

ANNEX 5

PUBLIC

From: Trial Chamber V Communications
Sent: 04 November 2021 19:08
To: Vanderpuye, Kweku; Massidda, Paolina; Trial Chamber V Communications
Cc: Associate Legal Officer-Court Officer; Chamber Decisions Communication; OTP CAR IIB Operations; OTP CAR IIB Case Management; D29 Yekatom Defence Team; D30 Ngaïssona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; Suprun, Dmytro
Subject: Decision on Request for Rule 74 assurances for P-2843
Attachments: RE: TC V Decision on Rule 74 duty counsel for P-2843; RE: TC V Decision on Rule 74 duty counsel for P-2843

Dear all,

The Chamber takes note of the request by P-2843's counsel (*Requête Urgente aux fins d'obtention de garanties de non-incrimination et des mesures de protection au profit de P-2843*, ICC-01/14-01/18-1162-Conf) (the 'Request'); as well as of the responses by the Yekatom Defence and the Ngaïssona Defence (see emails attached), the CLRV and the Prosecution (see emails below).

On the basis of the available information and in light of the specific circumstances (in particular P-2843's prospective evidence and the absence of prior statements), the Chamber considers there to be a risk that the witness may incriminate himself. Nonetheless, the Chamber does not consider that this risk is severe enough to require any general assurances under Rule 74 of the Rules from the outset of the hearing, as requested by counsel. Accordingly, the Request is rejected.

Should issues of self-incrimination arise during the hearing, the Chamber will address them on a case-by-case basis. In this regard, the Chamber notes that the witness may consult his counsel at any point and may object to making any statements that might tend to incriminate him pursuant to Rule 74(3)(a) of the Rules.

Lastly, the Chamber informs Mr Aouini that P-2843's identity will in any case be concealed from the public by virtue of the Chamber's *Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses*, ICC-01/14-01/18-906-Red2, para. 33, p. 41, in which it granted the use of a pseudonym, voice and face distortion, pursuant to Article 68 of the Statute.

The Registry is ordered to inform Mr Aouini of this decision.

Kind regards, TC V

From: Vanderpuye, Kweku [REDACTED]
Sent: 04 November 2021 11:02
To: Massidda, Paolina [REDACTED]; Trial Chamber V Communications
Cc: Associate Legal Officer-Court Officer [REDACTED]; Chamber Decisions Communication [REDACTED] OTP CAR IIB Operations [REDACTED] OTP CAR IIB Case Management [REDACTED] D29 Yekatom Defence Team [REDACTED] D30 Ngaïssona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V44 LRV Team [REDACTED] V45 LRV Team [REDACTED]; Suprun, Dmytro [REDACTED]
Subject: RE: TC V Decision on Rule 74 duty counsel for P-2843
Importance: High

Dear Trial Chamber V,

Dear All,

The Prosecution does not oppose the Requête Urgente ICC-01/14-01/18-1162-Conf. However, given that the content of P-2843's prospective testimony is not 'previewed' (so to speak) absent a statement, the rule 74 issue may be premature. That said, should the witness invoke silence concerning his response to any pertinent question on the grounds that it may tend to incriminate *him*, the Prosecution considers that the Chamber should compel the witness's response, providing such assurances per rule 74(7) as are necessary to ensure his full and truthful testimony. Requiring the witness to answer per rule 74(5)(a) is justified, given that the potential subject matter of his testimony [REDACTED] particularly, are not only 'relevant' to criminal responsibility, but potentially dispositive of the *actus reus* of the charged modes of liability.

We have provided this response informally via email in the interest of time. However, should the Chamber require that our submission be filed, the Prosecution is disposed to do so. Thank you.

Kind regards,

Kweku Vanderpuye

From: Massidda, Paolina [REDACTED]
Sent: 04 November 2021 10:16
To: Trial Chamber V Communications [REDACTED]
Cc: Associate Legal Officer-Court Officer [REDACTED]; Chamber Decisions Communication [REDACTED] OTP CAR IIB Operations [REDACTED]; OTP CAR IIB Case Management [REDACTED]
 D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team [REDACTED]
 [REDACTED]; V44 LRV Team OPCV [REDACTED] V44 LRV Team [REDACTED]
 [REDACTED]; V45 LRV Team [REDACTED]; Suprun, Dmytro [REDACTED]
 [REDACTED]
Subject: RE: TC V Decision on Rule 74 duty counsel for P-2843

Dear All,

The CLR of the victims of the other crimes will also do not file a response.

