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

**Date: 7 April 2021**

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**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**

Public redacted version of 'Order on disclosure and related matters', 7 April 2021,  
ICC-01/14-01/21-50-Conf

Order 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

**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**

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**REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and  
Reparations Section**

**Other**

**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 Order on disclosure and related matters.

## **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’ (the ‘Warrant of Arrest’ and ‘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 and instructed the Prosecutor to file observations on the modalities and procedure for evidence disclosure.<sup>6</sup>

5. On 5 February 2021, the Single Judge received the ‘Prosecution’s Submissions on the Modalities and Procedure for Evidence Disclosure’ (the ‘Prosecutor’s Disclosure Submissions’)<sup>7</sup> and the ‘Prosecution’s Proposal for Protocol on the Handling of

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<sup>1</sup> ICC-01/14-01/21-2-US-Exp; a public redacted version is also available, *see* [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; a confidential redacted, *ex parte* (only available to the Registry, the Prosecutor and the Defence) version is also available, *see* ICC-01/14-01/21-6-Conf-Exp-Red; a confidential, lesser redacted, *ex parte* (only available to the Registry, the Prosecutor and the Defence) version is also available, *see* 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](#), pp 11-12.

<sup>7</sup> ICC-01/14-01/21-11-Conf, together with [public annex A](#) and confidential annex B.

Confidential Information and Contacts with Witnesses’ (the ‘Prosecutor’s Protocol Proposal’)<sup>8</sup>.

6. On 26 February 2021, following the appointment of Ms Naouri as Counsel for Mr Said,<sup>9</sup> the Single Judge, by way of email, instructed the Defence to submit a consolidated response to the Prosecutor’s Disclosure Submissions and the Prosecutor’s Protocol Proposal by no later than 8 March 2021 at 16:00 hours.<sup>10</sup>

7. On 8 March 2021, the Single Judge received the ‘Réponse consolidée de la Défense à la « Prosecution’s Submissions on the Modalities and Procedure for Evidence Disclosure » (ICC-01/14-01/21-11-conf) et à la « Prosecution’s Proposal for Protocol on the Handling of Confidential Information and Contacts with Witnesses » (ICC-01/14-01/21-13)’ (the ‘Defence’s Response’).<sup>11</sup>

8. On 17 March 2021, following the recomposition of the Chambers by the Presidency,<sup>12</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>13</sup>

9. On 23 March 2021, the Single Judge issued the ‘Decision on the “Prosecution’s Request for Leave to Reply to the Defence’s Consolidated Response” and the “Prosecution’s Response to Defence Request for the Translation of Protocols”’<sup>14</sup> (the ‘Prosecutor’s Request for Leave to Reply’<sup>15</sup> and the ‘Prosecutor’s Translation Response’<sup>16</sup>). The Single Judge granted the Prosecutor’s Request for Leave to Reply and decided to exceptionally accept the Prosecutor’s Translation Response.<sup>17</sup>

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<sup>8</sup> [ICC-01/14-01/21-13](#), together with one confidential annex.

<sup>9</sup> Registry, [Notification of the Appointment of Ms Jennifer Naouri as Counsel for Mr Mahamat Said Abdel Kani](#), ICC-01/14-01/21-24, together with confidential annex III and public annexes I and II.

<sup>10</sup> Email from the Single Judge to Counsel for Mr Said, at 15:20 hours.

<sup>11</sup> ICC-01/14-01/21-32-Conf.

<sup>12</sup> [Decision assigning judges to divisions and recomposing Chambers](#), 16 March 2021, ICC-01/14-01/21-40.

<sup>13</sup> [Decision on the designation of a Single Judge](#), ICC-01/14-01/21-42.

<sup>14</sup> ICC-01/14-01/21-46-Conf.

<sup>15</sup> Prosecution’s Request for Leave to Reply to the Defence’s Consolidated Response - ICC-01/14-01/21-32-Conf dated 8 March 2021, 10 March 2021, ICC-01/14-01/21-35-Conf.

<sup>16</sup> Prosecution’s Response to Defence Request for the Translation of Protocols, 10 March 2021, ICC-01/14-01/21-33-Conf.

<sup>17</sup> ICC-01/14-01/21-46-Conf, paras 23-24.

10. On 25 March 2021, the Single Judge received the ‘Prosecution’s Reply to Defence’s Consolidated Response – ICC-01/14-01/21-32-Conf’ (the ‘Prosecutor’s Reply’).<sup>18</sup>

11. On 31 March 2021, the Single Judge received the ‘Information conjointe portant sur l’accord entre l’Accusation et la Défense concernant la langue dans laquelle seront divulgués les éléments de preuve à charge et les déclarations de témoins’ (the ‘Joint Information’).<sup>19</sup>

## II. SUBMISSIONS RECEIVED BY THE SINGLE JUDGE

### A. The Prosecutor’s Disclosure Submissions

12. The Prosecutor ‘requests the Chamber to adopt the *Unified Technical protocol for the provision of evidence, witness and victims information in electronic form* [...] currently applied in the case against *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaissona*’ (the ‘E-Court Protocol’).<sup>20</sup> According to the Prosecutor, ‘[a]dopting this protocol will ensure consistency and coherence within the CAR II situation’ as ‘the evidence for both the Anti-Balaka and the Seleka Investigations are registered and processed in one database’ and ‘the investigation teams have collected evidence of overlapping relevance to both investigations and the ensuing cases’.<sup>21</sup>

13. The Prosecutor further ‘proposes the continued implementation of the redactions regime adopted by the Chamber in its Decision on the “Prosecution’s request for the adoption of the redactions regime applied in the case against *Yekatom & Ngaissona* for the entire CAR II situation”’, as it would ‘enhance the expeditiousness and the predictability of proceedings’.<sup>22</sup>

### B. The Prosecutor’s Protocol Proposal

14. The Prosecutor ‘submits [a] proposal for the adoption of the Protocol on the Handling of Confidential Information and Contacts with Witnesses’ (the ‘Confidential Information and Contact Protocol’).<sup>23</sup> In this regard, the Prosecutor recalls that ‘the

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<sup>18</sup> ICC-01/14-01/21-48-Conf-Exp; a confidential redacted version is also available, *see* ICC-01/14-01/21-48-Conf-Red.

