

ANNEX 23

PUBLIC

From: Trial Chamber V Communications
Sent: 06 December 2021 17:28
To: [REDACTED] Suprun, Dmytro; OTP CAR IIB Managers; 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; Trial Chamber V Communications
Subject: Decision on 'Urgent Request for Assurances under Rule 74(3)(c) of the Rules' (1199-Conf)
Attachments: RE: Order shortening response deadline to 'Urgent Request for Assurances under Rule 74(3)(c) of the Rules' (1199-Conf); RE: Order shortening response deadline to 'Urgent Request for Assurances under Rule 74(3)(c) of the Rules' (1199-Conf); RE: Order shortening response deadline to 'Urgent Request for Assurances under Rule 74(3)(c) of the Rules' (1199-Conf); RE: Order shortening response deadline to 'Urgent Request for Assurances under Rule 74(3)(c) of the Rules' (1199-Conf); RE: Order shortening response deadline to 'Urgent Request for Assurances under Rule 74(3)(c) of the Rules' (1199-Conf); RE: Order shortening response deadline to 'Urgent Request for Assurances under Rule 74(3)(c) of the Rules' (1199-Conf)

Dear all,

The Chamber takes note of the request by P-0876's counsel (Urgent Request for Assurances under Rule 74(3)(c) of the Rules, ICC-01/14-01/18-1199-Conf) (the 'Request'); as well as of the responses by the CLRV, indicating that they do not intend to file a response, the Prosecution and the Yekatom Defence, indicating that they defer to the Chamber's discretion, and the Ngaissona Defence, opposing the Request (see emails attached).

On the basis of the witness's prior statement and the Prosecution's summary of his expected testimony (in particular, [REDACTED] the Chamber does not consider that any potential risk that the witness may incriminate himself 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 Ms Cariolou that P-0876'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 33, 36, p. 41, in which it granted the use of a pseudonym, and voice and face distortion for the witness, pursuant to Article 68 of the Statute.

The Registry is ordered to inform Ms Cariolou of this decision.

Kind regards, TC V

From: [REDACTED]
Sent: 06 December 2021 14:58
To: Suprun, Dmytro [REDACTED]; Trial Chamber V Communications [REDACTED]
[REDACTED] OTP CAR IIB Managers [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: Order shortening response deadline to 'Urgent Request for Assurances under Rule 74(3)(c) of the Rules' (1199-Conf)

Dear Trial Chamber V,

The Yekatom Defence ("Defence") defers to the Chamber's discretion in relation to "*Urgent Request for Assurances under Rule 74(3)(c) of the Rules*" (ICC-01/14-01/18-1199-Conf), dated 6 December 2021.

However, the Defence is concerned that the testimony, given the subjects highlighted by duty counsel, would be held almost entirely in private session which goes against the principal of publicity and Mr. Yekatom's rights, should the request be granted. However, the Defence understands that issues of self-incrimination might arise and that if any, they should be dealt in private session. Therefore, should issues of self-incrimination arise during the hearing, the Defence respectfully request that they be dealt on a case-by-case basis to minimise as much as possible the number of private sessions.

Kind regards,

From: Suprun, Dmytro [REDACTED]
Sent: lundi 6 décembre 2021 14:54
To: Trial Chamber V Communications [REDACTED]; OTP CAR IIB Managers [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: Order shortening response deadline to 'Urgent Request for Assurances under Rule 74(3)(c) of the Rules' (1199-Conf)

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: 06 December 2021 12:30
To: OTP CAR IIB Managers [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] Trial Chamber V Communications [REDACTED]
Subject: Order shortening response deadline to 'Urgent Request for Assurances under Rule 74(3)(c) of the Rules' (1199-Conf)

Dear all,

The Single Judge takes note of the request by P-0876's Rule 74 duty counsel notified today (Urgent Request for Assurances under Rule 74(3)(c) of the Rules, 5 December 2021, ICC-01/14-01/18-1199-Conf).

Noting that P-0876's testimony will commence tomorrow, 7 December 2021, responses to the request, if any, should be submitted today, by 3 pm.

