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

**Date: 16 April 2021**

**PRE-TRIAL CHAMBER II**

**Before: Judge Rosario Salvatore Aitala, Single Judge**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II**

**IN THE CASE OF**

***THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

**Public**

Decision establishing the principles applicable to  
victims' applications for participation

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

**The Office of the Prosecutor**

Ms Fatou Bensouda  
Mr James Stewart  
Mr Eric MacDonald

**Counsel for the Defence**

Ms Jennifer Naouri  
Mr Dov Jacobs

**Legal Representatives of Victims**

**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**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

Mr Esteban Peralta Losilla

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and  
Reparations Section**

Mr Philipp Ambach

**Other**

Public Information and Outreach Section

**JUDGE ROSARIO SALVATORE AITALA**, acting as Single Judge on behalf of Pre-Trial Chamber II of the International Criminal Court (the ‘Chamber’ and the ‘Court’), issues this Decision establishing the principles applicable to victims’ applications for participation.

## **I. PROCEDURAL HISTORY**

1. On 7 January 2019, Judge Rosario Salvatore Aitala, acting as Single Judge on behalf of the Chamber, issued the ‘Warrant of arrest for Mahamat Said Abdel Kani’ (‘Mr Said’).<sup>1</sup>
2. On 24 January 2021, Mr Said was surrendered to the Court and arrived at the Court’s Detention Centre on 25 January 2021.<sup>2</sup>
3. On 25 January 2021, Judge Rosario Salvatore Aitala was designated by the Chamber as Single Judge responsible for carrying out the functions of the Chamber in the present case until otherwise decided.<sup>3</sup>
4. On 29 January 2021, in accordance with the Single Judge’s decision dated 26 January 2021<sup>4</sup> and his further instructions dated 28 January 2021<sup>5</sup>, Mr Said appeared before the Single Judge pursuant to article 60(1) of the Rome Statute (the ‘Statute’) and rule 121(1) of the Rules of Procedure and Evidence (the ‘Rules’). The Single Judge, *inter alia*, scheduled the confirmation of charges hearing to commence on 5 October 2021.<sup>6</sup>

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<sup>1</sup> ICC-01/14-01/21-2-US-Exp (public redacted version filed on 17 February 2021 ([ICC-01/14-01/21-2-Red2](#))).

<sup>2</sup> Registry, Report of the Registry on the Arrest and Surrender of Mr Mahamat Said Abdel Kani and Request for Guidance, 27 January 2021, ICC-01/14-01/21-6-US-Exp, paras 13-27 (confidential redacted, *ex parte* (only available to the Registry, the Prosecutor and the Defence) version filed on 19 February 2021 (ICC-01/14-01/21-6-Conf-Exp-Red); confidential, lesser redacted, *ex parte* (only available to the Registry, the Prosecutor and the Defence) version filed on 18 March 2021 (ICC-01/14-01/21-6-Conf-Exp-Red2)).

<sup>3</sup> [Decision on the designation of a Single Judge](#), ICC-01/14-01/21-3.

<sup>4</sup> [Decision on the convening of a hearing for the initial appearance of Mr Mahamat Said Abdel Kani](#), ICC-01/14-01/21-4.

<sup>5</sup> [ICC-01/14-01/21-T-001-ENG](#), pp. 4-5.

<sup>6</sup> [ICC-01/14-01/21-T-002-ENG](#), p. 11.

5. On 26 February 2021, the Single Judge received the ‘Registry Submissions on Aspects Related to the Participation of Victims in the Proceedings’ (the ‘Registry Submissions’).<sup>7</sup>

6. On 11 March 2021, the Single Judge received the ‘Réponse de la Défense aux « Registry Submissions on Aspects Related to the Participation of Victims in the Proceedings » (ICC-01/14-01/21-25)’ (the ‘Defence Response’).<sup>8</sup>

7. On 17 March 2021, following the recomposition of the Chambers by the Presidency,<sup>9</sup> Judge Rosario Salvatore Aitala was designated by the Chamber as Single Judge responsible for carrying out the functions of the Chamber in the present case until otherwise decided.<sup>10</sup>