<sup>19</sup> ICC-01/14-01/21-49-Conf.

<sup>20</sup> ICC-01/14-01/21-11-Conf, para. 3; ICC-01/14-01/21-11-AnxA.

<sup>21</sup> ICC-01/14-01/21-11-Conf, para. 4.

<sup>22</sup> ICC-01/14-01/21-11-Conf, para. 5; ICC-01/14-01/21-11-Conf-AnxB.

<sup>23</sup> [ICC-01/14-01/21-13](#), para. 1.

Single Judge adopted a similar Protocol in the case of Yekatom and Ngaïssona which was based on the Chamber's practice manual and updated by the latest practices in the Al Hassan case' and 'the Protocol as foreseen by the Chambers Practice Manual in the Abd-Al-Rhaman [*sic*] case'.<sup>24</sup> However, the Prosecutor 'proposes three focused amendments with a view to clarify the role of the parties and participants'.<sup>25</sup>

### C. The Defence's Response

15. The Defence 'tient à informer la Chambre de ce que la langue de travail de l'équipe de Défense est le français' and that 'la langue principale de l'affaire sera, de manière importante, le français'.<sup>26</sup> Thus, the Defence requests the Single Judge to '[o]rdonner au Greffe de faire traduire en français, dans les plus brefs délais, tous les protocoles adoptés dans la présente affaire' (the 'Defence Translation Request').<sup>27</sup>

16. The Defence 'n'a pas d'objection à ce que soit adopté dans la présente affaire le « E-court Protocol » tel qu'adopté dans l'affaire *Yekatom et Ngaïssona*'.<sup>28</sup> It avers that 'il est important que le Procureur communique à la Défense les éléments de preuve à décharge dont il dispose « dès que cela est possible »'.<sup>29</sup> The Defence further requests to be authorised 'à accéder à l'ensemble des éléments dont dispose le Procureur de manière à pouvoir déterminer elle-même ce qui pourrait être soit exculpatoire soit nécessaire à la préparation de la Défense' (the 'First Defence Disclosure Request').<sup>30</sup> In addition, the Defence 'estime qu'il est fondamental que le Procureur divulgue à la Défense, au même moment, tous les éléments utiles dont il dispose qui permettent de comprendre sa preuve' (the 'Second Defence Disclosure Request').<sup>31</sup>

17. Regarding the proposed redactions regime, the Defence submits that 'c'est sur la partie qui expurge que repose la charge de justifier de la nécessité d'une expurgation et au principe que l'autre Partie doit toujours avoir la possibilité de demander la levée de l'expurgation en question'.<sup>32</sup> The Defence is also 'd'accord avec le principe [...] que

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<sup>24</sup> [ICC-01/14-01/21-13](#), para. 3.

<sup>25</sup> [ICC-01/14-01/21-13](#), para. 4; ICC-01/14-01/21-13-Conf-AnxA.

<sup>26</sup> ICC-01/14-01/21-32-Conf, paras 6-7.

<sup>27</sup> ICC-01/14-01/21-32-Conf, p. 18, para. 8.

<sup>28</sup> ICC-01/14-01/21-32-Conf, para. 9.

<sup>29</sup> ICC-01/14-01/21-32-Conf, para. 12, p. 17.

<sup>30</sup> ICC-01/14-01/21-32-Conf, para. 17, p. 17.

<sup>31</sup> ICC-01/14-01/21-32-Conf, para. 19, p. 17.

<sup>32</sup> ICC-01/14-01/21-32-Conf, para. 34, p. 17.

« the disclosing party shall monitor the continued necessity for redactions and shall re-disclose evidence with lesser redactions as soon as the reasons justifying them cease to exist »'.<sup>33</sup> Furthermore, the Defence 'ne s'oppose pas à l'adoption du Protocole adopté dans l'affaire *Ngaissona et Yekatom*'.<sup>34</sup> However, the Defence 'estime que les catégories A.8 [...] et B.5 [...] devraient être retirées du Protocole puisqu'elles sont trop vagues et ces catégories vont contre la logique même de définir une liste limitative d'informations que le Procureur serait autorisé à expurger directement' (the 'First Defence Redactions Request').<sup>35</sup> The Defence also contends that 'il pourrait être utile que soient explicitement prévus dans le Protocole des instructions aux Parties sur la marche à suivre en cas de demande d'expurgations non-standards' (the 'Second Defence Redactions Request').<sup>36</sup>

18. In relation to the Prosecutor's Protocol Proposal, the Defence, first, contends that 'il convient de reformuler le titre [de la section III.2] du Protocole qui [serait] « personnes dont le statut de témoin ou les relations avec la Cour n'ont pas été rendues publiques »' (the 'First Defence Protocol Request').<sup>37</sup> Second, the Defence proposes: (i) 'l'ajout de la phrase suivante au Protocole: « Une Partie peut discuter avec la victime de la possibilité qu'elle donne son consentement à cette Partie de parler des circonstances de violences sexuelles alléguées avec des tiers et qu'elle indique dans quelles circonstances elle accepterait que les violences sexuelles alléguées soient abordées »'; and (ii) 'si une Partie qui enquête se retrouve dans une situation d'impossibilité, du fait de l'application du Protocole, de pouvoir communiquer sur les crimes allégués afin de pouvoir construire son cas et de suivre toutes les pistes d'enquête qui se présentent à elle, notamment concernant les auteurs allégués, le Protocole doit prévoir, pour cette Partie, la possibilité de saisir le Juge de manière ex parte pour obtenir des instructions sur la marche à suivre' (the 'Second Defence Protocol Request').<sup>38</sup> Third, the Defence submits the following observations regarding the possibility of contacting witnesses. The Defence 'estime que [la possibilité d'interroger les témoins d'une autre Partie] devrait être exclusivement réservée aux

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<sup>33</sup> ICC-01/14-01/21-32-Conf, para. 35, p. 17.

