

Public redacted version of Annex II

Registry Report on Legal Representation

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Introduction

1. On 26 February 2021, the Registry recommended to Pre-Trial Chamber II (“Chamber”) that it be authorised by the Chamber to engage in consultations with key actors regarding victims’ legal representation in the case of *The Prosecutor v. Mahamat Said Abdel Kani* (“Case”) in order to: i) provide information concerning the legal representation of victims before the Court; and ii) collect information on victims’ experiences, preferences and organisation in this matter.¹ It further sought authorisation to appraise the Chamber of its findings, including relevant observations and recommendations on the way forward – indicating that it could do so by end of May 2021.²
2. On 16 April 2021, the Single Judge of the Chamber (“Single Judge”) issued the Decision Establishing the Principles Applicable to Victims’ Applications for Participation (“Decision”),³ ordering the Registry to report by 21 May 2021 on the legal representation of victims in the Case.
3. The present report on legal representation of victims in the Case (“Report”) is organised as follows:
 - A. Methodology used to collect information;
 - B. Information received through the various consultations; and
 - C. The Registry’s observations and recommendations.

¹ Registry, “Registry Submissions on Aspects Related to the Participation of Victims in the Proceedings”, 26 February 2021, ICC-01/14-01/21-25 (“Registry Submissions”), para 20.

² *Ibid*, para 21.

³ Pre-Trial Chamber II, “Decision establishing the principles applicable to victims’ applications for participation”, 16 April 2021, ICC-01/14-01/21-56.

A. Methodology used to collect information

4. In the following section, the Registry describes the activities carried out as well as the sources and types of information relied upon to respond to the Single Judge's instruction in his Decision. These include consultations with victims, civil society organisations ("CSOs") and lawyers. The Registry has also drawn some of its observations and recommendations based on its previous experience with victims in the context of the Central African Republic ("CAR").

1) Scope of consultations

(a) Categories of interlocutors met

5. As already reported, the security situation in CAR and the impact of the current coronavirus crisis continue to affect the capacity of the Registry to conduct relevant activities [REDACTED].⁴ Disruptions of connectivity and logistical constraints have compounded these challenges. Despite this complex environment, the Registry has undertaken several activities [REDACTED] to collect information for the purpose of the present Report.⁵ This has included meetings⁶ and correspondence with a variety of stakeholders including [REDACTED] CSOs, victims⁷ and lawyers from [REDACTED].⁸
6. The Registry has also benefited from the knowledge acquired by its staff - in charge of victims participation and reparations - in the Bangui Country Office since 2008. Through the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* ("Bemba case") and the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard*

⁴ Registry, "Annex I to the Registry Report on Planned Outreach and Other Activities Relating to Victims", 30 April 2021, ICC-01/14-01/21-66-Conf-Exp-AnxI, paras 33 - 39. [REDACTED].

⁵ [REDACTED], the Registry devised its methodology to conduct relevant consultations.

⁶ [REDACTED].

⁷ [REDACTED]

⁸ [REDACTED].

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Ngaïssona (“*Yekatom and Ngaïssona* case”), it has developed a sound understanding of victims’ issues and the civil society fabric in CAR.

7. With the issuance of the present Report, the Registry is now prioritising activities aiming at assisting individuals in filing in application forms for participation and continued training of (potential) intermediaries.⁹ As direct interaction with potential victim applicants has remained limited for the above-stated reasons, the present submissions are best considered as preliminary findings on the topic of victims’ legal representation.

(b) Questions asked to interlocutors

8. During the consultations, the Registry consistently asked victims the following set of questions:

⁹ In light of its current resources and COVID-19 related restrictions, the Registry had previously prioritised activities aiming at informing and consulting individuals on the topic of the victims’ legal representation in the Case.

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- Whether they have already chosen a lawyer to represent them in the proceedings before the ICC;
 - What they expect from the work of a legal representative and what they understand his/her role is;
 - What are the qualities they consider necessary in a lawyer (the Registry also indicated a number of general criteria developed by the Registry in other cases¹⁰ to prompt relevant reactions of interlocutors);
 - How would they know whether their lawyer did a good work;
 - Whether they have concerns being represented by a lawyer/legal team that also represents victims from different events (and if yes, why);
 - Whether they have the financial means to pay for a lawyer;
 - If they are unrepresented:
 - a) Whether they wish to be represented by a lawyer from the Office of Public Counsel for Victims of the ICC, or
 - b) Whether they wish to choose a lawyer from the ICC List of Counsel.¹¹
9. To further inquire on this issue, the Registry developed a questionnaire along a similar line of questioning and disseminated it amongst selected victim representatives, interlocutors in contact with victims and victim groups, CSOs supporting victims related to the present Case, and lawyers.¹²
10. The questionnaire included the following questions:

¹⁰ See for instance the Registry's proposed general criteria for selection of common legal representatives under rule 90(3) of the Rules of Procedure and Evidence in: Registry, *The Prosecutor v. Abdallah Banda Abakaer Nourain*, "Annex: Registry's proposed general criteria for selection of common legal representatives under rule 90(3) of the Rules of Procedure and Evidence", 22 June 2011, ICC-02/05-03/09-164-Anx.

¹¹ Consultations included a brief explanation of the legal representation options before the ICC including the mandate and functioning of the Office of Public Counsel for Victims ("OPCV") in this context.

¹² The Registry received completed questionnaires [REDACTED].

