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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
NGAÏSSONA**

Public

**With Two Annexes in Confidential *EX PARTE* Registry only and Confidential
Redacted versions**

**Public redacted version of “Registry Request to Establish a Procedure following
the Disclosure of Intermediaries’ Identities”, ICC-01/14-01/18-1853-Conf, 1 May
2023**

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's Victim Participation and Reparations Section ("VPRS") submits the present request in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaissona* ("Case") pursuant to Trial Chamber V's ("Chamber") instruction conveyed by email on 24 April 2023 ("Order").¹
2. Following the disclosure by the Prosecution of VPRS intermediaries' identities to parties and participants in the Case, the VPRS respectfully: i) seeks the Chamber's approval to inform its intermediaries that their identity has been disclosed to parties and participants; and ii) requests the Chamber to consider adopting a procedure for parties and participants who may wish to contact these intermediaries in the future.

II. Classification

3. Pursuant to regulation 23*bis* (2) of the Regulations of the Court ("RoC"), the present submission is classified as confidential since it refers to a Chamber's decision with the same classification.² The two annexes to the present submission ("Two Annexes") are classified as Confidential *ex parte* Registry only, since they contain sensitive information. Confidential redacted versions of the Two Annexes are also provided.

III. Applicable Law

4. The present submission is filed in accordance with the Order, and articles 64 (2) and 68 (1) of the Rome Statute.

IV. Procedural History

¹ Email from Trial Chamber V communications to the VPRS on 24 April 2023 at 11:35.

² Trial Chamber V, "Decision on the Yekatom Defence Request for a Judicial Order for the Registry to Disclose Information in relation to Count 29", 4 April 2023, ICC-01/14-01/18-1828-Conf.

5. On 9 March 2023, the Defence requested the Chamber to order the Registry “to disclose administrative information in its possession on [REDACTED] and involved with the [VPRS]” (“Defence Request”).³
6. On 4 April 2023, the Chamber “exceptionally” granted the Defence Request in part, thereby ordering the VPRS to provide to the Prosecution any material in its possession concerning (a) the identity of [REDACTED] by the VPRS [REDACTED] (“Intermediaries”); and (b) [REDACTED] on behalf of the VPRS.⁴
7. On 11 April 2023, the VPRS provided the Prosecution with, *inter alia*, a list of names of individuals who have assisted applicants in filling out application forms for participation/reparations in the present case [REDACTED] (“List of Intermediaries”).⁵
8. On 13 April 2023, the Prosecution provided the Chamber, parties and participants with a courtesy copy of a redacted List of Intermediaries, with the redacted contact details of some Intermediaries having been redacted pending consultations with VPRS.⁶
9. On 17 April 2023, the VPRS asked the Prosecution by email to maintain the relevant redactions on the List of Intermediaries (“17 April 2023 Email”, Annex 1).⁷
10. On 19 April 2023, the VPRS sought the Chamber’s approval to inform the Intermediaries that their identity had been disclosed to parties and

³ Yekatom Defence, “Request to issue a Judicial Order for the Registry to disclose information in relation to Count 29”, ICC-01/14-01/18-1790-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence, the Ngaïssona Defence, the Prosecution and the Registry (confidential redacted version filed on 30 March 2023), paras 1, 20 and 65.

⁴ Trial Chamber V, “Decision on the Yekatom Defence Request for a Judicial Order for the Registry to Disclose Information in relation to Count 29”, 4 April 2023, ICC-01/14-01/18-1828-Conf, para. 6.

⁵ Email from VPRS to Office of the Prosecution (“OTP”), 11 April 2023 at 16:40.

⁶ Email from OTP to Chamber, parties and participants, 13 April 2023 at 18:35.

⁷ Email from VPRS to OTP, 17 April 2023 at 10:25. [REDACTED].

participants, and asked the Chamber to consider establishing an *ad hoc* procedure in the event any party or participant seeks to contact them (“19 April 2023 Email”, Annex 2).⁸

11. On 24 April 2023, the Chamber instructed the VPRS to file on the record of the Case the requests conveyed in its 19 April 2023 Email - addressing also the arguments raised in its 17 April 2023 Email.⁹

V. Submissions

The disclosure of VPRS intermediaries’ identities will impact its operations on the ground

12. VPRS’ capacity to organize the victim application process hinges on its ability to identify reliable and committed individuals who can carry out auxiliary activities alongside the VPRS on the ground. In the context of the present case, the work of VPRS intermediaries, who assisted [REDACTED] in filling out application forms, presented many challenges. This particularly included to identify, reach out to and assist in a secure manner certain vulnerable victim groups who may wish to apply for participation in the proceedings.¹⁰
13. As already pointed out by the Registry,¹¹ the Registry considers that the disclosure of information pertaining to its intermediaries - including particularly their contact details - bears a high risk of impacting VPRS activities on the ground. Intermediaries may be less inclined to assist the Registry in relevant activities out of fear for their safety, privacy, well-being and any

⁸ Email from VPRS to Chamber 19 April 2023, at 17:04.

⁹ See footnote 1 *supra*.

¹⁰ VPRS previously shared with the Chamber information pertaining to [REDACTED] to apply for participation in the Case: 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; “Registry Observations on ICC-01/14-01/18-1290-Conf-Exp”, ICC-01/14-01/18-1302-Conf-Exp, 4 March 2022 (a confidential redacted version notified the same day, ICC-01/14-01/18-1302-Conf-Red), paras 12 -14.