8. The Single Judge has not received a response to the Registry Submissions by the Prosecutor.

## II. SUBMISSIONS RECEIVED BY THE SINGLE JUDGE

### A. The Registry Submissions

9. With regard to the transmission and admission of applications, the Registry ‘recommends the victim admission process adopted at pre-trial and trial in the cases of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* [...], and *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* [...], as well as at trial in the case of *The Prosecutor v. Bosco Ntaganda case* [...], and most recently by this Chamber in the case of *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman*’.<sup>11</sup> According to the Registry, the benefit of this approach ‘is that the parties as well as the Chamber can concentrate on pre-assessed unclear or borderline issues arising from victim applications in a bundled fashion’.<sup>12</sup> In addition, the Registry submits that ‘the [Victims Participation and Reparations Section’s] processing and redaction

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<sup>7</sup> [ICC-01/14-01/21-25](#), together with two public annexes and one confidential *ex parte* annex, only available to the Registry ([ICC-01/14-01/21-25-AnxI](#); [ICC-01/14-01/21-25-AnxII](#); ICC-01/14-01/21-25-Conf-Exp-AnxIII).

<sup>8</sup> [ICC-01/14-01/21-36](#).

<sup>9</sup> [Decision assigning judges to divisions and recomposing Chambers](#), 16 March 2021, ICC-01/14-01/21-40.

<sup>10</sup> [Decision on the designation of a Single Judge](#), ICC-01/14-01/21-42.

<sup>11</sup> [Registry Submissions](#), ICC-01/14-01/21-25, para. 6 (footnotes omitted).

<sup>12</sup> [Registry Submissions](#), ICC-01/14-01/21-25, para. 9.

obligations would extend to only a fraction of the relevant forms (i.e. only relevant examples from the Group C applications submitted to the Chamber and the parties), leading to considerable time and resource savings'.<sup>13</sup>

10. Further, the Registry 'requests the Chamber to approve the set of application forms for participation (for individuals and organizations, pursuant to rule 85 of the Rules) adopted and tested in the same situation, in the context of the *Yekatom and Ngaïssona* case ("Proposed Application Forms")'.<sup>14</sup> The Registry submits that it 'has implemented the victim application process in [the Central African Republic] for nearly two years in the context of the *Yekatom and Ngaïssona* case with forms identical to the Proposed Application Forms' and '[t]he use of these forms has shown positive results in terms of quantity and quality of the information gathered'.<sup>15</sup>

11. In addition, '[i]n the *Abd-Al-Rahman* case, the Registry further obtained approval for the use of a modified version of these forms – by replacing the signature field with a solemn undertaking text field'.<sup>16</sup> However, in the present case, it 'does not deem necessary [...] to request the same authorisation' as it 'has a Country Office in Bangui' and it 'is using identical versions of the Proposed Application Forms [...] in the *Yekatom and Ngaïssona* case [and it is] sensible to have parity'.<sup>17</sup>

12. The Registry also avers that it would 'make available versions of the Proposed Application Forms in all relevant languages (if approved) on the ICC homepage, including a printable electronic version of the form as well as an online form' and, in addition, it 'would operate with mobile devices that allow filling in a fully electronic form where the signature (or other mark) is saved electronically'.<sup>18</sup>

13. As to the identity of the applicants, the Registry 'recommends that the Chamber endorses the approach adopted in the *Yekatom and Ngaïssona* case with respect to the documentary requirements for participation, since the circumstances prevailing in [the Central African Republic] are still the same as those described in relation to the

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<sup>13</sup> [Registry Submissions](#), ICC-01/14-01/21-25, para. 9.

<sup>14</sup> [Registry Submissions](#), ICC-01/14-01/21-25, para. 10.

<sup>15</sup> [Registry Submissions](#), ICC-01/14-01/21-25, para. 13.

<sup>16</sup> [Registry Submissions](#), ICC-01/14-01/21-25, para. 14.

<sup>17</sup> [Registry Submissions](#), ICC-01/14-01/21-25, para. 14.

<sup>18</sup> [Registry Submissions](#), ICC-01/14-01/21-25, para. 15 (footnote omitted).

*Yekatom and Ngaïssona* case in the report on proof of identity documents submitted in that case'.<sup>19</sup> Specifically, the Registry 'requests the Chamber to accept as documents establishing the identity of applicants and those presenting an application on their behalf': (i) '[...] all types of identity documents accepted by Pre-Trial Chamber III in *The Prosecutor v. Jean-Pierre Bemba* case'; (ii) 'all additional forms of identification accepted by Trial Chamber III in the *Bemba* case'; (iii) 'further forms of identification accepted by Pre-Trial Chamber II in the *Yekatom and Ngaïssona* case'; and (iv) 'a statement signed by two witnesses and accompanied by their proof of identity attesting to the identity of the victim applicant/person acting on his/her behalf where it is not possible for the latter to acquire or produce a document of the kind set out above'.<sup>20</sup>

