

**Public redacted version of Annex to the  
Registry Report on Legal Representation of Victims**

## Contents

Introduction .....	2
1) Methodology of the consultations.....	3
a. Scope of the consultations .....	3
b. Consultation with victims .....	4
c. Consultations with CSOs in CAR .....	8
d. Consultations with the Yekatom and Ngaïssona LRVs .....	9
e. Consultations with CSS .....	9
2) Information collected.....	10
a. Legal representatives identified to date .....	10
b. Characteristics and qualities victims consider necessary for their legal representation .	15
c. Identification of number of victim groups .....	20
d. Indigence of victims and availability of legal aid .....	22
3) Registry observations.....	24
a. Observations on rule 90 (4) of the Rules.....	24
i. Conflict of interest and divergent interests of victims.....	25
ii. Registry’s conclusion on the grouping of victims of the Case.....	26
b. Observations on the appointment of the Yekatom and Ngaïssona LRVs as common legal representatives in the Mokom case.....	27
4) Registry recommendations .....	29
a. Recommendations on the appointment of legal representatives of victims at pre-trial stage .....	29
i. Former Child Soldiers group.....	29
ii. Victims of the Other Crimes group.....	30
b. Recommendations on the monitoring of the Common Legal Representation of Victims	
	32

## Introduction

1. In its 'Order on the conduct of the confirmation of charges proceedings'<sup>1</sup> ("Order"), Pre-Trial Chamber II ("Chamber") *inter alia* instructed the Registry to collect information and report on the following information related to the legal representation of victims in the case of *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka* case ("Mokom case" or "Case"):
  - i. whether potential victims have already identified one or more legal representatives who are able to represent them before the Court or whether efforts have been or are being made to this end, and the time needed for the victims to make a choice;
  - ii. how potential victims may have organised and the consequences for the choice of legal representative;
  - iii. whether potential victims have the means to pay for legal representatives themselves or whether to rely on persons or NGOs who have accepted to represent them *pro bono*;
  - iv. the way in which the Registry consulted with the victims;
  - v. the budgetary capacity currently available to the Court to pay for all or part of the representation of the victims, should the victims be unable to bear the financial cost of their legal representatives themselves and should they not have *pro bono* representation;
  - vi. should common legal representation under rule 90(2) of the Rules of Procedure and Evidence ("Rules") be necessary to ensure the effectiveness of the proceedings, the most appropriate number of common legal representatives, given the requirement of rule 90(4) of the Rules to take into account the distinct interests of the individual victims and to avoid any conflict of interest;
  - vii. whether the victims have identified common legal representatives and whether it is necessary to help them to do so by referring them to the list of counsel in accordance with rule 90(2) of the Rules; and

---

<sup>1</sup> Pre-Trial Chamber II, "Order on the conduct of the confirmation of charges proceedings", 27 June 2022, ICC-01/14-01/22-62.

- viii. where it is necessary for the Registry to choose common legal representatives when victims cannot agree on the choice,
- (a) the availability of persons who are able to communicate with the victims in the field, safely and in their language, and
  - (b) the views of the victims on the persons thus identified by the Registry, as required by rule 90(3) of the Rules and regulation 79(2) of the Regulations of the Registry (“RoR”).<sup>2</sup>
2. In accordance with the Order and the information requested therein, the Report will convey the following information:
- 1. Methodology of the consultations
  - 2. Information collected
  - 3. Registry observations
  - 4. Registry recommendations.

### **1) Methodology of the consultations**

3. In the section below, the Registry describes the activities carried out since the issuance of the Warrant of Arrest for Mr Mokom (“Warrant of Arrest”)<sup>3</sup> and the Order, and sets out the sources and types of information that have been collected by the Registry to respond to the Chamber’s requests. These include consultations with victims, civil society and legal representatives, as well as information received from the Registry’s Counsel Support Section (“CSS”).

#### *a. Scope of the consultations*

4. Since the issuance of the Warrant of Arrest, the Registry has undertaken a number of activities to inform victims about the Case, support the victim application process and collect information on the legal representation of victims for the present report.

---

<sup>2</sup> See Order, paras. 47-48.

<sup>3</sup> Pre-Trial Chamber II, “Public Redacted Version of ‘Warrant of Arrest for Maxime Jeoffroy Eli Mokom Gawaka’ (ICC-01/14-01/22-2-US-Exp)”, dated of 10 December 2018 and notified on 22 March 2022, ICC-01/14-01/22-2-Red2.

These included notably [REDACTED] meetings, [REDACTED] with victims, civil society organisations and legal representatives.

5. While the geographical scope of the Case extends beyond Bangui and its vicinity, due to the continuing logistical and security constraints prevailing in the Central African Republic (“CAR”),<sup>4</sup> the Registry primarily carried out most of its [REDACTED] activities with stakeholders located [REDACTED]. Despite this complex environment, the Registry managed to also conduct meetings in [REDACTED]<sup>5</sup> [REDACTED]<sup>6</sup> and [REDACTED].<sup>7</sup>
6. The Registry has however not been able to reach out [REDACTED] to victims of the conflict who live in the other locations cited in the Warrant of Arrest or who have been displaced and now live in different locations, including [REDACTED].

*b. Consultation with victims*

7. Despite its operational limitations, the Registry has managed to consult with 212 victims<sup>8</sup> on the legal representative(s) who should represent them in proceedings before the Court and/or on the characteristics and qualities that they would consider important in a (common) legal representative of victims in the Case. These victims were consulted either through [REDACTED] or through questions submitted to them in their applications for participation in the proceedings. The means of

---

<sup>4</sup> As reported in the “Registry Observations pursuant to Pre-Trial Chamber II’s “Order seeking observations on matters related to the conduct of the confirmation Proceedings” (ICC-01/14-01/22-50)”, 25 May 2022, ICC-01/14-01/22-55 (“Registry Observations”), the security in CAR remains volatile, and while the sanitary situation has improved, organising [REDACTED] meetings with stakeholders in a secure and safe manner remains challenging (see Registry Observations, see fn 35 and para. 23). This challenge has been compounded by Registry’s resource constraints, notably due to the increase of the cost of gasoline, which limit the Registry’s capacity to conduct missions outside of Bangui (see Registry Observations, fn. 39).

<sup>5</sup> [REDACTED]

<sup>6</sup> [REDACTED]

<sup>7</sup> [REDACTED]

<sup>8</sup> Out of 407 application forms registered so far in relation to the *Mokom* case. These forms have been either 1) received from different lawyers (Me Dangabo Moussa, Me Fall, Me Massidda, Me Rabesandratana, Me Suprun and Me Ouabizon-Tendouli), or 2) collected in the context of Registry field activities. Following the Order, the Office of Public Counsel for Victims (“OPCV”) represents the collective interest of potential victims (see Order, para. 46).

consultation varied depending on whether the victims were already participating in *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* case (“*Yekatom and Ngaïssona* case”) and had been referred by one or more member(s) of the teams of Common Legal Representatives in said case, or whether they had completed a separate application for participation and/or reparations in relation to the *Mokom* case.<sup>9</sup>

*i. Consultations with victims participating in the Yekatom and Ngaïssona case*

8. The VPRS requested the Common Legal Representatives of victims participating in the *Yekatom and Ngaïssona* case<sup>10</sup> (“*Yekatom and Ngaïssona* LRVs” and “*Yekatom and Ngaïssona* Participating Victims”), to provide a list of victims who had expressed an interest to participate in the *Mokom* case, and who would agree to be consulted on the subject of their legal representation. Having in mind that logistical constraints [REDACTED], the Registry asked the legal representatives to identify among their clients, to the extent possible, i) victims [REDACTED] who have suffered from crimes committed in Bangui, as well as ii) victims [REDACTED] who suffered from crimes committed in areas outside of Bangui.<sup>11</sup> The Registry wishes to extend its gratitude to the *Yekatom and Ngaïssona* LRVs for their collaboration in reaching out to their clients for the purpose of this exercise.

