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TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM AND
PATRICE-ÉDOUARD NGAÏSSONA***

Public

Public Redacted Version of the “Response of the Common Legal Representative of the Former Child Soldiers to the ‘Yekatom Defence Request for the Amendment of the Victim Application Procedure’”, No. ICC-01/14-01/18-1498-Conf, dated 5 July 2022

Source: Office of Public Counsel for Victims (CLR1)

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

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I. INTRODUCTION

1. The Common Legal Representative of the Former Child Soldiers (the “Legal Representative” or the “CLR1”) observes at the outset that the Defence for Mr Alfred Yekatom (the “Yekatom Defence” or the “Defence”), not only requests being provided with the application forms in Group A, but effectively seeks access to the identifying information of all participating former child soldiers and all future applicants in order to investigate their age.¹ He submits that the Defence Request should be rejected insofar that it finds no support in the Court’s jurisprudence, goes against the principle of anonymous victim participation *vis-à-vis* the Defence and is in sharp contrast with the *prima facie* standard applicable to the victim application process before the Court.

2. If the Defence Request is granted, this will jeopardise the safety, security and well-being of the former child soldiers, most of whom are vulnerable individuals. Further, this will undermine the ongoing application process and be contrary to the fundamental principle of equality of access to justice as the two groups of victims in the same proceedings — the former child soldier victims and the victims of other crimes — will be treated unequally in law and in practice. The Defence has failed to demonstrate the existence of compelling or exceptional reasons for such a drastic deviation from the Court’s previous practice on victims’ admission and participation. The consequences of granting the Defence Request will result in prejudice to the safety, security and well-being of victims, and violate the principle of equality.

3. The Defence’s concerns regarding [REDACTED] in the process of collecting victims’ applications, and [REDACTED] reliance on the [REDACTED]² are purely speculative. These concerns can and should be addressed by investigative measures

¹ See the “Yekatom Defence Request for the Amendment of the Victim Application Procedure”, [No. ICC-01/14-01/18-1478-Conf-Exp](#), 23 June 2022 (the “Defence Request”), with confidential and *ex parte* annex A”, [No. ICC-01/14-01/18-1478-Conf-Exp-AnxA](#) and confidential and *ex parte* annex B, [No. ICC-01/14-01/18-1478-Conf-Exp-AnxB](#), only available to the Legal Representative, the Registry and the Defence. A confidential redacted version, [No. ICC-01/14-01/18-1478-Conf-Red](#), and public redacted version, [No. ICC-01/14-01/18-1478-Red2](#), of the Defence Request were filed on 24 June 2022.

² See the Defence Request, *supra* note 1, para. 22.

— less intrusive measures than those sought in the Defence Request which prejudice the safety, security and well-being of all former child soldier victims and lead to unequal treatment between the two groups of victims within the same case.

II. PROCEDURAL HISTORY

4. On 5 March 2019, Pre-Trial Chamber II established the procedure for the transmission and admission of the applications of victims by adopting the A-B-C Approach.³

5. On 19 March 2020, Trial Chamber V (the “Trial Chamber”) confirmed that the victim application procedure adopted by Pre-Trial Chamber II is to remain in place for the present case.⁴

6. On 23 June 2022, the Defence submitted the Defence Request to amend the victim application procedure adopted by the Trial Chamber.⁵

III. CLASSIFICATION

7. Pursuant to regulation 23*bis* (1) and (2) of the Regulations of the Court, the present submissions are classified as confidential *ex parte*, available only to the Legal Representative, the Registry and the Yekatom Defence, following the classification chosen by the Yekatom Defence. A confidential redacted version will be filed forthwith and a public redacted version will be filed in due course.

³ See the “Decision Establishing the Principles Applicable to Victims’ Applications for Participation” (Pre-Trial Chamber II), [No. ICC-01/14-01/18-141](#), 5 March 2019 (the “Decision Establishing the Principles”), paras. 39-45.

⁴ See the “Order Scheduling First Status Conference” (Trial Chamber V), [No. ICC-01/14-01/18-459](#), 19 March 2020 (the “Order”), para. 8(iv).

⁵ See the Defence Request, *supra* note 1, para. 28.