14. Furthermore, the Registry contends that 'the Chamber may consider for acceptance any other documents appended by future applicants which contain similar features as those already authorised in the *Yekatom and Ngaïssona* case, following relevant assessments and recommendations provided by the Registry to that effect'.<sup>21</sup>

15. Lastly, with regard to the legal representation of victims, the Registry 'has started collecting information on legal representation of victims in the Case with a view to best assisting and informing victims on the matter'.<sup>22</sup> The Registry further 'plans to engage in consultations with victims and other relevant key actors'.<sup>23</sup> According to the Registry, it 'will be in a position to file a report to the Chamber by the end of May 2021 on the information it will have collected at that time in order for the Chamber to be notably apprised on the (common) legal representative(s) indicated by potential applicants in the Case' and to 'provide additional observations and recommendations on the way forward with regards to legal representation of victims in the Case'.<sup>24</sup>

## **B. The Defence's Response**

16. The Defence submits that it 'n'a pas de commentaire sur les formulaires de participation proposés par le Greffe [...], sous réserve d'une seule proposition

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<sup>19</sup> [Registry Submissions](#), ICC-01/14-01/21-25, para. 16 (footnote omitted).

<sup>20</sup> [Registry Submissions](#), ICC-01/14-01/21-25, para. 17 (footnotes omitted).

<sup>21</sup> [Registry Submissions](#), ICC-01/14-01/21-25, para. 18.

<sup>22</sup> [Registry Submissions](#), ICC-01/14-01/21-25, para. 19.

<sup>23</sup> [Registry Submissions](#), ICC-01/14-01/21-25, para. 20.

<sup>24</sup> [Registry Submissions](#), ICC-01/14-01/21-25, para. 21.

d'addition au formulaire'.<sup>25</sup> According to the Defence, 'il conviendrait d'ordonner qu'en l'absence d'un document officiel d'identité présentant une photographie, le demandeur présente au moins deux documents délivrés par une autorité gouvernementale ou administrative ou au moins un document délivré par une autorité gouvernementale ou administrative accompagné de deux autres documents permettant d'établir son identité' (the 'Defence Identity Proof Request').<sup>26</sup> It adds that 'il conviendrait que le formulaire de participation prévoit une section, signée, où la personne atteste qu'elle est bien la personne qu'elle affirme être' and that '[u]ne telle section devrait explicitement indiquer que la personne comprend que signer le formulaire signifie qu'elle indique à la Cour son souhait de participer dans une procédure judiciaire, ce qui implique de pouvoir s'identifier et que toute fausse déclaration, y compris sur son identité, pourrait l'exposer à être exclue du processus judiciaire et à des poursuites' (the 'Defence Application Form Request').<sup>27</sup>

17. As to the assessment of the applications, the Defence submits that '[l]e Greffe ne semble pas prévoir de rôle pour les Parties puisqu'il ne prévoit pas de transmettre les demandes de participation des groupes A et B' and, 'concernant la catégorie C, le Greffe propose de ne transmettre aux Parties que « quelques exemples »'.<sup>28</sup>

18. The Defence 'estime que la procédure proposée par le Greffe est contraire au texte même de la Règle 89 du RPP'.<sup>29</sup> According to the Defence, 'le Greffe a l'obligation de communiquer les demandes de participation aux Parties qui ont « toujours » le droit d'y répondre' and '[c]e droit est renforcé par la Règle 89(2)'.<sup>30</sup> The Defence asserts that 'il ressort de la Règle 89(4), [...] qu'elle vise à permettre aux Juges, dans le cadre juridique posé par la Règle 89 dans son ensemble, de ne pas avoir à examiner les demandes de participation une à une, ce qui aurait pour conséquence de devoir rendre des dizaines de décisions séparées, mais plutôt de permettre aux Juges de rendre « une décision unique »'.<sup>31</sup> In addition, the Defence 'note que le guide pratique de procédure pour les

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<sup>25</sup> [Defence's Response](#), ICC-01/14-01/21-36, para. 6.

<sup>26</sup> [Defence's Response](#), ICC-01/14-01/21-36, para. 12, p. 18.

<sup>27</sup> [Defence's Response](#), ICC-01/14-01/21-36, para. 13, p. 18.

<sup>28</sup> [Defence's Response](#), ICC-01/14-01/21-36, para. 16.

<sup>29</sup> [Defence's Response](#), ICC-01/14-01/21-36, para. 17.