<sup>34</sup> ICC-01/14-01/21-32-Conf, para. 36.

<sup>35</sup> ICC-01/14-01/21-32-Conf, para. 37, p. 17.

<sup>36</sup> ICC-01/14-01/21-32-Conf, para. 40, p. 17.

<sup>37</sup> ICC-01/14-01/21-32-Conf, para. 43, p. 17.

<sup>38</sup> ICC-01/14-01/21-32-Conf, paras 48-49, p. 18.

Parties’ (the ‘Third Defence Protocol Request’).<sup>39</sup> In addition, the Defence proposes that: (i) paragraph 31 of the Prosecutor’s Protocol Proposal be amended as follows: ‘la partie appelante a l’obligation de mettre en œuvre tous les moyens à sa disposition pour contacter le témoin, notamment si une première tentative de contact s’est révélée infructueuse’; and (ii) the following sentence be added to this paragraph: ‘la partie appelante ou le participant a l’obligation de garder un registre des dates et de la teneur de ses contacts avec son témoin concernant la demande émanant de la Partie non-appelante de l’interroger’ (the ‘Fourth Defence Protocol Request’).<sup>40</sup> Furthermore, the Defence ‘s’oppose à l’obligation prévue au paragraphe 40 selon laquelle : « A video or audio recording of the interview shall be provided to the calling party or participant, to the extent possible, within five days of the interview date »’ or requests that it be added to this paragraph that ‘l’enregistrement et sa communication ne saurait être faits sans l’accord exprès du témoin’ (the ‘Fifth Defence Protocol Request’).<sup>41</sup> Lastly, the Defence ‘conteste la possibilité pour la Partie appelante de s’opposer à un entretien avec la Partie non-appelante auquel aurait consenti le témoin (paragraphe 41)’ (the ‘Sixth Defence Protocol Request’).<sup>42</sup>

#### **D. The Prosecutor’s Translation Response**

19. The Prosecutor submits that the Defence’s request to translate all protocols in the present proceedings into French should be rejected.<sup>43</sup>

20. According to the Prosecutor, ‘the working languages of the Court are *both* French and English’ and the Defence ‘showed that it is capable of submitting a detailed response to the Prosecution Requests’.<sup>44</sup>

21. The Prosecutor further contends that Mr Said ‘is not prejudiced by the lack of translation of the protocols into French’.<sup>45</sup> In the view of the Prosecutor, ‘[t]he protocols governing the modalities of disclosure as well as issues of confidentiality are mere auxiliary documents governing procedural aspects of the proceedings’ with the ‘primary purpose [...] to govern and assist the Parties in the conduct of the

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<sup>39</sup> ICC-01/14-01/21-32-Conf, para. 52, p. 18.

<sup>40</sup> ICC-01/14-01/21-32-Conf, paras 55-56, p. 18.

<sup>41</sup> ICC-01/14-01/21-32-Conf, para. 57, p. 18.

<sup>42</sup> ICC-01/14-01/21-32-Conf, para. 58, p. 18.

<sup>43</sup> ICC-01/14-01/21-33-Conf, para. 1.

<sup>44</sup> ICC-01/14-01/21-33-Conf, para. 4 (emphasis in original).

<sup>45</sup> ICC-01/14-01/21-33-Conf, para. 5.



proceedings’.<sup>46</sup> The Prosecutor also avers that ‘only the document containing the charges, the decision confirming the charges, the list of the evidence relied upon by the Prosecutor and the witnesses’ statements should be made available to a suspect and accused in a language he or she fully understands and speaks’.<sup>47</sup>

### **E. The Prosecutor’s Reply**

22. The Prosecutor submits that ‘[o]pen file disclosure is inconsistent with the Prosecution making the primary determination on disclosure and with disclosure not being unlimited, two features of the disclosure regime before the Court’.<sup>48</sup> The Prosecutor adds that open file disclosure is ‘particularly inadequate when dealing with [REDACTED]’.<sup>49</sup> In the view of the Prosecutor, open file disclosure is ‘an impracticable measure bound to cause delay in reviewing the material in the Prosecution’s possession’.<sup>50</sup> In this regard, the Prosecutor asserts that, ‘since protective measures in the form of redactions for instance will be granted in this case and have already been granted in the *Yekatom and Ngaïssona* case on evidence to be disclosed to SAID, managing access rights would be time consuming and would heighten the risks of inadvertent disclosure of protected material to the Defence’.<sup>51</sup> As to the Defence’s request ‘to have disclosed, at the same time, “*tous les éléments utiles dont il dispose qui permettent de comprendre sa prevue [sic]*”’, the Prosecutor ‘will strive to disclose, at the same time, all pieces of information relevant and related to the main material being disclosed’.<sup>52</sup> However, ‘[REDACTED]’.<sup>53</sup> The Prosecutor adds [REDACTED].<sup>54</sup>

23. With regard to the Defence’s request to strike redaction categories A.8 and B.5, the Prosecutor is of the view that these categories ‘have been accepted in past cases’ and ‘[t]his established practice is also captured in the latest version of the Chambers Practice Manual and has been applied accordingly for the entire CARII situation

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<sup>46</sup> ICC-01/14-01/21-33-Conf, para. 5.

<sup>47</sup> ICC-01/14-01/21-33-Conf, para. 5.

<sup>48</sup> ICC-01/14-01/21-48-Conf-Red, para. 4.

