

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**Original: English**

**No.: ICC-01/14-01/21  
Date: 26 September 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 Redacted Version of**

**Decision on the Prosecution's Request for In-Court Protective Measures  
dated 21 September 2022 (ICC-01/14-01/21-481-Conf)**

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**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and  
Reparations Section**

**Other**

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**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(1) of the Regulations of the Court (the ‘Regulations’), issues this ‘Decision on the Prosecution’s Request for In-Court Protective Measures’.

## **I. PROCEDURAL HISTORY**

1. On 10 June 2022, the Office of the Prosecutor (the ‘Prosecution’) requested in-court protective measures for 30 of its trial witnesses and requested that the Chamber take notice that in-court protective measures ordered in respect of four witnesses in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* (the ‘*Yekatom and Ngaïssona Case*’) continue to apply in this case (the ‘Request’).<sup>1</sup>
2. On 27 June 2022, the Common Legal Representative of Victims filed her response to the Request (the ‘Victims’ Response’). The Common Legal Representative supports the Request and also requests that the Chamber grant in-court protective measures to P-1743.<sup>2</sup>
3. On 13 July 2022, the Defence responded to the Request and the Victims’ Response (the ‘Response’).<sup>3</sup>
4. On 25 August 2022, the Registry filed its ‘First Periodic Report on the Security and Political situation in the Central African Republic’ covering the period between 1 June and 15 August 2022 (the ‘Registry Security Report’).<sup>4</sup>

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<sup>1</sup> Prosecution’s Request for In-Court Protective Measures, 10 June 2022, ICC-01/14-01/21-356-Conf; a public redacted version was filed on 15 June 2022 (ICC-01/14-01/21-356-Red).

<sup>2</sup> Victims’ response to the “Prosecution’s Request for In-Court Protective Measures” (ICC-01/14-01/21-356-Red), 27 June 2022, ICC-01/14-01/21-377-Conf; a public redacted version was filed on 30 June 2022 (ICC-01/14-01/21-377-Red).

<sup>3</sup> Réponse de la Défense à la « Prosecution’s Request for In-Court Protective Measures » (ICC-01/14-01/21-356-Conf) et à la demande du BCPV dans la « response to the “Prosecution’s Request for In-Court Protective Measures” (ICC-01/14-01/21-356-Red) » (ICC-01/14-01/21-377-Conf.), 13 July 2022, ICC-01/14-01/21-407-Conf; a public redacted version was filed on 19 July 2022 (ICC-01/14-01/21-407-Red).

<sup>4</sup> First Periodic Report on the Security and Political situation in the Central African Republic 1 June – 15 August 2022, ICC-01/14-01/21-463-Conf-Anx.

5. On 9 September 2022, the Victims and Witnesses Unit (the ‘VWU’) requested guidance from the Chamber regarding the procedure for its security and psychological evaluation.<sup>5</sup>

## II. SUBMISSIONS

6. In the Request, the Prosecution seeks three general types of in-court protective and special measures in respect of different categories of trial witnesses: ‘(i) measures intended to protect a witness’s identity from the public; (ii) closed or private session intended to protect particular portions of a witness’s testimony from public disclosure; and (iii) measures intended to support a witness’s psychological well-being’.<sup>6</sup> The requested measures ‘concern the following categories of witnesses who share, in full or in part, relevant circumstances: (i) [REDACTED]; (ii) witnesses who have been admitted into the ICC Protection Programme (“ICCPP”); (iii) crime-based witnesses; (iv) victims of sexual violence; (v) a witness detained in prison; and (vi) Prosecution staff members’.<sup>7</sup>

7. The Common Legal Representative of Victims supports the Prosecution’s Request and ‘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 [the Accused]’.<sup>8</sup> She emphasises the volatile security situation in the Central African Republic (the ‘CAR’) and states that, ‘[o]ver the past months, victims have repeatedly stressed their vulnerable position and the permanent fear they are living in’.<sup>9</sup> The Common Legal Representative of Victims ‘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’.<sup>10</sup> She argues that these ‘measures are intended to protect against any attempts of interference with a witness’s or victim’s physical and psychological well-

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<sup>5</sup> Email received on 9 September at 09:58.

<sup>6</sup> Request, para. 2.

<sup>7</sup> Request, para. 2.

<sup>8</sup> Victims’ Response, para. 2.

<sup>9</sup> Victims’ Response, para. 19. See also paras 18-20.

<sup>10</sup> Victims’ Response, para. 5.

being in the first place’ and should be implemented to prospectively prevent any concrete incidents.<sup>11</sup> She submits that ‘waiting for the occurrence of concrete incidents of threats or intimidation before taking any action would squarely defeat the purpose of protective measures’.<sup>12</sup>

8. The Common Legal Representative of Victims particularly emphasises the need for protective measures for dual status individuals whose trauma ‘has been left untreated and in many instances has aggravated over time, leaving these individuals in an ongoing state of extreme vulnerability’.<sup>13</sup> She submits that ‘Victims who have agreed to testify are already exposed to re-traumatisation because they are required to recount on multiple occasions details of their painful and shocking experiences’ and that ‘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’.<sup>14</sup> She requests protective measures for P-1743, a dual status individual whose situation was not addressed in the Request.<sup>15</sup>

9. The Defence largely opposes the Prosecution’s application for protective measures, arguing that the Prosecution relies on generic reasons relating to the security situation in the CAR, Mr Said’s alleged support network, and information regarding security incidents that occurred several years ago and/or are unrelated to the witnesses cooperation with the Court.<sup>16</sup> In the Defence’s submission, the Request does not establish that there is a concrete, objective, personal and current risk in respect of most witnesses.<sup>17</sup>

10. On the other hand, the Defence does not object to the request for: (i) protective measures for witnesses in the ICCPP; (ii) portions of witnesses’ testimony to be heard in closed session when dealing with sensitive subjects with the potential for re-traumatisation; and (iii) special measures in the form of psychological support for five

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<sup>11</sup> Victims’ Response, para. 21.

<sup>12</sup> Victims’ Response, para. 21.

<sup>13</sup> Victims’ Response, para. 27.

<sup>14</sup> Victims’ Response, para. 27.

<sup>15</sup> Victims’ Response, para. 28.

<sup>16</sup> Response, paras 20, 26-51.