---

<sup>9</sup> These may include victims participating in the *Yekatom and Ngaïssona* case. The Registry notes that the participating victims in the *Yekatom and Ngaïssona* case had submitted their applications from 2019. and provided answers on the issue of their legal representation in those forms for the sole purpose of this case. The Registry considered these answers to be outdated and irrelevant for the purpose of the *Mokom* case. This is why it decided to use a different methodology (ie, through a consultation form, instead of the joint participation/reparations form) to consult this category of victims on the issue of their legal representation in the *Mokom* case.

<sup>10</sup> The Registry notes that the LRV representing the Former Child Soldiers group is Dmytro Suprun and the LRVs representing the Victims of Other Crimes group are: Me Dangabo Moussa, Me Rabesandratana, Me Fall, Me Douzima-Lawson and Me Massidda.

<sup>11</sup> Email from VPRS to *Yekatom and Ngaïssona* LRVs, 30 June 2022 at 17:27, and reminders , 15 July 2022 at 17:05, 20 September 2022 at 15:44, 15:56 and 16:08.

9. The following information was provided to the Registry by the *Yekatom and Ngaïssona* LRVs:

- the LRV representing the Former Child Soldiers group provided a list comprising 19 reference numbers of victims who agreed to be contacted for the purpose of the consultation.<sup>12</sup> Counsel also facilitated the meetings between Registry staff and his clients.
- a member of the LRVs representing the Victims of other Crimes group provided a final list as well as the contact details of 67 victims who agreed to be contacted for the purpose of the consultation<sup>13</sup> and facilitated the meetings between them and Registry staff.

10. As a result, the Registry managed to consult 40 *Yekatom and Ngaïssona* Participating Victims.<sup>14</sup> Amongst them,

- 18 are victims participating in the *Yekatom and Ngaïssona* proceedings as part of the Former Child Soldiers group,<sup>15</sup> and
- 22 are victims participating in the *Yekatom and Ngaïssona* proceedings as part of the Victims of Other Crimes group.<sup>16</sup>

11. The Registry notes that although this is not a representative sample of all *Yekatom and Ngaïssona* Participating Victims who may wish to participate in the *Mokom* case,<sup>17</sup>

---

<sup>12</sup> Email from Me Suprun to VPRS, 22 July 2022 at 15:26.

<sup>13</sup> Emails from Me Massidda to VPRS, 26 July 2022 at 09:21, 25 August 2022 at 16:12 and 8 September 2022 at 10:06. On 25 July 2022 at 19:27 other counsel from the team provided to VPRS a preliminary list of four victims [REDACTED]. Me Dangabo Moussa and Me Douzima -Lawson did not provide a list. [REDACTED].

<sup>14</sup> The meetings took place, respectively on [REDACTED] 2022 and on [REDACTED] 2022. Fifty victims identified by the *Yekatom and Ngaïssona* LRVs for the purpose of the consultations were not met, either because they did not attend the scheduled [REDACTED] meetings or because the Registry was not able to reach them (for example, they did not or were not able to respond to the Registry's call, their contact details were not updated, or because of network failures) or due to the difficulties to organise additional consultation activities within the required deadline.

<sup>15</sup> Three women and 15 men, all aged between 20-22 years old. Most of them are living [REDACTED].

<sup>16</sup> Eleven women and eleven men. Most of them are living [REDACTED]. Their age category repartition is as follow: 4 (15-29 years old), 10 (30-44 years old), 5 (45-59 years old) and 3 (60-74 years old).

<sup>17</sup> See Registry Observations, para. 11, in which the Registry submits that victim applications admitted at pre-trial and/or trial stage in the *Yekatom and Ngaïssona* case are subject to admission in the present Case.

this consultation exercise still offers an –albeit yet limited - initial overview on the choice of potential participating victims on their legal representation in the Case.

12. The consultation of these victims was organised in individual meetings<sup>18</sup> during which a questionnaire was administered.<sup>19</sup> The answers provided by the victims were reported on the consultation form.<sup>20</sup>

*ii. Desk review of new application forms*

13. To date, the Registry has received new 172 applications for participation in the *Mokom* case (“New Applicants”).<sup>21</sup> Among them,

- 21 victims were assisted to complete their application forms by the Registry in the context of the victim application process in the Case.<sup>22</sup>

---

<sup>18</sup> The Registry staff provided an explanation of the purpose of the exercise, in groups (Victims of Other Crimes and Former Child Soldiers were not met at the same time), prior to the individual meeting; or through individual meetings [REDACTED].

<sup>19</sup> The consultation form comprised the following questions: (1) What are the characteristics and qualities the victim considers necessary in a legal representative ? (2) Has the victim chosen a lawyer to represent him or her in the proceedings in the Case? If yes, please provide the name of the lawyer. (3) Does the victim wish to be represented by the same team of lawyers who represents him/her in the case *Yekatom/Ngaïssona*? The victims may wish to add observations or suggestions. (4) Does the victim have concerns being represented by a lawyer/legal team that also represents other victims in the proceedings? If yes, why ? (5) If the victim answered no to questions 2 and 3 : a) Does the victim wish to be represented by a lawyer from the Office of Public Counsel for Victims at the Court? (an independent office of lawyers within the Court, representing victims in proceedings) ; b) Does the victim wish to choose a lawyer from the List of Counsel before the Court?

<sup>20</sup> The Registry stands ready to transmit the consultation forms to the Chamber, should it order it.

<sup>21</sup> These application forms received in the *Mokom* case have been completed for the specific purpose of the Case by (1) applicants who have not participated in any proceedings, and (2) applicants or victims who are participating in the *Yekatom and Ngaïssona* case but have not been referred to the Registry by the *Yekatom and Ngaïssona* common legal representatives for the purpose of these consultations. The Registry will process in due time all applications for participation received in the Case, in accordance with the Chamber’s instructions.

<sup>22</sup> When assisting victims to fill in their application for participation and/or reparations in the proceedings, the Registry provides, *inter alia*, information concerning the legal representation of victims before the Court, and in particular the role and mandate of counsel representing victims in the proceedings, provisions of rule 90 of the Rules as well as the role that OPCV may play in this context. Moreover, the Registry explains that the criteria and preferences regarding their legal representation, which they are invited to indicate in their application form (in question 15) will assist the Registry to identify legal representative(s) to represent all victims authorized to participate in the Case. The Registry highlights that despite expressing a choice to be represented by a particular lawyer, a victim may not be represented by that individual.



- In addition, the Registry received 151 victim application forms collected by Me Rabesandratana and Me Fall, who are members of the team of LRVs representing the “Victims of Other Crimes” group in the *Yekatom and Ngaiissona* proceedings, and Me Ouabizon-Tendouli, a lawyer from CAR.

14. The Registry notes that all the New Applicants (108 women and 64 men) are Victims of Other Crimes.<sup>23</sup>

15. The New Applicants’ views on their legal representation were sought through a series of questions in their applications for participation and/or reparations in the proceedings which invite them to indicate (1) their preferences as regards legal representation, and (2) their capacity to finance their legal representation.<sup>24</sup>

*c. Consultations with CSOs in CAR*<sup>25</sup>

16. The Registry consulted representatives from civil society organizations (“CSOs”) that had collected information on human rights violations in the CAR during 2012-2015 and provided social and/or legal assistance to victims, including in relation to the *Yekatom and Ngaiissona* case and/or *The Prosecutor v. Mahamat Said Kani* case (“*Said case*”).<sup>26</sup>

17. During this process, the Registry has collected information pertaining to: 1) the experience of victims with lawyers, including with lawyers representing them in proceedings before the ICC or domestic courts; 2) victims’ expectations and needs in relation to their legal representation in the proceedings before the Court in light of the scope of the present Case; 3) whether there are reasons why, if relevant, participating victims should not be represented by only one legal representative of

---

<sup>23</sup> [REDACTED]. Their age category repartition is the following: 38 (15-29 years old), 55 (30-44 years old), 57 (45-59 years old), 17 (60-74 years old), 1 (75+). The ages of 4 New Applicants are unknown.

<sup>24</sup> See the [Standard Application Form](#), at Section 15, on p. 3 (Accessed 6 October 2022).

<sup>25</sup> The Registry selected these CSOs based on their engagement with victims. The Registry was not able to consult CSOs based [REDACTED].