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- What are the victim's previous experiences regarding legal representation in judicial proceedings?
- According to the victim(s) consulted, what are the most important aspects to be considered when choosing a legal representative? What characteristics and qualities are the victims looking for in a legal representative?
- Do(es) the consulted victim(s) already have legal representation? If yes, how many victims have lawyers? Who is/are their lawyer(s)? Where is/are the lawyer(s) from? How did the victim(s) choose the lawyer(s)?
- Are victims who already have legal representation satisfied with their lawyer(s)? If so, how many victims are satisfied and for what reasons? According to those victims already in contact with a lawyer, what are the qualities that their lawyers possess and in which areas could they improve?
- Do(es) the victim(s) have concerns being represented by a lawyer/legal team that also represents other victims in the proceedings?

2) Consultations with victims

11. For the purpose of the present Report, , the Registry has managed to consult [REDACTED] potential victims - from the events described in the arrest warrant against Mahamat Said Abdel Kani [REDACTED]¹³ [REDACTED].¹⁴
12. In accordance with the Decision,¹⁵ before consulting those victims on the issue of their legal representation in the Case, the Registry first provided them with information concerning:
 - the Court's overall mandate and the course of the proceedings before it;
 - the role of victims and their rights during the proceedings,
 - the proceedings related to CAR and the scope of the present Case;
 - the legal representation of victims before the Court, and in particular the role and mandate of counsel before the Court, the provisions of rule 90 of

¹³ See, Pre-Trial Chamber II, "Public Redacted Version of 'Warrant of Arrest for Mahamat Said Abdel Kani', 7 January 2019, ICC-01/14-01/21-2-US-Exp", 17 February 2021, ICC-01/14-01/21-2-Red2, para.19 [REDACTED].

¹⁴ [REDACTED].

¹⁵ Decision, para. 24. The Decision adopts *mutatis mutandis* the principles governing outreach set in the Yekatom and Ngaïssona case (See Pre-Trial Chamber II, "Decision Establishing the Principles Applicable to Victims' Applications for Participation", 5 March 2019, ICC01/14-01/18-141 ("Yekatom and Ngaïssona Victims Decision"), para 12).

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the Rules of Procedure and Evidence (“Rules”), as well as the role of the OPCV.¹⁶

3) Consultations with legal representatives and CSOs

13. [REDACTED], the Registry consulted representatives from CSOs [REDACTED].¹⁷

It further consulted lawyers recommended by these CSOs and/or with similar experience/expertise.¹⁸

14. During this process, the Registry has collected information pertaining to: 1) the experience of victims with lawyers, including their familiarity with the role of lawyers and their accessibility to them; 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; and 3) whether there are reasons why, if relevant, participating victims should not be represented by only one common legal representative of victims (“CLR”).

B. Information collected

15. In the ensuing section, the Registry provides relevant information collected through the above-mentioned consultations.¹⁹ This includes: i) general information relevant to legal representation of victims in the Case; ii) the characteristics and qualities victims consider necessary for their legal representation; iii) information pertaining to the legal representative’s team, iv) information on the indigence of victims, v) information on the potential legal representatives of victims identified by the Registry to date, vi) the applicability of rule 90(2) of the Rules, and vii) information on whether these victims appear to

¹⁶ In consultation between VPRS and OPCV, the general disponibility of the latter was established.

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ See above, paras. 5-14.

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have, among themselves, any conflicting or substantially “distinct interests” pursuant to rule 90(4) of the Rules.

1) General information relevant to legal representation of victims in the Case

i) Access to lawyers

16. According to the information collected, victims face many hurdles to gain access to lawyers. As a first key issue, there is a lack of knowledge and understanding regarding victims’ rights, judicial proceedings and the role of lawyers.²⁰ Second, even where victims are more familiar with the role of a lawyer, they cannot afford the costs associated with legal action in the domestic legal system - or they do not trust the latter.
17. As previously reported, CAR has been experiencing severe dysfunctions in the context of its judicial system.²¹ There is a rather small number of lawyers in comparison with the demand for justice.²² Many of them handle cases relating to property and business. For those lawyers involved in criminal proceedings

²⁰ A few organisations represent victims on a *pro bono* basis or have set up legal clinics across the country and offer free legal aid to victims involving lawyers [REDACTED].

²¹ See Registry, “Annex I to the 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”, dated 27 February 2019 and registered on 28 February 2019, ICC-01/14-01/18-133-AnxI, para. 16.

²² CAR has approximately 130 lawyers, most of whom are located in Bangui, where they exercise their main activities. There are less than ten female lawyers registered with the national Bar Association. There is approximately one lawyer per 40, 000 inhabitants and out of the approximately 130 lawyers officially registered, only one is registered outside the capital. See International Legal Assistance Consortium (“ILAC”), “ILAC Rapport d’évaluation d’état de droit : République centrafricaine” (Solna: ILAC, 2017), pp. 37-39, at <http://www.ilacnet.org/wp-content/uploads/2017/05/ILACs-Rule-of-Law-Assessment-Report-Central-Africa-Republic-2017-.pdf> (accessed on 21 May 2021); See also Avocats Sans Frontières (“ASF”), “Où sont les avocats ? Etudes sur les perspectives de déploiement de la profession d’avocat sur le territoire centrafricain”, pp. 12-13, at https://www.asf.be/wp-content/uploads/2018/10/ASF_RCA_Itin%C3%A9raires2016-2018_4_Avocats_FR.pdf (accessed on 21 May 2021).

