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Date: 6 October 2021

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Single Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF

THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI

Public

Decision on victim applications for participation in the proceedings and on legal representation of victims

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

The Office of the Prosecutor

Mr Karim A. A. Khan, Prosecutor
Mr James Stewart
Mr Eric MacDonald

Counsel for the Defence

Ms Jennifer Naouri
Mr Dov Jacobs

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

Ms Sarah Pellet

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Language Services Section

JUDGE ROSARIO SALVATORE AITALA, acting as Single Judge on behalf of Pre-Trial Chamber II of the International Criminal Court (the ‘Chamber’ and the ‘Court’), issues this ‘Decision on victim applications for participation in the proceedings and on legal representation of victims’.

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’.¹
2. On 24 January 2021, Mr Said was surrendered to the Court and arrived at the Court’s Detention Centre on 25 January 2021.²
3. On 29 January 2021, Mr Said appeared before the Single Judge³ pursuant to article 60(1) of the Rome Statute (the ‘Statute’) and rule 121(1) of the Rules of Procedure and Evidence (the ‘Rules’).⁴ The Single Judge, *inter alia*, scheduled the confirmation of charges hearing to commence on 5 October 2021.⁵
4. On 16 April 2021, the Single Judge issued the ‘Decision establishing the principles applicable to victims’ applications for participation’ (the ‘Victims’ Participation Decision’),⁶ in which the Single Judge adopted, *mutatis mutandis*, the system for the transmission and admission of victim applications, as established in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* (the ‘Victim Application Procedure’ and ‘Yekatom and Ngaïssona case’, respectively).⁷ Pursuant to

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

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

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. See [Decision on the designation of a Single Judge](#), ICC-01/14-01/21-3. See also [Decision on the designation of a Single Judge](#), 17 March 2021, ICC-01/14-01/21-42.

⁴ [Transcript of 29 January 2021](#), ICC-01/14-01/21-T-002-ENG. See also [Decision on the convening of a hearing for the initial appearance of Mr Mahamat Said Abdel Kani](#), ICC-01/14-01/21-4; [Transcript of 28 January 2021](#), ICC-01/14-01/21-T-001-ENG, p. 4, line 20 to p. 5, line 4.

⁵ [Transcript of 29 January 2021](#), ICC-01/14-01/21-T-002-ENG, p. 11, lines 11-12.

⁶ [ICC-01/14-01/21-56](#).

⁷ [Victims’ Participation Decision](#), ICC-01/14-01/21-56, para. 35, referring to Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision Establishing the Principles

the Victim Application Procedure, the Registry was directed to, *inter alia*, classify applicants into three categories: ‘(a) applicants who clearly qualify as victims (“Group A”); (b) applicants who clearly do not qualify as victims (“Group B”); and (c) applicants for whom the Registry could not make a clear determination for any reason (“Group C”)’.⁸

5. On 21 May 2021, the Single Judge granted the Defence’s request for leave to appeal the Victims’ Participation Decision with respect to the issue whether the Victim Application Procedure was in compliance with the Statutory framework, in particular rule 89 of the Rules, and rejected the remainder of the request.⁹

6. On 30 June 2021, the Single Judge issued the ‘Second order on disclosure and postponement of the confirmation hearing’, in which, *inter alia*, the confirmation hearing was postponed to 12 October 2021.¹⁰

7. On 9 July 2021, the Single Judge issued the ‘Decision on legal representation of victims and related matters’ (the ‘Legal Representation Decision’),¹¹ in which, *inter alia*, the Office of Public Counsel for Victims (the ‘OPCV’) was assigned to ‘represent the collective interests of applicant victims, on a temporary and provisional basis, which is limited to the stage between the present decision and the Chamber’s eventual decision taken on matters of legal representation at the stage of the determinations of the merits of the victim applications and on the status of victims’.¹²

8. On 12 July 2021, the OPCV filed the ‘Notification pursuant to the “Decision on legal representation of victims and related matters” (No. ICC-01/14-01/21-119)’, in which it notified the Chamber that OPCV Counsel Ms Sarah Pellet ‘has been designated

Applicable to Victims’ Applications for Participation, 5 March 2019, ICC-01/14-01/18-141 (the ‘[Yekatom and Ngaïssona Victims Decision](#)’), para. 41.

⁸ [Yekatom and Ngaïssona Victims Decision](#), ICC-01/14-01/18-141, para. 41(i).

