

# Victims' Consultation on the Grouping for their Legal Representation *in the Bosco Ntaganda case*



Avocats Sans Frontières





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On the road from Lipri to Mongbwalu: ASF/MCausin;  
Map of Ituri made for the purpose of this report. Musée Royal de l'Afrique Centrale, 2013, Tervuren.

# ACKNOWLEDGMENTS

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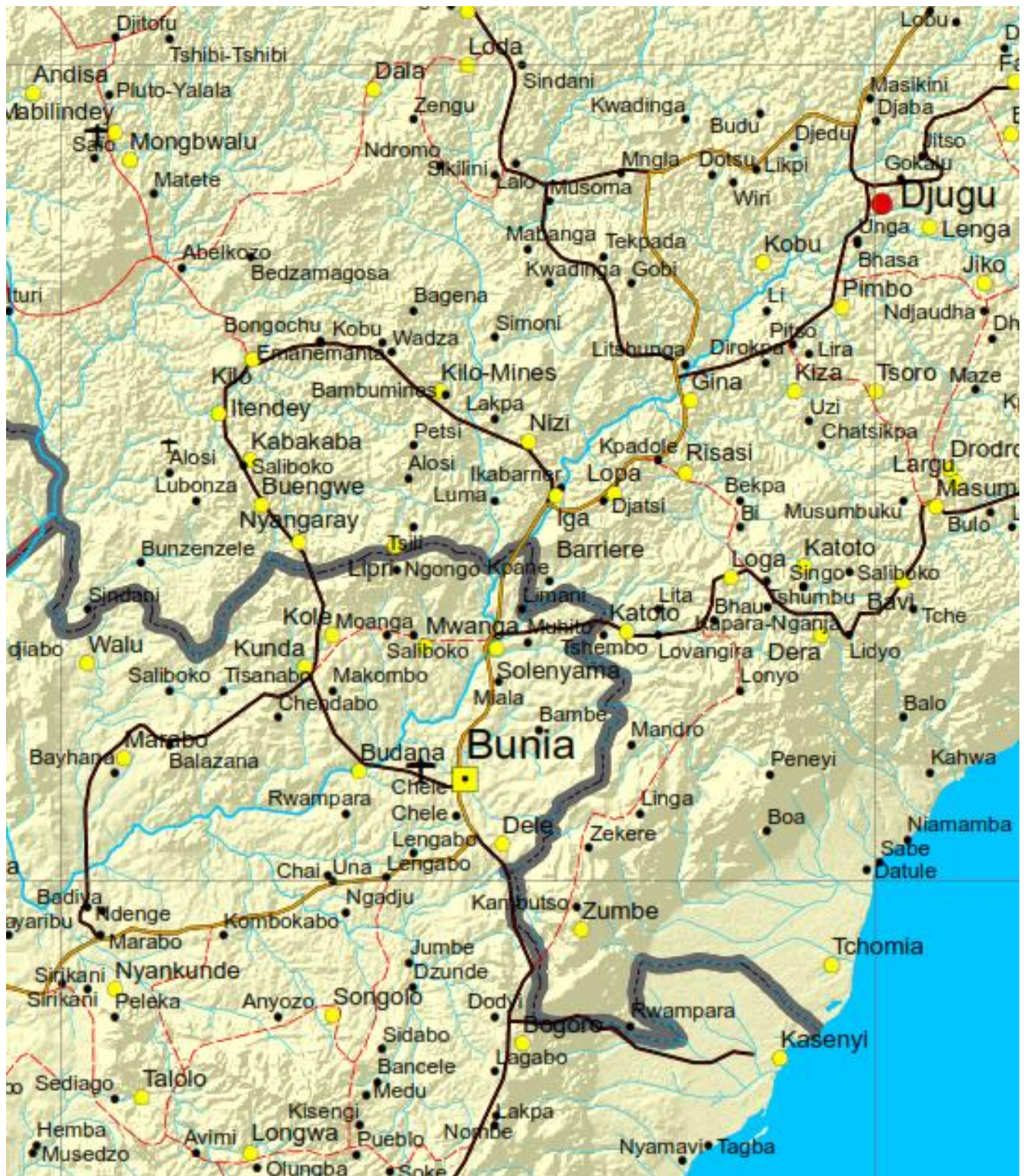


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## Geographical Scope of the Two Arrest Warrants in the *Bosco Ntaganda* case.



