

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/14-01/18  
Date: 16 December 2021

**TRIAL CHAMBER V**

**Before:** Judge Bertram Schmitt, Presiding Judge  
Judge Péter Kovács  
Judge Chang-ho Chung

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II**

**IN THE CASE OF**

***THE PROSECUTOR***

***v.***

***ALFRED YEKATOM AND PATRICE-EDOUARD NGAÏSSONA***

**Public**

**Public Redacted Version of  
'Urgent Request for Assurances under Rule 74(3)(c) of the Rules',  
dated 5 December 2021**

**Source:** Leto Cariolou, Legal Adviser to Witness P-0876

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

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**Unrepresented Victims**

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**REGISTRY**

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**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

Ms Leto Cariolou

## I. INTRODUCTION

1. Pursuant to Rule 74(3)(c) of the Rules of Procedure and Evidence ('Rules'), Witness P-0876 respectfully requests the Chamber to ensure that specific parts of his testimony be kept confidential at all times, not be disclosed to the public or any State, and not be used against him in any subsequent prosecution by the Court, except under Articles 70 and 71 of the Statute.
2. The Request is filed confidentially pursuant to Regulation 23bis(1) of the Regulations of the Court since it contains information which should remain confidential as covered by protective measures that are in force.<sup>1</sup> A public redacted version of the Request will be filed as soon as practicable.

## II. PROCEDURAL HISTORY

3. On 8 January 2021, the Prosecution advised the Chamber in accordance with Rule 74(8) of the Rules that it expected the testimony of certain witnesses, including Witness P-0876, to raise issues of self-incrimination and requested the appointment of counsel pursuant to Rule 74 of the Rules.<sup>2</sup> The Prosecution noted that the relevant witnesses' interviews '*took place in accordance with the Prosecution's founded belief that they had contributed to the commission of crimes within the Court's jurisdiction*'.<sup>3</sup> It anticipated that the witnesses' testimony provides '*several objective reasons for concern regarding possible self-incrimination*' as they were members of the Anti-Balaka during the relevant period, served in different capacities within the group, and '*directly or indirectly contributed to the*

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<sup>1</sup> ICC-01/14-01/18-906-Red2, Public Redacted Version of the Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses, 9 March 2021 (public redacted version dated 19 April 2021), p. 42.

<sup>2</sup> ICC-01/14-01/18-805-Red, Prosecution's Request for the appointment of Duty Counsel Pursuant to Rule 74, 8 January 2021 (public redacted version notified on 11 January 2021).

<sup>3</sup> ICC-01/14-01/18-805-Red, Prosecution's Request for the appointment of Duty Counsel Pursuant to Rule 74, 8 January 2021 (public redacted version notified on 11 January 2021), para. 3.

*criminal policy or purpose of the group, whether by participating in the planning, preparation, and/or execution of Anti-Balaka crimes, including by attending or directing meetings to that effect, or through their involvement in the organisation, structuring, or leadership of the group or of elements committing crimes.’<sup>4</sup>*

4. In this respect, the Prosecution submitted that, in its view, the anticipated testimony of these witnesses establishes:

*“‘contribution’ made by act or omission to the Anti-Balaka’s commission of crimes either directly or indirectly, and with knowledge (a) of the group’s intention to commit these types of crimes, or (b) in furtherance of the group’s criminal purpose or activity.’ This would effectively establish accessory criminal liability under article 25(3)(d), particularly given that it attaches where the contribution affects any aspect of the commission of a crime – (i.e., at any stage- conception, preparation, attempt, or execution), including its subjective or objective elements.”<sup>5</sup>*

5. The Prosecution added that *‘any question eliciting the [...] Witnesses’ knowledge of ongoing Anti-Balaka activities (i.e., the group’s crimes or intention to commit them), or any testimony establishing or bearing on the witness’s own actions (or omissions) in respect of their knowledge of the group’s ‘commission’ of crimes or its criminal policy during the relevant period especially, is incriminating.’<sup>6</sup>*
6. On 29 January 2021, Judge Schmitt acting as Single Judge on behalf of the Trial Chamber directed the Registry to appoint counsel to advise the relevant witnesses, including Witness P-0876, on issues of self-incrimination.<sup>7</sup> His

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<sup>4</sup> ICC-01/14-01/18-805-Red, Prosecution’s Request for the appointment of Duty Counsel Pursuant to Rule 74, 8 January 2021 (public redacted version notified on 11 January 2021), para. 4.

<sup>5</sup> ICC-01/14-01/18-805-Red, Prosecution’s Request for the appointment of Duty Counsel Pursuant to Rule 74, 8 January 2021 (public redacted version notified on 11 January 2021), para. 6 (emphasis in the original).

