

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/14-01/18
Date: 27 September 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-EDOUARD
NGAISSONA**

**Public redacted version of the “Registry Observations on ICC-01/14-01/18-1290-
Conf-Exp”, ICC-01/14-01/18-1302-Conf-Exp, 4 March 2022**

Source: Registry

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

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I. Introduction

1. The Registry submits the present observations in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaiisona* (“Case”) pursuant to Trial Chamber V’s (“Chamber”) instruction conveyed by email of 24 February 2022 (“Order”).¹
2. The Registry hereby respectfully requests that the identities and organisational affiliations of the persons who have assisted the victims in filing the applications for participation [REDACTED] and [REDACTED] be redacted in the respective forms.²

II. Procedural History

3. On 15 February 2022, the Prosecution (“OTP”) shared with the Registry’s Victims Participation and Reparations Section (“VPRS”) redacted versions of the applications for participation of dual status victims [REDACTED] and [REDACTED] (“Redacted Applications”).³ [REDACTED].⁴
4. On 22 February 2022, the Common Legal Representative of the Former Child Soldiers (“CLRV1”) filed his “Request [...] 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” (“CLRV1 Request”).⁵

¹ Email from Trial Chamber V communications to the VPRS on 24 February 2022 at 12.48.

² The Registry thus joins the similar request of the Common Legal Representative of the Former Child Soldiers, see fn. 5 and para. 8, *infra*.

³ Email from Prosecution to VPRS on 15 February 2022 at 13.08.

⁴ Emails from Prosecution to VPRS on 15 February 2022 at 1308 and on 16 February 2022 at 11.53.

⁵ CLRV1, “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”, 22 February 2022, ICC-01/14-01/18-1290-Conf-Exp. A confidential redacted version was notified on the same day, see ICC-01/14-01/18-1290-Conf-Red.

5. On 24 February, the Chamber issued its Order instructing the Registry to provide observations concerning the security implications for the concerned intermediaries and organisations. The Registry was instructed to provide these observations by the deadline applicable to the participants' responses.⁶

III. Classification

6. In accordance with regulation 23bis(2) of the Regulations of the Court (RoC), the present submission is classified as confidential *ex parte* "only available to the Prosecution and the Common Legal Representative of the Former Child Soldiers" since it refers to the CLRV1 Request with the same classification. Since the Chamber's Order and the CLRV1 Request were also provided to the Defence, the Registry is filing at the same time a confidential redacted version of the present submission.

IV. Applicable Law

7. The present transmission is submitted in accordance with article 64 (2) and 68 (1) of the Rome Statute, rule 81(4) of the Rules of Procedure and Evidence (the "Rules") and regulation 34 (b) of the RoC.

V. Submissions

8. The Registry supports the CLRV1 Request in relation to the identifying information of the intermediaries and their affiliation and confirms all of his submissions regarding the VPRS position previously communicated to the OTP.⁷

9. The OTP submits [REDACTED].

⁶ See *supra*, fn. 1. The Registry applied the deadline set in Regulation 34(b) of the RoC.

⁷ It is noted that a number of commonly agreed redactions between the OTP, CLRV1 and the Registry will continue to apply to the imminent disclosure of relevant lesser redacted versions of relevant documents.

10. [REDACTED], the Registry still considers that identifying information of Registry intermediaries in the present situation should be systematically redacted. Otherwise this may have an adverse impact on the safety, wellbeing and privacy of said intermediaries, and in extension on participating victims as well as on the VPRS activities in the field. It further considers that the application of relevant redactions would be in compliance with the applicable case law. Chambers have consistently held that the identities of the individuals who assisted the applicants in completing their forms should not be disclosed,⁸ except in specific situations, such as for example when the intermediary is a person known to the parties,⁹ or when the intermediary is a witness.¹⁰
11. A distinction should be made between the role played by intermediaries assisting a party to the proceedings in conducting its investigations, be it the Prosecutor or the Defence, and intermediaries assisting victims in the context of victims' participation or the reparations process. The role of intermediaries working in coordination with the VPRS is confined to informing and assisting

⁸ See for instance, Pre-Trial Chamber II, *The Prosecutor v. Kony et al*, "Decision on legal representation, appointment of counsel for the defence, protective measures and time-limit for submission of observations on applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06", 1 February 2007, ICC-02/04-01/05-134, para. 21; Pre-Trial Chamber I, *The Prosecutor v. Al Bashir*, "Decision on the Observations Submitted by the ad hoc Counsel for the Defence in relation to Applications a/0443/09 to a/0450/09 for Participation in the Proceedings", 28 January 2010, ICC-02/05-01/09-72, para. 9; Trial Chamber III, *The Prosecutor v. Jean Pierre Bemba*, "Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants, 22 February 2010, ICC-01/05-01/08-699, paragraph 33 and Pre-Trial Chamber II, *The Prosecutor v. Mahamat Said Abdel Kani*, "Decision on legal representation of victims and related matters", 9 July 2021, ICC-01/14-01/21-119, para. 34.