<sup>17</sup> Response, para. 20.

witnesses provided that the [REDACTED] are clearly identified.<sup>18</sup> However, in respect of the latter, the Defence requests to have access to the [REDACTED] in order to make informed observations and to be able to take this into account when questioning the witness.<sup>19</sup>

11. The Defence underlines that the situation vis-à-vis individual witnesses should be reassessed before they actually testify and requests that the VWU be required to prepare a report a few weeks before the witnesses' appearance and that the security of the witness be discussed with him at the hearing in order to ensure that any protective measures granted are justified by the existence of objective, concrete, personal and current risks.<sup>20</sup>

### III. APPLICABLE LAW

12. Articles 64(7) and 67(1) of 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 subject to exceptions, including for the purposes of protecting victims and witnesses.<sup>21</sup>

13. The Chamber notes that the legal framework regarding protective measures is contained in articles 68(1) and (2) of the Statute, together with articles 64(2) and 64(6)(e) of the Statute and rule 87 of the Rules. It has also had regard to the settled jurisprudence of the Court on these matters.<sup>22</sup>

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<sup>18</sup> Response, paras 23-25.

<sup>19</sup> Response, para. 24.

<sup>20</sup> Response, para. 101.

<sup>21</sup> Trial Chamber V, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaissona*, Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses, 9 March 2021, ICC-01/14-01/18-906-Conf-Exp; (a second public redacted version was filed on 19 April 2021 (ICC-01/14-01/18-906-Red2) (the 'Yekatom Protective Measures Decision'), para. 14; Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on the 'Prosecution's application for in-court protective and special measures', 29 November 2016, ICC-02/04-01/15-612-Conf (confidential and public redacted versions notified on 30 November 2016, ICC-02/04-01/15-612-Red) (the 'Ongwen Protective Measures Decision'), para. 5.

<sup>22</sup> Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, First decision on in-court protective measures, 31 August 2020, ICC-01/12-01/18-1019-Conf-Exp (a confidential redacted version was filed on that same date, ICC-01/12-01/18-1019-Conf-Red, and a public redacted version was filed on 5 January 2021, ICC-01/12-01/18-1019-Red2); Trial Chamber III, *The Prosecutor v. Paul Gicheru*, Trial Chamber I, Decision on the Prosecution Request for In-Court

14. Article 68(1) of the Statute gives the Chamber the power to ‘take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses’. Article 68(2) of the Statute further provides that such measures may include ‘conduct[ing] any part of the proceedings in camera or allow[ing] the presentation of evidence by electronic or other special means’, and provides that ‘such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness’. Rule 87(3) of the Rules specifies that the Chamber may order measures to protect the witnesses’ identity, such as: (i) the use of pseudonyms; (ii) distortion of the voice and/or image of a witness testifying at trial; (iii) restrictions on the disclosure of the identity of a victim or witness to third parties; and (iv) the use of private or closed session. In accordance with article 68(1) of the Statute, the measures must not, however, be ‘prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial’.

15. In the present decision, the Chamber will provide advance rulings on the requested protective measures for the witnesses covered by the Request and the Common Legal Representative of Victims’ request. For the purpose of these rulings, the Chamber has considered the information currently available to it, which is essentially limited to the information provided by the Prosecution in the Request and the information available regarding P-1743 (the subject of the Common Legal Representative of Victims’ request). These rulings are without prejudice to reconsideration at a later time, should this be warranted. The Chamber further notes that any granted protective measures are subject to: (i) the relevant witness consenting to the protective measure; and (ii) the absence of any further information communicated to the Chamber by the parties, participants or the VWU in the meantime which would negate the basis on which such measures are granted in the present decision.

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Protective Measures, 3 February 2022, ICC-01/09-01/20-276-Conf; a public redacted version was filed on the same date (ICC-01/09-01/20-276-Red); *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (‘Ali Kushayb’)*, Decision on in-court protective measures, 25 March 2022, ICC-02/05-01/20-645-Conf-Exp; a public redacted version was filed on 25 April 2022 (ICC-02/05-01/20-645-Red2).

16. The Chamber recalls that the need for in-court protective measures must be assessed on a case-by-case basis in order to determine whether such measures are necessary in light of an objectively justifiable risk to individual witnesses. However, 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.

17. In this regard, the Chamber notes that a large number of witnesses in this case are potentially affected by the volatile security situation in the CAR and the continued operation of armed groups on its territory. The Registry Security Report indicates that [REDACTED].<sup>23</sup> As the Chamber has previously noted, information provided to it by the Registry indicates ‘that the VWU considers [REDACTED].’<sup>24</sup> The Chamber 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.’<sup>25</sup> According to the Prosecution, one witness has already received threatening phone calls [REDACTED].<sup>26</sup> The Chamber considers that the [REDACTED].<sup>27</sup>

18. The Chamber notes that the Defence objects to the Prosecution’s reliance on general arguments to support its Request and, in particular, focuses on the above-mentioned generic factors relating to the security situation in the CAR and the continued activities of armed groups to which Mr Said may be linked. The Chamber considers that the fact that these justifications potentially apply to a large number of witnesses does not render them less objective or less specific to the individual witnesses affected.

19. In addition, the Chamber considers that protective measures are aimed at prevention of harm, in particular physical or psychological harm. If they are to be

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<sup>23</sup> Registry Security Report, para. 2.

<sup>24</sup> 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-Conf (the ‘Detention Decision’), para. 33.

<sup>25</sup> Detention Decision, para. 27.

<sup>26</sup> Request, para. 15.

<sup>27</sup> Public Redacted Version of ‘Warrant of Arrest for Mahamat Nouradine Adam’, 7 January 2019, ICC-01/14-41-US-Exp; a public redacted version was issued on 28 July 2022 (ICC-01/14-41-Red2).

effective in this aim, the question of whether an objectively justifiable risk exists must be based on an assessment of the possibility of future harm in light of all the general and specific circumstances. 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. In the view of the Chamber, the security situation in the area in which the witness resides and the activities of armed groups to which Mr Said may be linked are relevant considerations in assessing whether an objectively justifiable risk exists.

#### **IV. ANALYSIS**

##### **A. Protective Measures that are not opposed**

###### *1. Witnesses in the ICCPP*

20. The Chamber notes that the Defence does not oppose in-court protective measures sought by the Prosecution in respect of those witnesses who have been included in the Court's witness protection program.<sup>28</sup> Noting that the witnesses in this category have been assessed by the VWU as requiring protection within the framework of the ICCPP, the Chamber considers that the requested protective measures are justified in order not to compromise the protection provided through the ICCPP. Accordingly, the Chamber grants in-court protective measures in the form of the use of pseudonym, face and voice distortion, and use of private and closed sessions in respect of [REDACTED].<sup>29</sup>

###### *2. Special Measures in the Form of Psychological Support*

21. The Prosecution 'requests that the Chamber order special measures, namely psychological support, pursuant to rule 88 of the Rules, for [six witnesses] in order to facilitate the testimony of traumatised witnesses, subject to the Registry's input on the matter'.<sup>30</sup>

22. The Defence does not object in principle to this request provided that there is a specific [REDACTED] as experience has shown that the presence of a psychologist has

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<sup>28</sup> Response, para. 23.

<sup>29</sup> Request, para. 23.

