

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/14-01/22**

Date: **15 March 2023**

**PRE-TRIAL CHAMBER II**

**Before:** Judge Rosario Salvatore Aitala, Presiding judge  
Judge Tomoko Akane  
Judge Sergio Gerardo Ugalde Godínez

**SITUATION IN CENTRAL AFRICAN REPUBLIC II  
IN THE CASE OF  
*THE PROSECUTOR v. MAXIME JEOFFROY ELI MOKOM GAWAKA***

**Confidential *ex parte*, only available to the Registry**

**Addendum to "Registry Report on Legal Representation of Victims"  
(ICC-01/14-01/22-98)**

**Source: Registry**

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

**Office of the Prosecutor**

**Counsel for the Defence**

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**Office of Public Counsel for Victims**

**Office of Public Counsel for the  
Defence**

**States' Representatives**

**Amicus Curiae**

## **REGISTRY**

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**Registrar**

Peter Lewis

**Counsel Support Section**

Pieter Vanaverbeke

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Philipp Ambach

**Trust Fund for Victims**

## I. Introduction

1. By way of an email conveyed on 24 February 2023, Pre-Trial Chamber II (“Chamber”) in charge of *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka* (“Mokom case” or “Case”) ordered the Registry’s Victims Participation and Reparations Section (“VPRS”) to consult with the common legal representatives representing the group of “Victims of Other Crimes” in the *Yekatom and Ngaïssona* case (“Y/N CLR”),<sup>1</sup> Mr Ouabizon–Tendouli and, if necessary, any other potential legal representatives (altogether the “Potential CLR”), with a view to determining whether they are:

(i) willing to jointly act within a single team representing victims that may ultimately be admitted in the present proceedings under the same scheme that has been in place since the pre-trial proceedings in the *Yekatom and Ngaïssona* case; and

(ii) able to internally agree on an efficient structure allowing them to, first, represent such victims in full conformity with the ethical and professional obligations attached to such a role and, second, effectively participate in the present proceedings in accordance with the principle of expeditiousness (“Order”).<sup>2</sup>

2. The Chamber further instructed the VPRS to provide the above as well as any updated information on any other matter arising from the Registry Report on Legal Representation of Victims (“Report”)<sup>3</sup> where necessary, by means of an Addendum to the Report by 9 March 2023.

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<sup>1</sup> The team representing the group of “Victims of Other Crimes” in the *Yekatom and Ngaïssona* case is composed of the following counsel: (i) external counsel Mr Abdou Dangabo Moussa, Ms Marie-Edith Douzima-Lawson, Mr Yare Fall and Ms Elisabeth Rabesandratana, and (ii) Ms Paolina Massidda from the Office of Public Counsel for Victims (“OPCV”).

<sup>2</sup> Email from Chamber to the Registry, 24 February 2023 at 14:59.

<sup>3</sup> Registry, “Report on Legal Representation of Victims”, 7 October 2022, ICC-01/14-01/22-98-Anx-Red.

3. On 2 March 2023, following a VPRS request,<sup>4</sup> the Chamber extended the deadline to submit the Addendum until 15 March 2023.<sup>5</sup>
4. Pursuant to the Order, the Registry hereby transmits: (A) updated information relating to matters arising from the Report; (B) the results of consultations held with the Potential CLRs on the above-mentioned questions raised by the Chamber in the Order;<sup>6</sup> and (C) further VPRS observations on the legal representation of victims in the instant Case.

## II. Classification

5. Pursuant to regulation 23*bis*(1) of the Regulations of the Court (“RoC”) the present submission is classified as confidential *ex parte*, only available to the Registry, as it contains sensitive information on the legal representation of victims. The Registry stands ready to file a public redacted version of this Addendum, should the Chamber order it.

## III. Submissions

### A. Updated information on matters arising from the Report

#### *i. Update on applications received to date*

6. So far, the Registry received 574 applications for participation in the proceedings and/or reparations in relation to the *Mokom* case (“Applications” or “Applicants”),<sup>7</sup> including 167 additional applications received after the Report.

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<sup>4</sup> Email from VPRS to Chamber, 2 March 2023, at 14:25. The VPRS requested additional time to be in a position to consult all potential LRVs and to provide the Chamber with the most complete information *as per* the Order.

<sup>5</sup> Email from Chamber to VPRS, 2 March 2023 at 16:48.

<sup>6</sup> See *supra* para. 1.