IV. SUBMISSIONS

A. The A-B-C approach is consistent with the Court's practice and ensures a fair balance between different interests at stake

8. At the outset, it must be emphasised that the Trial Chamber adopted the A-B-C approach regarding the transmission and admission of victim applications for good reason. Such an approach, which balances the expeditiousness and fairness of the proceedings while providing for the effective and meaningful participation of victims in the proceedings which is not prejudicial to the rights of the accused, was previously adopted in the *Ntaganda* case,⁶ the *Al Hassan* case,⁷ the *Ali Kushayb* case,⁸ and recently in the *Mokom* case.⁹ The compatibility of the A-B-C approach with the Court's legal framework, and specifically rule 89(1) of the Rules of Procedure and Evidence (the "Rules") was recently affirmed by the Appeals Chamber in the *Saïd* case.¹⁰

9. The *Saïd* Appeal Judgment provides useful guidance on the factors a Chamber should consider in exercising its discretion to come to a "*decision on the most appropriate system for the processing of victims' applications [which] must always be case-specific, based on objective information and the result of a proper balancing of all the interests at stake*".¹¹ Furthermore, the Appeals Chamber held that "*nothing in the text or spirit of rule 89(1) of the Rules, article 68 of the Statute or the statutory framework more broadly suggests that the non-transmission of victim applications is per se impermissible*", and highlighted that the

⁶ See the "Decision on victims' participation in trial proceedings" (Trial Chamber VI), [No. ICC-01/04-02/06-449](#), 6 February 2015 (the "*Ntaganda* Participation Decision"), para. 25.

⁷ See the "Decision Establishing the Principles Applicable to Victims' Applications for Participation" (Pre-Trial Chamber I), [No. ICC-01/12-01/18-37-tENG](#) (the "*Al Hassan* Participation Decision"), 24 May 2018, para. 60.

⁸ See the "Decision establishing the principles applicable to victims' and representation during the Confirmation Hearing" (Pre-Trial Chamber II, Single Judge), [No. ICC-02/05-01/20-259](#), 18 January 2021 (the "*Ali Kushayb* Participation Decision"), para. 34.

⁹ See the "Order on the Conduct of the confirmation of charges proceedings" (Pre-Trial Chamber II), [No. ICC-01/14-01/22-62](#), 27 June 2022 (the "*Mokom* Order"), paras. 40-41.

¹⁰ See the "Judgment on the appeal of Mr Mahamat Saïd Abdel Kani against the decision of Pre-Trial Chamber II of 16 April 2021 entitled "Decision establishing the principles applicable to victims' applications for participation" (Appeals Chamber), [No. ICC-01/14-01/21-171 OA2](#), 14 September 2021 (the "*Saïd* Appeal Judgment"), paras. 83-84.

¹¹ *Idem*, para. 65.

only limit in this regard is when a Chamber exercises its discretion under rule 89 of the Rules, it is not prejudicial to or inconsistent with, the rights of an accused to a fair trial.¹²

10. It should be recalled that when a Chamber exercises its discretion under rule 89(1) of the Rules to determine the appropriate system for victim applications in each case, particular attention must be given to article 68(1) of the Statute. Indeed, the *Saïd* Appeals Chamber recalled that “[f]rom the wording of rule 89(1) of the Rules, it is clear that the right of the parties to be provided with copies of victims’ applications is not absolute and exceptions are explicitly provided for. Notably, rule 89(1) of the Rules states that the transmission of victims’ applications to the parties is subject to article 68(1) of the Statute” in addition to other relevant considerations from the Court’s statutory framework.¹³ Article 68(1) of the Statute requires the Court to “take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses”. The non-disclosure of the identifying information of victims is a protective measure by which the Court can secure their participation in the proceedings, and constitutes one of the rights of victims enshrined in the Statute as per article 68(1).¹⁴

11. Under the A-B-C approach and consistent with the Court’s obligations under article 68(1) of the Statute, the default position requires victims’ applications in Group C to be transmitted to the defence with the necessary redactions to their identifying information.¹⁵ It is worth noting that even in the *Saïd* case, victim applications in Group A were ordered to be transmitted to the defence with redactions to the identifying information of the victims.¹⁶

¹² *Idem*, para. 66.

¹³ *Idem*, para. 53.

¹⁴ See the “Decision on victims’ participation” (Trial Chamber I), [No. ICC-01/04-01/06-1119](#), 18 January 2008, paras. 128-129.

¹⁵ See e.g. the *Mokom* Order, *supra* note 8, para. 40(vi); the *Ntaganda* Participation Decision, *supra* note 6, para. 24(iv); the *Al Hassan* Participation Decision, *supra* note 7, paras. 59(iv) and 60-62; the *Ali Kushayb* Participation Decision, *supra* note 8, para. 34; the “Decision Establishing Principles on the Victims’ Application Process” (Pre-Trial Chamber II), [No. ICC-02/04-01/15-205](#), 4 March 2015, paras. 32 and 34.

¹⁶ See the *Saïd* Appeal Judgment, *supra* note 10, paras. 5 and 82.