<sup>26</sup> [REDACTED].

victims; and 4) whether victims have financial means to pay for their legal representative or could receive any legal aid support from existing structures.<sup>27</sup>

*d. Consultations with the Yekatom and Ngaïssona LRVs*

18. The Registry consulted the *Yekatom and Ngaïssona* LRVs on the organisation of the legal representation of victims in the *Mokom* case for the following reasons: (1) their experience representing victims in the *Yekatom and Ngaïssona* case - a case presenting crimes, events and victim population parameters that are similar to the ones of the *Mokom* case; (2) their expressed interest in representing victims in the *Mokom* case;<sup>28</sup> and (3) the probability that many *Yekatom and Ngaïssona* Participating Victims will apply for participation in the *Mokom* case, and will express a wish to be represented in these proceedings by the same counsel who represent them in the *Yekatom and Ngaïssona* case, on the account of them having established a relationship of trust.
19. The *Yekatom and Ngaïssona* LRVs' views were primarily collected *via* written communication, including through specific questions probing their interest and availability to represent victims in the Case, and, more broadly, their views on the manner in which the legal representation of victims should be organized in the present Case.<sup>29</sup>
20. The Registry also held a meeting with the Common Legal Representatives of victims representing the Victims of Other Crimes group on 21 September 2022, which was followed by further correspondence.<sup>30</sup>

*e. Consultations with CSS*

---

<sup>27</sup> The Registry developed a specific questionnaire for the purpose of consulting CSOs ("CSO Questionnaire").

<sup>28</sup> See *infra*, para. 28.

<sup>29</sup> Email from VPRS to the *Yekatom and Ngaïssona* LRV, 6 July 2022 at 9:43.

<sup>30</sup> Emails : from VPRS to the *Yekatom and Ngaïssona* LRVs, 23 September 2022 at 17:25; from Me Massidda to VPRS, 27 September 2022 at 11:39; from Me Rabesandratana (on behalf of Me Rabesandratana, Me Fall, Me Dangabo Moussa and Me Douzima-Lawson) to VPRS, 27 September 2022 at 12:58.

21. In accordance with paragraph 48(ii) of the Order, the Victims Participation and Reparations Section (“VPRS”) requested the CSS to provide specific information on the funds that will be available from the Court’s legal aid budget in 2022 and 2023 for the legal representation of victims in the Case, taking into account the following:

- a. The possibility of having up to two groups of victims paid from the legal aid budget, and
- b. The possibility of having some, or all counsel who already represent victims in another case before the Court represent victims in the present Case, and the impact on their remuneration.<sup>31</sup>

## 2) Information collected

### *a. Legal representatives identified to date*

#### *i. Legal representatives identified by Yekatom and Ngaiissona Participating Victims*

22. In their consultation forms, all the *Yekatom and Ngaiissona* Participating Victims that were consulted answered that they are, or wish to be, represented by the same lawyer(s) who represent them in the *Yekatom and Ngaiissona* case.<sup>32</sup> Thus:

- 18 indicate that they wish to be presented by the same lawyer who represents them in the *Yekatom and Ngaiissona* case (which is the LRV representing the Former Child Soldiers group);<sup>33</sup>

---

<sup>31</sup> Emails from VPRS to CSS, 29 June 2022 at 14:18 and 29 September 2022 at 15:50.

<sup>32</sup> In response to question 3: “Does the victim wish to be represented by the same team of lawyers who represents him/her in the case *Yekatom/Ngaiissona*?” All of the individuals consulted were referred to the Registry by OPCV.

<sup>33</sup> 15 victims indicated that they would choose Me Suprun or his field counsel, Me Akem (or both) to represent them in the *Mokom* case. Three victims indicate that they have not chosen a lawyer.

- 22 indicate that they wish to be presented by the same lawyers who represent them in the *Yekatom and Ngaiissona* case (which are the LRVs representing the Victims of Other Crimes group).<sup>34</sup>

*ii. Legal representatives identified by New Applicants*

23. In their applications for participation, 125 New Applicants appoint two counsel already representing victims as Common Legal Representatives in the *Yekatom and Ngaiissona* case to represent them in the *Mokom* case, and 26 New Applicants appoint other counsel from the CAR.

*Me Rabesandratana and Me Fall – part of the Yekatom and Ngaiissona LRV team*<sup>35</sup>

- 125 applicants appoint Me Rabesandratana and Me Fall in their application for participation.

*Me Ouabizon-Tendouli*

24. Twenty-six New Applicants appoint Me Francis Ouabizon-Tendouli, a lawyer from CAR [REDACTED]. Nineteen of these applicants also explicitly indicate that they do not want to be represented by a lawyer from the OPCV.<sup>36</sup>
25. Me Ouabizon-Tendouli has recently reached out to the Registry as the lawyer of the [REDACTED].<sup>37</sup> [REDACTED].<sup>38</sup>
26. [REDACTED]<sup>39</sup> and other correspondence,<sup>40</sup> Me Ouabizon-Tendouli further informed the Registry of the following:

---

<sup>34</sup> All the victims indicated that they would choose Me Massidda and her field counsel, Me Mpoko, who are members of the team of LRVs representing the Victims of Other Crimes group in *Yekatom and Ngaiissona*, to represent them in the *Mokom* case.

<sup>35</sup> Registry Observations, para. 24.

<sup>36</sup> Indicating, for example, “Je refuse l’avocat de l’OPCV” (unofficial translation).

<sup>37</sup> [REDACTED].

<sup>38</sup> [REDACTED].

<sup>39</sup> [REDACTED]. By email to VPRS on 30 September 2022 at 15:07, Me Ouabizon-Tendouli clarified that the views expressed [REDACTED] are on behalf of the victims he represents, [REDACTED].

<sup>40</sup> Email from Me Ouabizon-Tendouli to VPRS, 30 September 2022 at 15:07.

- he has been appointed by 105 applicants in the Case,<sup>41</sup> [REDACTED], who all wish to be represented only by him in the *Mokom* proceedings before the Court. Should he not be appointed by the Chamber to represent them, he informs that they will not participate in the proceedings;
- his clients refuse to be represented by the OPCV;
- his clients request that all communications from the Court go through him;
- his clients distrust the ICC's Registry Country Office;
- he will soon apply to the ICC List of Counsel ("List").<sup>42</sup>

27. The Registry notes that to date, the CSS has not received any application to be accepted on the List of counsel from Me Ouabizon -Tendouli. The Registry has received so far twenty-six application forms for participation and/or reparations in the proceedings in which victim applicants seek to appoint Me Ouabizon -Tendouli.

*iii. Legal representatives of victims in the Yekatom and Ngaïssona case*

28. All six *Yekatom and Ngaïssona* LRVs have manifested to the Registry their interest to represent victims in the *Mokom* case. At the request of the Registry, the following information was received:

- A correspondence signed by all five counsel representing the Victims of Other Crimes group in the *Yekatom and Ngaïssona* case,<sup>43</sup> in which they inform the Registry of:
  - their proposal to replicate in the *Mokom* case the legal representation scheme and composition in place in the *Yekatom and Ngaïssona* case, which would ensure an efficient and cost-effective legal representation in the *Mokom* case, based on counsel familiarity

---

<sup>41</sup> Me Ouabizon-Tendouli indicated that more victims could be identified in the future.

<sup>42</sup> Email from Me Ouabizon-Tendouli to VPRS, 30 September 2022 at 15:02.

<sup>43</sup> Email from Me Rabesandratana (on behalf of the team) to VPRS, 10 July 2022 at 18:56. The Registry notes that, prior to this correspondence, Me Fall addressed an email to VPRS on 7 July 2022 at 00:33 in which he manifested his interest and availability to represent victims in the Case. He later confirmed to VPRS that he adheres to the email sent by Me Rabesandratana on behalf of the team.

