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PRE-TRIAL CHAMBER II

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

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

**Public
With Public Annexes I and II and
Confidential *EX PARTE* Annex III, only available to the Registry**

**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)**

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

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I. Introduction

1. By its “Order seeking observations on matters related to the conduct of the confirmation proceedings” of 17 May 2022¹ in the case of *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka* case (“Mokom case” or “Case”), Pre-Trial Chamber II (“Chamber”) instructed the Registry (i) to submit observations, if any, on the Office of Public Counsel for Victims’ application for recognition of the status of victims in the Case;² and (ii) to file observations in relation to victims’ applications for participation in the Case by no later than 25 May 2022 (“Order”).³ The latter observations are to include (i) the admission process for applicants seeking to participate in the proceedings; (ii) application forms for participation; (iii) applicants’ proof of identity documents; and (iv) legal representation in the present proceedings.⁴
2. Pursuant to the Chamber’s Order, the Registry hereby submits its observations and respectfully recommends to:
 - i) allow victims admitted to participate during the pre-trial and/or trial phase of the case of *The Prosecutor v. Yekatom and Ngaïssona* (“Yekatom and Ngaïssona case”) to participate at the confirmation proceedings of the *Mokom* case, unless victims express a different wish (see paras 11-12);
 - ii) adopt the so-called ‘ABC’ admission process for the admission of victims’ applications (“ABC Approach”⁵)(see paras 13-16);

¹ Pre-Trial Chamber II, “Order seeking observations on matters related to the conduct of the confirmation Proceedings”, 17 May 2022, ICC-01/14-01/22-50.

² Office of Public Counsel for Victims, “Application for recognition of the status of victims in the case of The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka to victims participating in the case of The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona”, 7 April 2022, ICC-01/14-01/22-35.

³ Order, at para. 13.

⁴ *Ibid* and page 11 lit. (v) and (vi).

⁵ See Chambers Practice Manual, fifth edition of 25 March 2022, Section V. A., “Procedure for admission of victims to participate in the proceedings”, at para. 96(iv), at: <https://www.icc-cpi.int/sites/default/files/2022-05/20220323-chambers-practice-manual-fifth-edition-eng.pdf> (accessed on 24 May 2022).

- iii)* adopt the standard form used in the *Yekatom and Ngaïssona* proceedings (and other cases) for participation and/or reparations for individuals (Annex I) and for organisations (Annex II) (see paras 17-18);
- iv)* accept the same type of identity documents as those accepted in the *Yekatom and Ngaïssona* case (see paras 19-21); number of samples are provided in Annex III;
- v)* adopt the guidance already provided by the Judges in the *Yekatom and Ngaïssona* case relating to the parameters of the Registry's legal assessment of victims' applications (see para. 22); and
- vi)* approve the Registry's proposed course of action regarding the legal representation of victims in the present Case (see paras 23-35).

II. Procedural History

3. On 14 March 2022, Mr Maxime Jeoffroy Eli Mokom Gawaka ("Mr Mokom") was surrendered to the Court.⁶
4. On 22 March 2022, the Warrant of Arrest against Mr Mokom was made public.⁷ On the same date, Mr Mokom made his first appearance before the Chamber.⁸ At that occasion, the Chamber scheduled the opening of the confirmation of charges hearing provisionally for 31 January 2023.⁹
5. On 4 April 2022, Mr Townsend was appointed as duty counsel for Mr Mokom.¹⁰

⁶ See ICC Website, Press Release : 14 March 2022, see at: <https://www.icc-cpi.int/news/situation-central-african-republic-ii-maxime-jeoffroy-eli-mokom-gawaka-surrendered-icc-crimes> (accessed on 24 May 2022)

⁷ 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 ("Warrant of Arrest of Mr Mokom").

⁸ See Pre-Trial Chamber II, "Order convening a hearing for the first appearance of Mr Mokom", 16 March 2022, ICC-01/14-01/22-21.

⁹ ICC-01/14-01/22-T-001-Red-ENG WT 22-03-2022, p.11, lines 20-22.

¹⁰ Order, para. 4 and footnotes 10 and 11.

6. On 7 April 2022, the OPCV submitted an application for recognition of the status of victims in the Case for victims participating in the *Yekatom and Ngaïssona* case (“OPCV Application”).¹¹
7. On 17 May 2022, the Chamber issued its Order.¹²

III. Classification

8. Pursuant to regulation 23*bis*(1) of the Regulations of the Court (“RoC”), Annex III is classified confidential *ex parte* only available to the Registry as it contains information which may lead to the identification of victims before the Court and their whereabouts.

IV. Applicable Law

9. The Registry submits the present observations in accordance with the Order, article 68(1) and (3) of the Rome Statute (“Statute”), rules 16(1), 85, 89, 90 of the Rules of Procedure and Evidence (“Rules”), regulation 86 of the RoC, and regulations 106 to 109 of the Regulations of the Registry (“RoR”).

