

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: **11 March 2021**

PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF
*THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public

**Defence Response to “Registry Submissions on Aspects Related to the
Participation of Victims in the Proceedings” (ICC-01/14-01/21-25)**

Source: Defence team for Mahamat Said Abdel Kani

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

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Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

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States' Representatives

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REGISTRY

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Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Mr Nigel Verril

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**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

I. Procedural history

1. On 7 January 2019, the Single Judge issued a warrant for the arrest of Mr Said.¹
2. On 24 January 2021, Mr Said was transferred to the International Criminal Court on 24 January 2021. He arrived at the detention centre on 25 January 2021.
3. On 29 January 2021, Mr Said made his first appearance.
4. On 26 February 2021, the Registry filed "Submissions on Aspects Related to the Participation of Victims in the Proceedings".²

II. Discussion

5. The Defence submits the following observations on the Registry's submissions regarding the modalities of victim participation in the proceedings.

1. Participation forms

6. The Defence has no comments on the participation forms proposed by the Registry as an annex to its submissions, except for one proposed addition to the form – on which the Defence elaborates below (see section 2) – which relates to the procedure for verifying the identity of persons seeking the status of participating victims in the proceedings ("applicants").

2. Verification of the identify of persons seeking the status of victim

7. The Defence understands that there may be difficulties in verifying the identity of persons depending on the administrative and political circumstances

¹ ICC-01/14-01/21-2-Red2.

² ICC-01/14-01/21-25.

prevailing in some of the International Criminal Court's "situation" countries. For this reason, the Defence submits the following remarks:

8. The Defence considers it important to recall that the participation of victims in judicial proceedings is an important step and that such participation will, by definition, have procedural consequences. It is therefore essential that the Court take all necessary measures to verify that the persons wishing to participate in the proceedings are indeed the persons they claim to be.

9. While circumstances on the ground may require, in some cases, the need to show some form of flexibility in verifying a person's identity, the Defence believes that it is important to proceed with caution and to implement a procedure that preserves the principle that a person's identity must be established with certainty. Therefore, the various documents that may be presented by applicants should be ranked according to their probative value.

10. In this respect, an official identity document or an official document bearing a photograph has a higher probative value than a document issued by municipal or other authorities without a photograph. It seems difficult to verify the identity of a person without a document bearing a photograph. Indeed, it is one thing to present a document with a name on it – such as a birth certificate, a family record book or a marriage certificate – but it is also necessary to establish the link between the document and the person presenting it. In other words, presenting a document with a name on it, without a photograph, does not demonstrate that the person presenting the document is in fact the person whose name appears on the document. In the same vein, a document issued by a governmental or administrative authority – such as a refugee card, a criminal record or a certificate of nationality – cannot be equated with a document issued by private bodies, such as a card issued by a sports association or even a student card.

11. The Defence therefore considers that it would be appropriate for the Victims Participation and Reparations Section (“VPRS”) to try to obtain, in the absence of an official document bearing a photograph, several documents that corroborate each other, which, although not an ideal solution, would at least strengthen the verification of the person’s identity.

12. Therefore, it should be ordered that in the absence of an official identity document bearing a photograph, applicants must present at least two documents issued by a governmental or administrative authority, or at least one document issued by a governmental or administrative authority together with two other documents making it possible to establish their identity.

13. Lastly, in order to ensure that applicants are fully aware of the importance of being able to identify themselves throughout the proceedings should they be admitted to participate, the participation form should include a signed section where the applicant certifies that he or she is indeed the person he or she claims to be. Such a section should explicitly state that applicants understand that signing the form means they are indicating to the Court their wish to participate in judicial proceedings, which involves being able to identify themselves, and that any misrepresentation, including of their identity, could result in exclusion from the judicial process and possible prosecution. Such a proposal is in line with the practice followed when taking evidence, whether it is the preparation of a prior statement or testimony in court. In both cases, it is consistent practice to inform witnesses that they are liable to prosecution if they make false statements.