Kind regards,

Paolina Massidda

From: Suprun, Dmytro [REDACTED]
Sent: 04 November 2021 09:51
To: Trial Chamber V Communications [REDACTED]; OTP CAR IIB Operations [REDACTED]
 [REDACTED] OTP CAR IIB Case Management [REDACTED]
 D29 Yekatom Defence Team [REDACTED] D30 Ngaissona Defence Team [REDACTED]
 [REDACTED]; V44 LRV Team OPCV [REDACTED] V44 LRV Team [REDACTED]
 [REDACTED]; V45 LRV Team [REDACTED]
Cc: Associate Legal Officer-Court Officer [REDACTED]; Chamber Decisions Communication [REDACTED]
Subject: RE: TC V Decision on Rule 74 duty counsel for P-2843

Dear Trial Chamber V,

The CLR of the former child soldiers wishes to inform the Trial Chamber that he does not intend to respond to the Request.

Kind regards,

Dmytro Suprun

From: Trial Chamber V Communications [REDACTED]
Sent: 03 November 2021 18:26
To: Trial Chamber V Communications [REDACTED]; OTP CAR IIB Operations [REDACTED]; OTP CAR IIB Case Management [REDACTED]
 D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V44 LRV Team [REDACTED]; V45 LRV Team [REDACTED]
Cc: Associate Legal Officer-Court Officer [REDACTED] Chamber Decisions Communication [REDACTED]
Subject: RE: TC V Decision on Rule 74 duty counsel for P-2843

Dear all,

As indicated in the decision below, the Single Judge has taken note of the request by P-2843's Rule 74 counsel (Requête Urgente aux fins d'obtention de garanties de non-incrimination et des mesures de protection au profit de P-2843, ICC-01/14-01/18-1162-Conf).

Noting that P-2843's testimony will commence on Friday, 5 November 2021, responses to the request, if any, should be submitted by Thursday, 4 November 2021, at 2 pm.

Kind regards, TC V

From: Trial Chamber V Communications [REDACTED]
Sent: 03 November 2021 16:00
To: OTP CAR IIB Operations [REDACTED] OTP CAR IIB Case Management [REDACTED]; D29 Yekatom Defence Team [REDACTED]
 D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V44 LRV Team [REDACTED]; V45 LRV Team [REDACTED]
Cc: Associate Legal Officer-Court Officer [REDACTED]; Chamber Decisions Communication [REDACTED] Trial Chamber V Communications [REDACTED]
Subject: TC V Decision on Rule 74 duty counsel for P-2843

Dear Counsel, dear colleagues from the Registry,

The Single Judge takes notes of the Registry's notification of the appointment of Mr Hédi Aouini as Legal Adviser to witness P-2843 pursuant to Rule 74(10) of the Rules of Procedure and Evidence (the 'Rules') (see filing ICC-01/14-01/18-1157).

The Single Judge notes that the Prosecution did not raise the need for such appointment for P-2843 in its request (see Prosecution's Request for the Appointment of Duty Counsel pursuant to Rule 74, ICC-01/14-01/18-805-Conf, para. 3, n. 4) and, accordingly, the Chamber did not direct the Registry to identify and appoint, as necessary, a qualified counsel pursuant to Rule 74 of the Rules for this witness (Decision on the Prosecution Request for Appointment of Duty Counsel, ICC-01/14-01/18-857, para. 3, p. 4).

However, considering the specific circumstances, including the witness's prospective evidence and the absence of statements, and out of abundance of caution, the Single Judge agrees with the appointment of the Rule 74 counsel.

Furthermore, the Single Judge has taken note of the request by the Rule 74 counsel (Requête Urgente aux fins d'obtention de garanties de non-incrimination et des mesures de protection au profit de P-2843, ICC-01/14-01/18-1162-Conf), and will rule on it in due course.

Going forward, the Single Judge expects the Prosecution to seek the Chamber's authorisation prior to the appointment of any Rule 74 counsel in accordance with Rule 74(8) of the Rules, and the Registry to verify whether such authorisation exists.

Kind regards, TC V

From: [REDACTED]
Sent: 03 November 2021 18:44
To: Trial Chamber V Communications; OTP CAR IIB Operations; OTP CAR IIB Case Management; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team
Cc: Associate Legal Officer-Court Officer; Chamber Decisions Communication
Subject: RE: TC V Decision on Rule 74 duty counsel for P-2843

Dear Trial Chamber V,

The Defence for Mr Yekatom does not intend to respond to the 'Requête Urgente aux fins d'obtention de garanties de non-incrimination et des mesures de protection au profit de P-2843' (ICC-01/14-01/18-1162-Conf) and respectfully defers to the Chamber's discretion.