V. Submissions

10. In the present submissions the Registry sets out its observations: (A) on the OPCV Application; (B) on aspects related to the participation of victims for the purpose of the confirmation proceedings; and (C) on the legal representation of victims in the present proceedings.

A. Registry observations on the OPCV Application

11. The Registry concurs with the analysis provided in the OPCV Application with regard to the ‘*similarity of crimes and events in both cases*’, namely the *Yekatom and*

¹¹ See *supra*, footnote 2.

¹² See *supra*, para. 1 and footnote 1.

Ngaïssona and *Mokom* cases,¹³ including the overlap on the temporal, geographical and material parameters.¹⁴ The Registry therefore 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. If the Chamber were to be minded to accept the *Yekatom* and *Ngaïssona* Chambers' decisions on victim applications as well as the relevant standards applied, also any new application forms submitted in the *Yekatom* and *Ngaïssona* proceedings until the end of the Prosecution case could be admitted for participation in the *Mokom* case.¹⁵

12. The Registry concurs with the OPCV's suggestion that there be an automatic acceptance of application forms in any proceedings that address the harm expressed in a victim's application form. In the present situation, the Registry

¹³ OPCV Application, paras 14-19, 23. The Registry agrees with the OPCV on the similarities and almost complete overlap of crimes and events between the warrants of arrests for Mr Yekatom and Mr Ngaïssona (see the "Public Redacted Version of 'Warrant of Arrest for Alfred Yekatom', ICC-01/14-01/18-1-USExp, 11 November 2018", 17 November 2018, ICC-01/14-01/18-1-Red, and the "Public Redacted Version of 'Warrant of Arrest for Patrice-Edouard Ngaïssona'", 13 December 2018, ICC-01/14-01/18-89-Red), the Decision on the confirmation of charges in the *Yekatom* and *Ngaïssona* case (see "Corrected version of 'Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona'", 14 May 2020, original version dated on 11 December 2019, ICC-01/14-01/18-403-Red-Corr), and the Warrant of Arrest of Mr Mokom (see *supra* footnote 7).

¹⁴ The Registry notes that a similar analysis was submitted by the Prosecutor requesting to grant Mr Mokom access to the record of the *Yekatom* and *Ngaïssona* case in order to facilitate and expedite the pre-trial preparation of the *Mokom* case, see Prosecution, "Prosecution's Request to grant Maxime Jeoffroy Eli Mokom Gawaka access to the record of the Yekatom and Ngaïssona case", 8 April 2022, ICC-01/14-01/18-1353, paras 2-3. See also "Prosecution's Request for an E-Court Protocol, a Redaction Protocol, and a Protocol on the Handling of Confidential Information and Contacts with Witnesses", 21 March 2022, ICC-01/14-01/22-24, para. 5.

¹⁵ OPCV Application, paras 16, 18-19, 23 and 25. It may include the applications of victims eligible to participate at pre-trial stage of *Yekatom* and *Ngaïssona* case (1085), as well as additional victims who did not participate during the pre-trial phase but were admitted to participate at the trial stage (the total of victims admitted at the trial stage to date is at 1367); it would also include victims admitted at pre-trial but who subsequently no longer fell within the parameters of the case at trial stage following the non-confirmation of some of the charges (769), and future applicants who may be admitted until the end of the Prosecution case in the *Yekatom* and *Ngaïssona* case. For details on submitted applications in the case see Registry, "Public redacted version of 'Fourth Periodic Report on the Victims Admitted to Participate in the Proceedings'", 11 April 2022, ICC-01/14-01/18-1356-Conf-Exp', 11 April 2022, para. 14; and "Eighteenth Registry Transmission of Group A Applications for Victim Participation in Trial Proceedings", 23 May 2022, ICC-01/14-01/18-1424, para. 9.

supports the OPCV's suggestion that victims are consulted regarding their participation in the *Mokom* case and their explicit notification be sought if they do not wish to participate in the latter proceedings. The Registry stands ready to assist in the victim consultation process to this effect in the *Yekatom and Ngaïssona* proceedings.

B. Registry observations on aspects related to the participation of victims in the proceedings

i) Admission process

13. To prepare and organize the victim application process in light of the contextual realities of the Case, the Registry recommends to follow the victim admission standard practice adopted by different Chambers in most recent cases (hereinafter "ABC Approach"), approved by the Appeals Chamber¹⁶ and outlined in the most recent version of the Chambers Practice Manual as the process "generally [...] applicable at all stages of proceedings".¹⁷ Since its initial application at trial in the case of *The Prosecutor v. Bosco Ntaganda* ("Ntaganda case"),¹⁸ the ABC Approach has been adopted at pre-trial and trial in the cases of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* ("Al Hassan case"),¹⁹ the *Yekatom and Ngaïssona* case,²⁰ the case of *The Prosecutor v. Ali*

¹⁶ Appeals Chamber, "Judgment on the appeal of Mr Mahamat Said Abdel Kani against the decision of Pre-Trial Chamber II of 16 April 2021 entitled 'Decision establishing the principles applicable to victims' applications for participation'", 14 September 2021, ICC-01/14-01/21-171 ("Appeals Judgment"), para. 82 (the ABC admission process is "in principle an adequate tool to ensure the fairness and expeditiousness of the proceedings while at the same time respecting the rights of both the suspect/accused and the victims").