14. Therefore, the Defence suggests that the text of the applicant’s signature box on page 2 of the form read as follows: *“en soumettant ce formulaire de demande, la victime certifie, à l’aide de sa signature : 1) que l’identité qu’elle présente est conforme à la réalité 2) que les informations que la demande contient sont, à sa connaissance, exactes et véridiques 3) qu’elle a été informée qu’en cas de fausses déclarations elle pourrait être exclue*

du processus judiciaire et s'exposer à des poursuites". ["by submitting this application form, the victim certifies by his or her signature 1) that the identity he or she presents is true 2) that the information contained in the application is, to the best of his or her knowledge, accurate and truthful 3) that he or she has been informed that any false statement could result in exclusion from the judicial process and possible prosecution"].

3. Assessment of applications for participation

15. The Registry proposes that the applications for participation received be assessed against the criteria set out in rule 85 of the Rules of Procedure and Evidence and any other criteria determined by the Chamber and that these applications be categorized into three groups: group A, "applicants who clearly qualify as victims"; group B, "applicants who clearly do not qualify as victims"; and group C, "applicants for whom the VPRS could not make a clear determination for any reason";³ and that the applications for participation from groups A and B be transmitted to the Chamber on a rolling basis.

16. The Registry does not seem to foresee a role for the parties as it does not plan to transmit applications for participation from groups A and B to the Prosecution or the Defence. The Registry proposes only to transmit to the parties "reports" which will deal only in a general way with the issue of the admission of victims' applications for participation. In the same vein, with regard to category C, it proposes to transmit to the parties only "relevant examples"⁴ and a report explaining some of the difficulties encountered by Registry representatives.

³ ICC-01/14-01/21-25, para. 8.

⁴ ICC-01/14-01/21-25, para. 8.

1.1 Principally, the Defence must receive all applications for participation

3.1.1 *The principle*

17. The Defence considers that the procedure proposed by the Registry is contrary to the very text of rule 89 of the Rules of Procedure and Evidence.

18. Indeed, rule 89 of the Rules of Procedure and Evidence on the procedure for the admission of applications for participation of victims clearly provides that

1. In order to present their views and concerns, victims shall make written application to the Registrar, who shall transmit the application to the relevant Chamber. Subject to the provisions of the Statute, in particular article 68, paragraph 1, **the Registrar shall provide a copy of the application to the Prosecutor and the defence, who shall be entitled to reply**⁵ within a time limit to be set by the Chamber. Subject to the provisions of sub-rule 2, the Chamber shall then specify the proceedings and manner in which participation is considered appropriate, which may include making opening and closing statements.
2. The Chamber, on its own initiative or on the application of the Prosecutor or the defence, may reject the application if it considers that the person is not a victim or that the criteria set forth in article 68, paragraph 3, are not otherwise fulfilled. A victim whose application has been rejected may file a new application later in the proceedings.

19. It is clear from the wording of rule 89(1) that the Registry has an obligation to provide copies of applications for participation to the parties, who “shall” [*ont “toujours” le droit*] be entitled to reply. This right is reinforced by rule 89(2), which provides for the possibility for the parties to request the rejection of an application for participation. In order to request the rejection of an application, the parties must have had the opportunity to examine the application.

20. The phrase “Subject to the provisions of the Statute, in particular article 68, paragraph 1” does not change this. While this phrase naturally allows Judges to decide, on a case-by-case basis, on protective measures that are absolutely necessary for the protection of victims under article 68(1), it cannot be used to decide in a general and generic manner to deny the Defence a right under the Rules of

⁵ Emphasis added.

Procedure and Evidence. The States Parties – the legislators of both the Rome Statute and the Rules of Procedure and Evidence – adopted rule 89(1) with full knowledge of article 68(1) and neither the Registry nor the Judges can render ineffective a provision of the Rules adopted by the States without assuming a legislative role that goes beyond the scope of their function.

