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No. **ICC-01/14-01/18**  
Date: **21 September 2022**

**TRIAL CHAMBER V**

**Before: Judge Bertram Schmitt, Single Judge**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II**

**IN THE CASE OF  
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD  
NGAISSONA***

**Public redacted version of**

**Decision on the Common Legal Representative of the Former Child Soldiers  
Request to Maintain Redactions to Identifying and Contact Information of  
Intermediaries mentioned in Victim Application Forms**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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**Judge Bertram Schmitt**, acting as Single Judge on behalf of Trial Chamber V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 64(2) and (6)(c), 67(2) and 68(1) of the Rome Statute (the ‘Statute’), and Rules 77 and 81(4) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Common Legal Representative of the Former Child Soldiers Request to Maintain Redactions to Identifying and Contact Information of Intermediaries mentioned in Victim Application Forms’.

## **I. Procedural history**

1. On 8 October 2020, the Chamber issued the ‘Decision on Protocols at Trial’ (the ‘Protocols Decision’),<sup>1</sup> adopting, *inter alia*, the ‘Protocol governing the redaction of evidence at trial’, which updated some of the terms included in the protocol adopted by Pre-Trial Chamber II that had remained in place until then (the ‘Redaction Protocol’).<sup>2</sup>
2. On 22 February 2022, the Common Legal Representative of the Former Child Soldiers (the ‘CLRVI’) submitted a request to maintain redactions to the identifying and contact information of the intermediaries and organisations mentioned in the victim application forms of the dual status individuals P-2582 and P-2620<sup>3</sup> (the ‘Identifying Information’, the ‘Intermediaries’, the ‘Forms’ and, collectively, the ‘CLRVI Request’).<sup>4</sup>
3. On 1 March 2022, the Office of the Prosecutor (the ‘Prosecution’) responded to the CLRVI Request, indicating that (i) redactions to the names of the Intermediaries who assisted P-2620 with her victim application form (the ‘P-2620 Redactions’) should be lifted and communicated to the Defence pursuant to Rule

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<sup>1</sup> Protocols Decision, ICC-01/14-01/18-677.

<sup>2</sup> Annex 3 to the Protocols Decision, ICC-01/14-01/18-677-Anx3. *See also* Protocols Decision, ICC-01/14-01/18-677, paras 71-79, p. 31.

<sup>3</sup> Redactions as applied in CAR-OTP-2126-0456 at 0459, and CAR-OTP-2123-0072 at 0075, respectively.

<sup>4</sup> Request of the Common Legal Representative of the Former Child Soldiers to maintain redactions to the identifying and contact information of the intermediaries and the organisations mentioned in victim application forms of the dual status individuals P-2582 and P-2620, ICC-01/14-01/18-1290-Conf-Exp, confidential *ex parte*, only available to the CLRVI, the Registry and the Prosecution (with confidential *ex parte* Annexes 1 and 2, only available to the CLRVI, the Registry and the Prosecution) (confidential redacted version notified the same day, ICC-01/14-01/18-1290-Conf-Red; public redacted version notified on 28 March 2022, ICC-01/14-01/18-1290-Red2), paras 1, 20, 56.

77 of the Rules, and (ii) it defers to the Chamber’s discretion with regard to the basis for the remainder of the redactions requested by the CLRV1, which concern redactions to the names of the Intermediaries who assisted P-2582 with her victim application form<sup>5</sup> (the ‘P-2582 Redactions’ and, collectively, the ‘Prosecution Response’).<sup>6</sup>

4. On 4 March 2022,<sup>7</sup> the Registry expressed its support to the CLRV1 Request (the ‘Registry Observations’).<sup>8</sup>
5. On 7 March 2022, the Common Legal Representatives of Victims of Other Crimes responded to the CLRV1 Request, also expressing their support.<sup>9</sup>
6. On the same day, the Yekatom Defence (the ‘Defence’) responded to the CLRV1 Request, requesting that the Chamber (i) reject the CLRV1 Request; (ii) order that the Identifying Information of the Intermediaries ‘be immediately disclosed to the Defence’; (iii) find that the CLRV1 and the Prosecution ‘violated the Redaction Protocol’ (the ‘Defence Request to Find a Protocol Violation’); and (iv) order the CLRV1 ‘to immediately provide un-redacted dual status victim-witnesses’ victim application forms to the Prosecution, in accordance with the Redaction Protocol’ (the ‘Defence Request to Provide Unredacted Forms’ and, collectively, the ‘Defence Response’).<sup>10</sup>

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<sup>5</sup> The Prosecution refers to the names of (i) the individuals who helped P-2620 and P-2582 to fill in their victim application forms and (ii) the organisations to which these individuals belong or for which they work.

