



Original: English

No.: ICC-01/14-01/21

Date: 21 July 2023

Date of Public Redacted Version: 29 August 2023

TRIAL CHAMBER VI

Before:

**Judge Miatta Maria Samba, Presiding Judge
Judge María del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godínez**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF

THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI

Public Redacted version of

***Decision on the *Soumissions conjointes de la Défense et de l'Accusation*
concernant la position des Parties quant aux expurgations à apposer aux Annexes
du 'Registry's Report on Items Recognised as Formally Submitted by the
Chamber'***

Decision 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

Ms Holo Makwaia

Counsel for the Defence

Ms Jennifer Naouri

Mr Dov Jacobs

Legal Representatives of Victims

Ms Sarah Pellet

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
for Participation/Reparations**

**The Office of Public Counsel
for Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and
Reparations Section**

Other

TRIAL CHAMBER VI of the International Criminal Court, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, having regard to articles 54, 64, 67(1), 68 and 93 of the Rome Statute (the ‘Statute’), rules 81, 87, and 137 of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on *Soumissions conjointes de la Défense et de l’Accusation concernant la position des Parties quant aux expurgations à apposer aux Annexes du* “Registry’s Report on Items Recognised as Formally Submitted by the Chamber”’.

I. PROCEDURAL HISTORY

1. On 2 March 2023, after numerous exchanges between the Office of the Prosecutor (the ‘Prosecution’), the Defence, and the Common Legal Representative of Victims (the ‘CLR’), concerning redactions to the “Registry’s Report on Items Recognised as Formally Submitted by the Chamber”, the Prosecution submitted to the Chamber 11 annexes containing proposals for redactions made by the parties.¹
2. On 9 March 2023, following submissions by the Defence regarding the provided document,² the Chamber ordered the Defence and the Prosecution to file a joint submission.³
3. On 24 April 2023, the Prosecution and the Defence filed the ‘*Soumissions conjointes de la Défense et de l’Accusation concernant la position des Parties quant aux expurgations à apposer aux Annexes du* « Registry’s Report on Items Recognised as Formally Submitted by the Chamber »’ (the ‘Joint Submission’).⁴
4. On 25 April 2023, the CLR informed the parties that she did not intend to submit a response to the Joint Submission.⁵

¹ Email from the Prosecution to the Chamber, 2 March 2023, at 16:59.

² Email from the Defence to the Chamber, 3 March 2023, at 15:26.

³ Email from the Chamber to the Parties, 9 March 2023, at 12:32.

⁴ ICC-01/14-01/21-606-Conf, with 8 confidential annexes, paras 1-9. A public redacted version was filed on 1 May 2023 ([ICC-01/14-01/21-606-Red](#)).

⁵ Email from the CLR to the Chamber, 25 April 2023, at 11:54.

II. SUBMISSIONS AND ANALYSIS

5. In the Joint Submission, the Prosecution makes two types of requests for redactions. The first is based on rules 81(3) and (4) of the Rules and pertains mainly to the protection of witnesses. The second is based on article 93(8)(a) and 54(3)(f) of the Statute and relates to the confidentiality of cooperation between the Prosecution, States and other entities. The Chamber will discuss these two groups of requests together.

A. Redactions requested pursuant to rule 81(3) and (4) of the rules

5. Before analysing the individual requests for redactions, the Chamber will consider the appropriate legal basis for such redactions. The Prosecution bases its requests on rules 81(3) and (4) of the Rules. However, these provisions deal specifically with restrictions on disclosure to the suspect or the accused.⁶ In this instance the Defence has received all the information and the only question is whether or not it can be shared with the public in accordance with the principle of publicity of the proceedings. Restrictions on the dissemination of information to the public on the ground that this may endanger the security of victims and witnesses find their legal justification in article 68 of the Statute as implemented by rule 87 of the Rules. Accordingly, the Chamber will analyse the Prosecution's request on this basis.

6. The Chamber notes that in order to allow the requested redactions, the Chamber must be satisfied that they are demanded by an 'objectively justifiable risk' and are proportionate to the rights of the accused. The concept of risk necessarily involves a certain level of speculation and prediction. Nonetheless, the available information must indicate the existence of circumstances for which the public dissemination of the information, in the absence of adequate protective measures under rule 87 of the Rules,

⁶ See Appeals Chamber, *The Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*, Judgment on the appeal of Mr Germain Katanga against the decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Request for Authorisation to Redact Witness Statements", 13 May 2008, [ICC-01/04-01/07-476](#), para. 54; Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on the 'Prosecution's application for in-court protective and special measures', 30 November 2016, [ICC-02/04-01/15-612-Red](#), para 7; See also Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Public Redacted Version of "Decision on in-court protective measures for Witnesses D04-03 and D04-04", ICC-01/05-01/08-2694 of 17 June 2013, 29 June 2016, [ICC-01/05-01/08-2694-Red2](#), para 9; See also Pre-Trial Chamber II, *The Prosecutor v. Bosco Ntaganda*, Redacted First Decision on the Prosecutor's Requests for Redactions and Other Related Requests, 3 July 2014, [ICC-01/04-02/06-117-Red3](#), paras 21, 23.

would create or unduly increase an impermissible danger to any of the legitimate interests of witnesses protected under article 68 of the Statute – be it their physical security and safety or their psychological well-being, privacy and dignity.⁷

1. *Redaction of a portion of the titles of CAR-OTP-2018-0586, CAR-OTP-2018-0590, CAR-OTP-2018-0592, CAR-OTP-2018-0594, CAR-OTP-2018-0598 and CAR-OTP-2018-0600 – Annex 1 (P-0574), Annex 2 (P-0338)*

(a) Proposed Redaction

7. The Prosecution requests the redaction of the following words from the titles of the abovementioned exhibits “[REDACTED]”.⁸

(b) Prosecution’s Position⁹

8. According to the Prosecution, even if P-0547’s detention is in the public domain, his identity is not and the mention of the existence of [REDACTED] may be identifying. The Prosecution points out that the [REDACTED] in question were shown in private session and that no information about [REDACTED] was revealed publicly.¹⁰ According to the Prosecution, [REDACTED], which may allow for P-0547’s identification.