<sup>7</sup> This figure does not include the duplicates already identified or for which further clarification is being sought.

7. Out of these, the VPRS has assessed on a *prima facie* basis that 503 Applications<sup>8</sup> fall within the group of the Victims of Other Crimes.
8. The Registry notes that, to date, 447 Applications filled in for the purpose of the *Mokom* case are relating to applicants who have also filled in an application form for participation and/or reparations in the *Yekatom and Ngaissona* proceedings.
9. On 9 March 2023, the Office of the Prosecutor filed the "Prosecution's Submission of the Document Containing the Charges"<sup>9</sup> which contains a number of amendments of the charges compared to the previously filed Warrant of Arrest against Mr Mokom.<sup>10</sup> This will inevitably affect the status of victim applicants in the Case. The Registry analysis is presently ongoing and will be subject to separate reporting to the Chamber as part of its application transmission filings within the deadline set by the Chamber of 28 June 2023.<sup>11</sup>

*ii. Update on legal representatives identified to date*

10. In addition to the legal representatives indicated by applicants in their victim application forms in the Case and previously identified in the Report for the purpose of the representation of the group of "Victims of Other Crimes",<sup>12</sup> Mr

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<sup>8</sup> 277 women, 225 men and one applicant for whom the gender was not specified.

<sup>9</sup> Prosecutor, "Prosecution's Submission of the Document Containing the Charges", 9 March 2023, ICC-01/14-01/22-174.

<sup>10</sup> ICC-01/14-01/22-2-Red2, 22 March 2022. Of note, the Document Containing the Charges ("DCC") no longer includes crimes against child soldiers in the list of charges; as a result, the Registry did not include in the present Addendum any observations regarding the group of "Former Child Soldiers".

<sup>11</sup> Pre-Trial Chamber II, "Second order on the conduct of the confirmation of charges proceedings", 13 February 2023, ICC-01/14-01/22-157, paras 38-39.

<sup>12</sup> The legal representatives already identified in the Report regarding the group of "Victims of Other Crimes" are the following: Mr Dangabo Moussa, Mr Fall, Ms Massidda, Ms Rabesandratana and Mr Ouabizon-Tendouli (see Report, para. 13 and fn 8).

Mayombo Kassongo was also indicated by some applicants as their choice to represent them in the proceedings in the *Mokom* case.<sup>13</sup>

11. The Registry thus provides below the Chamber with consolidated information *as per* the Order.

*Consolidated information on victim applicants:*

- 506 applicants appointed a lawyer<sup>14</sup> to represent them in the *Mokom* case. Out of these :
  - 370 applicants appointed one of the *Yekatom and Ngaiissona* CLR's;<sup>15</sup>
  - 70 applicants appointed Mr Suprun, the OPCV legal representative of victims of the "Former Child Soldiers" in the *Yekatom and Ngaiissona* proceedings;<sup>16</sup>
  - 55 applicants appointed Mr Ouabizon-Tendouli,<sup>17</sup> a lawyer from the Central African Republic ("CAR"), who has been admitted on the List of counsel before the Court on 22 November 2022;<sup>18</sup> and
  - 11 applicants appointed Mr Kassongo, a lawyer from the Democratic Republic of Congo, who is also representing

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<sup>13</sup> To date, Mr Kassongo submitted altogether 11 victim application forms to the VPRS; see also paragraph 10 *infra*.

<sup>14</sup> The Registry notes that this figure includes cases where a lawyer is mentioned in the victim's application form and cases where a lawyer has submitted victim application forms for the purpose of the *Mokom* case on behalf of applicants and as their legal representative.

<sup>15</sup> 224 applicants appointed Ms Rabesandratana and Mr Fall, 75 applicants appointed Mr Dangabo Moussa and 71 applicants appointed Ms Massidda.

<sup>16</sup> See, however, para. 9 *supra*.

<sup>17</sup> In the Report, the Registry conveyed information received from Mr Ouabizon-Tendouli that he had been appointed by 105 applicants for the purpose of the *Mokom* case, and that more victims could be identified in the future (see Report, para. 26 and fn 41). In further correspondence received since the Report, it was clarified that no additional applications should be expected in addition to the 55 applications already received from Mr Ouabizon-Tendouli for the purpose of participation at the pre-trial stage in the *Mokom* case (E-mail from Mr Ouabizon-Tendouli to VPRS, 17 February 2023, 12:30).

