

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **5 March 2024**

TRIAL CHAMBER VI

Before: Judge Miatta Maria Samba
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

Public Redacted Version "Third Prosecution request for in-court protective measures", ICC-01/14-01/21-696-Conf, dated 15 February 2024

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Mr Karim A.A. Khan KC
Mr Mame Mandiaye Niang
Ms Holo Makwaia

Counsel for Defence

Ms Jennifer Naouri
Mr Dov Jacobs

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparations

**The Office of Public Counsel
for Victims**

Ms Sarah Pellet
Tars Van Litsenborgh

**The Office of Public Counsel
for the Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Oswaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation
and Reparations Section**

Other

I. INTRODUCTION

1. Pursuant to articles 64 and 68 of the Rome Statute (“Statute”) and rules 87 and 134(3) of the Rules of Procedure and Evidence (“Rules”), the Prosecution requests in-court protective measures (“Request”) for Witness P-2504 who is scheduled to testify between 25-28 March 2024.
2. The protective measures are required because of the ongoing security situation in the Central African Republic (“CAR”) and because P-2504’s profile establishes an objective and justifiable risk if his identity is exposed to the public.
3. Specifically, the Prosecution requests that the following protective measures be applied: (i) the use of a pseudonym in lieu of the Witness’s name; (ii) voice and face distortion; and (iii) the use of limited closed or private session for identifying portions of the testimony.
4. The requested measures will protect the privacy, physical and psychological well-being of P-2504. They will facilitate the provision of his testimony and ensure that P-2504 can fully participate without security concerns. The measures are also proportionate. They are the least restrictive means necessary to fairly balance Mr Said’s right to a fair and public hearing under articles 64(2) and 67(1) of the Statute with the Court’s obligation under articles 64(2), 68(1) and 68(2), to protect the interests of victims and witnesses who appear before it.

II. CONFIDENTIALITY

5. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, this submission is classified as confidential since it contains information that may identify P-2504. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

A. There is an objectively justifiable risk to P-2504

6. P-2504 is [REDACTED]. During the charged period, P-2504 [REDACTED] and [REDACTED]. He currently holds [REDACTED]. He is expected to testify, *inter alia*, about [REDACTED].
7. The application of in-court protective measures in the form of the use of a pseudonym, voice and facial distortion and limited questions in closed/private protects P-2504's (and his family's) security, physical and psychological well-being within the meaning of article 68(1).
 1. *The security situation in CAR poses an objectively justifiable risk to P-2504*¹
8. The "Sixth Registry Report on the Political and Security situation in the Central African Republic"² (covering the period between 16 August and 15 November 2023) reported that the security situation in the CAR "remained particularly fragile and unpredictable with ongoing clashes reported throughout the country..."³ It further reported that "the current perception of the ICC within the CAR civil society and the population has largely been negatively impacted by the

¹ The security situation in a country and region is to be considered a relevant factor when considering the application of in-court protective and special measures. *See* 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").

² ICC-01/14-01/21-659-Conf.

³ ICC-01/14-01/21-659-Conf-Anx, para. 36.

withdrawal of the charges and subsequent release of anti-Balaka leader Maxime Mokom in October 2023.”⁴

9. The Prosecution submits that the security situation and current situation in CAR constitute an objectively justifiable risk to P-2504 if his identity is made public. This risk is particularly acute given P-2504's [REDACTED].
 2. *P-2504 and his family are at an increased risk of being targeted, stigmatised and retaliated against*
10. P-2504 [REDACTED]. He [REDACTED] Mr Said. These facts place P-2504 at an increased risk of being targeted by [REDACTED]. For the same reasons, P-2504 is at risk of being stigmatised and retaliated against. These risks may also impact P-2504's ability to [REDACTED] should his identity be exposed to the public.
11. In addition, on 12 February 2024, P-2504 explicitly requested to testify in a way that does not reveal his identity. P-2504 has previously informed the Prosecution that he [REDACTED].⁵ P-2504 resides with [REDACTED]. As such, risks to P-2504 extend to members of his family.
12. Protective measures in this instance will ensure that the specific risks to P-2504 and his family are mitigated. It also allows P-2504 to provide his testimony to the Court and fully participate without concern. The Prosecution further submits that the application of protective measures will obviate the need for additional and more intrusive measures later and should P-2504's identity be exposed.

⁴ ICC-01/14-01/21-659-Conf-Anx, para. 53.

⁵ This Court has held that a witness's own understanding of their security situation is a factor that may be taken into account when considering the appropriateness of protective and special measures. *See* 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.

3. *The measures requested do not prejudice the Accused*

13. The factors listed above justify the imposition of protective measures. They are not inconsistent with the rights of Mr Said and do not result in any prejudice. On the contrary, the measures sought are fair and proportionate and will have only a limited impact on the public nature of the proceedings.

IV. RELIEF REQUESTED

14. For the reasons set out above, the Prosecution requests that the Chamber grants its Request.

A handwritten signature in blue ink, appearing to read 'K.A.K.', followed by a horizontal line and a period.

Karim A. A. Khan KC, Prosecutor

Dated this 5th day of March 2024
At The Hague, The Netherlands