

ANNEX 34
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Version

From: Trial Chamber V Communications
Sent: 28 June 2024 17:17
To: OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; 'V44 LRV Team'; V44 LRV Team OPCV; V45 LRV Team
Cc: Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber V Communications
Subject: RE: Order following the Prosecution Notification of Possible Self-Incrimination of D30-4848

[ICC] RESTRICTED

Dear Counsel,

The Single Judge takes note of the Prosecution's suggestion below, as well as the Ngaissona Defence's opposition thereto.

In light of the duty counsel's mandate pursuant to Rule 74 of the Rules, and having considered the Chamber's obligations under Article 68 of the Statute, the Single Judge does not consider it necessary to adopt the Prosecution's proposal.

Kind regards, TC V

From: [REDACTED]
Sent: Friday, June 28, 2024 3:57 PM
To: OTP CAR IIB [REDACTED] Trial Chamber V Communications [REDACTED]
 D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team
 <[REDACTED] V44 LRV Team OPCV [REDACTED] V44 LRV Team
 [REDACTED] V45 LRV Team [REDACTED] Associate Legal Officer-Court Officer
 [REDACTED]
Subject: Re: Order following the Prosecution Notification of Possible Self-Incrimination of D30-4848 - ICC-01/14-01/18-2556-Con

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[ICC] RESTRICTED

Dear Trial Chamber V,
 Dear Parties and Participants,

The Defence for Mr Ngaissona opposes the Prosecution's request to instruct witness D30-4848's duty counsel to withhold from his client certain pieces of information pertaining to the nature of possible self-incrimination, including identifying details.

It was upon the Prosecution's notification that the Chamber ordered that a duty counsel be appointed to advise D30-4848 on matters of self-incrimination, pursuant to Rule 74 of the Rules of Procedure and Evidence (ICC-01/14-01/18-2538-Conf). This appointment inherently obliges the counsel in question to fully inform the witness on all relevant legal and factual matters at hand. Instructing duty counsel to withhold information from D30-4848 on the very nature of the risk he has

been appointed to advise on would fundamentally undermine the counsel's ability to execute his mandate effectively. This would contravene the ethical and legal duties owed to his client, as it would impede the counsel's obligation to provide comprehensive legal advice and protect D30-4848's rights.

The Prosecution's Notification rightly rests on the assumption that "D30-4848 may be appropriately questioned regarding such conduct" (ICC-01/14-01/18-2538-Conf, para. 4). The Defence itself intends to discuss the contents of the two reports annexed to the "Prosecution's Notification of possible self-incrimination of a Defence witness pursuant to rule 74" during its examination-in-chief. Ensuring that the witness is fully aware of all details concerning potential self-incrimination during testimony is essential to uphold the integrity of the proceedings and to guarantee the witness' informed participation.

Kind regards,

[REDACTED]

On behalf of the Ngaïssona Defence Team

From: OTP CAR IIB [REDACTED]

Sent: 28 June 2024 09:18

To: Trial Chamber V Communications [REDACTED]; D29 Yekatom Defence Team

[REDACTED] D30 Ngaïssona Defence Team

[REDACTED] V44 LRV Team OPCV <[REDACTED]> 44 LRV Team

[REDACTED] V45 LRV Team [REDACTED] Associate Legal Officer-Court Officer

[REDACTED]; [REDACTED]

[REDACTED]

Cc: OTP CAR IIB [REDACTED]

Subject: Order following the Prosecution Notification of Possible Self-Incrimination of D30-4848 - ICC-01/14-01/18-2556-Con

Dear Trial Chamber V,

Dear all,

The Prosecution takes note of the Chamber's order directing the Registry to appoint duty counsel for D30-4848. In this regard, the Prosecution suggests that, when providing duty counsel with information relating to the nature of the possible self-incrimination, he/she should be instructed not to share identifying details with the client, D30-4848. Due to the nature of the possible self-incrimination (involving allegations of physical threat), disclosing identifying details to the Witness may elevate the security risk. Thus, providing the material to duty counsel for his/her eyes only would be in line with the Court's article 68 obligations to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.

Kind regards,

On behalf of the OTP Trial Team

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