<sup>30</sup> Request, para. 10.

a significant impact in terms of guiding the way in which the questions are answered.<sup>31</sup> The Defence requests access to the [REDACTED] in order to make informed observations and so that they can adapt their questioning of the witness to take this information into account.<sup>32</sup>

23. The Chamber notes that the Defence does not substantiate its allegation regarding the impact of the presence of a psychologist and thus the Chamber will not entertain it further. In addition, the Chamber does not deem it necessary or appropriate for the Defence to be provided with specific [REDACTED] about the witnesses for the purposes of making observations on requests for protective measures or adapting its questioning of a witness.

24. The Chamber has no reason to doubt the Prosecution's assessment of the vulnerability of the witnesses in question, but considers that it is necessary to hear from the VWU on this matter as it is best placed to determine the appropriateness of special measures intended to provide support to a witness closer to the time of testimony. Accordingly, the Chamber prospectively grants the special measures requested by the Prosecution subject to receipt of a report from the VWU prior to the witness's testimony confirming that this measure is necessary and that the witness consents to the presence of a psychologist as set out further in paragraph 101 below.

## **B. Insider Witnesses**

25. The Prosecution submits that '[t]he protective measures sought will enable [witnesses in this category] to testify freely and provide full accounts of the events at issue without reticence, and thus contribute to the truth-seeking function of the Chamber'.<sup>33</sup> As the circumstances of each of these witness is slightly different, an individual assessment of each application is set out below.

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<sup>31</sup> Response, para. 24.

<sup>32</sup> Response, para. 24.

<sup>33</sup> Request, para. 20.

*1. P-1167*

26. The Prosecution submits that P-1167 [REDACTED].<sup>34</sup> The Prosecution further submits that [REDACTED].<sup>35</sup>

27. The Defence argues that the [REDACTED] and do not appear to be connected to the cooperation of the witness with the Court.<sup>36</sup> It also suggests that participation in proceedings before the Court could be positively perceived and the Prosecution's assertion of risk is speculative and vague.<sup>37</sup>

28. The Chamber recalls its approach to the assessment of risk as set out above.<sup>38</sup> For the following reasons, the Chamber is satisfied that an objectively justifiable risk has been made out in respect of P-1167 and that the protective measures sought are necessary: (i) [REDACTED]; (ii) the activities of armed groups to which Mr Said may be linked; (iii) the nature of the testimony that the witness is expected to give [REDACTED]; (iv) [REDACTED]; and (v) the fact that [REDACTED]. Accordingly, the Chamber grants P-1167 in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and closed sessions.

*2. P-2161*

29. The Prosecution submits that P-2161 [REDACTED].<sup>39</sup> It states that the witness is [REDACTED].<sup>40</sup> The Prosecution states [REDACTED].<sup>41</sup>

30. The Defence argues that there is no [REDACTED].<sup>42</sup> Concerning [REDACTED] and the Prosecution does not appear to have attempted to conduct an investigation.<sup>43</sup>

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<sup>34</sup> Annex A to the Request.

<sup>35</sup> Annex A to the Request.

<sup>36</sup> Response, paras 54, 57.

<sup>37</sup> Response, paras 55-56.

<sup>38</sup> See above paras 17-19.

<sup>39</sup> Annex A to the Request.

<sup>40</sup> Annex A to the Request.

<sup>41</sup> Annex A to the Request.

<sup>42</sup> Response, para. 58.

<sup>43</sup> Response, para. 59.

31. The Chamber recalls its approach to the assessment of risk as set out above and, in particular, the fact that it considers it 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.<sup>44</sup> In this context, the Chamber does not consider it prudent to [REDACTED] for the purposes of determining whether protective measures should be granted as this may expose the witness further. For the following reasons, the Chamber is satisfied that an objectively justifiable risk has been made out in respect of P-2161 and that the protective measures sought are necessary: (i) [REDACTED]; (ii) the activities of armed groups to which Mr Said may be linked, (iii) the nature of the testimony that the witness is expected to give; (iv) the fact that [REDACTED]; and (v) [REDACTED]. Accordingly, the Chamber grants P-2161 in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and closed sessions.

### 3. *P-2563*

32. According to the Prosecution, P-2563 is [REDACTED].<sup>45</sup> The Prosecution submits that the witness '[REDACTED]'.<sup>46</sup> The witness believes that [REDACTED].<sup>47</sup>

33. The Defence argues that the witness does not appear to link the [REDACTED] with [REDACTED] cooperation with the Prosecution, these incidents [REDACTED] and the Prosecution has not independently verified these fears.<sup>48</sup> In its view, the justification put forward by the Prosecution in its request for protective measures is speculative in nature.<sup>49</sup>

34. The Chamber recalls its approach to the assessment of risk as set out above and, in particular, the fact that it considers it 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.<sup>50</sup> In this context, the Chamber does not consider it prudent to [REDACTED] for the purposes of determining whether protective measures

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<sup>44</sup> See above paras 17-19.

<sup>45</sup> Annex A to the Request.

<sup>46</sup> Annex A to the Request.

<sup>47</sup> Annex A to the Request.

<sup>48</sup> Response, para. 60.

<sup>49</sup> Response, para. 60.

<sup>50</sup> See above paras 17-19.

should be granted as this may expose the witness further. For the following reasons, the Chamber is satisfied that an objectively justifiable risk has been made out in respect of P-2563 and that the protective measures sought are necessary: (i) [REDACTED]; (ii) the activities of armed groups to which Mr Said may be linked; (iii) the nature of the testimony that the witness is expected to give; (iv) the fact that [REDACTED]. Accordingly, the Chamber grants P-2563 in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and closed sessions.

#### 4. P-2478

35. According to the Prosecution, 'P-2478 is [REDACTED].<sup>51</sup> The Prosecution submits that the witness is [REDACTED].<sup>52</sup> The Prosecution submits that [REDACTED].<sup>53</sup>

36. The Defence submits that the Prosecution's request is based on generic and speculative information and there is no evidence that the Prosecution conducted independent and neutral investigations.<sup>54</sup>

37. The Chamber recalls its approach to the assessment of risk as set out above.<sup>55</sup> In this context, the Chamber does not consider it prudent to [REDACTED] for the purposes of determining whether protective measures should be granted as this may expose the witness further. For the following reasons, the Chamber is satisfied that an objectively justifiable risk has been made out in respect of P-2478 and that the protective measures sought are necessary: (i) [REDACTED]; (ii) the activities of armed groups to which Mr Said may be linked; (iii) the nature of the testimony that the witness is expected to give, [REDACTED]; (iv) the fact that [REDACTED]; and (v) [REDACTED]. Accordingly, the Chamber grants P-2478 in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and closed sessions.

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<sup>51</sup> Annex A to the Request.

<sup>52</sup> Annex A to the Request.

<sup>53</sup> Annex A to the Request.

<sup>54</sup> Response, para. 61.

<sup>55</sup> See above paras 17-19.

