

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 28 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***

Public

Public 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-Exp, dated 22 February 2022

Source: Office of Public Counsel for Victims (CLR1)

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

The Office of the Prosecutor

Mr Karim A. A. Khan
Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Ms Mylène Dimitri

Counsel for Patrice-Édouard Ngaïssona

Mr Geert-Jan Alexander Knoops

Legal Representatives of the Victims

Mr Dmytro Suprun

Legal Representatives of the Applicants

Mr Abdou Dangabo Moussa
Ms Marie Édith Douzima Lawson
Mr Yaré Fall
Ms Paolina Massidda
Ms Elisabeth Rabesandratana

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda
Mr Dmytro Suprun
Mr Orchlon Narantsetseg
Ms Fiona Lau

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

I. INTRODUCTION

1. The Common Legal Representative of the Former Child Soldiers (the “Legal Representative” or “CLR1”) submits a request to maintain redactions to the identifying and contact information of the intermediaries and the organisations that assisted the dual status individuals P-2582 ([REDACTED]) and P-2620 ([REDACTED]) in completing their victim application forms (the “Request”). This Request is made following consultations with the Prosecution that indicated the need to disclose the information currently redacted.

2. It is submitted that the redactions should be maintained in order to protect (i) the safety of the intermediaries and the organisations as ‘innocent third parties’ pursuant to the “Protocol governing the redaction of evidence at trial” (the “Redaction Protocol”)¹; (ii) the safety, physical and psychological well-being, and privacy of the participating victims and victim applicants assisted by the intermediaries and the organisations concerned; and (iii) the integrity of the ongoing field activities of the Legal Representative, the Registry and other stakeholders as supported by said intermediaries and organisations. Furthermore, the redacted information is not related to any ‘live issue’ known in the present case, nor material to the preparation of the Defence. The Legal Representative submits that maintaining the existing redactions is proportionate and causes no undue prejudice to the Defence. Finally, the Legal Representative respectfully submits that Trial Chamber V (the “Trial Chamber”) would be properly assisted for the purpose of the determination of this Request if the Registry were to conduct a security assessment and to identify any mitigating measures in order to address any potential risks which may result from the disclosure of the information currently redacted.

¹ See the “Protocol governing the redaction of evidence at trial”, [No. ICC-01/14-01/18-677-Anx3](#), 8 October 2020 (the “Redaction Protocol”).

II. PROCEDURAL BACKGROUND

3. On 18 November 2019, the Legal Representative provided the Prosecution's investigators with a redacted version of P-2620's victim application form ([REDACTED]),² which was subsequently disclosed to the Defence as CAR-OTP-2123-0072.

4. On 5 March 2020, the Legal Representative provided the Prosecution's investigators with a redacted version of P-2582's victim application form ([REDACTED]),³ which was subsequently disclosed to the Defence as CAR-OTP-2126-0456.

5. On 8 October 2020, the Trial Chamber adopted the Redaction Protocol.⁴

6. On 19 January 2022, the Yekatom Defence (the "Defence") approached the Legal Representative with its first request to lift the redactions to the identifying and contact information of the intermediaries and the organisations that assisted the dual status individuals P-2582⁵ and P-2620⁶ in completing their victim application forms (the "First Defence Request"), on the basis of the alleged discrepancies between the victim application forms and the witness statements.⁷

7. On 20 January 2022, the Legal Representative responded to the First Defence Request, and submitted that pursuant to paragraphs 6 and 9 of the Redaction Protocol, such a request should be addressed to the Prosecution as the calling and disclosing party.⁸

² See the Email correspondence from the CLR1 to the Prosecution on 18 November 2019 at 08:11.

³ See the Email correspondence from the CLR1 to the Prosecution on 5 March 2020 at 16:28.

⁴ See the Redaction Protocol, *supra* note 1.

⁵ See CAR-OTP-2126-0456, at 0459.

⁶ See CAR-OTP-2123-0072, at 0075.

⁷ See the Email correspondence from the Defence to the CLR1 on 19 January 2022 at 17:55.

⁸ See the Email correspondence from the CLR1 to the Defence on 20 January 2022 at 09:13.

8. On the same date, the Defence re-directed its First Defence Request to the Prosecution.⁹

9. On 27 January 2022, the Legal Representative conveyed to the Prosecution his position on the content of the First Defence Request by submitting that the current redactions should be maintained, and further expressed his availability to provide the Prosecution with lesser redacted versions of the victim application forms of the individuals concerned.¹⁰

10. On 11 February 2022, the Prosecution responded to the Defence and submitted that the redactions applied to the victim application forms of the individuals concerned do not fall within the parameters of the Redaction Protocol, as the underlying content is not in the Prosecution's possession, and therefore the First Defence Request should be dealt with by the Legal Representative.¹¹

11. On the same date, during further consultations with the Prosecution over phone, the Legal Representative reiterated his position on the content of the First Defence Request, and further suggested contacting the VPRS to seek their views on the matter.