Kind regards, TC V

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From: [REDACTED]
Sent: 06 December 2021 14:50
To: Trial Chamber V Communications; OTP CAR IIB Managers; 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: Order shortening response deadline to 'Urgent Request for Assurances under Rule 74(3)(c) of the Rules' (1199-Conf)

Dear Trial Chamber V,
 Dear all,

Please note that the CLRV 2 does not intend to submit a response to the request.

Best Regards,

On behalf of the CLRV 2.

From: Trial Chamber V Communications [REDACTED]
Sent: 06 December 2021 12:30
To: OTP CAR IIB Managers [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]; Trial Chamber V Communications [REDACTED]
Subject: Order shortening response deadline to 'Urgent Request for Assurances under Rule 74(3)(c) of the Rules' (1199-Conf)

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The Single Judge takes note of the request by P-0876's Rule 74 duty counsel notified today (Urgent Request for Assurances under Rule 74(3)(c) of the Rules, 5 December 2021, ICC-01/14-01/18-1199-Conf).

Noting that P-0876's testimony will commence tomorrow, 7 December 2021, responses to the request, if any, should be submitted today, by 3 pm.

Kind regards, TC V

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Cc: Associate Legal Officer-Court Officer; Chamber Decisions Communication
Subject: RE: Order shortening response deadline to 'Urgent Request for Assurances under Rule 74(3)(c) of the Rules' (1199-Conf)

Dear Trial Chamber V,
Dear All,

It is the Defence's view that the *Urgent Request for Assurances under Rule 74(3)(c) of the Rules*, 5 December 2021, ICC-01/14-01/18-1199-Conf (the "request") not only lacks substantiation but is also premature.

First, the request lacks substantiation as it fails to describe Witness P-0876's individual circumstances in support the granting of general assurances ahead of his testimony. Rather, it simply identifies three general topics which, according to duty counsel, warrant assurances, without further elaboration (para. 10). This is clearly insufficient.

Second, the request is premature and the Defence refers to the Chamber's ruling of 4 November 2021, in which it held, in relation to Witness P-2843: *"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. (...) 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."* (Email from the Trial Chamber V, 4 November 2021, 19:08).

As such, duty counsel's request that assurances should be provided in advance of P-0876's testimony should be rejected.

Kind regards,

[REDACTED]
Legal Assistant, Defence for Mr Ngaissona

From: Trial Chamber V Communications [REDACTED]
Sent: 06 December 2021 12:30
To: OTP CAR IIB Managers [REDACTED]; OTP CAR IIB Operations [REDACTED]
[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]
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Noting that P-0876's testimony will commence tomorrow, 7 December 2021, responses to the request, if any, should be submitted today, by 3 pm.

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Subject: RE: Order shortening response deadline to 'Urgent Request for Assurances under Rule 74(3)(c) of the Rules' (1199-Conf)

Dear Trial Chamber V,
 Dear All,

Having no objection to the requested relief, the Prosecution defers to the Chamber's judgement and does not intend to file a response.

Kind regards,

On behalf of OTP Trial Team.

From: Trial Chamber V Communications [REDACTED]
Sent: lundi 6 décembre 2021 12:30
To: OTP CAR IIB Managers [REDACTED]; OTP CAR IIB Operations [REDACTED]
 [REDACTED] OTP CAR IIB Case Management [REDACTED]; D29 Yekatom Defence Team
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Noting that P-0876's testimony will commence tomorrow, 7 December 2021, responses to the request, if any, should be submitted today, by 3 pm.

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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

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To: OTP CAR IIB Managers [REDACTED]; OTP CAR IIB Operations [REDACTED]
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However, the Defence is concerned that the testimony, given the subjects highlighted by duty counsel, would be held almost entirely in private session which goes against the principal of publicity and Mr. Yekatom's rights, should the request be granted. However, the Defence understands that issues of self-incrimination might arise and that if any, they should be dealt in private session. Therefore, should issues of self-incrimination arise during the hearing, the Defence respectfully request that they be dealt on a case-by-case basis to minimise as much as possible the number of private sessions.

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[REDACTED]

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To: Trial Chamber V Communications [REDACTED] OTP CAR IIB Managers [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]
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Cc: Associate Legal Officer-Court Officer [REDACTED] Chamber
 Decisions Communication [REDACTED]; Trial Chamber V
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