<sup>49</sup> ICC-01/14-01/21-48-Conf-Red, para. 9.

<sup>50</sup> ICC-01/14-01/21-48-Conf-Red, para. 10.

<sup>51</sup> ICC-01/14-01/21-48-Conf-Red, para. 12.

<sup>52</sup> ICC-01/14-01/21-48-Conf-Red, para. 13.

<sup>53</sup> ICC-01/14-01/21-48-Conf-Red, para. 13.

<sup>54</sup> ICC-01/14-01/21-48-Conf-Red, para. 14.

including for the preparation of the disclosure process in the present case’.<sup>55</sup> The Prosecutor notes that ‘the Chamber can be furnished with unredacted versions of the evidence “to be able to verify, at its direction, the necessity of redactions”’ and that ‘the Defence is permitted to challenge any specific redactions, through *inter partes* consultation or through litigation’.<sup>56</sup> The Prosecutor intends to use the A.8 category only [REDACTED].<sup>57</sup> In addition, the Prosecutor intends to use the B.5 category for (i) ‘any contact information such as phone numbers and home addresses of an individual source or lead or an intermediary or a witness whose name is mentioned but whose status and role should not be revealed yet at this stage of the proceedings’; and (ii) ‘any contact information such as phone numbers and home address of a person who is not defined under the A.2.1 to A.6.7 categories under rule 81(2) and B.1 to B.4 categories under rule 81(4)’.<sup>58</sup> According to the Prosecutor, the use of the B.5 category ‘will actually allow the Prosecution to disclose *more* information to the Defence unredacted [...] that would be otherwise redacted’.<sup>59</sup>

24. With regard to the Prosecutor’s Protocol Proposal, the Prosecutor submits, first, that ‘[t]he Defence does not explain why the definition of witness should be expanded to include *persons*’ and ‘the proposed amendment should be rejected’.<sup>60</sup> Second, regarding the procedure concerning allegations of sexual or gender based crimes, the Prosecutor argues that ‘[t]he Defence misconstrues the Protocol’.<sup>61</sup> According to the Prosecutor, ‘article 15 of the Protocol foresees [...] that, when there are no suitable alternatives to disclosing the alleged victimisation of the victim to family members or third parties that could communicate it to the family, the investigating party may communicate the information of the victimisation but is barred from disclosing that the victim is a “Witness of the Court”’ and, therefore, the investigating party ‘can investigate fully the credibility of the allegation and victim since the fact of being a witness or not for the Court has no relevance to that assessment’.<sup>62</sup> Third, in the view of the Prosecutor, ‘[t]he Defence’s fears related to the audio or video recording of the

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<sup>55</sup> ICC-01/14-01/21-48-Conf-Red, para. 16.

<sup>56</sup> ICC-01/14-01/21-48-Conf-Red, para. 17.

<sup>57</sup> ICC-01/14-01/21-48-Conf-Red, para. 18.

<sup>58</sup> ICC-01/14-01/21-48-Conf-Red, para. 19.

<sup>59</sup> ICC-01/14-01/21-48-Conf-Red, para. 20 (emphasis in original).

<sup>60</sup> ICC-01/14-01/21-48-Conf-Red, para. 23 (emphasis in original).

<sup>61</sup> ICC-01/14-01/21-48-Conf-Red, para. 24.

<sup>62</sup> ICC-01/14-01/21-48-Conf-Red, para. 24.

investigating party's interview with the witness are unwarranted'.<sup>63</sup> The Prosecutor submits that '[t]he recording of the interview promotes its integrity' and '[i]t is also a guarantee and helpful tool for the Chamber'.<sup>64</sup> In addition, '[i]f the investigating party has [...] information [that a witness may be willing to disclose something that has not been mentioned in his or her statement], it can either ask the Prosecution to verify such an allegation in light of its article 54(1) obligations or seek permission from the Chamber to interview the witness alone'.<sup>65</sup> Lastly, the Prosecutor asserts that 'the Chamber retains the possibility to decide, beyond the consent of a witness, any objections to the investigating party conducting an interview of the witness of the opposing party' and that '[t]here is no reason why the Chamber should not retain the possibility to hear motions from the calling party that may oppose such interviews as the Chamber remains bound by its duties under article 68 of the Statute'.<sup>66</sup>

### III. DETERMINATION BY THE SINGLE JUDGE

25. The Single Judge notes articles 54(3)(e), 61(3), (5), (7), 67, 68(5), 69, 72 and 93(8) of the Statute, rules 15, 63(1), 76-83, 121 and 122 of the Rules, regulation 26 of the Regulations of the Court and regulations 15-19, 24-28 and 53(3) of the Regulations of the Registry.

#### A. Principles governing disclosure

26. The Single Judge notes that the Prosecutor requests that the E-Court Protocol currently applied in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* be adopted and that the Defence agrees to the adoption of this Protocol.<sup>67</sup> Accordingly, the Single Judge adopts the aforementioned protocol<sup>68</sup> and further

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<sup>63</sup> ICC-01/14-01/21-48-Conf-Red, para. 25.

<sup>64</sup> ICC-01/14-01/21-48-Conf-Red, para. 25.

<sup>65</sup> ICC-01/14-01/21-48-Conf-Red, para. 25.

<sup>66</sup> ICC-01/14-01/21-48-Conf-Red, para. 26.

<sup>67</sup> Prosecutor's Disclosure Submissions, ICC-01/14-01/21-11-Conf, para. 3; [Annex A to Prosecutor's Disclosure Submissions](#), ICC-01/14-01/21-11-AnxA; Defence's Response, ICC-01/14-01/21-32-Conf, para. 9.