12. On 14 February 2022, the Defence approached the Legal Representative with its second request to lift the redactions applied to the "*Photocopie de la preuve d'identité de la victime*" attached to the victim application forms of the dual status individuals concerned¹² (the "Second Defence Request")¹³. The Defence submitted that the witnesses' birth certificates and identifying information were already disclosed to the Defence.

⁹ See the Email correspondence from the Defence to the Prosecution on 20 January 2022 at 10:12.

¹⁰ See the Email correspondence from the CLR1 to the Prosecution on 27 January 2022 at 10:43.

¹¹ See the Email correspondence from the Prosecution to the Defence on 11 February 2022 at 12:59.

¹² See CAR-OTP-2126-0456, at 0459 and 0460; and CAR-OTP-2123-0072, at 0076.

¹³ See the Email correspondence from the Defence to the CLR1 on 14 February 2022 at 14:25.

13. On 15 February 2022, the Legal Representative informed the Prosecution about the Second Defence Request and provided the Prosecution with the lesser redacted versions of the relevant victim application forms of the dual status individuals to enable the Prosecution to discharge its obligations under paragraph 9 of the Redaction Protocol in consultation with the Legal Representative. Again, the Legal Representative reiterated his position on the need to maintain the original redactions to the names of the intermediaries and deferred to the VPRS on the question of whether redactions were required to be maintained to the names of the organisations. Regarding the Second Defence Request, the Legal Representative indicated that he had no issue with the disclosure of the annexes provided that the underlying content thereof was already disclosed.¹⁴

14. On the same date, the Legal Representative responded to the Second Defence Request and stated that this request should also be addressed to the Prosecution, and informed the Defence about the transmission of the lesser redacted versions of the victim application forms of the dual status individuals concerned to the Prosecution.¹⁵

15. On the same date, the VPRS expressed serious concerns to the Prosecution regarding the disclosure of the names of the intermediaries and the organisations that assisted the victims in completing their application forms to the Defence, and submitted that this information should remain redacted.¹⁶

16. On 16 February 2022, the Prosecution informed the VPRS of its intention to disclose to the Defence the names of the intermediaries and organisations that assisted P-2582 and P-2620 in completing their victim application forms and suggested to the VPRS that it seize the Trial Chamber on the matter if necessary.¹⁷

¹⁴ See the Email correspondence from the CLR1 to the Prosecution on 15 February 2022 at 11:00.

¹⁵ See the Email correspondence from the CLR1 to the Defence on 15 February 2022 at 11:23.

¹⁶ See the Email correspondence from the VPRS to the Prosecution on 15 February 2022 at 17:41.

¹⁷ See the Email correspondence from the Prosecution to the VPRS on 16 February 2022 at 11:53.

17. On the same date, the Legal Representative requested the Prosecution to clarify its position with respect to the existing redactions. He reiterated his position that the names of the intermediaries should remain redacted and, in light of the views expressed by the VPRS, submitted that the names of the organisations should also remain redacted. Due to the different interpretations regarding the application of redactions pursuant to the Redaction Protocol, the Legal Representative also inquired whether the Prosecution intended to seize the Trial Chamber pursuant to paragraph 11 of the Redaction Protocol, and provided notice of his intention to do so should there be a disagreement regarding the application of the Redaction Protocol.¹⁸

18. On the same date, the Prosecution subsequently confirmed its intention to disclose to the Defence the names of the intermediaries and the organisations in question and indicated that it did not intend to seize the Trial Chamber on the matter.¹⁹

III. CLASSIFICATION

19. Pursuant to regulation 23*bis* (1) and (2) of the Regulations of the Court (the “ROC”), the present submissions are classified as confidential *EX PARTE*, available only to the CLR of the Former Child Soldiers, VPRS and Prosecution, since they refer to the content of the redacted information, the content of *inter partes* consultations to which both Defence teams and the CLR of the Victims of Other Crimes were not privy, as well as to details of the VPRS’s field activities with respect to former child soldiers. The Annexes 1 and 2 bear the same classification, since they contain lesser redacted versions of the victim application forms of the individuals concerned not yet disclosed to the Defence. A confidential redacted version of the submissions is filed simultaneously.

¹⁸ See the Email correspondence from the CLR1 to the Prosecution on 16 February 2022 at 13:59.

