

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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

Date: 28 August 2023

**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 “Common Legal Representatives’ Joint Response to the ‘Registry Request to Establish a Procedure following the Disclosure of Intermediaries’ Identities’” (No. ICC-01/14-01/18-1866-Conf, dated 12 May 2023)**

**Source:** Common Legal Representatives of Victims

**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 Representative of the Victims Former Child Soldiers (the “CLR V1”) and the Common Legal Representatives of the Victims of Other Crimes (the “CLR V2”, together the “CLR V”) hereby file their response to the “Registry Request to Establish a Procedure following the Disclosure of Intermediaries’ Identities” (the “Request”).<sup>1</sup>

2. The CLR V support the Request that (i) the Intermediaries’ contact information or any other identifying information only be transmitted by the Registry to the parties and participants exceptionally, where there is an overriding legal interest established by the Chamber; (ii) the Registry provide the Intermediaries with notice as to whom, in the current proceedings, holds which information about them, in particular when their identity has been disclosed to the parties and participants; and (iii) the parties and participants notify the VPRS to seek the Intermediaries’ consent before they contact those Intermediaries who are not witnesses in these proceedings.

3. Regarding the proposed notification to the VPRS before contact is established with the Intermediaries, the CLR V submit that this procedure should not be applicable where the CLR V have already established contact with Intermediaries who also assist the VPRS for the purpose of the legal representation of the victims they represent.

## II. PROCEDURAL BACKGROUND

4. On 9 March 2023, the Yekatom Defence requested the Chamber to order the Registry to disclose, *inter alia*, administrative information in its possession on

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<sup>1</sup> See the “Registry Request to Establish a Procedure following the Disclosure of Intermediaries’ Identities”, No. [ICC-01/14-01/18-1853-Conf](#), 1 May 2023, with confidential redacted Annex 1, No. [ICC-01/14-01/18-1853-Conf-Anx1-Red](#), and confidential redacted Annex 2, No. [ICC-01/14-01/18-1853-Conf-Anx2-Red](#) (the “Request”).

individuals [REDACTED] involved with the Victims Participation and Reparations Section (the “VPRS”) (the “Request for Information”).<sup>2</sup>

5. On 4 April 2023, the Chamber granted in part the Request for Information (the “Request for Information Decision”),<sup>3</sup> thereby instructing, *inter alia*, [REDACTED].<sup>4</sup>

6. On 13 April 2023, [REDACTED] (the “List of Intermediaries”).<sup>5</sup>

7. On 24 April 2023, the Chamber instructed the VPRS to file in the record of the case its request - conveyed via email on 19 April 2023 - (a) to inform the Intermediaries that their identity has been disclosed to the parties and participants; and (b) to establish an *ad hoc* procedure in the event any party or participant seeks to contact the Intermediaries.<sup>6</sup>

8. On 1 May 2023, the VPRS filed the Request.<sup>7</sup>

### III. CLASSIFICATION

9. Pursuant to regulation 23bis (2) of the Regulations of the Court, the present submission is classified as confidential following the classification chosen by the Registry and because it refers to the content of documents likewise classified as confidential. A public redacted version will be filed in due course.

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<sup>2</sup> See the “Yekatom Defence Request to issue a Judicial Order for the Registry to disclose information in relation to Count 29”, No. ICC-01/14-01/18-1790-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence, the Ngaiissona Defence, the Prosecution and the Registry (with confidential *ex parte* Annexes A to N. A confidential redacted version was filed on 31 March 2023, No. [ICC-01/14-01/18-1790-Conf-Red](#) (the “Request for Information”).

<sup>3</sup> See the “Decision on the Yekatom Defence Request for a Judicial Order for the Registry to Disclose Information in relation to Count 29” (Trial Chamber V), No. [ICC-01/14-01/18-1828-Conf](#), 4 April 2023 (the “Request for Information Decision”).

<sup>4</sup> *Idem*, para. 6.

<sup>5</sup> See email from the Prosecution to the Chamber, parties and participants sent on 13 April 2023 at 18:35 (the “List of Intermediaries”).

<sup>6</sup> See the Request, *supra* note 1, para. 11.