Source: Musée Royal d'Afrique Centrale, 2013, Tervuren. This map was drawn for the purpose of this report.

# INTRODUCTION

## A. Factual Background

The Ituri war broke out in mid-2002 in a territory where violence, fuelled by land conflicts, has gradually risen since 1998. Among the numerous armed groups, *Union des Patriotes Congolais* (UPC), through its military branch, *Forces Patriotiques pour la Libération du Congo* (FPLC), became a major actor of the war. Bosco Ntaganda is alleged to be the former FPLC Deputy Chief of Staff and Commander of Operations.

On 22 August 2006, Pre-Trial Chamber I issued an Arrest Warrant against Bosco Ntaganda for his alleged responsibility in the enlistment, conscription and use of children under the age of 15<sup>1</sup>, committed between July 2002 and December 2003 in Bunia, Bule, Centrale, Mandro, Rwampara, Irumu, Sota, Mbau, Langu, Lipri, Bogoro, Djugu and Mongbwalu.

On 13 July 2012, Pre-Trial Chamber II issued a Second Arrest Warrant charging Bosco Ntaganda with murder, rape, sexual slavery and persecutions amounting to crimes against humanity<sup>2</sup>, and with murder, attack against a civilian population, rape, sexual slavery and pillaging constituting war crimes<sup>3</sup>, committed between September 2002 and the end of September 2003. More precisely, this Second Arrest Warrant focuses on two attacks, the first committed from 18 to 23 November 2002 in Mongbwalu and Sayo and the second from 17 February to 2 March 2003 in Lipri, Bambu and Kobu and surrounding villages.

Bosco Ntaganda surrendered on 22 March 2013 at the United States Embassy in Rwanda. He was subsequently transferred to the International Criminal Court (ICC) where he remains in custody. His first appearance before the Court took place on 26 March 2013. The confirmation of charges hearing is scheduled for 10 February 2014.

The Decision Establishing the Principles on the Victims' Application Process was issued by the Single Judge, Ekaterina Trendafilova, on 28 May 2013. It organises the process for victims' application through the creation of a simplified application form consisting of one single page. In addition, the decision also envisages outreach activities being conducted vis-à-vis the victims in the case and issues specific instructions regarding the Registry's involvement in the collection of applications and necessary oversight of intermediaries. Lastly, the Decision also mentions the need to consult victims on their preferences for legal representation.

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<sup>1</sup>Articles 8(2)(b)(xxvi) and 8(2)(e)(vii) of the Rome Statute

<sup>2</sup>Articles 7(1)(a), 7(1)(g) and 7(1)(h) of the Rome Statute

<sup>3</sup>Articles 8(2)(c)(i), 8(2)(e)(i), 8(2)(e)(vi) and 8(2)(e)(v) of the Rome Statute

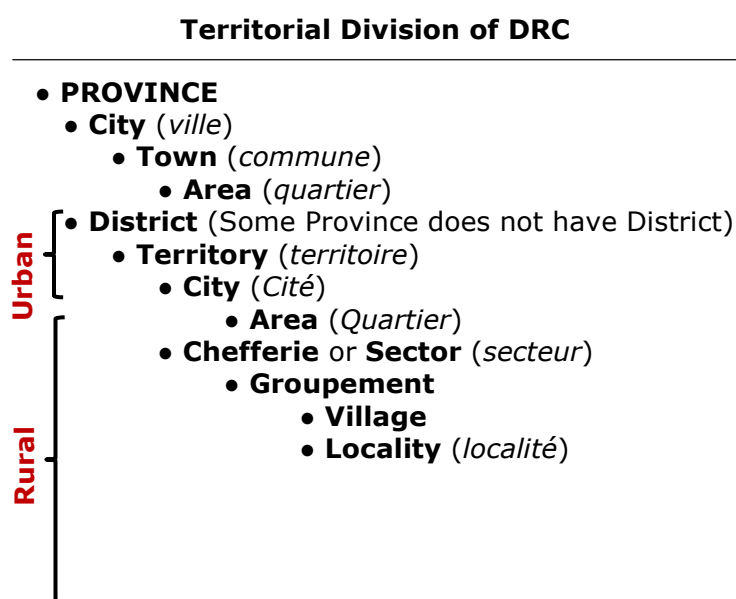


## B. Geographical and Demographic Data

Prior to any consultation, villages referred to in the Second Arrest Warrant had to be located and the indeterminate terms — such as the ‘surrounding villages’ attacked — had to be clarified. Just over 40 villages were identified through a systematic cross-check of the Prosecutor’s application under article 58 with United Nations reports.

