for the witnesses falling into the relevant category.¹³

13. Notwithstanding the exceptional character of protective and special measures, Trial Chamber I held in the *Lubanga* case that “[p]rotective and special measures for victims are often the legal means by which the Court can secure the participation of victims in the proceedings, because they are a necessary step in order to safeguard their safety, physical and psychological well-being, dignity and private life in accordance with article 68(1) of the Statute [and thus] protective measures are not favours but are instead the rights of victims, enshrined in article 68(1) of the Statute”.¹⁴

14. In the *Ruto & Sang* case, Trial Chamber V(A) held that “the Statute was careful to give, or rather mandate the Chamber with the obligation to not only respect the rights of the accused fully but also to respect the rights of victims and witnesses in a manner that does not unduly prejudice the rights of the Defence. [...] [The Chamber] note[s] in particular that the provisions of Article 68(1) not only recognises the need to protect witnesses against physical threats and interferences, it also requires the Chamber to take into account the need to protect the psychological well-being of witnesses, [and] it isn’t the view of an outsider always that should explain need for psychological well-being of a witness. [The Chamber] ha[s] to take into account the witness’s own concerns such as may affect his or her psychological well-being

note 10, para. 17; the “Decision on ‘Prosecution’s First Request for In-Court Protective Measures for Trial Witnesses’”, *supra* note 11, paras. 11 and 13. See also the “Public Redacted Version of ‘Decision on in-court protective measures for Witness D04-15’” (Trial Chamber III), [No. ICC-01/05-01/08-2741-Red](#), 29 June 2016, para. 7; the “Public Redacted version of the ‘Decision on protective measures for Witness 44’, ICC-01/05-01/08-2107 of 3 February 2012” (Trial Chamber III), [No. ICC-01/05-01/08-2107-Red](#), 29 June 2016, para. 8; and the “Public Redacted version of ‘Decision on in-court protective measures for Witness 32’, ICC-01/05-01/08-1774 of 22 September 2011” (Trial Chamber III), [No. ICC-01/05-01/08-1774-Red](#), 29 June 2016, para. 11.

¹³ See the “Public redacted version of ‘Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses’”, *supra* note 10, para. 18; and the “Decision on the ‘Prosecution’s application for in-court protective and special measures’”, *supra* note 10, para. 9.

¹⁴ See the “Decision on victims’ participation” (Trial Chamber I), [No. ICC-01/04-01/06-1119](#), 18 January 2008, paras. 128-129. See also, the “Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties’ observations on applications for participation by 86 applicants” (Trial Chamber III), [No. ICC-01/05-01/08-699](#), 22 February 2010, para. 24.

when they're sitting in the courtroom and giving testimony".¹⁵ Accordingly, in deciding whether to grant protective measures, Chambers of this Court have taken into consideration any fear or anxiety expressed by the witnesses.¹⁶ Moreover, "evidence of prior direct threats to a witness, or his/her family, are not required in order to determine that they face an objectively justifiable risk sufficient to support the granting of protective measures".¹⁷

15. The Legal Representative recalls that the Chamber, in the Directions, established that:

*"Applications for in-court protective or special measures pursuant to Rules 87 and 88 of the Rules shall be made as soon as possible. The Prosecution shall file a motivated application seeking relevant in-court protective measures pursuant to Rule 87 of the Rules for all Prosecution witnesses for whom it is reasonably foreseeable that protective measures are required no later than 13 June 2022. This will allow the Chamber to receive submissions on any request and the Victims and Witnesses Unit (the 'VWU') to fulfil its mandate in due time. The Chamber will rule on these applications as much as possible in advance of the witnesses' appearance, with the possibility to modify any determination on protective measures subject to further information provided by the VWU immediately prior to the testimony as necessary."*¹⁸

16. In line with the Chamber's Directions, the Prosecution requests the use of a pseudonym, voice and facial distortion, and use of private and closed sessions for

¹⁵ See the transcript of the hearing held on 20 February 2014, [No. ICC-01/09-01/11-T-91-Red-ENG WT](#), p. 28, lines 11-23 (emphasis added). See also the "Public Redacted Version of 'Decision on in-court protective measures for Witness 45'" (Trial Chamber III), [No. ICC-01/05-01/08-2063-Red](#), 29 June 2016, para. 18.