<sup>18</sup> Mr Ouabizon-Tendouli presently has no other representation mandate before the Court.

victims in two cases before the Court related to the Mali Situation, i.e. *The Prosecutor v. Ahmad Al Faqi Al Mahdi* (“*Al Mahdi case*”) and *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* (“*Al Hassan case*”).<sup>19</sup>

- 68 applicants did not appoint a lawyer to represent them in the *Mokom* case.<sup>20</sup>

*Detailed information for New Applications:*

12. Out of the 167 additional victim applications the VPRS registered in the *Mokom* case after the Report, 64 have been submitted by new applicants who had not applied previously to participate in the *Yekatom and Ngaïssona* case (“*New Applicants*” or “*New Applications*”) and contain information related to 1) the victims’ indigence; and 2) the victims’ desired legal representation for the purpose of the Case.<sup>21</sup>
13. The Registry further notes that the aforementioned New Applicants indicate the name of a Potential CLR to represent them in the proceedings:<sup>22</sup>
  - 29 applications indicate Mr Ouabizon-Tendouli,
  - 24 applications indicate Ms Rabesandratana and Mr Fall,
  - 11 applications indicate Mr Kassongo.

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<sup>19</sup> In the *Al Mahdi* proceedings, Mr Kassongo is the sole common legal representative of victims; in the *Al Hassan* proceedings, he forms part of a team of three counsel collectively representing all participating victims in the case. Mr Kassongo regularly submits to Counsel Support Section requests for fees (time sheets) for almost full time work in both cases (an average of 21 days per month in each case). His remuneration in the cases follows the Registry’s Single Policy Document on the Court’s Legal Aid System of 4 June 2013, (ICC-ASP/12/3, adopted during the Twelfth session of the Assembly of State Parties of 20-28 November 2013 and distributed on 4 June 2013) (“*Legal Aid Policy*”), at [https://asp.icc-cpi.int/sites/asp/files/asp\\_docs/ASP12/ICC-ASP-12-3-ENG.pdf](https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP12/ICC-ASP-12-3-ENG.pdf).

<sup>20</sup> These applicants have been assisted to complete their application forms by the Registry; concretely, 21 applications were submitted in the context of the victim application process in the *Mokom* case, and 47 applications were submitted in the context of *Yekatom and Ngaïssona* case but indicate that the applicant wishes to participate in the *Mokom* case as well.

<sup>21</sup> The remaining 103 application forms were submitted in the context of the *Yekatom and Ngaïssona* case (with an indication that victim applicants also wish to participate in the *Mokom* case); the views on legal representation in these forms is therefore related to the applicant’s legal representation in the *Yekatom and Ngaïssona* case and not relevant for the present exercise.

<sup>22</sup> See *supra*. para. 10.

14. 43 New Applicants have expressed their objection to be represented by a lawyer also representing other victims in the Case. The Registry notes that in the great majority of cases the applicants seemed to have linked the question of grouping with their choice of legal representative, and not on the account of what the Registry understands, in their view, to be a conflict of interest,<sup>23</sup> in particular 28 New Applicants expressly mention that they do not want to be represented by a lawyer from the OPCV, but by the lawyer of their choice (i.e. Mr Ouabizon-Tendouli).<sup>24</sup>
15. As regards characteristics and qualities victims find necessary in a legal representative, the New Applicants expressed similar views as those conveyed in the Report, such as availability and accessibility,<sup>25</sup> competence and work ethics<sup>26</sup> and knowledge of local language/CAR.<sup>27</sup>
16. With regards to indigence, the Registry notes that all but two New Applicants have indicated that they are unable to pay for their legal representation.<sup>28</sup> As indicated in the Report, the Registry expects that participating victims in the *Mokom* case will rely exclusively for their legal representation on the financial assistance provided by the Court under the legal aid budget.

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<sup>23</sup> See also Report, para. 44.

<sup>24</sup> The Registry notes that among the 55 applications received from Mr Ouabizon-Tendouli, 47 applicants (including 28 New Applicants) explicitly indicated that they do not want to be represented by a lawyer from the OPCV; the remaining 9 applicants indicated that they want to be represented by Mr Ouabizon-Tendouli only. The Registry further notes that Mr Ouabizon-Tendouli reiterated in several correspondences to the VPRS his clients' position - previously relayed in the Report - that should the Chamber not appoint him to represent them, they will not participate in the proceedings; and that his clients refuse to be represented by a lawyer from the OPCV (see also Report, para. 26).