One major constraint faced in this regard is the lack of precision. The two Arrest Warrants issued by the ICC, as well as the UN fact-finding reports, refer to villages, without any detail as to where those villages are located and without considering the fact that many villages bear the same name, even though they are only a few kilometres apart. For example, two villages called Wikpa are located in the Walendu-Djatsi ‘*Secteur*’ in the ‘*Groupements*’ of Petsi and Wadza, and one village in the *Secteur* of Walendu-Pitsi. The same goes, for example, for Ndjaza, Sindani and Mbidjo. The last one raises even more questions as it is a common word used in the region. Literally meaning “the one who has a noose around the neck” (‘*mbi*’ is a plant from which ropes are made), Mbidjo is alternatively used for a child born while his father was in jail, for a village whose chief is called Mbidjo or for a village located on top of a hill where *mbi* grows.

This constraint is reinforced by the complete absence, to ASF’s knowledge, of sufficiently accurate maps where villages are scientifically referenced. To overcome such constraints, ASF collaborated with the Royal Museum of Central Africa (MRAC) which carries out a unique referencing project called “*Monographies des nouvelles provinces de RDC*”. Maps inserted in this report have been made as part of the MRAC project. A cartographer was contracted in Bunia to set GPS coordinates when the maps already in MRAC’s possession were not detailed enough to give a clear picture of what the ‘surrounding villages’ are.



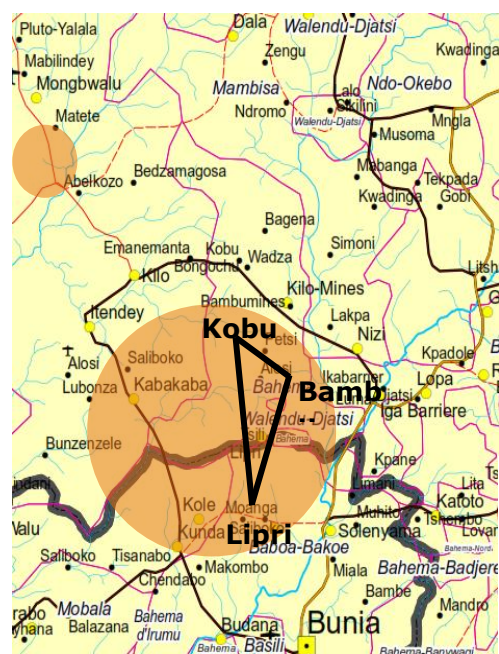
### ***District of Ituri***

The District of Ituri is situated North-East of the Democratic Republic of the Congo (DRC), in the *Province Orientale*. It borders Rwanda in the East and Uganda in the North. Four territories make up the District of Ituri: Djugu, Irumu, Mahagi and Aru. Territories are further divided into ‘*Chefferies*’ when they are administrated by Hema and ‘*Secteurs*’ (sectors) when they are administrated by Lendu. In Ituri, there are 16 *Chefferies* and five *Secteurs*.



Crimes mentioned in the Arrest Warrants were perpetrated in the Djugu and Irumu territories. The First Arrest Warrant refers to villages that straddle the two territories. The Second Arrest Warrant is limited to the Djugu territory. More precisely, except for Mandro, all the villages mentioned in the Second Arrest Warrant (2012) are located North-West of Bunia in the *Secteurs* of Walendu-Djatsi, Mambisa and Baniari de Kilo and in the city of Mongbwalu.

