

ANNEX 23

Public Redacted

Version

From: Trial Chamber V Communications
Sent: 01 September 2022 09:48
To: [REDACTED]; Vanderpuye, Kweku; Suprun, Dmytro
Cc: OTP CAR IIB Case Management; OTP CAR IIB Managers; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; D30 Ngaissona Defence Team; D29 Yekatom Defence Team; Associate Legal Officer-Court Officer; Chamber Decisions Communication; [REDACTED] Trial Chamber V Communications
Subject: Decision on 'Urgent Application for Assurances under Rule 74' (ICC-01/14-01/18-1562-Conf)

Dear all,

The Chamber takes note of the request by P-1339's counsel (Urgent Application for Assurances under Rule 74, 31 August 2022, ICC-01/14-01/18-1562-Conf) (the 'Request'), as well as the emails sent by the Yekatom Defence, the CLRV and the Ngaissona Defence, indicating that they do not intend to respond to the Request, as well as the Prosecution's email, indicating that it 'do[es] not oppose the Chamber granting the [assurances] at the outset of P-1339's testimony' (see emails below).

On the basis of the available information, the Chamber considers there to be a risk that the witness may incriminate himself. Nonetheless, the Chamber weighed the need of protecting the witness against the principle of publicity of the proceedings and interests of justice, and considers that general assurances under Rule 74 of the Rules from the outset of the hearing, as requested by counsel, are not necessary. The Request is therefore 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.

Participants should also be extra vigilant during their examinations in relation to areas of potential self-incrimination. Lastly, the Chamber informs Mr Khalil that P-1339'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, paras 50, 52, p. 45, in which it granted the use of a pseudonym, and face and voice distortion for the witness, pursuant to Article 68 of the Statute.

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

Kind regards, TC V

From: [REDACTED]
Sent: 31 August 2022 19:25
To: Vanderpuye, Kweku <[REDACTED]>; Suprun, Dmytro <[REDACTED]>; Trial Chamber V Communications [REDACTED]
Cc: OTP CAR IIB Case Management <[REDACTED]>; OTP CAR IIB Managers <[REDACTED]>; V44 LRV Team <[REDACTED]>; V44 LRV Team OPCV <[REDACTED]>; V45 LRV Team <[REDACTED]>; D30 Ngaissona Defence Team <[REDACTED]>; D29 Yekatom Defence Team <[REDACTED]>; Associate Legal Officer-Court Officer <[REDACTED]>; Chamber Decisions Communication <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: Re: Response to ICC-01/14-01/18-1562-Conf

Dear Trial Chamber V,

The Defence for Mr Ngaissona does not intend to file a response to the request.

Kind regards,

Sara Pedroso

Legal Assistant, Defence for Mr Ngaissona

From: Vanderpuye, Kweku <[REDACTED]>
Sent: 31 August 2022 18:38
To: Suprun, Dmytro <[REDACTED]>; Trial Chamber V Communications

<[REDACTED]>

Cc: OTP CAR IIB Case Management <[REDACTED]>; OTP CAR IIB Managers
 <[REDACTED]>; V44 LRV Team <[REDACTED]>; V44 LRV Team OPCV
 <[REDACTED]>; V45 LRV Team <[REDACTED]>; D30 Ngaissona Defence Team
 <[REDACTED]>; D29 Yekatom Defence Team <[REDACTED]>;
 Associate Legal Officer-Court Officer <[REDACTED]>; Chamber Decisions
 Communication <[REDACTED]>
 <[REDACTED]>

Subject: RE: Response to ICC-01/14-01/18-1562-Conf

Dear Trial Chamber V,

Dear All,

The Prosecution considers that Rule 74 assurances are appropriate. Although, in principle, the nature and extent of these assurances are determined on a case-by-case basis, the testimony of P-1339 is expected to be largely incriminating regardless of the forum in which he may be charged. While the instruction normatively provided by the Chamber in similar situations is sufficient to alert the witness and their Counsel to the conditions of Rule 74 and the possible provision of assurances, as a practical matter, we do not oppose the Chamber granting the same at the outset of P-1339's testimony. Thank you.

