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No. ICC-01/14-01/18

Date: 13 May 2022

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

**Decision on the Second Prosecution Request for Appointment of Duty Counsel
for Purposes of Rule 74 of the Rules**

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

The Office of the Prosecutor

Karim A. A. Khan
Mame Mandiaye Niang
Kweku Vanderpuye

Counsel for Alfred Yekatom

Mylène Dimitri
Thomas Hannis
Anta Guissé

Counsel for Patrice-Edouard Ngaïssona

Geert-Jan Alexander Knoops
Richard Omissé-Namkeamai

Legal Representatives of Victims

Abdou Dangabo Moussa
Elisabeth Rabesandratana
Yaré Fall
Marie-Edith Douzima-Lawson
Paolina Massidda
Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Pieter Vanaverbeke

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaiisona*, having regard to Rule 74 of the Rules of Procedure and Evidence (the ‘Rules’) and Regulation 73 of the Regulations of the Court, issues this ‘Decision on the Second Prosecution Request for Appointment of Duty Counsel for Purposes of Rule 74 of the Rules’.

1. On 8 January 2021, within the deadline set by the Presiding Judge,¹ the Office of the Prosecutor (the ‘Prosecution’) requested that the Chamber direct the Registry to identify and appoint, as necessary, qualified counsel to advise 21 witnesses pursuant to Rule 74 of the Rules (the ‘First Request’).²
2. On 29 January 2021, the Single Judge granted the First Request.³
3. On 9 May 2022, the Prosecution requested that the Chamber ‘direct the Registry to identify and appoint, as necessary, qualified counsel to advise witness P-2475 on self-incrimination, pursuant to rule 74, and assign the CLRV to provide such advice with respect to P-2582’ (the ‘Second Request’).⁴
4. On 11 May 2022, within the deadline set by the Single Judge,⁵ the Ngaiisona Defence⁶ and the Common Legal Representatives of Victims of Other Crimes (the ‘CLRV2’)⁷ indicated that they do not intend to respond to the Second Request.

¹ See Initial Directions on the Conduct of the Proceedings, ICC-01/14-01/18-631 (the ‘Initial Directions’), para. 37, where the Presiding Judge set 11 January 2021 as the deadline for any requests by the Prosecution pursuant to Rule 74 of the Rules for witnesses on its Final Witness List.

² Prosecution’s Request for the Appointment of Duty Counsel pursuant to Rule 74, ICC-01/14-01/18-805-Conf (public redacted version notified on 11 January 2021, ICC-01/14-01/18-805-Red), para. 1.

³ Decision on the Prosecution Request for Appointment of Duty Counsel, ICC-01/14-01/18-857, para. 5, p. 4. See also email from the Prosecution to the Chamber, 6 May 2022, at 15:10; email from the Chamber to the Prosecution, 6 May 2022, at 17:41, in which the Single Judge, noting the substantive nature of the Prosecution’s submissions, instructed it to formally file its request on the record.

⁴ Prosecution’s Request for the Appointment of Duty Counsel pursuant to Rule 74, ICC-01/14-01/18-1398-Conf, paras 1, 10.

⁵ Email from the Chamber, 9 May 2022, at 18:37, in which the Single Judge shortened the deadline for responses to the Second Request to 12 May 2022.

⁶ Email from the Ngaiisona Defence, 11 May 2022, at 09:47.

⁷ Email from the CLRV2, 11 May 2022, at 15:22.

5. On the same day, the Yekatom Defence responded to the Second Request, indicating that it would ‘not oppose the appointment of counsel to advise P-2475 on self-incrimination, pursuant to Rule 74’ and would also ‘not oppose the assignment of the [...] [CLR V] to advise witness P-2582, pursuant to Rule 74 and the Chamber’s Initial Directions, on the understanding that any discussions between the CLR V and P-2582 while the latter is under oath would be strictly limited to matters relevant to self-incrimination’.⁸
6. On 12 May 2022, the Common Legal Representative of the Former Child Soldiers (the ‘CLR V1’) responded to the Second Request, submitting that ‘he is best placed to provide to his client, dual status individual P-2582, legal advice regarding the risk of her self-incriminating on account of her testimony’, and informing the Chamber that ‘he is available to do so accordingly’.⁹
7. The Single Judge notes that while the Second Request has been filed 16 months after the expiry of the deadline set by the Presiding Judge, the ‘Initial Directions on the Conduct of the Proceedings’ stipulate that the calling participant shall give this notice ‘*where foreseeable*’.¹⁰ The Single Judge notes the explanation provided by the Prosecution in this regard,¹¹ and considers that the Chamber and participants have been advised of potential issues of self-incrimination sufficiently in advance of the testimony of both witnesses.¹²
8. The Single Judge recalls that the Registry shall make all necessary arrangements to provide independent legal advice to witnesses who may be at risk of incriminating themselves during their testimony. Likewise, he recalls that, unless otherwise ordered by the Chamber, ‘the CLR V shall provide this advice for dual-status witnesses’.¹³

⁸ Yekatom Defence Response to ‘Prosecution’s Request for the Appointment of Duty Counsel pursuant to Rule 74’ (ICC-01/14-01/18-1398-Conf), ICC-01/14-01/18-1401-Conf, paras 2-3, 5.

⁹ Response of the Common Legal Representative of the Former Child Soldiers to the ‘Prosecution’s Request for the Appointment of Duty Counsel pursuant to Rule 74’, ICC-01/14-01/18-1403-Conf, para. 6.

¹⁰ Initial Directions, ICC-01/14-01/18-631, para. 37 (emphasis added).

¹¹ Second Request, ICC-01/14-01/18-1398-Conf, paras 4-6.

¹² See Rule 74(8), (9) and (10) of the Rules.

¹³ Initial Directions, ICC-01/14-01/18-631, para. 38.

9. Accordingly, the Single Judge directs the Registry to appoint counsel to advise P-2475 and directs the CLRV1 to advise P-2582, in line with the Initial Directions regarding issues of self-incrimination that may arise during their respective testimonies.¹⁴
10. The present decision is without prejudice to the Chamber's assessment of whether assurances pursuant to Rule 74 of the Rules will be granted.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

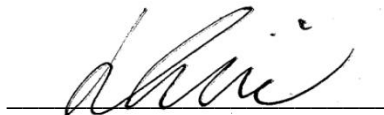
DIRECTS the Registry to appoint duty counsel for P-2475 to advise the witness pursuant to Rule 74 of the Rules, as set out in paragraph 9 above;

DIRECTS the CRLV1 to advise P-2582 pursuant to Rule 74 of the Rules, as set out in paragraph 9 above;

ORDERS the Prosecution to file a public redacted version of the Second Request within one week of notification of this decision; and

ORDERS the Registry to reclassify the responses to the Second Request by the Yekatom Defence and the CLRV1, ICC-01/14-01/18-1401-Conf and ICC-01/14-01/18-1403-Conf, respectively, to public.

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



Judge Bertram Schmitt
Single Judge

Dated 13 May 2022

At The Hague, The Netherlands

¹⁴ Initial Directions, ICC-01/14-01/18-631, paras 38-39.