5. *P-1737*

38. According to the Prosecution, ‘P-1737 [REDACTED].<sup>56</sup> It submits that [REDACTED].<sup>57</sup> The Prosecution states that the witness [REDACTED].<sup>58</sup>

39. The Defence submits that the Prosecution’s request is based on speculation and that it provides no substantial information that would establish an objective, actual, personal and current risk.<sup>59</sup>

40. The Chamber recalls its approach to the assessment of risk as set out above.<sup>60</sup> For the following reasons, the Chamber is satisfied that an objectively justifiable risk has been made out in respect of P-1737 and that the protective measures sought are necessary: (i) [REDACTED]; (ii) the activities of armed groups to which Mr Said may be linked; (iii) the nature of the testimony that the witness is expected to give, including the fact that [REDACTED]. Accordingly, the Chamber grants P-1737 in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and closed sessions.

6. *P-0435*

41. According to the Prosecution, P-0435 was a [REDACTED].<sup>61</sup> The Prosecution states that [REDACTED].<sup>62</sup> While the witness ‘has stated that [REDACTED].<sup>63</sup>

42. The Defence highlights [REDACTED].<sup>64</sup> The Defence submits that, if a [REDACTED] were an acceptable basis for granting protective measures, the vast majority of witnesses before the Court would be protected since, in prosecuting these crimes it would be necessary to hear from persons [REDACTED].<sup>65</sup>

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<sup>56</sup> Annex A to the Request.

<sup>57</sup> Annex A to the Request.

<sup>58</sup> Annex A to the Request.

<sup>59</sup> Response, para. 62.

<sup>60</sup> See above paras 17-19.

<sup>61</sup> Annex A to the Request.

<sup>62</sup> Annex A to the Request.

<sup>63</sup> Annex A to the Request.

<sup>64</sup> Response, para. 63.

<sup>65</sup> Response, para. 63.

43. The Chamber recalls its approach to the assessment of risk as set out above.<sup>66</sup> Notwithstanding the fact that this witness is subject to the same general risk as the other witnesses, the Chamber notes that the witness [REDACTED]. Accordingly, the Chamber rejects the request for in-court protective measures in respect of P-0435. This is without prejudice to the Chamber reconsidering, upon request or *proprio motu*, the need for an order under rule 87 of the Rules, should this be warranted.

#### 7. P-2573

44. According to the Prosecution, P-2573 was [REDACTED].<sup>67</sup> The Prosecution submits that [REDACTED].<sup>68</sup>

45. The Defence submits that the Prosecution's request is based on generic and speculative information and there is no evidence that the Prosecution conducted independent and neutral investigations.<sup>69</sup> It argues that the [REDACTED] and that they have not been tested in court and cannot be accepted as true.<sup>70</sup>

46. The Chamber recalls its approach to the assessment of risk as set out above and, in particular, the fact that it considers it 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.<sup>71</sup> In this context, the Chamber does not consider it prudent to [REDACTED] in Court for the purposes of determining whether protective measures should be granted as this may expose the witness further. For the following reasons, the Chamber is satisfied that an objectively justifiable risk has been made out in respect of P-2573 and that the protective measures sought are necessary: (i) [REDACTED]; (ii) the activities of armed groups to which Mr Said may be linked; (iii) the nature of the testimony that the witness is expected to give; (iv) the fact that [REDACTED]. Accordingly, the Chamber grants P-2573 in-court protective measures

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<sup>66</sup> See above paras 17-19.

<sup>67</sup> Annex A to the Request.

<sup>68</sup> Annex A to the Request.

<sup>69</sup> Response, para. 64.

<sup>70</sup> Response, para. 64.

<sup>71</sup> See above paras 17-19.

in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and closed sessions.

8. *P-0349*

47. According to the Prosecution, ‘P-0349 [REDACTED].<sup>72</sup> The witness has ‘stated that [REDACTED].<sup>73</sup> The Prosecution submits that the witness [REDACTED].<sup>74</sup> The Prosecution contends that [REDACTED].<sup>75</sup>

48. The Defence argues that the Prosecution merely suggests that [REDACTED].<sup>76</sup>

49. The Chamber recalls its approach to the assessment of risk as set out above.<sup>77</sup> For the following reasons, the Chamber is satisfied that an objectively justifiable risk has been made out in respect of P-0349 and that the protective measures sought are necessary: (i) [REDACTED]; (ii) the nature of the testimony that the witness is expected to give; (iii) [REDACTED]; and (v) [REDACTED]. Accordingly, the Chamber grants P-0349 in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and closed sessions.

9. *P-2240*

50. According to the Prosecution, ‘P-2240 [REDACTED].<sup>78</sup> The Prosecution submits that ‘P-2240 [REDACTED].<sup>79</sup> In [REDACTED], P-2240 stated that [REDACTED].<sup>80</sup> The Prosecution contends that [REDACTED].<sup>81</sup>

51. The Defence highlights [REDACTED].<sup>82</sup>

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<sup>72</sup> Annex A to the Request.

<sup>73</sup> Annex A to the Request.

<sup>74</sup> Annex A to the Request.

<sup>75</sup> Annex A to the Request.

<sup>76</sup> Response, para. 65.

<sup>77</sup> See above paras 17-19.

<sup>78</sup> Annex A to the Request.

<sup>79</sup> Annex A to the Request.

<sup>80</sup> Annex A to the Request.

<sup>81</sup> Annex A to the Request.

<sup>82</sup> Response, para. 66.

52. The Chamber recalls its approach to the assessment of risk as set out above.<sup>83</sup> For the following reasons, the Chamber is satisfied that an objectively justifiable risk has been made out in respect of P-2240 and that the protective measures sought are necessary: (i) [REDACTED]; (ii) the activities of armed groups to which Mr Said may be linked; (iii) the nature of the testimony that the witness is expected to give; (iv) [REDACTED]; and (v) [REDACTED]. Accordingly, the Chamber grants P-2240 in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and closed sessions.

### C. Crime-base Witnesses

53. The Prosecution submits that:

In-court protective measures for witnesses in this category 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. In this regard, protective measures will protect their dignity and privacy and help avoid re-traumatisation.<sup>84</sup>

54. As the circumstances of each of these witness is slightly different, an individual assessment of each application is set out below.

#### 1. P-3056

55. According to the Prosecution, ‘P-3056 [REDACTED].<sup>85</sup> The Prosecution submits that the witness [REDACTED].<sup>86</sup>

56. The Defence submits that the Prosecution has not demonstrated the existence of an objective, personal, concrete and current risk but simply argues that the witness will refer to alleged crimes that implicate Mr Said.<sup>87</sup> In its submission, this does not justify the granting of protective measures.<sup>88</sup>

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<sup>83</sup> See above paras 17-19.

<sup>84</sup> Request, para. 25.