B. Providing the Defence with access to the identifying information of all victims contradicts the principle of anonymous victim participation *vis-à-vis* the defence

12. The Defence not only requests being provided with the application forms in Group A, but effectively seeks access to the identifying information of all participating former child soldiers and all future applicants in order to investigate their age.¹⁷ In the event the Trial Chamber grants the Defence Request, which the Legal Representative strongly opposes, he requests the implementation of the necessary redactions on victims' applications in conformity with the consistent jurisprudence of the Court for victims who are not dual status,¹⁸ and for those who are, in conformity with the applicable protocols on dual status victims, particularly those in the ICCPP.¹⁹ Considering the concerns expressed by the Legal Representative's clients regarding the ramifications of the provision of their identifying information to the Defence, it is critical that redactions are applied as a proportionate measure pursuant to article 68(1) of the Statute. To proceed otherwise would be irreconcilable with the requirement to ensure the security, safety and well-being of victims, and in particular the principle of anonymous victim participation *vis-à-vis* the Defence. Anonymous victim participation is permissible,²⁰ and the Legal Representative submits that this is the only way to protect their security, safety and well-being during their participation in the proceedings.

¹⁷ See the Defence Request, *supra* note 1, para. 28.

¹⁸ See *e.g.*, the *Ntaganda* Participation Decision, *supra* note 6; the *Al Hassan* Participation Decision, *supra* note 7; the *Ali Kushayb* Participation Decision, *supra* note 8, para. 34.

¹⁹ See *e.g.* the "Decision adopting a dual status witness protocol" (Trial Chamber I), [No. ICC-02/05-01/20-618](#), 7 March 2022 (applying the dual status witness protocol adopted in the present case, which generally follows the protocols in the *Ongwen* and *Al Hassan* cases); and the "Decision adopting the Protocol on dual status witnesses and the Protocol on vulnerable witnesses" (Trial Chamber VI), [No. ICC-01/04-02/06-464](#), 18 February 2015.

²⁰ See the "Decision on the participation of anonymous victims in the appeal and on the maintenance of deceased victims on the list of participating victims" (Appeals Chamber), [No. ICC-01/04-02/12-140 A](#), 23 September 2013 (the "Decision on Anonymous Participation"), para. 17. See also, the "Decision on Disclosure of Victims' Identities" (Trial Chamber IX), [No. ICC-02/04-01/15-471](#), 17 June 2016, para. 11.

13. He further recalls that one of the recognised goals of the A-B-C approach is to facilitate the Registry's role to protect victims interacting with the Court by limiting the transmission of applications to the parties.²¹ Therefore, should transmission be granted, the only appropriate and necessary mitigating measure that the Court is required to take is to implement necessary redactions on the victim applications prior to their transmission.

C. Providing the Defence with access to the identifying information of all victims will jeopardise their security, safety and well-being, and is very likely to lead to their decision to withdraw from the case

14. The Legal Representative submits that consistent with the Court's jurisprudence,²² the identity of the victims should not be revealed to the Defence unless the victims concerned are called to present their views and concerns — which is still subject to the possibility of anonymous participation depending on specific circumstances of the victims²³ — or evidence in the capacity of a dual status witness.²⁴ Out of the 243 former child soldier victims currently admitted to participate in the proceedings, only two dual status individuals, namely P-2582 and P-2620, have consented to the disclosure of their identities to the Defence, by virtue of their willingness to testify as a witness for the Prosecution.²⁵

15. The Legal Representative strongly opposes the provision of the identity of all his clients to the Defence, as this is extremely likely to undermine their security, safety and well-being given the volatile security situation in the Central African Republic (the "CAR"), and given that the majority of them continue to reside in the areas where former Anti Balaka elements are present. During recent consultation with his clients,

²¹ See the *Saïd* Appeal Judgment, *supra* note 10, paras. 27, 53, 56, 60, 69, and 81-82.

²² See *e.g.* the "Decision on victims' participation status" (Trial Chamber I), [No. ICC-02/11-01/15-379](#), 7 January 2016 (the "*Gbagbo & Blé Goudé* Decision"), paras. 39 and 59.

²³ See the Decision on Disclosure of Victims' Identities, *supra* note 20, para.14.

²⁴ See *e.g.* the *Saïd* Appeal Judgment, *supra* note 10, para 52 *citing* the "Public Redacted Version of Judgment on the appeal of Mr Laurent Gbagbo against the oral decision on redactions of 29 November 2016" (Appeals Chamber), [No. ICC-02/11-01/15-915-Red OA9](#), 31 July 2017, para. 56.