21. Similarly, it follows from rule 89(4), which provides that “where there are a number of applications, the Chamber may consider the applications in such a manner as to ensure the effectiveness of the proceedings and may issue one decision” that this provision is intended to allow Judges, **within the legal framework set out in rule 89 as a whole**, not to have to consider applications for participation one by one, which would entail having to render dozens of separate decisions, but rather to allow Judges to issue “one decision”. This provision is not intended to allow for a procedure for admitting applications for victim participation that would deny the Defence a right explicitly provided for in the preceding paragraphs of the same rule.

22. In the same vein, it cannot be argued that article 64(2) – which provides generally that “[t]he Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses” – can be used as a basis for a Chamber to disregard provisions explicitly included in the Statute or the Rules of Procedure and Evidence. The article provides that the Chamber must ensure that the trial is “fair”. However, it would appear that a procedure which does not allow the parties, including the Defence, to exercise a right explicitly provided for in the Statute cannot be considered fair. In other words, to use article 64(2) to deny the Defence the right granted to it in rule 89(1) is to reject the spirit of article 64(2). Otherwise, it would be possible, on the basis of article 64(2), for a Chamber to organize proceedings in a

discretionary manner without taking into account all the rights of the accused under the Statute.

23. Furthermore, for the Defence, “expeditiousness” is not an abstract concept that allows judges to speed up proceedings in general, without taking into account the full exercise of the rights of the person charged. It is a right of the person charged, a right which derives from his or her right to be tried without undue delay. In these circumstances, the exercise of one of his or her rights by the accused can never be considered a “delay”. To reason otherwise would systematically lead to the use against a person charged wishing to exercise a right, of another right of which he or she is a beneficiary in order to prevent him or her from exercising it.

24. In this case, the right of the Defence to receive and reply to victims’ applications for participation must be respected and the Defence cannot be prevented from exercising this right because exercising such a right will take time.

25. Lastly, logistical reasons, relating, for example, to the Registry’s ability to apply redactions when necessary, cannot be used to deny the Defence its right under rule 89.

1.1.2. *Admission procedure provided by the Chambers Practice Manual*

26. The Defence notes that the Chambers Practice Manual (“the Practice Manual”) clearly provides for a procedure for the admission of victim applications for participation in accordance with rule 89.

27. According to the Practice Manual,

Rule 89 of the Rules of Procedure and Evidence sets out the basic requirements for the admission of victims to participate in the proceedings. The core elements of the system designed by rule 89 are, in essence, the following: (i) victims who wish to participate in the proceedings must make written application to the Registrar; (ii) the application is transmitted to the Chamber; (iii) **a copy of the application is provided to the Prosecutor and the Defence,**

who are entitled to reply within a time limit to be set by the Chamber;⁶ and (iv) the Chamber, proprio motu or upon request of the Prosecutor or the Defence, may reject the application *inter alia* if the person does not qualify as a victim.⁷

28. The Practice Manual also provides that:

[i]n accordance with rule 89(1), all complete applications falling within the scope of the concerned case that are transmitted to the Chamber, and any supporting documentation, **are also provided, together with the transmission report, to the Prosecutor and the Defence,**⁸ at the same time and by way of the same filing in the record of the case made for the transmission to the Chamber.⁹