¹¹ See for instance Registry, “Registry Observations on ICC-01/14-01/18-1290-Conf-Exp”, ICC-01/14-01/18-1302-Conf-Exp, 4 March 2022), paras 15-19.

impact on the confidentiality of their interaction with the ICC.¹² This may also generate a (perceived) risk to the safety and privacy of participating victims, particularly those who got in contact with the Registry through the Intermediaries.¹³ In other words, disclosure of Intermediaries' details, even if limited to the parties to the proceedings, could discourage the small existing pool of intermediaries to further collaborate with the VPRS,¹⁴ and potentially victims to apply for participation.

14. The Registry is therefore of the view that VPRS intermediaries' contact information or any other identifying information should only be disclosed to the parties in exceptional circumstances where there is an overriding legal interest for disclosure established by the relevant Chamber. It is for this reason that the VPRS submitted to the OTP that there is presently no need to provide the Intermediaries' contact details to the Defence (*see* Annex 1), also in light of the proposed process in paragraph 17 *infra* if it is considered necessary to contact said individuals.¹⁵

There is no existing procedure regulating parties' and participants' contact with VPRS intermediaries

15. Where an exceptional disclosure of VPRS intermediaries' information is considered appropriate, the Registry supports the establishment of a standard procedure/protocol in order to mitigate the impact of any such disclosure on

¹² *Id.*, paras 15-16. The Chamber has ruled in the Case that 'an objectively justifiable risk' to the safety of the intermediaries arises from disclosing their identifying information to the Defence ("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", ICC-01/14-01/18-1578-Conf, 21 September 2022, para. 33).

¹³ The Common Legal Representatives of the Former Child Soldiers reports that a number of victims has indicated to him having 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 country shortly ("Seventh Periodic Report on the Victims Admitted to Participate in the Proceedings", 11 April 2023, ICC-01/14-01/18-1835, pp. 10 -11).

¹⁴ *Id.*, para. 18. This is in particular 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.

¹⁵ The Registry has no doubt that the Defence observes the highest standards of professionalism and confidentiality. The proposed process merely serves as a risk mitigation measure regarding inadvertent and unintentional disclosure of information in the public domain.

the intermediaries' safety, privacy and well-being, as well as on VPRS activities on the ground.

16. The Registry notes that the current statutory framework does not regulate the situation where a party wishes to communicate with an individual who has assisted the VPRS in the organisation of the victim application process – except in the cases where said individual is also a witness in the case. The Registry notes that in a previous ruling on a comparable matter,¹⁶ the Chamber was of the view that VPRS intermediaries should be informed prior to the disclosure of their identity to the Defence, and ordered the Registry to proceed accordingly.¹⁷ The Registry would support the adoption of the same procedure in the present situation, and thus hereby seeks the Chamber's approval to provide Intermediaries with adequate notice as to whom, in the current proceedings, holds which information about them.
17. Moreover, considering the current security situation in the Central African Republic and the confidential nature of the intermediaries' involvement with the VPRS, the Registry further respectfully requests the Chamber to direct parties and participants to notify the VPRS first, should they wish to contact any of the Intermediaries – [REDACTED]. This would assist the VPRS to inform the relevant intermediary/ies, seek their prior consent to be contacted, and inform the relevant party/participant about the safest manner to reach out to the relevant intermediary/ies.
18. The Registry is of the view that the above procedure takes due consideration of the intermediaries' safety and privacy, and allows for a sufficiently secure and sustainable framework for the disclosure of these individuals' information, also in the context of ongoing VPRS activities on the ground.

¹⁶ See Trial Chamber V, "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", 21 September 2022, ICC-01/14-01/18-1578-Conf. The Chamber ordered the disclosure to the Defence of the identities of intermediaries who had assisted dual status victims in filling out their application forms.

¹⁷ *Id.*, para. 36.

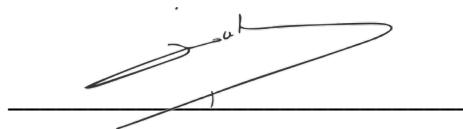
19. Lastly, the Registry submits that these measures are appropriate in light of the specific functions VPRS intermediaries carry out, *i.e.* assisting victims in filling out application forms for participation, as opposed to assisting a party to the proceedings in conducting its investigations.¹⁸

VI. Conclusion

20. The VPRS submits that the exceptional disclosure of the Intermediaries' identity ordered by the Chamber warrants the establishment of an *ad hoc* procedure which takes due consideration of the Intermediaries' safety, privacy, and well-being, thereby taking into consideration their role in the proceedings.

21. The VPRS therefore respectfully requests the Chamber:

- to authorise the VPRS to provide its Intermediaries with adequate notice of the disclosure of their relevant information to the parties; and
- to instruct parties who wish to contact any of the individuals on the List of Intermediaries – [REDACTED] - to follow the procedure described in paragraph 17 above.



Marc Dubuisson, Director, Division of Judicial Services

On behalf of Osvaldo Zavala Giler, Registrar

Dated this 29 August 2023

At The Hague, The Netherlands

¹⁸ In line with the Court's jurisprudence (see Appeals Chamber, *The Prosecutor v. Mahamat Said Abdel Kani* "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'" ICC-01/14-01/21-171, para. 51), VPRS considers that the victim application process should not be confused with activities related to the parties' collecting of material holding evidentiary value regarding the alleged charges in a case.