<sup>68</sup> Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom*, [Public Redacted Version of 'Decision on Disclosure and Related Matters'](#), 23 January 2019, ICC-01/14-01/18-64-Red, para. 11 (the 'Yekatom and Ngaïssona Disclosure Decision'); Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom*, [Annex to Decision on Disclosure and Related Matters](#), 23 January 2019, ICC-01/14-01/18-64-Anx. See also Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom And Patrice-Edouard Ngaïssona*, [Second Decision on Disclosure and Related Matters](#), 4 April 2019, ICC-01/14-01/18-163, p. 16.

incorporates, *mutatis mutandis*, the attendant principles governing disclosure previously established in that case.<sup>69</sup>

27. In addition, the Single Judge adopts, *mutatis mutandis*, the following principles previously established in the case of *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman* ('*Ali Kushayb*').

28. First, with a view to fully realising Mr Said's right to have adequate time and facilities to prepare his defence and to facilitate the Chamber's own preparation of the confirmation of charges hearing, the Prosecutor shall clarify the relevance of the disclosed evidence by indicating, for each disclosed item, which sections are deemed to contain incriminating, exonerating and/or other information.<sup>70</sup> In more specific terms, the Prosecutor shall provide the relevant information by using the codes PEXO, INCRIM, R-77, or other, and by indicating the corresponding page and paragraph numbers of the relevant sections of documents, statements and transcripts in a dedicated metadata field.<sup>71</sup> For audio material, the Prosecutor is expected to indicate the relevant time intervals and provide the pages/line numbers of the transcript in the metadata field.<sup>72</sup> For visual evidence, if the relevance and significance is not immediately apparent from the exhibit, the Prosecutor shall include a brief note in the metadata field, explaining what is depicted and how it is relevant to the Prosecutor's case.<sup>73</sup>

29. Second, the Single Judge instructs the Prosecutor to submit a report detailing the following aspects of the investigation and the disclosure process in relation to the present proceedings: (i) whether the Prosecutor has made available to the Defence the supporting material relied upon for the Warrant of Arrest; (ii) the estimated number and type of items of evidence and other material to be relied upon for the confirmation of charges hearing, including a provisional list of witnesses; (iii) the progress made by the Prosecutor in reviewing the evidence and other material in her possession; (iv) the

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<sup>69</sup> [Yekatom and Ngaïssona Disclosure Decision](#), ICC-01/14-01/18-64-Red, paras 12-18, 20-22; Defence's Response, ICC-01/14-01/21-32-Conf, para. 12, p. 17. *See also* Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman* ('*Ali Kushayb*'), [Order on disclosure and related matters](#), 17 August 2020, ICC-02/05-01/20-116, para. 11 (the '*Abd-Al-Rahman* First Disclosure Order'); Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman* ('*Ali Kushayb*'), [Second Order on disclosure and related matters](#), 2 October 2020, ICC-02/05-01/20-169, paras 12-13, 17, 21, 25-26 (the '*Abd-Al-Rahman* Second Disclosure Order').

<sup>70</sup> [Abd-Al-Rahman Second Disclosure Order](#), ICC-02/05-01/20-169, para. 23.

<sup>71</sup> [Abd-Al-Rahman Second Disclosure Order](#), ICC-02/05-01/20-169, para. 24.

<sup>72</sup> [Abd-Al-Rahman Second Disclosure Order](#), ICC-02/05-01/20-169, para. 24.

<sup>73</sup> [Abd-Al-Rahman Second Disclosure Order](#), ICC-02/05-01/20-169, para. 24.

progress made by the Prosecutor in translating the necessary evidence and other material into Sango and/or other languages, as well as the estimated time line for completing such translations; (v) whether the Prosecutor considers that protective measures are required for witnesses and, if so, the number of witnesses requiring such measures and the estimated time line for implementing all such measures; (vi) whether there is any material affected by articles 54(3)(e), 72 and 93(8) of the Statute and, if so, whether consent to disclose such material has been requested and the estimated time-line for obtaining such consent; (vii) whether the Prosecutor intends to submit requests to withhold the identity of witnesses, to present summaries of items of evidence and/or for non-standard redactions, and, if so, the estimated number of such requests; (viii) whether the Prosecutor is undertaking or intends to undertake further investigative activities prior to the confirmation of charges hearing, and, if so, the estimated time line for completing such activities; (ix) a detailed estimation of the timeline for completing all disclosure related activities; and (x) any other matters bearing on the investigation and the disclosure process.<sup>74</sup> This report shall be submitted by no later than 16 April 2021 (together with a confidential redacted version if necessary).

30. The Prosecutor is further instructed to submit updated progress reports detailing the following aspects of the investigation and the disclosure process in relation to the present proceedings: (i) the number and type of items of evidence and other material disclosed during the relevant period; (ii) the number and type of items of evidence and other material that have been identified as disclosable but have yet to be disclosed, including a detailed explanation as to their relevance to the Prosecutor's case, the obstacles preventing the Prosecutor from disclosing such items, and the steps taken to overcome them; (iii) any relevant developments regarding the issues to be detailed in the initial report to be submitted on 16 April 2021; and (iv) any other matters bearing on the investigation and the disclosure process.<sup>75</sup> Such reports shall be submitted on the first working day of each month, commencing on 1 June 2021 (together with a confidential redacted version if necessary).

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<sup>74</sup> [Abd-Al-Rahman Second Disclosure Order](#), ICC-02/05-01/20-169, paras 19, 28, 34. In this regard, the Single Judge takes note of the Joint Information and shall address any matters arising from this filing following receipt of the Prosecutor's report.

<sup>75</sup> [Abd-Al-Rahman First Disclosure Order](#), ICC-02/05-01/20-116, para. 17; *see also* [Abd-Al-Rahman Second Disclosure Order](#), ICC-02/05-01/20-169, paras 19, 28, 34.