⁹ [Decision on the Defence’s request for leave to appeal the ‘Decision establishing the principles applicable to victims’ applications for participation](#), ICC-01/14-01/21-79, para. 21, p. 8. *See also* [Demande d’autorisation d’interjeter appel de la « Decision establishing the principles applicable to victims’ applications for participation » \(ICC-01/14-01/21-56\)](#), 26 April 2021, ICC-01/14-01/21-63.

¹⁰ [ICC-01/14-01/21-112](#), p. 9.

¹¹ [ICC-01/14-01/21-119](#).

¹² [Legal Representation Decision](#), ICC-01/14-01/21-119, p. 12.

to act as the Counsel representing the collective interests of applicant victims in the present case’ (the ‘OPCV’s Notification’).¹³

9. On 27 August 2021, the Registry filed the ‘First Registry Transmission of Group A Applications for Victim Participation [...] in Pre-Trial Proceedings’, in which it transmitted application forms of 13 Group A applicants (the ‘Registry’s First Group A Transmission’).¹⁴ On the same day, the Registry also filed its ‘First Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings’ (the ‘Registry’s First Assessment Report’).¹⁵

10. On 16 August 2021, the Office of the Prosecutor (the ‘Prosecution’) filed the ‘Document Containing the Charges’ (the ‘DCC’)¹⁶ and on 30 August 2021, it filed the ‘Pre-Confirmation Brief’.¹⁷

11. On 13 September 2021, the Registry filed its ‘First Registry Transmission of Group C Applications for Victims’ Participation in Pre-Trial Proceedings’ (the ‘Registry’s Group C Transmission’)¹⁸ and its ‘Second Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings’ (the ‘Registry’s Second Assessment Report’).¹⁹

12. On 14 September 2021, the Appeals Chamber rendered the ‘Judgment on the appeal of Mr Mahamat Said Abdel Kani against the decision of Pre-Trial Chamber II of 16 April 2021 entitled “Decision establishing the principles applicable to victims”

¹³ [ICC-01/14-01/21-121](#).

¹⁴ [ICC-01/14-01/21-151](#), with 13 confidential *ex parte* annexes (ICC-01/14-01/21-151-Conf-Exp-Anx1 to ICC-01/14-01/21-151-Conf-Exp-Anx13).

¹⁵ [ICC-01/14-01/21-152](#), with confidential annex (ICC-01/14-01/21-152-Conf-Anx).

¹⁶ ICC-01/14-01/21-144-Conf (public redacted version filed on 17 September 2021 ([ICC-01/14-01/21-144-Red](#))).

¹⁷ ICC-01/14-01/21-155-Conf (public redacted version filed on 21 September 2021 ([ICC-01/14-01/21-155-Red](#))).

¹⁸ ICC-01/14-01/21-167-Conf (public redacted version filed on 20 September 2021 ([ICC-01/14-01/21-167-Red](#))), with 13 confidential *ex parte* annexes (ICC-01/14-01/21-167-Conf-Exp-Anx1 to ICC-01/14-01/21-167-Conf-Exp-Anx15).

¹⁹ ICC-01/14-01/21-168-Conf (public redacted version filed on 20 September 2021 ([ICC-01/14-01/21-168-Red](#))), with confidential annex ([ICC-01/14-01/21-168-Conf-Anx](#)).

applications for participation’’, in which it confirmed the Victims’ Participation Decision.²⁰

13. On 24 September 2021, the Defence,²¹ the Prosecution²² and OPCV Counsel²³ filed their submissions on the Registry’s Second Assessment Report.

14. On 27 September 2021, the Registry filed the ‘Registry’s Second Transmission of Group A and First Transmission of Group B Victim Applications for Participation in Pre-Trial Proceedings (the ‘Registry’s Second Group A and Group B Transmission’).²⁴ On the same day, the Registry filed its ‘Third Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings (the ‘Registry Third Assessment Report’),²⁵ in which it informs that its Third Assessment Report is its final report and it will not be transmitting other Group A and Group B applications prior to the confirmation hearing unless the hearing is postponed.²⁶

15. On 28 September 2021, the Defence filed a request for leave to reply to the Prosecution’s Response and the OPCV’s Response (the ‘Request for Leave to Reply’).²⁷

²⁰ [ICC-01/14-01/21-171](#) (OA2), para. 84.