<sup>6</sup> Réponse de l’Accusation à la “*Request of the Common Legal Representative of the Former Child Soldiers to maintain redactions to the identifying and contact information of the intermediaries and the organisations mentioned in victim application forms of the dual status individuals P-2582 and P-2620*” (ICC-01/14-01/18-1290-Conf-Exp), ICC-01/14-01/18-1297-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the CLRV1 and the Registry (confidential redacted version notified the same day, reclassified to public on 5 April 2022, ICC-01/14-01/18-1297-Red), paras 2, 11.

<sup>7</sup> See email from the Chamber, 24 February 2022, at 12:48, in which the Chamber instructed the Registry to provide observations on ‘the security implications for the concerned intermediaries and organisations’.

<sup>8</sup> Registry Observations on ICC-01/14-01/18-1290-Conf-Exp, ICC-01/14-01/18-1302-Conf-Exp, confidential *ex parte*, only available to the Registry, the Prosecution and the CLRV1 (confidential redacted version notified the same day, ICC-01/14-01/18-1302-Conf-Red), paras 2, 20.

<sup>9</sup> Response by the Common Legal Representatives of Victims of Other Crimes to the “Request of the Common Legal Representative of the Former Child Soldiers to maintain redactions to the identifying and contact information of the intermediaries and the organisations mentioned in victim application forms of the dual status individuals P-2582 and P-2620”, ICC-01/14-01/18-1304 (reclassified to public on 23 March 2022), paras 1, 16.

<sup>10</sup> Yekatom Defence Response to ‘Confidential Redacted Version of the “Request of the Common Legal Representative of the Former Child Soldiers to maintain redactions to the identifying and contact

7. On 9 March 2022, the CLRV1 requested leave to reply to the Defence Response (the ‘CLRV1 Request for Leave to Reply’),<sup>11</sup> which the Defence did not oppose.<sup>12</sup>
8. On 23 March 2022, after having been granted leave to do so,<sup>13</sup> the CLRV1 filed its reply to the Defence Response (the ‘CLRV1 Reply to the Defence Response’).<sup>14</sup>

## II. Submissions and analysis

### A. *The Defence Request to Find a Protocol Violation and the Defence Request to Provide Unredacted Forms*

#### 1. *Submissions*

9. The Defence submits that the CLRV1 failed to provide the Prosecution with unredacted versions of the Forms, without any ‘reasonable justification’ and in violation of the Protocols Decision and the Redaction Protocol.<sup>15</sup> It further submits, *inter alia*, that the CLRV1 did not respond in a constructive manner to the Defence’s *inter partes* requests to provide it with lesser redacted versions of the Forms.<sup>16</sup>
10. Moreover, the Defence submits that the Prosecution did not fulfil its duty to follow up on the CLRV1’s apparent violation of the Redaction Protocol and request disclosure of the unredacted versions of the Forms.<sup>17</sup> It further submits that it is concerned by the CLRV1’s suggestion that the Prosecution declined to

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information of the intermediaries and the organisations mentioned in victim application forms of the dual status individuals P-2582 and P-2620” (ICC-01/14-01/18-1290-Conf-Red), ICC-01/14-01/18-1305-Conf (with confidential Annexes A and B) (public redacted version notified on 25 March 2022, ICC-01/14-01/18-1305-Red), para. 60.

<sup>11</sup> Request of the Common Legal Representative of the Former Child Soldiers for leave to reply to the Defence’s Response No. ICC-01/14-01/18-1305-Conf dated 7 March 2022, ICC-01/14-01/18-1308-Conf (public redacted version notified on 28 March 2022, ICC-01/14-01/18-1308-Red).

<sup>12</sup> Email from the Yekatom Defence, 10 March 2022, at 09:52.

<sup>13</sup> Decision on the Common Legal Representative of the Former Child Soldiers Request for Leave to Reply to the Yekatom Defence Response ICC-01/14-01/18-1305-Conf, ICC-01/14-01/18-1320.