31. Lastly, while specific time limits for the disclosure process will be adopted subsequently, the Single Judge indicates as follows. Any requests to vary a time limit in connection with the disclosure process must be submitted, as a minimum, 15 calendar days prior to expiry of the time limit for which variation is requested so as to permit the opposing party to respond and the Single Judge to adopt a decision.<sup>76</sup> In addition, any items of evidence or other material disclosed after the expiry of the final time limit for disclosure, which, as mentioned, remains to be determined, will not be taken into account for the purposes of the confirmation of charges hearing, without prejudice to the Prosecutor's ongoing duty to provide the Defence with potentially exonerating evidence in accordance with article 67(2) of the Statute.<sup>77</sup>

32. Turning to the Defence's request to be authorised 'à accéder à l'ensemble des éléments dont dispose le Procureur de manière à pouvoir déterminer elle-même ce qui pourrait être soit exculpatoire soit nécessaire à la préparation de la Défense',<sup>78</sup> the Single Judge finds that, as specified in the Prosecutor's Reply,<sup>79</sup> it: (i) is inconsistent with the statutory framework of the Court, which establishes that the Prosecutor bears the primary burden regarding the review and disclosure of evidence and other material;<sup>80</sup> (ii) misapprehends that, as determined by the Appeals Chamber, 'the right to disclosure is not unlimited';<sup>81</sup> and (iii) would result in substantive delays if authorised. Accordingly, the Single Judge rejects the First Defence Disclosure Request.

33. As to the Defence's request that 'le Procureur divulgue à la Défense, *au même moment*, tous les éléments utiles dont il dispose qui permettent de comprendre sa preuve',<sup>82</sup> the Single Judge finds that the Defence fails to point to a general obligation

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<sup>76</sup> See also Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')*, [Order in relation to the 'Prosecution's urgent request for an extension of time'](#), 10 September 2020, ICC-02/05-01/20-151, para. 5; Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')*, [Decision on the Prosecutor's Second Request to Postpone the Confirmation Hearing and Requests for Variation of Disclosure Related Time Limits](#), 18 December 2020, ICC-02/05-01/20-238, para. 25 (the 'Abd-Al-Rahman Postponement Decision').

<sup>77</sup> See [Abd-Al-Rahman Postponement Decision](#), para. 46.

<sup>78</sup> Defence's Response, ICC-01/14-01/21-32-Conf, para. 17, p. 17.

<sup>79</sup> Prosecutor's Reply, ICC-01/14-01/21-48-Conf-Red, paras 4-12.

<sup>80</sup> See also [Yekatom and Ngaïssona Disclosure Decision](#), ICC-01/14-01/18-64-Red, para. 14.

<sup>81</sup> Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, [Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled "Judgment pursuant to Article 74 of the Statute"](#), 8 March 2018, ICC-01/05-01/13-2275-Red, para. 55.

<sup>82</sup> Defence's Response, ICC-01/14-01/21-32-Conf, para. 19, p. 17 (emphasis added).

for the Prosecutor to *simultaneously* disclose all related materials and it further disregards that, as indicated in the Prosecutor's Reply,<sup>83</sup> [RECA DTED]. Therefore, the Second Defence Disclosure Request is rejected. Nonetheless, noting the Prosecutor's commitment to 'strive to disclose, at the same time, all pieces of information relevant and related to the main material being disclosed',<sup>84</sup> the Single Judge calls upon the professionalism of the Prosecutor to exercise all possible efforts to proceed in this manner as much as possible.

## **B. Exceptions to disclosure (redactions)**

34. The Single Judge notes that the Prosecutor proposes to maintain the redactions regime adopted in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* and the CARII situation, while the Defence does not oppose the adoption of this regime, with the exception of its request discussed hereafter.<sup>85</sup> Accordingly, the Single Judge adopts, *mutatis mutandis*, the aforementioned redactions regime.<sup>86</sup>

35. With regard to the Defence's request to reject the Prosecutor's proposal to adopt redaction categories A.8 and B.5,<sup>87</sup> the Single Judge recalls that the receiving party may challenge any redaction and that the Single Judge will be provided with the unredacted evidence in order to verify the necessity of the redactions.<sup>88</sup> The Defence fails to explicate why, despite these safeguards, these categories should be rejected. Furthermore, these categories have been applied in other cases and they have also been included in the most recent Chambers Practice Manual.<sup>89</sup> Lastly, as previously found by the Chamber, [REDACTED].<sup>90</sup> The First Defence Redactions Request is, thus, rejected.

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<sup>83</sup> Prosecutor's Reply, ICC-01/14-01/21-48-Conf-Red, paras 13-14.

<sup>84</sup> Prosecutor's Reply, ICC-01/14-01/21-48-Conf-Red, para. 13.

<sup>85</sup> Prosecutor's Disclosure Submissions, ICC-01/14-01/21-11-Conf, para. 5; Defence's Response, ICC-01/14-01/21-32-Conf, para. 36.

<sup>86</sup> [Yekatom and Ngaïssona Disclosure Decision](#), ICC-01/14-01/18-64-Red, paras 23-32; Annex B to Prosecutor's Disclosure Submissions, ICC-01/14-01/21-11-Conf-AnxB; Defence's Response, ICC-01/14-01/21-32-Conf, paras 28-35, p. 17.

<sup>87</sup> Defence's Response, ICC-01/14-01/21-32-Conf, paras 37-39, p. 17.

<sup>88</sup> [Yekatom and Ngaïssona Disclosure Decision](#), ICC-01/14-01/18-64-Red, paras 30-31.

<sup>89</sup> [Yekatom and Ngaïssona Disclosure Decision](#), ICC-01/14-01/18-64-Red, paras 25-26; [Abd-Al-Rahman First Disclosure Order](#), ICC-02/05-01/20-116, para. 12; [Chambers Practice Manual](#), paras 99-101.

<sup>90</sup> Annex B to the Prosecutor's Disclosure Submissions, ICC-01/14-01/21-11-Conf-AnxB, para. 6.