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(noting that criminal court sessions are reportedly still infrequent),²³ they receive very small fees from being appointed as duty counsel. As a result, many lawyers do not thoroughly prepare their cases and victims may not receive quality legal representation.²⁴

18. Across the country, only a small number of lawyers are trained or have the necessary experience to represent victims. The community of counsel willing to support indigent victims consists of a very small pool of lawyers within a tight network. They are members of human rights organisations, working on a *pro bono* basis or with little support, and often entertain law firms exercising also in other areas of law (such as business law) for revenue. Consequently, they are overloaded with cases at the domestic level or/and with solicitations from international organisations.
19. The lack of resources and availability impacts the ability of lawyers to remain fully accessible to their clients in relevant criminal proceedings – even more so when the latter reside in remote areas. The relationship between the lawyers and the victims they represent in these legal proceedings is often limited, in terms of provision of information, advice and/or management of expectations.

ii) Access to victims

Language spoken by victims

²³ See, Amnesty International, “‘ON TRIAL, THESE WARLORDS LOWERED THEIR EYES’: The Central African Republic’s challenging pursuit of justice”, 22 October 2020, pp. 27-29, available at <https://www.amnesty.org/download/Documents/AFR1931852020ENGLISH.PDF> (accessed on 21 May 2021).

²⁴ One lawyer reported: “Le pénal n’intéresse pas beaucoup la plupart des avocats centrafricains car cela n’est pas bien payé”. Another one explained that “[l]a commission d’office telle que pratiquée par le droit centrafricain n’est pas gratifiante. Les avocats s’y engagent souvent soit par fibre sociale soit pour ce faire un nom. La plupart des avocats n’ont pas un niveau de revenu signifiant pour leur permettre de s’engager comme *pro bono*.”

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20. The victims interviewed [REDACTED] speak Sango, the predominant local language in CAR, and some also have intermediate levels of French. Based on the information collected thus far, the Registry anticipates that these trends will expand to the other victims in the Case.

Challenges

21. As referred to above, the security in the CAR is volatile and, compounded with the COVID-19 pandemic, renders meeting with victims in a secure and safe manner quite challenging. Many victims fear for their security when they are involved as victim participants in criminal cases dealing with crimes committed by members of armed groups.²⁵ Victims who make their voices heard through the judicial system report that they cannot count on any measures by the authorities to ensure their protection. Criminal trials in which they participate are usually public, with substantial media attention and without any medium of protection in place. A lawyer consulted further explained that the problem of perceived victim insecurity is sometimes not linked to the conflict itself but to a lack of understanding of judicial processes in general.²⁶

[REDACTED]

22. [REDACTED].²⁷ [REDACTED].

iii) Pools of lawyers' initiatives

23. The Registry was informed of the existence of two processes which aimed at selecting appropriate legal representatives for victims of crimes committed during

²⁵ [REDACTED].

²⁶ The lawyer explained that "*une victime ou quelqu'un de sa famille peut aussi bien violenter un conseil que les supporters d'un accusé si tout ce monde ne comprend pas bien le processus judiciaire*".

²⁷ [REDACTED].

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the recent crisis : the “*Collectif de Lutte Contre l’Impunité*” and the “*Corps Spécial des Avocats de la CPS*”.

The “*Collectif de Lutte Contre l’Impunité*”

24. Between 2014 and 2020, the FIDH, the Central African League for Human Rights (“LCDH”) and the Central African Observatory for Human Rights (“OCDH”) documented serious human rights violations in CAR and supported victims of those violations before national courts. They issued investigation reports and advocated for the creation of the CPS. In 2014, they created the “*Collectif des avocats pour la Lutte Contre l’Impunité*” (“*Collectif*”).²⁸
25. The *Collectif* included initially around 15 national lawyers from five Central African human rights organisations²⁹ and was assisted by several international lawyers. [REDACTED]³⁰ [REDACTED].³¹
26. The *Collectif* has assisted victims in their claims and has represented *parties civiles* throughout domestic proceedings related to two cases that constitute the main proceedings brought before ordinary criminal courts against former anti-Balaka commanders and which addressed crimes committed against civilians, the

²⁸ See FIDH press release, “*Comment les avocats centrafricains se préparent-ils à représenter les parties civiles devant la Cour pénale spéciale ?*”, 12 October 2018, available at <https://www.fidh.org/fr/regions/afrique/republique-centrafricaine/comment-les-avocats-centrafricains-se-preparent-ils-a-representer-les#:~:text=Le%20Collectif%20est%20compos%C3%A9%20d,des%20crimes%20commis%20en%20RC A.&text=Les%20avocats%20se%20pr%C3%A9parent%20mais%20agissent%20%C3%A9galement> (accessed on 21 May 2021).

²⁹ FIDH, LCDH, OCDH, Action by Christians Against Torture - CAR (ACAT-CAR) and the Central African NGO Network for the Defence of Human Rights (RONGDH).

³⁰ See FIDH press release: “*Inauguration du bureau conjoint FIDH-LCDH-OCDH pour lutter contre l’impunité*”, 11 March 2017. <https://www.fidh.org/fr/regions/afrique/republique-centrafricaine/inauguration-du-bureau-conjoint-fidh-lcdh-ocdh-pour-lutter-contre-l> (accessed on 21 May 2021).

³¹ The CSO representative explained that these concerns the lawyers who accepted subsequently to defend perpetrators.

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Rodrigue Ngaibona *alias* “General Andjilo” case³² and the “Bangassou trial”.³³
[REDACTED].

27. [REDACTED].

