

**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, 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

Decision on the Prosecution's Third Request for In-Court Protective Measures

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

The Office of the Prosecutor

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Mr Dov Jacobs

Legal Representatives of Victims

Ms Sarah Pellet

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
for Participation/Reparations**

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**The Office of Public Counsel
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States Representatives

Amicus Curiae

REGISTRY

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Detention Section

**Victims Participation and
Reparations Section**

Other

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’), and rules 87 and 88 of the Rules of Procedure and Evidence (the ‘Rules’) issues this ‘Decision on the Prosecution’s Third Request for In-Court Protective Measures’.

I. PROCEDURAL HISTORY

1. On 21 September 2022, the Chamber issued the Decision on the Prosecution’s Request for In-Court Protective Measures (the ‘First Protective Measures Decision’).¹
2. On 20 April 2023, the Chamber issued the Decision on the Prosecution Second Request for In-Court Protective Measures (the ‘Second Protective Measures Decision’).²
3. On 4 December 2023, the Registry filed the ‘Sixth Periodic Report of the Registry on the Security and Political Situation in the Central African Republic’ for the period 16 August 2023 to 15 November 2023 (the ‘Sixth Report’).³
4. On 15 February 2024, the Office of the Prosecutor (the ‘Prosecution’) filed its third request for in-court protective measures (the ‘Request’).⁴
5. On 26 February 2024, the Defence filed its response to the Request (the ‘Response’).⁵ The Common Legal Representative of Victims did not respond to the Request.

¹ Decision on the Prosecution’s Request for In-Court Protective Measures, 21 September 2022, [ICC-01/14-01/21-481-Red](#). A confidential version was issued simultaneously (ICC-01/14-01/21-481-Conf).

² Decision on the Prosecution Second Request for In-Court Protective Measures, 4 May 2023, [ICC-01/14-01/21-605-Red](#). A confidential version was filed on 20 April 2023 (ICC-01/14-01/21-605-Conf).

³ Sixth Periodic Report of the Registry on the Security and Political Situation in the Central African Republic, 4 December 2023, ICC-01/14-01/21-659-Conf with one confidential annex (ICC-01/14-01/21-659-Conf-Anx) (the ‘Sixth Report’).

⁴ Third Prosecution request for in-court protective measures, 15 February 2024, ICC-01/14-01/21-696-Conf.

⁵ Réponse de la Défense à la « Prosecution’s Third Request for In-Court Protective Measures » (ICC-01/14-01/21-696-Conf), 26 February 2024, ICC-01/14-01/21-708-Conf.

6. On 26 February 2024, the Registry filed the ‘Seventh Periodic Report of the Registry on the Security and Political Situation in the Central African Republic’ for the period 16 November 2023 to 15 February 2024 (the ‘Seventh Report’).⁶

II. SUBMISSIONS

7. In the Request, the Prosecution seeks protective measures for one witness, P-2504.⁷ Specifically, the Prosecution requests that P-2504 be granted: (i) the use of pseudonym; (ii) voice and face distortion; and (iii) the use of limited closed or private sessions for identifying portions of his testimony.⁸

8. In support of the Request, the Prosecution explains that P-2504 is ‘[REDACTED]’ and currently [REDACTED] ‘[REDACTED]’.⁹ The Prosecution notes that the protective measures sought ‘protects P-2504’s (and his family’s) security, physical and psychological well-being within the meaning of article 68(1)’.¹⁰ The Prosecution notes that the ‘security situation and current situation in CAR constitute an objectively justifiable risk to P-2504 if his identity is made public’,¹¹ making reference to the Sixth Report, which notes, *inter alia*, that the security situation in the Central African Republic ‘remained particularly fragile and unpredictable with ongoing clashes reported throughout the country’.¹²

9. The Prosecution further avers that P-2504 is ‘a [REDACTED] who worked alongside the Seleka at [REDACTED] during the charged period’ and ‘visited the OCRB Central and interacted with Mr Said’.¹³ In this regard, the Prosecution submits that this places P-2504 ‘at an increased risk of being targeted by individuals from within his community of origin, and from amongst his former Seleka associates.’¹⁴

⁶ Seventh Period Report of the Registry on the Security and Political Situation in the Central African Republic, 26 February 2024, ICC-01/14-01/21-709-Conf-Corr with one confidential annex (ICC-01/14-01/21-709-Conf-Anx-Corr) (the ‘Seventh Report’).

⁷ Request, ICC-01/14-01/21-696-Conf, para. 1.

⁸ Request, ICC-01/14-01/21-696-Conf, para. 3.

⁹ Request, ICC-01/14-01/21-696-Conf, para. 6.

¹⁰ Request, ICC-01/14-01/21-696-Conf, para. 7.