<sup>30</sup> [Defence's Response](#), ICC-01/14-01/21-36, para. 19.

<sup>31</sup> [Defence's Response](#), ICC-01/14-01/21-36, para. 21 (emphasis in original omitted).

Chambres [...] prévoit clairement un régime d'admission des demandes de participation des victimes conforme à la Règle 89'.<sup>32</sup>

19. In the view of the Defence, the proposed system would result in prejudice for the Defence as '[t]oute limitation de [la] dialectique [entre les Parties] porte en elle le risque que des questions importantes n'aient pas été débattues de manière complète'.<sup>33</sup> The Defence also avers that, '[s]i la Défense n'a pas pu contester leur participation, elle devra alors [...] répondre et faire face à des participants dont certains ne rempliraient peut-être pas les critères pour être qualifiés de victimes'.<sup>34</sup> In addition, the Defence submits that '[i]l est inconcevable que la Défense ne puisse pas prendre connaissance des accusations portées contre l'Accusé dans le cadre de la procédure et vérifier si elles sont fondées'.<sup>35</sup> In this regard, it adds that '[l]es rapports que le Greffe propose de soumettre ne permettraient en aucun cas de remédier aux préjudices'.<sup>36</sup>

20. Accordingly, the Defence requests 'à la Chambre de rejeter la proposition du Greffe portant sur la procédure de participation des victimes'.<sup>37</sup> It 'demande aussi à la Chambre d'ordonner que toutes les demandes de participations des victimes soient transmises' and that 'toute expurgation apposée sur les demandes de participation des victimes doit être exceptionnelle et spécifiquement justifiée au cas par cas' (the 'Defence Admission Request').<sup>38</sup> In the alternative, the Defence submits that 'il conviendrait [...] de lui permettre d'accéder aux demandes relevant des catégories A et C proposées par le Greffe' (the 'Defence Alternative Admission Request').<sup>39</sup> In the further alternative, the Defence contends that 'les Parties devront avoir accès aux demandes de participations qui seront soumises au dossier de l'affaire' (the 'Defence Further Alternative Admission Request').<sup>40</sup>

21. In relation to the use of intermediaries, the Defence 'estime nécessaire que les Parties soient informées de l'identité de ces intermédiaires et que toute information

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<sup>32</sup> [Defence's Response](#), ICC-01/14-01/21-36, para. 26.

<sup>33</sup> [Defence's Response](#), ICC-01/14-01/21-36, para. 32.

<sup>34</sup> [Defence's Response](#), ICC-01/14-01/21-36, para. 34.

<sup>35</sup> [Defence's Response](#), ICC-01/14-01/21-36, para. 35.

<sup>36</sup> [Defence's Response](#), ICC-01/14-01/21-36, para. 36.

<sup>37</sup> [Defence's Response](#), ICC-01/14-01/21-36, para. 37, p. 18.

<sup>38</sup> [Defence's Response](#), ICC-01/14-01/21-36, paras 38-39, p. 18.

<sup>39</sup> [Defence's Response](#), ICC-01/14-01/21-36, para. 44, p. 19.

<sup>40</sup> [Defence's Response](#), ICC-01/14-01/21-36, p. 16. *See also* paras 53-55, p. 19.



portant sur ces intermédiaires figurant dans les formulaires de demande de participation de victimes ne soit pas expurgée'.<sup>41</sup> According to the Defence, 'il convient que les Parties soient destinataires de tout rapport de [la Section de la participation des victimes et des réparations] concernant les contacts avec ses intermédiaires, les formations qui leur ont été données et leur rôle concret sur le terrain'.<sup>42</sup> In this regard, the Defence adds that 'il est essentiel que concernant les témoins à double statut, la Défense dispose de tous les éléments nécessaires pour tester, vérifier et discuter la plausibilité de leur récit et l'authenticité des éléments de preuve qu'ils présenteront devant la Cour' (collectively the 'Defence Intermediaries Request').<sup>43</sup>

22. As regards the legal representation of victims, the Defence 'prend note de ce que le Greffe prévoit de déposer un rapport à ce sujet à la fin du mois de mai 2021' and 'déposera d'éventuelles observations à ce moment là', but observes that 'il est crucial de prendre toutes les précautions pour éviter d'éventuels conflits d'intérêts'.<sup>44</sup>

### III. DETERMINATION BY THE SINGLE JUDGE

23. The Single Judge notes articles 21, 43, 57(3)(c), and 68 of the Statute, rules 16(1), 85-90, 92 and 94 of the Rules, regulations 23(2), 79-81, 86 and 88 of the Regulations of the Court (the 'Regulations') and regulations 103-118 and 123(1) of the Regulations of the Registry.