Best regards,

[REDACTED]
 Legal Assistant, Yekatom Defence

From: Trial Chamber V Communications [REDACTED]
Sent: 03 November 2021 18:26
To: Trial Chamber V Communications [REDACTED]; OTP CAR IIB Operations [REDACTED]; OTP CAR IIB Case Management [REDACTED]; D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V44 LRV Team [REDACTED]; V45 LRV Team [REDACTED]
Cc: Associate Legal Officer-Court Officer [REDACTED]; Chamber Decisions Communication [REDACTED]
Subject: RE: TC V Decision on Rule 74 duty counsel for P-2843

Dear all,

As indicated in the decision below, the Single Judge has taken note of the request by P-2843's Rule 74 counsel (Requête Urgente aux fins d'obtention de garanties de non-incrimination et des mesures de protection au profit de P-2843, ICC-01/14-01/18-1162-Conf).

Noting that P-2843's testimony will commence on Friday, 5 November 2021, responses to the request, if any, should be submitted by Thursday, 4 November 2021, at 2 pm.

Kind regards, TC V

From: Trial Chamber V Communications [REDACTED]
Sent: 03 November 2021 16:00
To: OTP CAR IIB Operations [REDACTED]; OTP CAR IIB Case Management [REDACTED]; D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V44 LRV Team [REDACTED]; V45 LRV Team [REDACTED]
Cc: Associate Legal Officer-Court Officer [REDACTED]; Chamber Decisions Communication [REDACTED]; Trial Chamber V Communications [REDACTED]

Subject: TC V Decision on Rule 74 duty counsel for P-2843

Dear Counsel, dear colleagues from the Registry,

The Single Judge takes notes of the Registry's notification of the appointment of Mr Hédi Aouini as Legal Adviser to witness P-2843 pursuant to Rule 74(10) of the Rules of Procedure and Evidence (the 'Rules') (see filing ICC-01/14-01/18-1157).

The Single Judge notes that the Prosecution did not raise the need for such appointment for P-2843 in its request (see Prosecution's Request for the Appointment of Duty Counsel pursuant to Rule 74, ICC-01/14-01/18-805-Conf, para. 3, n. 4) and, accordingly, the Chamber did not direct the Registry to identify and appoint, as necessary, a qualified counsel pursuant to Rule 74 of the Rules for this witness (Decision on the Prosecution Request for Appointment of Duty Counsel, ICC-01/14-01/18-857, para. 3, p. 4).

However, considering the specific circumstances, including the witness's prospective evidence and the absence of statements, and out of abundance of caution, the Single Judge agrees with the appointment of the Rule 74 counsel.

Furthermore, the Single Judge has taken note of the request by the Rule 74 counsel (Requête Urgente aux fins d'obtention de garanties de non-incrimination et des mesures de protection au profit de P-2843, ICC-01/14-01/18-1162-Conf), and will rule on it in due course.

Going forward, the Single Judge expects the Prosecution to seek the Chamber's authorisation prior to the appointment of any Rule 74 counsel in accordance with Rule 74(8) of the Rules, and the Registry to verify whether such authorisation exists.

Kind regards, TC V

This message contains information that may be privileged or confidential and is the property of the International Criminal Court. It is intended only for the person to whom it is addressed. If you are not the intended recipient, you are not authorized by the owner of the information to read, print, retain copy, disseminate, distribute, or use this message or any part hereof. If you receive this message in error, please notify the sender immediately and delete this message and all copies hereof.

Les informations contenues dans ce message peuvent être confidentielles ou soumises au secret professionnel et elles sont la propriété de la Cour pénale internationale. Ce message n'est destiné qu'à la personne à laquelle il est adressé. Si vous n'êtes pas le destinataire voulu, le propriétaire des informations ne vous autorise pas à lire, imprimer, copier, diffuser, distribuer ou utiliser ce message, pas même en partie. Si vous avez reçu ce message par erreur, veuillez prévenir l'expéditeur immédiatement et effacer ce message et toutes les copies qui en auraient été faites.

From: [REDACTED]
Sent: 04 November 2021 09:47
To: [REDACTED] Trial Chamber V Communications; OTP CAR IIB Operations; OTP CAR IIB Case Management; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team
Cc: Associate Legal Officer-Court Officer; Chamber Decisions Communication
Subject: RE: TC V Decision on Rule 74 duty counsel for P-2843

Dear Trial Chamber V,

The Defence for Mr Ngaissona defers to the Chamber's discretion on the request ICC-01/14-01/18-1162-Conf. The Defence wishes to stress that guarantees should be granted on a case-by-case basis and will depend on the specific circumstances of P-2843's testimony.