<sup>14</sup> Reply of the Common Legal Representative of the Former Child Soldiers to the Defence’s Response No. ICC-01/14-01/18-1305-Conf dated 7 March 2022, ICC-01/14-01/18-1323-Conf (with confidential Annex A; public redacted version of the annex notified on 28 March 2022).

<sup>15</sup> Defence Response, ICC-01/14-01/18-1305-Red, paras 19-20.

<sup>16</sup> Defence Response, ICC-01/14-01/18-1305-Red, para. 21.

<sup>17</sup> Defence Response, ICC-01/14-01/18-1305-Red, para. 23.

receive the Forms – and, by extension, to assess the information redacted thereto – on 27 January 2022, which raises ‘serious concerns about [sic] whether the Prosecution has met its statutory duties in respect of the Forms’.<sup>18</sup>

11. The CLRV1 submits that, contrary to the ‘misguided and fully unfounded’ allegations made in the Defence Response, ‘at all stages he acted in full compliance with the applicable procedure and exercised due diligence’.<sup>19</sup> In particular, he submits that (i) the Prosecution was in possession of the full and unredacted versions of the Forms since 15 January 2021, which the VPRS transmitted in compliance with the Redaction Protocol and the Chamber’s guidance;<sup>20</sup> (ii) the Defence was aware of the Prosecution’s acknowledgment of such a transmission at the time it filed the Defence Response;<sup>21</sup> (iii) the Defence’s *inter partes* requests should have been addressed to the Prosecution as the ‘disclosing party’ and not to the CLRV1;<sup>22</sup> and (iv) he nonetheless seized the Chamber only days after ‘[t]he lack of mutual agreement [with the Prosecution] on the matter became apparent’.<sup>23</sup>

## 2. *Applicable law*

12. At the outset, the Single Judge notes that, in its Protocols Decision, the Chamber indicated that the procedure set out by Pre-Trial Chamber II in respect of dual status witnesses ‘remains largely applicable at this stage of the proceedings’. In particular, it noted that, in setting out this procedure, Pre-Trial Chamber II (i) ‘considered that the Prosecution should receive unredacted versions of the victim application forms, finding that the Prosecution is best placed to ensure that the same information is redacted in both the victim application form and the evidence provided by the witness’, and (ii) ‘further instructed the Prosecution to liaise with the legal representatives before applying redactions’. For the same reasons, the

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<sup>18</sup> Defence Response, ICC-01/14-01/18-1305-Red, para. 24.

<sup>19</sup> CLRV1 Reply to the Defence Response, ICC-01/14-01/18-1323-Conf, para. 1.

<sup>20</sup> CLRV1 Reply to the Defence Response, ICC-01/14-01/18-1323-Conf, paras 1, 3-4.

<sup>21</sup> CLRV1 Reply to the Defence Response, ICC-01/14-01/18-1323-Conf, para. 5.

<sup>22</sup> CLRV1 Reply to the Defence Response, ICC-01/14-01/18-1323-Conf, paras 9, 12.

<sup>23</sup> CLRV1 Reply to the Defence Response, ICC-01/14-01/18-1323-Conf, para. 10.

Chamber also found it appropriate for ‘the CLRV to be consulted in advance of lifting redactions in victim application forms and related material’.<sup>24</sup>

13. The Single Judge notes that, as previously confirmed by the Chamber, (i) ‘the *Registry* is expected to provide the Prosecution with the unredacted applications of dual status individuals’ and (ii) ‘[t]he *Prosecution* must subsequently effect disclosure pursuant to its statutory disclosure obligations and in line with the [dual status and Redaction] protocols’ (the ‘Guidance’).<sup>25</sup>
14. Furthermore, the Single Judge notes that the Redaction Protocol stipulates that the Prosecution shall (i) ‘apply redactions to the victim application forms and related material of Dual Status Witnesses as necessary and in consultation with their legal representatives (the “LRV”)', and (ii) ‘consult the LRV *before* applying or lifting redactions in victim application forms and related material’.<sup>26</sup> The Redaction Protocol further stipulates that the Prosecution and the LRV ‘shall mutually resolve any disagreements resulting from the application and lifting of redactions’ and, in case of dispute, they ‘may approach the Chamber’.<sup>27</sup>

### 3. *The Chamber’s determination*

15. The Single Judge recalls the ‘Decision on the Yekatom Defence Motion for Finding of Disclosure Violation’ (the ‘Disclosure Violation Decision’), in which the Chamber found that the Prosecution had violated its disclosure obligations pursuant to Rule 77 of the Rules by not timely disclosing P-2620’s complete victim application form, which it received from the Registry on 15 January 2021.<sup>28</sup> As acknowledged by the Prosecution in its response to the motion adjudicated in the Disclosure Violation Decision, this untimely disclosure affected the victim application forms of both P-2620 and P-2582 and was due to an oversight.<sup>29</sup> It is therefore clear that, while the Prosecution was unaware until

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<sup>24</sup> Protocols Decision, ICC-01/14-01/18-677, paras 74-76.