(c) Defence’s Position¹¹

9. The Defence objects to this redaction for the following reasons: first, P-0547’s detention at the OCRB is public information.¹² Second, the Defence points out that the public redacted version of the Prosecution’s Trial Brief refers to [REDACTED] of P-0547 taken [REDACTED]. The Defence questions why information about the existence of [REDACTED] would not be identifying whereas information about [REDACTED]

⁷ See Decision on the Prosecution’s Request for In-Court Protective Measures, 21 September 2022, [ICC-01/14-01/21-481-Red](#), paras 12-19; Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on the ‘Prosecution’s application for in-court protective and special measures’, 29 November 2016, [ICC-02/04-01/15-612-Red](#), para. 8.

⁸ [Joint Submission](#), para. 20.

⁹ [Joint Submission](#), para. 21.

¹⁰ [Joint Submission](#), para. 21; Prosecution’s Trial Brief, 13 June 2022, ICC-01/14-01/21-359-Conf. A public redacted version was filed on 28 July 2022 ([ICC-01/14-01/21-359-Red](#)) (‘Prosecution’s Trial Brief’), paras 221 and 225.

¹¹ [Joint Submission](#), para. 22.

¹² [Joint Submission](#), para. 23.

would. Third, the Defence rejects the suggestion that information about the [REDACTED] would allow him to be identified.¹³

(d) Analysis

10. The Chamber notes that it is indeed true that the public already knows that P-0547 was allegedly detained and mistreated at the OCRB. It is equally publicly known that [REDACTED] of P-0547 exist [REDACTED]. At the same time, P-0547's identity is still protected and the Prosecution took great care not to reveal any information that could lead to his identification. In particular, although one of the [REDACTED] in question¹⁴ was shown in open session to another witness,¹⁵ it was never publicly discussed [REDACTED].

11. The Chamber recognises that the information that particular [REDACTED] were made [REDACTED] is not, in itself, identifying. Nevertheless, given the [REDACTED], the Chamber deems it more prudent to redact this information. Moreover, given P-0547's fragile emotional state and considering the precarious security situation in Bangui, the Chamber deems it more prudent to redact this information to avoid any possible anxiety on the part of P-0547. This redaction does not cause any prejudice to the accused and there is virtually no public interest in this information. Accordingly, the Chamber grants this redaction.

2. *Redaction of a portion of the title of CAR-OTP-2082-0458 – Annex 2 (P-0338), Annex 4 (P-2105), Annex 7 (P-0787)*

(a) Proposed Redaction

12. The Prosecution requests the redaction of the following stricken out words 'Liste ~~Generale Elements~~ OCRB Central' in the title of CAR-OTP-2028-0458.¹⁶

(b) Prosecution's Position¹⁷

13. According to the Prosecution, the disclosure of the full title of this document may identify witness [REDACTED] who compiled this document. To do so, [REDACTED]

¹³ [Joint Submission](#), para. 24.

¹⁴ CAR-OTP2018-0598

¹⁵ See ICC-01/14-01/21-T-018-CONF-ENG CT, p. 46

¹⁶ [Joint Submission](#), para. 35.

¹⁷ [Joint Submission](#), para. 36.

had contacted each [REDACTED] individually.¹⁸ Thus, if this list were publicly disclosed, [REDACTED] who participated and/or have knowledge of the list could easily infer that [REDACTED] cooperated with Prosecution. According to the Prosecution, this would put [REDACTED] in jeopardy.

(c) Defence's Position¹⁹

14. The Defence objects to this redaction. On the one hand, the public redacted version of the Prosecution's Trial Brief refers to this document in a footnote and calls it 'List of [REDACTED]',²⁰ Since the names on this list have already been commented on by the witness in open session, both the nature of the exhibit and its contents are publicly known.²¹ Moreover, this exhibit appears in the Prosecution's list of materials for P-0338 and P-2105, in which the Prosecution indicated that the document in question could be shown to the public. The full title in question was also shown in open session during the testimony of P-0338.²²

(d) Analysis

15. The Chamber accepts the Defence's submissions and notes that indeed the document was commented upon by a witness in public session²³ and is publicly referred to a number of times in the Prosecution's Trial Brief.²⁴ Although the Chamber understands that it may be identifying if the document in its entirety were to be made public, it is not persuaded by the Prosecution's assertion that simply mentioning the title could have this effect. Accordingly, the requested redaction is rejected.

¹⁸ CAR-OTP-2100-2673, paras 91 and 92.

¹⁹ [Joint Submission](#), paras 37-39.

²⁰ [REDACTED].

²¹ ICC-01/14-01/21-T-017-CONF-ENG CT, pp 76-79.

²² ICC-01/14-01/21-T-017-CONF-ENG CT, pp 76-79.

²³ ICC-01/14-01/21-T-017-CONF-ENG CT, pp 76-79.

²⁴ [Prosecution's Trial Brief](#), para. 111, footnote 338 and para. 114, footnote 354.