²¹ Réponse de la Défense au « Second Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings » (ICC-01/10-01/21-168-Conf), ICC-01/14-01/21-181-Conf (public redacted version filed on 1 October 2021 (ICC-01/14-01/21-181-Red)) (the ‘[Defence’s Response](#)’).

²² Prosecution’s Observations on the Registry’s “Second Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings”, ICC-01/14-01/21-168-Conf, ICC-01/14-01/21-178-Conf (public redacted version filed on 27 September 2021 (ICC-01/14-01/21-178-Red)) (the ‘[Prosecution’s Response](#)’).

²³ OPCV Observations on the “Second Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings” (ICC-01/14-01/21-168-Conf), ICC-01/14-01/21-180-Conf-Exp (confidential redacted version filed on the same date (ICC-01/14-01/21-180-Conf-Red), lesser confidential redacted version filed on 30 September 2021 (ICC-01/14-01/21-180-Conf-Red2) and public redacted version filed on 30 September 2021 (ICC-01/14-01/21-180-Red3)) (the ‘[OPCV’s Response](#)’).

²⁴ [ICC-01/14-01/21-183](#), with 17 annexes (ICC-01/14-01/21-183-Conf-Exp-Anx1 to ICC-01/14-01/21-183-Conf-Exp-Anx17).

²⁵ [ICC-01/14-01/21-184](#), with one confidential annexe (ICC-01/14-01/21-184-Conf-Anx1) and one confidential *ex parte* annex (ICC-01/14-01/21-Conf-Exp-Anx2).

²⁶ [Registry’s Third Assessment Report](#), ICC-01/14-01/21-184, para. 28.

²⁷ Demande d’autorisation de répliquer aux « Prosecution’s Observations on the « Second Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings » (ICC-01/14-01/21-168-Conf) » et aux « OPCV Observations on the “Second Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings » (ICC-01/14-01/21-168-Conf) », ICC-01/14-01/21-186-Conf (public redacted version filed on 1 October 2021 ([ICC-01/14-01/21-186-Red](#))).

16. On 1 October 2021, the OPCV filed a response to the Defence's Request for Leave to Reply.²⁸

II. SUBMISSIONS

A. The Registry's submissions regarding Groups A, B and C applications

1. Group A applications

17. In the Registry's First Group A Transmission, the Registry transmits 13 application forms of applicant victims assessed as falling under Group A (the 'First Group A Applications'). In the Registry's Second Assessment Report, the Registry informs the Single Judge that out of the 13 applications initially transmitted, three should in fact be categorised as 'unclear applications' and be part of Group C. In addition, in the Registry's Second Group A and Group B Transmission, the Registry transmits 12 application forms of applicant victims assessed as falling under Group A (the 'Second Group A Applications').²⁹

18. The Registry submits that each of the First and Second Group A Applications is complete, and confirms that, upon conducting its initial assessment, it has determined that these applications meet, *prima facie*, the following criteria: (i) the identity of the applicant as a natural person is established; (ii) the applicant has suffered harm; and (iii) the harm suffered is a result of an incident falling within the temporal, geographic and material scope of the case.

19. In relation to the first criterion, the Registry states that certain applications of the First and Second Group A Applications contain minor discrepancies which appear to be the result of inadvertent errors, and that, in accordance with the Victim Application Procedure, a certain degree of flexibility needs to be shown in this regard. The Registry submits that these discrepancies do not call into question the overall credibility of the

²⁸ OPCV Response to the Defence "Demande d'autorisation de répliquer aux 'Prosecution's Observations on the 'Second Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings' (ICC-01/14-01/21-168-Conf)' et aux 'OPCV Observations on the 'Second Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings' (ICC-01/14-01/21-168-Conf)", ICC-01/14-01/21-191-Conf (public redacted version filed on the same day ([ICC-01/14-01/21-191-Red](#))).

²⁹ The Single Judge notes that the Registry incorrectly refers to 11 applications in the Registry's Second Group A and Group B Transmission.

information provided by the applicants. Regarding the third criterion, the Registry submits that while one applicant of the Second Group A Applications used a different name for the location referred to as the *Comité extraordinaire de défense des acquis démocratiques* (Extraordinary Committee for the Defence of Democratic Achievements) (the ‘CEDAD’), ‘the application contains sufficient contextual information that places the events within the parameters’ of the present case.

