

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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

Date: **19 January 2023**

**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 *PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

**Public  
with Confidential Annex A**

**Public Redacted Version of “Prosecution’s Second Request for In-Court Protective Measures”, ICC-01/14-01/21-577-Conf, dated 16 December 2022**

**Source:** Office of the Prosecutor

**Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**

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## I. INTRODUCTION

1. Pursuant to Trial Chamber VI's ("Chamber") Direction on the Conduct of Proceedings,<sup>1</sup> the Office of the Prosecutor ("Prosecution") requests in-court protective measures and special measures for 15 of its trial witnesses ("Request"), in accordance with articles 64 and 68 of the Rome Statute ("Statute"), and rules 87 and 88 of the Rules of Procedure and Evidence ("Rules").

2. The Prosecution seeks in-court protective and special measures for the following crime base and contextual Witnesses P-0358, P-0491, P-0510, P-0622, P-0662, P-1180, P-1289, P-1524, P-1808, P-1967, P-2172, P-2179, P-2263, P-2519, and P-3047: (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 witnesses psychological well-being. The requested measures with detailed justifications are set out in Annex A for each witness.

3. The protective measures sought are necessary and appropriate in view of the objectively justifiable risk faced by the witnesses, if their identity became known to the public. They are requested on a case-by-case basis and are, in each case, the least restrictive means available to appropriately balance the Accused's right to a fair and public trial with the Court's obligation to protect the physical and psychological well-being, dignity, and privacy of victims and witnesses who appear before it. The measures requested are not prejudicial to or inconsistent with the rights of Mr SAID and a fair and impartial trial.

## II. CONFIDENTIALITY

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<sup>1</sup> ICC-01/14-01/21-251, paras. 47-48.

4. Pursuant to Regulation 23bis(1) of the Regulations, this Request is filed confidential because it contains identifying and other sensitive information about the Prosecution's witnesses. The Prosecution will file a public redacted version as soon as practicable.

### III. SUBMISSIONS

#### A. Overview of requested measures

5. The Chamber has allowed the Witnesses P-0358, P-0491, P-0510, P-0622, P-0662, P-1180, P-1289, P-1524, P-1808, P-1967, P-2172, P-2179, P-2263, P-2519, and P-3047 to appear pursuant to rule 68(3) of the Rules at trial.<sup>2</sup> The Prosecution informed the Chamber that it intends to call the latter witnesses to testify pursuant to rule 68(3) of the Rules<sup>3</sup> per the Chamber's instructions.<sup>4</sup>

6. Annex A to this Request sets out the witnesses for whom protective measures are sought, indicating for each witness: (i) the witness's pseudonym; (ii) the witness's name; (iii) the intended mode of testimony; (iv) the location of testimony (remote via video-link or at the ICC headquarters); (v) the in-court protective measures requested (pseudonym, face and voice distortion, private and closed sessions); (vi) the in-court special measures requested (psychological support); (vii) the witness's dual status (if any); and (viii) key facts and security incidents that demonstrate the need for protective measures.

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<sup>2</sup> ICC-01/14-01/21-556 (P-0358, P-1180, P-2263); ICC-01/14-01/21-507-Conf (P-0491, P-0510, P-0662, P-1524, P-1808); ICC-01/14-01/21-555-Conf (P-0622, P-1289, P-2172, P-2179, P-2519 and P-3047); and ICC-01/14-01/21-551-Conf (P-1967).

<sup>3</sup> Prosecution E-mails on 31 October 2022 at 09:21 (witnesses P-1524, P-0491, P-0510, P-0662, and P-1808), on 30 November 2022 at 17:25 (witnesses P-0622, P-1289, P-2172, P-2179, P-2519, and P-3047), on 1 December 2022 at 09:04 (witnesses P-0358, P-1180, and P-2263), and on 14 December 2022 at 18:20 (witness P-1967).

<sup>4</sup> ICC-01/14-01/21-507-Conf, paras. 95, 126, 139, 146 ; ICC-01/14-01/21-555-Conf, paras. 20, 26, 42, 49, 74, 84 ; ICC-01/14-01/21-551-Conf, para. 15 ; and ICC-01/14-01/21-556, para. 33.

7. The Prosecution requests that the Chamber order the use of pseudonym, face and voice distortion, and the use of private and closed sessions for the 15 Witnesses P-0358, P-0491, P-0510, P-0622, P-0662, P-1180, P-1289, P-1524, P-1808, P-1967, P-2172, P-2179, P-2263, P-2519, and P-3047.

