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No.: **ICC-01/14-01/18**

Date: **16 May 2022**

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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public

**Public redacted version of “Prosecution’s Request for the Appointment of Duty
Counsel pursuant to Rule 74”, 9 May 2022, ICC-01/14-01/18-1398-Conf**

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests Trial Chamber V (“Chamber”) to direct the Registry to identify and appoint, as necessary, qualified counsel to advise witness P-2475 on self-incrimination, pursuant to rule 74 of the Rules of Procedure and Evidence (“Rules”). Further, in accordance with the Initial Directions on the Conduct of the Proceedings’ (“Initial Directions”),¹ the Prosecution requests that the Common Legal Representative of Victims (“CLRV”) be similarly assigned to advise witness P-2582.

2. Although the Initial Directions required the filing of all rule 74 requests by 11 January 2021,² the risk of [REDACTED] was not fully appreciated, given [REDACTED].³ However, despite this oversight, to ensure that P-2475 and P-2582 can testify without undermining their fundamental right against self-incrimination, the present application is necessary, consistent with rule 74(8).

II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, the Prosecution files this Request as *Confidential* because it contains information that should not be made public. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

4. The Prosecution expects that P-2475’s and P-2582’s prospective testimonies will raise issues of self-incrimination and advises the Chamber accordingly.⁴ Although

¹ ICC-01/14-01/18-631, para. 38.

² ICC-01/14-01/18-631, para. 37.

³ [REDACTED].

⁴ See rule 74(8) (“[w]here the Prosecutor is aware that the testimony of any witness may raise issues with respect to self-incrimination, he or she shall ... advise the Chamber of this, in advance of the testimony of the witness”).

[REDACTED].⁵

5. P-2475's and P-2582's Prior Statements provide several objective reasons for concern regarding possible self-incrimination. Both witnesses were members of YEKATOM's Anti-Balaka Group during the Relevant Period,⁶ and confirm [REDACTED].⁷

6. Given the nature of the alleged crimes and the witnesses' potential [REDACTED] to criminal liability, it is clear that rule 74 assurances are necessary to guarantee that they would not be subject to [REDACTED] on the basis of their testimonies before this Court. Aptly, rule 74(3)(c)(i) allows Chambers to assure witnesses that their evidence "[w]ill be kept confidential and will not be disclosed to the public or any State", to preclude the use of the information as a basis for criminal prosecution.

7. To this extent, the Chamber should direct the Registry to appoint Duty Counsel for witness P-2475, and instruct the CLRV in respect of P-2582, to advise the witnesses regarding their possible self-incrimination. The assignment of counsel for these purposes at this stage is appropriately justified, and will obviate disruption or delay during trial.⁸

8. The Prosecution is mindful that P-2475 and P-2582 already benefit from in-court protective measures in the form of a pseudonym and face and voice distortion.⁹ 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

⁵ [REDACTED].

⁶ As defined in the Prosecution's Trial Brief, from September 2013 through December 2014: ICC-01/14-01/18-723-Red para. 5.

⁷ For P-2475 *see notably* CAR-OTP-2110-0556, at 0565-0566, para. 67, at 0572, paras. 106-107, at 0575, paras. 128-129, at 0575-0576, para. 132, at 0587, para. 216; for P-2582 *see notably* CAR-OTP-2117-0605, at 0610-0611, paras. 34-35, 38-39, at 0613-0614, paras. 52-54, 57-58, at 0615, para. 61, at 0616, para. 65.

⁸ *See* rule 74(10) ("[i]f an issue of self-incrimination arises in the course of the proceedings, the Chamber shall suspend the taking of the testimony and provide the witness with an opportunity to obtain legal advice if he or she so requests for the purpose of the application of the rule").

⁹ ICC-01/14-01/18-906-Conf-Red, p. 44.

envisioned that the witnesses will provide answers that may incriminate them or allow for their identification.

9. Should the Chamber grant the Request, the Prosecution considers the following is further in line with the Court's practice: (1) it is incumbent on the Registry to make the necessary arrangements to appoint a qualified and non-conflicted lawyer to provide independent legal advice to P-2475 regarding potential self-incrimination.¹⁰ In the case of P-2582, the CLRV should similarly provide independent legal advice; and (2) the Prosecution will provide Duty Counsel with the witness' statements as well as any other relevant material upon notice of their appointment by the Registry, as appropriate.

IV. CONCLUSION

10. Based on the foregoing, the Chamber should 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.



Karim A. A. Khan QC, Prosecutor

Dated this 16th of May 2022
At The Hague, The Netherlands

¹⁰ ICC-01/09-01/11-847-Corr, para. 29; ICC-01/04-02/06-619, para. 44.