<sup>6</sup> ICC-01/14-01/18-805-Red, Prosecution’s Request for the appointment of Duty Counsel Pursuant to Rule 74, 8 January 2021 (public redacted version notified on 11 January 2021), para. 7.

<sup>7</sup> ICC-01/14-01/18, Decision on the Prosecution Request for Appointment of Duty Counsel, 29 January 2021, para. 5; ICC-01/14-01/18-631, Initial Directions on the Conduct of the Proceedings, paras. 36-39.

decision was without prejudice to the Chamber's assessment of whether assurances pursuant to Rule 74 will be granted.<sup>8</sup>

7. On 9 March 2021, Judge Schmitt, acting as Single Judge on behalf of the Trial Chamber granted Witness P-0876 in-court protective measures and specifically the use of pseudonym, face and voice distortion vis-à-vis the public.<sup>9</sup> The Single Judge noted that the witness had reported experiencing security incidents that appear related to the witness's prospective cooperation with the Court and considered that such incidents '*compounded by the individual circumstances of this witness, notably his prior role within the Anti-Balaka, his [REDACTED] and the fact that he [REDACTED] demonstrate the existence of an objectively justifiable risk to the witness's legitimate interests protected under Article 68 of the Statute*'.<sup>10</sup>
8. On 26 November 2021, the Registry appointed a Legal Adviser to Witness P-0876 pursuant to Rule 74(10) of the Rules.<sup>11</sup>

### III. SUBMISSIONS

9. Pursuant to Rule 74(3)(c) of the Rules, a Chamber may require a witness to answer a question, after assuring the witness that the evidence provided in response to the question or questions: (i) will be kept confidential and will not be disclosed to the public or any State; and (ii) will not be used either directly

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<sup>8</sup> ICC-01/14-01/18, Decision on the Prosecution Request for Appointment of Duty Counsel, 29 January 2021, para. 6.

<sup>9</sup> ICC-01/14-01/18-906-Red2, Public Redacted Version of the Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses, 9 March 2021 (public redacted version dated 19 April 2021), p. 42.

<sup>10</sup> ICC-01/14-01/18-906-Red2, Public Redacted Version of the Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses, 9 March 2021 (public redacted version dated 19 April 2021), paras. 27, 33, 34, 36.

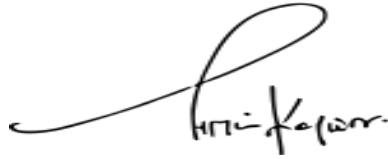
<sup>11</sup> ICC-01/14-01/18, Notification of the Appointment of Ms Leto Cariolou as Legal Adviser to Witness P-0876 (public with confidential annexes I and II), 26 November 2021. The 26 November 2021 appointment substituted an earlier appointment providing for the witness's representation at the Court's field office.

or indirectly against that person in any subsequent prosecution by the Court, except under Articles 70 and 71 of the Statute.

10. In the present circumstances, the Chamber's assurances under both limbs of Rule 74(3)(c) are required for the portions of Witness P-0876's anticipated testimony that concern: (i) any activity of the Anti-Balaka, including their organisation, structure, and financing; (ii) the acts and conduct of individual members, associates and/or affiliates of the Anti-Balaka as well as the witness's relationship with such persons; (iii) the witness's acts and conduct that relate, either directly or indirectly, to any Anti-Balaka activity.
11. The requested guarantees will enable the witness to testify without fear of the consequences of possible self-incrimination. In addition, they are restricted to what is strictly necessary to ensure an appropriate balance between protecting the witness from self-incrimination and the right of the accused to a public trial.
12. In any event, the portions of the witness's testimony covered by the proposed guarantees (as identified in paragraph 10 above) should be taken in closed or private session given the potential of such evidence to lead to the witness's identification.

#### **IV. RELIEF REQUESTED**

13. For the above reasons, it is respectfully requested that the Trial Chamber direct, prior to the commencement of Witness P-0876's testimony in court, that the portions of the witness's testimony that concern Anti-Balaka activities; the acts and conduct of members, associates and/or affiliates of the Anti-Balaka; and the witness's acts and conduct that relate to any Anti-Balaka activity: (i) be kept confidential at all times and not be disclosed to the public or any State; and (ii) not be used, either directly or indirectly, against the witness in any subsequent prosecution by the Court, except under Articles 70 and 71 of the Statute.



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Leto Cariolou  
Legal Adviser to Witness P-0876

Dated this 16th day of December 2021

At The Hague, the Netherlands