

ANNEX 15
PUBLIC

From: Trial Chamber V Communications
Sent: 14 April 2021 10:17
To: Vanderpuye, Kweku; Trial Chamber V Communications
Cc: D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; OTP CAR IIB Case Management; OTP CAR IIB Operations; Chamber Decisions Communication; [REDACTED] Associate Legal Officer-Court Officer
Subject: RE: Prosecution Request for Status Conference

Dear Counsel,

The Chamber considers that a status conference with regard to the matters raised in the Prosecution's request below is unnecessary at this point. It further observes that these matters have either already been addressed or are too abstract to warrant the Chamber's intervention at this stage. Specifically, the Chamber notes that the request is almost identical to the Prosecution's previous request for a status conference, which was rejected by the Chamber (see email decision from the Chamber on 26 February 2021, at 09:27, the 'Decision').

The Chamber expects the Prosecution to henceforth abstain from submitting requests relating to matters already dealt with by the Chamber and to act in accordance with the directions given in its Decision.

Accordingly, the request is rejected.

Kind regards, TC V

From: Vanderpuye, Kweku [REDACTED]
Sent: 12 April 2021 19:03
To: Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED] V44 LRV Team [REDACTED] V45 LRV Team [REDACTED] OTP CAR IIB Case Management [REDACTED] OTP CAR IIB Operations [REDACTED] Chamber Decisions Communication [REDACTED]
Subject: RE: Prosecution Request for Status Conference

Dear Trial Chamber V,

Dear All,

In the wake of the first evidentiary block ("First Block"), the Prosecution considers that several issues remain unresolved regarding various aspects of the proceedings which would benefit from at least an airing of the Parties', Participants', and the Chamber's concerns, with a view to identifying workable, pragmatic, and systematic solutions and approaches. Ideally, the Prosecution requests that the Chamber hold a Status Conference on **Friday, 16 April 2021**, or as soon thereafter as practicable.

The Prosecution is fully cognisant of the Chamber's refusal of its previous entreaty to hold a Status Conference in advance of the start of evidence. However, given the number of difficulties that have occurred in respect of nearly all of the issues below, notwithstanding the Chamber's earlier decisions bearing on aspects thereof, the Prosecution considers that a Status Conference would substantially contribute to the efficient conduct of future proceedings. The Prosecution thus considers that discussion on the following matters may be of assistance:

- **Witness production at the seat of the Court**
 - In particular, the application and extent of COVID-19 protocols for which the Chamber's intervention had to be sought repeatedly on an *ad hoc* basis during the last First Block – this can be systematised.
- **Audio/visual-link appearances – *in situ* requirement for Registry personnel**
 - Mindful of the Chamber's guidance, the circumstances involving P-1577 which resulted in the Registry sending personnel abroad for an extended period of time might have been averted if there were clarity on whether their presence *in situ* is *legally* required;
- **Scheduling contingencies** (including, variations of sitting hours).
 - Here, it may be helpful to identify specific circumstances and the extent to which the Registry may consider and extend sitting hours, as circumstances may require – in other words, to ensure that the appropriate mechanisms and personnel are in place to accommodate such circumstances, again a lesson arising from the First Block.
- **Certification issues concerning Rule 68(2) Statements**
 - Mindful of the Chamber's decision requiring the Registry to designate personnel to certify Rule 68(2)(b) declarations, the issue of *remote certifications* given the exigencies of the pandemic is a *legal* issue, and the Chamber may benefit from hearing the Parties and Participants respective positions.
- **Modes of participation for Rule 74 Counsel** (e.g., access to Live Feed)
 - As the testimony of P-0287 underscored, the participation of 'representatives' and/or assigned Rule 74 Counsel will require the ability to advise witnesses – in some cases, confidentially. Both CMS and the Chamber itself play a significant role in determining the modality of participation. Whether the role of Rule 74 Counsel is qualitatively different from other 'representatives' such that the modality of their participation is also distinguishable is for the Chamber's determination. But, the Prosecution considers that the Parties' and Participants' views should be aired.
- **Transcript issues (interpretation/correction/redactions)**
 - The accuracy of the record of proceedings is critical. And, as has been observed, there are certain concerns that have arisen meriting discussion on how best to address transcript issues, particularly the review and the extent of *lesser* public redacted versions, as well as the timing thereof.
- **Ecourt metadata issues**
 - This concerns settling which eCourt fields require population and those that do not, which would increase efficiency and certainty in respect of information management during the course of trial. This may also have bearing on the practice involving the production of eBinders for witnesses.