- with the context of the Case and their engagement with *Yekatom and Ngaïssona* Participating Victims, potential New Applicants<sup>44</sup> and local leaders;
- their availability to represent victims in the *Mokom* case, and confirmation that they are able to represent victims in both proceedings simultaneously;
  - A correspondence from the OPCV<sup>45</sup> provided *inter alia* the following information:
    - victims in the Case should participate in two distinct groups (a group composed of former child soldiers and a group comprising victims of the other crimes);
    - the two counsel from the OPCV who represent victims in the *Yekatom and Ngaïssona* case are both available to continue representing one group of victims in the *Mokom* case. Using the same resources as in the *Yekatom and Ngaïssona* case, each counsel, based at the seat of the Court and with rapid access to the Court's internal systems, would be assisted by a counsel permanently based in the field (the same already appointed in the *Yekatom and Ngaïssona* case), who keeps regular contact with the victims. In this regard the appointment by the Chamber to represent the collective interests of potential victims, counsel from the OPCV started organizing meetings with applicants in the present Case;
    - Counsel also drew the attention of the Registry to the fact that the appointment of five counsel acting at the same level and taking decisions unanimously, with counsel located both at headquarters

---

<sup>44</sup> The lawyers refer in particular to those victims whose applications for participation were rejected in the *Yekatom and Ngaïssona* case, who, in view of the different scope of the case, could be accepted as participating victims in the *Mokom* case.

<sup>45</sup> Email from Me Massidda and Me Suprun to VPRS, 8 July 2022 at 15:11.

and in the field - as in the *Yekatom and Ngaïssona* case -, could be time-consuming and less efficient in the context of speedy proceedings;

- In the course of a meeting held with all five counsel representing the Victims of the Other Crimes group and the VPRS, the challenge of ensuring efficient internal communication between counsel was raised, in the absence of reliable IT networks for counsel based in the field. During said meeting, Counsel from the OPCV suggested the idea of a Counsel based permanently in The Hague with the other counsel coming at the seat of the Court for critical junctures in the proceedings;
- In further correspondence, the four external legal representatives of victims representing the Victims of Other Crimes group in the *Yekatom and Ngaïssona* case added the following proposals regarding the internal organization of the group of lawyers in *Mokom*:
  - they considered inappropriate the suggestion of a lead counsel based (permanently) at the seat of the Court and other lawyers acting permanently as field counsel<sup>46</sup> and suggested a rotation of counsel's presence at the seat of the Court (as in the *Yekatom and Ngaïssona* case), with the latter acting as lead on procedural issues, in consultation with the OPCV. Counsel underlined the importance for victims to see their counsel in the courtroom; and
  - that amongst the team of Counsel, decisions could be taken following the majority principle ( as a second recourse, if there is no unanimity).<sup>47</sup>

---

<sup>46</sup> Email from Me Rabesandratana to VPRS, 27 September 2022 at 11:31.

<sup>47</sup> The issue of decision-making within the team, and proposal to adopt decisions at the majority, was also raised in the course of the meeting between the legal representatives of the Victims of Other Crimes group and VPRS, held on 21 September 2022 and in an email from the Case-Manager (on behalf of the external counsel) to VPRS, 6 October 2022 at 17:48.

- All LRVs have indicated to the Registry that the victims consulted they represent so far expressed their wish to continue being represented by the same lawyers who already represent them in the *Yekatom and Ngaïssona* case.<sup>48</sup>

*b. Characteristics and qualities victims consider necessary for their legal representation*

*i. Views expressed by the victims (Yekatom and Ngaïssona Participating Victims and New Applicants)*

29. The *Yekatom and Ngaïssona* Participating Victims and New Applicants expressed a wish for their legal representation <sup>49</sup> to present the following characteristics/qualities:<sup>50</sup>

Availability and accessibility

30. Many victims consulted by the Registry, whether they are already participating in the *Yekatom and Ngaïssona* case or not, indicated that they want their lawyer to be available and/or accessible. In particular, consultations have revealed that victims want a lawyer who will take the time to inform them, conveying and explaining the proceedings to them.
31. Closely related to this requirement is the victims' wish, many times expressed, for proximity with their lawyer (to have someone who is "close to them"), asking for a

---

<sup>48</sup> *Ibid.*, and email from Me Massidda to VPRS, 6 October 2022 at 20:29.

<sup>49</sup> The Registry notes that consultations generally focus on qualities and characteristics sought in one legal representative. However, it considers that said qualities and characteristics would often not be found in one person/counsel, but rather within a legal team constituted of several members with complementary profiles.

<sup>50</sup> Question 15. IV of the standard application form for participation and/or reparations in the proceedings asks the applicant to provide "[c]haracteristics and qualities that the victim considers necessary in a lawyer representing them in the proceedings". Similarly, question 1 of the consultation form asks "what are the qualities a lawyer should have?".



lawyer who listens to them, who knows and understands them, who puts them at ease,<sup>51</sup> treats them with respect, and whom they can trust.

#### Competence and work ethics

32. The victims consulted also mentioned the importance of having a lawyer who demonstrates work ethics, mentioning qualities such as honesty, loyalty or integrity. Moreover many mentioned that they want their lawyer to be competent, and able to defend them; a person who communicates well<sup>52</sup> and who can advise them.

#### Knowledge of local language/CAR

33. Some victims have raised the necessity for their lawyer to be from, or to reside in the CAR; and who knows or has experienced the events and/or who speaks Sango.

#### *ii. Views provided by CSOs in CAR<sup>53</sup>*

34. According to the information collected from CSOs, victims lack knowledge and understanding of their rights, judicial proceedings in general and the role of lawyers. This is reinforced when victims are illiterate. However the victims who have experienced ICC proceedings and/or Central African Special Criminal Court proceedings are more familiar with the role of a victim lawyer and what victims can be expecting from their legal representative. The CSOs assisting these victims in their judicial process have also more experience and victims' feedback on the legal representation. During the consultations, all CSOs highlighted, as victims themselves had done, that the availability of lawyers and their accessibility are key for victims. They also mentioned that the lawyer should be accountable, committed, competent, experienced and able to understand the victims' realities.

---

<sup>51</sup> "Accueillant, ouvert,[...] sociable" (Consultation form received on 16 August 2022).

<sup>52</sup> "Capable de bien faire comprendre aux juges le vécu des victimes" (Consultation form received on 16 August 2022).

<sup>53</sup> The Registry was not able to consult CSOs based [REDACTED] where many victims are currently residing.

Availability and accessibility

35. During the consultations, all CSOs highlighted that the victims wish to be represented by someone with whom they can have permanent contact<sup>54</sup> throughout the proceedings, who listens, and from whom they can receive information on the proceedings and answers to their questions or concerns.
36. The lawyer's availability and accessibility are a *sine qua none* condition of a relationship of trust with the victims he or she would represent, and more broadly a condition to build trust of victims into the judicial process. It was held that victims need to be accompanied and that their expectations be managed throughout the course of the lengthy proceedings.
37. Some of the CSOs consulted assisted victims directly in filing in their application form before the LRVs were appointed, and maintained contact with these victims since then. They also reported on the experience of victims in relation to the latter participation in the *Yekatom and Ngaïssona* case, and their own experience as CSOs assisting victims in judicial processes. Most of them indicated during the consultations that, aside from some activities organized at the beginning of the judicial process in the *Yekatom and Ngaïssona* case for Victims of Other Crimes and Former Child Soldiers, there was a general lack of contact between participating victims and their legal representative<sup>55</sup> and a lack of information regarding the proceedings.<sup>56</sup> They expressed frustrations and disappointment, explaining that they asked victims to trust the LRVs and considered that the latter have not complied with their mandate. Victims ask for information about the proceedings on a daily basis to the CSOs who are not in a position to step into the LRV's role.

---

<sup>54</sup> "Un contact perpétuel" [REDACTED].

<sup>55</sup> "Les victimes sont déconnectées de leur avocat" [REDACTED]. One CSO reported that victims had their last contact with their lawyer in 2019, and another two CSOs mentioned that the last contact occurred in 2020, while one other mentioned that victims had not met with their lawyer after completing their application form.

<sup>56</sup> "Il y a un problème de restitution de l'information aux victimes" [REDACTED].