The “Corps spécial des avocats de la CPS”

28. The CPS has instituted a special body of defence and victims’ lawyers, the “*Corps spécial d’Avocats*” (“*Corps Special*”), which recently became operational. The United Nations Office on Drugs and Crime (“UNODC”) and *Avocats Sans Frontières Belgique* have co-organized a training cycle for potential candidates.³⁴

29. This *Corps Special* is comprised of national lawyers, individually vetted by an oversight body following a review of their experience. To be admitted on the list of the Corps Special, national candidates must have, among other criteria, ten years of experience – including in the areas of human rights, international criminal law and humanitarian law.³⁵ Currently, there are 32 national lawyers on the list.³⁶

30. Non-Central African lawyers are also part of the *Corps Special*. They are designated to represent parties in the context of the most sensitive cases, for example in

³² See FIDH press release, “Condamnation d’Andjilo : un premier pas décisif, en attendant le jugement d’autres chefs de guerre” , 22 January 2018, available at <https://www.fidh.org/fr/regions/afrique/republique-centrafricaine/condamnation-d-andjilo-un-premier-pas-decisif-en-attendant-le>, (accessed on 21 May 2021).

³³ See FIDH press release, “The Central African justice system strongly condemns those responsible for the Bangassou massacre”, 19 February 2020, available at <https://www.fidh.org/en/region/Africa/central-african-republic/the-central-african-justice-system-strongly-condemns-those> (accessed on 21 May 2021)

³⁴ See UNODC press release, “UNODC opens project office in Bangui, Central African Republic”, 4 March 2019. <https://www.unodc.org/unodc/en/frontpage/2019/March/unodc-opens-project-office-in-bangui-central-african-republic.html> (accessed on 21 May 2021) .

³⁵ See CPS, Arrêté n° 035 du 10 décembre 2018 portant organisation et fonctionnement de l’organe paritaire chargé de l’admission des candidats au Corps Spécial d’Avocats près la Cour Pénale Spéciale, article 6, available at <http://cps-rca.cf/uploads/Organe%20paritaire/Arrete%20no%2035%20-%20organisation%20et%20fonctionnement%20organe%20paritaire.pdf>, (accessed on 21 May 2021).

³⁶ See CPS newsletter, “Le Bulletin d’information de la Cour Pénale Spéciale List”, December 2020, p. 8, available at https://cps-rca.cf/documents/NEWSLETTER_n_4_DECEMBRE_2020.pdf (accessed on 21 May 2021).

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instances where local lawyers may be subject to threats or undue influence, or in partnership with a local lawyer and at the request of the client.³⁷

2) Characteristics and qualities considered necessary for the victims' legal representatives

i) Information collected through meetings with victims

31. In Registry consultations with victims, the latter expressed a wish for a lawyer who is accessible/available, familiar with CAR and properly skilled.

Accessibility/availability

32. Victims wish to be represented by someone with whom they can have and maintain a relationship of trust throughout the proceedings. He/she must be close to them, communicate well and be available. They consider the lawyer's availability and accessibility as a *sine qua none condition* of a relationship of trust with the victims he or she would represent. The legal representative needs to maintain contact with victims and to keep them informed, and be a good listener. As one victim explained : *"il doit être la voix et les oreilles des victimes. Tout ce qu'il dit dans la procédure doit être de commun accord avec nous."*

Familiarity/connection with the situation country

33. While most victims explained that the lawyer does not necessarily need to be from CAR, they explained that he/she must have a sound knowledge of the country, the "realities" of its people and must understand Sango.³⁸

Experience/expertise

³⁷ See article 59 of the CPS Rules of Procedure and Evidence, available at <https://cps-rca.cf/documentation.php?idcategorie=15> (accessed on 21 May 2021).

³⁸ As one victims mentioned, *" la connaissance de la RCA, le parler Sango et la maîtrise du contexte socio-politique du pays"*.

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34. The victims consulted do not consider the gender of the lawyer relevant – but rather only his/her skills. In this regard, the lawyer must have relevant expertise on the issues at stake as well as experience working with victims.³⁹ The lawyer should have information technology skills to allow him/her to better inform the victims, and ensure efficiency and confidentiality.

Accountability

35. Consulted victims consider that a lawyer should be accountable for his/her work. The victims should be in a position to inform the judges, at each stage of the proceedings, as to whether they wish to continue to be represented by their lawyer. A group of victims explained: *“Nous voulons instituer un mandat de satisfaction ou de non satisfaction par lequel nous informerons les juges après chaque étape si oui ou non nous devrions continuer à être représentés par cet avocat”*.

ii) Information received from CSOs and legal representatives

36. During the consultations, CSOs and lawyers highlighted, as victims themselves had done, that the victims’ legal representative should be someone who is accessible and sufficiently available. They also mentioned that the lawyer should be committed, competent, experienced and able to understand the victims’ culture, their daily realities, the political context of the country and the complexities of the case.

Availability/accessibility

37. As reported by CSOs and lawyers, the availability of lawyers in CAR is a key challenge for various reasons, and options for the legal representation of victims in CAR are limited. Having recourse to a lawyer is rare, and therefore people have no element of comparison. It was submitted that the legal representative needs to

³⁹ One victim explained: *“les victimes d’actes de torture et autres vivent encore les séquelles de ce qui leur ait arrivé. L’avocat doit être à même de les comprendre, les soutenir et les traiter dignement”*.

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be ready to commit a significant time to maintain regular contacts with his/her clients, follow developments in proceedings and take any appropriate active steps in the proceedings. When the legal representative may not be available, he/she should inform the clients accordingly, and let them know when he/she will be available to them. It was recommended that victims should have a means to address the unavailability of their lawyers to the Court.⁴⁰ This is even more important in the context of proceedings which might last many years. It was held that victims need to be accompanied in a sustainable way throughout that time.

