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No. ICC-01/14-01/18

Date: 29 June 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 Third 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
Marie-Hélène Proulx

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 Ngaïssona*, 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 Third Prosecution Request for Appointment of Duty Counsel for Purposes of Rule 74 of the Rules’.

1. The Single Judge recalls the procedural history set out in his ‘Decision on the Second Prosecution Request for Appointment of Duty Counsel for Purposes of Rule 74 of the Rules’.¹
2. On 15 June 2022, the Office of the Prosecutor (the ‘Prosecution’) requested that the Chamber ‘direct the Registry to identify and appoint, as necessary, qualified counsel to advise witness P-1339 on self-incrimination, pursuant to rule 74’ (the ‘Request’).²
3. On the same day, the Yekatom Defence and the Ngaïssona Defence (the ‘Defence’) indicated that they did not intend to respond to the Request.³
4. The Single Judge notes that the Prosecution filed the Request 17 months after the expiry of the deadline set by the Presiding Judge,⁴ and regretfully also did not include P-1339 in its second ‘Prosecution’s Request for the Appointment of Duty Counsel pursuant to Rule 74’.⁵ He further takes note of the Prosecution’s oversight and the reasons therefore.⁶ While this oversight is unfortunate, the Single Judge notes that the Defence did not raise any issues and considers that

¹ Decision on the Second Prosecution Request for Appointment of Duty Counsel for Purposes of Rule 74 of the Rules, 13 May 2022, ICC-01/14-01/18-1406, paras 1-6.

² Prosecution’s Third Request for the Appointment of Duty Counsel pursuant to Rule 74, ICC-01/14-01/18-1458-Conf (public redacted version notified the same day, ICC-01/14-01/18-1458-Red), paras 1, 10.

³ Email from the Yekatom Defence, 15 June 2022, at 15:52; email from the Ngaïssona Defence, 15 June 2022, at 17:48.

⁴ See Initial Directions on the Conduct of the Proceedings, 26 August 2020, 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 the witnesses on its Final Witness List.

⁵ See Prosecution’s Request for the Appointment of Duty Counsel pursuant to Rule 74, 9 May 2022, ICC-01/14-01/18-1398-Conf (public redacted version notified on 16 May 2022, ICC-01/14-01/18-1398-Red).

⁶ Request, ICC-01/14-01/18-1458-Red, para. 2.

the Chamber and participants have been advised of potential issues of self-incrimination sufficiently in advance of P-1339's testimony.⁷

5. 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.⁸
6. Accordingly, the Single Judge directs the Registry to appoint counsel to advise P-1339 in line with the 'Initial Directions on the Conduct of the Proceedings' regarding issues of self-incrimination that may arise during his testimony.⁹
7. 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-1339 to advise the witness pursuant to Rule 74 of the Rules.

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



Judge Bertram Schmitt

Single Judge

Dated 29 June 2022

At The Hague, The Netherlands

⁷ P-1339's testimony is due to commence on 7 July 2022 (*see* email from the Prosecution, 21 June 2022, at 17:02).

⁸ Initial Directions, ICC-01/14-01/18-631, para. 38.

⁹ Initial Directions, ICC-01/14-01/18-631, paras 38-39.