Kind regards,

Kweku Vanderpuye

From: Suprun, Dmytro <[REDACTED]>

Sent: 31 August 2022 18:23

To: Trial Chamber V Communications <[REDACTED]>

Cc: OTP CAR IIB Case Management <[REDACTED]>; OTP CAR IIB Managers
 <[REDACTED]>; V44 LRV Team <[REDACTED]>; V44 LRV Team OPCV
 <[REDACTED]>; V45 LRV Team <[REDACTED]>; D30 Ngaissona Defence Team
 <[REDACTED]>; D29 Yekatom Defence Team <[REDACTED]>;
 Associate Legal Officer-Court Officer <[REDACTED]>; Chamber Decisions
 Communication <[REDACTED]>
 <[REDACTED]>

Subject: RE: Response to ICC-01/14-01/18-1562-Conf

Dear Trial Chamber V,

The CLR of the former child soldiers also informs the Trial Chamber that he does not intend to respond to the request.

Kind regards,

Dmytro Suprun

From: Massidda, Paolina <[REDACTED]>

Sent: 31 August 2022 18:17

To: Trial Chamber V Communications <[REDACTED]>

Cc: OTP CAR IIB Case Management <[REDACTED]>; OTP CAR IIB Managers
 <[REDACTED]>; V44 LRV Team <[REDACTED]>; V44 LRV Team OPCV
 <[REDACTED]>; V45 LRV Team <[REDACTED]>; D30 Ngaissona Defence Team
 <[REDACTED]>; D29 Yekatom Defence Team <[REDACTED]>;
 Associate Legal Officer-Court Officer <[REDACTED]>; Chamber Decisions
 Communication <[REDACTED]>; Pages-Granier, Florent <[REDACTED]>
 <[REDACTED]>

Subject: RE: Response to ICC-01/14-01/18-1562-Conf

Dear All,

The CLR of the victims of the other crimes inform the Chamber that they do not intend to file a response to the request.

Kind regards,

Paolina Massidda

From: Trial Chamber V Communications <[REDACTED]>

Sent: 31 August 2022 18:15

To: <[REDACTED]>

Cc: OTP CAR IIB Case Management <[REDACTED]>; OTP CAR IIB Managers

<[REDACTED]>; V44 LRV Team <[REDACTED]>; V44 LRV Team OPCV
 <[REDACTED]>; V45 LRV Team <[REDACTED]>; D30 Ngaissona Defence Team
 <[REDACTED]>; D29 Yekatom Defence Team <[REDACTED]>;
 Associate Legal Officer-Court Officer <[REDACTED]>; Chamber Decisions
 Communication <[REDACTED]>; Trial Chamber V Communications
 <[REDACTED]>

Subject: RE: Response to ICC-01/14-01/18-1562-Conf

Dear all,

The Single Judge takes note of the request by P-1339's Rule 74 duty counsel notified today (Urgent Application for Assurances under Rule 74, 31 August 2022, ICC-01/14-01/18-1562-Conf).

Noting that P-1339's testimony will commence tomorrow, 1 September 2022, at 13:00, further responses to the request, if any, should be submitted by 1 September 2022, at 09:30.

Kind regards, TC V

From [REDACTED]

Sent: 31 August 2022 17:30

To: Trial Chamber V Communications <[REDACTED]>

Cc: OTP CAR IIB Case Management <[REDACTED]>; OTP CAR IIB Managers

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

<[REDACTED]>; V45 LRV Team <[REDACTED]>; D30 Ngaissona Defence Team

<[REDACTED]>; D29 Yekatom Defence Team <[REDACTED]>

Subject: Response to ICC-01/14-01/18-1562-Conf

Dear Trial Chamber V,

The Defence for Mr. Yekatom wishes to inform the Chamber that it does not intend to respond to the "*URGENT APPLICATION FOR ASSURANCES UNDER RULE 74*" (ICC-01/14-01/18-1562-Conf), filed on 31 August 2022, and defers to the discretion of the Chamber.

Kind regards,

[REDACTED]

Legal Consultant

Yekatom Defence

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