Familiarity/connection with the situation country

38. In light of the CAR context, it was suggested that the legal representative must have a strong understanding of the victims' culture and the complexities of the case. Some CSOs and lawyers consulted considered that national lawyers would be in a position to be closer to their clients,⁴¹ others indicated that the lawyer should be locally based to collect better information.⁴²

Demonstrated commitment to working for the victims' cause

39. CSO representatives emphasised that counsel should demonstrate an ability and willingness to take a victim-centred approach to their work. They should be already engaged actively in the "victims' cause".

40. The lawyer should be able to understand the victims' situation and should possess communication skills to address them in a sensitive and victims' friendly manner

⁴⁰ As one CSO representative explained: "La plupart du temps, des avocats mettent en avant la question des honoraires d'abord et après ils disparaissent – on n'arrive pas à mettre la main dessus. Quand voulez appeler le téléphone n'est jamais ouvert et quand vous les rencontrez brusquement ils vous disent que non le téléphone était déchargé – ça mérite des excuses mais des fois c'est fait exprès."

⁴¹ One lawyer explained: "l'avantage est qu'il n'y a pas de barrière de langue et de complexe lors des rencontres et séances de travail."

⁴² One CSO representative explained: "pour être un bon avocat, il faudrait être sur le terrain et avoir de bonnes informations. Puisque les crimes sont passés sur le territoire centrafricain. Cela n'interdit pas que les avocats étrangers peuvent s'associer aux avocats nationaux pour défendre leurs clients."

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throughout the course of the lengthy proceedings.⁴³ Such a lawyer should make sure that victims are informed and aware of and should defend their interests in the proceedings.

41. A CSO representative further considered that in light of the scope of the Case the lawyer should have experience and expertise on the issues of torture and victims' access to justice.⁴⁴

3) Information pertaining to the legal representative's team

i) *Team composition/structure*

42. The Registry's interlocutors mentioned that the legal representative selected should have a holistic view of the victims' needs and of the current field constraints. For that reason, they advocated for a multi-disciplinary team in support of the legal representative. According to them, the victims' legal representation in the Case should include a psychological and/or sociological component to reflect victims' needs. In light of the current security and Covid-19 related constraints, the legal representative's team should include reliable individuals who have access to, and can facilitate communication with the

⁴³ One lawyer explained: "*De la spécificité des victimes engagées dans un procès qui va durer beaucoup d'années il serait indispensable de choisir un avocat qui a de la sensibilité pour les droits de l'homme. Un avocat qui connaît leur spécificité pour bien les accompagner. C'est pourquoi la Cour a le devoir de proposer une équipe qui réponde au mieux aux besoins des victimes*"

⁴⁴ One CSO representative explained: "*L'avocat doit avoir une expérience, connaissance de la question de tortures pour permettre de mieux défendre la problématique qu'il va rencontrer. Un avocat qualifié. Un avocat qui va dans tous les sens cela n'a pas de sens. Il faut qu'il ait une connaissance des questions d'accès à la justice.*"

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victims.⁴⁵ One interlocutor further pointed that these realities call for a local lawyer based *in situ* to overcome such challenges.⁴⁶

ii) *Support*

43. The Registry's interlocutors highlighted that there are skilled and talented lawyers within the CAR legal community. However, the several crises in CAR have impacted their resources and capacities. Many lawyers in CAR are not familiar with litigations before international criminal courts. For these reasons, a national lawyer representing victims before the Court may need to be supported technologically (e.g. in their familiarisation with the Court e-system), substantively (i.e. in the drafting of submissions, and legal research on issues pertaining to victims' rights in international criminal law) as well as materially (in particular with logistical support to maintain their relationship with both their clients and the Court). Some interlocutors explained that having a national lawyer working with the support of an international lawyer would represent an opportunity to build up the skills and knowledge of the former, and would work towards the Court's principle of complementarity.

4) Indigence status of victims

i) *Victims' financial means*

44. All victims consulted indicated that they do not have financial resources to pay for a lawyer.

⁴⁵ A lawyer explained : "*l'accompagnement de victimes doit prendre en compte plusieurs paramètres, ce qui n'est pas le cas auprès des tribunaux locaux et même des projets d'appui mis en œuvre.*" According to him : "*Les victimes qui participent le plus souvent dans une telle affaire sont des personnes affaiblies qui le plus souvent cherchent à comprendre la procédure, traumatisées ces victimes ont besoin de l'appui des professionnels comme les psychologues pour les aider à sortir de leur traumatisme, mais aussi des personnes qui leur sont accessibles comme les intermédiaires qui peuvent appuyer les conseils sur le terrain pour la recherche d'information.*"

⁴⁶ A lawyer explained : "*Le contexte sécuritaire et sanitaire actuel plaide pour un avocat local pour pallier toute éventualité. La résidence in situ du Conseil principal permet un accès direct et régulier de la victime.*"

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45. This was confirmed by CSOs and lawyers who moreover highlighted that most victims live in precarious conditions also because of the crisis which has impoverished the CAR population and the victim communities in particular.

ii) Other financial support

46. According to the interlocutors consulted by the Registry, some organisations have received financial support, through various projects, to provide legal assistance to victims, to reinforce the capacity of domestic lawyers or even to represent victims in national proceedings and/or in the prospect of future cases before the CPS in Bangui.⁴⁷ However, funds have been merely sufficient to support a few specific projects for a limited period of time.