¹⁶ See, *inter alia*, the "Public Redacted Version of 'Decision on in-court protective measures for Witness D04-15'", *supra* note 12, para. 8; the "Public Redacted Version of 'Decision on in-court protective measures for Witness 45'", *supra* note 15, paras. 19 and 21; the "Public Redacted version of 'Decision on in-court protective measures for Witness 32', ICC-01/05-01/08-1774 of 22 September 2011", *supra* note 12, para. 14; and the transcript of the hearing held on 15 August 2011, [No. ICC-01/04-01/07-T-291-Red2-ENG CT WT](#), p. 10, line 22 to p. 15, line 13.

¹⁷ See the "Decision on 'Prosecution's First Request for In-Court Protective Measures for Trial Witnesses'", *supra* note 11, para. 14. See also, the "Decision on request for in-court protective measures relating to the first Prosecution witness" (Trial Chamber VI), [No. ICC-01/04-02/06-824-Red](#), 16 September 2015, para. 14; and the "Decision on Prosecution request for in-court protective measures for Witness [REDACTED]" (Trial Chamber VI), [No. ICC-01/04-02/06-1605-Red](#), 2 November 2016, para. 7.

¹⁸ See the Directions, *supra* note 3, paras. 47-48.

25 witnesses, as well as the use of a pseudonym, facial distortion and use of private and closed sessions for another 5 witnesses.¹⁹ In addition, it requests psychological support for six traumatised witnesses in order to facilitate their testimony, subject to the Registry's input on the matter.²⁰

17. The Legal Representative concurs with the Prosecution that the requested measures are necessary and appropriate in view of the objectively justifiable risk faced by the witnesses, if their identity became known to the public.²¹

18. In particular, the security situation in the Central African Republic (the "CAR") remains highly volatile. [REDACTED] "[REDACTED]. [REDACTED]".²²

19. Over the past months, victims have repeatedly stressed their vulnerable position and the permanent fear they are living in.²³ Most recently, in light of the Prosecution's request for the trial to be held partially in Bangui,²⁴ victims raised concerns regarding the potential security issues, insisting that the situation in Bangui remains volatile and that former members of the Seleka are still very influential, and are even key members of the Government.²⁵ Regarding the latter, [REDACTED] "[REDACTED]", which "[REDACTED]".²⁶

¹⁹ See the Application, *supra* note 2, para. 9.

²⁰ *Idem*, para. 10.

²¹ *Idem*, para. 3.

²² [REDACTED].

²³ See, *inter alia*, the "Victims' response to the 'Demande de la Défense se fondant sur les informations actualisées portant sur le nombre de demandes de participation de victimes déposées et anticipées dans la présente affaire visant à ce que ces demandes soient communiquées aux Parties en application du Jugement d'appel du 14 septembre 2021 (ICC-01/14-01/21-171)'" , [No. ICC-01/14-01/21-263](#), 18 March 2022, para. 19; the "Victims' observations on the 'Registry Submission on the parameters for the organisation of a judicial site visit' (ICC-01/14-01/21-241-Conf)", [No. ICC-01/14-01/21-245-Conf](#), 28 February 2022, para. 14; and the transcript of the hearing held on 12 October 2021, [No. ICC-01/14-01/21-T-004-Red2-ENG](#), p. 23, lines 20-23: "[victims] are terrorised. They live in constant fear of being arrested in the streets in Bangui or to be recognised by their torturers [...], some of whom, continue to serve within the internal security forces or within the Central African Armed Forces, while others hold high offices within the Central African administration".

²⁴ See the "Prosecution's request for the trial be held partially in Bangui", with Confidential Annex A, [No. ICC-01/14-01/21-337-Conf](#) and [No. ICC-01/14-01/21-337-Red](#), 30 May 2022

²⁵ See the "Victims' observations on the 'Prosecution's request for the trial be held partially in Bangui' (ICC-01/14-01/21-337-Conf)", [No. ICC-01/14-01/21-355-Conf](#) and [No. ICC-01/14-01/21-355-Red](#), 10 June 2022, para. 13.