<sup>85</sup> Annex A to the Request.

<sup>86</sup> Annex A to the Request.

<sup>87</sup> Response, para. 72.

<sup>88</sup> Response, para. 72.

57. The Chamber recalls its approach to the assessment of risk as set out above.<sup>89</sup> For the following reasons, the Chamber is satisfied that an objectively justifiable risk has been made out in respect of P-3056 and that the protective measures sought are necessary: (i) that the [REDACTED]; (ii) the [REDACTED]; and (iii) the nature of the testimony that the witness is expected to give [REDACTED]. Accordingly, the Chamber grants P-3056 in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and closed sessions.

## 2. *P-3064*

58. According to the Prosecution, P-3064 [REDACTED].<sup>90</sup> The Prosecution submits that ‘P-3064 [REDACTED].’<sup>91</sup> The witness reported ‘that “[REDACTED]”’<sup>92</sup> The Prosecution submits that [REDACTED].<sup>93</sup> The witness is [REDACTED].<sup>94</sup>

59. The Defence argues that the witness’s [REDACTED] and the Prosecution appears to speculate about the risk [REDACTED] would run by testifying publicly.<sup>95</sup>

60. The Chamber recalls its approach to the assessment of risk as set out above.<sup>96</sup> For the following reasons, the Chamber is satisfied that an objectively justifiable risk has been made out in respect of P-3064 and that the protective measures sought are necessary: (i) the nature of the testimony that the witness is expected to give, including the fact that [REDACTED]; (ii) [REDACTED] and (iii) [REDACTED]. The Chamber considers that, in these circumstances, it would be [REDACTED]. Accordingly, the Chamber grants P-3064 in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and closed sessions.

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<sup>89</sup> See above paras 17-19.

<sup>90</sup> Annex A to the Request.

<sup>91</sup> Annex A to the Request.

<sup>92</sup> Annex A to the Request.

<sup>93</sup> Annex A to the Request.

<sup>94</sup> Annex A to the Request.

<sup>95</sup> Response, para. 73.

<sup>96</sup> See above paras 17-19.

### 3. *P-2692*

61. According to the Prosecution, P-2692 [REDACTED].<sup>97</sup> The Prosecution submits that [REDACTED].<sup>98</sup>

62. The Defence submits that the Prosecution does not provide any justification for requesting protective measures in respect of this witness but rather speculates on the potential impact of [REDACTED] testimony.<sup>99</sup>

63. The Chamber recalls its approach to the assessment of risk as set out above.<sup>100</sup> For the following reasons, the Chamber is satisfied that an objectively justifiable risk has been made out in respect of P-2692 and that the protective measures sought are necessary: (i) [REDACTED]; (ii) the activities of armed groups to which Mr Said may be linked; (iii) the nature of the testimony that the witness is expected to give, including the fact that [REDACTED]; and (iv) [REDACTED]. Accordingly, the Chamber grants P-2692 in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and closed sessions.

### 4. *P-0664*

64. According to the Prosecution, 'P-0664 [REDACTED].<sup>101</sup> The Prosecution submits that [REDACTED].<sup>102</sup> It provides information about the witness's [REDACTED].<sup>103</sup>

65. The Defence submits that the Prosecution does not provide any justification for requesting protective measures in respect of this witness but rather speculates on the potential impact of [REDACTED] testimony.<sup>104</sup>

66. The Chamber recalls its approach to the assessment of risk as set out above.<sup>105</sup> For the following reasons, the Chamber is satisfied that an objectively justifiable risk has been made out in respect of P-0664 and that the protective measures sought are

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<sup>97</sup> Annex A to the Request.

<sup>98</sup> Annex A to the Request.

<sup>99</sup> Response, para. 74.

<sup>100</sup> See above paras 17-19.

<sup>101</sup> Annex A to the Request.

<sup>102</sup> Annex A to the Request.

<sup>103</sup> Annex A to the Request.

<sup>104</sup> Response, para. 74.

<sup>105</sup> See above paras 17-19.

necessary: (i) [REDACTED]; and (ii) the nature of the testimony that the witness is expected to give. The Chamber further notes that this witness is [REDACTED]. Accordingly, the Chamber grants P-0664 in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and closed sessions.

#### 5. *P-1762*

67. According to the Prosecution, P-1762 [REDACTED].<sup>106</sup> The Prosecution submits that P-1762 [REDACTED].<sup>107</sup> The Prosecution provides information regarding [REDACTED].<sup>108</sup>

68. The Defence submits that the [REDACTED] and thus have nothing to do with proceedings before the ICC.<sup>109</sup>

69. The Chamber recalls its approach to the assessment of risk as set out above.<sup>110</sup> For the following reasons, the Chamber is satisfied that an objectively justifiable risk has been made out in respect of P-1762 and that the protective measures sought are necessary: (i) [REDACTED]; and (ii) the nature of the testimony that the witness is expected to give. Furthermore, the Chamber notes that the Prosecution [REDACTED] and assesses this witness to be a [REDACTED]. The Chamber considers protective measures to be particularly appropriate in these circumstances. Accordingly, the Chamber grants P-1762 in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and closed sessions.

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<sup>106</sup> Annex A to the Request.

<sup>107</sup> Annex A to the Request.

<sup>108</sup> Annex A to the Request.

<sup>109</sup> Response, para. 75.

<sup>110</sup> See above paras 17-19.

6. *P-2607*

70. According to the Prosecution, P-2607 [REDACTED].<sup>111</sup> P-2607 [REDACTED].<sup>112</sup> The Prosecution submits that the witness [REDACTED].<sup>113</sup>

71. The Defence submits that the Prosecution merely relays the witness's account of [REDACTED] that the Prosecution has not independently investigated.<sup>114</sup>

72. The Chamber recalls its approach to the assessment of risk as set out above.<sup>115</sup> For the following reasons, the Chamber is satisfied that an objectively justifiable risk has been made out in respect of P-2607 and that the protective measures sought are necessary: (i) [REDACTED]; and (iii) the nature of the testimony that the witness is expected to give. The Chamber further notes that [REDACTED]. In the context of insecurity outlined above, the Chamber does not consider it prudent to [REDACTED] regarding circumstances that may expose them to risk for the purposes of determining whether protective measures should be granted as this may expose the witness further. Accordingly, the Chamber grants P-2607 in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and closed sessions.

7. *P-1263*

73. According to the Prosecution, P-1263 [REDACTED].<sup>116</sup> The Prosecution submits that P-1263 [REDACTED].<sup>117</sup> The Prosecution requests that [REDACTED].<sup>118</sup> The Prosecution reports that the witness is a [REDACTED].<sup>119</sup>

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<sup>111</sup> Annex A to the Request.

<sup>112</sup> Annex A to the Request.

<sup>113</sup> Annex A to the Request.

<sup>114</sup> Response, para. 76.