<sup>25</sup> Email from the Chamber, 4 January 2021, at 15:35 (emphasis added).

<sup>26</sup> Redaction Protocol, ICC-01/14-01/18-677-Anx3, para. 9.

<sup>27</sup> Redaction Protocol, ICC-01/14-01/18-677-Anx3, para. 10.

<sup>28</sup> Disclosure Violation Decision, 5 September 2022, ICC-01/14-01/18-1566-Conf (public redacted version notified the same day, ICC-01/14-01/18-1566-Red), paras 4, 7.

<sup>29</sup> Prosecution’s Response to Yekatom Defence’s Motion for Finding of Disclosure Violation (ICC-01/14-01/18-1318-Conf), 1 April 2022, ICC-01/14-01/18-1344, paras 3-7.

at least 4 March 2022, when it informed the Defence of this oversight,<sup>30</sup> it was in fact in possession of the complete and unredacted Forms since 15 January 2021.

16. Moreover, the Single Judge notes with concern that, in response to the *inter partes* request sent by the Defence on 20 January 2022, the Prosecution indicated on 11 February 2022 that the redactions in question ‘do not fall under the Redaction Protocol’, that they were ‘LRV/Registry-applied’ and that, since the underlying content was not in its possession or known to it, the responsibility lied with the ‘LRV/Registry’.<sup>31</sup> In doing so, the Prosecution did not only incorrectly assume that it was not in possession of the unredacted versions of the Forms, but also failed to immediately request that the Registry provide it with these versions, which would have allowed it to effect disclosure pursuant to its statutory disclosure obligations and in line with the applicable protocols.
17. While the above shows a lack of diligence with regard to the transmission and disclosure process of victim application forms of dual status individuals, the Single Judge does not consider that it amounts to a violation of the Redaction Protocol. Accordingly, the Defence Request to Find a Protocol Violation is rejected.
18. Going forward, the Single Judge expects the parties and participants to fully comply with the transmission and disclosure process of victim application forms of dual status individuals, in accordance with the Redaction Protocol and the Guidance, as set out above in paragraphs 12 to 14.
19. With regard to the Defence Request to Provide Unredacted Forms, the Single Judge recalls that it is not the CLRVI’s duty to provide victim application forms of dual status individuals to the Prosecution. Accordingly, this request is also rejected.

## B. *The CLRVI Request*

### 1. *Submissions*

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<sup>30</sup> Disclosure Violation Decision, ICC-01/14-01/18-1566-Red, para. 7, n. 18.

<sup>31</sup> Annex B to the Defence Response, ICC-01/14-01/18-1305-Conf-AnxB, p. 1.



20. The CLRV1 submits that redactions to the Identifying Information of the Intermediaries in the Forms should be maintained since they fall under category B.3. of the Redaction Protocol<sup>32</sup> or, alternatively, under category B.5. thereof<sup>33</sup> in order to protect the safety of intermediaries and victims, as well as the integrity of the ongoing field activities by the CLRV1, the Registry and other stakeholders. It also submits that the redacted information is not related to any ‘live issue’ known in the case, nor material to the preparation of the Defence, and that maintaining the redactions is proportionate and ‘causes no undue prejudice to the Defence’.<sup>34</sup>
21. The Prosecution submits that the name of the Intermediary in P-2620’s victim application form is disclosable to the Defence pursuant to Rule 77 of the Rules – subject to the application of Rule 81 of the Rules – because this intermediary is linked to evidence against Mr Yekatom concerning [REDACTED], and cooperates with the Prosecution [REDACTED].<sup>35</sup> As for the P-2582 Redactions, the Prosecution considers that, while they are not disclosable under Article 67(2) of the Statute or Rule 77 of the Rules, they may be disclosed should they not be subject to Rule 81 of the Rules, and defers to the Chamber in this regard.<sup>36</sup>
22. The Defence submits that the Identifying Information of the Intermediaries is ‘clearly relevant to its preparations’ and therefore subject to disclosure.<sup>37</sup> It further argues that categories B.3. and B.5. of the Redaction Protocol do not apply to this information, noting, *inter alia*, that the Intermediaries cannot be considered ‘innocent third parties’ and that the CLRV1 heavily relies on arguments related to alleged risks to the safety of individuals other than the Intermediaries.<sup>38</sup> The Defence therefore argues that the CLRV1 ‘fails to demonstrate that the Sought Information warrants continued redactions pursuant to Rule 81(4)’.<sup>39</sup>