3. *Redaction of a portion of the titles of CAR-REG-0002-0031, CAR-REG-0002-0032, CAR-OTP-2069-3226 and CAR-OPT-2069-3227 – Annex 3 (P-3056), Annex 6 (P-2400), Annex 8 (P-1429)*

(a) Proposed Redaction

16. The Prosecution requests the redaction of the following stricken out words ‘[REDACTED]’ and ‘[REDACTED]’.²⁵

(b) Prosecution’s Position²⁶

17. According to the Prosecution, revealing the full title of these items could, when read in conjunction with other available information, present a risk of identification of [REDACTED]. [REDACTED], making identification of [REDACTED] easier.

(c) Defence’s Position²⁷

18. The Defence objects to this redaction, pointing out that the public redacted version of Prosecution’s Trial Brief mentions that ‘[[REDACTED]’ and that corresponding footnote [REDACTED] indicates: ‘[REDACTED]’.²⁸ It is therefore clear from this paragraph and its footnote [REDACTED].

(d) Analysis

19. The Chamber agrees with the Defence that the Prosecution has already revealed information from which one could infer that [REDACTED]. However, the titles of the items are even clearer in this regard and the Chamber accepts that it may be more prudent to redact the reference to [REDACTED]. Accordingly, the Prosecution’s request for redactions in this instance is granted.

²⁵ [Joint Submission](#), para. 40.

²⁶ [Joint Submission](#), para. 41.

²⁷ [Joint Submission](#), paras 42-45.

²⁸ [REDACTED]

4. *Redaction of a portion of the titles of CAR-OTP-2134-1593-R01 and R02 – Annex 3 (P-3056)*

(a) Proposed Redaction

20. The Prosecution requests the redaction pursuant to rules 81(3)(and (4) of the Rules of the following stricken out words ‘INVESTIGATION REPORT / ~~Death certificate of CAR-OTP-P-3053~~’.

(b) Prosecution’s Position²⁹

21. According to the Prosecution, as this exhibit is a confidential investigation report that was discussed in private session, this portion of the title should be redacted from the public.³⁰ The Prosecution also claims that this part of the title, taken together with information on [REDACTED] and [REDACTED] contained in the public redacted version of the Prosecution’s Trial Brief, allows [REDACTED] to be identified.³¹

(c) Defence’s Position³²

22. The Defence objects to this redaction. First, it considers that a pseudonym cannot in itself constitute identifying information. Second, the Defence notes that there is nothing in the title to suggest that the investigator's report explains [REDACTED]. Furthermore, the public redacted version of the Prosecution’s Trial Brief already refers to the fact that [REDACTED] and [REDACTED] were [REDACTED] and that P-3053 is dead. The use of the pseudonym in the title of the piece in question does not therefore provide any new information that presents a risk of identification. Since the fact that P-3053 is dead is public information, the fact that there is a death certificate is not identifying information. Nothing in the words ‘Death certificate of CAR-OTP-P-3053’ identifies [REDACTED].

(d) Analysis

23. The Chamber agrees with the Defence that the Prosecution has failed to demonstrate how the words ‘Death certificate of CAR-OTP-3053’, alone or taken together with the information contained in the public redacted version of the Prosecution’s Trial Brief, would identify [REDACTED]. As the Defence points out, the Prosecution’s Trial Brief

²⁹ [Joint Submission](#), para. 47.

³⁰ ICC-01/14-01/21-T-021-CONF-ENG ET, p. 77.

³¹ ICC-01/14-01/21-T-021-CONF-ENG ET, p. 78.

³² [Joint Submission](#), paras 48-50.

reveals the fact that [REDACTED] and [REDACTED] are [REDACTED] and that the latter is deceased.³³ [REDACTED].³⁴ Under these circumstances, it is unclear how redacting the title of the Investigation Report would help protect the identity of [REDACTED]. The redaction request must be denied.

5. *Redaction of a portion of the title of CAR-OTP-2023-0646-R01 and R02 – Annex 4 (P-2105), Annex 5 (P-3108), Annex 7 (P-0787)*

(a) Proposed Redaction

24. The Prosecution requests the redaction of the following stricken out words from the title of CAR-OTP-2023-0646: ‘Annex D/ Liste des elements ~~emite extraordinaire pour la defense des acquis democratiques (CEDAD) identifiés~~’.³⁵

(b) Prosecution’s Position³⁶

25. According to the Prosecution, the disclosure of this information risks identifying [REDACTED] and might alert those who know [REDACTED]. It points out that this document was classified as confidential in the list of materials for P-2105 and discussed only in private session.³⁷ The Prosecution further states that during P-3108’s testimony, this document was referred to as ‘CEDAD list’ in open session without the exact title or content being mentioned. P-3108 only commented on the document for purposes of telephone attribution.³⁸ It was not mentioned in the public redacted version of the Prosecution’s Trial Brief or shown to the public during the trial.

(c) Defence’s Position³⁹

26. The Defence objects to this redaction. First, the Defence points out that the words the Prosecution wishes to redact are only the full name of the acronym ‘CEDAD’ and that this full name appears in the public redacted version of the Prosecution’s Trial Brief and is therefore publicly known.⁴⁰ According to the Defence the title is neutral and descriptive.

³³ [REDACTED]

³⁴ ICC-01/14-01/21-T-021-CONF-ENG ET, pp 77-79.

³⁵ [Joint Submission](#), para. 53.

³⁶ [Joint Submission](#), paras 54-55.

³⁷ [REDACTED]

³⁸ [REDACTED]

³⁹ [Joint Submission](#), paras 56-60.

⁴⁰ [Prosecution’s Trial Brief](#), para. 23.

The Prosecution does not explain how this title would be specific enough to identify [REDACTED].