<sup>115</sup> See above paras 17-19.

<sup>116</sup> Annex A to the Request.

<sup>117</sup> Annex A to the Request.

<sup>118</sup> Annex A to the Request.

<sup>119</sup> Annex A to the Request.

74. The Defence submits that the Prosecution does not present current or objectively verifiable concerns, but bases its request [REDACTED] and speculation as to the risks that the witness would incur if [REDACTED] were to testify publicly.<sup>120</sup>

75. The Chamber recalls its approach to the assessment of risk as set out above.<sup>121</sup> Given [REDACTED], the Chamber is satisfied that an objectively justifiable risk has been made out in respect of P-1263 and that the protective measures sought are necessary. Furthermore, the Chamber notes that the Prosecution [REDACTED] and that he is a [REDACTED]. The Chamber considers protective measures to be particularly appropriate in these circumstances. Accordingly, the Chamber grants P-1263 in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and closed sessions.

#### 8. *P-2931*

76. According to the Prosecution, P-2931 [REDACTED].<sup>122</sup> The Prosecution submits that these [REDACTED].<sup>123</sup> The Prosecution states that the witness [REDACTED].<sup>124</sup>

77. The Defence submits that the Prosecution refers generically and speculatively to [REDACTED] to justify a risk. It argues that the information submitted about the [REDACTED] have not been tested in Court or independently verified by the Prosecution and cannot be relied upon as a basis to establish a risk to the witness.<sup>125</sup>

78. The Chamber recalls its approach to the assessment of risk as set out above.<sup>126</sup> Given the information provided about [REDACTED] and the nature of the testimony that the witness is expected to give, the Chamber is satisfied that an objectively justifiable risk has been made out in respect of P-2931 and that the protective measures sought are necessary. In the context of insecurity outlined above, the Chamber does not consider it prudent to [REDACTED] regarding circumstances that may expose them to risk for the purposes of determining whether protective measures should be granted as

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<sup>120</sup> Response, para. 77.

<sup>121</sup> See above paras 17-19.

<sup>122</sup> Annex A to the Request.

<sup>123</sup> Annex A to the Request.

<sup>124</sup> Annex A to the Request.

<sup>125</sup> Response, para. 78.

<sup>126</sup> See above paras 17-19.

this may expose the witness further. Accordingly, the Chamber grants P-2931 in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and closed sessions.

#### 9. P-1429

79. According to the Prosecution, P-1429 [REDACTED].<sup>127</sup> The Prosecution reports that, [REDACTED].<sup>128</sup> The Prosecution submits that [REDACTED].<sup>129</sup>

80. The Defence submits that the Prosecution speculates on [REDACTED], without providing any indication that it has investigated or that the witness has expressed any fear and, in these circumstances, there are no objective, personal, concrete and current bases for justifying the granting of protective measures.<sup>130</sup>

81. The Chamber recalls its approach to the assessment of risk as set out above.<sup>131</sup> Given the information provided about [REDACTED] and the nature of the testimony that the witness is expected to give, the Chamber is satisfied that an objectively justifiable risk has been made out in respect of P-1429 and that the protective measures sought are necessary. In the view of the Chamber, [REDACTED] may increase the risk to this witness should [REDACTED] cooperation in this case become public. In the context of insecurity outlined above, the Chamber does not consider it prudent to [REDACTED] regarding circumstances that may expose them to risk for the purposes of determining whether protective measures should be granted as this may expose the witness further. Accordingly, the Chamber grants P-1429 in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and closed sessions.

#### **D. Witnesses who are Victims of Sexual and Gender Based Crimes**

82. The Prosecution requests in-court protective measures for four witnesses who were direct or indirect victims of sexual violence on the basis that the ‘inherent nature of such crimes and the regrettable but persisting associated stigma, constitutes in and

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<sup>127</sup> Annex A to the Request.

<sup>128</sup> Annex A to the Request.

<sup>129</sup> Annex A to the Request.

<sup>130</sup> Response, para. 79.

<sup>131</sup> See above paras 17-19.

of itself a proportionate and justified exception to the principle of publicity of the proceedings'.<sup>132</sup> The Prosecution submits that '[t]he requested measures will enable these highly vulnerable witnesses to provide full accounts with minimal re-traumatisation, to protect their privacy and the privacy of their family members, and to avoid the public stigma, associated with rape or other forms of sexual violence in the CAR'.<sup>133</sup> In its submission, '[h]aving to testify openly would likely result in the witnesses being forced to repeat or discuss their traumatic experiences after they return to their homes, or at least live with the anxiety of having to do so'.<sup>134</sup>

83. The Defence does not oppose the special measure in the form of psychological assistance requested in respect of the four witnesses provided that the witness has the opportunity to accept or reject this support.<sup>135</sup> It submits that a balance must be struck between the publicity of proceedings and the protection necessary for these witnesses and suggests that the testimony regarding sexual offenses should be held in closed session and that the rest of the testimony should be made public.<sup>136</sup>

84. The Chamber has reviewed the information provided by the Prosecution regarding the location and current circumstances of these witnesses and, given the nature of the testimony they are expected to deliver, it is satisfied that an objectively justifiable risk has been made out in respect of these witnesses. Accordingly, the Chamber grants P-1264, P-0834, P-2400 and P-2241 in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and closed sessions.

#### **E. Detained Witness**

85. According to the Prosecution, [REDACTED].<sup>137</sup> The Prosecution submits that [REDACTED].<sup>138</sup> The Prosecution submits that [REDACTED].<sup>139</sup>

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<sup>132</sup> Request, paras 26-27.

<sup>133</sup> Request, para. 28.

<sup>134</sup> Request, para. 28.

<sup>135</sup> Response, para. 80.

<sup>136</sup> Response, para. 83.

<sup>137</sup> Annex A to the Request.

<sup>138</sup> Annex A to the Request.

<sup>139</sup> Annex A to the Request.

86. The Defence submits that the Prosecution does not provide any concrete evidence that the situation of this witness would justify the grant of protective measures and has not communicated the reasons for this witness's incarceration, which it submits is important in terms of preparing for the witnesses examination and allowing the Defence to assess whether the witness may be under duress and should be required to testify in The Hague.<sup>140</sup>

87. The Chamber recalls its approach to the assessment of risk as set out above.<sup>141</sup> Given the information provided about [REDACTED] and the nature of the testimony that the witness is expected to give, the Chamber is satisfied that an objectively justifiable risk has been made out in respect of [REDACTED] and that the protective measures sought are necessary. Accordingly, the Chamber grants [REDACTED] in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and closed sessions.