<sup>25</sup> The applicants mentioned in their application forms the importance of a relation of trust, the wish to be listened to and to have a "confidant".

<sup>26</sup> The applicants mentioned in their application forms qualities such as good communication skills, honesty, loyalty or integrity.

<sup>27</sup> Some applicants raised in their application forms the necessity for their lawyer to be from, or to reside in the CAR and/or to speak Sango. However, the Registry also notes that a few applicants indicated that they prefer an international (as opposed to a national/local) lawyer.

<sup>28</sup> One applicant did not answer the question, and another applicant answered positively to the question. The Registry assumes that the positive answer was provided erroneously, but notes that it may request clarification to the respective applicants on their answer, if the Chamber deems it necessary (See also Report, para. 51).



## B. Results of Consultations held with the Potential CLRs

17. On 28 February 2023, the VPRS sent an email communication to the Potential CLRs, requesting them to provide their views and any relevant information in relation to the two questions raised by the Chamber in its Order.<sup>29</sup>

18. The following information was received from the *Yekatom and Ngaïssona* CLRs:

- Two correspondences signed by four out of the five *Yekatom and Ngaïssona* CLRs,<sup>30</sup> in which they informed the Registry *inter alia* of the following:
  - Their commitment to represent within a single team all participating victims in the Case, following the same legal representation scheme that has been in place in the *Yekatom and Ngaïssona* case, alongside their preparedness to do so together with Mr Ouabizon-Tendouli and Mr Kassongo. Counsel confirmed that this arrangement implies that all counsel have access to all the victims' files, and that they will work together in full cooperation to represent a greater number of participating victims located in several countries.<sup>31</sup>
  - Their proposal to adopt a system of periodic rotation of counsel's presence at the seat of the Court for the hearings,<sup>32</sup> who would also be taking the lead on procedural issues. In

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<sup>29</sup> Email from VPRS to the Potential CLRs, 28 February 2023 at 14:26. In the correspondence, the VPRS further informed the Potential CLRs that (1) Mr Ouabizon-Tendouli was admitted to the ICC List on Counsel on 22 November 2022, and so far, was designated by 55 applicants, with 54 who appear, *prima facie*, to belong to the group of "Victims of Other Crimes"; and (2) Mr Kassongo was designated by 11 applicants who appear, *prima facie*, to belong to the group of "Victims of Other Crimes".

<sup>30</sup> Emails from Ms Rabesandratana (on behalf of Mr Fall, Mr Dangabo Moussa, Ms Douzima and herself) to VPRS, 1 March 2023 at 19:28 and 4 March 2023 at 19:51.

<sup>31</sup> Due to an initial larger geographical and temporal scope of the Case as per the Warrant of Arrest for Mr Mokom dated of 10 December 2018 and notified on 22 March 2022 (ICC-01/14-01/22-2-Red2), compared to the *Yekatom and Ngaïssona* case. However, the Registry notes that this information may be revisited in light of the DCC, see *supra* para. 9.

<sup>32</sup> A similar system is currently in place for the representation of victims in the proceedings in the *Yekatom and Ngaïssona* case. Hearings in the latter case will be conducted concurrently with hearings in the present Case.

this regard, the legal representatives noted that they consider this system - presently in place in the *Yekatom and Ngaiissona* case as the most cost efficient. While strategies would be discussed amongst all counsel, there would be also a rotation among counsel regarding the drafting of submissions, notably between external counsel and the OPCV.<sup>33</sup> In the absence of any (external) counsel at the seat of the Court, Ms Rabesandratana would be the team's *porte parole*. The CLR's also mention the possibility of appointing a coordinator for the group, acting as focal point in communication with third parties.

- Their agreement to share amongst themselves the resources allocated to one team under the legal aid budget.
- A correspondence from Ms Paolina Massidda of the OPCV<sup>34</sup> providing the following information:
- Her unavailability to represent victims in the instant Case beyond the Chamber's final decision on the legal representation of victims at the present stage of the Case.
  - In this regard, Ms Massidda reiterated her remarks, previously made in the context of the consultations held in preparation for the Report,<sup>35</sup> that (now potentially) seven counsel acting at the same level and deciding jointly could be time-consuming and less efficient for the purpose of speedy

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<sup>33</sup> The Registry notes that the proposal was communicated to the VPRS without Ms Massidda in copy (which the Registry immediately brought to Ms Rabesandratana's attention) and before Ms Massidda had indicated that she would not be available to represent victims in the Case beyond her present mandate. See *infra*.