27. The Defence further notes that the exhibit CAR-OTP-2023-0646-R01 referred to is referenced in a footnote in the public redacted version of the Prosecution's Trial Brief as 'List of CEDAD Seleka'⁴¹ and that, although the exact title is different, the description of its contents remains the same.

28. Second, in the Prosecution's list of materials for P-2105, the Prosecution indicated that CAR-OTP-2023-0646-R01 could be shown to the public, even though it contains the full title which the Prosecution now wants to redact.

29. Third, the Defence states that P-3108 stated in open session that this document was '*une liste de la CEDAD*'⁴² and that the Prosecution asked questions about it in open session.

(d) Analysis

30. The Chamber starts by noting that the Prosecution's assertion that [REDACTED] is the [REDACTED] of CAR-OTP-2023-0646 is not entirely correct. In his statement, [REDACTED] states that he indeed kept a copy of the list, but that it was created by someone else.⁴³ Moreover, the Chamber observes that in the public redacted version of the Prosecution's Trial Brief, the Prosecution identifies the item as a 'List of CEDAD Seleka',⁴⁴ thereby revealing the nature of the document publicly. The Chamber also agrees with the Defence that the Prosecution has failed to explain why it would be identifying to use the actual wording instead of the acronym of the CEDAD. Under these circumstances, the redaction request must be denied.

⁴¹ [Prosecution's Trial Brief](#), p. 43, footnote 334.

⁴² ICC-01/14-01/21-T-028-CONF-ENG CT, p. 58.

⁴³ CAR-OTP-2023-0621, para. 60.

⁴⁴ [Prosecution's Trial Brief](#), p. 43, footnote 334.

6. *Redaction of a portion of the titles of [REDACTED] – Annex 5 (P-3108)*

(a) Proposed Redaction

31. The Prosecution requests the redaction of the following stricken out words from the title of CAR-OTP-2059-0580: ‘[REDACTED] MEMBRES DU CABINET PRESIDENTIEL’.⁴⁵

(b) Prosecution’s Position⁴⁶

32. The Prosecution argues that disclosure of this information to the public may expose the cooperation of [REDACTED], as he was [REDACTED]. The Prosecution notes that although some information about the origin of the document was revealed in open court, the exact title was not shown in public.

(c) Defence’s Position⁴⁷

33. The Defence objects to this redaction since it was stated in open session that ‘[REDACTED]’.⁴⁸ Furthermore, the Defence notes that the title of the document is neutral and descriptive and does not identify the author of the list or the person who gave it to the Prosecution.

(d) Analysis

34. The Chamber notes that the nature of [REDACTED] and the fact that it was provided by [REDACTED] was indeed discussed in open session.⁴⁹ The Prosecution now claims that this was inadvertent, even though it did not request the transcript to be redacted at the time.⁵⁰ Nevertheless, the Chamber agrees with the Prosecution that revealing the full title of [REDACTED] would further expose [REDACTED]. The nature of the document is such that only a limited number of persons would have had access to it. The fact that [REDACTED] is not the only possible source of the document does not mean that the risk of his identification would not increase if the full title were revealed. Under

⁴⁵ [Joint Submission](#), para. 71.

⁴⁶ [Joint Submission](#), para. 72.

⁴⁷ [Joint Submission](#), paras 73-74.

⁴⁸ [REDACTED]

⁴⁹ [REDACTED]

⁵⁰ See Daily Redaction Report T-029 – 01.11.2022.

these circumstances, the Chamber authorises the redaction but urges the Prosecution to exercise caution in the future.

7. *Redaction in Chamber's email from 12 January 2023 "Decision on Submitted Materials for P-0787" and in Prosecution's email from 18 November 2022 "Re: Mise en oeuvre du paragraphe 22 de la decision ICC-01/14-01/21-251/P-0787" – Annex 7 (P-0787)*

(a) Prosecution's Proposed Redaction

35. The Prosecution requests the redaction of the following stricken out words in two separate emails:⁵¹

Email from Prosecution to Trial Chamber VI Communications, dated 18 November 2022 at 12:17: 'The Prosecution objects to the Defence's submission of CAR-D33-0014-0009 (item 7 of the Defence's list), which is an intermediary contract signed by ~~Witness P-0838~~ in 2016.'

Email from Trial Chamber VI Communications dated 12 January 2023 at 15:05: "'This document [CAR-D33-0014-0009] is an intermediary contract signed by ~~Witness P-0838~~.'"

(b) Prosecution's Position⁵²

36. According to the Prosecution, disclosing this information may identify P-0838, [REDACTED]. The Defence showed CAR-D33-0014-0009 (a redacted version of CAR-OTP-2027-2428) to P-0787 in open session. However, the pseudonym P-0838 or other identifying details were not mentioned publicly.⁵³ According to the Prosecution, the disclosure of P-0838's pseudonym is sensitive because of their status as an intermediary and may therefore present a risk of identification. The Prosecution also argues that the witness may feel exposed.

(c) Defence's Position⁵⁴

37. The Defence objects to this redaction. The Defence notes first that the fact that the Prosecution uses intermediaries is not in itself confidential information. Second, the issue of the contract signed by P-0838 was discussed in open session and the fact that this person was given a pseudonym is not in itself confidential information that reveals anything about

⁵¹ [Joint Submission](#), para. 77.

⁵² [Joint Submission](#), paras 78-79.

⁵³ ICC-01/14-01/21-T-038-CONF-ENG-ET, pp 85-87.

⁵⁴ [Joint Submission](#), paras 80-82.

his or her identity. Indeed, the Defence argues that considering that the mention of a pseudonym would create a risk of identification of a person would call into question the use of pseudonyms altogether.

