

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/14-01/18

Date: 7 March 2022

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
THE PROSECUTOR *v.* ALFRED YEKATOM AND
PATRICE-ÉDOUARD NGAÏSSONA**

Confidential

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"

Source: Common Legal Representatives of Victims of Other Crimes

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

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I. INTRODUCTION

1. The Common Legal Representatives of Victims of Other Crimes (the "CLRV") support the Request filed by the Common Legal Representative of Former Child Soldiers seeking to maintain redactions to identifying and contact information of the intermediaries and organisations that assisted the dual status individuals P-2582 and P-2620 in completing their victim application forms (the "Request").¹

2. The CLRV agree with the Common Legal Representative of Former Child Soldiers that said redactions should be maintained under rule 81(4) of the Rules of Procedure and Evidence (the "Rules") in order to protect: (i) the safety of the intermediaries and organisations as "*innocent third parties*" pursuant to the "Protocol governing the redaction of evidence at trial" (the "Redaction Protocol")²; (ii) the safety, physical and psychological well-being, and privacy of the participating victims and victim applicants assisted by said intermediaries and organisations; and (iii) the integrity of the ongoing field activities of the Common Legal Representative of Former Child Soldiers, the Registry and other stakeholders, supported by the same intermediaries and organisations. Moreover, the CLRV submit that the maintenance of said redactions is equally warranted under articles 64(2) and 68(1) of the Rome Statute (the "Statute"), in particular in the current volatile situation prevailing in the Central African Republic.

3. The CLRV further agree that the redacted information is very limited, not related to any contested issue of the present case and thus maintaining those redactions will cause no undue prejudice to the Defence.

¹ See the "Confidential Redacted Version of 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'", [No. ICC-01/14-01/18-1290-Conf-Red](#), 22 February 2022 (the "Request").

² See the "Protocol governing the redaction of evidence at trial" (Trial Chamber V), [No. ICC-01/14-01/18-677-Anx3](#), 8 October 2020 (the "Redaction Protocol").

II. PROCEDURAL BACKGROUND

4. On 8 October 2020, Trial Chamber V (the “Chamber”) adopted the Redaction Protocol.³

5. On 22 February 2022, the Common Legal Representative of Former Child Soldiers filed the Request.⁴

III. CLASSIFICATION

6. Pursuant to regulation 23bis(1) and (2) of the Regulations of the Court, the present submission is filed confidential following the classification chosen by the Common Legal Representative of Former Child Soldiers. However, the CLRV indicate that this document does not contain information which should remain confidential and therefore can be reclassified as public.

IV. SUBMISSIONS

7. At the outset, the CLRV note that they are not privy to the totality of the confidential information about the individuals concerned, as well as the specific procedural steps preceding the Request. Consequently, they are not in a position to address all the particulars of the contested issues in these response. Based on the information contained in the confidential redacted version of the Request, the CLRV submit these observations since the prospective decision of the Chamber on the matter may potentially affect the interests of dual status individuals they represent in the present proceedings.

³ *Ibid.*

⁴ See the Request, *supra* note 1.

8. In relation to the merit of the Request, rule 81(4) of the Rules states :

"[...] The Chamber dealing with the matter shall, on its own motion or at the request of the Prosecutor, the accused or any State, take the necessary steps to ensure the confidentiality of information, in accordance with articles 54, 72 and 93, and, in accordance with article 68, to protect the safety of witnesses and victims and members of their families, including by authorizing the non-disclosure of their identity prior to the commencement of the trial".

9. In the Redaction Protocol, the Chamber held, *inter alia*, that:

"[...] Under Rule 81(4) of the Rules, the disclosing party may withhold information falling under any of the following categories:

[...]

Category 'B.3': Identifying and contact information of 'other persons at risk as a result of the activities of the Court' ('innocent third parties'), insofar as necessary.

[...]

Category 'B.5': Other redactions under Rule 81(4) of the Rules".⁵

10. The CLRV agree with the Common Legal Representative of Former Child Soldiers that the redacted information - which may reveal the identities of the intermediaries and organisations that assisted dual status individuals P-2582 and P-2620 in completing their victim application forms - falls within the meaning of *"Category B.3 : Identifying and contact information of 'other persons at risk as a result of the activities of the Court' ('innocent third parties')"* or, in the alternative, under *"Category B.5: Other redactions under Rule 81(4) of the Rules"*, pursuant to the Redaction Protocol.⁶

11. The redactions remain necessary and justified to protect the safety, physical and psychological well-being, and privacy of the participating victims and victim applicants assisted by said intermediaries and organisations, as well as the integrity of the ongoing field activities of the Common Legal Representative of Former Child Soldiers, the Registry and other stakeholders, supported by the same intermediaries

⁵ See the Redaction Protocol, *supra* note 2, para. 3.