2. *Group B applications*

20. In the Registry’s Second Group A and Group B Transmission, the Registry transmits five application forms of applicant victims assessed as falling under Group B (the ‘Group B Applications’). In the Third Assessment Report, the Registry submits that each of the Group B Applications is complete, but that upon conducting its initial assessment, it has determined that these applicants do not, *prima facie*, qualify as victims because the alleged harm resulted from an incident falling outside the temporal, geographic and/or material parameters of the case.

3. *Group C applications*

21. In the Registry’s Group C Transmission, the Registry transmits 15 application forms of applicant victims which it has assessed as falling under Group C (the ‘Group C Applications’). The Registry informs the Single Judge that the Group C Applications are complete, but that it ‘is not in a position to make a clear determination whether the personal harm reported by the applicants resulted from an incident falling within the temporal [and] territorial [...] parameters of the [c]ase’.

22. With respect to the temporal scope of the case, the Registry submits that certain applications relating to crimes committed at the *Office Central de Répression du Banditisme* (Central Office for the Repression of Banditry) (the ‘OCRB’) and the CEDAD, do not fall within the period for which Mr Said is alleged to be criminally responsible as specified in the DCC. The Registry submits in this regard that ‘all relevant applications place the alleged harm suffered in the right year, regarding events as long as eight years ago’ and that the ‘[r]elevant time indications differ from the timeframes provided in the DCC by up to a few months’.

23. Regarding the territorial scope of the case, the Registry submits that it has been unable ‘to determine whether the alleged harm suffered by some applicants resulted from an incident falling within the geographical parameters of the [c]ase’, and that this concerns applications which do not refer to the OCRB or the CEDAD.

B. The Defence’s Response

24. Regarding the Group C Applications, the Defence submits that documents, such as medical certificates, are missing from some applications and that, therefore, the Defence and the Chamber cannot assess whether the applicant suffered the alleged harm. The Defence further argues that the redactions applied by the Registry do not fall under article 68(1) of the Statute and prevent the Defence from properly assessing the content of the applications.

25. Furthermore, the Defence avers that all Group C Applications should be rejected as they either fall outside the temporal scope of the case or are vague and lack any link to the charges.

C. The Prosecution’s Response

26. The Prosecution submits that four applicants regarding incidents committed at the CEDAD should be accepted on a preliminary basis pending additional information to be provided by the Registry if the Chamber does not follow a flexible approach. It avers that three applicants identified as dual status victims should be part of the Group A Applications. The Prosecution adds that the last eight applications should be rejected as they either fall outside the temporal scope of the case or the alleged harm suffered does not result from the crimes charged.

D. The OPCV’s Response

27. OPCV Counsel submits that ten of the Group C Applications fulfil the criteria for the victims to be admitted to participate in the present stage of the proceedings, and requests the Chamber to defer its decision on the five remaining applications until after additional information is provided by the Victims Participation and Reparations Section (the ‘VPRS’).

28. OPCV Counsel submits that a flexible approach should be adopted considering ‘the time that elapsed between the commission of the alleged crimes and the completion

of the participation form’, and as ‘the events left durable traumatic scars that affect the recollection of the events by the victims, be it regarding the temporal or the geographical scope of their application’. OPCV Counsel further avers that adopting a flexible approach ensures the expeditiousness of the proceedings and the interest of victims.

III. DETERMINATION BY THE SINGLE JUDGE

A. Preliminary matters

1. Request for Leave to Reply

29. In the Request for Leave to Reply, the Defence seeks to reply, *inter alia*, to the Prosecution’s submissions concerning the dual status of some of the victims on the one hand and on the charges related to the CEDAD on the other hand. The Defence also seeks leave to reply to the OPCV’s submissions regarding (i) the Defence’s lack of access to certain information available to the OPCV and the impact it has on its preparation for the confirmation hearing; and (ii) on the alleged speculations made by the OPCV about dates and locations given by certain applicants, which, in the Defence’s view, constitute new arguments.

30. The Single Judge recalls that pursuant to regulation 24(5) of the Regulations of the Court (the ‘Regulations’), participants may only reply to a response with the leave of the Chamber, unless otherwise provided for in the Regulations. The Single Judge considers that there is sufficient information to make a determination and does not find it necessary to receive additional submissions on the above-mentioned issues. Accordingly, the Request for Leave to Reply is rejected.