29. The Practice Manual further provides that:

[t]he Prosecutor and the Defence, in accordance with Rule 89(1), are entitled to provide observations on the applications and request, as provided in Rule 89(2), that one or more individual applications be rejected. The Single Judge/Chamber shall establish a time limit within which the parties may present specific objections to the admission as victims of any individual applicant. Evidently, neither party has a duty in this respect: it is entirely within their discretion to determine the extent of time and resources, if any, which they find worthy dedicating to the assessment of the applications. **In case any objection is raised by either party, the Single Judge/Chamber assesses the contested application(s) individually.** Conversely, upon expiration of the time limit for the parties' objections, all those victims whose applications for participation have not been objected by either party, or otherwise rejected by the Single Judge/Chamber, are admitted *ex lege* to participate in the proceedings, as envisaged in the last sentence of Rule 89(1), in conjunction with Rule 89(2), which states that *without prejudice* to the possibility for a Chamber to reject applications on its own motion or when prompted by the parties, the Chamber upon receipt of the application shall proceed to specify the proceedings and modalities for participation. In sum, the Chamber is seized with a decision on an individual application only in case **either party objects, for any particular reason, the person's admission** contesting the Registry's original assessment.¹⁰

30. It is therefore clear from these various provisions that Judges have repeatedly made it clear that the procedure for the admission of applications for victim participation must safeguard the possibility for the parties to receive all applications for victim participation in order to be able to request their rejection if they consider it necessary.

⁶ Emphasis added.

⁷ Practice Manual, para. 95.

⁸ Emphasis added.

⁹ Practice Manual, para. 96(v).

¹⁰ Practice Manual, para. 96(vii) and (viii). Emphasis added.

31. The Practice Manual also makes it clear that “[t]he above mentioned system applies equally to **all stages** of the case.”¹¹ It is therefore not intended that the confirmation of charges phase should be different, even though this hearing may result in the charges not being confirmed.

1.1.3. The prejudice to the Defence for not having access to all applications for participation of victims

32. First, it is fundamental that the procedure for the admission of victims’ applications for participation provides for the parties to be afforded notice and be heard. Indeed, the procedure is naturally organized around the dialectic between parties, which makes it possible to bring out all the useful elements for a full and informed debate on an issue. It is only at the end of such an exchange of arguments that the Chamber can render a fully informed decision. Any limitation of this dialectic carries with it the risk that important issues will not have been fully debated, and above all, that a decision will be rendered without the parties having been able to present all their arguments in full, thereby calling into question the fairness of the proceedings.

33. In this case, the role of the Defence in the analysis of an application for victim participation (“application”) is fundamental since the Defence, like the Prosecutor, will have a different assessment of the content of an application to the Registry’s. The Chamber will only be able to decide on an application following an exchange of arguments between the parties to assess whether the criteria for participation are met for a given application. The Registry, as an external body, cannot, by definition, identify what is relevant for the parties and cannot represent their interests. Only the parties know what is important to them and it is important for the fairness of the

¹¹ Practice Manual, para. 97. Emphasis added.

procedure that they are able to discuss the content of each application for participation (see below).

34. Second, it is important to take into account the role that victims who are admitted to participate in proceedings may play, as these participants will be able to intervene on many issues through their legal representation. It is common practice before the ICC for legal representative(s) of victims to file numerous submissions, to participate in debates on important legal issues (e.g. an application for interim release) and to advocate at hearings (e.g. status conferences and confirmation of charges hearings). If the Defence has been unable to challenge their participation, then at the confirmation of charges stage it will have to respond to and deal with participants, some of whom may not meet the criteria to qualify as victims. All submissions and interventions by participating victims form part of the proceedings and are taken into account in the Chambers' decisions. Above all, the participation of victims has a real and significant impact on the work of the Defence, which frequently has to respond to them, in addition to having to respond to the Prosecutor's submissions. Because of this legal status and the role of participants in the proceedings, and its impact on the work of the Defence, it should be ensured *ab initio* that these participants have the standing to act in the proceedings.

35. Third, the prejudice to the Defence arises from the very nature of a victim's participation in the proceedings. It is not, by definition, a neutral participation, but involves making a direct accusation against the accused. It is inconceivable that the Defence should be unable to apprise itself of the accusations made against the accused in the proceedings and verify whether they are well founded, even if only *prima facie*. The fairness of the proceedings does not require a "casting of the net" to ensure the participation of as many victims as possible in the proceedings – and thus a proliferation of accusers against the accused – but rather the participation only of those who meet the criteria set out in the texts and case law.