8. The Prosecution requests that the Chamber order special measures, namely psychological support, pursuant to rule 88 of the Rules, for 10 Witnesses P-0510, P-0622, P-0662, P-1180, P-1289, P-1967, P-2179, P-2263, P-2519, and P-3047 in order to facilitate the testimony of traumatised witnesses, subject to the Registry's input on the matter.

9. This Request addresses the in-court protective measures that are reasonably foreseeable at this moment. The Prosecution notes that modifications to some of the requested measures may be requested in the future. The Prosecution monitors the situation of each witness and will promptly approach the Chamber if there is any change in circumstances in the future. It will also promptly inform the Chamber should protective measures no longer be necessary for any of its witnesses.

## **B. Objectively justifiable risk to the witnesses' security**

### *1. The current security situation in the CAR remains volatile*

10. 13 of the witnesses included in Annex A reside in the Central African Republic ("CAR"), with all of them living in Bangui, except for one.<sup>5</sup> Two other witnesses, P-0510 and P-1967, have immediate family in the CAR who would be at risk if the witnesses' cooperation with the Court were to become public, or have other particular circumstances that justify protective measures as set out in the Annex.

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<sup>5</sup> P-1524.

11. When granting in-court protective measures, the security situation in a country and region is to be considered a relevant factor.<sup>6</sup> The security situation in the CAR remains “[REDACTED]”<sup>7</sup> and “[REDACTED]”.<sup>8</sup> [REDACTED].<sup>9</sup> [REDACTED].<sup>10</sup> [REDACTED].<sup>11</sup>

12. The majority of witnesses included in this application are *victims*. The OPCV communicated in the past that “*regarding the volatile security situation in the CAR, victims continue to indicate that they are living in permanent fear*”.<sup>12</sup>

*2. Mr ADAM and Mr SAID’s associates may retaliate against witnesses, if their identity is publicly known*

13. Mr SAID has been a member of armed groups in the CAR for 12 years prior to his arrest<sup>13</sup> and continues to hold influence over the *Front Populaire pour la Renaissance de la Centrafrique* (the “FPRC”) and its affiliates in the CAR. One of the leaders of the FPRC is Nouradine ADAM, for whom an arrest warrant has been issued and made

<sup>6</sup> ICC-01/04-02/06-824-Red, para. 14; ICC-01/04-02/06-1004-Conf-Red, para. 5; ICC-01/04-02/06-1383-Red2, para. 12; ICC-01/09-01/11-902-Red2, para. 14. See also *Prosecutor v Rwamakuba*, Decision on the Defence Motion for Protective Measures, ICTR-98-44C-PT, T.Ch. III, 21 September 2005, para. 9; *Prosecutor v Furundzija*, Decision on Prosecutor’s Motion Requesting Protective Measures for Witnesses “A” and “D” at Trial, IT-95-17/1-T, T. Ch.II, 11 June 1998, paras. 7-8; *Delalić et al.*, Decision on the Motion by the Prosecution for Protective Measures for the Witness Designated by the Pseudonym “N”, IT-96-21-T, T.Ch., 28 April 1997, paras. 7-9 (reasoning that: “[e]ven if witness’s fears have not been substantiated by objective evidence, they cannot be disregarded as irrational. They must be seen in the light of the normal tensions that exist in the aftermath of the conflict. It is not unusual for people to take the law into their own hands against their enemies, real or imagined, in such situations, and in the circumstances, fear of probable attacks is not an abnormal reaction. A Trial Chamber cannot, therefore, summarily dismiss the personal fears of a witness it is mandated to protect under Article 22 of the Statute”).

<sup>7</sup> See ICC-01/14-01/21-560-Conf and Annex, paras. 1-5, 55-57, 59-63.

<sup>8</sup> See also Media press article, Global centre for the responsibility to protect dated 1 December 2022, [Central African Republic - Global Centre for the Responsibility to Protect \(globalr2p.org\)](#); HRW report dated 2022 on events in the CAR in 2021, [Rapport mondial 2022: République centrafricaine | Human Rights Watch \(hrw.org\)](#).

<sup>9</sup> ICC-01/14-01/21-560-Conf-Anx, para. 3.

<sup>10</sup> ICC-01/14-01/21-560-Conf-Anx, para. 2.