2. The Registry’s request for approval of a new type of document

31. In the Registry’s Third Assessment Report, the Registry requests that a ‘new type of identity document provided by new applicants’ be approved as an alternative document that can be used to establish the identity of an applicant, namely a ‘*reçu de paiement*’ issued in the context of applications to obtain national identity cards in the Central African Republic (the ‘CAR’). It submits that the ‘*reçu de paiement*’ was recently approved by Trial Chamber V in the *Yekatom and Ngaïssona* case. The Registry further submits that the issuance of identity cards in the CAR is problematic

and difficult, and the '*reçu de paiement*' has been used by applicants to facilitate travel and for police checks.

32. The Single Judge recalls the Victims' Participation Decision, in which the documents listed in the 'Registry Submissions on Aspects Related to the Participation of Victims in the Proceedings' (the 'Registry's Victims Participation Submissions') were accepted as proof of identity.³⁰ In this regard, the Single Judge notes that the Registry's Victims Participation Submissions provided a non-exhaustive list of such documents. In the Victims' Participation Decision, the Single Judge further considered that, in the event that applicants present other types of documents, the decision whether to accept such documents will be made upon receipt of the Registry's assessments and recommendations.³¹

33. The Single Judge notes the Registry's submissions on the difficulties experienced by certain applicants in obtaining national identity cards in the CAR. The Single Judge further notes that the '*reçu de paiement*' presents features similar to the documents included in the Registry's Victims Participation Submissions, and considers that the information contained in the '*reçu de paiement*' (i.e. date of birth, first name, last name and photography of the applicant) sufficiently establishes the applicant's identity for the purpose of their application to participate in the present proceedings. The Single Judge is therefore satisfied, at this stage, that the '*reçu de paiement*' can be accepted by the Registry as an alternative document that can be used to establish the identity of an applicant.

B. Groups A, B and C applications of victims

34. The Single Judge notes articles 57(3)(c) and 68 of the Statute, rules 85 and 89 to 91 of the Rules, regulations 81(4) and 86 of the Regulations and regulations 107 to 109 and 112 of the Regulations of the Registry.

³⁰ 26 February 2021, [ICC-01/14-01/21-25](#), paras 17, 28.

³¹ [Victims' Participation Decision](#), ICC-01/14-01/21-56, para. 28.

1. *Group A applications*

35. The Single Judge recalls the criteria for an applicant to qualify as a victim and the procedure for the admission of Group A and B applications, namely that ‘barring a clear, material error in the Registry’s assessment [...], [the Chamber] will [...] ratify the Registry’s assessment of the Group A and B applications’.³²

36. The Single Judge notes that out of the 13 applications which were part of the Registry’s First Group A Transmission, three were moved to Group C and, as a result, the Single Judge will only consider whether the above-mentioned criteria are met for the remaining ten applications and the 12 additional Second Group A Applications.

37. The Registry submits that all applications of the First and Second Group A Applications are complete and that upon its initial assessment, confirms that the applicants concerned fall under Group A.³³ The Single Judge has not identified any clear, material error in the Registry’s assessment and concurs with it. The Single Judge also considers that the minor discrepancies identified by the Registry in certain applications, which concern the spelling of the name or date of birth of some applicants do not affect the overall credibility of the information provided by the concerned applicants. The Single Judge notes the application that refers to a different name for the CEDAD,³⁴ and concurs with the Registry’s assessment that the application nonetheless provides ‘sufficient contextual information’ that indicates that the reported incident occurred at the CEDAD.

38. Therefore, the Single Judge decides to authorise the participation as victims in the proceedings of the following applicant victims of the First and Second Group A Applications: a/20566/21, a/20568/21, a/20569/21, a/20570/21, a/20571/21, a/20572/21, a/20573/21, a/20574/21, a/20575/21, a/20576/21, a/20578/21, a/20581/21, a/20585/21, a/20587/21, a/20591/21, a/20593/21, a/20594/21, a/20595/21, a/20598/21, a/20600/21, a/20609/21, and a/20807/21.

³² [Yekatom and Ngaïssona Victims Decision](#), ICC-01/14-01/18-141, para. 41(ix).

³³ [Registry’s First Assessment Report](#), ICC-01/14-01/21-152, paras 2, 10; [Registry’s Third Assessment Report](#), ICC-01/14-01/21-184, para. 28.

³⁴ [Registry’s Third Assessment Report](#), ICC-01/14-01/21-184, para. 24.