²⁶ [REDACTED].

20. The Legal Representative further notes that “[REDACTED]”.²⁷ In light of this finding, the Legal Representative submits that it is all the more necessary and appropriate for the Chamber to order the in-court protective measures sought, in line with its duty under article 68(1) of the Statute.²⁸

21. Additionally, the Legal Representative submits that even witnesses who are not currently facing critical security risks may still need protective (and/or special) measures. Indeed, said measures are intended to protect against any attempts of interference with a witness’s or victim’s physical and psychological well-being in the first place. They should thus be implemented to prevent any concrete incidents and are intended to be prospective rather than retrospective. Therefore, waiting for the occurrence of concrete incidents of threats or intimidation before taking any action would squarely defeat the purpose of protective measures.

22. The Legal Representative further agrees with the Prosecution that the sought measures are justified in light of Mr Saïd’s continuous influence over the *Front Populaire pour la Renaissance de la Centrafrique* (the “FPRC”) and his support in the CAR, which give rise to a significant risk of his supporters exerting pressures on witnesses to alter their testimony.²⁹ In this regard, she recalls that the Chamber, in concluding, in accordance with article 58(1)(b)(i) and (ii) of the Statute, decided that there is still a significant risk that Mr Saïd might be able to abscond if he were to be allowed to return to the CAR,³⁰ and that the risk of potential witness interference remains high.³¹ The Chamber specifically took into account the Accused’s potential access to a support network through his current or former role in the FPRC,³² as well as indications of

²⁷ [REDACTED].

²⁸ See *supra* para. 11.

²⁹ See the Application, *supra* note 2, paras. 14-18.

³⁰ See the “Public redacted version of ‘Decision on the Defence Application for Interim Release of Mahamat Saïd Abdel Kani and Contact Restrictions’” (Trial Chamber VI), [No. ICC-01/14-01/21-247-Red](#), 3 March 2022, para. 30.

³¹ *Idem*, para. 36.

³² *Idem*, paras. 27-28.

support for the Accused in the CAR.³³ The Appeals Chamber confirmed the Chamber's findings in a recent judgment.³⁴

23. In addition to being justified and necessary, the Legal Representative posits 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.³⁵

24. Indeed, in accordance with the established jurisprudence of the Court, limited measures such as image and voice distortion and the assignment of pseudonyms are considered "*non-intrusive*"³⁶ or "*the usual menu*",³⁷ and are therefore frequently applied in cases where a witness could be at risk on the account of his or her testimony. This is especially the case when witnesses live in an easily identifiable community or could be readily targeted by hostile individuals,³⁸ and when the provision of protective measures will increase their chances to continue to live in their own community or to continue their activities without the fear of being threatened or harassed as a result of their cooperation with the Court.³⁹

25. In terms of the fairness of the proceedings, the measures sought seek to protect the witness' identity solely with regard to the general public and do not curtail the

³³ *Ibid.*

³⁴ See the "Judgment on the appeal of Mr Mahamat Said Abdel Kani against the decision of Trial Chamber VI entitled 'Decision on the Defence Application for Interim Release of Mahamat Said Abdel Kani and Contact Restrictions'", [No. ICC-01/14-01/21-318](#), 19 May 2022. See also the "Victims' observations on the review of Mr Saïd's Detention", No. [ICC-01/14-01/21-336](#), 30 May 2022, para. 15.

³⁵ In this sense, see the Application, *supra* note 2, para. 33.

³⁶ See the "Public Redacted version of the 'Decision on protective measures for Witness 44', ICC-01/05-01/08-2107 of 3 February 2012", *supra* note 12, para. 8; and the "Decision on in-court protective measures for Witness 65" (Trial Chamber III), [No. ICC-01/05-01/08-1809-Red](#), 28 June 2016, para. 9.

³⁷ See, *inter alia*, the transcript of the hearing held on 18 June 2014, [No. ICC-01/09-01/11-T-118-Red-ENG WT](#), p. 6, line 15 to p. 7, line 3; the transcript of the hearing held on 4 March 2014, [No. ICC-01/09-01/11-T-98-Red-ENG WT](#), p. 7, line 7 to p. 8, line 19; the transcript of the hearing held on 14 October 2003, [No. ICC-01/09-01/11-T-48-Red2-ENG WT](#), p. 25, line 25 to p. 26, line 23.

