

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 24 April 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
*THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public

**Public Redacted Version of “Victims’ response to the ‘Prosecution’s Second Request for In-Court Protective Measures’ (ICC-01/14-01/21-577-Conf)”
No. ICC-01/14-01/21-581-Conf, dated 11 January 2023**

Source: Office of Public Counsel for Victims

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

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I. INTRODUCTION

1. Counsel representing the collective interests of future applicants as well as of applicants in the proceedings and participating victims (the “Common Legal Representative”)¹ hereby submits her response in support of the “Prosecution’s Second Request for In-Court Protective Measures” (the “Request”).²

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

3. In particular, the Common Legal Representative supports the Prosecution’s Request for dual status individuals P-1180, P-1289, P-2263, P-2519, and P-3047.

4. Additionally, in relation to witnesses P-1180, P-2263, and P-3047, for whom the modality of testimony is yet to be determined, the Common Legal Representative requests that a member of her team be authorised to be present at the location of the video-link.

II. PROCEDURAL BACKGROUND

5. On 8 March 2022, Trial Chamber VI (the “Chamber”) issued the Directions on the Conduct of Proceedings setting out the procedure to request protective or special

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” (Trial Chamber VI), [No. ICC-01/14-01/21-278](#), 13 April 2022, para. 29; and the “Decision authorising 20 victims to participate in the proceedings” (Trial Chamber VI), [No. ICC-01/14-01/21-331](#), 27 May 2022.

² See the “Prosecution’s Second Request for In-Court Protective Measures”, with confidential [annex](#), [No. ICC-01/14-01/21-577-Conf](#), 16 December 2022 (the “Request”).

measures pursuant to rules 87 and 88 of the Rules of Procedure and Evidence (the “Rules”).³

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

7. [REDACTED].⁵

8. On 16 December 2022, the Prosecution submitted the Request, seeking in-court protective measures for 15 of its witnesses and special measures for 10 of them.⁶

9. On the same day, the Chamber extended the time limit and directed any responses to the Request to be filed no later than 4pm on 11 January 2023.⁷

III. CLASSIFICATION

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

IV. SUBMISSIONS

11. *Applicable law* – The Common Legal Representative recalls her submissions in relation to the law applicable to protective measures and special measures,⁸ and refers also to the First ICPM Decision.⁹ In particular, she recalls that the Chamber found that

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

⁴ See the “Decision on the Prosecution’s Request for In-Court Protective Measure”, [No. ICC-01/14-01/21-481-Conf](#) and [No. ICC-01/14-01-21-481-Red](#), 21 September 2022 (“First ICPM Decision”), paras. 12-19.

⁵ [REDACTED].

⁶ See the Request, *supra* note 2.

⁷ See the email from Trial Chamber VI to the parties and participants entitled “Suspension of Time Limits during the Winter Recess & Extension of Time Limit for responses to Filings 574 and 577”, 16 December 2022 at 16:54.

⁸ See the “Victims’ response to the ‘Prosecution’s Request for In-Court Protective Measures (ICC-01/14-01/21-356-Red)”, [No. ICC-01/14-01/21-377-Conf](#) and [No. ICC-01/14-01/21-377-Red](#), 27 June 2022 (the “Victims’ Submissions on First ICPM Request”).

⁹ See the First ICPM Decision, *supra* note 4, paras. 12-19.

“protective measures are aimed at preventing harm”¹⁰ and that, as a result, the existence of an objectively justifiable risk to the witnesses must be based on “an assessment of the possibility of future harm”.¹¹ In this regard, Chamber considered that the general security situation in the area of residence of the witnesses and the activities of armed groups to which Mr Said may be linked are relevant considerations.¹²

12. *Protective measures* – The Prosecution requests the use of a pseudonym, voice and facial distortion, and use of private and closed sessions for fifteen witnesses, including five victims or applicants represented by the Common Legal Representative: P-1180, P-1289, P-2263, P-2519, and P-3047.

13. The Common Legal Representative concurs with the Prosecution that the protective measures requested are necessary and appropriate in view of the objectively justifiable risk faced by the witnesses if their identity became known to the public. As submitted by the Prosecution,¹³ [REDACTED],¹⁴ and as previously accepted by the Chamber, including recently,¹⁵ the security situation in the CAR remains highly volatile,¹⁶ and, as a result, victims continue to report on their fear that their cooperation with the Court become known. All the Common Legal Representative’s clients concerned by the Request still reside in CAR and therefore remain easily reachable by potential threat actors.

14. The Common 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.¹⁷ In this regard, she recalls that the Chamber concluded, in

¹⁰ *Idem*, para. 19.

¹¹ *Ibid.* (emphasis added).

¹² *Ibid.*

¹³ See the Request, *supra* note 2, paras. 13-15.

¹⁴ [REDACTED].

¹⁵ [REDACTED]: [REDACTED].

¹⁶ See the Request, *supra* note 2, paras. 10-12.

¹⁷ *Idem*, paras. 13-18.

accordance with article 58(1)(b)(ii) of the Statute, that the risk of potential witness interference remains high.¹⁸ The Chamber specifically took into account the Accused's potential access to a support network through his current or former role in the FPRC,¹⁹ as well as indications of support for the Accused in the CAR.²⁰

15. As underlined by the Prosecution,²¹ the recent issuance of an arrest warrant against Nouradine Adam exacerbates this risk factor by drawing more attention to the present proceedings and those perceived as being associated with the Court. Additionally, testifying individuals are more likely to be identified and targeted as a result of the opening of the trial: hearings are easily available to the general public and [REDACTED].²²

16. In addition to being justified and necessary, the Common 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.²³

17. *Special measures* – The Prosecution requests special measures in the form of psychological support for 10 witnesses, including five victims or applicants represented by the Common Legal Representative: P-1180, P-1289, P-2263, P-2519 and P-3047.²⁴

¹⁸ See the "Public redacted version of 'Decision on the Defence Application for Interim Release of Mahamat Said Abdel Kani and Contact Restrictions'" (Trial Chamber VI), [No. ICC-01/14-01/21-247-Red](#), 3 March 2022, para. 36.