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<sup>32</sup> ‘Identifying and contact information of “other persons at risk as a result of the activities of the Court” (“innocent third parties”), insofar as necessary to protect their safety’.

<sup>33</sup> ‘Other redactions under Rule 81(4) of the Rules’.

<sup>34</sup> CRV1 Request, ICC-01/14-01/18-1290-Red2, paras 2, 22.

<sup>35</sup> Prosecution Response, ICC-01/14-01/18-1297-Conf-Exp, paras 2, 5-6.

<sup>36</sup> Prosecution Response, ICC-01/14-01/18-1297-Red, para. 7.

<sup>37</sup> Defence Response, ICC-01/14-01/18-1305-Red, paras 2, 22. *See also* paras 25-35.

<sup>38</sup> Defence Response, ICC-01/14-01/18-1305-Red, paras 37-50.

<sup>39</sup> Defence Response, ICC-01/14-01/18-1305-Red, para. 2.

## 2. *Applicable law*

23. The Single Judge recalls that, pursuant to Rule 77 of the Rules, the Prosecution ‘shall, subject to the restrictions on disclosure as provided for in the Statute and in rules 81 and 82, permit the defence to inspect any books, documents, photographs and other tangible objects in the possession or control of the Prosecutor, which are [*inter alia*] material to the preparation of the defence’.
24. He further recalls that, according to the Court’s jurisprudence, the Prosecution’s obligation pursuant to Rule 77 of the Rules is subject to a ‘two-fold test’. First, it must be determined whether the objects in question are ‘material to the preparation of the defence’ which, according to the Appeals Chamber, refers to ‘all objects that are relevant for the preparation of the defence’ and could include evidence that is ‘significantly helpful to an understanding of important inculpatory or exculpatory evidence’. Second, if they are material, the Chamber must consider whether any restrictions on disclosure are justified under the Statute and Rules 81 and 82 of the Rules.<sup>40</sup>
25. Specifically with regard to Rule 81(4) of the Rules, the Single Judge notes the Appeals Chamber’s findings that ‘permitting redactions to be made on this basis pursuant to rule 81(4) in principle necessarily does not mean that they will be granted wherever sought’ and that ‘a careful assessment will need to be made, in each case, to ensure that any measures restricting the rights of the Defence that are taken to protect individuals at risk are strictly necessary and sufficiently counterbalanced by the procedures taken by the [C]hamber’.<sup>41</sup> Further, and according to the Appeals Chamber, in making this assessment, the Chamber should consider whether ‘disclosure of the information concerned would pose a

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<sup>40</sup> See Decision on the Ngaißsona Defence Request for Disclosure of Reports related to Seizure of Digital Materials from P-0889, 30 May 2022, ICC-01/14-01/18-1438-Conf, paras 6-8, and the jurisprudence referred to therein.

<sup>41</sup> Appeals Chamber, *The Prosecutor v. Germain Katanga*, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled “First Decision on the Prosecution Request for Authorisation to Redact Witness Statements”, 13 May 2008, ICC-01/04-01/07-475 OA1 (the ‘AC 475 *Katanga* Judgment’), para. 59.

danger to the particular person’ and, in the affirmative, consider the following factors in relation to the alleged risk of danger:<sup>42</sup>

- (i) whether there is ‘an objectively justifiable risk to the safety of the person concerned’ which arises from disclosing the particular information to the Defence, as opposed to disclosing the information to the public at large;
- (ii) whether the non-disclosure of the information is ‘necessary’, namely that there is no alternative measure short of redaction which is available and feasible in the circumstances; and
- (iii) whether the non-disclosure of the information is ‘proportionate’, in that it is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

26. Lastly, the Single Judge recalls that ‘[t]he overriding principle is that full disclosure should be made’ and non-disclosure is the exception.<sup>43</sup>

### 3. *The Chamber’s determination*

27. Turning to the question whether the Identifying Information of the Intermediaries is ‘material to the preparation of the Defence’, the Single Judge notes that the Prosecution agrees with the Defence that the information subject to the P-2620 Redactions is disclosable under Rule 77 of the Rules, and that it defers to the Chamber’s discretion with regard to the P-2582 Redactions.