#### A. Outreach activities

24. The Single Judge recalls that the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* (the '*Yekatom and Ngaïssona* case') and the present case arise out of the same situation and that the Registry has already been conducting outreach activities in the Central African Republic (the 'CAR') in the context of the former case. For this reason, the Single Judge adopts, *mutatis mutandis* and subject to any Covid-19 related restrictions, the principles governing outreach activities, as established in the *Yekatom and Ngaïssona* case.<sup>45</sup>

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<sup>41</sup> [Defence's Response](#), ICC-01/14-01/21-36, para. 56.

<sup>42</sup> [Defence's Response](#), ICC-01/14-01/21-36, para. 56.

<sup>43</sup> [Defence's Response](#), ICC-01/14-01/21-36, para. 57, p. 19.

<sup>44</sup> [Defence's Response](#), ICC-01/14-01/21-36, paras 58-59.

<sup>45</sup> Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision Establishing the Principles Applicable to Victims' Applications for Participation, 5 March 2019, ICC-01/14-01/18-141 (the '[Yekatom and Ngaïssona Victims Decision](#)'), paras 10-15.

25. The Registry shall submit a report as to the outreach activities it plans to undertake in relation to the present case by no later than 30 April 2021 (together with a confidential redacted version if required), including with regard to: (i) the lessons learned in the *Yekatom and Ngaïssona* case; (ii) suggestions as to how to avoid any difficulties and proposed solutions to any challenges encountered in that case; (iii) suggestions as to how to make the most efficient use of the existing facilities and outreach activities in the CAR; (iv) the need to undertake a field mission for the purposes of the present case and the possibility of doing so in view of the Covid-19 pandemic; and (v) any other relevant matters.

### **B. Application forms for participation**

26. The Single Judge notes that the Registry ‘requests the Chamber to approve the set of application forms for participation [...] adopted and tested in the same situation, in the context of the *Yekatom and Ngaïssona* case’, and that the Defence does not oppose the adoption of these forms, with the exception of its request for one addition as discussed hereafter.<sup>46</sup> Accordingly, the Single Judge adopts the aforementioned forms<sup>47</sup> and further considers that it is not necessary to incorporate the modification arising from the case of *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (‘Ali Kushayb’)*<sup>48</sup> as noted by the Registry.<sup>49</sup> In addition, the Single Judge incorporates, *mutatis mutandis*, the attendant principles in relation to these forms, as previously established in the *Yekatom and Ngaïssona* case.<sup>50</sup>

27. Turning to the Defence Application Form Request,<sup>51</sup> the Single Judge considers that, beyond stating that the proposed amendment would be beneficial ‘pour que les demandeurs soient pleinement informés de l’importance de pouvoir s’identifier tout au long de la procédure s’ils devaient être admis à participer’,<sup>52</sup> the Defence does not

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<sup>46</sup> [Registry Submissions](#), ICC-01/14-01/21-25, para. 10; [Defence’s Response](#), ICC-01/14-01/21-36, paras 6, 13-14.

<sup>47</sup> Annex I to Registry Submissions, [ICC-01/14-01/21-25-AnxI](#); Annex II to Registry Submissions, [ICC-01/14-01/21-25-AnxII](#).

<sup>48</sup> Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (‘Ali Kushayb’)*, [Decision on the Registry’s Request for Authorisation to use a Modified Standard Application Form for Victim Participation](#), 4 November 2020, ICC-02/05-01/20-198.

<sup>49</sup> [Registry Submissions](#), ICC-01/14-01/21-25, para. 14.

<sup>50</sup> [Yekatom and Ngaïssona Victims Decision](#), ICC-01/14-01/18-141, paras 18-23.

<sup>51</sup> [Defence’s Response](#), ICC-01/14-01/21-36, paras 13-14, p. 18.

<sup>52</sup> [Defence’s Response](#), ICC-01/14-01/21-36, para. 13.

justify the need for such an amendment. In addition, the proposed forms already require applicants to acknowledge that, ‘en soumettant ce formulaire de demande, la victime certifie, à l’aide de sa signature, que les informations qu’elle contient sont, à sa connaissance, exactes et véridiques’.<sup>53</sup> The Single Judge also agrees with the Registry that it is ‘sensible to have parity, whenever feasible’, between different cases arising from the same situation.<sup>54</sup> Thus, the Defence Application Form Request is rejected.