36. The reports that the Registry proposes to submit would in no way remedy the prejudice that the parties would suffer as a result of the failure to transmit victims' applications. Neither would they provide the parties with sufficient information to enable them to make meaningful submissions. Indeed, the Registry states that "VPRS prepares reports that accompany each transmission and list the victim applications falling into the aforementioned three groups. These reports are notified to the Chamber, the parties and participants. The reports **need not include application-by-application reasoning or analysis and need not justify the respective classifications.**"¹² In other words, these will be general reports in which the Registry will not even give a general or application-by-application reasoning for the choices its representatives have made in deciding whether an application for participation falls into category A, B or C. Failure by the Registry to give reasons on a case-by-case basis leaves the door open to arbitrariness, since it is impossible for either the Judges or the parties to understand the classification work done by the Registry.

1.1.4. *Conclusion*

37. For the reasons set out above, the Defence respectfully requests the Chamber to reject the Registry's proposal on the procedure for victim participation and to decide on a procedure for the admission of applications for victim participation in accordance with rule 89 of the Rules of Procedure and Evidence.

38. Therefore, the Defence also requests the Chamber to order that all applications for victim participation be transmitted by the Registry to the parties on a rolling basis, and to decide on a procedure that safeguards the right of the Defence to request the rejection of applications for participation as recognized by rule 89(2).

¹² ICC-01/14-01/21-25, para. 8. Emphasis added.

39. With regard to the communication of applications for participation, the Defence recalls that the principle is that it must have access to all material in the case file, including information provided by victims wishing to participate in the proceedings. Thus, any redactions applied to victims' applications for participation must be exceptional and specifically justified on a case-by-case basis. Therefore, the VPRS should justify to the Judge the redactions made and demonstrate that its representatives have respected the principle of proportionality as set out in article 68(1) of the Statute.

40. Under article 68(1) of the Statute, measures may be taken to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. The same article provides that "[t]hese measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial." It should be recalled that the Defence is subject to the same ethical and professional obligations as the Prosecutor with respect to the confidentiality of the case file and that it cannot be considered, as a matter of principle, that the disclosure of any information to the Defence is tantamount to disclosure to the public and may in itself constitute a risk to victims.

41. The Defence submits that if redactions are to be made to applications for participation, they should be made only in the context of article 68(1) and should not exceed what is necessary to ensure the protection of the applicants. For example, if applicants explicitly indicate that they have no reason to be concerned about their safety, well-being, dignity or privacy or that of their relatives, then Registry officials should not be able to make unwarranted redactions to applications for participation.

42. In the same vein, the Defence already notes that in principle, information relating to the place and date of the alleged crimes does not endanger the applicants' safety and that this information should therefore not be redacted. Indeed, this information is crucial for the Defence to determine whether the crime alleged by the

applicant corresponds to the crimes for which Mr Said is being prosecuted. The same is true for information relating to the applicants' injuries, since without such information the Defence cannot verify the truth of the facts. In the event that such redactions are made, the Registry representatives should explain the reasons and justification to the Chamber.

43. If this information were to be redacted, the ability of the Defence to verify applications for participation would be reduced because it would not be able to determine whether the criteria for participation are met (for example, the Defence would not be able to verify that the harm alleged by the applicant is the result of a crime within the jurisdiction of the Court) and the Defence would not be able to assist the Chamber in examining the admissibility of applications for participation.

1.2. In the alternative, the Defence must have access to applications in categories A and C proposed by the Registry

44. If the Chamber is to limit the right of the Defence to access all applications for participation, then it would be appropriate to allow the Defence access to applications in categories A and C proposed by the Registry.

1.2.1. Provision of category A applications

45. It is essential that the Defence be able to examine all category A applications to enable it to assess whether they meet all the criteria established by the texts and case law. The Defence will then be in a position to make useful observations before the Chamber, for example questioning the credibility of certain applications (by identifying patterns of consistency in responses, problems of authenticity regarding certain documents, etc.).