The Prosecution has broadly canvassed the above issues with the Parties and Participants, who respectively do not object to the holding of a Status Conference, with the exception of the Ngaissona Defence. As it has previously stated, the Ngaissona Defence opposes a Status Conference at this stage as unnecessary, and considers the prospective issues logistical matters that can be better dealt with by way of written submissions. In addition, it considers that the organisation of a status conference will take time and would consume a full day, detracting from its witness preparation. By contrast, the Prosecution believes that a Status Conference would be a far more efficient means for the Parties, Participants, and the Chamber, to vet and address issues, such that subsequent evidentiary blocks are not mired in uncertainty or require continual *ad hoc* solutions to fully foreseeable issues.

The Prosecution very much appreciates the Chamber's consideration of its request, and the continued cooperation of the Parties and Participants.

Kind regards,

Kweku Vanderpuye

From: Trial Chamber V Communications <[REDACTED]>
Sent: 26 February 2021 09:27
To: [REDACTED]; Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V44 LRV Team [REDACTED]; V45 LRV Team [REDACTED]; OTP CAR IIB Case Management [REDACTED]; OTP CAR IIB Operations [REDACTED]; Chamber Decisions Communication [REDACTED]
Subject: RE: Prosecution Request for Status Conference

Dear counsel,

The Chamber takes note of the Prosecution's request (the 'Request') below.

Having considered the matters raised, and noting the Ngaissona Defence's position on the Request, the Chamber does not consider it necessary to hold a status conference at this point.

While the Chamber acknowledges that practical difficulties may arise in light of the Coronavirus Pandemic, the Chamber is of the view that the below matters cannot be addressed in the abstract and, as such, do not require the Chamber's involvement at this stage. Moreover, the Chamber notes that it has already given guidance in relation to a number of issues mentioned (*see*, in particular, email from the Chamber, 3 February 2021, at 10:52, regarding audio/visual link appearances; Decision on the Prosecution's Request to Designate a Person Authorised to Witness a Declaration under Rule 68(2)(b) of the Rules of Procedure and Evidence, 6 May 2020, ICC-01/14-01/18-508, regarding the certification of Rule 68(2) statements; Decision on Protocols at Trial, 8 October 2020, ICC-01/14-01/18-677, rejecting the Prosecution's request for witness preparation).

The Prosecution is instructed to liaise with the other participants and the Registry on the below matters and jointly find solutions. As appropriate, the Prosecution may then approach the Chamber with concrete requests, providing specific information and indicating the outcome of the *inter partes* consultations.

Accordingly, the Chamber rejects the Request.

Kind regards, TC V

From: [REDACTED]
Sent: 25 February 2021 14:06
To: Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV <[REDACTED]>; V44 LRV Team <[REDACTED]>; V45 LRV Team [REDACTED]; OTP CAR IIB Case Management [REDACTED]; OTP CAR IIB Operations [REDACTED]
Subject: Prosecution Request for Status Conference

Dear Trial Chamber V,

Dear All,

Having completed the opening phase of the trial, there remain a number of challenges looming ahead concerning the presentation of evidence in addition to other procedural matters which would benefit from a Status Conference prior to the commencement of evidence in mid-March. The Prosecution considers that mid to late next week would be preferable, should this suit the Chamber. We have vetted this proposal with the Parties and Participants, who have no objection to the holding of a Status Conference next week, excepting the Ngaissona Defence. The latter opposes a Status Conference, given the time remaining to prepare for upcoming witnesses, particularly given a

change in the witness order. It further considers that the proposed matters could be better dealt with by way of written submissions.

By contrast, the Prosecution considers that a short Status Conference may be of substantial benefit to setting up as smooth and efficient a trial proceeding as can be had in the current situation. It is in the interests of everyone to be clear on the substantial and unprecedented challenges that lie ahead, and to understand and vet feasible contingencies in advance to avoid delay and the exploration of options only after foreseeable issues arise – as they will, inevitably.

Thus, the Prosecution believes that a number of challenges, but also potential contingencies, can be discussed regarding the following:

- Witness production of at the seat of the Court;
- Audio/visual link appearances (including the necessity of the Registry's presence *in situ*);
- Scheduling contingencies;
- Certification issues concerning rule 68(2) Statements;
- Live transcript access (e.g., for rule 74 Counsel or as a condition of testimony);
- Substantive contacts with witnesses prior to testimony; and
- Arrangements for the Parties'/Participants' remote participation

All of these, may be implicated to varying degrees by current restrictions related to the ongoing COVID-19 pandemic at the Court, as well as nationally and internationally. They will in turn affect the celerity and efficiency of the trial proceedings. The Parties and Participants may wish to raise other issues which may be beneficial for the Chamber to take cognizance of, and the Chamber may similarly wish to address specific matters to the Parties and Participants.

Given the nature of some concerns that the Prosecution would like to raise, we consider that it would be in the interests of the proceedings for representatives of VWS to be present, as well as whomever the Chamber may deem appropriate – for instance, members of the Registry's Legal Office in respect of Rule 68(2) procedures.

The Prosecution very much appreciates the Chamber's consideration.

Kind regards,

On behalf of Kweku Vanderpuye