

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 27 May 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 Version of

**Request for assurances pursuant to Rule 74 of the Rules of Procedure and Evidence
(ICC-01/14-01/21-768-Conf)**

Source: Noah Al-Malt, Legal Advisor to Witness P-0884

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

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Witness P-0884, through his Legal Advisor (“Counsel”), pursuant to Rule 74(9) of the Rules of Procedure and Evidence (“Rules”), hereby requests the Trial Chamber to provide assurances under Rule 74 of the Rules. This request is made necessary to preserve the integrity of the proceedings by enabling the Witness to testify without fear of possible self-incrimination, while also ensuring the truthfulness of his testimony before the Chamber.

I. CLASSIFICATION

1. This request is filed confidentially pursuant to Regulation 23*bis*(2) of the Regulations of the Court since it contains confidential material that could identify Witness P-0884, potentially thwarting the Rule 74 assurances being sought as well as protective measures previously granted. A public redacted version will be filed in due course.

II. PROCEDURAL HISTORY

2. On 6 March 2024, the Registry appointed Counsel to Witness P-0884 to notify him of the provisions of Rule 74 concerning self-incrimination and to provide independent legal advice. The Registry filed the notification of this appointment on 7 March 2024.¹
3. On 7 March 2024, Counsel requested disclosure of Witness P-0884’s evidence from the Prosecution and coordinated with the Victims and Witnesses Unit (“VWU”) to schedule the date and location for consultations with the client.
4. On 11 March 2024, the Prosecution disclosed 23 transcripts of interview, 22 annexes, and five trial transcripts from the *Yekatom and Ngaïssona* case related to P-0884. An additional 12 documents associated with Witness P-0884 were disclosed on 18 March 2024.
5. On 18 March 2024, the VWU informed Counsel that [REDACTED]. Two days later, the VWU informed Counsel that [REDACTED].
6. On 13 May 2024, the Prosecution informed Counsel that [REDACTED].
7. Between 20 and 24 May 2024, Counsel consulted with Witness P-0884 and notified him of the content of Rules 66 and 74 of the Rules, and Articles 70 and 71 of the Rome Statute.

¹ *Prosecutor v. Said*, [ICC-01/14-01/21-717](#), Notification of Appointment of Mr Noah Al-Malt as Legal Adviser to Witness P-0884, 7 March 2024.

III. LAW AND ARGUMENT

8. Prosecution investigators interviewed Witness P-0884 [REDACTED]² and [REDACTED].³ At the start of both interviews, investigators informed him that [REDACTED].⁴ Specifically, investigators informed him [REDACTED].⁵ They also explained, among other things, his rights [REDACTED].⁶
9. Subsequently in July 2021, Witness P-0884 testified for five days during the *Yekatom and Ngaïssona* trial.⁷ At the outset of his testimony, the Presiding Judge informed the Witness that under Rule 74, he could refuse to answer potentially self-incriminating questions and could consult with his counsel for that purpose.⁸ During cross-examination, [REDACTED].⁹ [REDACTED].¹⁰
10. Indeed, under Rule 74(3)(a), the default rule is that a witness may object to giving evidence that might tend to incriminate him or herself. However, Rule 74(3)(c) provides an exception to this rule which enables the Chamber to require a witness to answer self-incriminating questions *after assuring* him or her that the evidence provided will: (i) be kept confidential (and not disclosed to the public or any State); and (ii) not be used directly or indirectly against him or her in any subsequent prosecution by the Court, except under Articles 70 and 71 of the Rome Statute.¹¹ If the Chamber decides not to provide assurances, it shall not require the witness to answer potentially self-incriminating questions under Rule 74(6).
11. Rule 74(2)(3)(c) assurances should be granted to Witness P-0884 in the present proceedings to enable him to testify without fear of self-incrimination. His expected evidence is just as “important”, “unique” and potentially as self-incriminating as in *Yekatom and Ngaïssona*.¹² He is described as “[REDACTED]”,¹³ [REDACTED].¹⁴ The Prosecution Trial Brief relies on his testimony to establish contextual elements for war crimes and crimes against humanity, including: (i) identifying parties to the conflict in CAR; (ii) the pro-Bozizé

² Transcripts CAR-OTP-2072-1335 to CAR-OTP-2072-1913.

³ Transcripts CAR-OTP-2080-1548 to CAR-OTP-2080-1678.

⁴ CAR-OTP-2072-1335, p. 1339, line 124 to p. 1343, line 288; CAR-OTP-2080-1548, pp. 1550, line 66 to p. 1555, line 249.

⁵ CAR-OTP-2072-1335, p. 1341, line 193 to p. 1343, line 262.

⁶ CAR-OTP-2072-1335, pp. 1343, line 267 to p. 1344, line 296.