#### **F. Witnesses who are Prosecution Staff Members**

88. The Prosecution requests protective measures in respect of five staff members: P-3108 who is an investigative analyst, P-3112 who is a forensic officer, and P-3113, P-3114 and P-3115 who are investigators.<sup>142</sup> These individuals travel to the field regularly or occasionally on confidential missions in which they have direct contact with witnesses, sources, representatives of governments and international and non-government organisations, and other third persons on behalf of the Prosecution.<sup>143</sup> It submits that '[p]rotective measures are required in order to preserve their ability to perform these and other core investigative functions pursuant to article 54 of the Statute'.<sup>144</sup>

89. The Defence argues that information regarding the role of most of the staff members is publicly available and some have already testified in public in ICC proceedings.<sup>145</sup> On this basis, the Defence submits that the Prosecution has not justified

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<sup>140</sup> Response, paras 86-87.

<sup>141</sup> See above paras 17-19.

<sup>142</sup> Request, para. 31.

<sup>143</sup> Request, para. 31.

<sup>144</sup> Request, para. 31.

<sup>145</sup> Response, paras 90-91.

the need for protective measures in respect of P-3112, P-3113 and P-3114.<sup>146</sup> Regarding P-3108 and P3115, the Defence submits that, since it is possible for Prosecution staff members to testify publicly, the Prosecution should present concrete and specific reasons to explain why these staff members cannot do so.<sup>147</sup>

90. The Chamber notes that P-3112's name, image and role within the Prosecution are publically available on the internet. His role as a forensic officer means that it could be assumed that he works on multiple situations. As such, the Chamber does not consider that any further objectively justifiable risk exists in respect of P-3112's professional activities should his position with the Prosecution be made public in the current case. Accordingly, the Chamber finds that the protective measures requested for P-3112 in the present proceedings are not justified. This is without prejudice to the Chamber reconsidering, upon request or *proprio motu*, the need for an order under rule 87 of the Rules, should this be warranted.

91. The Chamber notes that P-3114's name and role within the Prosecution are publically available on the internet and in particular his responsibility as Lead Investigator in relation to CAR II investigation has been disclosed to the public. As such, the Chamber does not consider that any further objectively justifiable risk exists in respect of P-3114's professional activities should his position with the Prosecution be made public in the current case. Accordingly, the Chamber finds that the protective measures requested for P-3114 in the form of the use of pseudonym and use of private and closed sessions in the present proceedings are not justified. This is without prejudice to the Chamber reconsidering, upon request or *proprio motu*, the need for an order under rule 87 of the Rules, should this be warranted.

92. However, the Chamber notes that images of P-3114 are not readily available to the public. In this regard, the Chamber acknowledges that, due to the nature of P-3114's work, a level of anonymity is necessary to protect his safety and the safety of others when he carries out his functions for the Prosecution. For this reason, the Chamber finds that face distortion is justified for P-3114 in the present proceedings.

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<sup>146</sup> Response, para. 92.

<sup>147</sup> Response, para. 93.

93. The Chamber notes that P-3108 and P-3113's names and roles within the Prosecution are publically available on the internet. However, the fact that they work specifically on the CAR II investigation is not public. [REDACTED]. In a context in which investigations are continuing in the present situation, the Chamber considers that further publication of this association creates an objectively justifiable risk to P-3108 and P-3113 and those with whom they work. Accordingly, the Chamber finds that the protective measures requested for P-3108 and P-3113 in the present proceedings are justified. Accordingly, the Chamber grants P-3108 and P-3113 in-court protective measures in the form of the use of a pseudonym, facial distortion and private and closed sessions.

94. The Chamber notes that P-3115's name and role within the Prosecution have not been publically disclosed. The Chamber is satisfied that protective measures are justified in order to preserve his ability to perform his investigative functions pursuant to article 54 of the Statute. Accordingly, the Chamber grants P-3115 in-court protective measures in the form of the use of a pseudonym, facial distortion and private and closed sessions.

**G. Witnesses Subject to Protective Measures in the *Yekatom and Ngaïssona* Case**

95. The Prosecution submits that 'four of its witnesses, namely P-0884, P-2251, P--2232 and P-1339 are [...] already subject to continuing protective measures ordered in the *Yekatom and Ngaïssona* case' and that regulation 42(1) of the Regulations is unequivocal in providing 'that protective measures, once ordered in any proceedings, shall continue to have full force and effect in relation to any other proceedings before the Court'.<sup>148</sup> The Prosecution states that 'Trial Chamber V ordered in-court protective measures for these witnesses in the form of voice and facial distortion, the use of pseudonym and permitted private sessions, as necessary' and that the same measures are warranted in this case as the testimony of the 'witnesses is expected to be substantially similar [...] and the risk level remains unchanged [...]'.<sup>149</sup>

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<sup>148</sup> Request, para. 36.

<sup>149</sup> Request, para. 37.

96. The Defence argues that the Prosecution cannot simply refer to Regulation 42(1) of the Regulations and claim that the risk level remains unchanged without substantiating the existence of an objective, concrete, personal and present risk in the context of the present case.<sup>150</sup> It submits that the Chamber must have all the relevant information before it in order to decide in an informed manner whether such measures should be revised or not.<sup>151</sup>

97. The Chamber has reviewed the decision issued by Trial Chamber V in the *Yekatom and Ngaïssona* case and the reasons provided for granting protective measures in that case and considers that the continuation of protective measures in the context of the present case is justified.<sup>152</sup> Accordingly, the Chamber confirms that in-court protective measures in the form of voice and facial distortion, the use of pseudonym and use of private sessions continue to apply in this case in respect of P-0884, P-2251, P-2232 and P-1339.

## **H. Other Requests**

### *1. Requests regarding VWU Report before the Witness Testifies*

98. The Defence underlines that the situation vis-à-vis individual witnesses should be reassessed before they actually testify and requests that the VWU be required to prepare a report a few weeks before the witnesses' appearance and that the security of the witness be discussed with him at the hearing in order to ensure that any protective measures granted are justified by the existence of objective, concrete, personal and current risks.<sup>153</sup> The Prosecution and the Common Legal Representative of Victims also note that the situation of individual witnesses may change and should be subject to reassessment prior to their appearance as witnesses.<sup>154</sup>

99. In its email of 9 September 2022, the VWU informed the Chamber that it agrees with the Prosecution's Request for protective measures. It noted that the final evaluation

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<sup>150</sup> Response, paras 96-97.

<sup>151</sup> Response, para. 96.

<sup>152</sup> Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses, 9 March 2021, ICC-01/14-01/18-906-Conf-Exp; a public redacted version was issued on 19 April 2021 (ICC-01/14-01/18-906-Red2).

<sup>153</sup> Response, para. 101.

<sup>154</sup> Request, para 11; Victims' Response, paras 4-5, 30-31.

of the vulnerability of particular witnesses would be done after the witness familiarisation process just before the witness testifies in order to take stock of the witness's fears and psychological condition at the time that they testify. It indicates that as a result, it is rarely in a position to send its report more than half a day before the witness's appearance. It suggests that the assessment report should be sent to the Chamber together with its recommendations, while the parties and participants should be provided with the recommendations only.