<sup>11</sup> ICC-01/14-01/21-560-Conf-Anx, paras. 4 and 59. See also Media press article, HumAngle dated 28 November 2022 reporting on clashes between the CPC and national forces in Bossangoa and intense gunfire in Bangui, [Fierce Fighting Between CPC Rebels And National Forces In CAR - HumAngle Media](#); Media press article, Corbeau News dated 8 December 2022 reporting an attack of the CPC to Bangui as “imminent”, [Wagner menace ouvertement les États voisins de la Centrafrique \(corbeau-news-centrafrique.org\)](#).

<sup>12</sup> ICC-01/14-01/21-336, para. 18.

<sup>13</sup> ICC-01/14-01/21-236-Conf, paras. 26-27.

public.<sup>14</sup> Mr ADAM is said to be in the CAR and has made public statements in relation to his arrest being sought. He has reportedly [REDACTED].<sup>15</sup> According to a local media *Corbeau News*, Mr ADAM would have “warned that Bangui will soon fall” and that CAR President Touadéra and him will “soon go to the ICC”.<sup>16</sup>

14. The vast majority of the witnesses subject to this Request either [REDACTED]. Furthermore, while they do not directly implicate Mr SAID, many of these witnesses provide evidence on alleged crimes committed at the OCRB that if proven can be attributed to Mr SAID by virtue of the acts of other co-perpetrators and demonstrate a pattern of criminality relevant to the charged crimes as well as the contextual elements of crimes against humanity.

15. In this broad context of instability and considering the continuing influence of Mr ADAM in the CAR, in-court protective measures are justified for witnesses even if they do not directly live within the areas of influence of the FPRC and its supporters, but are accessible to ensure their safety once they return to their respective communities.

16. According to recent media coverage, the FPRC and its off-shoot rebel groups - including the CPC - and partner groups continue to engage in armed hostilities which show that Mr SAID’s support network is still armed and continues to destabilise the CAR.<sup>17</sup> There is no indication that Mr SAID has broken ranks with the FPRC or has fallen out with its current leadership, former colleagues or subordinates since his

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<sup>14</sup> ICC-01/14-41-Red.

<sup>15</sup> ICC-01/14-01/21-560-Conf-Anx, para. 56. *See also* Media press article, Africa Intelligence dated 6 September 2022, [CENTRAFRIQUE/SOUDAN : Dans le nord de la RCA, Noureddine Adam tente de rallier des groupes dissidents sous sa bannière - 06/09/2022 - Africa Intelligence](#), media press article, Corbeau news dated 6 September 2022, [Noureddine Adam tente de rallier des groupes dissidents sous sa bannière \(corbeaunews-centrafrique.org\)](#).

<sup>16</sup> ICC-01/14-01/21-560-Conf-Anx, para. 56. *See also* Media press article, Corbeau News published on 15 September 2022, [Noureddine Adam prévient, Bangui va tomber bientôt : « Touadéra et moi nous serons à la CPI » \(corbeaunews-centrafrique.org\)](#).

<sup>17</sup> Reports cited in ICC-01/14-01/21-335, para. 6 (dated 30 May 2022). *See also* fn. 11.

arrest. There is therefore a real possibility that the FPRC or its members in their private capacity, may approach Prosecution witnesses, if their identity is known, in an attempt to influence, threaten or harm them to prevent them from testifying.

17. The Prosecution had previously reported that the CPC was targeting persons they perceived as 'traitors'.<sup>18</sup> The Chamber noted in its decision on interim release that even if these threats were not attributable to Mr SAID, "*this clearly shows how fragile the security situation is for ICC witnesses residing inside the CAR*".<sup>19</sup> Further, the Chamber observed that "*the VWU considers [REDACTED]*".<sup>20</sup>

18. In light of Mr ADAM's apparent continuous influence over and support in the CAR, and the clear links of Mr SAID to the armed groups of the FPRC and the CPC, the risk of his supporters exerting pressure on witnesses to change their testimony, either directly or indirectly remains high. The actions of Mr ADAM and Mr SAID's supporters could increase the risk to the physical security and safety of witnesses testifying openly on behalf of the Prosecution and who, after their testimony, will return to their homes in the CAR.

### *3. Specific risks for witnesses from the region*

19. The Prosecution notes that evidence of prior direct threats to a witness, or his/her family, are not a prerequisite for determining that a witness faces an objectively justifiable risk that warrants protective measures. The determination of whether a risk exists necessarily involves a degree of prediction and speculation and is to be performed on a case by case basis, taking into account the individual circumstances of each witness.