46. Similarly, the Defence must also be put in a position to comment, from its point of view, on the facts alleged by applicants, for example whether these facts are

within or outside the geographical or temporal scope of the DCC or whether the alleged crimes are part of the charges alleged in the DCC. The Registry's representatives do not know the Defence's understanding of the facts or the strategy adopted by the Defence. Therefore, the Defence must be allowed to play its part in the examination of applications for participation.

47. Again in the same vein, the Defence may draw the Chamber's attention to what it considers to be vague and unclear statements that do not make it possible to establish, for example, whether the applicant actually had knowledge of the alleged facts, whether the applicant suffered harm or who the perpetrators of the alleged crimes were.

48. Furthermore, the Defence must also be able to discuss the link between the alleged harm and the alleged crimes.

49. The Defence may also note glaring contradictions between an application for participation and the information contained in the documents provided in support of it.

50. Lastly, the Defence may, after analysis, find that elements not necessarily identified by the VPRS are missing. For example, the absence of a medical certificate attesting to the harm suffered.

1.2.2. Provision of category C applications

51. The Defence notes that, in relation to category C, the Registry proposes to further reduce the scope of the exchange of arguments that should take place in relation to the examination of victims' applications for participation by proposing to no longer communicate to the parties all applications for participation falling within category C, i.e. "applicants for whom VPRS could not make a clear determination for any reason." The Registry suggests that "only **relevant examples** of Group C

applications presenting unclear or borderline issues on which the VPRS 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”¹³ and states that “the VPRS would also provide a report to the Chamber and the parties that clearly highlights the issue(s) arising from the application forms that the VPRS was unable to make a clear determination on. Once the parties’ observations have been received on the unclear applications, the Chamber would assess the Group C applications individually and determine whether the victims concerned shall be admitted to participate or not”.¹⁴

52. This proposal is not in line with any of the Court’s jurisprudence and, if adopted, would result in the absolute exclusion of the parties from the procedure for the admission of applications for participation, even in cases where the Registry itself acknowledged that it was unable to decide.

1.3. As a further alternative, parties should have access to the applications for participation that will be entered in the case record

53. Under article 67(1) of the Rome Statute, the accused must be given “adequate time and facilities for the preparation of the defence”. The implementation of this fundamental right, respect of which helps to ensure the fairness of the proceedings, requires, *inter alia*, that the Defence be provided with all the information and documents necessary for it to participate fully in the discussions. The absence of such information would breach the equality of treatment that must exist between the Defence and the Prosecution, and would thereby upset the balance of the proceedings and call into question the fairness of the trial.

¹³ ICC-01/14-01/21-25, par. 8.

¹⁴ ICC-01/14-01/21-25, par. 8.

54. In the application of this right, the principle must be that the Defence has automatic access to the entirety of the proceedings, including submissions of the parties and participants, decisions of the Chamber, evidence in the case record and applications for participation in the case record.

55. The Defence notes in this regard that such access is envisaged by the Practice Manual, which provides that:

in accordance with Rule 89(1), all complete applications falling within the scope of the concerned case that are transmitted to the Chamber, and any supporting documentation, **are also provided, together with the transmission report, to the Prosecutor and the Defence**, at the same time and by way of the same filing in the record of the case made for the transmission to the Chamber.¹⁵

4. Intermediaries

56. The Defence would welcome the Registry's involvement in the field. While the Defence understands that in certain circumstances, VPRS may use intermediaries such as field-based NGOs or intergovernmental organizations, it considers that the risks of pressure and influence are high and that measures should therefore be put in place to avoid any risk of manipulation. For this reason, the Defence considers it necessary that the parties be informed of the identity of such intermediaries and that any information concerning these intermediaries in the application forms for victim participation not be redacted. In the same vein, the parties should be provided with any reports from the VPRS regarding contacts with its intermediaries, the training given to them and their actual role in the field.