¹⁹ See the Email correspondence from the Prosecution to the CLR1 on 16 February 2022 at 14:51.

IV. SUBMISSIONS

20. The Legal Representative respectfully requests that the existing redactions to the identifying and contact information of the intermediaries and the organisations that assisted the dual status individuals of P-2582 and P-2620 in completing their victim application forms, as applied in CAR-OTP-2126-0456 at 0459, and CAR-OTP-2123-0072 at 0075, be maintained pursuant to the Redaction Protocol.

21. The Legal Representative disagrees with the Prosecution that the redacted information is *“either material to the Defence’s preparation or does not fall within any category under the Redaction Protocol”*.²⁰

22. The Legal Representative submits that the existing redactions fall under category B.3. of the Redaction Protocol, *i.e.* redactions related to “[i]dentifying 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”,²¹ or alternatively under category B.5. thereof, *i.e.* “[o]ther redactions under Rule 81(4) of the Rules”,²² in order to protect the safety, physical and psychological well-being, and privacy of the participating victims and victim applicants as well as the integrity of the ongoing field activities by the Legal Representative, the Registry and other stakeholders as supported by said intermediaries and organisations.

1. **The identifying and contact information of the intermediaries and the organisations that assisted the individuals concerned must remain redacted as they are “innocent third parties” (category B.3. of the Redaction Protocol)**

23. The Appeals Chamber in the *Lubanga* case found that intermediaries, independently from their specific functions, may be included in the category of persons *“at risk on account of the activities of the Court”*, thereby qualifying for

²⁰ See the Email correspondence from the Prosecution to the VPRS on 16 February 2022 at 11:53.

²¹ See the Redaction Protocol, *supra* note 1, para. 3.

²² *Ibid.*

protection.²³ Consequently, most Chambers have systematically authorised redactions to the identifying and contact information of the intermediaries that assisted victims in completing their application forms.²⁴ Recently, Pre-Trial Chamber II in the *Said* case, rejected the Defence request for disclosure of the identities of the Registry's intermediaries operating in the Central African Republic (the "CAR") because of "*a real risk to the safety of those intermediaries and the applicants he or she has assisted*".²⁵

24. The Legal Representative submits that there is no reason to deviate from said approach when it comes to the intermediaries and the organisations that assisted the victims in the present instance, and contends that their identifying and contact information must remain covered by standard redactions under category B.3. of the Redaction Protocol because the intermediaries concerned: (i) have not agreed to be part of the Court process and may not even be aware of it,²⁶ and/or (ii) may be perceived as potential witnesses or collaborators with the Court,²⁷ and (iii) also

²³ See the "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'" (Appeals Chamber), [No. ICC-01/04-01/06-2582 OA18](#), 08 October 2010, footnote 117, referring to the "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'" (Appeals Chamber), [No. ICC-01/04-01/07-475 OA](#), 13 May 2008, paras. 54-58.

²⁴ See *inter alia* the "Second decision on issues related to the victims' application process" (Pre-Trial Chamber I, Single Judge), [No. ICC-02/11-01/11-86](#), 5 April 2012, para. 41; the "Corrigendum to Decision on the Registry Report on six applications to participate in the Proceedings" (Trial Chamber IV), [No. ICC-02/05-03/09-231-Corr](#), 29 October 2011, para. 33.ix); the "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" (Trial Chamber III), [No. ICC-01/05-01/08-699](#), 22 February 2010, para. 33.xi); the "Decision on the treatment of applications for participation" (Trial Chamber II), [No. ICC-01/04-01/07-933-tENG](#), 09 July 2009, para. 49.ix); and the "Decision inviting the parties' observations on applications for participation of a/0001/06 to a/0004/06, a/0047/06 to a/0052/06, a/0077/06, a/0078/06, a/0105/06, a/0221/06, a/0224/06 to a/0233/06, a/0236/06, a/0237/06 to a/0250/06, a/0001/07 to a/0005/07, a/0054/07 to a/0062/07, a/0064/07, a/0065/07, a/0149/07, a/0155/07, a/0156/07, a/0162/07, a/0168/07 to a/0185/07, a/0187/07 to a/0191/07, a/0251/07 to a/0253/07, a/0255/07 to a/0257/07, a/0270/07 to a/0285/07, and a/0007/08" (Trial Chamber I), [No. ICC-01/04-01/06-1308](#), 07 May 2008, para. 28.xi).

²⁵ See the "Decision on legal representation of victims and related matters" (Pre-Trial Chamber II, Single Judge), [No. ICC-01/14-01/21-119](#), 9 July 2021, para. 34.