¹⁷ Version of 25 March 2022, Section V. A., p. 25, at para. 96 *et seq.* (see *supra*, footnote 5).

¹⁸ *Ntaganda* case, Trial Chamber VI, "Decision on victims' participation in trial proceedings", 6 February 2015, ICC-01/04-02/06-449.

¹⁹ *Al Hassan* case, Pre-Trial Chamber I, "Decision Establishing the Principles Applicable to Victims' Applications for Participation", 24 May 2018, ICC-01/12-01/18-37; Trial Chamber X, "Decision on the procedure for the admission of victims to participate in proceedings for the purposes of trial", 12 March 2020, ICC-01/12-01/18-661.

²⁰ *Yekatom and Ngaïssona* case, Pre-Trial Chamber II, "Decision Establishing the Principles Applicable to Victims' Applications for Participation", 5 March 2019, ICC-01/14-01/18-141 ("*Yekatom and Ngaïssona's* Pre-Trial Victims Participation Principles"); Trial Chamber V, "Order Scheduling First Status Conference", 19 March 2020, ICC-01/14-01/18-459, para. 8 (iv) and fn. 5.

Muhammad Ali Abd-Al-Rahman ("Abd-Al-Rahman case"),²¹ and most recently in the case of *The Prosecutor v. Mahamat Said Abdel Kani* ("Said case").²²

14. In addition, as already submitted by the OPCV, the Independent Expert Report on the Review of the International Criminal Court and the Rome Statute System held that the ABC admission process is a system in which "[t]he task for the Judiciary is greatly simplified and expedited".²³

15. Mindful of the Appeals Chamber's consideration calling for a case-by-case assessment of appropriateness,²⁴ the Registry notes the various factors that render the ABC Approach most sensible and effective in the present proceedings:

- The similarity of the *Mokom* and *Yekatom and Ngaïssona* cases, and therefore the fact that most (if not all) victims applying in one case would also be subject to admission in the other, would render the adoption of a similar victim admission approach the most efficient way forward;
- The large scope of the present case and the expected high number of victim applications still to be received:²⁵ in addition to the thousands of victim applications already received in relation to the *Yekatom and Ngaïssona* case,²⁶ the Registry estimates that, should security and operational constraints allow, several hundreds of potential new applicants may be

²¹ *Abd-Al-Rahman* case, Pre-Trial Chamber II, "Decision establishing the principles applicable to victims' participation and representation during the Confirmation Hearing, 18 January 2021, ICC-02/05-01/20-259, para. 34.

²² *Said* case, Pre-Trial Chamber II, "Decision Establishing the Principles Applicable to Victims' Applications for Participation" ("*Said's* Pre-Trial Victims Participation Principles"), 16 April 2021, ICC-01/14-01/21-56, paras 35-36.

²³ See Final Report of the Independent Expert Review of the International Criminal Court and the Rome Statute System, "Final Report", 30 September 2020, para. 847.

²⁴ See in *Said* case, the Appeals Judgement considering that '*any decision on the most appropriate system for the processing of victims' applications must always be case-specific, based on objective information and the result of a proper balancing of all of the interests at stake. Importantly, any such decision cannot be prejudicial to the accused, or inconsistent with his or her rights*', Appeals Judgement, paras 65, 67.

²⁵ See in particular the Appeal's Chamber guidance on this matter (*Said* case, Appeals Judgement, paras 60, 82). See also Chambers Practice Manual, Section V. A., at para. 96 (iv), see *supra*, footnote 5.

²⁶ It is here submitted that participating victims in the *Yekatom and Ngaïssona* case are qualified to participate also in the *Mokom* case, see *supra*, para. 11.

identified before the confirmation hearing scheduled provisionally for 31 January 2023.²⁷

16. For the details of the victim admission process following the ABC Approach, the Registry refers to the features as described in the Chambers Practice Manual.²⁸ The benefit of the ABC Approach, as it can be observed in practice in the aforementioned proceedings,²⁹ is that the parties as well as the Chamber can concentrate on pre-assessed unclear or borderline issues arising from victim applications in a bundled fashion. In addition, the VPRS's processing and redaction obligations would extend to only a fraction of the relevant forms (i.e. only Group C applications submitted to the parties and legal representative(s)), leading to considerable time and resource savings. This, in turn, would enable the VPRS to process the highest number of victim applications with a view to their timely participation in the proceedings leading up to the confirmation of charges hearing in the present proceedings. It is submitted that this approach would ensure meaningful victim participation in the present case as well as the protection of victims' well-being and dignity without delaying the process.³⁰

ii) Application forms

17. The Registry respectfully requests the Chamber to approve the set of application forms for participation (for individuals and organizations, pursuant to rule 85 of the Rules) adopted as standard application forms in the context of the *Yekatom and Ngaïssona* case ("Proposed Application Forms").³¹
18. In the Registry's view, the Proposed Application Forms are appropriate in light of the contextual realities in the Central African Republic ("CAR"), based on its

²⁷ The Registry has already received 127 new applications for participation in the Case.