57. This information will be all the more crucial for the parties if any of the participating victims were approached through these intermediaries and subsequently become prosecution witnesses (dual status witnesses). Indeed, it is essential that, with regard to dual status witnesses, the Defence has all the necessary material to test, verify and discuss the plausibility of their account and the

¹⁵ Practice Manual, para. 96(v). Emphasis added.

authenticity of the evidence they will present before the Court. In order to avoid wasting time and to ensure the expeditiousness of the proceedings, it is essential that the parties have, from the outset of the proceedings, the necessary material to investigate and prepare for the confirmation hearing and possibly the trial phase.

5. Legal representation.

58. With regard to legal representation, the Defence notes that the Registry plans to file a report on this subject at the end of May 2021.¹⁶ The Defence will submit any observations at that time.

59. The Defence already notes that, given the existence of several proceedings at the Court relating to the CAR II situation, it is crucial to take all precautions to avoid possible conflicts of interest. For example, the Defence finds it difficult to imagine that lawyers representing victims in the *Yekatom and Ngaisonna* case could also represent victims in the present case.

FOR THESE REASONS, MAY IT PLEASE PRE-TRIAL CHAMBER II TO

Regarding the identification of applicants:

- **Order** that in the absence of an official identity document bearing a photograph, applicants shall present at least two documents issued by a governmental or administrative authority or at least one document issued by a governmental or administrative authority together with two other documents making it possible to establish their identity;

¹⁶ ICC-01/14-01/21-25, para. 21.

- **Order** that the applicant's signature box on page 2 of the proposed VPRS form (ICC-01/14-01/21-25-AnxI) be worded as follows: *“en soumettant ce formulaire de demande, la victime certifie, à l'aide de sa signature : 1) que l'identité qu'elle présente est conforme à la réalité 2) que les informations que la demande contient sont, à sa connaissance, exactes et véridiques 3) qu'elle a été informée qu'en cas de fausse déclaration elle pourrait être exclue du processus judiciaire et s'exposer à des poursuites”* [“by submitting this application form, the victim certifies by his or her signature: 1) that the identity he or she presents is true 2) that the information contained in the application is, to the best of his or her knowledge, accurate and truthful 3) that he or she has been informed that any false statement could result in exclusion from the judicial process and possible prosecution”]

Regarding the provision to the parties of applications for participation:

In the main,

- **Reject** the Registry's proposal on the procedure for the admission of victims' applications for participation as set out in its submissions ICC-01/14-01/21-25;
- **Decide** on a procedure for the admission of victims' applications for participation in accordance with rule 89 of the Rules of Procedure and Evidence;

Consequently,

- **Order** that unredacted versions of all victim applications for participation be transmitted by the Registry to the Parties on a rolling basis;
- **Order** the Registry to justify, on a case-by-case basis, any requests for redactions;

- **Decide** on a procedure for the admission of applications for participation of victims that safeguards the right of the Defence to request the rejection of such applications, as recognized by rule 89(2) of the Rules of Procedure and Evidence;

In the alternative,

- **Order** that applications for participation of victims falling under categories A and C as defined by the Registry (ICC-01/14-01/21-25, para. 8) be transmitted by the Registry to the Parties on a rolling basis;

As a further alternative,

- **Order** that the parties be granted access to the applications for participation of victims entered in the record of the case;

Regarding intermediaries,

- **Order** the Registry to inform the parties of the identity of the intermediaries it may use in order to facilitate victims' participation in the proceedings;
- **Order** the Registry to forward any reports from the VPRS concerning contacts with its intermediaries, the training given to them and their actual role in the field.

[signed]

Jennifer Naouri

Lead Counsel for Mahamat Said Abdel Kani

Dated this 11 March 2021

At The Hague, Netherlands