³⁸ See the "Public redacted version of 'Decision on Prosecution's request for in-court protective measures and special measure for Witness P-0815'" (Trial Chamber VI), [No. ICC-01/04-02/06-1236-Red2](#), 30 March 2016, para. 5.

³⁹ See the "Decision on in-court protective measures for Witness 65", *supra* note 36, para. 10.

Defence's knowledge of the witnesses' identity.⁴⁰ The Defence will be able to listen to and see the witnesses without any distortions and its ability to question the witnesses will not be affected.⁴¹ Moreover, the public will still be able to listen to the major parts of the testimonies, as the Prosecution intends to use closed or private sessions only for limited portions of testimony as will be necessary to protect the identity 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.⁴² The Legal Representative considers this approach to be indispensable to protect the safety and well-being of the witnesses. Protective measures such as image and voice distortion and the assignment of pseudonyms "*need to be combined with limited private session testimony, in order not to defeat their purpose and to ensure effective protection of the identities of the witnesses concerned*".⁴³

26. In conclusion, the Legal Representative submits that the protective measures sought are proportionate, will not cause prejudice to the Defence and are consistent with the Accused's fundamental right to a fair and public trial, as enshrined in article 67 of the Statute.⁴⁴

⁴⁰ See the "Public redacted version of 'Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses'", *supra* note 10, para. 22; the "Decision on the 'Prosecution's application for in-court protective and special measures'", *supra* note 10, para. 13. See also, the "Public Redacted Version of 'Decision on in-court protective measures for Witness D04-02', ICC-01/05-01/08-2663 of 10 June 2013" (Trial Chamber III), [No. ICC-01/05-01/08-2663-Red2](#), 29 June 2016, para. 14; and the "Public Redacted Version of 'Decision on in-court protective measures for Witness D04-06', ICC-01/05-01/08-2701 of 18 June 2013" (Trial Chamber III), [No. ICC-01/05-01/08-2701-Red2](#), 29 June 2016, para. 12.

⁴¹ *Ibid.*

⁴² *Idem*, para. 35.

⁴³ See the "Public Redacted Version of 'Decision on in-court protective measures for Witness 45'", *supra* note 15, para. 18. See also the "Public Redacted version of 'Decision on in-court protective measures for Witness 32', ICC-01/05-01/08-1774 of 22 September 2011", *supra* note 12, para. 12.

⁴⁴ See the "Public Redacted Version of 'Decision on in-court protective measures for Witness 45'", *supra* note 15, para. 20. See also, the "Public Redacted version of 'Decision on in-court protective measures for Witness 32', ICC-01/05-01/08-1774 of 22 September 2011", *supra* note 12, para. 13; the "Public redacted version of 'Decision on Prosecution's request for in-court protective measures and special measure for Witness P-0815'", *supra* note 38, para. 6; and the "Order on protective measures for certain witnesses called by the Prosecutor and the Chamber (Rules 87 and 88 of the Rules of Procedure and Evidence)" (Trial Chamber II), [No. ICC-01/04-01/07-1667-Red-tENG](#), 9 December 2009, para. 13.

27. With regard to dual status individuals specifically, the Legal Representative argues that the trauma sustained by the victims she represents has been left untreated and in many instances has aggravated over time, leaving these individuals in an on-going state of extreme vulnerability. Those victims who have agreed to testify before the Chamber are already exposed to re-traumatisation because they are required to recount on multiple occasions details of their painful and shocking experiences. Therefore, the Court must avoid any unnecessary additional re-traumatisation by failing to address any real and objectively justifiable risk for their personal safety and that of their family members. As such, the need for protective measures applies even more forcefully to dual status individuals P-0547, P-3056, P-2400, P-2241, P-1762, P-1429, P-2931, and P-2692.⁴⁵

28. The Legal Representative notes that the Prosecution does not seek any measures for dual status individual P-1743, although the same circumstances justifying protective measures apply to said witness. During a recent consultation, P-1743 indicated to be afraid of the consequences of testifying without protective measures for himself and his family, especially in light of the deteriorating security situation in the CAR in general, and in Bangui in particular. Therefore, she respectfully requests the Chamber to also grant the use of a pseudonym, voice and facial distortion, and use of private and closed sessions to the benefit of the witness concerned.