<sup>34</sup> Email from Ms Massidda to VPRS, 6 March 2023 at 10:27.

<sup>35</sup> Report, para. 28.

proceedings.<sup>36</sup> Moreover, Ms Massidda's Office's involvement in multiple other cases before the Court would not allow her to perform her duties in this Case in accordance with the highest standards of legal representation.

- Notwithstanding the above, Ms Massidda remains committed to represent the collective interests of potential victims until a final decision is made on their legal representation in the Case.<sup>37</sup>

19. On 28 February<sup>38</sup> and 2 March 2023,<sup>39</sup> respectively, Mr Ouabizon-Tendouli and Mr Kassongo both confirmed to the VPRS their willingness to represent victims of the Case jointly with other counsel, and their agreement to share the resources available for one team under the Court's Legal Aid Policy.<sup>40</sup>

20. Following a meeting it had conveyed with the Potential CLR's on 6 March 2023<sup>41</sup> during which the counsel present confirmed their willingness to work jointly,<sup>42</sup> the VPRS requested the four *Yekatom and Ngaïssona* CLR's who had expressed their willingness to represent victims in the Case (Mr Dangabo Moussa, Ms Douzima, Mr Fall and Ms Rabesandratana), Mr Ouabizon-

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<sup>36</sup> Ms Massidda notes that the designation of multiple legal representatives at the same level requires that strategic matters as well as oral and written advocacy issues affecting the interests of victims be discussed and approved by all counsel at each phase, often within very tight deadlines. Moreover, the fact that counsel from different countries must contribute and approve each intervention on behalf of victims is in itself a time-consuming exercise, which is not always possible to implement in the highly dynamic proceedings before the Court; *supra*, fn. 32.

<sup>37</sup> See "Order on the conduct of the confirmation of charges proceedings", 27 June 2022, ICC-01/14-01/22-62, para. 46.

<sup>38</sup> Email from Mr Ouabizon-Tendouli to VPRS, 28 February 2023, at 15:57.

<sup>39</sup> Email from Mr Kassongo to VPRS, 2 March 2023, at 18:18.

<sup>40</sup> See *supra* at fn. 19.

<sup>41</sup> Ms Massidda informed the VPRS that she was not available for the meeting; Ms Douzima informed the VPRS after the meeting that she had not been able to attend the meeting due to IT issues.

<sup>42</sup> The VPRS notes Mr Ouabizon-Tendouli's position, reiterated during the meeting, that his clients will not accept to be represented in the proceedings by any other counsel. He however accepted to represent these victims jointly with other counsel in the team.

Tendouli and Mr Kassongo, to confirm or clarify their common agreement on the following issues, should they be appointed by the Chamber:<sup>43</sup>

- The internal organisation of the work of the team, at the seat of the Court and in the field ;
- Their commitment to jointly represent all the participating victims - including victims who did not appoint one of them as their legal representative-, within a single team, which involves a complete sharing of information amongst counsel and the capacity, for each counsel, to meet any victim represented by the team when necessary and, in particular, for the purpose of preparing the confirmation of charges hearing;
- Their agreement to share the resources available for one team under the Court's legal aid scheme.<sup>44</sup>

21. On 9 March 2023, Ms Rabesandratana confirmed the counsels' commitment on the above, on behalf of the team, further confirming that Mr Ouabizon-Tendouli agreed with the approach.<sup>45</sup>

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<sup>43</sup> The VPRS sought a confirmation of the counsel's common agreement on a number of issues, notably in light of the fact that: 1) since the last written communication of counsel on the subject, Ms Massidda had informed the VPRS and the other *Yekatom and Ngaïssona* CLRs that she would no longer be part of a team representing victims for the purpose of the Case, 2) Mr Ouabizon-Tendouli had in the past informed the VPRS that his clients would not accept to be represented by other counsel.

<sup>44</sup> Email from VPRS to Mr Fall, Mr Dangabo Moussa, Ms Douzima, Ms Rabesandratana, Mr Kassongo and Mr Ouabizon-Tendouli, 7 March 2023, at 17:06. The *Yekatom and Ngaïssona* LRVs had been informed already in July 2022 that, pursuant to the Legal Aid Policy, applicable fees for counsel who represent victims in a second case before the Court would be at 50% of the disbursement applicable in the first case (email from VPRS to the *Yekatom and Ngaïssona* LRVs, 22 July 2022, at 12:47). See also Report, para. 53.