(d) Analysis

38. The Chamber notes that CAR-D33-0014-0009 was indeed shown to P-0787 in open session. However, the pseudonym P-0838 was not mentioned. The only thing the public knows on the basis of the transcript is thus that an unidentified person signed a declaration as an intermediary. If the full text of the email exchange between the Chamber and the parties were to be made public, it would reveal that someone without any connection to P-0787 referred to by the pseudonym P-0838 agreed to be an intermediary for the Prosecution. The Prosecution fails to explain how the mere information that P-0838 may have acted as a Prosecution intermediary would allow anyone to identify this person. The Chamber also notes that P-0838 is not on the Prosecution's list of witnesses and will thus *a priori* not be called to testify. The risk of further exposure of this person is thus in principle limited. Under these circumstances, the Chamber rejects the requested redaction.

8. *Redaction of a portion of the title of CAR-OTP-2036-0439 – Annex 7 (P-0787)*

(a) Proposed Redaction

39. The Prosecution requests the redaction of the following stricken out words from the title of CAR-OTP-2036-0439: 'Annex 1: List of Seleka elements at the OCRB during 2013-[REDACTED]'.⁵⁵

(b) Prosecution's Position⁵⁶

40. According to the Prosecution, disclosure of this information could expose P-0787 to retaliation from potential actors. The exact title of the document was not read in public but P-0787 only stated 'this is the staff of the Seleka coalition who were on duty at the OCRB'.⁵⁷ Since this list [REDACTED] the Prosecution argues that this information should remain redacted from the public in order to protect P-0787.

⁵⁵ [Joint Submission](#), para. 83.

⁵⁶ [Joint Submission](#), para. 84.

⁵⁷ ICC-01/14-01/21-T-037-CONF-ENG ET, p. 18.

(c) Defence's Position⁵⁸

41. The Defence objects to this redaction. First, the Defence notes that it was revealed in open session that P-0787 is the source of the document.⁵⁹ The Defence notes in this regard that the Prosecution does not explain why the fact that the list was signed by P-0787 should be kept confidential or how it would be identifying information when P-0787 has testified publicly, his name is already well known and he has publicly revealed that he provided the list to the Prosecution.⁶⁰ Second, the terms [REDACTED] do not reveal any identifying or confidential information about anyone.

(d) Analysis

42. The Chamber notes that P-0787 is an active law enforcement officer who testified without a pseudonym and publicly acknowledged that he had provided a list of Seleka staff members at the OCRB.⁶¹ However, the wording of the title of CAR-OTP-2036-0439 reveals that the list also contains information about the [REDACTED]. The Chamber agrees with the Prosecution that revealing that P-0787 provided such information to the Prosecution might cause certain of the implicated individuals to feel threatened and seek to harm or threaten P-0787 as a result. Accordingly, the Chamber grants this redaction, which does not prejudice the Defence in any way and does not affect the public's ability to follow the proceedings.

9. *Redaction of a portion of the title of CAR-OTP-2036-0441 – Annex 7 (P-0787)*

(a) Proposed Redaction

43. The Prosecution requests the redaction of the following words from the title of CAR-OTP-2036-0441: 'Annex 3: Sketch made by P-0787 [REDACTED], signed by the witness'.⁶²

(b) Prosecution's Position⁶³

44. Although the witness testified in open session, the title of the document is more detailed and explicit than what was publicly revealed. Indeed, this title refers to

⁵⁸ [Joint Submission](#), paras 85-87.

⁵⁹ ICC-01/14-01/21-T-037-CONF-ENG CT, p. 1.

⁶⁰ ICC-01/14-01/21-T-037-CONF-ENG CT, p. 11.

⁶¹ ICC-01/14-01/21-T-037-CONF-ENG CT, pp 11, 18.

⁶² [Joint Submission](#), para. 88.

⁶³ [Joint Submission](#), para. 89.

[REDACTED], according to the Prosecution, who was a powerful Seleka leader active in a Bangui camp in 2013. Thus, the Prosecution submits that disclosure of information about [REDACTED] activities ([REDACTED]) would expose P-0787 to the risk of retaliation from threatening actors such as [REDACTED].

(c) Defence's Position⁶⁴

45. The Defence objects to this redaction since P-0787 testified publicly and his name is already known to the public.⁶⁵ The Defence also recalls that, since the Prosecution's allegations about the alleged role of [REDACTED] is public,⁶⁶ redacting the title of the document in question would not change the fact that the Prosecution has already publicly presented its position on the alleged role of [REDACTED].

(d) Analysis

46. The Chamber agrees with the Prosecution that publicly revealing the fact that P-0787 implicated [REDACTED] in the detention of persons [REDACTED], would provide [REDACTED] (or others) with a motive to harm the witness. The Chamber notes, in this regard, that [REDACTED] allegedly [REDACTED].⁶⁷ The Chamber further notes that the current whereabouts of [REDACTED] are unknown to it. It can therefore not completely discount the possibility that he might seek to harm P-0787 if he becomes aware that the witness has implicated him in potential human rights violations. For these reasons, the Chamber grants the request, which does not prejudice the Defence in any way and does not at all affect the public's ability to follow the proceedings.

⁶⁴ [Joint Submission](#), paras. 90-92.

⁶⁵ ICC-01/14-01/21-T-037-CONF-ENG CT, p. 11.