36. As to the Second Defence Redactions Request,<sup>91</sup> the Single Judge recalls that the non-disclosure of witnesses' identities, the non-disclosure of entire items of evidence, and redactions not falling in the standard categories must be requested by means of an application to the Single Judge, together with a confidential redacted version if necessary.<sup>92</sup> While specific time limits will, as mentioned, be defined following receipt of the aforementioned report by the Prosecutor, the Single Judge emphasises the importance of the timely submission of such applications so as to allow for a response by the opposing party, a decision by the Single Judge, and the subsequent disclosure of evidence within the relevant time limits.<sup>93</sup>

### **C. The Confidential Information and Contact Protocol**

37. The Single Judge understands that the Prosecutor requests that the Confidential Information and Contact Protocol applied in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* be adopted with certain amendments and that, beyond its own proposed amendments, the Defence does not object to the Prosecutor's Protocol Proposal.<sup>94</sup> In the interests of predictability and consistency, the Single Judge adopts the version of the Confidential Information and Contact Protocol as annexed to the current version of the Chambers Practice Manual.<sup>95</sup>

38. As to the Prosecutor's proposed amendments, the Single Judge considers that the first proposed amendment is moot, since it relates to a sentence that is no longer reflected in the version of the Confidential Information and Contact Protocol annexed to the current version of the Chambers Practice Manual.<sup>96</sup> As to the remaining proposed amendments, the Prosecutor, besides a general assertion that they aim 'to clarify the role of the parties and participants', does not specifically justify why these amendments are required.<sup>97</sup> In the absence of compelling reasons to amend the Confidential

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<sup>91</sup> Defence's Response, ICC-01/14-01/21-32-Conf, para. 40, p. 17.

<sup>92</sup> [Yekatom and Ngaïssona Disclosure Decision](#), ICC-01/14-01/18-64-Red, para. 32; [Abd-Al-Rahman First Disclosure Order](#), ICC-02/05-01/20-116, para. 13.

<sup>93</sup> [Yekatom and Ngaïssona Disclosure Decision](#), ICC-01/14-01/18-64-Red, para. 32.

<sup>94</sup> [Prosecutor's Protocol Proposal](#), ICC-01/14-01/21-13, paras 1, 3-5; Annex to Prosecutor's Protocol Proposal, ICC-01/14-01/21-13-Conf-AnxA; Defence's Response, ICC-01/14-01/21-32-Conf, paras 41-58, pp 17-18.

<sup>95</sup> Annex to [Chambers Practice Manual](#), 29 November 2019; *see also* [Annex 2 to the Abd-Al-Rahman First Disclosure Order](#), ICC-02/05-01/20-116-Anx2.

<sup>96</sup> Annex to Prosecutor's Protocol Proposal, ICC-01/14-01/21-13-Conf-AnxA, p. 2.

<sup>97</sup> [Prosecutor's Protocol Proposal](#), ICC-01/14-01/21-13, para. 4.



Information and Contact Protocol, and further noting the importance of ensuring predictability and consistency, the Single Judge rejects these proposals.

39. Turning to the Defence's request to amend the title of section III.2 of the Prosecutor's Protocol Proposal, which is numbered as section C.2 in the Confidential Information and Contact Protocol annexed to the current version of the Chambers Practice Manual,<sup>98</sup> the Single Judge notes that, contrary to the Defence's submission, this section of the Protocol 'applies to witnesses whose identity or relationship with the Court has not been made public', and not to *persons* whose relationship with the Court has not been made public.<sup>99</sup> In addition, as argued by the Prosecutor, the Defence does not justify the need for such a modification, in particular in light of the fact that the term '[w]itness' has been defined in this Protocol whereas the Defence's proposed term remains undefined.<sup>100</sup> The Single Judge further considers that the absence of such a definition could engender a lack of clarity as to the Protocol's scope of application. For these reasons, the Single Judge rejects the First Defence Protocol Request.

40. The Single Judge also rejects the Defence's proposed amendments to paragraph 15 of the Prosecutor's Protocol Proposal, which relate to paragraph 14 of the Confidential Information and Contact Protocol annexed to the current version of the Chambers Practice Manual (the Second Defence Protocol Request).<sup>101</sup> The Defence speculates that this provision '*risque d'interdire, dans certains cas, à une Partie de tester le témoignage d'une victime alléguée de violences sexuelles ou de le corroborer*' and that '[l]a formulation *semble même interdire à une Partie d'enquêter sur les auteurs présumés des violences alléguées*'.<sup>102</sup> It has, thus, not been substantiated how this provision would specifically inhibit the investigative activities of the parties and participants and, as a result, the Defence fails to demonstrate why the proposed amendments are required.

41. In relation to the Defence's request to reserve the possibility of contacting witnesses for the Prosecutor and the Defence,<sup>103</sup> the Single Judge notes that such a

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<sup>98</sup> Defence's Response, ICC-01/14-01/21-32-Conf, para. 43, p. 17.

<sup>99</sup> Annex to [Chambers Practice Manual](#), 29 November 2019, article 9.

<sup>100</sup> Prosecutor's Reply, ICC-01/14-01/21-48-Conf-Red, para. 23.

<sup>101</sup> Defence's Response, ICC-01/14-01/21-32-Conf, paras 48-49.

<sup>102</sup> Defence's Response, ICC-01/14-01/21-32-Conf, paras 45-46 (emphases added).

<sup>103</sup> Defence's Response, ICC-01/14-01/21-32-Conf, para. 52.

proposal directly contravenes the terms of the Confidential Information and Contact Protocol. The Defence's reference to a precedent arising from the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé* is distinguishable as, dissimilar to the latter case, the Prosecutor has not expressed her agreement to disallow any Legal Representatives of Victims from doing so in the present case.<sup>104</sup> Therefore, the Single Judge rejects the Third Defence Protocol Request.