5) Potential legal representatives of victims identified by the Registry to date

47. According to the information collected by the Registry, it appears that the victims in the Case have not benefited from a continuous legal representation in relation to crimes linked to the Case, even if some victims might have been briefly represented by duty counsel in domestic proceedings in 2013 in the course of their detention, or approached by some lawyers offering them legal services.⁴⁸

48. The Registry provides below the information it has collected in relation to lawyers who were reported during the consultations as in contact with potential victims of alleged crimes within the scope of the Case. The Registry was not in a position to verify the accuracy of all this information and will be able to do so only in the course of a proper vetting process, if it were to be mandated by the Chamber to organise the common legal representation of victims in the Case and in the event

⁴⁷ See ILAC, “ILAC Rapport d’évaluation d’état de droit : République centrafricaine”, see above, footnote 22, p. 40. See also ASF, “ Où sont les avocats ? Etudes sur les perspectives de déploiement de la profession d’avocat sur le territoire centrafricain ””, see above, footnote 22.

⁴⁸ [REDACTED].

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that one of the lawyers listed below were to be selected by the Chamber as common legal representative for the victims in the Case.

i) [REDACTED]

49. [REDACTED].⁴⁹

50. [REDACTED].

ii) [REDACTED]

51. [REDACTED]⁵⁰.

iii) [REDACTED]

52. [REDACTED].⁵¹ [REDACTED].

53. [REDACTED]⁵² [REDACTED].

iv) [REDACTED]

54. [REDACTED].⁵³ [REDACTED].

55. [REDACTED].

56. [REDACTED].

57. [REDACTED].

⁴⁹ See *supra*, paras 24-27.

⁵⁰ See *supra*, paras 28-30.

⁵¹ [REDACTED].

⁵² [REDACTED].

⁵³ See art 55- 57 of the CPS Rules of Procedure and Evidence, available at <https://cps-rca.cf/documentation.php?idcategorie=15> (accessed on 21 May 2021).

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6) Information pertaining to Rule 90(2) of the Rules

58. Applying the sequential logic of rule 90 of the Rules, the Registry sought to explore the potential for victims to organize their own legal representation in application of rule 90(2) of the Rules.
59. According to most of the individuals consulted, the Registry should assist victims in organising their common legal representation as they do not have legal representation. To do so, it should i) refer victims to a short list of qualified counsel or suggest one or more common legal representatives to them, and ii) provide victims with information on these counsel. These interlocutors assessed that such exercise may take between two weeks and two months, as soon as the identification of victims in the Case is deemed sufficiently comprehensive. The organisation of this process could be made easier where victims are already constituted in victims' associations.
60. One interlocutor considered that it would be appropriate for the Registry to designate a common legal representative for victims. According to him, victims are numerous and dispersed. Unless they have constituted an association, it would be difficult for victims to agree on a common choice.

7) Information pertaining to Rule 90(4) of the Rules

61. During its consultations, the Registry sought to identify whether, in the present Case, victims appear to have, among themselves, any conflicting⁵⁴ or substantially

⁵⁴ Although no definition of conflict of interest is provided under the Code of Professional Conduct for Counsel (Article 16(1) states that "Counsel shall exercise all care to ensure that no conflict of interest arises."), 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 [...]. (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);

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“distinct interests”⁵⁵ 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 warrant common legal representation of victims through two or more groups.

62. Following consultation, no potential conflict of interests between victim groups has been identified. Rather, concerns were raised in relation to the ability of a single individual potentially representing numerous victims.

C. Registry’s Observations and Recommendations

1) Observations

63. In its consultations and as part of its general approach, the Registry has followed the sequential logic of rule 90 of the Rules, commencing with the possibility for victims to be represented, first and foremost, by a person of their choice, on the basis of their personal interests.
64. Based on the information collected thus far, its experience in carrying operations in CAR for more than a decade, and the date set for the confirmation of charges hearing, the Registry provides the following observations.

“ [...] a conflict of interest may arise when the situation or the specificity of the victims is so different that their interests are irreconcilable”. (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.)

⁵⁵ 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 [...]”. 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.

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i) Legal aid budget

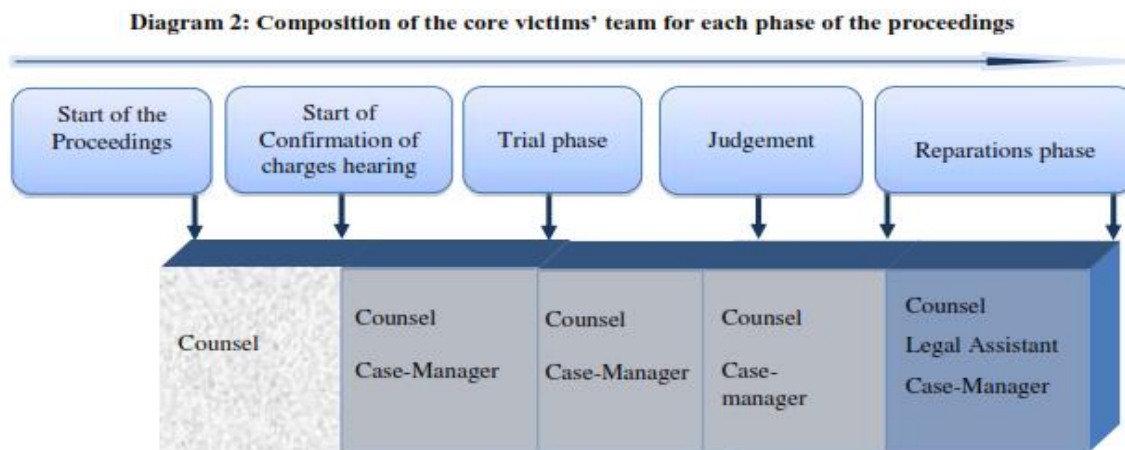
65. It is expected that victims in CAR cannot afford the cost of legal representation before the Court and will rely on the financial assistance that may be provided by the Court under its legal aid budget.
66. The Registry notes that the resources allocated to the legal representation of victims in 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 Counsel⁵⁶ up until the start of the confirmation of charges hearing and one Counsel plus one Case Manager⁵⁷ 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.⁵⁸ The graph presented below and extracted from the Legal Aid Policy illustrates the resource allocation for each phase of proceedings.