38. Interlocutors met referred to the challenges that make regular meetings and contact between lawyers and victims difficult.<sup>57</sup> They include the security and/or COVID-19 pandemic situation, the difficulty to meet and/or reach victims who live in remote areas and/or who move their place of residence (i.e. [REDACTED], victims moving within the country), the limited means of victims to reach their lawyers,<sup>58</sup> and the poor communication networks in the CAR. However, they also indicated that the impact of these challenges have evolved over time and that the LRVs teams have members located in [REDACTED] who could reach out to the victims and provide regular information.<sup>59</sup>
39. The CSOs consulted by the Registry requested the latter to address the question of availability of the legal representative of victims in order not to replicate the same difficulties reportedly experienced in the *Yekatom and Ngaïssona* case in the present proceedings.<sup>60</sup> It was suggested that the legal representative(s) have to maintain more regular contact with victims to keep them informed, through different means.<sup>61</sup> It was also recommended – while acknowledging the principle of privileged communication between the lawyer and his/her clients - that legal representatives maintain contacts with the CSOs who could facilitate the

---

<sup>57</sup> Some CSOs mentioned that while COVID-19 pandemic and/or previous security situation were challenging for conducting activities in the field, the current situation allows contacts with victims.

<sup>58</sup> It was indicated that although lawyer's contact details have been provided to the victims, this mode of communication remains limited, as it requires victims to be in a position to financially afford calling or sending messages to their lawyers.

<sup>59</sup> *"Les avocats nationaux ils sont avec nous dans le même quartier, on se voit, mais il n'y a pas d'organisation de petites réunions de restitution aux victimes, on prie ensemble dans le lieu de culte, on sort, on se salue mais on ne peut pas poser de question (...) ou alors ils se trouvent à l'extérieur de Bangui"* [REDACTED].

<sup>60</sup> *"Il faut un changement de méthode"* [REDACTED].

<sup>61</sup> It was recommended to organise regular meetings (i.e. every two, three or four months) and at minimum at key moments of the proceedings between the legal representatives (and/or members of lawyer's team) and the victims, in addition to maintaining contact through phone calls/messaging. During these regular exchanges, the victims could receive updates on the proceedings (*"atelier de restitution de l'information"*), provide update on their situation to their lawyers (i.e. security concerns, specific needs, information on potential deceased victim), and provide their views regularly in order for victims to feel that their views are properly communicated by their lawyer to the judges. One CSO mentioned that the main lawyer could be in The Hague but his/her assistant(s) should be based in the field and *"doit être celui qui a la dynamique, être actif et organise les rencontres périodiques"* ("and who would have the dynamic, be active and organising periodic meetings/contacts with the victims") [REDACTED] (unofficial translation).

communication and contacts with the victims. The interlocutors met considered that having several lawyers representing victims is appropriate due to the parameters of the *Mokom* case (multiple crime locations as per the charges, different locations where the victims reside - in or outside CAR - and the potential high number of victims),<sup>62</sup> and appointing the same LRVs as in *Yekatom and Ngaïssona* case may avoid potential delay in the proceedings to give some time for new lawyers to get familiarised with the Case and the victims.

#### Experience and expertise

40. From the information collected, the skills – as opposed to the gender of the lawyer, his/her community of origin or nationality – of the legal representative(s) are considered relevant.<sup>63</sup> In this regard, the lawyer must have relevant expertise on the issues at stake as well as experience working with victims.

#### Familiarity/connection with the situation country

41. From the consultation with CSOs, it transpired that the lawyer does not necessarily need to be from the CAR.<sup>64</sup> However he/she must have a sound knowledge of the country, the “realities” of its people, the situation of the victims, and he or she must understand national/local languages.

#### Demonstrated commitment to working for the victims’ cause

---

<sup>62</sup> Some CSOs mention that even having additional lawyers (on top of the LRVs teams in *Yekatom and Ngaïssona case*) could be appropriate.

<sup>63</sup> One CSO mentioned that having a female lawyer would be relevant for victims who have experienced gender based violence (i.e. sexual crimes). CSOs mentioned that the origin or religion is no longer a topical issue. One CSO mentioned that a lawyer coming from victims community [REDACTED] is relevant, but maintained that skills and availability are considered the most important qualities for a lawyer.

<sup>64</sup> One CSO mentioned that being a national of the CAR may be relevant. However it was emphasized that the availability of the lawyer was the most important criteria.

42. CSOs' representatives emphasised that counsel should demonstrate an ability and willingness to take a victim - centred approach to their work. They should be engaged actively in the "victims' cause".<sup>65</sup> The lawyer should be able to understand the victims' situation and should possess communication skills to address them in a sensitive manner, communicating regularly in order to manage victims' expectations throughout the proceedings. Such a lawyer should make sure that victims are informed, and should defend their interests in the proceedings.

### Accountability

43. The CSOs consulted consider that a lawyer should be accountable for his/her work and that the victims should be in a position, directly and/or through CSOs assisting them, to inform the Registry on potential difficulties they are facing with regards to their legal representation,<sup>66</sup> without fear to be abandoned by the judicial system.<sup>67</sup> It was submitted that the Registry should organize for the possibility for the victims to share their experience on their legal representation throughout the proceedings).<sup>68</sup> This was seen even more important in the context of proceedings which spread over many years. It was also recommended that the Court emphasizes on the lawyer's availability in the selection of a legal representative for victims.

#### *c. Identification of number of victim groups*

---

<sup>65</sup> As one CSO representative mentioned : "*l'avocat doit être convaincu par la cause, pas pour l'argent*" ("The lawyer must be convinced by the cause, not the money" [REDACTED] (unofficial translation).

<sup>66</sup> "*Il faut un mécanisme pour évaluer le travail des avocats*", "*une évaluation franche et sincère de la bonne communication des avocats*" [REDACTED].

<sup>67</sup> One CSO shared the concern as of : "*si les victimes indiquent qu'elles ne sont pas contentes de leur avocat, qui va alors les représenter?*" [REDACTED].

<sup>68</sup> It was recommended that victims should be better informed on how to convey satisfactory evaluation with regards to their legal representation to the Court. It was also submitted that meetings between the Registry and victims should be organised throughout the proceedings in order to receive victims' direct feedback and to address any potential issue with the lawyers concerned, and that CSOs in contact with victims could be also in a position to provide useful feedback to the Registry with regards to legal representation of victims.

*i. Views expressed by the victims (Yekatom and Ngaïssona Participating Victims and New Applicants)*

44. Out of 172 application forms received so far, 140 New Applicants have expressed their objection to being represented by a lawyer representing also other victims in the Case. The Registry notes, however, that, in the great majority, the applicants seemed to have linked the question of grouping with their choice of legal representative, and not on the account of a conflict of interest.
45. Three *Yekatom and Ngaïssona* Participating Victims clearly explained that they did not want to be grouped with other victims because of issues related to their specific victimhood.<sup>69</sup>
46. On behalf of his clients, Me Ouabizon-Tendouli informed the Registry that the legal representation of victims in the *Mokom* case could be organised on the same model as in the *Yekatom and Ngaïssona* case, with the possibility of a team comprising many lawyers, each victim thus represented by the lawyer amongst said team whom they know well and whom they trust.<sup>70</sup>

*ii. Views of legal representatives of victims and CSOs*

47. *Yekatom and Ngaïssona* LRVs as well as the CSOs consulted informed the Registry that, so far, they have not identified the need for more than two groups of victims in the Case. These groups would mirror the *Yekatom and Ngaïssona* case's organisation of the legal representation of victims : a Former Child Soldiers group, and a Victims of Other crimes group.
48. The Registry has also taken stock of its previous findings and recommendations in the context of the *Yekatom and Ngaïssona* case, which analysed in depth whether there

---

<sup>69</sup> One applicant answered "I think the harm suffered by former child soldiers is different. I don't want us to be mixed with the victims of the other events in the *Mokom* case" ("*Je pense que les préjudices des ex-enfants soldats sont différents. Je ne veux pas que nous soyons mélangés avec les autres victimes des différents événements de l'affaire Mokom* ») (unofficial translation).