²⁸ Chambers Practice Manual, Section V. A., in particular at para. 96, (iv) to (xi).

²⁹ See *supra*, para. 13.

³⁰ *Said* case, Appeals Judgement, paras 60 to 62.

³¹ See Annexes I and II. Also available under 'Victim application process in the *Yekatom and Ngaïssona* case', at: <https://www.icc-cpi.int/about/victims> (accessed on 24 May 2022). Identical forms are in use also in the other case in the CAR II Situation presently before the Chambers, i.e. the *Said* case.

experiences in the *Yekatom and Ngaïssona* and *Said* cases. The use of the Proposed Application Forms also in other cases has shown positive results in terms of quantity and quality of the information gathered, facilitating the swift implementation of the application process while taking in victims' individual submission most comprehensively.³²

iii) Identity documents

19. The Registry recommends that the Chamber endorses the approach adopted in the *Yekatom and Ngaïssona* case and more recently in the *Said* case with respect to the documentary requirements for participation,³³ since the circumstances prevailing in CAR are still the same as those described in relation to both aforementioned cases in the reports on proof of identity documents submitted there ("*Yekatom and Ngaïssona* Report" and "*Said* Report");³⁴ this includes notably an enduring conflict situation,³⁵ a complex legal and institutional

³² The Registry has implemented the victim application process in CAR for four years in the context of the *Yekatom and Ngaïssona* case with forms identical to the Proposed Application Forms. It assisted victims directly in filling out relevant forms, provided training to intermediaries and informed civil society actors and victim communities of relevant processes.

³³ See *supra* footnote 20, *Yekatom and Ngaïssona's* Pre-Trial Victims Participation Principles, paras 24-25; See also *supra* footnote 22, *Said's* Pre-Trial Victims Participation Principles, para. 28.

³⁴ *Yekatom and Ngaïssona* case, Registry, "Annex I to Registry Report on Proof of Identity Documents Available in the Central African Republic and Transmission of Proposed Application Form for Victims Under Rule 85(b) of the Rules of Procedure and Evidence", 28 February 2019, ICC-01/14-01/18-133-AnxI ("*Yekatom and Ngaïssona* Report"); and *Said* case, Registry, "Registry Submissions on Aspects Related to the Participation of Victims in the Proceedings", 26 February 2021, ICC-01/14-01/21-25, para. 16 ("*Said* Report").

³⁵ The security situation in the country has deteriorated and remains volatile with frequent reports of ceasefire violations and human rights abuses (see the latest Report of the Secretary General, Central African Republic, 16 February 2022, S/2022/119, at: https://digitallibrary.un.org/record/3959020/files/S_2022_119-EN.pdf (accessed on 24 May 2022)). The ongoing violence has severely affected the humanitarian situation in the country. In OCHA Situation Report of 4 January 2022, OCHA reported that the CAR's humanitarian emergency "has reached levels not seen since 2015 due to the new conflict dynamics observed since December 2020". "Recurring violence, persistent shocks and the degradation of basic services", OCHA noted, "have significantly worsened the living conditions of Central Africans in 2021". By OCHA's estimate, 3.1 million Central Africans—63 percent of the country's population—will need humanitarian assistance in 2022 (see at: <https://reliefweb.int/report/central-african-republic/central-african-republic-situation-report-4-january-2022> (accessed on 24 May 2022)).

framework regarding civil status,³⁶ dysfunctions in the administration,³⁷ continuing extensive movements of population,³⁸ an economic crisis and high costs for the requester for the issuance of identification documents.³⁹

20. In light of the challenges currently faced by potential applicants for participation and/or reparations in this Case to prove their identity, the Registry respectfully requests the Chamber to accept as documents establishing the identity of applicants and those presenting an application on their behalf:⁴⁰
- (i) all types of identity documents accepted by Pre-Trial Chamber III⁴¹ and by Trial Chamber III⁴² in the case of the *Prosecutor v. Jean-Pierre Bemba Gombo* (the

³⁶ *Yekatom and Ngaïssona* Report, para. 15.

³⁷ *Ibid*, paras 15-18. See also *Said* Report, para. 16, footnote 26.

³⁸ Violence continued to trigger displacement; a quarter of the population was affected (692,000 people were displaced internally and more than 736,000 had sought refuge in neighbouring countries) as at 1 February 2022 (See the latest Report of the Secretary General, Central African Republic, 16 February 2022, S/2022/119, para. 37, at: https://digitallibrary.un.org/record/3959020/files/S_2022_119-EN.pdf (accessed on 24 May 2022)).

