

ANNEX 46
PUBLIC
REDACTED

From: Trial Chamber V Communications
Sent: 05 July 2022 11:48
To: Massidda, Paolina
Cc: D29 Yekatom Defence Team; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; OTP CAR IIB Case Management; OTP CAR IIB Operations; OTP CAR IIB Prosecution Team; D30 Ngaissona Defence Team; [REDACTED]; Trial Chamber V Communications; Chamber Decisions Communication
Subject: Decision on the CLRV Request concerning P-2353's Testimony

Dear Counsel,

The Single Judge takes note of the email by the Common Legal Representative of Victims of Other Crimes (the 'CLR'), requesting that field counsel [REDACTED] be allowed to be present in the same room at the remote location in Bangui from where P-2353 – a dual status individual – will testify, should he be called to do so, and to attend the hearing remotely, including by questioning the witness (*see below* email from the CLR, 16 June 2022, at 18:07) (the 'Request').

In relation to the presence of [REDACTED] in the same location as the witness, the Single Judge notes the CLR's submissions that contact between witnesses and their legal representatives during the whole testimony 'has proven to facilitate the testimonies of dual status individuals because of the presence of a person the witness trusts'. In this regard, the Single Judge observes that the dual status witness protocol (*see* Annex 2 to the Decision on Protocols at Trial, ICC-01/14-01/18-677-Anx2) does not preclude counsel's presence. He also notes, as pointed out by the CLR, that Trial Chamber IX has allowed a legal representative to question dual status witnesses from the same location of their testimonies (*see* Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, 'Annex 6 to the Registry's Monthly Report implementing the "Decision on Publicity of Case Record", ICC-02/04-01/15-700', 28 April 2017, ICC-02/04-01/15-819-Anx6).

As to the remote attendance of [REDACTED] the Single Judge recalls that should exceptional circumstances require counsel to attend remotely, the Chamber will rule on requests on a case-by-case basis (email from the Chamber, 14 April 2022, at 10:14). In this regard, the Single Judge notes the CLR's submissions that due to Ms Massidda being unable to attend the hearings scheduled from 12 until 22 July 2022, [REDACTED] will be in charge of questioning the witness on the CLR's behalf. The Single Judge is therefore of the view that, given the explanations provided, exceptional circumstances exist that warrant the remote attendance of [REDACTED] during P-2353's testimony.

Having considered the above, and particularly noting the absence of objections, the Single Judge grants the Request.

The Single Judge recalls that legal representatives should refrain from holding substantive discussions with witnesses about the topics that are to be dealt with in the courtroom until after the close of the evidence in the case (*see* Annex 1 to the Decision on Protocols at Trial, ICC-01/14-01/18-677-Anx1, para. 32).

Kind regards, TC V

From: Massidda, Paolina [REDACTED]
Sent: 16 June 2022 18:07
To: Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED] V44 LRV Team
[REDACTED] V44 LRV Team OPCV [REDACTED] V45 LRV Team
[REDACTED] OTP CAR IIB Case Management [REDACTED] OTP CAR IIB
Operations [REDACTED] OTP CAR IIB Prosecution Team [REDACTED]
[REDACTED]; D30 Ngaissona Defence Team [REDACTED]
[REDACTED]
Subject: CLRV Request concerning P-2353 testimony

Dear Trial Chamber V,

P-2353 is a dual status individual represented by Ms Massidda. He is scheduled as a contingency witness in the upcoming block (No. 14) and will testify from a remote location in Bangui.

Should the witness be called to testify, Ms Massidda respectfully requests that her Field Counsel, [REDACTED], is allowed to be present at the location where the witness will testify (in the same room) during the entire testimony. As per practice, Chambers allow contact between the witness and her/his legal representative during the whole testimony provided that matters linked to said testimony are not discussed. This practice has proven to facilitate the testimonies of dual status individuals because of the presence of a person the witness trusts. The presence of [REDACTED] will be even more indispensable because, for a part of block No. 14, Ms Massidda will be on mission and because she will be unable to attend the hearings scheduled from 12 until 22 July [REDACTED]. Therefore, [REDACTED] will be in charge of questioning the witness on behalf of the CLRV.

In this regard, Ms Massidda recalls the practice of Trial Chamber IX in the *Ongwen* case, according to which the late Field Counsel was authorised to be present with two dual status witnesses at the location of the testimony and questioned them (see "Registry's Monthly Report implementing the 'Decision on Publicity of Case Record', ICC-02/04-01/15-700", No. ICC-02/04-01/15-819, Annex 6, 28 April 2017 containing Email decision of Trial Chamber IX sent on 29 March 2017 at 13:34).

Kind regards,
Paolina Massidda



Paolina Massidda

Conseil principal / Principal Counsel
Bureau du conseil public pour les victimes (BCPV)
Office of Public Counsel for Victims (OPCV)
International Criminal Court
[REDACTED]
www.icc-cpi.int

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