²⁶ See for e.g. a similar application of the definition of "innocent third parties" in the "Protocol establishing a redaction regime in the case of The Prosecutor v. Laurent Gbagbo" (Pre-Trial Chamber I), [No. ICC-02/11-01/11-737-AnxA](#), 15 December 2014, para. 40.

²⁷ *Ibid.*

because the redacted information (iii) is of no relevance to any ‘live issue’ known in the case.²⁸

25. First, the intermediaries and the organisations relied upon by the Registry to establish contact with the victims and to assist the latter to complete their application forms usually have not agreed to be part of the Court process and may not even be aware of it.

26. As explained in the “Guidelines Governing the Relations between the Court and Intermediaries”, not every intermediary performs the same functions nor does so for the same purpose.²⁹ The intermediaries of the Prosecution may have assisted in the conduct of investigations or to contact potential witnesses, whereas in contrast, the intermediaries of the Registry usually only assisted victims and/or potential victims in the submission of their applications for participation and/or reparations.

27. In these circumstances, none of the intermediaries or the organisations mentioned in the victim application forms of the dual status individuals concerned may be said to have “agreed to be part of the Court process”. None of the intermediaries concerned have been called by the Prosecution to testify in the present case. None of them could have reasonably anticipated that the victims they assisted in the submission of their applications would eventually agree to provide evidence in the proceedings upon the call of the Prosecution.

28. In short, by providing their consent in supporting the Registry’s activities – *i.e.* contacting and assisting victims in filling in application forms – the intermediaries and the organisations mentioned in the victim application forms of the individuals concerned have not explicitly agreed to be part of the Court process beyond assisting potential victims in the completion of their application forms.

²⁸ *Idem*, para. 43.

²⁹ See the “[Guidelines Governing the Relations between the Court and Intermediaries for the Organs and Units of the Court and Counsel working with intermediaries](#)”, March 2014, pp. 5-6.

29. Second, there is a risk that the intermediaries relied upon by the Registry to establish contact with the victims and assist them to complete their application forms be perceived as potential witnesses or collaborators with the Court should their identities be exposed.

30. Although the role played by the intermediaries of the Registry is not to assist in investigations, but rather to simply help victims and/or potential victims to complete their applications for participation and/or reparations, the Legal Representative submits that the risk of intermediaries in the Central African Republic (“CAR”) being perceived as potential witnesses or collaborators with the Court remains the same. According to the VPRS, should the identities of the intermediaries and the organisations involved with assisting the former child soldiers be disclosed – with the latter continuing to reside in the areas in which support for Anti Balaka groups remains significant - this could pose a real risk to the safety of the intermediaries and the victims assisted by them. Additionally, the VPRS [REDACTED]. Given the current security context in the CAR, the VPRS considers that disclosing information on its intermediaries poses a real risk to the safety of said intermediaries. Furthermore, [REDACTED] the intermediaries may decide to no longer collaborate with the VPRS for fear of being identified and/or perceived as ICC collaborators. This in turn may have a serious negative impact on the Registry’s field activities.³⁰

31. Furthermore, it is submitted that the redactions applied to the identifying and contact information of the intermediaries and the organisations that assisted the dual status individuals concerned in completing their victim application forms must be maintained because the redacted information is of no relevance to any known issue in the case.

32. In this regard, the First Defence Request is based on alleged discrepancies between the victim application forms and the witness statements. However, as

³⁰ See the Email correspondence from the VPRS to the Prosecution on 15 February 2022 at 17:41.

previously held by Pre-Trial Chamber II, *“the information provided by the applicants in their applications for participation can under no circumstances be considered as evidence [...]. Indeed, such information has been provided by the applicants to the Chamber only for the purposes of substantiating an application for participation”*.³¹ Likewise, Trial Chamber III has emphasised that *“[u]nlike evidence collected to support or challenge the substantive criminal charges in the case, the application forms are administrative in nature [...]. They are intended to serve a limited purpose: to provide the Chamber with a basis for determining whether individual victims should be permitted to participate in the proceedings pursuant to Rule 89 of the Rules”*.³² Trial Chamber III further elaborated that *“no formal requirements govern their creation”*³³ and that *“third parties often fill out the application forms on behalf of victim applicants or assist them in doing so; a process that may increase errors”*.³⁴

33. Regarding the need to disclose the identity of the intermediaries of dual status individuals due to their relevance to an issue in the case, Pre-Trial Chamber I in the *Mbarushimana* case found that the fact the same intermediaries helped to complete several different application forms was not relevant to the assessment of said applications.³⁵

34. Trial Chamber I in the *Lubanga* case shared the same opinion,³⁶ and further clarified that *“[t]he threshold for disclosure [of the intermediary’s identity] is whether prima facie grounds have been identified for suspecting that the intermediary in question had been in contact with one or more witnesses whose incriminating evidence has been materially called*

³¹ See the “Decision on the Defence Request in Relation to the Victims’ Applications for Participation in the Present Case” (Pre-Trial Chamber II), [No. ICC-01/09-01/11-169](#), 8 July 2011, para. 9.