### C. Documents as proof of identity

28. The Single Judge notes that the Registry ‘recommends that the Chamber endorses the approach adopted in the *Yekatom and Ngaïssona* case with respect to the documentary requirements for participation’ and understands that, with the exception of the Defence Identity Proof Request, the Defence does not oppose this recommendation.<sup>55</sup> For this reason, the Single Judge accepts the documents establishing the identity of applicants proposed by the Registry<sup>56</sup> and, in addition, incorporates, *mutatis mutandis*, the principles in relation to these documents, as previously established in the *Yekatom and Ngaïssona* case.<sup>57</sup> The same applies to the Registry’s assertion that ‘the Chamber may consider for acceptance any other documents appended by future applicants which contain similar features as those already authorised in the *Yekatom and Ngaïssona* case’.<sup>58</sup> This entails that, ‘[i]n the event that applicants present other documents, the [Single Judge] will decide whether to accept such documents upon receipt of the Registry’s assessments and recommendations’.<sup>59</sup>

29. As to the Defence Identity Proof Request, the Single Judge recalls that, for the purposes of rule 85(a) of the Rules, it must be demonstrated that the applicant’s identity *appears* to have been duly established<sup>60</sup> and that ‘the Pre-Trial Chamber is in the best

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<sup>53</sup> Annex I to Registry Submissions, [ICC-01/14-01/21-25-AnxI](#), p. 2; Annex II to Registry Submissions, [ICC-01/14-01/21-25-AnxII](#), p. 2.

<sup>54</sup> [Registry Submissions](#), ICC-01/14-01/21-25, para. 14.

<sup>55</sup> [Registry Submissions](#), ICC-01/14-01/21-25, para. 16; [Defence’s Response](#), ICC-01/14-01/21-36, paras 7-12.

<sup>56</sup> [Registry Submissions](#), ICC-01/14-01/21-25, para. 17; ICC-01/14-01/21-25-Conf-Exp-AnxIII.

<sup>57</sup> [Yekatom and Ngaïssona Victims Decision](#), ICC-01/14-01/18-141, paras 24-25, 33.

<sup>58</sup> [Registry Submissions](#), ICC-01/14-01/21-25, para. 18.

<sup>59</sup> [Yekatom and Ngaïssona Victims Decision](#), ICC-01/14-01/18-141, para. 25.

<sup>60</sup> *See for example* Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, [Decision on Victims’ Participation and Victims’ Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings](#), 4 June 2012, ICC-02/11-01/11-138, para. 20; Pre-Trial Chamber I, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, [Decision Establishing the](#)

position to determine the nature and quantum of evidence that it deems necessary and adequate at that stage of the proceedings to establish the elements of rule 85 (a) of the Rules'.<sup>61</sup> The Single Judge considers that the Defence has failed to demonstrate that, in view of this threshold and considering the circumstances prevailing in the present situation,<sup>62</sup> a departure from the approach to documents as proof of identity, as established in the *Yekatom and Ngaïssona* case, is warranted. The Defence Identity Proof Request is therefore rejected.

#### **D. Collection and processing of applications**

30. The Single Judge further incorporates, *mutatis mutandis* and subject to any Covid-19 related restrictions, the principles regarding the collection and processing of applications, as established in the *Yekatom and Ngaïssona* case.<sup>63</sup>

31. In addition, the Single Judge defers his assessment as to the Defence Intermediaries Request and, pursuant to regulation 28(2) of the Regulations, orders the Registry to provide observations on this request in its upcoming report on the legal representation of victims and, should they wish to do so, allows the Prosecutor and the Defence to respond to the Registry's observations.

#### **E. Transmission and admission of applications**

32. The Single Judge notes that, with regard to the transmission and admission of victim applications, the Registry recommends the procedure that has been adopted in other cases, including in the *Yekatom and Ngaïssona* case, whereas the Defence opposes this procedure and requests to have access to: (i) all victim applications (the Defence Admission Request); (ii) or, in the alternative, Group A and C applications (the Defence Alternative Admission Request); (iii) or, in the further

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[Principles Applicable to Victims' Applications for Participation](#), 24 May 2018, ICC-01/12-01/18-37-tENG (the '*Al Hassan* Victims Decision'), para. 27; [Yekatom and Ngaïssona Victims Decision](#), ICC-01/14-01/18-141, para. 21.

<sup>61</sup> Appeals Chamber, *The Prosecutor v. Joseph Kony et al.*, [Judgment on the appeals of the Defence against the decisions entitled "Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06" of Pre-Trial Chamber II](#), 23 February 2009, ICC-02/04-179, para. 38.