³⁹ *Yekatom and Ngaïssona* Report, paras 19-20, see also *Said* Report, para. 16, footnote 27. The Registry notes that the CAR is facing acute food insecurity with high food prices and current fuel shortages impacting transportation and essential products costs, see at : [IPC CAR Acute Food Insec Update 2022AprAug Snapshot English.pdf \(ipcinfo.org\)](https://www.ipcinfo.org/ipcinfo/IPC_CAR_Acute_Food_Insec_Update_2022AprAug_Snapshot_English.pdf) (accessed on 24 May 2022).

⁴⁰ See *Yekatom and Ngaïssona* Report, paras 6-8 and *Said* Report, para. 17.

⁴¹ It includes: (i) "certificat de nationalité", (ii) "permis de conduire", (iii) "passeport", (iv) "livret de famille", (v) "extrait d'acte de mariage", (vi) "acte de mariage", (vii) "extrait d'acte de décès", (viii) "acte de décès", (ix) "jugement supplétif", (x) "extrait d'acte de naissance", (xi) "acte de naissance", (xii) "nouvelle carte d'identité", (xiii) "ancienne carte d'identité qui n'est plus en vigueur", (xiv) "carte professionnelle", (xv) "carte d'association", (xvi) "récépissé de dépôt de demande de carte nationale d'identité", (xvii) "carte de commission d'emploi", (xviii) "carte de député", (xix) "déclaration de naissance", (xx) "carte d'identité pastorale", (xxi) "testament", and (xxii) "livret de pension" ; See *Bemba* case, Pre-Trial Chamber III, "Fourth Decision on Victims' Participation", dated 12 December 2008 and registered on 15 December 2008, ICC-01/05-01/08-320, para. 36.

⁴² It includes: (i) electoral cards, (ii) baptism cards, (iii) certificates of school attendance and student cards, (iv) civil status certificates signed by the "Chef de quartier", (v) residence permits, (vi) refugee cards, (vii) police statements for loss of identity documents, (viii) "cartes de demandeur d'emploi", (ix) "actes de notoriété", (x) "avis de mariage", (xi) "cartes d'identité scolaire", (xii) cards indicating marital status ("fiches individuelles d'état civil"), (xiii) police records ("casiers judiciaires") (xiv) duplicates of birth certificates ("duplicata d'acte de naissance"), (xv) "déclarations de reconnaissance" signed and stamped by the "Chef de quartier", (xvi) "cartes de religion" and (xvii) membership cards ("cartes d'adhésion") ; See *Bemba* case: Trial Chamber III, "Decision on 772 applications by victims to participate in the proceedings", 18 November 2010, ICC-01/05-01/08-1017, para. 42; "Corrigendum to the Decision on 401 applications by victims to participate in the proceedings and setting a final deadline for the

“*Bemba* case”); (ii) further forms of identification accepted by Pre-Trial Chamber II in the *Yekatom* and *Ngaïssona* case;⁴³ and (iii) a statement signed by two witnesses and accompanied by their proof of identity attesting to the identity of the victim applicant/person acting on his/her behalf where it is not possible for the latter to acquire/produce a document of the kind set out above.⁴⁴

21. Lastly, the Chamber may consider for acceptance any other documents appended by future applicants which contain similar features as those already authorised in the *Yekatom* and *Ngaïssona* case, following relevant assessments and recommendations provided by the Registry to that effect.⁴⁵

vii) Guidance related to the legal assessment of victim applications in the *Yekatom* and *Ngaïssona* case

22. The Pre-Trial Chamber in the *Yekatom* and *Ngaïssona* case has provided guidance related to the scope of the case for the purpose of the Registry’s legal assessment of victim applications in that case.⁴⁶ The Registry submits that said

submission of new victims’ applications to the Registry”, 21 July 2011, ICC-01/05-01/08-1590-Corr, para. 35; “Decision on 270 applications by victims to participate in the proceedings”, 25 October 2011, ICC-01/05-01/08-1862, para. 25; “Decision on 418 applications by victims to participate in the proceedings”, 15 December 2011, ICC-01/05-01/08-2011, para. 17.

⁴³ It includes i) “Formulaire d’enregistrement des électeurs” (also called “Récépissé”), and ii) “Registration card” and “Entitlement card”; See *Said* Report, para. 17 referring to para. 25 of *Yekatom* and *Ngaïssona*’s Pre-Trial Victims Participation Principles” and *Said*’s Pre-Trial Victims Participation Principles, para. 28.

⁴⁴ This is consistent with the decisions issued in other cases before the Court. See for instance *Bemba* case, Pre-Trial Chamber III, “Fourth Decision on Victims’ Participation”, dated 12 December 2008 and registered on 15 December 2008, ICC-01/05-01/08-320, para. 37; See *supra* footnote 18, *Yekatom* and *Ngaïssona*’s Pre-Trial Victims Participation Principles, para. 25; *Abd-Al-Rahman* case, Pre-Trial Chamber II, “Decision establishing the principles applicable to victims’ and representation during the Confirmation Hearing”, 18 January 2021, ICC-02/05-01/20-259, para. 19; see also *supra* footnote 22, *Said*’s Pre-Trial Victims Participation Principles, para. 28 (at trial stage, see ICC-01/14-01/21-278, para. 19).