³² See the “Public redacted version of the First decision on the prosecution and defence requests for the admission of evidence, dated 15 December 2011” (Trial Chamber III), [No. ICC-01/05-01/08-2012-Red](#), 9 February 2012, para. 100.

³³ *Ibid.*

³⁴ *Ibid* (Internal citations omitted).

³⁵ See the “Decision on the 138 applications for victims’ participation in the proceedings” (Pre-Trial Chamber I, Single Judge), [No. ICC-01/04-01/10-351](#), 11 August 2011, para. 30.

³⁶ See the “Redacted version of the Decision on the applications by 7 victims to participate in the proceedings” (Trial Chamber I), [No. ICC-01/04-01/06-2764-Red](#), 25 July 2011, para. 25.

into question, for instance by internal contradictions or by other evidence. In these circumstances, the intermediary's identity is disclosable under Rule 77 of the Rules".³⁷

35. In the present instance, beyond alleging inconsistencies between the victim application forms and the witness statements, the Defence does not put forward any grounds for suspicion regarding the intermediaries or the organisations that assisted the dual status individuals concerned in completing their victim application forms. In this regard, Trial Chamber VI in the *Ntaganda* case found that *"potential inconsistencies between the victim participation form and her witness statement and/or in-court testimony are [not] sufficient in themselves to make the identity of the intermediary material. [...] [T]he Defence is free to explore any purported discrepancies with the witness directly during cross-examination".³⁸*

36. In conclusion, the Legal Representative submits that non-disclosure of the identifying and contact information of the intermediaries and the organisations that assisted the individuals concerned in completing their victim application forms is necessary to protect their safety as 'innocent third parties', and as such, these redactions must be maintained under category B.3. of the Redaction Protocol.

2. In the alternative, the identifying and contact information of the intermediaries and the organisations that assisted the individuals concerned must remain redacted under category B.5. of the Redactions Protocol)

37. If the Trial Chamber were to decide that the redactions to the identifying and contact information of the intermediaries and the organisations that assisted the individuals concerned do not fall under category B.3. of the Redaction Protocol, the

³⁷ See the "Redacted Decision on Intermediaries" (Trial Chamber I), [No. ICC-01/04-01/06-2434-Red2](#), 31 May 2010, para. 139(b). See also the "Redacted version of the Corrigendum of Decision on the applications by 15 victims to participate in the proceedings" (Trial Chamber I), [No. ICC-01/04-01/06-2659-Corr-Red](#), 08 February 2011, para. 30.

³⁸ See the Transcript of the hearing held on 3 May 2016, [No. ICC-01/04-02/06-T-94-Red2-ENG CT WT](#), p. 35, lines 18-24.

Legal Representative submits in the alternative that the redactions remain justified under category B.5. of the Redaction Protocol.

38. The Appeals Chamber found that rule 81(4) of the Rules of Procedure and Evidence (the “Rules”) provides for non-disclosure where the disclosure of the information would compromise the safety of victims, witnesses, their families or any other ‘person at risk on account of activities of the Court’.³⁹ It further set out the requirements to authorise the non-disclosure of information as follows:

(i) the existence of an ‘objectively justifiable risk’ to the safety of the person concerned or which may prejudice further or ongoing investigations; (ii) the risk must arise from disclosing the particular information to the Defence; (iii) the infeasibility or insufficiency of less restrictive protective measures; (iv) an assessment as to whether the redactions sought are ‘prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial’; and v) the obligation to periodically review the decision authorising the redactions should circumstances change.⁴⁰

39. First, it is submitted that the disclosure of the identifying and contact information of the intermediaries and the organisations that assisted the individuals concerned poses an objective risk not only to the safety of said intermediaries and organisations as argued *supra*, but also to the safety, physical and psychological well-being and privacy of *all* victims assisted by them – whether they are witnesses or not.⁴¹ According to the VPRS, [REDACTED]. Should it be known in particular that [REDACTED] has been involved with participating victims, the VPRS considers that

³⁹ See the “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”” (Appeals Chamber), [No. ICC-01/04-01/07-475-OA](#), 13 May 2008, para. 56.