42. Furthermore, the Single Judge rejects the Defence's proposed amendments to paragraph 31 of the Prosecutor's Protocol Proposal, which relate to paragraph 29 of the Confidential Information and Contact Protocol annexed to the current version of the Chambers Practice Manual (the Fourth Defence Protocol Request).<sup>105</sup> The Single Judge recalls that '[t]his Protocol shall be interpreted restrictively and no provision shall be interpreted to derogate [...] any obligations of the parties and participants under the Code of Conduct of the Office of the Prosecutor, the Code of Professional Conduct for counsel, the Code of Conduct for Investigators, the Code of Conduct for Intermediaries and any binding national codes of conduct'.<sup>106</sup> The parties and participants are, therefore, under a responsibility to carry out their responsibilities under paragraph 29 of the Confidential Information and Contact Protocol in accordance with such obligations. It follows that the Defence has not demonstrated that the proposed amendments to this paragraph are necessary.

43. With regard to the Defence's proposal to reject or amend article 40 of the Prosecutor's Protocol Proposal (article 37 of the Confidential Information and Contact Protocol annexed to the current version of the Chambers Practice Manual),<sup>107</sup> the Single Judge agrees with the Prosecutor that the obligation set forth in this paragraph promotes the integrity of the interview process.<sup>108</sup> Should a party identify compelling reasons to proceed with an interview without a recording, it may apply for authorisation to do so. Such applications will be addressed on a case-by-case basis. Accordingly, the Fifth Defence Protocol Request is rejected.

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<sup>104</sup> Defence's Response, ICC-01/14-01/21-32-Conf, para. 53.

<sup>105</sup> Defence's Response, ICC-01/14-01/21-32-Conf, paras 55-56.

<sup>106</sup> Annex to [Chambers Practice Manual](#), 29 November 2019, article 2.

<sup>107</sup> Defence's Response, ICC-01/14-01/21-32-Conf, para. 57.

<sup>108</sup> Prosecutor's Reply, ICC-01/14-01/21-48-Conf-Red, para. 25.

44. Lastly, in connection with the Defence's proposal to reject or amend article 41 of the Prosecutor's Protocol Proposal (the Sixth Defence Protocol Request),<sup>109</sup> the Single Judge observes that this provision is no longer reflected in the Confidential Information and Contact Protocol annexed to the current version of the Chambers Practice Manual. Even so, the Defence overlooks that '[t]his Protocol shall be interpreted restrictively and no provision shall be interpreted to derogate [...] other protection accorded to witnesses, victims or other persons at risk on account of the activities of the Court',<sup>110</sup> and that the Chamber retains ultimate control over the protection of victims and witnesses as well as the fairness of the proceedings. Therefore, the Single Judge clarifies that, in exceptional circumstances and on the basis of an application demonstrating compelling reasons for such a course of action, a party or participant may object to a request to interview a witness on the basis of articles 57(3)(a) and (c), 67 and/or 68(1) of the Statute.

#### **D. The Defence Translation Request**

45. Pursuant to article 50(2) of the Statute, '[t]he working languages of the Court shall be English and French'. The Single Judge emphasises that counsel fluent in one of the working languages of the Court is expected to sufficiently understand the other working language so as to be able to respond to documents drafted in that language and, in any event, counsel in the present proceedings is, by her own admission, capable of responding to documents submitted in English.<sup>111</sup> The Defence Translation Request is, accordingly, rejected.

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

- a) **DECIDES** to adopt the E-Court Protocol currently applied in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* and the principles governing disclosure as specified in the present order;
- b) **ORDERS** the Prosecutor to submit a report detailing the aspects of the investigation and the disclosure process in relation to the present

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<sup>109</sup> Defence's Response, ICC-01/14-01/21-32-Conf, para. 58.

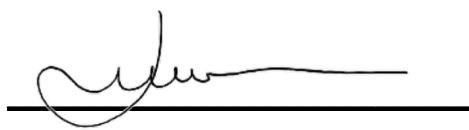
<sup>110</sup> Annex to [Chambers Practice Manual](#), 29 November 2019, article 2.

<sup>111</sup> Defence's Response, ICC-01/14-01/21-32-Conf, para. 8.

- proceedings, as specified in the present order, by no later than 16 April 2021 (together with a confidential redacted version if necessary);
- c) **ORDERS** the Prosecutor to submit progress reports detailing the aspects of the investigation and the disclosure process in relation to the present proceedings, as specified in the present order, on the first working day of each month starting from 1 June 2021 (together with a confidential redacted version if necessary);
  - d) **REJECTS** the First Defence Disclosure Request and the Second Defence Disclosure Request;
  - e) **DECIDES** to adopt, *mutatis mutandis*, the redactions regime currently applied in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* and the CARII situation;
  - f) **REJECTS** the First Defence Redactions Request;
  - g) **RECALLS**, in regard to the Second Defence Redactions Request, that the non-disclosure of witnesses' identities, the non-disclosure of entire items of evidence, and redactions not falling in the standard categories must be requested by means of an application to the Single Judge, together with a confidential redacted version if necessary;
  - h) **DECIDES** to adopt the Protocol on the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant as annexed to the current version of the Chambers Practice Manual;
  - i) **REJECTS** the amendments to the Protocol on the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant proposed by the Prosecutor and the Defence, as specified in the present decision;
  - j) **REJECTS** the Defence Translation Request;
  - k) **ORDERS** the Registrar to reclassify ICC-01/14-01/21-13-Conf-AnxA as public; and
  - l) **ORDERS** the Prosecutor and Defence to indicate whether the Prosecutor's Disclosure Submissions, the Prosecutor's Translation Response, the Prosecutor's Request for Leave to Reply, the Prosecutor's Reply, and the Defence's Response, respectively, may be reclassified as public or, in the

alternative, to submit public redacted versions of these filings as soon as possible.

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



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**Judge Rosario Salvatore Aitala,**  
**Single Judge**

Dated this Wednesday, 7 April 2021

At The Hague, The Netherlands