²⁵ For P-2582, see [REDACTED], para. 7. For P-2620, see [REDACTED], para. 6.

all of them expressed great concerns about the eventuality of the provision of their identity to the Defence, and many stated that they will withdraw from participating in the proceedings out of fear for their safety should their identity become known to Mr Yekatom and his Defence team. Also, the psychological well-being of these participating victims is likely to be affected by the very awareness of the fact that their identity is known to Mr Yekatom and his Defence team, instilling in them further anxiety, fear and concerns about their safety, which only exacerbates their vulnerability.

D. Automatically granting the Defence with access to the identifying information of all future victim applicants is very likely to lead to their decision not to apply for participation

16. According to the VPRS, [REDACTED].²⁶ Notably, [REDACTED].²⁷ If potential victim applicants become aware that their actual identities will be disclosed to Mr Yekatom and his Defence team, for those that have not yet come forward there is a real risk that they may decide to abstain from applying to participate out of fear for their safety²⁸ — a consequence which runs counter to the spirit of the Rome Statute regarding victims' participation before the Court.

17. For this very reason, it is critical to not provide the Defence with access to the identities of the participating victims and any future victim applicants in order to provide for effective and meaningful victim participation where they may realise their rights enshrined in the Statute without another dimension of fear.

²⁶ See the "Registry Observations on ICC-01/14-01/18-1290-Conf-Exp", [No. ICC-01/14-01/18-1302-Conf-Red](#), 4 March 2022, para. 13.

²⁷ [REDACTED].

²⁸ [REDACTED].

E. Providing the Defence with the identifying information of all participating and future victim applicants is in sharp contrast with the *prima facie* standard applicable to the victim application process

18. The Legal Representative underscores that as far as the victim application process is concerned, a Chamber is only required to apply a *prima facie* standard to determine eligibility for victim participation. This *prima facie* determination reflects the established Court jurisprudence.²⁹ In making this *prima facie* determination, a Chamber may make a decision based on the “*intrinsic coherence of the application*”, even if there are some discrepancies between the application and the supporting documents.³⁰ In line with the victim applications to be “*primarily intended as a procedural mechanism to participate in proceedings*”³¹, it must be recalled that the Trial Chamber in the present case is only required to assess eligibility for the participation of the former child soldier victims on a *prima facie* determination based on the information contained in their application forms to which an identification document was attached. Such a *prima facie* determination has already been made in relation to all former child soldiers admitted to participate, and the applicable standard does not require any further scrutiny of these applications.

19. Indeed, victim applications are “[u]nlike evidence collected to support or challenge the substantive criminal charges in the case ... [as they] are administrative in nature and are created through a relationship of confidence between a potential victim and the Registry”.³² Moreover, they are collected to “provide the Chamber with a basis for determining whether individual victims should be permitted to participate in the proceedings pursuant to Rule 89 of the Rules”.³³ It should be further noted that contrary to formal witness statements taken

²⁹ See the *Gbagbo & Blé Goudé* Decision, *supra* note 22, paras. 45-46. See also the “Redacted version of the Corrigendum of Decision on the applications by 15 victims to participate in the proceedings” (Trial Chamber I), [No. ICC-01/04-01/06-2659-Corr-Red](#), 8 February 2011, para. 28.

³⁰ See the *Gbagbo & Blé Goudé* Decision, *supra* note 22, para. 46.

³¹ See the *Saïd* Appeal Judgment, *supra* note 10, para 50.

³² See the “Public redacted version of the First decision on the prosecution and defence requests for the admission of evidence, dated 15 December 2011” (Trial Chamber III), [No. ICC-01/05-01/08-2012-Red](#), 9 February 2012 (the “First Decision on Requests for admission of evidence”), para. 100.

³³ *Ibid.*

pursuant to rules 111 and 112 of the Rules, no such formal requirements apply to the completion of the victims' application forms³⁴ which further supports the importance of applying a *prima facie* standard when assessing them for the limited purpose of determining victim participation at this stage of the proceedings.

20. The Legal Representative submits that providing the Defence with the identifying information of all former child soldiers will mean that their applications will be scrutinised in more depth and far beyond what has already been assessed and determined on a *prima facie* standard. Beyond generally alleging [REDACTED], the Defence has not demonstrated that [REDACTED]. The proliferation of identification documents, on occasion with different personal information thereon seems to be a widespread phenomenon in the CAR, and will be addressed *infra*.

F. Victims applications are not meant to assist the Defence in its investigations

21. The *Saïd* Appeals Chamber made it clear that victims' applications are not provided for the purpose of allowing the defence to gather information that may be important for the preparation of its case.³⁵ As already argued *supra*, victim applications are "*primarily intended as a procedural mechanism to participate in proceedings*".³⁶ Even though the Defence claims the need to challenge the age of all participating former child soldiers and future victim applicants, the main objective appears to be obtaining access to the identity of the victims to further the preparation of its case on the basis of victim applications.

