

Annex A

Public redacted version

Subject: Lifting of the redaction of the intermediary - Witness P-0350 application to participate

From: [REDACTED]
 Sent: 28 November 2016 11:54
 To: [REDACTED]
 Cc: [REDACTED]

Message sent on behalf of Ms Paolina Massidda

Dear Ms Gioia,

I would be grateful if you could convey the following response to the Presiding Judge.

The Legal Representative opposes the Defence's request and submits that the redactions on the name and contact details of the intermediary mentioned in P-0350's application form should be maintained. Indeed, the Chamber has already ruled on two occasions on redactions on the name of intermediaries who are not Prosecution's witnesses and for two times granted the Legal Representative request for those redactions to be maintained (decisions [202](#) and [506](#), which specifically address the redactions on the application form of witness P-0350). In particular, the Chamber found that these redactions should be maintained in order (i) to protect the safety, dignity, privacy and well-being of the intermediaries and the applicants, and (ii) to avoid jeopardising the activities of the Registry in the field.

All the arguments raised by the Defence were already addressed and decided upon by the two abovementioned decisions, first in September 2015 and more recently in May 2016.

Firstly, the Defence argues that "*we have no justification from the legal representative of the victim to maintain this redaction*". However, the decisions make it very clear that it is the party requesting the lifting of the redactions the one who should provide reasons for it (decision [202](#), para. 20). In other words, the decision of the Chamber to maintain the redactions needs no "justification" from the Legal Representative to remain unchanged. Nonetheless, the Legal Representative submits that the same arguments put the Chamber to maintain the redactions in the applications of dual status individuals remain valid today. In particular, lifting these redactions would affect the activities of the Legal Representative in the field because the disclosure of the information is very likely to lead to the intermediaries' ceasing to cooperate with the Court and, in turn, to the victims disengaging from the proceedings.

Secondly, the Legal Representative submits that the Defence has failed to show that the redacted information has become relevant to a live issue in the case. In this regard, the Defence neither indicates the relevance of the redacted information nor does it explain how knowing the identity of the intermediary has an impact on the defence's preparation for the questioning of witness P-0350. The Defence simply argues that "*it is indispensable for us to know who this person [the intermediary] is and find out what the person might have done*", without pointing out the relevance of this person's identity for the Defence case.

The Legal Representative submits that to lift the redactions in P-0350's application form in these circumstances would deprive decisions [202](#) and [506](#) of their *effet utile* because the Defence would not have to provide substantive grounds to seek the lifting of the redactions ordered by the Chamber. In fact, the Defence arguments cannot suffice because all intermediaries are involved in the applications for participation, it is precisely their role. The Defence must justify how the intermediary at hand is linked to any live issue in the case. Otherwise, as determined by the

Chamber, the provision of pseudonyms to the Defence suffices to facilitate investigations and the Defence's ability to prepare for trial (decision [202](#), para. 21). In this regard, the Defence sustains that they are “not sure [whether this intermediary] could be involved in the drafting or filling out of other applications for the participation of victims”, although the Defence can easily verify by checking the pseudonym that the intermediary for P-0350 did not assist any other dual status witness in this case.

Thirdly, the Defence appears to complain of the tardiness of the Legal Representative’s opposition to their request to lift redactions. In this regard, it must be noted that the Defence request to lift the redactions was received on Friday 25 November at 14h10. The Legal Representative has done her most to prepare a response in time, but she needed to carry out an assessment on the situation of all the intermediaries in relation to dual status individuals. The Legal Representative cannot understand why the Defence has raised this issue on the eve of P-0350’s testimony if the redactions now challenged were ordered seven months ago, in compliance with decision [202](#).

Finally, the Legal Representative cannot see the relevance for the request in the Defence’s suggestion that the intermediary might have talked publicly of his or her cooperation with the Legal Representative. Moreover, this is allegation is totally unsubstantiated.

Kind regards,
Paolina Massidda