29. In relation to the dual status individuals who will testify by video-link, namely P-3056, P-2400, P-2241, P-1762, P-1429, P-2931, P-2692, and P-1743, the Legal Representative underlines the importance of having a member of her team present next to the witness during his or her testimony. The experience in other trials has shown that the presence of the legal representative (or delegated member of his/her

⁴⁵ See also, *inter alia*, the “Public redacted version of ‘Decision on Prosecution’s request for in-court protective measures for Witness P-0790’” (Trial Chamber VI), [No. ICC-01/04-02/06-1083-Red](#), 9 February 2016, para. 9.

team) next to the witness at the same location contributes to reassuring the person concerned.⁴⁶

30. Additionally, the Legal Representative recalls that, in accordance with the practice of the Court, legal representatives are allowed to request the Chambers to grant new⁴⁷ or additional⁴⁸ protective measures for dual status individuals, if necessary. Accordingly, the Legal Representative reserves her right to raise any issues related to in-court protective measures and/or special measures for dual status individuals she represents if necessary to respond to their evolving security situation or personal circumstances.

31. Finally, noting the Prosecution's approach to special measures,⁴⁹ the Legal Representative stresses the importance of implementing special measures for particularly vulnerable witnesses, including the presence of a support person during the witness' testimony. The need for these kinds of additional special measures may become evident shortly before the start of the testimony or even during the testimony of the concerned witness. Therefore, the Legal Representative advocates for a flexible approach by the Chamber allowing for reassessing and adapting the necessary measures to the evolving circumstances.⁵⁰ She further recalls that in the practice of the Court, special measures for vulnerable witnesses may include not only the use of private or closed sessions and/or psychological support, but also: (i) the use of curtains in order to prevent eye contact between the witness and the Accused; and (ii) the

⁴⁶ In this sense, see, *inter alia*, the decision issued by Trial Chamber IX in relation to the testimonies of dual status individuals P-0396 and P-0352, available in Annex 6 to the "Registry's Monthly Report implementing the "Decision on Publicity of Case Record", [No. ICC-02/04-01/15-819-Anx 6](#), 28 April 2017, p. 2.

⁴⁷ See the "Decision on the application for the institution of protective measures for Witnesses a/0381/09, a/0018/09, a/0191/08, pan/0363/09 and Victim a/0363/09, issued on 27 January 2011" (Trial Chamber II), [No. ICC-01/04-01/07-2663-Red-tENG](#), 22 February 2011.

⁴⁸ See the transcript of the hearing held on 30 November 2010, [No. ICC-01/04-01/07-T-225-Red-ENG CT WT](#), p. 3, line 23 to p. 5, line 1.

⁴⁹ See the Application, *supra* note 2, para. 10.

⁵⁰ *Idem*, para. 11. See also the "Public Redacted Version of 'Prosecution's application for in-court protective and special measures', 26 October 2016, ICC-02/04-01/15-578-Conf", [No. ICC-02/04-01/15-578-Red](#), 11 November 2016. paras. 6 and 56-60.

absence of the Accused when the witness enters and leaves the courtroom in public and in closed session.⁵¹

FOR THESE REASONS, the Legal Representative respectfully requests the Chamber to grant the Application in its entirety, and to grant the use of a pseudonym, voice and facial distortion, and use of private and closed sessions for P-1743.



Sarah Pellet

Dated this 30th day of June 2022

At The Hague, The Netherlands

⁵¹ See the transcript of the hearing held on 15 November 2010, [No. ICC-01/04-01/07-T-216-Red-ENG WT](#), p. 4, line 18 to p. 6, line 22; and the transcript of the hearing held on 6 September 2010, [No. ICC-01/04-01/07-T-183-Red-ENG WT](#), p. 73, line 24 to p. 76, line 3.