100. The Chamber notes that the VWU agrees with the Prosecution's Request for protective measures and that the Prosecution and the Common Legal Representative of Victims are conscious of the need to keep the situation of individual witnesses under review. In these circumstances, the Chamber expects the parties and participants or the VWU to apprise it of any relevant changes in the situation of the witnesses mentioned in the present decision and it does not otherwise consider it necessary to receive an additional report from the VWU immediately prior to their testimony unless there is a change in their circumstances. The Chamber expects the VWU to consult with the witnesses on the protective and special measures ordered in the present decision and enquire as to whether they consent to the imposition of these measures. If the witness does not consent or if the VWU would recommend variation of the measures ordered, the VWU is instructed to provide the relevant information and recommendation to the Chamber at least one day before the witness's appearance.<sup>155</sup>

101. Regarding the vulnerability assessment for affected witnesses, the Chamber confirms that the report and recommendations should be sent to it at least half a day before the witness's appearance, and that only the recommendations should be provided to the parties and participants.

## 2. *Protective Measures sought by the Common Legal Representative of Victims*

102. The Common Legal Representative of Victims notes that the Prosecution did not seek protective 'measures for dual status individual P-1743, although the same

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<sup>155</sup> Rule 87(1) of the Rules provides that '[t]he Chamber shall seek to obtain, whenever possible, the consent of the person in respect of whom the protective measure is sought prior to ordering the protective measure'.

circumstances justifying protective measures apply to said witness'.<sup>156</sup> She reports that during a recent consultation, P-1743 indicated that he was 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'.<sup>157</sup> Therefore, the Common Legal Representative of Victims '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'.<sup>158</sup>

103. The Defence objects to this request and argues that the Common Legal Representative of Victims merely reports vague and generic statements that reveal a reticence to testify.<sup>159</sup> It submits that the witness does not identify any risk to himself or his family and only shares the security situation in Bangui and argues that there is not sufficient information to determine that protective measures are justified in these circumstances.<sup>160</sup>

104. The Chamber recalls its approach to the assessment of risk as set out above.<sup>161</sup> Although the Common Legal Representative of Victims has not provided information regarding the witness's current location, the Chamber notes that his application for participation as a victim indicates that he [REDACTED]. Given the nature of the testimony that the witness is expected to give and his reported fear of the consequences of testifying without protective measures for himself and his family, the Chamber is satisfied that an objectively justifiable risk has been made out in respect of P-1743 and that the protective measures sought are necessary. Accordingly, the Chamber grants P-1743 in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and closed sessions.

### 3. *Common Legal Representative of Victims' Request to be Present*

105. The Common Legal Representative of Victims submits that it is important to have a member of her team present next to dual status individuals who will testify by video-

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<sup>156</sup> Victims' Response, para. 28.

<sup>157</sup> Victims' Response, para. 28.

<sup>158</sup> Victims' Response, para. 28.

<sup>159</sup> Response, para. 98.

<sup>160</sup> Response, para. 98.

<sup>161</sup> See above paras 17-19.

link.<sup>162</sup> She states that '[t]he experience in other trials has shown that the presence of the legal representative (or delegated member of his/her team) next to the witness at the same location contributes to reassuring the person concerned'.<sup>163</sup>

106. The Chamber considers the justification for this request to be vague and unsubstantiated. Therefore, it rejects the Common Legal Representative of Victims request to have a member of her team present next to dual status individuals who will testify by video-link.

### **I. Impact of the Protective Measures**

107. The Chamber notes that the requested in-court protective measures are intended to protect the identities of the witnesses. Notwithstanding these measures, it will be possible to hear much of their testimony in public session; closed or private session will only be used for critical portions of the testimony to protect the witnesses' identity or security. Therefore, it finds 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.

108. The Chamber also considers that the protection of certain witnesses, as necessary, will not prejudice the rights of the Accused. Although the Defence will be required to conduct its investigations with due regard to the protection afforded, the Chamber is satisfied that the provisions of the *Protocol on the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant* as annexed to the current version of the Chambers Practice Manual and adopted in this case<sup>164</sup> will allow the Defence team to effectively pursue its investigation strategy.

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<sup>162</sup> Victims' Response, para. 29.

<sup>163</sup> Victims' Response, para. 29.

<sup>164</sup> Pre-Trial Chamber II, Order on disclosure and related matters', 7 April 2021, ICC-01/14-01/21-50-Conf; a public redacted version was issued on 12 May 2022 (ICC-01/14-01/21-50-Red).

**FOR THESE REASONS, THE CHAMBER HEREBY**

**GRANTS** in-court protective measures in the form of the use of pseudonym, face and voice distortion, and use of private and closed sessions as and when necessary in respect of P-1167, P-2161, P-2563, P-2478, P-1737, P-2573, P-0349, P-2240, P-3056, P-3064, P-2692, P-0664, P-1762, P-2607, P-1263, P-2931, P-1429, P-1264, P-0834, P-2400, P-2241, [REDACTED], [REDACTED], [REDACTED], and P-1743;

**REJECTS** the request for in-court protective measures in respect of P-0435 and P-3112;

**GRANTS** the special measures in the form of psychological support for Witnesses P-0547, P-0834, P-1762, P-1263, P-1264, P-2400 subject to receipt of a report from the VWU prior to the witness's testimony confirming that this measure is necessary and that the witness consents to the presence of a psychologist;

**GRANTS** in-court protective measures in the form of the use of face distortion in respect of P-3114;

**REJECTS** the request for in-court protective measures in respect of P-3114 in the form of the use of pseudonym and use of private and closed sessions in the present proceedings;

**GRANTS** in-court protective measures in the form of the use of a pseudonym, facial distortion and private and closed sessions as and when necessary in respect of P-3108, P-3113 and P-3115;

**CONFIRMS** that in-court protective measures in the form of voice and facial distortion, the use of pseudonym and use of private sessions as and when necessary continue to apply in this case in respect of P-0884, P-2251, P-2232 and P-1339;

**REJECTS** the Common Legal Representative of Victims' request to have a member of her team present next to dual status individuals who will testify by video-link; and

**ORDERS** the parties and participants to apprise it of any relevant changes in the situation of the witnesses mentioned in the present decision and instructs the VWU to report to the Chamber as outlined in paragraphs 100-101 above.



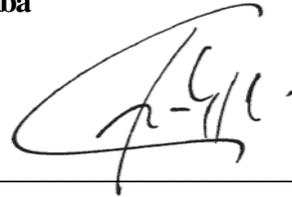
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**Judge Miatta Maria Samba**  
**Presiding Judge**



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**Judge María del Socorro Flores Liera**



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**Judge Sergio Gerardo Ugalde Godínez**

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

Dated 26 September 2022

At The Hague, The Netherlands