⁵⁶ According to paras. 85 and 92 of the Legal Aid Policy, Counsel receive a net base salary of €8,221 per month plus expenses (up to €3,000). Legal representatives of victims are remunerated per hour and not on a lump sum basis. Pursuant to para. 103 of the Legal Aid Policy, legal representatives appointed to simultaneously represent victims in a second case before the Court are only entitled to a maximum additional 50% remuneration for counsel fees in the second case (i.e., €4,110 per month) https://asp.Court-cpi.int/Courtdocs/asp_docs/ASP12/ICC-ASP-12-3-ENG.pdf (accessed on 21 May 2021).

⁵⁷ The net base salary of Case Managers is at €3,974 per month.

⁵⁸ According to para. 64 of the Legal Aid Policy, the budget allocated for investigations for victims' teams is €43,752 for the duration of proceedings of the case, including the reparations phase. According to paras. 62 and 63 of the Legal Aid Policy, the post of field assistant is specifically created to assist the legal representative of victims, on an *ad hoc* basis to facilitate the communication of the views and preoccupations of victims and assist a counsel to fully represent the views and concerns of victims before the Chamber. The field assistant post is remunerated on an hourly basis up to a maximum of €4,047 per month and deducted from the investigation budget allocated to the team.

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67. It is also noted that in addition, or as an alternative to external legal representation, the OPCV may be vested by Chambers with a mandate *inter alia* to represent victim applicants at the confirmation of charges stage and beyond.⁵⁹

ii) Victims' choice in accordance with Rule 90(1)

68. The Registry found that, at the present time, most of the victims that would be admitted to participate in the Case have neither chosen a legal representative nor established a relationship of trust with lawyers in other claim processes.

⁵⁹ 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, Henry Kiprono Kosgey 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. 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.

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69. Given the general lack of knowledge and understanding of victims regarding their rights, the Court and the role of lawyers, the Registry believes that many victims are currently not in a position to make an informed choice on a legal representative. Moreover, the Registry is concerned that victims may become unduly solicited by various actors in order to influence their choice in terms of legal representation. In the Registry's experience, victims show a high degree of deference towards the lawyers that contact them and offer to represent them, free of charge, in a justice process they have been seeking for many years.
70. For these reasons, the Registry considers unlikely that relying only on rule 90(1) of the Rules would suffice for victims of this Case to be efficiently and timely represented in the proceedings.

iii) Grouping for the purpose of victims' common legal representation

71. 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 ("CLR").⁶⁰
72. Based on the crimes listed in the Arrest Warrant⁶¹ and the preliminary information collected in its consultations, the Registry is of the view that to date and on its face no adverse interests arise amongst the victim population in the present Case. Therefore, all participating victims should be represented by one CLR.
73. [REDACTED]. Additionally, it notes that some caution may be warranted because it is not yet known which issues will turn out to be contentious in the proceedings. The Registry therefore considers that identifying conflicting or divergent interests

⁶⁰ See, for example, Registry, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, 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.

⁶¹ Arrest Warrant, para. 19.

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among victims should be an ongoing process taking into account the developing subject matter of the litigation and the interests and views of the various victims in relation to those matters.

iv) Potential conflict of interest

74. The Registry notes that one of the legal representatives identified in the current report is currently involved in the legal representation of victims in the *Yekatom and Ngaïssona* case.⁶² It is however not in a position to assess whether there could be a potential conflict of interest, should this lawyer be appointed as CLR in the Case.

75. In accordance with article 16 of the Code of Professional Conduct for Counsel, the Registry considers that it is first and foremost an obligation incumbent upon Counsel to (pro-actively) notify the relevant interlocutors in the event of a potential conflict interest.

v) Applicability of a Rule 90(2)

76. It is the Registry's view that the approach followed for the purpose of legal representation in the *Yekatom and Ngaïssona* case⁶³ is not applicable in the instant Case. Since only a small number of potential victims have been identified so far, and since victims have had no or little contact with the legal representatives identified by the Registry, the Registry submits that the views and proposals of these lawyers do not reflect the victims' own views as regards their legal representation pursuant to rule 90(2) of the Rules.

77. In the same vein, the Registry does not consider that it should request the victims to choose a common legal representative among one of the lawyers identified

⁶² See *supra* paras. 54,55.

⁶³ Registry, *Yekatom and Ngaïssona* case, "Public redacted version of 'Annex I to the Registry's Report on Legal Representation of Victims'", registered on 16 April 2019 and notified on 17 April 2019, ICC-01/14-01/18-178-Conf-Exp-AnxI'', ICC-01/14-01/18-178-AnxI-Red, paras 89, 110.