28. Moreover, the Single Judges notes the Defence’s submissions concerning the ‘substantial discrepancies’ between the Forms and the witness statements of P-2620 and P-2582, and that it contests the allegations contained in these

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<sup>42</sup> AC 475 *Katanga* Judgment, ICC-01/04-01/07-475 OA1, paras 71-73. *See also e.g.* Pre-Trial Chamber II, *The Prosecutor v. Bosco Ntaganda*, First Decision on the Prosecutor’s Requests for Redactions and Other Related Requests, 1 October 2013, ICC-01/04-02/06-117-Conf-Exp, confidential *ex parte*, only available to the Prosecution and the Registry (with Annexes I-II) (confidential and public redacted versions notified on 3 July 2014, ICC-01/04-02/06-117-Conf-Red2 and ICC-01/04-02/06-117-Red3), para. 21.

<sup>43</sup> *See e.g.* Decision on the Prosecution Request for Non-Standard Redactions, 30 September 2020, ICC-01/14-01/18-670-Conf-Exp, confidential *ex parte*, only available to the Prosecution and the Registry (confidential redacted version notified the same day, ICC-01/14-01/18-670-Conf-Red), para. 10 *referring to, inter alia*, AC 475 *Katanga* Judgment, ICC-01/04-01/07-475 OA1, paras 61, 70.

statements.<sup>44</sup> Likewise, he notes that, in broader terms, the Defence contests that ‘[REDACTED] P-2582 and P-2620, were child soldiers and/or part of Mr Yekatom’s group’,<sup>45</sup> and that this issue is currently part of its investigations and of ongoing litigation in this case.

29. In light of the above, the Single Judge considers that the Identifying Information of the Intermediaries is ‘material to the preparation of the Defence’ within the meaning of Rule 77 of the Rules.
30. The Single Judge will now consider whether any restrictions on disclosure are justified. In this regard, he notes that Rule 81(4) of the Rules provides the legal basis to seek redactions in order ‘to protect the safety of witnesses and victims and members of their families’, and has been interpreted by the Appeals Chamber to include the words ‘[other] persons at risk on account of the activities of the Court’.<sup>46</sup>
31. Consequently, the Single Judge considers that, at the very least, the Identifying Information falls within the broader category B.5. of the Redaction Protocol of ‘other redactions under Rule 81(4) of the Rules’, and thus under one of the standard categories of the Redaction Protocol.
32. The Single Judge further notes that both the CLRV1 and the Registry have emphasised that the redactions in question are necessary to protect the safety of the Intermediaries due to the risk of them being ‘perceived as potential witnesses

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<sup>44</sup> Defence Response, ICC-01/14-01/18-1305-Red, paras 26, 30. *See also* paras 27-29. *See further* Disclosure Violation Decision, ICC-01/14-01/18-1566-Red, paras 5-6.

<sup>45</sup> Defence Response, ICC-01/14-01/18-1305-Conf, para 30 *with reference to* Yekatom Defence Response to the ‘Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-2582 pursuant to Rule 68(3)’ (ICC-01/14-01/18-1283-Conf), 7 March 2022, ICC-01/14-01/18-1306-Conf-Exp (confidential redacted version notified the same day; public redacted version notified on 5 April 2022, ICC-01/14-01/18-1306-Red2); Yekatom Defence Response to ‘Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-2084 pursuant to Rule 68(3)’ (ICC-01/14-01/18-1210-Conf), 10 January 2022, ICC-01/14-01/18-1237-Conf (public redacted version notified the next day, ICC-01/14-01/18-1237-Red).