⁴⁰ *Idem*, paras. 71, 97, 71(b) and 73(c). See also the “Judgment on the Prosecutor’s appeal against the decision of Pre-Trial Chamber I entitled “Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 (2) and (4) of the Rules of Procedure and Evidence”” (Appeals Chamber), [No. ICC-01/04-01/06-568 OA3](#), 13 October 2006, para. 37; and the “Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81” (Appeals Chamber), [No. ICC-01/04-01/06-773 OA5](#), 14 December 2006, paras. 33-34.

⁴¹ See in this regard the “Decision on legal representation of victims and related matters”, *supra* note 25, para. 34.

this could pose a real risk to the safety of both this intermediary and the victims this [REDACTED] has assisted.⁴²

40. Indeed, the intermediaries and the organisations in question have assisted [REDACTED]. Thus, it is submitted that by disclosing the names of the intermediaries and the organisations to the Defence, the latter could reasonably discover the identities of the participating victims and/or victim applicants while carrying out its investigations on the activities of said intermediaries and organisations. The redaction of the intermediaries' and organisations' identifying and contact information is therefore warranted to protect the victims they have assisted as well as their families.

41. Second, if the participating victims become aware of the fact that the identities of the intermediaries and/or the organisations that assisted them were disclosed to the Accused and his Defence team, and given that these intermediaries and organisations [REDACTED], there is a real risk that latter may decide to no longer participate in the present proceedings out of fear for their safety. In this regard, [REDACTED]. In the same vein, and in line with the views expressed by the VPRS,⁴³ any new potentially eligible victims may decide to abstain from applying to participate in the proceedings for the same reason. It is for this very reason that the importance of maintaining the existing redactions to the identities of the intermediaries and their respective organisations is fundamental for preserving the victims' right to truth and justice in light of the necessity of maintaining an environment in which the participating victims and potential victims may effectively realise their rights enshrined in the Rome Statute without another dimension of fear.

42. Third, even assuming that the participating victims concerned ultimately decide to continue to take part in the present proceedings, it is very likely that their psychological well-being will be affected by the very awareness of the fact that the identifying and contact information of the intermediaries and the organisations that

⁴² See the Email correspondence from the VPRS to the Prosecution on 15 February 2022 at 17:41.

⁴³ *Ibid.*

assisted them is known to the Accused and his Defence team. Understandably, this would instil in the former child soldiers further anxiety, fear and concerns about their safety and only exacerbate their vulnerability. It cannot be emphasised enough that the participating victims concerned are former child soldiers who continue to suffer various forms of psychological trauma and emotional difficulties - and despite the time elapsed after the events – still have not received any form of psychological support.⁴⁴ These victims have already demonstrated a great deal of courage in applying to participate in the present proceedings despite the numerous risks and challenges they face on a daily basis, *i.e.* being stigmatised or even rejected by their own communities for their affiliation with the Anti Balaka on the one hand, and running ongoing risks of being treated as traitors by their former Anti Balaka associates on the other. The Legal Representative therefore submits that the former child soldiers constitute a particularly vulnerable group,⁴⁵ which entails the need for enhanced protection, going beyond that which applies to the general population,⁴⁶ and respectfully requests this Trial Chamber to recognise this.

43. In this regard, in the *Lubanga* case, Trial Chamber I found that “[n]on-disclosure of the identities of those who assisted the [victim] applicants is necessary in order to protect the applicants, by maintaining their anonymity, pursuant to Article 68(1) of the Statute. This step is not detrimental to rights of the accused”.⁴⁷ In the same vein, Pre-Trial Chamber I in the *Gbagbo* case held that article 68(1) of the Rome Statute and rule 81(4) of the Rules are meant to ensure that the involvement of victims in the proceedings does not lead to a

⁴⁴ See the Transcript of the hearing held on 17 February 2021, [No. ICC-01/14-01/18-T-015-ENG ET WT](#), p. 32, lines 4-16.

⁴⁵ See e.g. the “Sentencing Judgment” (Trial Chamber VI), [No. ICC-01/04-02/06-2442](#), 7 November 2019, paras. 193 and 195.

⁴⁶ *Idem*, para. 179.

⁴⁷ See the “Redacted Decision on Intermediaries”, *supra* note 37, para. 139(b). See also the “Redacted version of the Corrigendum of Decision on the applications by 15 victims to participate in the proceedings”, *supra* note 37, para. 30.

situation where their safety and well-being are put at stake, all the more where they are not part of the Court process by providing testimony.⁴⁸

44. Fourth, the disclosure of the identifying and contact information of the intermediaries and their respective organisations in question poses a real and objective risk to the current and ongoing field activities of the VPRS,⁴⁹ the Legal Representative, and other stakeholders such as the Trust Fund of Victims, who may rely on the intermediaries' support.