⁴⁵ This would be in line with the approach adopted by Pre-Trial Chamber II in the *Yekatom* and *Ngaïssona* case. See *supra* footnote 20, *Yekatom* and *Ngaïssona*’s Pre-Trial Victims Participation Principles, para. 25 and *supra* footnote 22, *Said*’s Pre-Trial Victims Participation Principles, para. 28.

⁴⁶ See Pre Trial Chamber II, “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, and “Decision regarding the Registry’s Outstanding Transmissions of Applications for

guidance remains valid for the present Case and invites the Chamber to endorse it for the purpose of the confirmation of charges proceedings in the present Case, as it would prevent the Registry from potentially putting identical queries to the Chamber on the scope of the case based on the same alleged facts as what has been decided upon in the *Yekatom and Ngaïssona* proceedings.⁴⁷

C. Registry observations on aspects related to legal representation

i) Preliminary observations on the victims' legal representation

23. The Registry has relatively recently submitted reports in both the *Yekatom and Ngaïssona* and the *Said* cases on victims' legal representation in the CAR II Situation.⁴⁸ In particular, information collected in the *Yekatom and Ngaïssona* proceedings on the representation of victims remains relevant for the instant case. In this regard, the Registry anticipates that:

- victims in CAR continue to face many hurdles to gain access to lawyers; most of them, except those already participating in the *Yekatom and Ngaïssona* case, have no legal representation;⁴⁹
- the security in CAR remains volatile and, while measures in place in the context of the COVID-19 pandemic have been eased for the time being,

Victim Participation", 13 September 2019, ICC-01/14-01/18-338, paras 24-35. The Registry also sought, by way of email, the Chamber's guidance on a number of issues encountered during its assessment of victim applications, see Chamber's guidance received by e-mail Communication from Pre-Trial Chamber II to the VPRS on 11 July 2019 at 11:24, 2 August 2019 at 15:20 and 29 August 2019 at 11:17.

⁴⁷ Such endorsement would be without prejudice to the Chamber's subsequent review at the issuance of the decision on confirmation of charges.

⁴⁸ *Yekatom and Ngaïssona* case, Registry, "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 ("*Yekatom and Ngaïssona* LRV Report"); *Said* case, Registry, "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 ("*Said* LRV Report").

⁴⁹ *Yekatom and Ngaïssona* LRV Report, paras.25 to 27; *Said* LRV Report, paras 16 to 19.

organising physical meetings with victims in a secure and safe manner remains challenging;⁵⁰

- the availability and accessibility of lawyers will remain a key challenge in the legal representation of participating victims in proceedings;⁵¹
- in line with the *Yekatom and Ngaïssona* case, and in view of the charges brought against Mr Mokom including the recruitment and use of child soldiers in hostilities, two groups of victims with separate legal representation would be warranted to avoid any potential conflict of interest, i.e. ideally there would be a “Child Soldiers” group and a “Victims of Other Crimes” group;⁵²
- victims do not have the means to finance their legal representation.⁵³

24. The Registry further notes the following in regard to the current state of legal representation of applicants in the Case:

- in the OPCV Application, Counsel requested the Chamber to recognise the status of victims in the present case to victims already authorised to participate in the *Yekatom and Ngaïssona* case at the pre-trial and/or trial phase;⁵⁴ this could include their status of representation by relevant counsel, at least at the current phase of the proceedings;⁵⁵ the OPCV also suggested as an alternative to an automatic recognition of victims across cases to “be appointed to represent the distinct collective interests of the two categories of Victims (former child soldiers and victims of the other

⁵⁰ *Said* LRV Report, para. 21. With regard to security situation, see also *supra*, footnote 35.

⁵¹ *Yekatom and Ngaïssona* LRV Report, para. 107. *Said* LRV Report, paras 21 and 37.

⁵² *Yekatom and Ngaïssona* LRV Report, paras. 97, 98 and 107. See *supra* Warrant of Arrest of Mr Mokom, footnote 7.

⁵³ *Yekatom and Ngaïssona* LRV Report para. 83. *Said* LRV Report, paras 44-45.

⁵⁴ OPCV Application, paras 1, 23, 38.

⁵⁵ OPCV reports that a number of the Office’s clients have expressed interest in also participating in the *Mokom* case, OPCV Application para. 29.

crimes) in the present Case, with a view to protect[ing] their interests and to provide them with legal assistance and support”;⁵⁶

- out of the 127 applications for participation received in the present Case to date, a number of applicants indicated in their application form that they wish for Yaré Fall and Elizabeth Rabessandratana, both counsel representing victims in the *Yekatom and Ngaïssona* case,⁵⁷ to represent them in the proceedings;⁵⁸
- Me Abdou Dangabo Moussa, who represents victims in the *Yekatom and Ngaïssona* case,⁵⁹ has contacted the Registry, expressing his interest in seeing his clients registered in the present Case.⁶⁰

25. Due to the overlap of charges – and therefore the participating victim population – between the *Mokom* and the *Yekatom and Ngaïssona* cases, the Registry expects that many victims participating in the *Yekatom and Ngaïssona* case may wish to be represented in the *Mokom* proceedings by the same counsel they have in the *Yekatom and Ngaïssona* case, on account of having developed a relationship of trust with their lawyer.⁶¹ Consequently, the Registry considers the OPCV Application to be meritorious in contemplating victims participating in both cases through the same counsel, provided victims do not hold any adverse views. Furthermore, victims who do not participate in the *Yekatom and*

⁵⁶ OPCV Application, para. 35.