2. *Group B applications*

39. Concerning the Group B Applications, the Single Judge notes that the Registry has transmitted five applications for which it has determined that the applicants do not qualify as victims because the alleged harm resulted from an incident falling outside the temporal, geographic and/or material scope of the case. The Single Judge has not identified any clear, material error in the Registry's assessment and considers that the five applicants do not qualify as victims for the reasons provided by the Registry. Therefore, the Single Judge decides not to authorise the participation as victims in the proceedings of the following applicant victims: a/20582/21, a/20583/21, a/20586/21, a/20588/21, and a/20611/21.

3. *Group C applications*

40. The Single Judge notes that, in the Registry's Group C Transmission, the Registry transmitted complete applications of 15 applicant victims for whom it is not in a position to make a clear determination whether they may qualify as victims.³⁵ The Registry submits that it is not clear with respect to some of these applications whether they fall within the temporal scope of the present case ('Issue 1') and for the remaining applications whether they fall within the territorial scope of the case ('Issue 2').³⁶

41. In relation to the applications raising Issue 1, the Single Judge recalls that a flexible approach to the assessment of applications for participation may be adopted in light of the time elapsed since the events and the personal circumstances of the victims.³⁷ Therefore, applicants may be authorised to participate in the confirmation

³⁵ [Registry's Group C Transmission](#), ICC-01/14-01/21-167-Red, para. 13; [Registry's Second Assessment Report](#), ICC-01/14-01/21-168-Red, para. 15.

³⁶ [Registry's Second Assessment Report](#), ICC-01/14-01/21-168-Red, paras 16-27.

³⁷ Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman*, Decision on victim applications for participation, legal representation, leave to appeal and *amicus curiae* requests, 20 May 2021, ICC-02/05-01/20-398 (the '[Abd-Al-Rahman Victim Participation Decision](#)'), para. 41. See also Pre-Trial Chamber I, *The Prosecutor v Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, [Decision Establishing the Principles Applicable to Victims' Applications for Participation](#), ICC-01/12-01/18-37-tENG, 20 July 2018 (French version issued on 24 May 2018 (ICC-01/12-01/18-37)), para. 50; Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, [Decision regarding the Registry's First Assessment Report on Applications for Victim Participation, the Registry's First Transmission of Group C Applications, the appointment of counsel for Victims of Other Crimes, and the victims' procedural position](#), 21 June 2019, ICC-01/14-01/18-227-Red (confidential version issued on the same day (ICC-01/14-01/18-227-Conf)), para. 24; Pre-Trial Chamber I, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, [Second Decision on the Principles Applicable to Victims'](#)

proceedings as victims ‘when the date [of the relevant events] provided [in the application form] is just a few days or weeks off from the dates of the charges’.³⁸

42. The Single Judge notes that the applications categorised by the Registry as raising Issue 1 describe alleged events which, based on the dates provided by the applicants, do not fall within the period relevant to the charged crimes allegedly committed at the OCRB³⁹ or at the CEDAD.⁴⁰ This concerns applicant victims a/20565/21, a/20567/21, a/20577/21, a/20589/21, a/20590/21, a/20597/21, a/20599/21, a/20601/21, a/20602/21, a/20603/21, a/20607/21, and a/20610/21.

43. The Single Judge finds that applicant victims a/20589/21, a/20599/21, a/20601/21, a/20602/21, a/20603/21, and a/20607/21 shall not be authorised to participate in the proceedings as the difference between the date of the incident which caused the alleged personal harm and the periods relevant to the crimes charged in relation to the OCRB and the CEDAD, is too significant. The Single Judge also finds that applicant victim a/20590/21 shall not be authorised to participate in the proceedings, as the date of the reported event (two weeks before the relevant period) is attested to by an official document and therefore it is unlikely that an error has been committed when completing the application form.

44. The Single Judge notes the OPCV’s submissions that ‘many applicants are not in a position to know the precise location of their detention’ and that ‘the events described could have taken place at the CEDAD, as opposed to the OCRB, and therefore fall within the temporal scope of the case’.⁴¹ The Single Judge is however not persuaded by this argument. The concerned applicant victims do not appear to have had difficulties providing precise dates of the relevant incidents. In some cases the dates provided are supported by accounts of other events coinciding with the incident in question or by a death certificate. It is also not likely that the concerned applicant victims mistook the

[Applications for Participation](#), 10 December 2018, ICC-01/12-01/18-146-tENG (French version issued on 8 October 2018 (ICC-01/14-01/21-146), para. 22.

³⁸ [Abd-Al-Rahman Victim Participation Decision](#), ICC-02/05-01/20-398, para. 45.