<sup>45</sup> Email from Ms Rabesandratana to VPRS, 9 March 2023, at 15:59. The VPRS notes that, while copied to the group communication, it is unclear if Mr Kassongo is part of the agreement. The Registry further notes that Mr Ouabizon-Tendouli, Ms Douzima and Mr Kassongo each confirmed to the VPRS their own commitment through individual communications. Emails from: Mr Ouabizon-Tendouli to VPRS, 7 March 2023 at 19:56; from Ms Douzima to VPRS, 9 March 2023 at 13:01; and from Mr Kassongo to VPRS, 12 March 2023 at 20:15.

22. Lastly, on 12 March 2023, Mr Kassongo reacted to a separate inquiry made by the VPRS<sup>46</sup> on how he intends to represent victims in the *Mokom* case in full conformity with his ethical and professional obligations - in view of his current and concomitant commitments as common legal representative of victims in both the *Al Mahdi* case and the *Al Hassan* case. Mr Kassongo confirmed to the VPRS his general agreement with the general common legal representation scheme.<sup>47</sup> The question of simultaneous representation mandates, as further explained below<sup>48</sup>, was not addressed by Mr Kassongo in his email.

### C. Registry observations

23. The Registry notes that in the instant Case, four counsel who seek their appointment as common legal representatives of victims of the group “Victims of Other Crimes” have already been representing victims in the *Yekatom and Ngaïssona* case, which presents many similarities with the *Mokom* case. There are two potential additional counsel – Mr Kassongo and Mr Ouabizon-Tendouli – who are new to the representation of victims in the CAR II situation before the Court, and who, so far, have been designated by a relatively low portion of applicants for participation in the *Mokom* case, compared to the overall estimated number of participants in the Case (55 applicants for Mr Ouabizon-Tendouli and 11 applicants for Mr Kassongo out of a current total of 574 applicants) which may become comparable to the *Yekatom/Ngaïssona* case with presently close to 1400 participating victims of ‘the other crimes’.<sup>49</sup>

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<sup>46</sup> Email from VPRS to Mr Kassongo, 9 March 2023, at 11:00. The VPRS also informed Mr Kassongo about the Registry’s Legal Aid Policy which limits to two the number of legal representation mandates. See *infra*, para. 23.

<sup>47</sup> Email from Mr Kassongo to VPRS, 12 March 2023, at 20:15.

<sup>48</sup> *Infra*, para. 24.

<sup>49</sup> The distribution of participating victims in two groups in the *Yekatom/Ngaïssona* proceedings follows the same logic as in the present Case (*see* para. 1 *supra*), with altogether 286 former child soldier victims and 1380 victims of the other crimes presently participating in the *Yekatom/Ngaïssona* trial.

*Observations regarding the appointment of Mr Kassongo and Mr Ouabizon-Tendouli*

24. The Registry notes its Legal Aid Policy, which “limits simultaneous [counsel’s representation] mandates to no more than two cases”, to “ensure that obligations owed to clients are honoured without the distraction and burden of additional cases”.<sup>50</sup> As mentioned *supra*,<sup>51</sup> the VPRS duly informed Mr Kassongo of this limitation of mandates funded under the legal aid scheme, in light of his concurrent legal representation mandates in the *Al Mahdi* and *Al Hassan* case and, what he has communicated to CSS, per his time sheets, as the substantial amount of work he performs in both cases as per his periodic reports submitted to the Counsel Support Section.<sup>52</sup> In this regard, the Registry notes that to date Mr Kassongo did not respond on this aspect, or indicate to the VPRS how he would manage his schedule to ensure his availability in light of his other commitments, or how these earlier commitments would change in the short term.

25. Should the Chamber consider Mr Kassongo’s other engagements as an impediment for his appointment in the present case, the Registry would undertake to liaise with Mr Kassongo so that the impact on these victims remains as low as possible, also noting that they have appointed Mr Kassongo only recently. As for a potential impact on the proceedings, the Registry observes that affected applicants are comparatively low in number (11 out of 574 Applicants), and that they reside in areas that should be accessible to other counsel in the team, should applicants wish to retain their applications for participation and/or reparations and fall within the remit of the case.<sup>53</sup>

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<sup>50</sup>Legal Aid Policy, paras 106 and 107.