¹⁹ *Idem*, paras. 27-28.

²⁰ *Ibid*. The Decision was confirmed by the Appeals Chamber. 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; the "First Review of the detention of Mr Mahamat Said Abdel Kani", [No. ICC-01/14-01/21-382](#), 29 June 2022, para. 28, and the "Judgement on the appeal of Mr Mahamat Said Abdel Kani against the decision of Trial Chamber VI entitled 'First review of the detention of Mr Mahamat Said Abdel Kani'", [No. ICC-01/14-01/21-460](#), 23 August 2022, paras 42-46.

²¹ See the Request, *supra* note 2, paras. 13-18.

²² [REDACTED].

²³ See the Request, *supra* note 2, paras. 26-28.

²⁴ *Idem*, paras. 8 and 29(b).

18. The Common Legal Representative concurs with the Prosecution assessment that special measures in the form of psychological support should be granted to her clients, subject to the Registry's input on the matter.²⁵ She recalls her submission according to which a flexible approach should be adopted, allowing for reassessing and adapting the necessary measures to the evolving circumstances.²⁶

19. In this regard, she posits that the provision of the Registry's input on the matter is sufficient and that, as ruled by the Chamber in the First Decision on ICPM, no further information is required to reach a conclusion as to whether the proposed measures are warranted, and that it is neither appropriate nor necessary to provide the Defence with specific medical or psychological information in this regard.²⁷

20. In relation to P-1180, P-2263 and P-3047, whose mode of testimony is yet to be determined (*viva voce* or via video-link), the Common Legal Representative reiterates her request to have a member of her team present at the video-link location during the testimony.²⁸ The Common Legal Representative is cognisant of the fact that the Chamber previously rejected this request for it was considered "*vague and unsubstantiated*".²⁹ She therefore offers the following observations for the Chamber's consideration.

21. First, P-1180, P-2263 and P-3047 benefit from dual status precisely because they are victims *themselves* of the charged crimes (direct victims). Victims of the crimes – also referred to as crime-base witnesses – naturally tend to be more vulnerable than other categories of witnesses (such as contextual witnesses or insiders) as a result of the events they experienced and are expected to testify on, which requires that special attention be given to their situation.

²⁵ *Idem*, para. 8.

²⁶ See the Victims' Submissions on First ICPM Request, *supra* note 8, para. 31.

²⁷ See the First Decision on ICPM, *supra* note 4, paras. 21-24.

²⁸ See the Victims' Submissions on First ICPM Request, *supra* note 8, paras. 29-30.

²⁹ See the First Decision on ICPM, *supra* note 4, paras. 105-106.

22. In this respect, rule 88 of the Rules does not limit, or restrict, in any way the type of special measure that can be ordered, provided that the measure is aimed at *“facilitat[ing] the testimony of a traumatised victim or witness”*. The Common Legal Representative respectfully submits that the presence of a member of her team at the video-link location can be envisaged as a special measure, which can be ordered, subject to the Registry’s input, to facilitate the testimony of a traumatised witness.

23. Second, when testifying *viva voce*, dual status witnesses have *de facto* a right to have their lawyers in the courtroom. While this has no impact on any party and participant, it does often constitute a source of comfort to witnesses who find themselves in the presence of a familiar individual, thereby leading to a smoother delivery of their testimony. In this regard, the Common Legal Representative underlines that rule 67 of the Rules provides that, when ordering that a testimony takes place by way of video-link, the Chamber shall ensure that the location is conducive to the giving of *“truthful and open testimony and to the safety, physical and psychological well-being, dignity and privacy of the witness”*. Therefore, ensuring that witnesses testifying by video-link are not placed in a situation disadvantageous compared to individuals travelling to The Hague, by allowing the presence of a member of the Common Legal Representative’s team during the testimony, is fully compliant with the applicable legal framework.

24. Third, ensuring that the witness’ testimony unfolds in the best possible conditions by having a member of the Common Legal Representative’s team present does not cause any prejudice whatsoever to the Accused. The Common Legal Representative recalls in this regard that her field counsel is equally bound by the Code of Professional Conduct for counsel and by this Chamber’s decisions – as is any member of her team. Accordingly, the same restrictions concerning the content of exchanges with witnesses apply to any of the Common Legal Representative’s team members.

25. Incidentally, the Common Legal Representative recalls that, whether labelled as a special measure or not, having a member of a legal representative's team present at the video-link location has been accepted in the recent practice at the Court. She thus submits that there is no reason to depart from said practice in the present case.³⁰

26. Accordingly, the Common Legal Representative requests that, in cases when special measures in the form of psychological support are granted to certain witnesses, the Chamber also allows for the presence of one of the Common Legal Representative's team members at the video-link location.

FOR THESE REASONS, the Common Legal Representative respectfully requests the Chamber to grant the Request with respect to her clients, and to allow for the presence of one of her team members at the video-link location in cases special measures in the form of psychological support are granted to them.



Sarah Pellet

Dated this 24th day of April 2023

At The Hague, The Netherlands

³⁰ In this sense, see, *inter alia*, the decision issued by Trial Chamber V in relation to the presence of counsel at the video-link location, available in Annex 46 to the "Eighth Registry Quarterly Report on Decisions issued by way of e-mail from 1 May 2022 to 31 July 2022", [No. ICC-01/14-01/18-1557-Anx46-Red](#), p. 2. See also 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.