<sup>70</sup> In response to question 11 of the CSO questionnaire.

were any potential conflict or distinct interest that would mandate the separate legal representations of victims in that case.<sup>71</sup>

*d. Indigence of victims and availability of legal aid*

49. All but four New Applicants have indicated that they are unable to pay for their legal representation.<sup>72</sup> The consultations held with *Yekatom and Ngaïssona* Participating Victims did not include questions on their financial means. However, based on their (negative) answers provided to this question in their respective *Yekatom and Ngaïssona* application forms<sup>73</sup> and in the absence of any subsequent counter indications, the Registry assumes that these victims remain unable to pay for their legal representation .
50. Likewise, the CSOs and legal representatives consulted submitted that the victims have no financial means to afford a legal representative and that they had no knowledge of any existing structure offering legal aid or *pro bono* legal representation support to victims.
51. In light of the above findings and referring also to its previous submissions on victims' financial means in the CAR submitted in the context of the *Yekatom and*

---

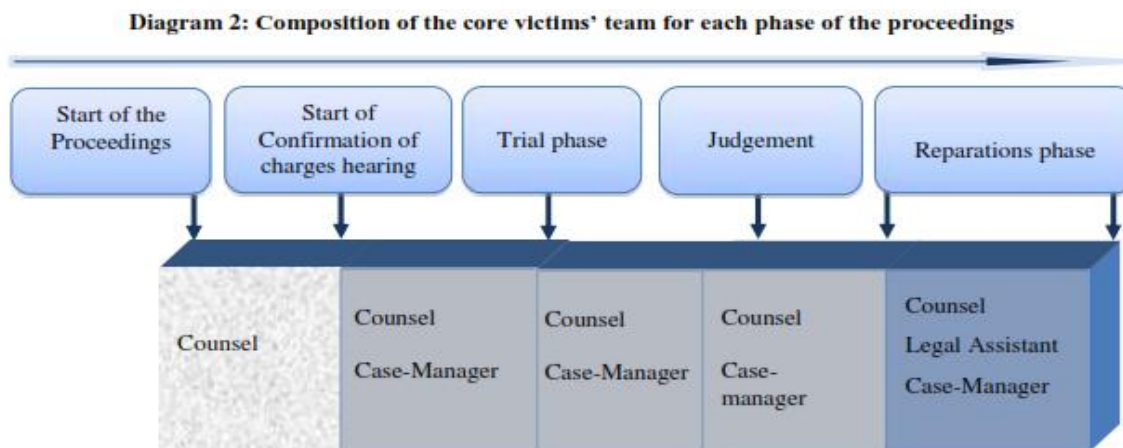
<sup>71</sup> Registry, *Yekatom and Ngaïssona* case, "Registry's Report on Legal Representation of Victims", dated 16 April 2019 and notified on 17 April 2019, ICC-01/14-01/18-178. A public redacted version of Annex I, which contains the report, was notified on 16 May 2019, ICC-01/14-01/18-178-AnxI-Red, paras 96-109 ("*Yekatom and Ngaïssona* LRV Report"). In this context, the Registry had analysed, (1) the potential conflict of interest between former child soldiers and the victims of other crimes listed in the Warrants of Arrest; 2) the potential distinct interests between the victims currently displaced and residing outside of the CAR and those who reside in the CAR that warranted different legal representation; and (3) whether victims who have been subjected to sexual and gender based violence should be represented separately. Regarding the last two, the Registry concluded that they did not justify separate legal representation. The Registry however recommended separate legal representation between the former child soldiers and victims of the other crimes.

<sup>72</sup> Four New Applicants answered positively to this question. The Registry assumes that this answer was provided erroneously, but will further verify with the applicants.

<sup>73</sup> In response to question 15. II of the standard application form: "*Does the victim have financial resources to pay for a lawyer?*".

*Ngaiissona* case<sup>74</sup> and *the Said* case,<sup>75</sup> which still remain valid to date, the Registry expects that participating victims in the Case will rely exclusively for their legal representation on the financial assistance that may be provided by the Court under its legal aid budget.

52. The Registry notes that the resources allocated to the legal representation of victims in a case pursuant to the Registry's Single Policy Document on the Court's Legal Aid System of 4 June 2013 ("Legal Aid Policy") by way of common legal representation should be one Counsel up until the start of the confirmation of charges hearing and one Counsel plus one Case Manager following the commencement of the hearing and until the conclusion of trial, should it reach that stage. The legal representative's team would *inter alia* be entitled to a one-time investigation budget, with the possibility to use this budget to recruit a field assistant in the CAR. The graph presented below and extracted from the Legal Aid Policy illustrates the resource allocation for each phase of proceedings.



<sup>74</sup> *Yekatom and Ngaiissona* LRV Report, paras. 83-86.

<sup>75</sup> Registry, *Said case*, "Registry Report on Legal Representation of Victims and Observations on the Defence Requests", 21 May 2021, ICC-01/14-01/21-80. A public redacted version of Annex II, which contains the report, was notified on the same day, ICC-01/14-01/21-80-AnxII- Red, paras. 44-46.



53. Moreover, according to the Legal Aid Policy,<sup>76</sup> where counsel represents victims in a second case before the Court, applicable fees would be at 50% of the disbursement applicable in the first case.<sup>77</sup>

54. As per the OPCV's general mandate, the office may be vested by Chambers, in addition or as an alternative to external legal representation, with a mandate *inter alia* to represent victim applicants at the confirmation of charges stage and beyond – as is presently the case in the *Yekatom and Ngaïssona* proceedings.<sup>78</sup>

### 3) Registry observations

#### *a. Observations on rule 90 (4) of the Rules*

---

<sup>76</sup> Registry, "Registry's single policy document on the Court's legal aid system" (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), paragraph 102.

<sup>77</sup> Emails from CSS to VPRS, 25 July 2022 at 13:59 and 3 October 2022 at 17:12.

<sup>78</sup> This is in accordance with Regulation 81.4(e) of the Regulations. For unrepresented applicants at pre-trial stage or trial stage, see Pre-Trial Chamber III, *The Prosecutor vs. Jean-Pierre Bemba Gombo*, "Decision on Victim Participation", dated 12 September 2008 and registered on 13 October 2008, ICC-01/05-01/08-103-tENG-Corr, para. 10 and "Fifth Decision on Victims Issues Concerning Common Legal Representation of Victims", 16 December 2008, ICC-01/05-01/08-322, para. 14; Pre-Trial Chamber II, *The Prosecutor vs. William Samoei Ruto and Joshua Arap Sang*, "First Decision on Victim's Participation in the Case", 30 March 2011, ICC-01/09-01/11-17, para. 23 and p. 13; See also Trial Chamber IV, *The Prosecutor vs. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, "Corrigendum to Decision on the Registry Report on six applications to participate in the proceedings", 28 October 2011, ICC-02/05-03/09-231-Corr, para. 28 and p. 16; Trial Chamber III, *The Prosecutor vs. Jean-Pierre Bemba Gombo*, "Decision on the legal representation of victim applicants at trial", 19 November 2010, ICC-01/05-01/08-1020, paras. 24-25 and 27; Pre-Trial Chamber II, *Said* case, "Decision on legal representation of victims and related matters", 9 July 2021, ICC-01/14-01/21-119, p. 12, and para. 30. For victims authorised to participate at pre-trial and trial stage, see Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, "Decision on Victims' Participation and Victims' Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings", 4 June 2012, ICC-02/11-01/11-138, paras. 42 to 44 and p. 26; Pre-Trial Chamber II, *The Prosecutor vs. Bosco Ntaganda*, "Decision Concerning the Organisation of Common Legal Representation of Victims", 2 December 2013, ICC-01/04-02/06-160, para. 25 and p. 11; and Pre-Trial Chamber II, "Second Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings", 7 February 2014, ICC-01/04-02/06-251, p. 20; Pre-Trial Chamber I, *The Prosecutor v. Charles Blé Goudé*, "Decision on victims' participation in the pre-trial proceedings and related issues", 11 June 2014, ICC-02/11-02/11-83, para. 25 and p. 20; and "Second Decision on victims' participation in the pre-trial proceedings and related issues", 1 August 2014, ICC-02/11-02/11-111, para. 15 and p. 15; Pre-Trial Chamber II, *Yekatom and Ngaïssona* case, "Decision on the Legal Representation of Victims", 23 May 2019, ICC-01/14-01/18-205, para. 16; Pre-Trial Chamber II, *Said* case, "Decision on victim applications for participation in the proceedings and on legal representation of victims", 6 October 2021, ICC-01/14-01/21-199, paras 52-53.