<sup>62</sup> [Yekatom and Ngaïssona Victims Decision](#), ICC-01/14-01/18-141, paras 24-25; [Registry Submissions](#), ICC-01/14-01/21-25, para. 16.

<sup>63</sup> [Yekatom and Ngaïssona Victims Decision](#), ICC-01/14-01/18-141, paras 26-38.

alternative, the ‘demandes de participations qui seront soumises au dossier de l’affaire’ (the Defence Further Alternative Admission Request).<sup>64</sup>

33. The Single Judge observes that the arguments in support of the Defence Admission Request and the Defence Alternative Admission Request have been previously considered.<sup>65</sup> More specifically, it has been determined that ‘the parties’ right to reply to victim applications set out in Rule 89(1) of the Rules is not absolute’ as it is ‘[s]ubject to the provisions of the Statute’, including ‘the Court’s obligation under Article 68(1) of the Statute to protect the safety, physical and psychological well-being, dignity and privacy of victims’ and the obligation to ensure the fairness and expeditiousness of the proceedings.<sup>66</sup> Furthermore, it has been found that ‘Rule 89(1) of the Rules should be interpreted in light of Rule 89(4), which gives the Chamber discretion to “consider the applications in such a manner as to ensure the effectiveness of proceedings”’.<sup>67</sup> Therefore, contrary to the Defence’s submissions,<sup>68</sup> rule 89(4) of the Rules allows the Chamber to organise the application and admission process in light of the circumstances of each case.<sup>69</sup>

34. In addition, the Defence fails to take into account ‘the challenges presented by the difficult security situation in the CAR and, hence, the extensive redactions anticipated to protect the victims in accordance with article 68(1) of the Statute’.<sup>70</sup> The Defence further omits to consider that it may be expected that a substantial number of victims will submit applications to participate in the present proceedings.

35. For these reasons, the Single Judge considers that the system proposed by the Registry is: (i) in compliance with the Court’s legal framework; (ii) conducive to the

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<sup>64</sup> [Registry Submissions](#), ICC-01/14-01/21-25, paras 6-8; [Defence’s Response](#), ICC-01/14-01/21-36, paras 15-55, pp. 18-19.

<sup>65</sup> Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Decision on victims’ participation in trial proceedings, 6 February 2015, ICC-01/04-02/06-449 (the ‘[Ntaganda Victims Decision](#)’), paras 29-32; [Al Hassan Victims Decision](#), ICC-01/12-01/18-37-tENG, paras 60-63; [Yekatom and Ngaïssona Victims Decision](#), ICC-01/14-01/18-141, paras 42-45; Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (‘Ali Kushayb’)*, Decision establishing the principles applicable to victims’ and representation during the Confirmation Hearing, 18 January 2021, ICC-02/05-01/20-259 (the ‘[Abd-Al-Rahman Victims Decision](#)’), paras 25-28.

<sup>66</sup> [Ntaganda Victims Decision](#), ICC-01/04-02/06-449, para. 29.

<sup>67</sup> [Ntaganda Victims Decision](#), ICC-01/04-02/06-449, para. 31.

<sup>68</sup> [Defence’s Response](#), ICC-01/14-01/21-36, para. 21.

<sup>69</sup> [Abd-Al-Rahman Victims Decision](#), ICC-02/05-01/20-259, para. 26.

<sup>70</sup> [Yekatom and Ngaïssona Victims Decision](#), ICC-01/14-01/18-141, para. 43.

expeditious conduct of the proceedings as a whole, which includes Mr Said's right to have the proceedings conducted expeditiously; and (iii) in the interests of the victims by enabling the greatest number of victims to apply to participate in the hearing on the confirmation of charges. Accordingly, the Single Judge adopts, *mutatis mutandis*, the system for the transmission and admission of victim applications, as established in the *Yekatom and Ngaïssona* case.<sup>71</sup> Accordingly, the Defence Admission Request and the Defence Alternative Admission Request are rejected.