<sup>46</sup> AC 475 *Katanga* Judgment, ICC-01/04-01/07-475 OA1, para 55-57. *See also The Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I of 8 July 2010 entitled “Decision on the Prosecution’s Urgent Request for Variation of the Time-Limit to Disclose the Identity of Intermediary 143 or Alternatively to Stay Proceedings Pending Further Consultations with the VWU”, 8 October 2010, ICC-01/04-01/06-2582 OA18, para. 50, n. 117. *See also* Pre-Trial Chamber II, Decision on the ‘Prosecution’s Request to Vary the Decision on Disclosure and Related Matters (ICC-01/14-01/18-64-Red)’, 10 April 2019, ICC-01/14-01/18-169, para. 16.

or collaborators with the Court should their identities be exposed'. In addition, the Single Judge is mindful of the fact that, according to the CLRV1 and the Registry, such disclosure would also put at risk other individuals (including victims), and have an adverse impact on the Registry's activities on the field.<sup>47</sup> In this regard, he notes that the Prosecution [REDACTED], and that the Chamber has previously expressed its concerns over breaches of confidentiality and 'reports that witnesses [REDACTED]'.<sup>48</sup> Moreover, he notes that the political and security situation in the CAR remains volatile and that the Registry considers that it is 'unlikely to improve in the short to medium term'.<sup>49</sup>

33. In light of these circumstances, the Single Judge is satisfied that 'an objectively justifiable risk' to the safety of the Intermediaries arises from disclosing the Identifying Information to the Defence, as opposed to disclosing it to the general public.
34. Although the Single Judge acknowledges the need to redact the Identifying Information of the Intermediaries in the absence of alternative measures, he finds that maintaining the redactions in question would be disproportionate and prejudicial to or inconsistent with the rights of the accused. In reaching this conclusion, and in balancing the various interests at stake, the Single Judge has particularly taken into account the fact that the Identifying Information is relevant to the Defence and may be of assistance to its case or may affect the credibility of the Prosecution's evidence.<sup>50</sup>
35. Accordingly, the Single Judge considers that the P-2620 and P-2582 Redactions are not justified pursuant to Rule 81(4) of the Rules. He therefore rejects the CLRV1 Request.

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<sup>47</sup> CLRV1 Request, ICC-01/14-01/18-1290-Red2, paras 29-30; Registry Observations, ICC-01/14-01/18-1302-Conf-Red, paras 15-19.

<sup>48</sup> Third Order in Relation to the Article 70 Proceedings, 15 June 2022, ICC-01/14-01/18-1459-Conf, para. 5.

<sup>49</sup> Ninth Periodic Report of the Registry on the Political and Security Situation in the Central African Republic, 25 August 2022, ICC-01/14-01/18-1556-Conf (with one confidential annex, ICC-01/14-01/18-1556-Conf-Anx), paras 7-8.

<sup>50</sup> See AC 475 *Katanga* Judgment, ICC-01/04-01/07-475 OA1, para. 72.c).

36. While the Single Judge does not consider it necessary to seek the Intermediaries' prior consent to lift the P-2620 and P-2582 Redactions,<sup>51</sup> he is nonetheless of the view that they should be informed of the present decision prior to its implementation and to the extent possible. The Registry is therefore instructed to inform the Intermediaries of the present decision immediately upon notification. The Prosecution is instructed to lift the P-2620 and P-2582 Redactions and provide lesser redacted versions of the Forms to the Defence as soon as the Registry confirms that it has informed the Intermediaries of the present decision and, in any event, within one week of notification of the present decision.

**FOR THESE REASONS, THE SINGLE JUDGE HEREBY**

**REJECTS** the Defence Request to Find a Protocol Violation;

**REJECTS** the Defence Request to Provide Unredacted Forms;

**REJECTS** the CLRV1 Request;

**ORDERS** the Registry to inform the Intermediaries of the present decision immediately upon notification;

**ORDERS** the Prosecution to lift the P-2620 and P-2582 Redactions and provide lesser redacted versions of the Forms to the Defence as soon as the Registry confirms that it has informed the Intermediaries of the present decision and, in any event, within one week of notification of the present decision; and

**ORDERS** the Registry and the CLRV1 to file public redacted versions of the Registry Observations, ICC-01/14-01/18-1302-Conf-Exp, and the CLRV1 Reply to the Defence Response, ICC-01/14-01/18-1323-Conf, within one week of notification of the present decision.

Done in both English and French, the English version being authoritative.



<sup>51</sup> See CLRV1, ICC-01/14-01/18-1290-Red2, paras 48-51; Defence Response, ICC-01/14-01/18-1305-Red, paras 51-54.

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**Judge Bertram Schmitt**  
**Single Judge**

Dated 21 September 2022

At The Hague, The Netherlands