³⁹ ‘[F]rom at least 12 April 2013 until 30 August 2013’. [Registry’s Second Assessment Report](#), ICC-02/05-01/20-168-Red, para. 19, *referring to* DCC, para. 27.

⁴⁰ ‘[F]rom at least 15 September until on or about 8 November 2013’. [Registry’s Second Assessment Report](#), ICC-02/05-01/20-168-Red, para. 21, *referring to* DCC, para. 28.

⁴¹ [OPCV’s Response](#), ICC-01/14-01/21-180-Red3, para. 22.

OCRB for the CEDAD, as the level of detail provided in the applications usually shows a degree of familiarity with these two locations and their function.

45. Regarding applicants a/20565/21, a/20567/21, a/20577/21, a/20597/21, and a/20610/21, the Single Judge is satisfied that they shall be authorised to participate in the confirmation proceedings as victims, as the discrepancies between the dates of the events reported in their application forms and the dates relevant to the charges in this case, are not significant.

46. Turning to applications raising Issue 2, namely applicant victims a/20596/21, a/20608/21, and a/20612/21, the Single Judge notes that in addition to not mentioning either of the two detention centres relevant to the present case, these applications are lacking in detail making it difficult to establish if any of the persons concerned was detained or mistreated at the OCRB or CEDAD during the periods relevant to the charges in this case. Therefore, the Single Judge decides that applicants a/20596/21, a/20608/21, and a/20612/21 shall not be authorised to participate in the present proceedings.

47. Lastly, the Single Judge notes the OPCV's submissions that the applications of applicant victims a/20589/21, a/20590/21, a/20596/21, a/20608/21, and a/20612/21 'were submitted on behalf of deceased victims and that additional information might be needed to avoid speculating on their place of detention'⁴² and its request that the decision on these applicants be deferred until additional information is received by the VPRS.⁴³ Noting that the confirmation hearing is to commence in less than a week, on 12 October 2021, the Single Judge considers it unlikely that additional information could be supplied in such time that a decision on the concerned applicant victims could be issued before the hearing. Therefore, the Single judge does not consider it appropriate, at this stage, to defer a decision on these applicant victims. Nonetheless, the Single Judge notes that, pursuant to rule 89(2) of the Rules, applicants victims whose applications to participate in the proceedings have been rejected may file new applications later in the proceedings.

⁴² [OPCV's Response](#), ICC-01/14-01/21-180-Red3, para. 23.

⁴³ [OPCV's Response](#), ICC-01/14-01/21-180-Red3, paras 3, 25.

C. The legal representation of victims

48. The Single Judge recalls that, pursuant to article 68(3) of the Statute victims shall be permitted to present their views and concerns where their personal interests are affected, in a manner which is not prejudicial to or inconsistent with the rights of the Defence and that such views and concerns may be presented by legal representatives. The Single Judge further recalls rule 90(4) of the Rules, which provides, *inter alia*, that the Chamber shall take all reasonable steps to ensure that, in the selection of common legal representation, any conflict of interest is avoided.

49. In this regard, the Registry has provided a list annexed to the Registry's First and Third Assessment Reports, indicating the choice of counsel by each of the Group A applicants insofar as such choice was made. Some of these applicants have indicated on their applications, a choice for a specific counsel.⁴⁴ The Single Judge recalls that in its report on legal representation, the Registry submitted that, whilst it was not in a position to assess whether there could be a conflict of interest, it noted that one of the counsel selected by some of the applicants is involved in the legal representation of victims in the *Yekatom and Ngaïssona* case.⁴⁵ Moreover, although some of the applicants have not indicated their choice of counsel, they expressed the wish to be represented by a lawyer from the OPCV or a lawyer from the Court's list, or both.⁴⁶

50. In addition, the Single Judge notes the Registry's earlier assessment that 'no adverse interests arise amongst the victim population in the present [c]ase' and its recommendation that 'all participating victims should be represented by one [common legal representative]'.⁴⁷ The Single Judge understands that, since the Registry's Report on Legal Representation, the Registry has not identified conflicting or diverging interests which would weigh against a common legal representation of victims in this case.

⁴⁴ See [Registry's First Assessment Report](#), ICC-01/14-01/21-152, para. 13, fn. 20; Annex I to Registry's Third Assessment Report, ICC-01/14-01/21-184-Conf-Anx1.

⁴⁵ Annex II to the Registry Report on Legal Representation of Victims and Observations on the Defence Requests, 21 May 2021, ICC-01/14-01/21-80-AnxII-Red (the '[Registry's Report on Legal Representation](#)'), para. 74.