22. It should be recalled that the Statute and the Rules "*primarily establish [...] disclosure obligations on the Prosecutor, which remain unaffected by rule 89(1) of the Rules*".³⁷ As noted by the *Saïd* Appeals Chamber, if the Prosecution decides to call a victim in question as a witness, then it may determine that the victim application of this dual

³⁴ *Ibid.*

³⁵ See the *Saïd* Appeal Judgment, *supra* note 10, para. 51.

³⁶ *Idem*, para. 50.

³⁷ *Idem*, para. 51.

status individual is disclosable under rule 77 of the Rules as being material to the preparation of the defence.³⁸

G. Only transmitting the Group A applications of the former child soldiers and consequently their identities to the Defence will lead to the unequal treatment of the two groups of victims

23. According to Principle 12 of the Basic Principles, “[a] *victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law*”.³⁹ It is submitted that the fundamental principle of equality underpinning Principle 12 necessitates that all victims seeking effective access to justice shall be treated equally, with no discrimination in law and in practice.

24. Granting the Defence Request will result in the establishment of two different victim application regimes within the same case. This will lead to the unequal treatment of the two groups of victims seeking access to justice in the present case – the former child soldiers and the victims of other crimes – based solely on the nature of their victimisation. The two groups of victims seek to participate in a case pertaining to the same events, allegedly involving the criminal responsibility of the same perpetrators. The Defence Request effectively means that applications of all former child soldiers would be transmitted to the Defence, along with their identifying information, and would be subject to in-depth scrutiny. In contrast, only Group C applications of the victims of other crimes would be transmitted to the Defence, and only the identifying information of a limited number of the victims called to present evidence or views and concerns, would be known to the Defence.

25. The Legal Representative submits that any unequal or discriminatory treatment of victims is impermissible. The Defence Request must be rejected on this basis alone

³⁸ *Idem*, para. 52.

³⁹ See the [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), adopted on 16 December 2005 by General Assembly resolution 60/147, Principle 12.

to prevent a victim application regime that is irreconcilable with the requirement of equal treatment of the two groups of victims.

H. The Defence fails to demonstrate the existence of any compelling or exceptional reasons warranting amendment of the victim application procedure

1) The number of participating former child soldier victims is not low

26. With reference to the *Saïd* case, the Defence Request is based on the assertion that the number of admitted former child soldier victims in this case is low and therefore allows for the transmission of their applications to the Defence.⁴⁰ The Legal Representative notes that the *Saïd* Appeals Judgment stated that in cases where the number of victims' applications is expected to remain low, this particular situation *may* enable the accused to receive copies of the applications and to reply to them.⁴¹ Beyond the fact that a low number of victims is not in itself sufficient to order the transmission of the applications to the Defence, the factual arguments used to support the existence of this situation are erroneous.

27. First, there are currently a total of 243 former child soldier victims admitted to participate in the proceedings, and not 161 as the Defence submits. This current total takes into account the Trial Chamber's recent Fifteenth Decision on Participation issued in May 2022⁴² — in which 82 new former child soldiers were recently admitted — and is subsequent to the Registry Report issued in April 2022 and referred to by the Defence.⁴³ The figure of 243 admitted former child soldiers in the middle of the Prosecution's case is not a low figure by any objective observation.

⁴⁰ See the Defence Request, *supra* note 1, paras. 13-17.

⁴¹ See the *Saïd* Appeal Judgment, *supra* note 10, para. 82.

⁴² See the "Fifteenth Decision on Victims' Participation in Trial Proceedings (Group A)" (Trial Chamber V), [No. ICC-01/14-01/18-1391](#) with public Annex, [No. ICC-01/14-01/18-1391-Anx](#), 5 May 2022.

⁴³ See the 'Public redacted version of "Fourth Periodic Report on the Victims Admitted to Participate in the Proceedings"', 11 April 2022, ICC-01/14-01/18-1356-Conf-Exp', [No. ICC-01/14-01/18-1356-Red](#), 11 April 2022, para. 19.