<sup>51</sup> See para. 22.

<sup>52</sup> See fn 19 *supra*.

<sup>53</sup> The Registry would, in correspondence with Mr Kassongo, inform the applicants of any decision taken by the Chamber on their legal representation and provide options for applicants as to their continuous engagement with the ICC.

26. As indicated above,<sup>54</sup> despite earlier communication to VPRS to the contrary, Mr Ouabizon-Tendouli recently informed the VPRS that he is willing to jointly represent victims together with other counsel, and in this context agreed that other counsel from the team would have full access to his clients and their respective dossiers. Mr Ouabizon-Tendouli's clients had previously maintained - *via* their application forms and through correspondence by Mr Ouabizon-Tendouli on their behalf - that they do not want to be represented by anyone other than Mr Ouabizon-Tendouli, that they would, in fact, accept to be also represented by other counsel from the team.
27. The Registry notes the relatively small number of applicants who have chosen Mr Ouabizon-Tendouli to represent them in the Case,<sup>55</sup> and that they all reside in areas which should be accessible to other *Yekatom and Ngaïssona* CLRs. As for applicants presently represented by Mr Kassongo, the Registry is in a position to contact these applicants in order to explain to them any decision taken by the Chamber related to their legal representation.
28. When organizing Common Legal Representation, the Registry has generally aimed – to the extent possible - at upholding the general principle of a victim's free choice of legal representation enshrined in Rule 90(1) of the Rules of Procedure and Evidence, recognizing the importance of the relationship of trust between victims and their lawyers. It also considers that both of these factors should not receive undue weight to the detriment of other important and desirable factors, such as efficiency and sustainability, which are the cornerstones of the common legal representation of victims – explicitly stipulated in Rule 90(2) and (3) as key considerations potentially limiting the general premise under Rule 90(1). Consultations held in the context of

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<sup>54</sup> Paras. 19 and 20.

<sup>55</sup> Up to 55 out of 574 Applicants.

preparing the Report<sup>56</sup> and the current Addendum have underlined that despite a group of counsel's agreement to cooperate in a team to the best of their abilities, effective coordination amongst a too big team of equals may still remain a challenge; a reasonably low number of counsel working alongside each other in a single team and a clear distribution of tasks, channels of communication and an understanding on (majority) decision-making are key in order to ensure efficient coordination within the team, good communication with victims, and effective representation of victims' interests in the courtroom. In this context, the Registry takes good note of the LRVs' submission on its envisaged internal structure and *modus operandi*.<sup>57</sup>

*Structure/Functioning of the team in view of challenges identified in the Report*

29. Notwithstanding any decision the Chamber may take regarding the appointment of Mr Kassongo and/or Mr Ouabizon-Tendouli as (additional) common legal representative(s) of victims, the Registry had previously noted that for several counsel to work together within a single team in an efficient manner requires that the team adopts an internal structure that formalizes the coordination of the team's work and optimizes the use of resources available.<sup>58</sup> In this regard, the Registry notes the proposals made by the legal representatives consulted to 1) put in place a system of rotation, with counsel taking turns to be present in the courtroom, act as a lead to address procedural issues and draft filings/submissions; as well as 2) name a coordinator/focal point for the team. It also notes that, with one counsel located in The Hague (on a rotational basis), other counsel present in the field should ensure regular

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<sup>56</sup> These challenges notably relate to the internal functioning/coordination between counsel within a team and counsel availability and ability to communication with victims (See Report, paras 68 to 71).

<sup>57</sup> See *infra*, paras. 30, 31.

<sup>58</sup> See Report, para. 76.



communication with the victims, which is fundamental to their meaningful participation in the Case.<sup>59</sup>

30. The Registry commends the proposals made by the counsel consulted in order to come up with practical solutions to address potential challenges involved with having several counsel working together within a single team.<sup>60</sup>
31. The Registry stands ready to provide the Chamber with any additional information.



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Marc Dubuisson  
Director Division of Judicial Services  
on behalf of Peter Lewis, Registrar

Dated this 15 March 2023

At The Hague, The Netherlands

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<sup>59</sup> The Registry notes the need for good coordination within the team regarding operational decisions involving the use of legal aid funds such as mission travel, as these decisions have to be taken at unanimity due to the limited availability of legal aid funds.

<sup>60</sup> See also Report, paras 68 and 69 and *supra*, fn. 35.