¹¹ Request, ICC-01/14-01/21-696-Conf, para. 9.

¹² Request, ICC-01/14-01/21-696-Conf, para. 8 referring to the Sixth Report, ICC-01/14-01/21-659-Conf-Anx, para. 36.

¹³ Request, ICC-01/14-01/21-696-Conf, para. 10.

¹⁴ Request, ICC-01/14-01/21-696-Conf, para. 10.

Furthermore, the Prosecution notes that, for the same reasons, ‘P-2504 is at risk of being stigmatised and retaliated against’ and it may also ‘impact P-2504’s ability to perform his duties as [REDACTED] should his identity be exposed to the public.’¹⁵

10. The Prosecution also submits that ‘P-2504 explicitly requested to testify in a way that does not reveal his identity’ and that he and his family have received threats.¹⁶ In this regard, the Prosecution notes that the protective measures will ensure that any risks to P-2504 and his family are mitigated.¹⁷ Last, the Prosecution avers that the protective measures are ‘not inconsistent with the rights of Mr Said’ and are ‘fair and proportionate’ only having a ‘limited impact on the public nature of the proceedings.’¹⁸

11. In the Response, the Defence requests that the Request be rejected.¹⁹ First the Defence makes reference to the principle of the publicity of the proceedings²⁰ and notes that exceptions to this principle must be justified on a case-by-case basis and not prejudice the rights of the defence.²¹ The Defence further notes that such an evaluation involves a particularised analysis with respect to each witness and it is on the party requesting the measure to justify the specific special circumstances that may affect the safety of the witness and general allegations are insufficient in this respect.²²

12. The Defence notes that for the first twenty Prosecution witnesses it has been very difficult to maintain the public nature of their testimony because the majority of what they say will be identifying.²³ In this regard, any question relating to the course of events, the source of knowledge, their relationship with the Prosecution and their credibility can create a risk that the witness will provide identifying information.²⁴ In these circumstances, the Defence submits that the Chamber’s original rationale from the First Protective Measures Decision that the impact of the measures will be limited and proportionate to the need to protect witnesses can reasonably be called into question

¹⁵ Request, ICC-01/14-01/21-696-Conf, para. 10.

¹⁶ Request, ICC-01/14-01/21-696-Conf, para. 11.

¹⁷ Request, ICC-01/14-01/21-696-Conf, para. 12.

¹⁸ Request, ICC-01/14-01/21-696-Conf, para. 13.

¹⁹ Response, ICC-01/14-01/21-708-Conf, para. 40.

²⁰ Response, ICC-01/14-01/21-708-Conf, paras 5-7

²¹ Response, ICC-01/14-01/21-708-Conf, para. 8.

²² Response, ICC-01/14-01/21-708-Conf, paras 9-11.

²³ Response, ICC-01/14-01/21-708-Conf, para. 14.

²⁴ Response, ICC-01/14-01/21-708-Conf, para. 14.

and justifies a more limited approach to the granting of protective measures.²⁵ Further, the Defence submits that if the identities of the witnesses are concealed it makes its investigative work more complex.²⁶

13. In respect of the specific measures requested for P-2504, the Defence submits that the mere fact that P-2504 may have known Mr Said and now [REDACTED] does not justify the granting of protective measures, noting that other witnesses who were considered to be [REDACTED] by the Prosecution and now [REDACTED] have testified without any protective measures.²⁷ In this regard, the Defence avers that the mere fact of being a [REDACTED], or having being at the OCRB during the period of the charges, or having allegedly interacted with Mr Said does not create a risk of P-2504 being targeted, stigmatised or retaliated against justifying the granting of protective measures.²⁸ Further, in this respect, the Defence notes that the arguments put forward by the Prosecution are also not new and do not support the belated request, noting that the when it submitted its earlier applications for protective measures it decided not to include P-2504 indicating that the Prosecution originally considered that P-2504 could testify in open court.²⁹

14. In respect of the Prosecution's submissions regarding the political and security situation in the Central African Republic, the Defence notes that the general security situation of a situation country cannot in and of itself justify the granting of protective measures without demonstrating a real, personal and objective risk to a witness.³⁰ Furthermore, the Defence submits that everyone is free to comment on ongoing proceedings at the Court without this being considered a risk to the proceedings and it is not possible to equate any critical opinion of the Court with a risk to the proceedings.

15. Last, the Defence notes that it has no information regarding the content of any contact between the Prosecution and P-2504,³¹ nor has any recent evidence been provided to support the Prosecution's submission that P-2504 has received threats, with

²⁵ Response, ICC-01/14-01/21-708-Conf, para. 15.

²⁶ Response, ICC-01/14-01/21-708-Conf, para. 16.