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<sup>18</sup> ICC-01/14-01/21-236-Conf, para. 24.

<sup>19</sup> ICC-01/14-01/21-247-Conf, para. 32.

<sup>20</sup> ICC-01/14-01/21-247-Conf, para. 33. See also ICC-01/14-01/21-318, para. 53.

20. Finally, the witness's own understanding of their security situation can (and should) be taken into account according to article 68(2) of the Statute, but is not determinative.<sup>21</sup> Even where a witness may have indicated that they would be open to testifying publicly, the Prosecution – and the Chamber – should not rely exclusively on the witness's perception at the expense of an objective assessment of the risk. Where protective measures are objectively justified, they should be implemented in order to protect the witness, even when the witness may perceive that they are not at any risk.

#### 4. *Crime base and contextual witnesses*

21. Against the aforementioned background, protective measures are requested for the witnesses to protect them from possible retaliation and to protect their privacy and dignity.<sup>22</sup>

22. First, a number of these witnesses are *victims* of crimes allegedly committed at the OCRB in 2013 while Mr SAID was in charge and Mr ADAM was his superior. If left unprotected, these witnesses would be identifiable to Mr ADAM and other co-perpetrators of the charged crimes. Such potential threat actors would have an interest to interfere with them, as they may fear prosecution themselves.<sup>23</sup>

23. Second, several of these witnesses are also participating as victims in this proceeding.<sup>24</sup> They face a heightened risk of stigmatisation upon their testimony should their cooperation with the Prosecution become public.

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<sup>21</sup> ICC-01/14-01/18-906-Red, para. 32. *See also* ICC-02/04-01/15-612-Red, para. 29; ICC-01/09-01/11-902-Red2, para. 14.

<sup>22</sup> *See* Annex A.

<sup>23</sup> *See* Annex A, Witnesses P-0358, P-0510, P-0622, P-0662, P-1180, P-1289, P-1524, P-1808, P-1967, P-2179, P-2263, P-2519 and P-3047.

<sup>24</sup> *See* Annex A, Witnesses P-1180 (a/70292/22), P-1289 (a/70289/22), P-2519 (a/70309/22), and P-3047 (a/70314/22).

24. Furthermore, most of the witnesses do not have access to any additional protection measures linked to their profession or social status, and most would be easily accessible within Bangui to supporters of Mr SAID or other potential threat actors such as Mr ADAM.<sup>25</sup>

25. In-court protective measures for the witnesses will ensure that they can provide full accounts without fear for 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.

### **C. The measures requested do not prejudice the Accused**

26. The requested measures are not prejudicial to or inconsistent with the rights of Mr SAID and a fair and impartial trial. They are necessary and justified as set out in the Prosecution's submissions above and in Annex A. The measures are also proportionate as they would have only a limited impact on the public nature of the proceedings.

27. The measures requested are needed to ensure that the witnesses are able to provide unfettered evidence, and in so doing, assist the Court in establishing the truth. The identities of all witnesses are known to the Accused and his Defence team. The Accused will have the same opportunity and ability to question these witnesses as if

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<sup>25</sup> An exception could be made for those witnesses who are members of the FACA, such as P-2519 and P-2179. However, for both witnesses additional factors apply which justify protective measures.

their identities were publicly known and is not prevented from conducting his own enquiries to test the prospective evidence.

28. Although the public will not know the identities of the affected witnesses, a large amount of their testimony will still be given in public. Notably, the Prosecution has not requested that the totality of testimony of any witness be given in closed session. Under the requested measures, private sessions will be used only for limited portions of testimony to protect the identities of witnesses or information that is particularly private or sensitive and therefore likely to affect the psychological well-being, dignity, or privacy of the witness if broadcast publicly.

#### IV. RELIEF SOUGHT

29. For reasons set out above and in Annex A, the Prosecution requests the Chamber to:

- a) grant in-court protective measures in the form of the use of pseudonym, face and voice distortion, and the use of private and closed sessions for 15 Witnesses P-0358, P-0491, P-0510, P-0622, P-0662, P-1180, P-1289, P-1524, P-1808, P-1967, P-2172, P-2179, P-2263, P-2519, and P-3047.
- b) grant special measures in the form of psychological support for 10 Witnesses P-0510, P-0622, P-0662, P-1180, P-1289, P-1967, P-2179, P-2263, P-2519, and P-3047.



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**Karim A. A. Khan KC, Prosecutor**

Dated this 19<sup>th</sup> January 2023  
At The Hague, The Netherlands