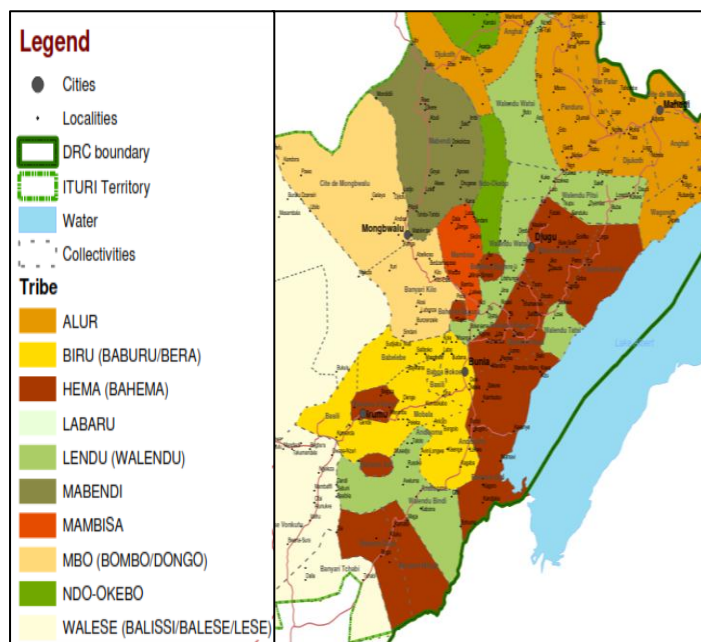
Organisation of the territory is complicated, reflecting the complex tapestry of constructions over time, from initial settlement of the population in the 17<sup>th</sup> century to displacements caused by the war, by way of the impact of the evolution of economic and political priorities. The map below gives an immediate idea of the geographical complexity of the territory where *Secteurs* and *Chefferies* are fragmented and delineated by convoluted borders. Complexity also lies in the poor infrastructure making any travel difficult, especially during rainy seasons.



Geographical zones where are located villages mentioned by the Second Arrest Warrant

Musée Royal de l'Afrique Centrale

In broad outline, Alur are settled in the North of Ituri, in the territory of Mahagi while Hema and Lendu share the Djugu and Irumu territories — Hema being mainly located in the East and South of Bunia and Lendu in the North and West. The reality is more complex though as, for example, Ngiti — a related Lendu ethnic group — live in the South. Moreover, in the regions concerned by the Second Arrest Warrant, many ethnic groups are represented, such as Mambisa, Walese, Nande, Nyali and Hema in gold-mining regions.



Tribal areas in Ituri

Source: GIS – MONUC joint Geo Cell, April 2003

Over time, relationships between ethnic groups have varied and sometimes even blurred any distinction. Thus, Gegere Hema and Lendu Bale used to cohabit and share many customs as well as the language. Beyond that, the fact that even during the war ethnicity was sometimes less important than social class, reflecting a division between 'rich Hema' against the rest, has been documented<sup>6</sup>.

<sup>6</sup> See i.e. J. Pottier "Displacement and Ethnic Reintegration in Ituri, DR Congo : Challenges Ahead", *The Journal of Modern African Studies*, 46-3, September 2008, at 427 and f.

## C. Purpose and methodology of the report

The report aims to present victims' views on their legal representation in the *Bosco Ntaganda* case in order to point out specificities that should be taken into account to ensure that their needs and concerns are adequately addressed.

According to Rule 90.1 of the Rules of Procedures and Evidence (RPE), "*a victim shall be free to choose a legal representative*" in order to exercise their right to participate in the proceedings before the ICC. This right has to be balanced against practical, financial and logistical constraints faced by the Court. Rule 90.2 indeed indicates that:

"where there are a number of victims, the Chamber may, for the purposes of ensuring the effectiveness of the proceedings, request that victims or particular groups of victims, if necessary with the assistance of the Registry, choose a common legal representative or representatives[...]"

Yet, in any case, the distinct interests of victims must be taken into account. Rule 90.4 points out that:

"the Chamber and the Registry shall take all reasonable steps to ensure that in the selection of common legal representatives, the distinct interests of the victims, particularly as provided in article 68, paragraph 1, are represented and that any conflict of interests is avoided."

Under this provision, a separate representation is justified whenever constituting a single group prevents the effective expression of the distinct interests of victims. The Registry, in a report submitted in the *Banda and Jerbo Jamus* case, pointed out such pitfall:

"The Registry notes that, following rule 90(4), there may be circumstances in which the "distinct interests" of different participating victims justify their separate representation."<sup>7</sup>

Such circumstances were further detailed in the *Gbagbo* case where the Single Judge, mindful of the potential difficulties in creating a collective narrative of events, particularly in cases where sensitive categories of victims are involved, stated that:

"when it becomes clear that there are areas of divergence between the group applicants with regard to their views or recollection of events or the nature and extent of their victimization, it may be appropriate that VPRS staff suggest to the members of the group to submit instead separate individual applications or to constitute distinct and more homogeneous groups in order to ensure that sensitive categories of victims, [...] are properly represented during the proceedings."<sup>8</sup>

Similarly, the Single Judge in the *Bosco Ntaganda* case explained in her decision establishing the principles on the victims' application process that:

"grouping victims already at the application stage not only facilitates the application process itself, but [...] also [...] the actual participation of victims subsequently, for instance making it easier for victims' legal representatives to manage the interaction with the clients if they are already organized in groups according to location or crime."<sup>9</sup>

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<sup>7</sup>Registry, *Annex 2 Summary of information relevant to the grouping of victims*, ICC-02/05-03/09-203-Anx2-Red, p. 3, para 5.

<sup>8</sup> Pre-trial Chamber I, *Second decision on issues related to the victims' application process*, The Prosecutor v. Laurent Gbagbo, ICC-02/11-01/11-86, p. 11, para 29.

<sup>9</sup> Pre-trial Chamber II, *Decision establishing principles on the victims' application process*, The Prosecutor v. Bosco Ntaganda, 28 May 2013, ICC-01/04-02/06-67, p. 15

She further explained that:

"with regard to legal representation of unrepresented applicants who might be admitted as participants in the case, [...], this will be subject to the wishes of the applicant, the potential conflicts of interests among groups of applicants, as well as the Chamber's discretion depending on the circumstances of the case."<sup>10</sup>

In other words, common legal representation does not prevent further division into groups to better reflect the distinct interests of victims and to avoid conflict of interests. In any event, victims retain their right to choose their representative, therefore being the first actor in designing such groups.

Many criteria have already been assessed in the Court's practice. In particular, the following have been considered relevant: crimes<sup>15</sup>, harm<sup>16</sup>, linguistic backgrounds<sup>17</sup>, views and expectations<sup>18</sup>, logistical reasons<sup>19</sup>, reintegration in the original community, location<sup>20</sup>, affinities, gender, ethnic groups, nationality or cultural background<sup>21</sup>, class (economic or social status), size of a group, type of benefits sought, perception of victimisation.

It is nevertheless important to recall that grouping can apply to different phases of participation and can serve diverse purposes. The criteria used for grouping victims for one purpose (for example, treatment of applications) may not be relevant for other purposes (for example, for legal representation of victims presenting a common interest). Given the diverse approaches that are necessary to facilitate participation and legal representation, it is likely that the grouping will not be static and that the criteria for grouping change in accordance with the purpose of such grouping.

### **Grouping at the application stage**

Grouping of applicants in order to ensure easier management of the application process is a recent development at the ICC. Given the practical purpose of the grouping exercise and the need to avoid overlap in order to make treatment of applications more straightforward, the VPRS has considered that the use of simple criteria would be best.<sup>22</sup>

For example, harm is a complex criterion because different victims have suffered different types of crime and therefore groups overlap, as a victim may belong simultaneously to different groups. In contrast, location is a simpler criterion as most victims identify with one location.<sup>23</sup> The location could be the one of commission of the crimes (grouping per incident) or the victims' current location. In some cases, those may be the same, but differences may apply in case of displacement or when victims have moved. It is important to determine at the outset which of the two will be used.

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<sup>10</sup>*Ibid.* para. 46.

<sup>15</sup> Registry, *Annex 2 Summary of information relevant to the grouping of victims*, ICC-01/09-02/11-214-Anx2, p.2

<sup>16</sup>*The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, ICC-01/09-02/11-214-Anx2, p. 2 and ICC-02/05-03/09-203-Anx2-Red, p. 4

<sup>17</sup> ICC-02/05-03/09-203-Anx2-Red, pp. 4-5

<sup>18</sup>*The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, ICC-01/09-02/11-214-Anx2, p. 2 and ICC-02/05-03/09-203-Anx2-Red, p. 5

<sup>19</sup> ICC-02/05-03/09-203-Anx2-Red, p. 6

<sup>20</sup> ICC-01/09-02/11-214-Anx2, p. 2

<sup>21</sup> ICC-01/09-02/11-214-Anx2, pp. 5-8 and 13 and ICC-02/05-03/09-203-Anx2-Red, p. 5

<sup>22</sup>See ASF report on Mode of Participation and Legal Representation, November 2013.