²⁷ Response, ICC-01/14-01/21-708-Conf, para. 21.

²⁸ Response, ICC-01/14-01/21-708-Conf, para. 23.

²⁹ Response, ICC-01/14-01/21-708-Conf, paras 24-25.

³⁰ Response, ICC-01/14-01/21-708-Conf, para. 27.

³¹ Response, ICC-01/14-01/21-708-Conf, para. 36.

the only evidence relating to an incident dated in October 2020.³² In this regard, the Defence submits that it appears that the Prosecution has not carried out any independent verification of what P-2504 allegedly told it.³³

III. APPLICABLE LAW

16. The Chamber recalls that in the First Protective Measures Decision it set out the applicable law regarding its approach to requests for in-court protective measures.³⁴ The Chamber adopts its findings in respect of the applicable law as set out in the First Protective Measures Decision for the purpose of the present decision.

IV. ANALYSIS

17. At the outset, the Chamber notes that the Registry has filed an updated security assessment since the Request and the Response were filed. For the purposes of the present decision, the Chamber will have regard to both assessments in order to determine whether protective measures should be granted in the present case. Before turning to the specific protective measures sought by the Prosecution, the Chamber will address a number of the Defence's more general objections.

18. First, in respect of the Prosecution's submission that the security situation in the Central African Republic constitutes an objectively justifiable risk to P-2504,³⁵ the Chamber takes note of the Defence's submissions that this cannot in and of itself justify the granting of protective measures without demonstrating a real, personal and objective risk to a witness.³⁶ However, the Chamber reiterates its previous findings that information regarding the security situation may still be of importance when assessing whether there is an objectively justifiable security risk which may warrant the granting of protective measures. In this regard, the general security situation can have an impact on how national authorities can act and provide assistance and may also have an

³² Response, ICC-01/14-01/21-708-Conf, paras 37-38.

³³ Response, ICC-01/14-01/21-708-Conf, para. 38.

³⁴ First Protective Measures Decision, [ICC-01/14-01/21-481-Red](#), paras 12-19.

³⁵ Request, ICC-01/14-01/21-696-Conf, para. 9.

³⁶ Response, ICC-01/14-01/21-708-Conf, para. 27.

exacerbating effect on the impact of risks or might influence the decision of potential threat actors on whether to act or not.³⁷

19. In respect of the security situation in the Central African Republic, the Chamber notes from the Sixth Report that the ‘security situation has remained particularly fragile and unpredictable with ongoing clashes reported throughout the country’.³⁸ The Chamber observes from the Seventh Report that this continues to appear to be the case. Specifically, the Chamber notes from the Seventh Report that ‘[w]hile the security situation has remained relatively calm in the capital, a deterioration of the security situation has been observed in the provinces with an increase of armed clashes’³⁹ and ‘[t]he political and security situation in the CAR is unlikely to improve in the short to medium term’⁴⁰ with the security environment in the country remaining ‘tense’.⁴¹ Considering the foregoing, the Chamber finds that the security situation in the Central African Republic is a factor that must be taken into consideration for the purposes of determining whether protective measures should be granted for P-2504.

20. In respect of the Defence’s objection that no recent evidence has been provided by the Prosecution to demonstrate that P-2504 or his family have received threats, the Chamber reiterates its previous finding that it ‘does not consider it prudent to investigate claims by witnesses that they have been threatened for the purposes of determining whether protective measures should be granted as this may expose the witness further.’⁴² In this sense, the Chamber recalls that ‘[r]eliance on information provided by the person in this framework is fundamentally different from the assessment of evidence provided by a witness for the purposes of the judgment.’⁴³ Accordingly, the Defence’s submissions in this respect are rejected.

21. Turning to the Defence’s submissions regarding the publicity of the proceedings, the Chamber recalls that the publicity of the proceedings is a factor to be taken into

³⁷ See First Protective Measures Decision, [ICC-01/14-01/21-481-Red](#), para. 19.

³⁸ Sixth Report, ICC-01/14-01/21-659-Conf-Anx, para. 36

³⁹ Seventh Report, ICC-01/14-01/21-709-Conf-Anx-Corr, para. 26.

⁴⁰ Seventh Report, ICC-01/14-01/21-709-Conf-Anx-Corr, para. 34.

⁴¹ Seventh Report, ICC-01/14-01/21-709-Conf-Anx-Corr, para. 3.

⁴² First Protective Measures Decision, [ICC-01/14-01/21-481-Red](#), para. 31; Second Protective Measures Decision, [ICC-01/14-01/21-605-Red](#), para. 30.