28. Second, contrary to the Defence's contention,⁴⁴ the Prosecution's presentation of evidence is not reaching the end. Since the start of the trial in February 2021, only 39 Prosecution witnesses have completed their testimony out of the 92 witnesses scheduled by the Prosecution to appear.⁴⁵ Given the current pace of the trial which is susceptible to further unforeseeable circumstances related to the COVID-19 pandemic and the volatile security situation in the CAR, it can be anticipated that the remainder of the Prosecution's presentation of evidence will take at least one more year to complete. Accordingly, this also corresponds to the amount of time new victim applications may still be received as the Trial Chamber determined that the cut-off date to receive applications to be at the "*end of the Prosecution's presentation of evidence*" to enable the appropriate time and opportunities for victims to apply for participation.⁴⁶

29. Third, the Defence's submission that there is a significantly lower number of former child soldier victims in this case *vis-à-vis* other cases is unfounded. The current total of 243 (with more expected to come forward) is comparable to the final total of 284 former child soldier victims admitted to participate in the *Ntaganda* case.⁴⁷ As a matter of fact, the number of participating former child soldiers in the *Lubanga* case was actually 129,⁴⁸ and not the figures referenced by the Defence which represent the anticipated number of former child soldiers expected to come forward for reparations,⁴⁹ which is a different phase of the proceedings and the figures quoted are not relevant to the current matter.

⁴⁴ See the Defence Request, *supra* note 1, para. 16.

⁴⁵ See the Email correspondence from the Prosecution to the Trial Chamber and participants on 1 June 2022 at 17:06.

⁴⁶ See the "Decision Setting the Commencement Date of the Trial" (Trial Chamber V), [No. ICC-01/14-01/18-589](#), 16 July 2020, para. 20.

⁴⁷ See the "Reparations Order" (Trial Chamber VI), [No. ICC-01/04-02/06-2659](#), 8 March 2021, para. 234.

⁴⁸ See the "Judgement pursuant to Article 74 of the Statute" (Trial Chamber I), [No. ICC-01/04-01/06-2842](#), 5 April 2012, para. 15.

⁴⁹ See the Defence Request, *supra* note 1, para. 16, which incorrectly references between 2,451-5,938 children as the number of participating victims in the *Lubanga* case, which was taken from a judgement regarding a discussion on the number of eligible victims for reparations. See the "Judgment on the appeals against Trial Chamber II's 'Decision Setting the Size of the Reparations Award for which

30. The Legal Representative is aware that in the *Saïd* case, a total of 23 victim application forms were transferred to the parties at the trial stage, which is objectively a relatively low number.⁵⁰ Indeed, this figure corresponds to less than 10 percent of the total number of former child soldiers currently admitted to participate in the present case. In the *Saïd* case, Trial Chamber VI used its discretion to adopt an amended version of the A-B-C approach due to the “*expected low number of applications*” to transmit redacted Group A and C applications to the parties in order to safeguard the safety and well-being of the applicants by not revealing their identity or those of their relatives.⁵¹ Conversely, in the present case, Pre-Trial Chamber II correctly “*expected that a large number of victims will submit applications to participate in the proceedings*” when adopting the current A-B-C approach, which notably did not entail the transmission of application forms in Group A to the parties.⁵² This approach and underlying reasoning was adopted by the Trial Chamber to take into account the individual circumstances of the present case.

31. The Legal Representative submits that the number of former child soldiers in the present case cannot be said to be low, and nor can it be used as a basis to invoke an amendment to the current A-B-C approach. He also disagrees with the Defence’s simplistic submission that the requirements set by the *Saïd* Appeals Chamber are met by giving undue weight to the singular requirement that victim applications are to be low in order to warrant their transmission to the Defence.⁵³

Thomas Lubanga Dyilo is Liable” (Appeals Chamber), [No. ICC-01/04-01/06-3466-Red A7 A8](#), 18 July 2019, para. 119.

⁵⁰ See the “Decision authorising 20 victims to participate in the proceedings” (Trial Chamber VI), [No. ICC-01/14-01/21-331](#), 27 May 2022, para. 2.

⁵¹ See the “Decision on matters relating to the participation of victims during the trial” (Trial Chamber VI), [No. ICC-01/14-01/21-278](#), paras. 16 and 23.

⁵² See the Decision Establishing the Principles, *supra* note 3, para. 44.

⁵³ See the Defence Request, *supra* note 1, paras. 13-17 and 26.

- 2) *The Defence cannot be granted access to the identifying information of all former child soldiers based on the assumption that admitted victims would be called by the CLR1 before the Trial Chamber*

32. The Legal Representative submits that the Defence cannot be granted access to the identifying information of all former child soldiers based on the premature need to investigate their ages from speculating that some of them may be called by him to appear before the Trial Chamber. Should the Legal Representative decide to make an eventual request for leave to call some of his clients to present evidence or views and concerns, and should such a request be granted, then it is only at this stage that the concerned victims' identities, application forms and other relevant material are expected to be provided to the parties. At this point, the Defence will have an opportunity to investigate matters it deems appropriate, which may include the age of the concerned victims. At the current juncture of the trial, where the Prosecution's case is only mid-way, with the expectation that further former child soldier victims are to come forward, the Legal Representative submits that it is premature to speculate on any further modalities of participation of the admitted victims in the proceedings – other than participation through their counsel. In this regard the *Saïd* Appeals Chamber held that:

*“[T]he system of admission of victims regulated, inter alia, in rule 89(1) of the Rules is different from the modalities of participation of those victims who are admitted to participate regulated, inter alia, in rules 90 to 93 of the Rules. [...] Therefore, it is inapposite to submit that a system regulating the admission of victims is prejudicial to the suspect/accused by speculating on the possible modalities of participation that a chamber may decide to implement”.*⁵⁴

33. Apart from the two dual-status individuals mentioned *supra*, the remaining 241 former child soldier victims have only asked to participate in the proceedings through their counsel and currently, do not have a more active role in the trial and nor are they trial witnesses. Consequently, there is no basis or reason to provide the Defence with

⁵⁴ See the *Saïd* Appeal Judgment, *supra* note 10, para. 80.

the identifying information of all former child soldiers solely based on the assumption that some of them may be called before the Trial Chamber.

3) *The Defence allegation that [REDACTED] is purely speculative*

34. The Defence Request is further based on the allegation that [REDACTED].⁵⁵ [REDACTED]. These are facts already well known to the Defence. The Legal Representative is not aware of any instances [REDACTED].

35. From the victim application forms of the admitted former child soldiers, there is no *prima facie* indication that [REDACTED]. It must also be recalled that the victim application forms have been collected by the intermediaries of the VPRS of the Registry pursuant to their mandate under regulation 86(9) of the Regulations of the Court, and not the CLR1 team, which are further facts also known to the Defence. According to the Decision Establishing the Principles as subsequently adopted by the Trial Chamber, “intermediaries shall act under the oversight of VPRS” in the process of collecting victim applications as per the adopted victim application procedure.⁵⁶ As recently emphasised in the *Saïd* case,⁵⁷ should there be any irregularities in the application process [REDACTED], it is incumbent on the VPRS to bring this to the attention of the Trial Chamber — which, to the Legal Representative’s knowledge there have been no instances of to date.

36. The Legal Representative observes that under the current legal framework, the Defence is not restricted from exploring its “serious concerns”⁵⁸ [REDACTED], with other Prosecution witnesses who are yet to be called, and may be in a position to provide information on said concerns. It is submitted that at this phase of the

⁵⁵ See the Defence Request, *supra* note 1, para. 21.

⁵⁶ See the Decision Establishing the Principles, *supra* note 3, para. 27. See also the Order, *supra* note 4, para. 8(iv)

⁵⁷ See “Decision on matters relating to the participation of victims during the trial” (Trial Chamber VI), No. [ICC-01/14-01/21-278](#), 13 April 2022, para. 25.

⁵⁸ See the Defence Request, *supra* note 1, paras. 18 and 21.

proceedings, this is the proper way of exploring such concerns and not as per the avenue in the Defence Request, in order to balance the competing interests at stake.

4) *Issues with identification documents in the CAR since the 2013 conflict*

37. Relevant to the aforementioned discussion, in which the Defence alleges that [REDACTED], is the contextual background regarding the obstacles victim applicants are likely to encounter in obtaining or providing copies of identification documents in the CAR. As highlighted by the Registry and referred to by Pre-Trial Chamber II in the present case, such difficulties are due to the:

*“enduring conflicts, the collapse of a parallel system of administration and justice that was in place before the crisis starting in December 2012, the complexity of the legal and institutional framework regarding civil status, the almost complete absence of administration and functional tribunals outside of Bangui, the shortcomings of the institutional framework in Bangui, the high costs of obtaining documentation, extensive movements of victims, [...]”.*⁵⁹

38. This state of disarray has been documented by several reputable non-governmental organisations in the field. For example, the issuance of national identity cards has been suspended since 2013.⁶⁰ Therefore, there is a general perception that the most reliable proof of identity document to confirm the age of individual Central Africans is a birth certificate,⁶¹ which should be obtained within one month after birth.⁶² However, in practice the registration of births within the required one month timeframe remains at a very low rate – largely due to the prohibitive costs of registration for Central Africans.⁶³ After this deadline, the only way to obtain a birth certificate is to go through the procedure for a “*jugement supplétif*” due to what is deemed a late registration,⁶⁴ or to go through the procedure for a “*jugement de*

⁵⁹ See the Decision Establishing the Principles, *supra* note 3, para 24, referencing “Annex I – Registry Report on Proof of Identity Documents Available in the Central African Republic”, [No. ICC-01/14-01/18-133-AnxI](#), 28 February 2019, paras. 12-24.