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supra as they were not selected through a transparent and open process, but identified through limited consultations.

78. The organisation of victim representation under rule 90(2) of the Rules would therefore further require the Registry to i) identify a representative sample of victims in the Case (on the basis, for example, of gender/age/crime incidents); ii) constitute a shortlist of qualified lawyers to represent victims from the Court list of Counsel; and iii) consult the representative sample of victims, in a safe and secure manner, in order to obtain their preference for a legal representative from the shortlist.
79. In light of the COVID-19 pandemic and the limitations on gatherings, the Registry fears that meeting victims in groups might not be feasible in the short term and/or prove to be too resource intensive, and therefore difficult to put in place within the judicial timeframe.

vi) Organisation of a Rule 90(3) selection process

80. For the aforementioned reasons, the Registry would therefore recommend to initiate a process under rule 90(3) of the Rules with a view to organizing the common legal representation of victims.
81. Following an order from the Chamber for the Registry to organize the common legal representation of victims in the Case, the latter could follow one of the following process:

Option A: Selection process for all those legal representatives registered on the Court list of counsel

Launch a call for expression of interest addressed to the lawyers on the Court list of Counsel

82. The call for expression of interest (“EOI”) would be published on the Court website. It would set out the procedure and criteria to be used in the identification

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of a CLR as well as information relating to the role of CLR of victims and remuneration.⁶⁴ Beyond the core criteria identified and proposed in other cases by the Registry,⁶⁵ the EOI would include any additional requirement included in the Chamber's decision and/or drawn from the Registry's consultations in the Case.

83. The Registry found in particular that the criteria and qualities expressed by victims and CSOs actors mentioned *supra*⁶⁶ have been consistent throughout the consultations. As a result, the EOI will specify that due consideration will be given 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. Additionally, to be selected, a CLR would need to demonstrate a strong familiarity/connection with the situation country.

84. 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. Lawyers should have a minimum period of 2 weeks to apply.

Selection of CLR

85. For the selection process, 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.

⁶⁴ 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", ICC-02/11-01/11-120-Anx2.

⁶⁵ Beyond the minimum set requirements for counsel set out in rule 22 of the Rules and regulation 67 of the Regulations of the Court, the Registry considers the additional following criteria in all 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.

⁶⁶ See *supra*, 31-41.

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86. The panel members would agree on a shortlist of candidates who would have scored the highest to convene to an interview. As for the written test, the aim of the questions posed in the interviews would be to allow the panel members to evaluate the motivations and capacities of the candidate to represent victims in the Case.

Final recommendation to the Chamber

87. Based on the results of the selection process, the Registry would submit its final recommendations on the organization of common legal representation in the Case.

88. The Registry estimates that these recommendations could be submitted within three months after the issuance of the Chamber's order.

Option B: Selection process for only those legal representatives identified in the present Report

89. If the selection process were limited to only those legal representatives identified in the present Report,⁶⁷ the Registry would adopt a simplified process. There would be no launch of an EOI and therefore no need for a pre-selection of candidates. The legal representatives identified in the present Report would be contacted directly in order to confirm their interest to be CLR in the Case.

90. The Registry notes that these counsel appear *prima facie* to meet some of the criteria identified during the Registry's consultations: they have familiarity/connection with CAR and experience in working with victims in criminal proceedings. In addition, they all report to have connections with victims in the Case and are currently based in Bangui.

⁶⁷ See above paras 49-57.

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91. The Registry estimates that such process would last approximately two months, from the date of the issuance of the Chamber's order.

vii) Availability/Accessibility of the CLR

92. The Registry notes the concerns expressed by the interlocutors during the consultations regarding the availability and accessibility of the CLR. In light of the Covid-19 constraints and other challenges CAR victims are likely to face in accessing their lawyer before the confirmation of charges - including logistical constraints (such as shortage of power and connectivity issues) -, the Registry considers necessary that the selected CLR be present in Bangui during the pre-trial stage and that he/she receives appropriate support from the Court to facilitate the familiarisation with the Court's framework.

93. During the pre-trial stage, the CLR would only have to be physically present at the seat of the Court for the duration of the Confirmation of Charges hearing.

2) Recommendations on the way forward

i) Organisation of common legal representation under rule 90(3) of the Rules

94. Should the Chamber wish to commence with the organization of common legal representation under rule 90(3) of the Rules, the Registry proposes the above two options (including relevant time frames as above) for the Chamber's consideration:

- Option A: The Registry organizes a competitive process for all those legal representatives registered on the Court list of counsel and applies the criteria gathered through the consultation mentioned above;⁶⁸

⁶⁸ See above, paras. 82-88.

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- Option B: The Registry organizes a competitive process only for those legal representatives identified in the present Report.⁶⁹

ii) Monitoring and review of common legal representation

95. Whichever model the Chamber may decide to adopt, the Registry notes that there will be a need to keep the legal representation of victims under review throughout the proceedings, in particular regarding the availability and accessibility of lawyers. The Registry anticipates that this will constitute one of the major challenges in the current CAR environment. Should the Chamber find it relevant, the Registry may, on a continuous basis and to the extent feasible, consult victims and legal representatives on this issue during the pre-trial stage, before and after the confirmation of charges. The Registry would monitor the situation and propose any adjustments necessary for the next phase of proceedings, as appropriate.⁷⁰

⁶⁹ See above, paras. 89-91.

⁷⁰ The Registry however highlights that this would be the primary responsibility of the legal teams to request such adjustments depending on their needs.