<sup>23</sup>*Ibidem.*

### ***Grouping for the purpose of legal representation***

Given the numbers of victims involved in ICC proceedings, the Chambers of the Court have requested that victims be grouped together and represented by Common Legal Representatives. The tendency in most recent cases has been to group victims under one single Common Legal Representative per case, to the extent that that is possible, except when there is a conflict of interests or when the number of victims is significantly high. Therefore, grouping for the purpose of legal representation requires consultation with victims in order to ascertain whether there is a conflict of interests.

The issue of victims' interests and actual or potential conflicts is complex and difficult to discuss in the abstract. The universe of interests is vast and it may be impossible to elicit the multitude of interests at the outset. Victims may have different and even opposing views on specific aspects of the proceedings, without that necessarily amounting to a conflict of interests. The extent to which a legal representative can represent those diverse views will depend on the context. In terms of criteria that could drive a conflict of interests, that will also depend on the context. For example, ethnicity may be a relevant factor in one country/area and not another. Ethnicity will be relevant when it was the reason (real or exploited) for division among the communities during the conflict.

### ***Grouping for the purpose of organising legal representation and meeting victims***

According to the Registry, "grouping victims already at the application stage not only facilitates the application process itself, but can also facilitate the actual participation of victims subsequently, for instance making it easier for victims' legal representatives to manage their own interaction with their clients if they are already organised in groups according to location or crime."<sup>24</sup> In general, the location criteria may indeed have an impact on the way in which victims are organised for the purpose of meeting their lawyer.<sup>25</sup>

However, there are many factors at play, and criteria for organising representation or meeting victims could vary in accordance with the purpose sought by the legal representative. It is also possible to group victims by location (for practically logistical reasons) and then organise sub-groups in accordance with victims' needs. All in all, there is no static criterion and the way in which victims are grouped for the purpose of representation may vary throughout the proceedings.

Criteria will be specific to the nature of the case and the characteristics of the group. For example, while location will be relevant when victims are spread out, it may not be so when victims are located within a limited geographical space. When victims speak different local languages, language could become a relevant criterion for organising meetings.

Grouping or sub-grouping may also depend on what the purpose of the meeting is. For example, meetings in which participants are expected to talk about their personal harm are particularly sensitive. In such cases, it may prove impossible to hold meetings with groups and the legal representative may need to meet with each client individually (for example, in order to study their case for the purpose of reparations claims). When discussing harm or personal experiences is involved, grouping victims by type of harm or incident may prove useful. Special attention should be paid in these circumstances to victims of sexual violence, who may not want to speak about their experiences in front of other members of the group.

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<sup>24</sup> ICC-01/04-02/06-57

<sup>25</sup> See also ICC-01/09-01/11-566; ICC-01/09-02/11-Anx.



In her Decision of 28 May 2013, the Single Judge in the *Bosco Ntaganda* case calls for a grouping of victims at the application stage, while expressing the view that such grouping may facilitate:

*“the actual participation of victims subsequently, for instance making it easier for legal representatives to manage the interaction with their clients [...]”<sup>26</sup>.*

Although the decision clearly focuses on the management of the application process rather than on legal representation, the Single Judge gives instruction *“to consult with applicants as to their preferences for legal representation”<sup>27</sup>*. The present report aims at looking into the multitude of elements at stake, in order to point out specificities that should be taken into account and highlight potential pitfalls.

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<sup>26</sup>Pre-trial Chamber II, *Decision establishing principles on the victims’ application process*, The Prosecutor v. Bosco Ntaganda, 28 May 2013, ICC-01/04-02/06-67, para 45.

<sup>27</sup>*Ibid.* para 46.

# Questionnaire on grouping of victims

24 June – 22 July 2013

The questions asked in the questionnaire are the following:

Quelle est votre ethnie / What is your ethnic group?:

1. Quelle(s) langue(s) parlez-vous? / What language do you speak?

- ☐ Seulement Kilendu
- ☐ Seulement Swahili
- ☐ Kilendu et Swahili
- ☐ Kilendu, Swahili et Français
- ☐ Autre, précisez / Other, please specify

2. Quel type de regroupement souhaiteriez-vous? Pourquoi? / What kind of grouping would you like? Why?

- ☐ 1 seul groupe / Only one group
- ☐ Différents groupes par genre / Several groups by gender
- ☐ Différents groupes par village (seulement mon village) / Several groups by village (only my village)
- ☐ Différents groupes par communauté ethnique / Several groups by ethnic groups
- ☐ Différents groupes par crimes / Several groups by crimes
- ☐ Autre, précisez / Other, please, specify

3. Si vous avez coché la case « communauté ethnique » veuillez préciser lesquelles / If you have ticked « ethnic groups », could you clarify which one?