⁶⁰ See Avocats Sans Frontières, [Etat civil en République Centrafricaine : enjeux et pratiques](#), July 2017, p. 16.

⁶¹ See Norwegian Refugee Council, [Legal identity and education in Central African Republic](#), Norwegian Refugee Council, January 2018, p. 33.

⁶² See the [Code de la famille](#), article 134.

⁶³ See Avocats Sans Frontières, *supra* note 60, p. 13, para. 4.2

⁶⁴ See the [Code de la famille](#), *supra* note 62, article 179.

reconstitution ou rectification” where the birth certificate is lost⁶⁵ which are avenues considered to be costly and time consuming by Central Africans.⁶⁶ Further, not all regions have judicial institutions which renders this judicial procedure impractical.⁶⁷ Due to these obstacles, and the general level of corruption in the country,⁶⁸ it is not uncommon for individuals to seek alternative methods to obtain proof of identity documents without the complication of institutional bureaucracy and at lower costs.⁶⁹ This situation is further complicated by the different practices and procedures across the different *communes* and *prefectures*.⁷⁰

39. With the exception of a limited number of instances where birth certificates are issued within the one-month deadline, it appears that the vast majority of identification documents in the CAR are commonly issued based only on statements made by the applicant, and/or respective family or community members, often many years after the birth.⁷¹ In the absence of a systematic and centralised database in the country to record and double-check identification documents, a prevailing declaratory-based system of the issuance of identification documents many years after one’s birth is very likely to contribute to the proliferation of identification documents with different personal data thereon.

40. The Defence seeks to rely on the birth certificates of four participating former child soldier victims as a basis to raise doubts as to these victims’ eligibility to participate *and* to cast serious doubts on the *prima facie* admission of other victims.⁷² The Legal Representative posits that this submission cannot be accepted in light of the

⁶⁵ *Idem*, articles 183 to 194.

⁶⁶ See Norwegian Refugee Council, *supra* note 61, pp. 25-26.

⁶⁷ *Idem*, pp. 25-26.

⁶⁸ Transparency International has consistently ranked the CAR as one of the most corrupted countries in the world. In their annual Corruption Perceptions Index, on a scale from 0 (highly corrupt) to 100 (very clean), the CAR has consistently received a score between 20 and 26 from 2012 to 2021. See Transparency International, [Corruption Perceptions Index](#), 2012-2021.

⁶⁹ See Avocats Sans Frontières, *supra* note 60, p. 16. See also, *e.g.*, Norwegian Refugee Council, *supra* note 61, p. 36.

⁷⁰ See Norwegian Refugee Council, *supra* note 61, pp. 21-22.

⁷¹ *Idem*, p. 25

⁷² See the Defence Request, *supra* note 1, para. 20.

general situation in the CAR as described above. It therefore appears entirely feasible for several identification documents to be issued with different personal information. For example, the Defence refers to baptism records relating to [REDACTED] where the date of birth recorded for this dual-status individual is [REDACTED].⁷³ However, a birth certificate obtained by the Prosecution regarding [REDACTED] states that the date of birth for the same individual is [REDACTED].⁷⁴ Moreover, the date of birth of [REDACTED] for [REDACTED] is also mentioned in another form of identification, the *attestation de reconnaissance*, which is attached to [REDACTED] victim application form.⁷⁵

41. While challenging [REDACTED] age, the Defence does not explain why the information contained in the baptism records should be given more weight *vis-à-vis* the information contained in a birth certificate or the *attestation de reconnaissance*. This is particularly important in light of the prevailing administrative practices in the CAR which indicate that inconsistencies in the proof of identity documents for Central Africans – and accordingly those of the former child soldier victims – may exist due to reasons other than the speculative allegation that [REDACTED]. For this reason, any submission that the Court’s reputation in the CAR would suffer should the Defence Request not be granted is equally speculative and baseless.⁷⁶

V. CONCLUSION

42. For the abovementioned reasons, the Legal Representative submits that there is no basis or any compelling reason to exceptionally amend the victim admission procedure with respect to the former child soldier victims pursuant to rule 91(1) of the Rules, and the Trial Chamber should dismiss the Defence Request in its entirety.

⁷³ *Idem*, para. 19, footnote 21.

⁷⁴ See [REDACTED].

⁷⁵ See [REDACTED].

⁷⁶ See the Defence Request, *supra* note 1, para. 24.

RESPECTFULLY SUBMITTED

A handwritten signature in black ink, appearing to read 'Dmytro Suprun', with a long vertical stroke extending downwards from the bottom of the signature.

Dmytro Suprun
Common Legal Representative of the Former Child Soldiers

Dated this 3rd Day of October 2022

At The Hague, The Netherlands