Respectfully,

[REDACTED]
 Legal Assistant, Defence for Mr Ngaissona

From: [REDACTED]
Sent: 3 novembre 2021 18:44
To: Trial Chamber V Communications [REDACTED] OTP CAR IIB Operations [REDACTED]; OTP CAR IIB Case Management [REDACTED] D29 Yekatom Defence Team [REDACTED] D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V44 LRV Team [REDACTED] V45 LRV Team [REDACTED]
Cc: Associate Legal Officer-Court Officer [REDACTED] Chamber Decisions Communication [REDACTED]
Subject: RE: TC V Decision on Rule 74 duty counsel for P-2843

Dear Trial Chamber V,

The Defence for Mr Yekatom does not intend to respond to the 'Requête Urgente aux fins d'obtention de garanties de non-incrimination et des mesures de protection au profit de P-2843' (ICC-01/14-01/18-1162-Conf) and respectfully defers to the Chamber's discretion.

Best regards,

[REDACTED]
 Legal Assistant, Yekatom Defence

From: Trial Chamber V Communications [REDACTED]
Sent: 03 November 2021 18:26
To: Trial Chamber V Communications [REDACTED] OTP CAR IIB Operations [REDACTED]; OTP CAR IIB Case Management [REDACTED] D29 Yekatom Defence Team [REDACTED] D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED] V44 LRV Team [REDACTED]; V45 LRV Team [REDACTED]
Cc: Associate Legal Officer-Court Officer [REDACTED] Chamber Decisions

Communication [REDACTED] >

Subject: RE: TC V Decision on Rule 74 duty counsel for P-2843

Dear all,

As indicated in the decision below, the Single Judge has taken note of the request by P-2843's Rule 74 counsel (Requête Urgente aux fins d'obtention de garanties de non-incrimination et des mesures de protection au profit de P-2843, ICC-01/14-01/18-1162-Conf).

Noting that P-2843's testimony will commence on Friday, 5 November 2021, responses to the request, if any, should be submitted by Thursday, 4 November 2021, at 2 pm.

Kind regards, TC V

From: Trial Chamber V Communications [REDACTED]

Sent: 03 November 2021 16:00

To: OTP CAR IIB Operations [REDACTED]; OTP CAR IIB Case Management

[REDACTED]; D29 Yekatom Defence Team [REDACTED]

D30 Ngaissona Defence Team [REDACTED] V44 LRV Team OPCV [REDACTED]

[REDACTED] V44 LRV Team [REDACTED]; V45 LRV Team [REDACTED]

Cc: Associate Legal Officer-Court Officer [REDACTED] Chamber Decisions Communication [REDACTED] Trial Chamber V Communications [REDACTED]

Subject: TC V Decision on Rule 74 duty counsel for P-2843

Dear Counsel, dear colleagues from the Registry,

The Single Judge takes notes of the Registry's notification of the appointment of Mr Hédi Aouini as Legal Adviser to witness P-2843 pursuant to Rule 74(10) of the Rules of Procedure and Evidence (the 'Rules') (see filing ICC-01/14-01/18-1157).

The Single Judge notes that the Prosecution did not raise the need for such appointment for P-2843 in its request (see Prosecution's Request for the Appointment of Duty Counsel pursuant to Rule 74, ICC-01/14-01/18-805-Conf, para. 3, n. 4) and, accordingly, the Chamber did not direct the Registry to identify and appoint, as necessary, a qualified counsel pursuant to Rule 74 of the Rules for this witness (Decision on the Prosecution Request for Appointment of Duty Counsel, ICC-01/14-01/18-857, para. 3, p. 4).

However, considering the specific circumstances, including the witness's prospective evidence and the absence of statements, and out of abundance of caution, the Single Judge agrees with the appointment of the Rule 74 counsel.

Furthermore, the Single Judge has taken note of the request by the Rule 74 counsel (Requête Urgente aux fins d'obtention de garanties de non-incrimination et des mesures de protection au profit de P-2843, ICC-01/14-01/18-1162-Conf), and will rule on it in due course.

Going forward, the Single Judge expects the Prosecution to seek the Chamber's authorisation prior to the appointment of any Rule 74 counsel in accordance with Rule 74(8) of the Rules, and the Registry to verify whether such authorisation exists.

Kind regards, TC V

This message contains information that may be privileged or confidential and is the property of the International Criminal Court. It is intended only for the person to whom it is addressed. If you are not the

intended recipient, you are not authorized by the owner of the information to read, print, retain copy, disseminate, distribute, or use this message or any part hereof. If you receive this message in error, please notify the sender immediately and delete this message and all copies hereof.

Les informations contenues dans ce message peuvent être confidentielles ou soumises au secret professionnel et elles sont la propriété de la Cour pénale internationale. Ce message n'est destiné qu'à la personne à laquelle il est adressé. Si vous n'êtes pas le destinataire voulu, le propriétaire des informations ne vous autorise pas à lire, imprimer, copier, diffuser, distribuer ou utiliser ce message, pas même en partie. Si vous avez reçu ce message par erreur, veuillez prévenir l'expéditeur immédiatement et effacer ce message et toutes les copies qui en auraient été faites.