⁷ ICC-01/14-01/18-T-54; ICC-01/14-01/18-T-55; ICC-01/14-01/18-T-56; ICC-01/14-01/18-T-57; ICC-01/14-01/18-T-58.

⁸ ICC-01/14-01/18-T-54, p. 4, lines 19-25.

⁹ ICC-01/14-01/18-T-57, p. 77, lines 9-12.

¹⁰ ICC-01/14-01/18-T-57, p. 78, lines 12-25.

¹¹ *Prosecutor v. Ongwen*, [ICC-01/12-01/18-2368](#), Decision on assurances pursuant to Rule 74 of the Rules for D-0006, 6 October 2012, para. 3.

¹² See [ICC Rules of Procedure and Evidence](#), Rule 74(5).

¹³ [REDACTED].

¹⁴ ICC-01/14-01/18-T-54, p. 14, line 8 to p. 15, line 22.

forces' level of organization and command; (iii) their training and organization in Cameroon and aim of ousting Michel Djotodia and the Séléka; and (iv) the Séléka's targeting of ethnic groups.¹⁵

12. Accordingly, Witness P-0884 respectfully requests the Trial Chamber to provide him with assurances with respect to any evidence given concerning his: (i) [REDACTED]; and (ii) [REDACTED]. Specifically, the Trial Chamber should: (i) ensure that any questioning of Witness P-0884 on these matters is conducted in private session; and (ii) provide assurances that any evidence given by him on these matters (and any potentially self-incriminating matters) will remain confidential, not be disclosed, and not be used against him in any proceedings under the Court's jurisdiction, except for giving false evidence or committing misconduct.
13. Moreover, since the Trial Chamber confirmed "that in-court protective measures in the form of voice and facial distortion, use of pseudonym, and use of private sessions continue to apply in this case in respect of P-0884",¹⁶ it should hear portions of his testimony covered by the requested assurances in private session to prevent identifying him.
14. Granting the requested assurances will not unduly prejudice any Party, but rather preserve the integrity of the proceedings. Rule 74 assurances do not amount to an agreement against prosecution; nor do they provide any protection against prosecutions for offences under Articles 70 or 71 of the Statute, should the Witness's testimony be false.¹⁷

IV. RELIEF REQUESTED

WHEREFORE, for the reasons above, Witness P-0884 respectfully requests the Chamber to:

- (1) Pursuant to Rules 74(2) and (3)(c) of the Rules, ASSURE P-0884, before the commencement of his testimony, that any evidence given by him in relation to issues identified in paragraph 12 and any matters that "might tend to incriminate" him within the meaning of Rule 74(3)(a) will be kept confidential at all times, not disclosed to the public or any State, and not be used against the Witness in any proceeding under the

¹⁵ *Prosecutor v. Said*, [ICC-01/14-01/21-359-Red](#), Public Redacted Version of "Prosecution's Trial Brief", ICC-01/14-01/21-359-Conf, dated 13 June 2022, 28 June 2022, paras. 18, 38, 47-48, 52.

¹⁶ *Prosecutor v. Said*, [ICC-01/14-01/21-481-Red](#), Decision on the Prosecution's Request for In-Court Protective Measures dated 21 September 2022 (ICC-01/14-01/21-481-Conf), 26 June 2022, para. 98.

¹⁷ *Prosecutor v. Bemba et al.*, [ICC-01/05-01/13-2275-Red](#), Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled "Judgment pursuant to Article 74 of the Statute", para. 1533. See also *Prosecutor v. Katanga and Ngudjolo*, [ICC-01/04-01/07-1665-Corr](#), Directions for the conduct of proceedings and testimony in accordance with rule 140, 1 December 2009, para. 55; *Prosecutor v. Ongwen*, [ICC-02/04-01/15-504](#), Decision on Protocols to be Adopted at Trial, 22 July 2016, para. 23.

Court's jurisdiction, except for giving false testimony or committing misconduct before the Trial Chamber in the present case;

(2) Pursuant to Rule 74(3)(c) of the Rules, ORDER that evidence with respect to matters identified in paragraph 12 and any matters that "might tend to incriminate" him within the meaning of Rule 74(3)(a) shall not be used, directly or indirectly, against him in any subsequent prosecution by the Court, except for giving false testimony or committing misconduct before the Trial Chamber in the present case under Articles 70 and 71 of the Statute; and

(3) Pursuant to Rule 74(3)(c) and 74(7) of the Rules, ORDER that any questioning of P-0884 with respect to matters identified in paragraph 12 and any matters that "might tend to incriminate" him within the meaning of Rule 74(3)(a) be conducted in private session and the transcripts and any records of the proceedings be classified as confidential, and that the identity of P-0884 and the content of his evidence shall not be disclosed to the public or any State.

Respectfully submitted, 27 May 2024,

In The Hague, the Netherlands.



Noah Al-Malt
Legal Advisor to Witness P-0884