

**ANNEX 46**  
**Public Redacted**  
**Version**

**From:** Trial Chamber V Communications  
**Sent:** 17 January 2023 09:34  
**To:** D30 Ngaissona Defence Team  
**Cc:** OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; Chamber Decisions Communication; Associate Legal Officer-Court Officer; Trial Chamber V Communications  
**Subject:** Decision on the Request for clarification with respect to the mandate of counsel for P-2625

Dear Counsel,

The Single Judge takes note of the Ngaissona Defence request (see email below).

The Single Judge recalls that Mr Philpot was appointed pursuant to Rule 171(5) of the Rules, in the event that P-2625 refused to appear and/or testify (see email from the Chamber, 13 October 2022, at 11:24). The appointment was as such not limited to the hearing held on 17 October 2022. However, noting that P-2625 has agreed to testify before the Court, the Single Judge concedes that Mr Philpot's presence may indeed no longer be necessary. To ensure the witnesses' continued agreement to continue his testimony, the Single Judge finds it appropriate to have Mr Philpot present until the end of today but notes that he can be relieved from his duties as of tomorrow.

The Registry is instructed to notify this decision to Mr Philpot.

Kind regards, TC V

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**From:** [REDACTED]  
**Sent:** 16 January 2023 19:25  
**To:** Trial Chamber V Communications [REDACTED]  
**Cc:** OTP CAR IIB [REDACTED]; D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team [REDACTED] V44 LRV Team [REDACTED] V44 LRV Team OPCV [REDACTED]; V45 LRV Team [REDACTED]  
**Subject:** Request for clarification with respect to the mandate of counsel for P-2625

**Importance:** High

Dear Trial Chamber V,

We write to request clarification about the presence of Counsel Mr John Philpot in the courtroom during the testimony of P-2625. It is our understanding that Mr Philpot's appointment as duty counsel pursuant to rule 171(5) of the RPE – on the basis of the Chamber's order of 13 October 2022, at 11:24 – was limited to the summons hearing held on 17 October 2022. Therefore, it seems that Mr Philpot's presence in the courtroom lacks a legal basis and that he is acting in the absence of a mandate. Not only is this a procedural irregularity, it is also prejudicial to the integrity of the proceedings.


Mr Philpot's limited mandate was clear from the Chamber's ruling, in which it held: "In light of the possibility that the witness refuses to appear and/or testify, the Chamber considers it necessary for the witness to appear with the assistance of counsel. In this regard, the Chamber notes that Rule 171(5) of the Rules stipulates that a person refusing to comply with a direction by the Court 'shall be given an opportunity to be heard before a sanction for misconduct, as described in this rule, is imposed'."

This was also clear from the Registry's notification of Mr Philpot's appointment, dated 14 October 2022, confirming his appointment pursuant to rule 171(5) of the RPE (ICC-01/14-01/18-1610-Conf). According to ICC-01/14-01/18-1610-Conf-Anxl, Mr Philpot's appointment was limited to the summons hearing held in October 2022, via video-link. The Registry made clear that Mr Philpot's appointment was "limited to the mandate and dates outlined in this letter (between 17 and 20 October 2022) and in no way connotes an appointment as counsel, to be retained and remunerated under the Court's legal aid scheme, for any other legal services the person you will assist during this interview may subsequently require."

During the summons hearing, it became clear that P-2625 decided to testify and comply with the summons. Therefore, the Defence seeks clarification as to the legal basis for Mr Philpot's presence in the courtroom, as P-2625's counsel, and seeks information as to any contacts and consultations had between Mr Philpot and P-2625 directly before and during his testimony today. It is unclear whether such contacts and consultations have taken

place. The Defence is concerned that any such contacts, in the absence of a proper mandate, may taint the evidence and therefore, the integrity of trial.

Kind regards,

  
Legal Assistant, Defence for Mr Ngaissona

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