*i. Conflict of interest and divergent interests of victims*

55. In recent years, the Registry has consistently recommended to Chambers that in the absence of any conflict of interest between participating victims that would justify their separate representation, it may be appropriate that all participating victims are represented by one common legal representative.<sup>79</sup>
56. Following the Chamber's relevant guidance in the Order,<sup>80</sup> the Registry sought to identify whether, in the present Case, victims appear to have, among themselves, any conflicting or substantially "distinct interests" pursuant to rule 90(4) of the Rules that would justify their separate representation before the Court, or whether there exists any other factor that would necessitate and justify common legal representation of victims through two or more groups.
57. Although no definition of conflict of interest is provided under the Code of Professional Conduct for Counsel ("Code"),<sup>81</sup> the approach adopted thus far before the Court is that:

"[i]n case the common legal representative receives conflicting instructions from one or more groups of victims, he or she shall endeavour to represent both positions fairly and equally before the Chamber. In case the conflicting instructions are irreconcilable with representation by one common legal representative, and thus amount to a conflict of interest, the common legal representative shall inform the Chamber immediately, who will take appropriate measures [...].<sup>82</sup>

[...] a conflict of interest may arise when the situation or the specificity of the victims is so different that their interests are irreconcilable".<sup>83</sup>

---

<sup>79</sup> See, for example, Registry, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Registry, Public redacted version of "Annex I to the Registry's Second Report on Legal Representation of Victims", 28 January 2019, ICC-01/12-01/18-209-AnxI-Red, para. 13.

<sup>80</sup> Order, para. 48(iii).

<sup>81</sup> Article 16(1) states that "Counsel shall exercise all care to ensure that no conflict of interest arises."

<sup>82</sup> Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, "Order on the organisation of common legal representation of victims", 22 July 2009, ICC-01/04-01/07-1328, para. 16.

<sup>83</sup> Trial Chamber IV, *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, "Decision on common legal representation", 25 May 2012, ICC-02/05-03/09-337, para. 42.

58. For guidance on what constitutes the “distinct interest” of the victims, the Registry notes that rule 90(4) of the Rules makes reference to the criteria set out in article 68(1) of the Rome Statute that includes, *inter alia*, “the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence [...]”.
59. Since it is accepted that within any group of participating victims, a variety of interests will co-exist, the Registry would have to identify distinct interests so substantially different among participating victims that they would justify separate representation.

*ii. Registry's conclusion on the grouping of victims of the Case*

60. Included in the charges brought against Mr Mokom is the charge of children under the age of 15 years old being enlisted in the forces affiliated to the Anti-Balaka group and participating in crimes committed against the Muslim population and others perceived to support the Seleka group.
61. On the basis of its experience in other cases before this Court where this crime is included in the charges,<sup>84</sup> including the *Yekatom and Ngaïssona* case, and its most recent consultations of relevant stakeholders, the Registry has sufficient information to conclude that there may be tensions (between the victim group of former child soldiers on one hand, and the group of predominantly Muslim victims targeted by the Anti-Balaka on the other hand) that would make it unlikely that victims would accept to be represented by the same legal representative. Moreover, it is doubtful that a legal representative representing victims from both groups would be in a position to equally and fairly represent their respective positions before the Chamber.
62. At this stage of the proceedings, the Registry did not identify any other conflicting or divergent interest between victims that would warrant additional groups. The

---

<sup>84</sup> See fn 71; see also Pre-Trial Chamber II, *The Prosecutor v. Bosco Ntaganda*, “Decision Concerning the Organisation of Common Legal Representation of Victims”, 2 December 2013, ICC-01/04-02/06-160.

Registry will however continue to monitor whether any additional groups of victims would be warranted.

63. The Registry therefore concludes that two groups of victims with separate legal representation would be warranted to avoid any potential conflict of interest : a group which includes victims of the crime of enlistment of children under the age of 15 years and their use to participate actively in hostilities, as detailed in the Warrants of Arrest (the Former Child Soldiers group); and a group which includes the victims of other crimes referred to in the Warrants of Arrest (Victims of Other Crimes group).

*b. Observations on the appointment of the Yekatom and Ngaïssona LRVs as common legal representatives in the Mokom case*

64. At the outset, the Registry recalls that the organisation of legal representation of victims in the *Yekatom and Ngaïssona* case was the result of the sequential approach of rule 90 of the Rules, starting with the fundamental tenet of rule 90(1) of the Rules regarding a victim's free choice of counsel, and facilitating the coordination of victim representation under rule 90(2) of the Rules due to the number of victims.

65. As reported above,<sup>85</sup> so far all victim applicants who participated in the *Yekatom and Ngaïssona* case consulted directly by the Registry have requested to be represented in the *Mokom* case by the same lawyers that represent them in the *Yekatom and Ngaïssona* case. In addition, a number of New Applicants who have been assisted by legal representatives who represent victims in the *Yekatom and Ngaïssona* case have requested to be represented by them in the *Mokom* proceedings. Moreover, all *Yekatom and Ngaïssona* LRVs have themselves confirmed their interest and availability to represent victims in the *Mokom* case.

---

<sup>85</sup> See *supra* paras. 22-23.

66. The Registry identifies as key to victim participation the relationship of trust which develops between counsel and client.<sup>86</sup> In addition, the Registry has also acknowledged the benefits of having lawyers already familiar with proceedings in a case continuing to represent their clients, from one phase of the proceedings to another.<sup>87</sup> The same would apply in the context of the current Case, with lawyers representing victims in the *Yekatom and Ngaïssona* case being, by virtue of the overlapping features of both cases, already familiar with many aspects of the *Mokom* case, including with the victims represented as well as the case file.

67. While the Registry sees the numerous advantages of appointing the same legal representation scheme in the *Yekatom and Ngaïssona* case in the *Mokom* case, it also notes a number of challenges which transpired from the consultations as indicated below. It considers that the Chamber may want to address them in order to optimize this model of legal representation.

- *The internal functioning of the team representing the Victims of the Other Crimes group.*

68. In the *Yekatom and Ngaïssona* case, the five counsel were appointed to represent jointly, as a single team, the Victims of the Other Crimes group. According to recent Registry consultations, having multiple counsel acting commonly as lead counsel in a single team may present coordination challenges. In this regard, the Registry welcomes the different ideas proposed by the LRVs to address such challenges, and believes that some of these measures can and should be put in place by the LRVs in order to optimize the functioning of the team.

---

<sup>86</sup> See, for example, Registry, *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Annex I to the "Proposal for the common legal representation of victims", 25 August 2011, ICC-02/05-03/09-203-Anx1, para. 14.

<sup>87</sup> Registry, *Said Case*, "Registry Report in Relation to the Legal Representation of Victims in Trial Proceedings", 21 July 2022, ICC-01/14-01/21-424, para. 21.

- *The communication between lawyers and their clients*

69. This reported challenge in the legal representation scheme in place in the *Yekatom and Ngaïssona* case came to light during the consultations and may be compounded, in the case of the Victims of the Other Crimes group, by the aforementioned coordination challenges due to unreliable IT communication means. As revealed by the consultations, it is however of particular importance, in light of victims' expressed emphasis, for victims to have good communication with their lawyers.

70. While the Registry acknowledges the enormous challenges for legal representatives to effectively communicate with the victims they represent, the composition and coordination of, and resources available to, the legal representatives' teams should allow for regular and quality contact between the legal representatives' teams and their clients, to ensure that victims feel accompanied meaningfully through their engagement with the Court.

71. In this regard, the Registry considers, as further developed *infra*,<sup>88</sup> that measures should be put in place to ensure, to the extent possible, that this is the case.

#### **4) Registry recommendations**

*a. Recommendations on the appointment of legal representatives of victims at pre-trial stage*

##### *i. Former Child Soldiers group*

72. For the aforementioned reasons, notably the choice expressed so far by victims consulted by the Registry, the Registry would recommend to appoint Me Suprun of the OPCV to represent the Former Child Soldiers group.

---

<sup>88</sup> Paras. 81 and following.