- ☐ Avec toutes les communautés sauf les Ngiti / With all ethnic groups except Ngiti
- ☐ Un groupe composé uniquement de Hema / A group composed of Hema only
- ☐ Un groupe composé uniquement de Lendu / A group composed of Lendu only
- ☐ Un groupe composé uniquement de Ngiti / A group composed of Ngiti only
- ☐ Avec toutes les communautés sauf les Hema et ses alliés / With all ethnic groups except Hema and their allies
- ☐ Avec toutes les communautés sauf les Lendu / With all ethnic groups except Lendu
- ☐ Uniquement avec certaines communautés / Only with some ethnic groups

4. Si vous avez coché « uniquement avec certaines communautés » veuillez préciser lesquelles / If you have ticked « only with some ethnic groups », please specify which one? :

- ☐ Hema
- ☐ Lendu
- ☐ Alur
- ☐ Ndo
- ☐ Nyali
- ☐ Bira
- ☐ Mambisa
- ☐ Walese
- ☐ Nande
- ☐ Mbisa
- ☐ Pygmée
- ☐ Ngiti
- ☐ Gegere
- ☐ Lugbara
- ☐ Kakwa
- ☐ Munlyali

5. Rencontrer vous des difficultés dans votre communauté? Si oui, précisez / Do you meet difficulties within your community? If so, please specify:

- ☐ Non / No
- ☐ Oui, dues aux souffrances liées aux préjudices moraux, physiques et/ou matériels (perte de parents, de biens, incendie d'une maison, abandon des études, etc) / Yes, due to sufferings related to moral, physical and/or material harms (loss of parents, goods, house fire, drop-our school, etc)

- ☐ Oui, dues aux conditions de vie générales difficiles (manque d'infrastructure, systèmes de santé et d'éducation défaillants, etc) / Yes, due to the hard living conditions (lack of infrastructure, bad health-care and education system, etc)

6. Avez-vous des inquiétudes sur votre sécurité sur ce dossier? / Do you have security concerns?

- ☐ Oui / Yes

- ☐ Non / No

7. Qu'attendez-vous de votre avocat? / What do you expect from your lawyer?

- ☐ Qu'il soit impartial et neutre / He should be impartial and neutral
- ☐ Qu'il soit compétent et défende mes droits et mes intérêts ainsi que ceux de ma communauté (obtenir des réparations, recouvrer mes droits, condamnation de l'accusé, etc) / He should be skillfull and should defend my rights and interests as well as those of my community (obtain reparation, regain my rights, conviction of the accused, etc)
- ☐ Qu'il connaisse le contexte (la langue, la région, les cultures, etc) / He should know the context (language, region, cultures, etc)
- ☐ Qu'il soit proche de nous, qu'il ait des contacts réguliers avec nous / He should be close to us, have regular contacts with us

8. Qu'attendez-vous des procédures à la CPI? / What do you expect from the proceedings at the ICC?

- ☐ Rien de spécial / Nothing special
- ☐ La poursuite de la vérité / Pursuit of truth
- ☐ Des réparations / Reparations
- ☐ La condamnation de l'accusé / Conviction of the accused
- ☐ La célérité des procédures / Rapidity of the proceedings
- ☐ Une communication effective avec les victimes / An effective communication with the victims
- ☐ Autres, précisez / Others, please specify

Name : \_\_\_\_\_

Date / Lieu (Location) : \_\_\_\_\_

## Questionnaires and interviews

The term ‘victim’ will be used in this report in a broad sense. At this stage of the proceedings, and before the determination of their status by the Single Judge, there are no victims meeting the definition given by Rule 85 of the Rules of Procedure and Evidence (RPE). Persons consulted by ASF are *applicants* and can only be qualified as victims through a Court Decision.