⁶ See the Request, *supra* note 1, paras. 20 - 51.

and organisations.⁷ In particular, the CLRV further agree that there is a risk that said intermediaries and organizations - relied upon by the Registry to establish contact with victims and assist them to complete their application forms - be perceived as potential witnesses or collaborators with the Court, should their identities be disclosed in the current volatile situation prevailing in the Central African Republic.⁸

12. Accordingly, the CLRV further submit that the maintenance of the redactions is equally warranted at the present stage under articles 64(2) and 68(1) of the Statute. In this regard, Trial Chamber I in the *Gbagbo and Blé Goudé* case held that, in the circumstances where: (i) there is a risk that the intermediaries may be perceived as potential witnesses or collaborators with the Court and their identification thus poses a real risk to the safety, dignity, privacy and well-being of the intermediaries and the applicants; and (ii) the revelation of their identities could jeopardise the activities of the VPRS in the field, the Trial Chamber has an obligation to protect victims and witnesses and ensure the integrity of the proceedings under articles 64(2) and 68(1) of the Statute.⁹ This is especially true when maintaining the redactions in question is the most appropriate measure to protect the safety of the intermediaries and also of other individuals who have applied or may apply for participation through said intermediaries or are otherwise in contact with them in the field for the purposes of these proceedings.¹⁰

13. Moreover, the CLRV also concur with the Common Legal Representative of Former Child Soldiers that maintaining the redactions of the identifying and contact information of the intermediaries and organisations that assisted the two victims in

⁷ *Idem*, paras. 22 - 47.

⁸ *Idem*, paras. 29 – 30. See also the “Seventh Periodic Report of the Registry on the Political and Security Situation in the Central African Republic”, [No. ICC-01/14-01/18-1294-Conf](#), 2 February 2022, para. 7.

⁹ See the “Decision on the Legal Representative of Victims’ requests to maintain redactions to information relating to certain intermediaries (Trial Chamber I)”, [No. ICC-02/11-01/15-202](#), 2 September 2015, paras. 19 - 20.

¹⁰ *Idem*, para. 20.

completing their application forms is the only available and least intrusive measure to reduce the related risk in the circumstances of the present case.¹¹

14. In this regard, the Trial Chamber in the *Gbagbo and Blé Goudé* case also held that the Defence will not be unduly prejudiced when the identity or contact information of the intermediaries is not relevant to any known live issues, the identity of the individuals with dual status has been disclosed to the Defence and the redactions in question are of very limited nature.¹²

15. In the present case, as argued by the Common Legal Representative of Former Child Soldiers, (i) the redacted information is not related to any live issue(s) of the present case and is thus immaterial to the preparation of the Defence; (ii) the redacted information is also very limited and does not render the relevant documents unintelligible or unusable; (iii) the Defence will have an adequate opportunity to address any alleged inconsistency between victim application forms and witness statements during the course of its questioning of the relevant witnesses; (iv) the Defence may at a later stage submit an application to lift redactions, should circumstances change; and therefore, (v) maintaining said redactions will not be unduly prejudicial to or inconsistent with the rights of the Accused and a fair and impartial trial.¹³


¹¹ See the Request, *supra* note 1, para. 52.

¹² See the "Decision on the Legal Representative of Victims' requests to maintain redactions to information relating to certain intermediaries, *supra* note 9, para. 20.

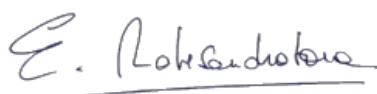
¹³ See the Request, *supra* note 1, paras. 52 – 54.

V. CONCLUSION

16. For the foregoing reasons, the Common Legal Representatives of Victims of Other Crimes respectfully request the Chamber to grant the Request.



Paolina Massidda



Elisabeth Rabesandratana



Yaré Fall



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Marie-Edith Douzima-Lawson

Common Legal Representatives
of the Victims of Other Crimes

Dated this 7th day of March 2022

At The Hague (The Netherlands), Bangui (Central African Republic), La Rochelle (France) and Saint Louis (Senegal)