⁶⁶ [Prosecution's Trial Brief](#), para. 274. *See also* [Prosecution's Trial Brief](#), paras 23, 290, 353; Pre-Confirmation Brief, 30 August 2021, ICC-01/14-01/21-155-Conf. A public redacted version was filed on 8 December 2021 ([ICC-01/14-01/21-155-Red3](#)), paras 21, 129, 154, 235; Corrected Version of "Public Redacted Version of "Document Containing the Charges, ICC-01/14-01/21-144-Conf", dated 16 August 2021", ICC-01/14-01/21-144-Red, dated 17 October 2021, 27 October 2021, [ICC-01/14-01/21-144-Corr2](#), para. 26; Prosecution's seventh request to introduce prior recorded testimony pursuant to rule 68(3), in relation to P-0291, P-0349, P-0884, P-2232, P-2251, and P-2328, 27 June 2022, ICC-01/14-01/21-376-Conf. A public redacted version was filed on 5 July 2022, ([ICC-01/14-01/21-376-Red](#)), para. 14.

⁶⁷ [REDACTED].

B. Redaction requests pursuant to articles 93(8)(a) and 54(3)(f) of the Statute

47. The Chamber will now decide on the redactions that are requested on the basis of articles 93(8)(a) and 54(3)(f) of the Statute. Before addressing the redaction requests themselves, the Chamber must first consider whether the very fact of cooperation between the Court and a given entity falls under the notion of ‘information’ that must, as a rule, be kept confidential, as seems to be suggested by the Prosecution.⁶⁸ The Chamber is of the view that article 93(8)(a) of the Statute relates primarily to items of evidence or other forms of information received from the cooperating entity.⁶⁹ In other words, it protects the confidentiality of the documents and information itself, not necessarily the fact that such documents and information were provided.

48. In respect of the present requests, the relevant State Party and entity in question is the Central African Republic and the United Nations respectively. First, in respect of the Central African Republic, the Chamber notes that there is a presumption that all States Parties will comply in good faith with their cooperation obligation pursuant to article 86 of the Statute.⁷⁰ Indeed, the Central African Republic is a State Party, and it is public knowledge that it has a cooperation agreement with the Court. It therefore stands to reason that there is a presumption that it cooperates with the Court in respect of the collection of evidence. Similarly, in respect of the United Nations, the Relationship Agreement between the International Criminal Court and the United Nations⁷¹ contains a clear commitment on the part of the United Nations to provide the Court ‘with such information or documents as the Court may request pursuant to article 87, paragraph 6, of the Statute’.⁷² In other words, the fact that the Central African Republic and the United Nations cooperate with the Court in terms of evidence gathering is not, as such, a secret.

⁶⁸ [Joint Submission](#), para. 66.

⁶⁹ This interpretation is supported by the French version of the Statute, which states that ‘la Cour préserve le caractère confidentiel des pièces et renseignements *recueillies* [...]’ (emphasis added).

⁷⁰ Trial Chamber V(B), *The Prosecutor v. Uhuru Muigai Kenyatta*, Decision on the Prosecution’s application for a finding of non-compliance under Article 87(7) of the Statute, 3 December 2014, [ICC-01/09-02/11-982](#), para. 40.

⁷¹ Relationship Agreement between the International Criminal Court and the United Nations, entry into force: 4 October 2004, UNTS, vol. 2283

⁷² Article 15(1) of the Relationship Agreement between the International Criminal Court and the United Nations.

49. On the other hand, there can be no question about the Court's obligation to safeguard the confidentiality, subject to the Prosecution's disclosure obligations, of specific requests for assistance and related correspondence between the Court and the requested State or intergovernmental organisation.⁷³

50. The Chamber must now address the specific question as to whether the fact that a particular State or intergovernmental organization has provided the Court with specific documents or information – without revealing the content thereof – must also be kept confidential. According to article 93(8)(a) of the Statute, the Court shall ensure the confidentiality of received documents and information, *except* as required for the investigation and proceedings described in the request. In other words, article 93(8)(a) of the Statute does not envisage that documents or other information used as evidence must automatically remain confidential merely by virtue of the fact that they were obtained through State cooperation under Part 9 of the Statute.

51. The Chamber accepts that States and other information providers may well have valid reasons for wanting to keep the nature and extent of their cooperation with the Court confidential from the public. The Prosecution may also have other reasons for keeping this information confidential.⁷⁴ However, the need for restrictions cannot be presumed. It is thus incumbent on the Prosecution to provide clear and cogent reasons for why a specific instance of cooperation must be kept secret from the public.

⁷³ Article 87(3) of the Statute. Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba*, Decision on Mr Bemba's preliminary application for reclassification of filings, disclosure, accounts, and partial unfreezing of Mr Bemba's assets and the Registry's Request for guidance, 18 October 2018, [ICC-01/05-01/08-3660-Red2](#), para. 16; Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba et al.*, Decision on the Defence Requests for Prosecution Requests for Assistance, Domestic Records and Audio Recordings of Interviews, 10 September 2015, [ICC-01/05-01/13-1234](#), paras 12-13. *See also* article 7 of the Agreement on Privileges and Immunities of the International Criminal Court, entry into force: 22 July 2004, UNTS, vol. 2271, No. 40446.

