

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 21 October 2022

TRIAL CHAMBER VI

Before: Judge Miatta Maria Samba, Presiding Judge
Judge 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

Report pursuant to rule 74 of the Rules of Procedure and Evidence

Source: Fabián Raimondo, Legal Adviser to Witness P-2105

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

The Office of the Prosecutor

Mr Karim Khan

Mr Holo Makwaia

Counsel for the Defence

Ms Jennifer Naouri

Mr Dov Jacobs

Legal Representatives of the Victims

Ms Sarah Pellet

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Mr Pieter Vanaverbeke

Victims and Witnesses Unit

Mr Nigel Verril

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. On 4 October 2022, the Chief *ad interim* of the Counsel Support Section of the Registry of the International Criminal Court ('ICC' or 'Court') informed me by email that I had been appointed as the Legal Adviser to Witness P-2105 ('the Witness'). From the text of the notification it follows that the purpose of the appointment is threefold, namely: (i) to notify the Witness of the provisions of rule 74 of the Rules of Procedure and Evidence ('RPE'); (ii) to provide him with legal advice in a language that he fully understands, on issues of self-incrimination that might arise during his testimony before the Trial Chamber; and (iii) to submit to the Trial Chamber a report on the outcome of my meeting with the Witness, including any recommendations as provided in rule 74(3)(c).

2. On 6 October 2022, the Registry informed the Trial Chamber of my appointment.¹

3. Pursuant to my mandate as Legal Adviser to the Witness, I hereby respectfully submit to the Trial Chamber the following report.

II. REPORT

4. On 6, 13 and 19 October 2022 the Office of the Prosecutor ('OTP') granted me electronic access to the following documents: (i) CAR-OTP-2023-0646-R01; (ii) CAR-OTP-2070-0268; (iii) CAR-OTP-2078-0031.riv; (iv) CAR-OTP-2082-0458; (v) Tab 1-CAR-OTP-2078-0003.riv; (vi) Tab 2-CAR-OTP-2084-0191.riv; (vii) Tab 3-CAR-OTP-2081-0037.riv; (viii) Tab 4-CAR-OTP-2083-0003.riv; (ix) Tab 5-CAR-OTP-2081-0062.riv; (x) Tab 6-CAR-OTP-2081-0063.riv; (xi) Tab 7-CAR-OTP-2081-0065.riv; (xii) Tab 8-CAR-OTP-2081-0066.riv; (xiii) Tab 9-CAR-OTP-2081-0067.riv; (xiv) Tab 10-CAR-OTP-2130-7866.riv; (xv) Tab 11-CAR-OTP-2130-7865.riv; (xvi) Tab 12-CAR-OTP-2033-7718.riv; (xvii) Tab 13-CAR-OTP-2033-6811.riv; (xviii) Tab 14-CAR-OTP-2033-6820.riv; (ixx) Tab 15-CAR-OTP-2033-7154.riv; (xx) Tab 16-CAR-OTP-2033-7060.riv; (xxi) Tab 17-CAR-OTP-2033-7061.riv; (xxii) Tab 18-CAR-OTP-2033-7041.riv; (xxiii) Tab 19-CAR-OTP-2033-7056.riv; (xxiv) Tab 20-CAR-OTP-2033-7049.riv; (xxv) Tab 21-CAR-OTP-2033-

¹ ICC-01/14-01/21-495.

