

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 11 July 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 *PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public

Public redacted version of “URGENT Request for Assurances under Rule 74(3)(c) of the Rules of Procedure and Evidence”, 5 July 2024, ICC-01/14-01/21-797-Conf

Source: Mr Marc Desalliers, Legal Advisor to Witness P-2573

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 the Defence

Ms Jennifer Naouri
Mr Dov Jacobs

Legal Representatives of Victims

Ms Sarah Pellet

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Mr Juan A. Escudero

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Mr Marc Desalliers, Legal Advisor to P-2573

I. INTRODUCTION

1. Pursuant to Rule 74 of the Rules of Procedure and Evidence ("Rules"), Witness P-2573 respectfully requests Trial Chamber VI ("Chamber") to provide assurances that any potentially self-incriminating evidence given during his testimony 1) will be kept confidential and will not be disclosed to the public or any State, and 2) will not be used either directly or indirectly against him in any subsequent prosecution by the Court, except under Articles 70 and 71 of the Rome Statute ("Statute").

II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis*(1) of the Regulations of the Court ("RoC"), this submission is filed as "Confidential", as it contains sensitive information which might lead to the identification of Witness P-2573. A public redacted version will be filed as soon as practicable.

III. PROCEDURAL HISTORY

3. On 26 June 2024, the Registrar appointed the Legal Advisor to Witness P-2573 to notify him of the provisions of Rule 74 of the Rules concerning self-incrimination and to provide independent legal advice.¹ The notification of the appointment of the Legal Advisor was filed by the Registry on 1 July 2024.²

4. On 1 July 2024, the Prosecution disclosed to the Legal Advisor the written statement provided by Witness P-2573 to the Office of the Prosecutor ("Prosecution"), along with 51 documents that were referred to during his interview.

¹ ICC-01/14-01/21-792-Conf-AnxI.

² ICC-01/14-01/21-792.

5. On 4 July 2024, the Legal Advisor consulted with Witness P-2573 and notified him of the content of Rules 66 and 74 of the Rules, and of Articles 70 and 71 of the Statute.

IV. SUBMISSIONS

6. Assurances under Rule 74(3)(c) of the Rule shall be provided to the witness where the Court determines, pursuant to Rule 74(2), that an assurance with respect to self-incrimination is required. Granting such assurances constitutes an exception to the default rule that a witness may object to making any statement that might incriminate him or her. Such assurances “are thus centred around the prospect of the Chamber compelling answers to questions”.³ If the Chamber decides not to provide assurances, it shall not require the witness to answer potentially self-incriminating questions.⁴

7. It is respectfully submitted that such assurances should be given to Witness P-2573 prior to his testimony before the Court to ensure that he can testify without undermining his fundamental right against self-incrimination.

8. The Prosecution has indicated that it intends to rely on Witness P-2573’s testimony to prove contextual elements in relation to crimes against humanity in the present case.⁵ The Prosecution further identifies incidents/operations described by Witness P-2573 in his statement as reflective of the Seleka’s attack against the civilian population of Bangui⁶ and relevant to demonstrate the Seleka’s policy to attack the civilian population.⁷

³ ICC-02/04-01/15-1096, *Prosecutor v. Dominic Ongwen*, Single Judge on behalf of Trial Chamber IX, Decision on request for Rule 74 Assurances for P-40, 6 December 2017, para. 6.

⁴ Rule 74(6).

⁵ ICC-01/14-01/21-322-Red, para. 14.

⁶ *Idem*, para. 14.

⁷ *Idem*, para. 17.

9. The Legal Advisor submits that the anticipated testimony of Witness P-2573 provides objective reasons for concern regarding possible self-incrimination. P-2573 [REDACTED]. As such, any testimony establishing or bearing on the witness's own actions or omissions [REDACTED] is potentially incriminating.

10. The requested assurances would enable the witness to testify without fear of the consequences of possible self-incrimination and would be conducive to a more open and complete testimony, thus contributing to the integrity of the proceedings and to the cause of justice.

11. The Legal Advisor is mindful that protective measures were granted to P-2573 in the form of a pseudonym and face and voice distortions.⁸ With these measures in place, the risk of self-incrimination may be further mitigated through the use of private sessions, on a case-by-case basis, where it can be anticipated that the witness will provide information that may incriminate him or allow for his identification.

V. RELIEF SOUGHT

12. For the above reasons, it is respectfully requested that the Chamber provides Rule 74 assurances to Witness P-2573 prior to the commencement of his testimony, that evidence given in response to potentially self-incriminating questions during the course of his testimony 1) will be kept confidential and not be disclosed to the public or any State, and 2) will not be used either directly or indirectly against him in any subsequent prosecution by the Court, except under Articles 70 and 71 of the Statute.

⁸ ICC-01/14-01/21-481-Red, paras 44-46.



Marc Desalliers
Legal Advisor, on behalf of Witness P-2573

Dated this 11th day of July 2024
At The Hague, The Netherlands