⁷⁴ Article 54(3)(f) of the Statute. The Chamber notes, in this regard, that the identity of cooperating States or other institutional information providers is not covered by the Chambers Practice Manual's list of instances where the Prosecution may apply redactions without prior authorisation - *See* Chambers Practice Manual, Sixth edition, p. 31 *et seq.*

1. *Redaction of a portion of the titles of CAR-OTP-2034-1740 and CAR-OTP-2034-4515 – Annex 2 (P-0338)*

(a) Proposed Redaction

52. The Prosecution requests the redaction pursuant to articles 54(3)(f) and 93(8)(a) of the Statute of the following stricken out words from the title of CAR-OTP-2034-1740 ‘NOTE DE SERVICE No. ~~135/MSEIOP/DIRCAB~~: Ministry of Public Security Note de service appointing Louis MAZANGUE as OCRB Director replacing MALLOT Benjamin. Dated 19 April 2013 and signed by Nouredine ADAM’.⁷⁵ and from title of CAR-OTP-2034-4515 ‘NOTE DE SERVICE No. ~~0011/MSEIOP/DIRCAB/DGPC/SP~~: Ministry of Public Security Note de service on the appointments to the Commission Nationale d’Enquete. Dated 16 May 2013 and signed by Henri Wanzet Linguissara’.⁷⁶

(b) Prosecution’s Position⁷⁷

53. According to the Prosecution, disclosure of the full title to the public may undermine the willingness of the Central African authorities to cooperate with the Court in the future. The Prosecution claims that the document was collected through a confidential request for assistance, the details of which have not been publicly disclosed.⁷⁸ When the documents were used in court, they were not shown to the public and their source was not disclosed publicly. The Prosecution further states that the required redaction does not affect the rights of the Defence as it has access to all unredacted documents and that the Defence can fully investigate documents even if they are classified as confidential.⁷⁹

(c) Defence’s Position⁸⁰

54. The Defence objects to this redaction. First, it argues that the Prosecution indicated in its list of materials for P-0338 that the two documents could be shown publicly, which, according to the Defence, did in fact occur.⁸¹ Second, the Defence refutes the Prosecution’s argument that there is a risk of future non-cooperation. It points out, in this

⁷⁵ CAR-OTP-2034-1740.

⁷⁶ CAR-OTP-2034-4515.

⁷⁷ [Joint Submission](#), para. 26.

⁷⁸ Prosecution’s First Application for Submission of Documents from the Bar Table Pursuant to Article 64(9), 14 April 2022, ICC-01/14-01/21-279-Conf. A public redacted version was filed on 21 April 2022 ([ICC-01/14-01/21-279-Red](#)), (‘Prosecution’s First Bar Table Motion’), para 7.

⁷⁹ [Joint Submission](#), para. 27.

⁸⁰ [Joint Submission](#), paras. 28-32.

⁸¹ ICC-01/14-01/21-T-017-CONF-ENG, p. 68; ICC-01/14-01/21-T-018-CONF-ENG CT, pp 55-56.

regard, that the references which the Prosecution wishes to redact appear in the headings of memoranda that have no connection with requests for cooperation.⁸² The Defence recalls that the fact that the Central African Authorities cooperate with the Prosecution is public information.⁸³ Finally, the Defence claims that these redactions will complicate the Defence's ability to investigate properly.⁸⁴

(d) Analysis

55. The Chamber first points out that, as the Defence correctly claims, the Prosecution indicated in the list of materials for P-0338 that CAR-OTP-2034-1740 and CAR-OTP-2034-4515 could be shown publicly. Second, the Prosecution has not explained how revealing the documents' reference numbers might reveal that they were in fact provided by the Central African authorities. Third, since the cooperation between the Central African authorities and the Prosecution is publicly known, it is difficult to understand why there would be a risk of future non-cooperation if it became known that these two documents were provided by the Central African Republic. The Chamber also does not see how revealing the full title of the documents would breach the confidentiality of the evidence collection process in the Central African Republic. Fourth, the Prosecution has not indicated that the Central African authorities have requested their cooperation in general or specifically in relation to these documents to be kept confidential. The Chamber observes, in this regard, that in relation to the requested redaction in the title of CAR-OTP-2023-0768 (see immediately below), the Prosecution did not request to redact the fact that the Central African Republic provided the item. Under these circumstances, the Chamber sees no justification for the requested redaction, which must therefore be denied.

2. *Redaction of a portion of the title of CAR-OTP-2023-0768 – Annex 5 (P-3108)*

(a) Proposed Redaction⁸⁵

56. The Prosecution requests the redaction pursuant to articles 54(3)(f) and 93(8)(a) of the Statute as well as rules 81(3) and (4) of the Rules of the following stricken out words from the title of CAR-OTP-2023-0786: 'List of Person of Interest provided by the

⁸² CAR-OTP-2034-1740 and CAR-OTP-2034-4515.

⁸³ [Joint Submission](#), para. 31.

⁸⁴ [Joint Submission](#), para. 32.

⁸⁵ [Joint Submission](#), para. 61.

Government of Central African Republic (indicating their phone numbers, other associated name, neighbourhood, date phone number was created, and status)?

(b) Prosecution's Position⁸⁶

57. According to the Prosecution, this information is confidential and has not been disclosed in open session.⁸⁷ Disclosure of the full title to the public would reveal information about the extent of information received from the Central African government on the basis of a confidential request for assistance.

(c) Defence's Position⁸⁸

58. The Defence objects to this redaction. First, the two redacted terms appear in French in the column headings of CAR-OTP-2023-0768. By themselves, they do not reveal any confidential information. The Defence notes that the Prosecution lacks consistency, as it proposes to redact the title words but agrees to keep the other column headings. Second, the Defence notes that the fact that words were not spoken or that a particular document was not used in open session does not in itself justify the confidential nature of those words or that document.⁸⁹

(d) Analysis

59. At the outset, the Chamber notes that the Prosecution's request seems limited to keeping the precise extent of the information provided by the Central African Republic confidential and not the fact of the cooperation as such. The Chamber further notes that P-3108 stated publicly that CAR-2023-0768 was generated by Telecel but that she did not know whether the document was provided in response to a request for assistance or not.⁹⁰ Under these circumstances, the Chamber fails to see how revealing the words 'neighbourhood' and 'status' would inform the public about the content of a confidential request for assistance addressed from the Court to the Central African Republic. As the Chamber has explained above, the very fact of cooperation is not, as such, necessarily confidential and the Prosecution has not explained why there would be a need to hide the nature of the information provided by the Central African Republic from the public.

