

Annex 2

Public

From: Trial Chamber I Communications
Sent: 20 December 2022 15:09
To: Jeremy, Edward; Trial Chamber I Communications
Cc: Abd Al Rahman Prosecution Team; D31 Abd-Al-Rahman Defence Team; V47 Abd Al Rahman LRV Team; Associate Legal Officer-Court Officer; Office of the Director DJSS; [REDACTED]
Subject: RE: Rule 74/Duty counsel: P-0921

Dear Mr Jeremy,

The Chamber has taken note of the Prosecution's request in relation to P-0921. The Chamber instructs the Prosecution to provide a summary of the witness's testimony by **Thursday 22 December at noon.**

Kind regards,

[REDACTED]
(on behalf of Trial Chamber I)

From: Jeremy, Edward [REDACTED]
Sent: 20 December 2022 11:25
To: Trial Chamber I Communications [REDACTED]
Cc: Abd Al Rahman Prosecution Team [REDACTED] D31 Abd-Al-Rahman Defence Team [REDACTED] V47 Abd Al Rahman LRV Team [REDACTED] Associate Legal Officer-Court Officer [REDACTED]
Subject: Rule 74/Duty counsel: P-0921

Dear Trial Chamber I,

Pursuant to rule 74 of the Rules of Procedure and Evidence ("Rules") and the Registry's Protocol on the practices to be used to familiarise witnesses for giving testimony at trial, 9 May, 2022, [ICC-02/05-01/20-688-AnxI](#), the Prosecution hereby requests Trial Chamber I (the "Chamber") (i) to direct the Registry to identify and appoint, as necessary, qualified counsel to advise witness **P-0921** on self-incrimination and (ii) to provide the witness assurances under rule 74(3)(c) of the Rules.

I – ASSIGNMENT OF DUTY COUNSEL

Witness P-0921, who is scheduled to testify from **30-31 January 2023**, was interviewed following the procedure established in article 55(2) of the Rome Statute [REDACTED] during the relevant period. [REDACTED]
[REDACTED]
[REDACTED]. During a recent meeting with P-0921 he again requested the assistance of assigned duty counsel.

The Prosecution already identified P-0921 as a self-incriminating witness who may be provided an assurance in respect to self-incrimination pursuant to Rule 74 of the Rules and indicated this to the Chamber (Prosecution's submission of the List of Witnesses and the List of Evidence, [ICC-02/05-01/20-551-Conf-Exp-Anx1](#), p. 7).

The transcripts of the witness' interview do provide grounds for self-incrimination, [REDACTED]
[REDACTED]. The examination of the witness in court will also address this part of the witness' evidence.

As such, given the reasonable expectation that P-0921's examination may support his individual criminal responsibility, the assignment of Duty Counsel in advance of P-0921's testimony is appropriately justified, and will obviate potential disruption or delay of trial.

Should the Chamber grant the Request, the Prosecution suggests that the following measures are in line with the Court's practice: (1) it is incumbent on the Registry to make the necessary arrangements to appoint a qualified lawyer, with no conflict of interest, to provide independent legal advice to P-0921 regarding his potential self-incrimination during testimony; (2) the Prosecution will provide Duty Counsel with the witness's statement and any other relevant material upon notice of their appointment by the Registry; and (3) Duty Counsel should be directed to inform the witness of the offences defined in articles 70 and 71 of the Rome Statute.

II – ASSURANCES PURSUANT TO RULE 74(3)

Witness P-0921 is a valuable insider who provides important, unique evidence regarding case-relevant events [REDACTED]. As such, given that factors listed under rule 74(5) are present, the Prosecution requests the Chamber to assure the witness that the evidence provided in response to potentially self-incriminatory questions which could be asked during the course of his upcoming testimony: (i) will be kept confidential and will not be disclosed to the public or any State; and (ii) 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.

The Prosecution is mindful that P-0921 already benefits from in-court protective measures in the form of the use of a pseudonym and face and voice distortion ([ICC-02/05-01/20-645-Conf-Red](#), para. 62). With these measures in place, the risk of self-incrimination may be further mitigated through the use of closed or private sessions, on a case-by-case basis, where it is envisioned that the witnesses will provide answers that may incriminate him or allow for his identification.

Best wishes,
Edward Jeremy