45. The Redaction Protocol does not expressly consider the danger of disclosing the information regarding the intermediaries assisting the VPRS in the collection of victim application forms, and/or the Legal Representative in the establishment of contact with his clients. However, the Redaction Protocol *does* address the risks arising from the disclosure of the identity and contact information of intermediaries and of investigators of the Prosecution.⁵⁰ It is submitted that while the functions played by the abovementioned intermediaries are different, the risks arising from the disclosure of their identifying information are similar in nature. Such disclosure may jeopardise the discharge of their respective tasks and compromise the safety of their field operations. The support provided by the VPRS's intermediaries has become even more important in the ongoing COVID-19 pandemic which has seriously undermined over past two years the field activities of the Court due to travel restrictions. This added practical challenge ought to be a further consideration in favour of a greater protection for the safety of the VPRS's intermediaries.

46. As the VPRS [REDACTED],⁵¹ if the identity of the intermediaries were to be disclosed and known to a greater number of individuals, any ongoing and future

⁴⁸ See the "Protocol establishing a redaction regime in the case of The Prosecutor v. Laurent Gbagbo" (Pre-Trial Chamber I), [No. ICC-02/11-01/11-737-AnxA](#), 15 December 2014, para. 49.

⁴⁹ See the Email correspondence from the VPRS to the Prosecution on 15 February 2022 at 17:41.

⁵⁰ See the Redaction Protocol, *supra* note 1, para. 2 (categories A.4 and A.5).

⁵¹ See the Email correspondence from the VPRS to the Prosecution on 15 February 2022 at 17:41.

contact with the victims could be put at risk, thereby jeopardising the ongoing victim application process, as submitted above.

47. In conclusion, the Legal Representative submits that the non-disclosure of the identifying and contact information of the intermediaries and the organisations that assisted the individuals concerned in completing their victim application forms is necessary to protect the safety, physical and psychological well-being, and privacy of all participating victims and victim applicants. This is in addition to the need to protect the integrity of the ongoing field activities of the Legal Representative, the VPRS and other stakeholders as supported by said intermediaries and organisations. The Legal Representative therefore posits that the existing redactions must be maintained under category B.5. of the Redaction Protocol.

3. The disclosure of the identifying and contact information of the intermediaries and the organisations requires the previous consent of the latter

48. The Legal Representative submits that the disclosure of the identifying and contact information of the intermediaries and organisations requires the prior consent of the individuals and entities concerned. Accordingly, the Legal Representative considers said consent as a countervailing basis for non-disclosure of this information.

49. A distinction needs to be made between those individuals who are Prosecution witnesses and those who are not, and the obligations that flow from this. As a starting point, there are intermediaries and third parties who are also Prosecution witnesses, and have therefore agreed to testify in the present case *and* consented to the disclosure to the Defence of their identities as witnesses. However, this is not the case for *all* intermediaries - especially the intermediaries that only agreed to assist victims in completing their application forms. The intermediaries that assisted the dual status individuals concerned have not been called to testify by the Prosecution as witnesses, and accordingly, have not consented to their identities being disclosed to other parties.

50. Moreover, regulation 42(4) of the ROC expressly provides that once protective measures have been ordered, “[t]he Chamber shall seek to obtain, whenever possible, the consent of the person in respect of whom the application to rescind, vary or augment protective measures has been made”.

51. The practice of the Court shows consistency in this regard. In the *Lubanga* case, for instance, Trial Chamber I instructed the legal representatives of the victims to consider seeking the consent of the individuals concerned prior to the communication of their identities to the defence, and ordered the Registry to contact the relevant individuals to establish their views on disclosure of their identities to the defence, and thereafter to report to the Chamber.⁵² Moreover, in the *Katanga and Ngudjolo Chui* case, Trial Chamber II considered itself bound to implement regulation 42 of the ROC *proprio motu*, where the issue concerned the non-disclosure of the identity of a witness for whom another Chamber had authorised protective measures, and where the witness continued to remain opposed to the disclosure of his identity.⁵³ Similarly, other Chambers routinely verified whether the individuals concerned consented to their identities being disclosed to the Defence.⁵⁴ Accordingly, the Legal Representative submits that the consent of the intermediaries concerned is a matter that the Trial Chamber ought to consider prior to deciding to lift redactions where the safety of an individual is at stake.

⁵² See, for instance, the “Redacted Decision on the disclosure of information from victims’ application forms (a/0225/06, a/0229/06 and a/0270/07)” (Trial Chamber I), [No. ICC-01/04-01/06-2586-Red](#), 4 February 2011, paras. 15 and 43.