<sup>7</sup> See the Request, *supra* note 1.

#### IV. SUBMISSIONS

##### **A. Transmission of the Intermediaries' relevant information to the parties and participants only when established by the Chamber and giving notice thereof to the Intermediaries**

10. The CLRV agree with the VPRS's contention that transmission of the Intermediaries' relevant information, even if limited to the parties and participants in the proceedings, could discourage victims from applying for participation and/or reparation.<sup>8</sup>

11. In conversations held with the CLRV, some participating victims have conveyed concerns for their safety and privacy when explained that the information pertaining to the Intermediaries could be disclosed. An increased concern was expressed by victims who got in touch with the Registry through the Intermediaries.

12. The CLRV understand that the concern of these victims stems from the volatile political and security situation in the CAR.<sup>9</sup> As already transmitted to the Registry, some victims have conveyed to the CLRV that the Anti-Balaka are still active and armed, and that they have been approached by former Anti-Balaka elements who attempted to dissuade them from further engaging with the Court, insisting that both Accused would be released and would return to the CAR shortly.<sup>10</sup>

13. Furthermore, the confidential nature of the victims' involvement with the Court, sometimes kept secret even from their own families, also explains their concern for rendering public the Intermediaries' relevant information. Victims have conveyed

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<sup>8</sup> *Idem*, para. 13.

<sup>9</sup> See the "Annex to the Eleventh Periodic Report of the Registry on the Political and Security Situation in the Central African Republic", No. [ICC-01/14-01/18-1772-Conf-Anx](#), 27 February 2023, para. 2.

<sup>10</sup> See the "Seventh Periodic Report on the Victims Admitted to Participate in the Proceedings", No. [ICC-01/14-01/18-1835](#), 11 April 2023, pp. 10-11, 13.

to the CLRV their worries that their security situation may be endangered if more people are given notice of the fact that they are participating in the Court proceedings.

14. *A maiore ad minus*, the CLRV support the VPRS contention that the transmission of the Intermediaries' relevant information may make the latter less inclined to assist the Registry and, thereby, may affect the VPRS capacity to organize the victim application process.<sup>11</sup> The volatile security situation in the CAR may indeed be of equal concern for the safety, privacy, and well-being of the Intermediaries as it is for the participating victims since the Intermediaries run the risk of being perceived as potential witnesses or collaborators with the Court should their identities be exposed.<sup>12</sup>

15. For the reasons above, the CLRV support the Request that the Intermediaries' contact information or any other identifying information only be transmitted by the Registry to the parties and participants "*in exceptional circumstances where there is an overriding legal interest for disclosure established by the relevant Chamber*".<sup>13</sup> In this regard, the CLRV note that, in the Request for Information Decision, the Chamber ordered [REDACTED].<sup>14</sup>

16. In the same circumstances and for the same reasons, the CLRV support the Request "*to provide the Intermediaries with notice as to whom, in the current proceedings, holds which information about them*", in particular when their identity has been disclosed to the parties and participants.<sup>15</sup> In this regard, in its decision concerning the redactions to the names of the intermediaries who assisted dual-status individuals P-2620 [REDACTED] and P-2582 [REDACTED], the Chamber was of the view that, although the prior consent of the VPRS Intermediaries involved was not necessary to lift

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<sup>11</sup> See the Request, *supra* note 1, para. 12.

<sup>12</sup> See the "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" (Trial Chamber V), No. [ICC-01/14-01/18-1578-Conf](#), 21 September 2023, paras. 32-33.

<sup>13</sup> See the Request, *supra* note 1, para. 14.

<sup>14</sup> *Idem*, para. 3.

<sup>15</sup> See the Request, *supra* note 1, para. 16.

redactions on their identifying information, “*they* [the intermediaries] *should be informed of the present decision* [to disclose their identity to the Defence] *prior to its implementation and to the extent possible*”.<sup>16</sup>

**B. Provision of prior notice to the VPRS when the parties or participants wish to contact the Intermediaries**

17. The CLRV agree with the VPRS’ contention that, where the transmission of the Intermediaries’ relevant information has been considered appropriate by the Chamber, there is currently no existing procedure regulating the parties’ or participants’ contact with the Intermediaries, other than where said individuals are also witnesses in the case.<sup>17</sup>

18. Furthermore, as indicated *supra*, the CLRV agree with the VPRS’s argument that the volatile security situation in the CAR also concerns the Intermediaries’ safety, privacy, and well-being.<sup>18</sup> In these circumstances, the Intermediaries are entitled to not agree to be contacted by the parties or participants. If they do, the VPRS is in the best position to inform the parties and participants about the safest way to get in touch with the Intermediaries.