*ii. Victims of the Other Crimes group*

*Option 1: keep the same system of common legal representation as in the Yekatom and Ngaïssona case, pursuant to rule 90(2) of the Rules*

73. In light of the parallelism of the *Mokom* and the *Yekatom and Ngaïssona* proceedings (also regarding new victim applicants in the *Mokom* proceedings that may also be eligible for participation in the *Yekatom and Ngaïssona* case, and notably represented by the LRVs appointed there), the Registry submits that a sensible option could be to assign the LRVs in the *Yekatom and Ngaïssona* proceedings representing the Victims of the Other Crimes also in the present case.
74. A benefit of this option would be that all victims already participating in the *Yekatom and Ngaïssona* proceedings would arguably continue communicating with their counsel also for the purpose of representation in the *Mokom* proceedings.<sup>89</sup>
75. The Registry notes that the group of counsel may potentially be joined by an additional –6<sup>th</sup> - counsel appointed by some victim applicants in the *Mokom* case more recently, should he be admitted to the List of Counsel and accepted by the Chamber in the present proceedings.
76. Mindful that the consultations revealed that an organization of legal representation which comprises several counsel acting at the same level may impede on the efficiency of the team, the Registry recommends that if option 1 is followed, some measures for enhanced efficiency should be implemented in relation to the internal organisation of the lawyers representing the Victims of the Other Crimes group:
- the Chamber may want to reiterate that all lawyers represent jointly all the victims in the group;<sup>90</sup> and

---

<sup>89</sup> In addition, new victims in the *Mokom* proceedings would, if they so wish and are admitted, be represented by the same counsel in the *Yekatom and Ngaïssona* case, creating a parallelism which is likely to generate synergies and a more effective representation of victims across these cases.

<sup>90</sup> See Pre-Trial Chamber II, *Yekatom and Ngaïssona* case, “Public redacted version of ‘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, para. 36.

- the Chamber may want to order – or request the counsel team to formally adopt - measures to enhance its internal coordination. This could include, but is not limited to, the following: (1) taking decisions on legal submissions at the majority;<sup>91</sup> (2) implementing a system of a more delineated task distribution within the team, such as:

(a) naming a permanent counsel at Headquarters who provides the procedural interface of victims in the courtroom; or, alternatively periodic rotation of counsel representing the LRV team in the courtroom; and/or

(b) determining who is (permanently or in rotation) in charge of the preparation and coordination for filings/submissions.

The Registry notes that during consultations, the LRV of the Victims of the Other Crimes in the *Yekatom and Ngaïssona* proceedings agreed that a majority principle regarding legal submissions and questions may be more adequate even if unanimity should be preferred; in addition, both the option of a permanent counsel at headquarters as well as the rotation of victim counsel in the courtroom were discussed.<sup>92</sup>

77. Should the Chamber agree to this option, the Registry is ready to consult said lawyers and report back in an expedited manner on: (1) the answers of the lawyers representing the Victims of the Other Crimes group regarding their willingness to jointly represent this group of victims in the Case; (2) the modalities of the internal organization of the team, if and as ordered by the Chamber; and (3) the status of Me Ouabizon-Tendouli as a potential further counsel in the Victims of Other Crimes group.

---

<sup>91</sup> The Registry notes that *operational* decisions involving the use of legal aid funds such as mission travel should still be taken at unanimity (excluding counsel from OPCV) due to the limited availability of legal aid funds.

<sup>92</sup> On account of being an office with multiple legal staff designated *inter alia* to the *Mokom* and *Yekatom and Ngaïssona* proceedings, OPCV has a surge capacity for the preparation of submissions and courtroom presence also in case of simultaneous hearings in the aforementioned two cases.



*Option 2: the Registry organizes a competitive process for those legal representatives identified in the present Report*

78. In the event that the Chamber prefers to adopt a modified version of the *Yekatom and Ngaiissona* victims' legal representation scheme - *ie* only one counsel (including support staff) per group - the Registry proposes to organize the common legal representation of victims under rule 90(3) of the Rules, in an expeditious manner, through a simplified selection process that would only include consideration of the legal representatives identified so far in the Case to represent victims in each group.<sup>93</sup>
79. The selection process would be conducted in a transparent and objective manner, with the candidates' experience and skills that are relevant for representing victims in the Case considered by panel members.
80. The Registry estimates that such process would last approximately one month, from the date of the issuance of the Chamber's order.

*b. Recommendations on the monitoring of the Common Legal Representation of Victims*

81. Through the consultations held in the context of the present report, it transpired *inter alia*, that victims expect counsel to regularly inform their clients of procedural developments and provide them with the explanations needed for them to participate in proceedings in an meaningful manner. In this respect, consultations with CSOs have revealed that some victims participating in the *Yekatom and Ngaiissona* case feel that they have not been sufficiently kept abreast of the proceedings by their lawyer.

---

<sup>93</sup> The Registry is mindful of the Chamber's view that "a sufficient number of counsel has already been identified in light of the Registry's previous reports [in the CAR II Situation] on these matters" and therefore that there is no necessity to launch a call for expression of interest (Order, para. 49).

82. The Registry is of the view that whichever model the Chamber may decide to adopt for the legal representation of victims in the instant Case, the system would benefit from a constant assessment of the actual victims' level of access, trust and confidence in their counsel.<sup>94</sup>

83. In order for the Registry to properly assess whether there is sufficient communication between counsel and their clients, the Registry proposes to put in place a monitoring scheme in the Case, already proposed to Trial Chamber VI in the context of the *Said* case,<sup>95</sup> which consists in the following:

- regular communications/meetings between the Registry and the common legal representatives and their respective support staff, both at Headquarters and in the field,<sup>96</sup> which will allow the Registry to inquire on the general situation of their clients, hear about any challenges they meet, and potentially identify areas where the Registry may be of assistance;
- the Chamber instructs the Registry, in consultation with the common legal representatives, to seek victims' views on their participation after the decision on the confirmation of charges in the Case is issued.<sup>97</sup> This consultation will inform the Registry about the victims' overall level of satisfaction with their legal representation and the effectiveness of their communication about the developments in the Case,<sup>98</sup> and enable the

---

<sup>94</sup> As Trial Chamber VI has held, "If there is no relationship of trust between the CLR and the participating victims or no effective communication between them, it is difficult to envisage how their views and concerns can be effectively represented in a meaningful manner". Trial Chamber VI, *Said case*, "Decision on matters relating to the participation of victims during the trial", 13 April 2022, ICC-01/14-01/21-278, para. 31.

<sup>95</sup> Registry, *Said case*, "Registry Report in Relation to the Legal Representation of Victims in Trial Proceedings", 21 July 2022, ICC-01/14-01/21-424", paras. 24-31. The Registry notes that the scheme proposed in this context was for monitoring legal representation during trial proceedings.

<sup>96</sup> Consultations in the field will be carried out through Registry Country Office staff.

<sup>97</sup> The Registry will decide in due time on the appropriate timing to carry out the consultations, taking into account the conditions in the field and the availability of resources. These consultations may include other relevant stakeholders.

<sup>98</sup> As part of a more general survey of victims' views on their participation in the ICC proceedings. In this context, and prior to any inquiry, the participating victims will be provided with information about the Registry services and the legal representation of victims at the ICC, and what they can expect from

Registry to propose any amendment to the scheme for the next phase of proceedings, if applicable;

- the Registry would use a reporting system previously implemented in other cases, through which it systematically (i) records any incident or concern in relation to the legal representation of victims that comes to its attention; (ii) performs an objective assessment of the incident or concern;<sup>99</sup> and (iii) channels it to the Chamber, as appropriate, after consulting with the legal representative(s).

84. Lastly, in order to implement the above mentioned monitoring scheme, the Registry would prepare and disseminate, in coordination with the common legal representatives, to all participating victims information notes on victim counsel's duties and what victims can expect from their legal representative as per the Court's framework, and on the above consultation scheme, including the details on how to reach the Registry.

---

both entities. Victims will also be explained that the Registry will not inquire on matters that are covered by the client-counsel relationship.

<sup>99</sup> Different factors are taken into account to assess incidents. This includes, for example, who is affected, the seriousness of the incident/event, its frequency, as well as other contextual factors. The Registry may seek additional information at this juncture of anybody involved including the legal representative(s) concerned, observing rules of confidentiality, safety and security.