⁵⁷ Counsel form a joint team of the victims of the attacks alongside Counsel from OPCV and other external counsel.

⁵⁸ On 16 May 2022, the Registry received 127 applications for participation in the *Mokom* proceedings from Mess. Yaré Fall and Elizabeth Rabessandratana. The Registry is currently registering the applications, also to gauge whether relevant individuals have submitted previously an application form in other proceedings related to the CAR II Situation.

⁵⁹ Counsel form a joint team of the victims of the attacks alongside Counsel from OPCV and other external counsel.

⁶⁰ E-mail communication from Me Dangabo Moussa to VPRS on 30 March 2022 at 21:18.

⁶¹ In this regard, the Registry notes that the benefits of continuity of legal representation have been recognized by this Court. See for example, Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, “Second decision on victims’ participation in trial proceedings”, 16 June 2015, ICC-01/04-02/06-650, para. 28.

Ngaïssona case⁶² may have less knowledge about legal representation, and/or hold different views or formulate different desires or expectations regarding their representation.

26. A victim consultation process at the present juncture, including also potential new victim participants,⁶³ may therefore yield a number of different elements which the Chamber may find helpful in its consideration of common legal representation pursuant to rules 90(2) and (3) of the Rules.

ii) Proposed way forward

27. In order to give full effect to the general premise of rule 90 of the Rules, the Registry, unless otherwise instructed,⁶⁴ will continue to collect information on legal representation and inform victims on the matter.⁶⁵ This includes:

- providing 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 the OPCV may play in this context;
- consulting victims on previous experiences they may have had regarding legal representation in judicial proceedings, including in the *Yekatom and Ngaïssona* proceedings;
- collecting the victims' general views and preferences as regards their legal representation – such as the characteristics and qualities that they would

⁶² Victims may not have had the chance to apply for participation in the *Yekatom and Ngaïssona* case, or they are victims of crimes which have not been confirmed at trial stage in the *Yekatom and Ngaïssona* case.

⁶³ Victims who do not participate in the *Yekatom and Ngaïssona* case.

⁶⁴ The Registry proposes to do so independent from the Chamber's ruling on the OPCV Application unless decided otherwise by the Chamber.

⁶⁵ The Registry suggests that even if the Chamber were minded to appoint OPCV to represent the distinct collective interests of the two categories of victims (former child soldiers and victims of other crimes) in the present case, a full overview will still prove instrumental for the Chamber's final ruling on legal representation of participating victims at the confirmation of charges.

consider important in a (common) legal representative who would represent them in proceedings before the Court;

- assessing whether distinct interests or conflict of interests other than the above-mentioned⁶⁶ exist, and how they may have an impact on the organisation of the legal representation of victims;
- identifying potential common legal representatives in the event that victims cannot agree on a common choice.

28. The views of victims on their legal representation will be sought in two ways.

Firstly, all applicants who fill-in the application form are invited to indicate their preferences as regards legal representation, as well as provide information on their capacity to finance their legal representation.⁶⁷ It will notably be explained to applicants filling-in the form that the criteria and preferences they indicate in their application form will assist the Registry to identify legal representative(s) to represent all victims authorized to participate in the Case, and that they may not be represented by the individual of their choice. Secondly, particularly for victims already participating in the *Yekatom and Ngaïssona* proceedings, the Registry will seek to collect their views and preferences through direct consultation with a representative sample of victims.⁶⁸ Said consultation would be carried out in consultation and cooperation with the LRV in the *Yekatom and Ngaïssona* proceedings.

29. In parallel to these consultations, the Registry recommends that it issues a call for potential victim counsel's expression of interest ("EOI") to identify all potential options of victim counsel in the *Mokom* proceedings, but also more broadly regarding potential future cases in the Situation. Such an EOI would

⁶⁶ See *supra*, para. 23.

⁶⁷ See the Standard Application Form, at Section 15, on p. 3, at: https://www.icc-cpi.int/sites/default/files/itemsDocuments/appForms-yn/ynAppFormInd_ENG.pdf (accessed on 24 May 2022).