⁸⁶ [Joint Submission](#), para. 62.

⁸⁷ ICC-01/14-01/21-T-029-CONF-ENG ET, p. 66.

⁸⁸ [Joint Submission](#), paras 63-64.

⁸⁹ [Joint Submission](#), para. 64.

⁹⁰ ICC-01/14-01/21-T-029-CONF-ENG ET, p. 67.

Moreover, the Prosecution has not presented the Chamber with any indication that the Central African authorities wish their cooperation in relation to these items or the specific nature contained in them to be kept confidential. The Chamber therefore sees no reason to grant this redaction.

3. *Redaction of the title of [REDACTED] – Annex 5 (P-3108)*

(a) Prosecution’s Proposed Redaction

60. The Prosecution wishes to redact the title of the exhibit ‘List of Contacts of CAR Authorities provided by [REDACTED]’ pursuant to articles 54(3)(f) and 93(8)(a) of the Statute.⁹¹

(b) Prosecution’s Position⁹²

61. According to the Prosecution, although the title of this document was inadvertently revealed in open session,⁹³ it should still be redacted so that the Court’s cooperation with United Nations [REDACTED] is not further exposed.

(c) Defence’s Position⁹⁴

62. The Defence objects to this redaction. The Defence recalls that the document was referred to in open session as having been provided by the United Nations. The Defence also recalls that the fact that the United Nations and its organs cooperate with the Court is public knowledge.⁹⁵ The Defence point out, in this regard, that the Prosecution no longer requests the redaction of the title of CAR-OTP-2050-0273, which reveals that the United Nations Panel of Experts on the Central African Republic provided the Prosecution with a different list.⁹⁶

(d) Analysis

63. The Chamber notes that the origin of [REDACTED] was indeed discussed in open session.⁹⁷ The Prosecution now claims that this was inadvertent, even though it did not

⁹¹ [Joint Submission](#), para. 65.

⁹² [Joint Submission](#), para. 66.

⁹³ ICC-01/14-01/21-T-029-CONF-ENG ET, p. 83.

⁹⁴ [Joint Submission](#), paras 67-68.

⁹⁵ [Joint Submission](#), para. 68 and footnote 61.

⁹⁶ [Joint Submission](#), para. 68, with reference to Annex 5, p. 4 thereto.

⁹⁷ [REDACTED].

request the transcript to be redacted at the time.⁹⁸ Be that as it may, the Chamber understands that the Prosecution now insists that its cooperation with United Nations [REDACTED] should be kept confidential. The Defence claims that this cooperation is already publicly known and that the Prosecution is inconsistent, since it no longer objects to mentioning publicly that it cooperated with the United Nations Panel of experts on the Central African Republic. As regards the first point, the Chamber is not convinced that the documents referred to by the Defence reveal specifically the cooperation between the Prosecution and the United Nations [REDACTED] when it comes to evidence gathering in this situation. With respect to the second point, the Chamber notes that the title of CAR-OTP-2050-0273, to which the Defence refers, indicates that a list was provided by the ‘CAR Panel of Experts’, whereas the Prosecution wants to keep the fact that the United Nations [REDACTED] provided a different list. As indicated above, the fact that the United Nations cooperates with the Court is public knowledge. However, the public does not need to know which specific units of the United Nations provide evidence to the Court. The Chamber therefore authorises the redaction of the reference to the [REDACTED]. Specifically, the Chamber authorises the following redaction: ‘List of Contacts of CAR Authorities provided by UN [REDACTED]’.

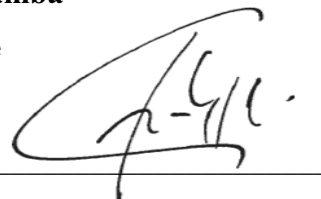
⁹⁸ Daily Redaction Report T-029 – 01.11.2022.

FOR THESE REASONS, THE CHAMBER HEREBY**AUTHORISES** the following redactions:

- Redaction of a portion of the titles of CAR-OTP-2018-0586, CAR-OTP-2018-0590, CAR-OTP-2018-0592, CAR-OTP-2018-0594, CAR-OTP-2018-0598 and CAR-OTP-2018-0600 as specified in paragraphs 10-11;
- Redaction of a portion of the titles of CAR-REG-0002-0031, CAR-REG-0002-0032, CAR-OTP-2069-3226 and CAR-OPT-2069-3227 as specified in paragraph 19;
- Redaction of a portion of the titles of CAR-OTP-2059-0580-R01 and R02 as specified in paragraph 34;
- Redaction of a portion of the title of CAR-OTP-2036-0439 as specified in paragraph 42;
- Redaction of a portion of the title of CAR-OTP-2036-0441 as specified in paragraph 46;
- Redaction of the title of [REDACTED], as specified in paragraph 63;

REJECTS the remainder of the requested redactions; and**ORDERS** the Prosecution to provide the Registry with a new version of the annexes with the authorised redactions.

Done in both English and French, the English version being authoritative.

**Judge Miatta Maria Samba****Presiding Judge****Judge María del Socorro Flores Liera****Judge Sergio Gerardo Ugalde Godínez**

Dated 21 July 2023

At The Hague, The Netherlands