⁹ See for instance Trial Chamber III, *The Prosecutor v. Jean Pierre Bemba*, "Public redacted version of "Decision on the tenth and seventeenth transmissions of applications by victims to participate in the proceedings", 19 July 2012, ICC-01/05-01/08-2247-Red, para. 25.

¹⁰ See for instance Trial Chamber I, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, "Decision on Prosecutor's requests for lifting of certain redactions in victim application forms (ICC-02/11-01/15-465 and ICC-02/11-01/15-493)", 9 May 2016, ICC-02/11-01/15-506, para. 21. The Chamber in the Case instructed the VPRS on 11 January 2021 to provide the OTP with the full application of dual status witnesses - including the page containing the intermediary's information - recalling the OTP's obligation to apply redactions "ensuring the safety of the dual status witnesses before disclosing the applications to the Defence" (see Registry, *Yekatom and Ngaïssona Case* "Annex 10 to the Third Registry Quarterly Report Filing on the Case Record Decisions issued by way of e-mail from 8 December 2020 to 14 March 2021", 15 March 2021, ICC-01/14-01/18-914-Anx10).

potential victims to complete and submit an application for participation and/or reparations rather than supporting a party to the proceedings in collecting or giving evidence on either points of fact or law. As much as victims' applications should not be confused as material with evidentiary value regarding the charges in a case, Registry intermediaries are likewise generally fulfilling a purpose that has no relevance to the litigation in the courtroom. Interests to protect their safety and security outweigh the general postulate of publicity of proceedings.

Remarks on the role of the intermediaries concerned

12. In accordance with the victim application procedure adopted in the Case,¹¹ the VPRS identified [REDACTED]. It understands that the intermediaries mentioned in the Redacted Applications [REDACTED].
13. [REDACTED].
14. [REDACTED].

Impact on intermediaries and participating victims

15. In ensuring the security of VPRS intermediaries, the Registry relies above all on the adoption of preventive measures, good practices and the intermediaries' ability to remain a low profile.¹² Given the volatility of the security situation in CAR, the Registry considers that the VPRS intermediaries may face security risks should their connection with the Court be accidentally exposed.
16. This could further lead to the identification of the persons the relevant intermediary assisted, posing also a real risk to the safety, privacy and well-

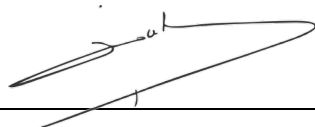
¹¹ Pre-Trial Chamber II, "Decision Establishing the Principles Applicable to Victims' Applications for Participation", 5 March 2019, ICC-01/14-01/18-141.

¹² Registry, *The Prosecutor v. Mahamat Said Abdel Kani*, "Annex I to the Registry Report on Legal Representation of Victims and Observations on the Defence Requests", 21 May 2021, ICC-01/14-01/21-80-AnxI, para. 16.

being of former child soldiers, be they also witnesses or not. [REDACTED],¹³
[REDACTED].

Impact on VPRS activities

17. The identification, selection, training and assessment of intermediaries is a delicate exercise.¹⁴ Disclosing information on the identity and/or the organisational affiliation of the VPRS with intermediaries may jeopardize the VPRS' activities in the field linked to the collection of applications for participation and/or reparations.
18. [REDACTED] VPRS intermediaries may decide not to collaborate with the VPRS any longer, due to the fear of being identified and/or perceived as potential collaborators with the Court with potential negative consequences for them in the field. [REDACTED].
19. In the same vein, victims may decline to apply for participation – out of fear of being identified – should they become aware that the identity of the person who directly assisted them is known to the Defence.
20. For the foregoing reasons, the Registry respectfully submits, in accordance with the CLR1 Request, that redactions should be applied to the identifying information of the intermediaries, including [REDACTED], mentioned in the applications for participation of dual status victims [REDACTED] and [REDACTED].



Marc Dubuisson, Director Division of Judicial Services

On behalf of Peter Lewis, Registrar

Dated this 27 September 2022

At The Hague, The Netherlands

¹³ [REDACTED].

¹⁴ Registry, Public redacted version of “Annex to the Registry’s Joint Report on Outreach and Other Victim Related Activities”, 28 January 2021, ICC-01/14-01/18-216-Anx-Red, para. 30.