⁶⁸ The VPRS aims to identify and meet, in consultation with the LRV in the *Yekatom and Ngaïssona* proceedings, a sample of victims, as far as possible representing the main characteristics of the victim population as a whole and the harm suffered.

allow the Registry to screen the landscape of potential victim counsel as early as possible, with a view to providing the Chamber with a comprehensive list of options for the common legal representation of victims at the earliest, should the Chamber consider this useful.⁶⁹

30. Said process would entail the following steps:

- the EOI⁷⁰ would be published on the ICC website, and would set out the procedure and criteria⁷¹ to be used in the identification of a Common Legal Representative (“CLR”) as well as information relating to the role of CLR and remuneration. Interested counsel would be asked to provide their CV as well as a written statement setting out their motivations and explaining how their involvement would meet the identified criteria; counsel would have a period of four weeks to apply;
- written questions would be sent to pre-selected candidates, in order to give the panel members an opportunity to evaluate the candidates’ experience and skills that are relevant for representing victims in the Case, taking into consideration the particularities of the Case;

⁶⁹ The OPCV would be considered as part of the different representation options, following the OPCV Application signalling the preparedness, also regarding available resources, to fulfil their mandate at this stage of the proceedings; *see* OPCV Application, para. 37.

⁷⁰ See for example the EOI launched by the Registry in relation to the case of *The Prosecutor v. Laurent Gbagbo*, “Annex 2 to Proposal for the common legal representation of victims”, 16 May 2012, ICC-02/11-01/11-120-Anx2.

⁷¹ Beyond the minimum set requirements for counsel set out in rule 22 of the Rules and regulation 67 of the RoC, the Registry considers the additional following criteria identified and proposed by the Registry in other cases in the context of common legal representation selection processes: (1) Pre-established relationship of trust with victims eligible to participate in the case, or factors demonstrating a capacity for such a relationship; (2) Demonstrated commitment and ability to work with vulnerable persons; (3) Familiarity/connection with the situation country; (4) Relevant litigation expertise/experience (this can include: experience representing groups of victims, experience in international criminal litigation, etc.); (5) Sufficient availability; and (6) Information technology skills. The EOI would also include any additional requirement included in the Chamber’s decision and/or drawn from the Registry’s above-mentioned consultations. In particular, as a result of consultations carried out in 2021 in the context of the *Said* case, it is proposed to also give due consideration to “the availability and accessibility of the lawyer and how he/she will ensure that victims are meaningfully kept informed and consulted, under the current constraints”. See *Said* LRV Report, para. 83.

- the panel members would agree on a shortlist of candidates who would have scored the highest to convene to an interview, during which the panel members would evaluate the motivations and capacities of the candidate to represent victims in the Case;
- based on the results of the process, the Registry would be in a position to identify suitable counsel to represent victims and, if so ordered, submit its final recommendations to the Chamber.

31. As the Registry estimates that the overall process would take around three months, launching the EOI at the earliest juncture, following the authorization of the Chamber, would put the Registry in an optimal position to constitute a pool of qualified and available counsel for the organization of the common legal representation of victims in a timely manner and sufficiently ahead of the confirmation of charges hearing.

32. Lastly, the Registry notes the importance for victim applicants – including notably also individuals not already participating in the *Yekatom and Ngaïssona* case – to benefit from immediate legal representation. In this regard, the Registry supports the idea of OPCV representing the collective interests of unrepresented applicants in the current phase.

33. As for victims from the *Yekatom and Ngaïssona* proceedings, the Chamber may want to make a final determination on their legal representation following receipt of the Registry report referenced *infra* at paragraph 36. For the intervening period, the Registry considers sensible the suggestion in the OPCV Application to represent the two victim groups' collective interests.⁷²

iii) Monitoring of victims' legal representation

34. 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

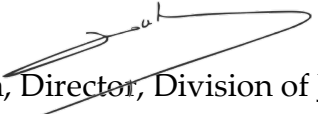
⁷² OPCV Application, para. 35.

would benefit from a constant review throughout the proceedings with a view to victims' access, trust and confidence in their counsel. A potential monitoring role of the Registry in this regard was specifically addressed by Trial Chamber VI in its recent decision on victim participation in the *Said* case.⁷³

35. Consequently, if the Chamber considers it appropriate, the Registry proposes to further develop a potential monitoring regime of victims' legal representation in the *Mokom* case for the Chamber's approval; such a framework would be destined to assist legal representatives in providing the best services to their clients. The Registry proposes to submit said elements as part of its report referenced in para. 36 below.

Conclusion

36. Based on the above, the Registry respectfully: (i) proposes that, unless instructed otherwise, it will commence imminently relevant consultations with victims and other relevant interlocutors on victims' legal representation; and (ii) recommends that it be authorized to launch an EOI to identify a pool of qualified and available lawyers to represent victims in the Situation, and the *Mokom* case more specifically. The Registry proposes to submit a report with its conclusions and recommendations to the Chamber within three months following the Chamber's authorisation to issue the EOI.⁷⁴


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

Dated this 25 May 2022
At The Hague, The Netherlands

⁷³ Trial Chamber VI, "Decision on matters relating to the participation of victims during the trial", 13 April 2022, ICC-01/14-01/21-278, paras 30-31.

⁷⁴ The target date presupposes a sufficiently permissible situation in the field to reach out to relevant interlocutors; incidentally, the Registry notes the current fuel shortage in the region, threatening to paralyse imminent missions until the issue is solved, see *supra* footnote 39.