36. Nonetheless, the Single Judge notes that the Registry, without providing reasoning, proposes that 'only relevant examples of Group C applications presenting unclear or borderline issues on which the [Victims Participation and Reparations Section] is unable to make a clear determination would be transmitted to the Chamber and the parties (with the necessary redactions) for observations from the parties'.<sup>72</sup> Noting the Defence's objection to the Registry's proposal,<sup>73</sup> the Single Judge emphasises that, in accordance with the aforementioned procedure, *all* Group C applications shall be transmitted to the Chamber and, where necessary with redactions, to the parties.<sup>74</sup>

37. As to the Defence Further Alternative Admission Request, the Single Judge understands that the Defence is requesting to receive the victim applications that would be eventually *admitted*. This is because, despite a reference to a paragraph of the Chambers Practice Manual dealing with the transmission of victim applications prior to a judicial assessment,<sup>75</sup> this request is formulated as a further alternative to the Defence's requests to receive either all victim applications or, in the alternative, Group A and C victim applications for the purposes of providing observations prior to the Single Judge's decision regarding the admission of such applications. The Single Judge defers his assessment of the Defence Further Alternative Admission Request and, pursuant to regulation 28(2) of the Regulations, orders the Registry to provide observations on this request in its upcoming report on the legal representation of victims

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<sup>71</sup> [Yekatom and Ngaïssona Victims Decision](#), ICC-01/14-01/18-141, para. 41.

<sup>72</sup> [Registry Submissions](#), ICC-01/14-01/21-25, para. 8.

<sup>73</sup> [Defence's Response](#), ICC-01/14-01/21-36, paras 16, 51-52.

<sup>74</sup> See [Yekatom and Ngaïssona Victims Decision](#), ICC-01/14-01/18-141, para. 41(iv), (vii).

<sup>75</sup> [Defence's Response](#), ICC-01/14-01/21-36, para. 55, referring to Chambers Practice Manual, para. 96(v).

and, should they wish to do so, allows the Prosecutor and the Defence to respond to the Registry's observations.

#### **F. Legal representation**

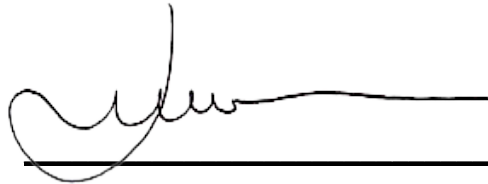
38. The Single Judge instructs the Registry to submit its report on the legal representation of victims by no later than 21 May 2021 (16:00 hours). Furthermore, the Single Judge instructs the parties to file their responses to the Registry's report, if any, by no later than 26 May 2021 (16:00 hours).

#### **FOR THESE REASONS, THE SINGLE JUDGE HEREBY**

- a) **ADOPTS**, *mutatis mutandis* and subject to any Covid-19 related restrictions, the principles governing outreach activities, as established in the *Yekatom and Ngaïssona* case;
- b) **INSTRUCTS** the Registry to submit a report on the outreach activities it plans to undertake in the present case, as further specified in the present decision, by no later than 30 April 2021;
- c) **APPROVES** the victim application forms adopted in the *Yekatom and Ngaïssona* case and further adopts, *mutatis mutandis*, the attendant principles in relation to these forms, as established in that case;
- d) **REJECTS** the Defence Application Form Request;
- e) **DECIDES** to accept the documents establishing the identity of applicants as accepted in the *Yekatom and Ngaïssona* case and, in addition, incorporates, *mutatis mutandis*, the attendant principles in relation to these documents, as established in that case;
- f) **REJECTS** the Defence Identity Proof Request;
- g) **ADOPTS**, *mutatis mutandis* and subject to any Covid-19 related restrictions, the principles regarding the collection and processing of applications, as established in the *Yekatom and Ngaïssona* case;
- h) **DEFERS** his assessment as to the Defence Intermediaries Request;
- i) **ADOPTS**, *mutatis mutandis*, the system for the transmission and admission of victim applications, as established in the *Yekatom and Ngaïssona* case, and further emphasises that *all* Group C applications shall be transmitted to the Chamber and, where necessary with redactions, to the parties;

- j) **REJECTS** the Defence Admission Request and the Defence Alternative Admission Request;
- k) **DEFERS** his assessment as to the Defence Further Alternative Admission Request;
- l) **ORDERS** the Registry to submit a report on the legal representation of victims, including its observations on the Defence Intermediaries Request and the Defence Further Alternative Admission Request, by no later than 21 May 2021 (16:00 hours); and
- m) **ORDERS** the Prosecutor and the Defence to respond to the Registry's report on the legal representation of victims, including in relation to the Registry's observations on the Defence Intermediaries Request and the Defence Further Alternative Admission Request, by no later than 26 May 2021 (16:00 hours).

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

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a solid black horizontal line.

**Judge Rosario Salvatore Aitala,  
Single Judge**

Dated this Friday, 16 April 2021

At The Hague, The Netherlands