⁴⁶ See i.e. [Registry's First Assessment Report](#), ICC-01/14-01/21-152, para.13, fn. 20.

⁴⁷ [Registry's Report on Legal Representation](#), ICC-01/14-01/21-80-AnxII-Red, para. 72.

51. In these circumstances, the Single Judge is of the view that it is appropriate to proceed by way of one common legal representation so as to ensure the effectiveness of the proceedings. The common legal representation of victims will strike the right balance between the resources available to the Court and the duty to enable victims to participate meaningfully in the present proceedings.⁴⁸ Accordingly, the Single Judge considers that it is not currently necessary to appoint separate legal representatives and decides that victims authorised to participate in the present proceedings shall be represented by one common legal representative.

52. Considering the Registry's submissions as to the potential conflict of interest, certain applicants' expressed preference for representation by the OPCV, the advanced stage of the proceedings, and the need to ensure that victims authorised to participate may present their views and concerns during the confirmation hearing in a meaningful manner, the Single Judge finds it appropriate to appoint the OPCV as the common legal representative of the applicants authorised to participate in the proceedings as specified at paragraphs 38 and 45 of the present decision.

53. In this regard, the Single Judge notes that the OPCV, which is specifically mandated, pursuant to regulation 81(4)(e) of the Regulations, to, *inter alia*, represent 'a victim or victims throughout the proceedings', possesses the necessary expertise and experience to enable victims in the present case to express their views and concerns. In addition, the Single Judge recalls that since the Legal Representation Decision was rendered, the OPCV has been assigned to represent the collective interests of applicant victims,⁴⁹ and as a result, Counsel designated for this purpose has been able to fully familiarise herself with the present case.⁵⁰

54. Furthermore, pursuant to rule 121(10) of the Rules, the Single Judge grants access to OPCV Counsel to the record of the proceedings before the Chamber containing all filings, decisions, transcripts of hearing, and items of evidence. Accordingly, the Single Judge instructs the Registry to notify OPCV Counsel of all public and confidential

⁴⁸ See Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, [Decision on the Legal Representation of Victims](#), 23 May 2019, ICC-01/14-01/18-205, para. 13.

⁴⁹ [Legal Representation Decision](#), ICC-01/14-01/21-119, p. 12. See also para. 30.

⁵⁰ See [OPCV's Notification](#), ICC-01/14-01/21-121.

documents, decisions, and transcripts contained in the record, with the exception of those classified as *ex parte*, only available to or held in the presence of the Prosecutor, the Defence, and/or the Registry.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Request for Leave to Reply;

DECIDES to accept, at this stage, the ‘*reçu de paiement*’ as an alternative document that can be used to establish the identity of an applicant victim;

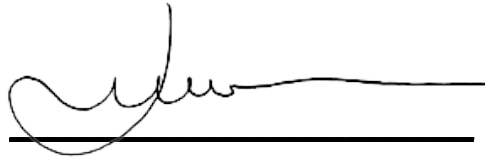
AUTHORISES applicant victims a/20565/21, a/20566/21, a/20567/21, a/20568/21, a/20569/21, a/20570/21, a/20571/21, a/20572/21, a/20573/21, a/20574/21, a/20575/21, a/20576/21, a/20577/21, a/20578/21, a/20581/21, a/20585/21, a/20587/21, a/20591/21, a/20593/21, a/20594/21, a/20595/21, a/20597/21, a/20598/21, a/20600/21, a/20609/21, a/20610/21, and a/20807/21 to participate in the proceedings;

DECIDES to reject the applications from applicant victims a/20582/21, a/20583/21, a/20586/21, a/20588/21, a/20589/21, a/20590/21, a/20596/21, a/20599/21, a/20601/21, a/20602/21, a/20603/21, a/20607/21, a/20608/21, a/20611/21, and a/20612/21;

APPOINTS OPCV Counsel to act as the common legal representative for the authorised victims listed at paragraphs 38 and 45 of the present decision; and

INSTRUCTS the Registry to notify OPCV Counsel of all public and confidential documents, decisions, and transcripts contained in the record, with the exception of those classified as *ex parte*, only available to or held in the presence of the Prosecutor, the Defence, and/or the Registry.

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

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

**Judge Rosario Salvatore Aitala,
Single Judge**

Dated this Wednesday, 6 October 2021

At The Hague, The Netherlands