⁴³ Second Protective Measures Decision, [ICC-01/14-01/21-605-Red](#), para. 29.

consideration on whether to grant protective measures, however, the Chamber cannot neglect its duty with regard to the protection of witnesses' safety and well-being.⁴⁴ Furthermore, whilst the Chamber acknowledges that it has been difficult to maintain the public nature of testimony during hearings, it finds that this cannot be a reason for refusing protective measures. Indeed the use of private sessions has been required because the parties have been engaging in extensive lines of questioning relating to the witnesses' personal background, as acknowledged by the Defence.⁴⁵ Accordingly, this general submission is also rejected.

22. The Chamber will now turn to the specific measures requested by the Prosecution for P-2504. First, the Chamber observes that P-2504 now works for the [REDACTED] as '[REDACTED]'.⁴⁶ At this juncture, the Chamber notes the Defence's submission that other witnesses of a similar category testified without any protective measures and that this cannot be a reason in and of itself to grant protective measures.⁴⁷ The Chamber finds this submission somewhat contradictory as the Defence also maintains that Chamber must make a case by case assessment for each witness.⁴⁸ Simply because other witnesses of a similar category elected to testify without protective measures does not mean that all witnesses of that category should testify without protective measures. Accordingly, this submission is rejected. The Chamber further notes that, in addition to working for the [REDACTED], P-2504 and his family have received threats from [REDACTED].⁴⁹ The Chamber attaches weight to this for the purpose of determining whether protective measures are required in this instance, particularly in respect of the fact that the threats to him and his family appear to originate from [REDACTED]. In this regard, the Chamber takes note of the witness's own fears with regard to his security situation.⁵⁰

⁴⁴ First Protective Measures Decision, [ICC-01/14-01/21-481-Red](#), paras 12 and 14; Second Protective Measures Decision, [ICC-01/14-01/21-605-Red](#), para. 31.

⁴⁵ Response, ICC-01/14-01/21-708-Conf, para. 14.

⁴⁶ See Request, ICC-01/14-01/21-696-Conf, para. 6.

⁴⁷ Response, ICC-01/14-01/21-708-Conf, paras 21-23.

⁴⁸ Response, ICC-01/14-01/21-708-Conf, paras 8-9.

⁴⁹ Request, ICC-01/14-01/21-696-Conf, paras 10-11.


⁵⁰ See Decision on the Prosecution's Request for reconsideration of the In-Court Protective Measures for Witness P-0435, 8 November 2022, [ICC-01/14-01/21-537-Red](#), para. 6. A confidential version was filed simultaneously (ICC-01/14-01/21-537-Conf).

23. In respect of the nature and content of his anticipated testimony, the Chamber notes that P-2504 used to work alongside the Seleka at [REDACTED] and visited the OCRB Central, where he is alleged to have interacted with the accused. The Chamber finds that this places him at an increased risk of retaliation should his identity become public. In this regard, the Chamber recalls that it has previously 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’.⁵¹

24. Taking the foregoing together, the Chamber finds that protective measures are warranted in this particular instance. Specifically, the Chamber takes note of: (i) the security situation in the Central African Republic; (ii) the content and nature of P-2504’s anticipated testimony; and (iii) the fact that P-2504 is a [REDACTED] and his family have already received threats from [REDACTED], and finds that there is an objectively justifiable risk to this witness and his family should his identity become public. Accordingly, the Chamber grants the protective measures sought by the Prosecution for P-2504.

25. Last, the Chamber notes that both the Prosecution and Defence have not filed public redacted versions of the Request and the Response and are instructed to do so forthwith.

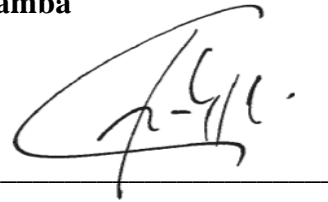
⁵¹ See Second Protective Measures Decision, [ICC-01/14-01/21-605-Red](#), para. 25 referring to Public Redacted version of the Decision on the Defence Application for Interim Release of Mahamat Said Abdel Kani and Contact Restrictions, 3 March 2022, [ICC-01/14-01/21-247-Red](#), para. 27. A confidential version was filed simultaneously (ICC-01/14-01/21-247-Conf).

FOR THESE REASONS, THE CHAMBER HEREBY**GRANTS** the Request;**AUTHORISES** in-court protective measures in the form of the use pseudonym, voice and face distortion, and the use of private and closed sessions when necessary for P-2504;**ORDERS** the Prosecution and Defence to file public redacted versions of the Request and the Response as soon as possible.

Judge Miatta Maria Samba
Presiding Judge



Judge María del Socorro Flores Liera



Judge Sergio Gerardo Ugalde Godínez

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

Dated 5 March 2024

At The Hague, The Netherlands