⁵³ See the “Decision concerning the situation of Witness 270 (regulation 42 of the Regulations of the Court)” (Trial Chamber II), [No. ICC-01/04-01/07-1448-tENG](#), 1 September 2009, para. 5.

⁵⁴ See, for instance, the “Decision on the prosecution’s applications for lifting redactions on material relating to Witnesses 307 and 484 pursuant to Regulation 42 of the Regulations of the Court” (Trial Chamber IV), [No. ICC-02/05-03/09-393](#), 12 September 2012, para. 9. See also the “Redacted Decision on the variation of protective measures under Regulation 42 on referral from Trial Chamber II on 22 July 2009” (Trial Chamber I), [No. ICC-01/04-01/06-2209-Red](#), 16 March 2010, para. 36: in this last example, while the Chamber held that for this individual there was no risk in disclosing the witness’s identity, the Chamber held that “if information is relevant to the issues in the case and falls within the scope of the prosecution’s disclosure obligations, applying the criteria established by the Appeals Chamber, non-disclosure can only be authorised if a danger or risk to the witness has been established and non-disclosure is necessary and will not cause prejudice to the rights of the accused”. (emphasis added)

4. Maintaining redactions to the identifying and contact information of the intermediaries and the organisations that assisted the individuals concerned is proportionate and causes no undue prejudice to the Defence

52. It is submitted that maintaining the redactions to the identifying and contact information of the intermediaries and the organisations that assisted the individuals concerned in completing their victim application forms is the only available measure to overcome or reduce the numerous risks identified above. It is submitted that at this stage there are no less intrusive, alternative measures available for this purpose.

53. Maintaining said redactions is not *per se* prejudicial to or inconsistent with the rights of the Accused and a fair and impartial trial. In fact, the information redacted in the respective victim application forms is very limited and does not render the victim application forms unintelligible or unusable.

54. The Legal Representative posits that the Defence will have an opportunity to address any alleged inconsistency between victim application forms and witness statements during the course of its cross-examination of the relevant witnesses. As submitted earlier, the victim application process is currently ongoing until the end of the Prosecution's presentation of evidence⁵⁵ and with the risks identified *supra*, the Legal Representative submits that this is not the juncture to disclose the identities of the intermediaries and their respective organisations to the Defence. Notwithstanding this, the Legal Representative remains ready to bring to the attention of the Trial Chamber any change in circumstances that may warrant a variation in the non-disclosure of the identities of the intermediaries and their respective organisations to enable the Trial Chamber to strike the right balance enumerated in article 64(2) and article 68 of the Rome Statute in the discharge of its duties to ensure a fair and expeditious trial and to balance the rights of the Defence against the interests of the victims and/or any third parties. Furthermore, the Defence may always submit another application to lift redactions should circumstances change, and the Trial Chamber may

⁵⁵ See the "Decision Setting the Commencement Date of the Trial" (Trial Chamber V), [No. ICC-01/14-01/18-589](#), 16 July 2020, para. 20.

grant the Defence access to the identities of the intermediaries and the organisations concerned in the future should circumstances allow. The Legal Representative reiterates that he is mindful of the Trial Chamber's obligations under the Rome Statute, but takes the position that the current juncture is not appropriate to disclose the information in question.

55. Finally, the Legal Representative respectfully submits, and in line with the serious concerns expressed by the VPRS,⁵⁶ that the Trial Chamber would be properly assisted for the purpose of the determination of this Request if the Registry were to conduct a security assessment and to identify any mitigating measures in order to address any potential risks which may result from the disclosure of the information currently redacted.

V. RELIEF SOUGHT

56. For the foregoing reasons, pursuant to article 64(2) and 68(1) of the Rome Statute and rule 81(4) of the Rules and in accordance with the Court's duty to protect the safety, physical and psychological well-being, dignity and privacy of victims, witnesses and other persons at risk as a result of the activities of the Court, the Legal Representative respectfully requests the Trial Chamber to:

⁵⁶ See the Email correspondence from the VPRS to the Prosecution on 15 February 2022 at 17:41.

ORDER that the existing redactions to the identifying and contact information of the intermediaries and the organisations that assisted dual status individuals P-2582 ([REDACTED]) and P-2620 ([REDACTED]), as applied in CAR-OTP-2126-0456, at 0459, and CAR-OTP-2123-0072, at 0075, should remain redacted.

RESPECTFULLY SUBMITTED

A handwritten signature in black ink, appearing to read 'Dmytro Suprun', with a long vertical stroke extending downwards from the bottom of the signature.

Dmytro Suprun
Common Legal Representative of the Former Child Soldiers

Dated this 28th Day of March 2022

At The Hague, The Netherlands