6871.riv; (xxvi) Tab 22-CAR-OTP-2033-7001.riv; (xxvii) Tab 23-CAR-OTP-2033-6874.riv; (xxviii) Tab 24-CAR-OTP-2033-6907.riv; (ixxx) Tab 25-CAR-OTP-2033-6874.riv; (xxx) Tab 26-CAR-OTP-2033-7064.riv; (xxxi) Tab 27-CAR-OTP-2033-7703.riv; (xxxii) Tab 28-CAR-OTP-2033-7068.riv; (xxxiii) Tab 29-CAR-OTP-2033-7097.riv; (xxxiv) Tab 30-CAR-OTP-2033-7130.riv; (xxxv) Tab 31-CAR-OTP-2033-7163.riv; (xxxvi) Tab 32-CAR-OTP-2033-7194.riv; (xxxvii) Tab 33-CAR-OTP-2033-7215.riv; (xxxviii) Tab 34-CAR-OTP-2033-7287.riv; (ixl) Tab 35-CAR-OTP-2033-7259.riv; (xl) Tab 36-CAR-OTP-2033-7301.riv; (xl1) Tab 37-CAR-OTP-2033-7250.riv; (xlii) Tab 43-CAR-OTP-2069-3245; (xliii) Tab 57-CAR-OTP-2069-3221.riv; (xliv) Tab 58-CAR-OTP-2069-3222.riv; (xlv) Tab 59-CAR-OTP-2069-3224.riv; (xlvi) Tab 59-CAR-OTP-2114-0323.riv; (xlvii) Tab 60-CAR-OTP-2069-2179.riv; (xlviii) Tab 60-CAR-OTP-2069-3225.riv; (il) Tab 61-CAR-OTP-2069-2180.riv; (l) Tab 61-CAR-OTP-2069-3226.riv; (li) Tab 62-CAR-OTP-2069-1056.riv; (lii) Tab 62-CAR-OTP-2069-3227.riv; (liii) Tab 63-CAR-OTP-2069-1488.riv; (liv) Tab 63-CAR-OTP-2069-3228.riv; (lv) Tab 64-CAR-OTP-2033-5395.riv; (lvi) Tab 64-CAR-OTP-2069-3229.riv; (lvii) Tab 65-CAR-OTP-2033-5402.riv; (lviii) Tab 65-CAR-OTP-2069-3230.riv; (ilx) Tab 66-CAR-OTP-2033-5743.riv; (lx) Tab 66-CAR-OTP-2069-3231.riv; (lxi) Tab 67-CAR-OTP-2033-5839; (lxii) Tab 67-CAR-OTP-2069-3232.riv; (lxiii) Tab 68-CAR-OTP-2067-0120.riv; (lxiv) Tab 68-CAR-OTP-2069-3233.riv; (lxv) Tab 69-CAR-OTP-2069-3234.riv; (lxvi) Tab 70-CAR-OTP-2069-3235.riv; (lxvii) Tab 71-CAR-OTP-2069-1201.riv; (lxviii) Tab 72-CAR-OTP-2069-1202.riv; (ilxx) Tab 73-CAR-OTP-2069-1203.riv; (lxx) Tab 74-CAR-OTP-2069-1205.riv; (lxxi) Tab 75-CAR-OTP-2069-1206.riv; (lxxii) Tab 76-CAR-OTP-2069-1207.riv; (lxxiii) Tab 77-CAR-OTP-2069-1208.riv; (lxxiv) Tab 78-CAR-OTP-2069-1209.riv; (lxxv) Tab 79-CAR-OTP-2069-1210.riv; (lxxvi) Tab 80-CAR-OTP-2069-1991.riv; (lxvii) Tab 81-CAR-OTP-2064-0798.riv; (lxxviii) Tab 82-CAR-OTP-2064-0796.riv; (ilxxx) Tab 83-CAR-OTP-2064-0791.riv; (lxxx) Tab 84-CAR-OTP-2064-0794.riv; (lxxx1) Tab 85-CAR-OTP-2064-0795.riv; (lxxxii) Tab 86-CAR-OTP-2064-0797.riv; (lxxxiii) Tab 87-CAR-OTP-2064-0800.riv; (lxxxiv) Tab 89-CAR-OTP-2047-0334.riv; (lxxxv) Tab 91-CAR-OTP-2069-1990.riv; (lxxxvi) Tab 95-CAR-OTP-2069-0671.riv; and (lxxxvii) Tab 106-CAR-OTP-2054-1339.riv.

5. The above-referred documents include statements made by the Witness and other materials such as photographs.

6. On 20 October 2022 the Witness and I met at the seat of the Court. We conferred in French – a language that the Witness fully understands.

7. During the meeting I notified the Witness of the provisions of rule 74 of the RPE. In particular I explained to him that: (i) where a Chamber determines that an assurance with respect to self-incrimination should be provided to a specific witness, it shall provide the assurances before the witness attends; (ii) witnesses have the right to object to making any statement that might lead to self-incrimination; (iii) the Chamber has the power to require a witness who has attended after receiving an assurance to answer the questions that might lead to self-incrimination; (iv) in the case of witnesses who have not attended after receiving said assurance, the Chamber may require the witness to answer the questions, after assuring the witness that the evidence provided in response to the questions will be kept confidential, will not be disclosed to the public or any State, and will not be used directly or indirectly against the witness in any prosecution before the ICC, except under articles 70 and 71 of the ICC Statute; (v) the Chamber shall seek the views of the Prosecutor, *ex parte*, before determining if the assurance should be given; (vi) the Chamber will decide whether to give such assurances, depending on the importance of the expected evidence, whether the witness would be providing unique evidence, the nature of the possible incrimination, and the sufficiency of the protections for the witness; (vii) if the Chamber decides that it would be inappropriate to give the assurances, it shall not require the witness to answer the questions that may lead to self-incrimination and may continue questioning the witness on other issues; (viii) the Chamber may choose among several measures, to give effect to the assurance; (ix) the witness may advise the Chamber that the testimony will raise issues of self-incrimination before the witness attends and may adopt the measures indicated in rule 74(7); and that (x) if an issue of self-incrimination occurs during the testimony of the witness, the Chamber shall suspend the taking of

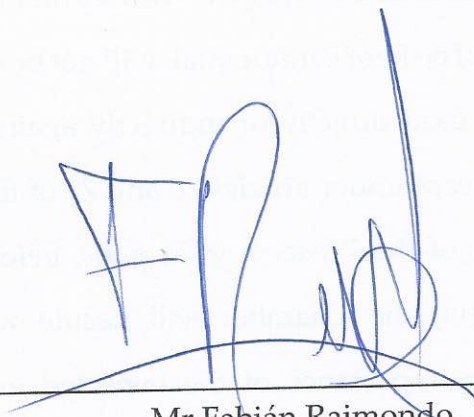
the testimony and give the witness the opportunity to consult with the witness' legal adviser.

8. Nothing in the documents listed in paragraph 4, above, reveals or suggests the involvement of the Witness in crimes within the jurisdiction of the Court.

9. In document CAR-OTP-2078-0003,² the Witness tells OTP staff that he has not committed or participated in the commission of any crime.

10. During my meeting with the Witness, he confirmed the veracity of said statement and informed me that assurances under rule 74 would not be necessary.

11. In light of the foregoing considerations, the Witness and I agreed not to request the adoption of any assurance under rule 74 before the Witness attends, without prejudice to reserving the Witness' right under rule 74(3)(a).



Mr Fabián Raimondo
Legal Adviser to Witness P-2105

Dated this 21 October 2022

At Warmond, the Netherlands

² At p. 17, para. 99.