19. As noted by the VPRS, this approach is justified only if the Intermediaries are not witnesses in the case.<sup>19</sup> If the Intermediaries are witnesses, the Contact Protocol adopted by the Chamber applies for the parties or participants to establish contact with

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<sup>16</sup> See the “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” (Trial Chamber V), No. [ICC-01/14-01/18-1578-Conf](#), 21 September 2023, para. 36.

<sup>17</sup> See the Request, *supra* note 1, para. 16.

<sup>18</sup> See *supra* para. 14.

<sup>19</sup> See the Request, *supra* note 1, paras. 16-17.

them,<sup>20</sup> with the exceptions identified by the Chamber.<sup>21</sup> Nonetheless, the CLRV are of the view that, even in this latter scenario, the VPRS must not become an investigating tool for any party or participant in the proceedings, given the neutral character of the Registry<sup>22</sup> and the non-evidentiary functions conducted by the Intermediaries collecting victims' applications.<sup>23</sup>

20. Therefore, the CLRV support the Request "*to direct the parties and participants to notify the VPRS first, should they wish to contact any of the Intermediaries*" who are not witnesses in these proceedings, to seek their consent to be contacted.<sup>24</sup>

21. However, the CLRV submit that a notification to the VPRS must not be required where the CLRV have already established contact with the Intermediaries for the purpose of the legal representation of the victims concerned. In this scenario, seeking the Intermediaries' consent through the VPRS is not necessary in light of the relationship already established between the CLRV and the Intermediaries. Moreover, contacting the Intermediaries in this scenario without prior notice to the VPRS will avoid any interference by the Registry which may impact on the independence of the CLRV in providing legal representation to the victims.

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<sup>20</sup> See the "Protocol on the handling of confidential information during investigations and contact between a party or participant and witnesses of the opposing party or of a participant" (Trial Chamber V), No. [ICC-01/14-01/18-677-Anx5](#), 8 October 2020, paras. 27-44.

<sup>21</sup> See the "Decision Providing Further Directions on the Contact Protocol" (Trial Chamber V), No. [ICC-01/14-01/18-942](#), 1 April 2021, para. 11; and the "Decision on the Ngaïssona Defence Request for Further Directions on the Contact Protocol" (Trial Chamber V), No. [ICC-01/14-01/18-1681](#), 30 November 2022, para. 12.

<sup>22</sup> See the "Judgment on the appeal of the Prosecutor against the 'Decision on Evidentiary Scope of the Confirmation Hearing, Preventive Relocation and Disclosure under Article 67(2) of the Statute and Rule 77 of the Rules' of Pre-Trial Chamber I" (Appeals Chamber), No. [ICC-01/04-01/07-776\\_OA7](#), 26 November 2008, para. 90.

<sup>23</sup> See the "Judgment on the appeal of Mr Mahamat Said Abdel Kani against the decision of Pre-Trial Chamber II of 16 April 2021 entitled "Decision establishing the principles applicable to victims' applications for participation"" (Appeals Chamber), No. [ICC-01/14-01/21-171\\_OA2](#), 14 September 2021, para. 51.

<sup>24</sup> See the Request, *supra* note 1, para. 17.



## V. CONCLUSION

22. For the foregoing reasons, the CLRV respectfully request the Chamber to grant the Request, clarifying that notification to the VPRS is not required from the CLRV where they have already established contact for the purpose of the legal representation of the victims with Intermediaries who also assist the VPRS.



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Victims Former Child Soldiers



Paolina Massidda  
For the team of the Common  
Legal Representatives  
Victims of Other Crimes

Dated this 28<sup>th</sup> day of August 2023

At The Hague, The Netherlands