Questionnaires were filled in during the field missions organised in order to assist victims in applying for participation in the proceedings in the *Bosco Ntaganda* case. Interviews were organised in geographical areas such as in Lipri and surrounding villages, Mongbwalu and Sayo, Kilo and Kobu, Nyangaraye and surroundings villages, Bunia and Rwampara, etc. (see list opposite).

Questionnaires were filled in through individual exchange with the applicants whereby all grouping possibilities were fully detailed and explained. The filling in of questionnaires was therefore time-consuming as interviewers had to be as clear as possible to the applicants, so they could express an informed preference.

An initial batch of 150 questionnaires designed with open-ended questions was used as a test to compile a list of possible answers. Answers were filled in in a narrative form and encoded in order to enter the data in an input mask. A second questionnaire (see opposite), listing the different options in a closed-ended way, was then circulated.

In principle, cumulative answers were only allowed for questions 4, 7 and 8. Some exceptions were nevertheless permitted in order to better reflect the victims’ preferences. In this regard, answers to question 2 were exceptionally taken cumulatively (in Rwampara, Bunia and Mandro). In principle, the interviewer would consider questions 3 and 4 only when an applicant expressed her preference for an ethnic grouping in question 2. However, it transpired that some respondents who expressed a preference for an ethnic grouping were subsequently unable to answer questions 3 and 4 because the meaning of ‘community’ is more complex than it seemed at first glance. In this situation, a cumulative choice had to be offered. In addition, interviewers transcribed the narrative answers on a separate sheet of paper to allow victims to express the motivation for their views and reveal the “reasons behind the reasons”.

Questionnaires were batched by villages. The villages referred to in the present report are the ones where the applicants live (and thus where the Victims’ Application Forms (VAF) were filled in), even if the crimes were suffered elsewhere. As some of the victims moved over time (for example, because they had to flee from their place of origin during the conflict or due to economic necessity), it transpires that some applicants suffered crimes in a different place from the villages where they filled in Questionnaires/VAF. Results were broken down according to Arrest Warrants, geographical zones and villages, in order to analyse different result combinations.

### List of villages where ASF conducted its consultations

Sayo  
Mongbwalu  
Lipri  
Tsili  
Bbukpa  
Kilo-mission  
Kilo-Etat  
Matongo  
Buengwe  
Nyangaraye  
Bunde  
Wikpa  
Kangama  
Kobu  
Ndr’ Chukpa  
Dhekpa  
Mbidjo  
Petsi  
Mopila  
Kpaki  
Ngbachulu  
Mandro  
Bambu  
Nizi  
Ngoto  
Ndjaza  
Saramungu  
Mutumbi  
Avetso  
Loga  
Kpandroma  
Sindani  
Djambisi  
Loyi  
Dhimbe  
Tsesi  
LambiKitambala  
Kato  
CentraleSoleniama  
Shari  
Nyakunde  
Djugu  
Kasenyi  
Rwampara  
Bogoro  
Bunia

## ***Total amount of questionnaires and constraints faced***

Figures displayed in the present report cannot be considered as representative of the opinion of *all applicants in the case*. Firstly, ASF only consulted applicants it identified and assisted. The results detailed in the present report do not reflect the opinion of any other applicants assisted by VPRS' intermediaries. Beyond that, only a significant portion of applicants were consulted. Although applicants consulted represent a significant sample of the total amount of applicants assisted by ASF, percentages differ village by village due to several constraints explained below. Secondly, and maybe more importantly, one can never pretend to speak on behalf of all applicants. Statistics analysed in the report only express overall tendencies. Applicants' experience, expectations or motivations are strictly individual and cannot be summarised as a whole. From this perspective, the present report cannot be understood as reflecting any homogeneous views, concerns and interests.

Victims were randomly selected to answer the questionnaire. No predetermined criterion was set. Unless otherwise mentioned, the gender balance in the questionnaire is reflective of the gender balance among applicants who filled in the VAF.

Questionnaires/Victims Application Forms (VAF) were meant to be filled in together, even though priority was given to the latest. 592 questionnaires were filled in, i.e. 69.8% of the total amount of VAF that ASF collected and handed in to the VPRS at the time of writing this report.

Questionnaires were filled in at the same time as the VAF. As already mentioned, the various possibilities for the grouping of victims were fully explained to each and every respondent by means of individual interviews. Such specific outreach was time-consuming and could not be conducted for every applicant in the timeframe set together with the VPRS for filling in VAF.

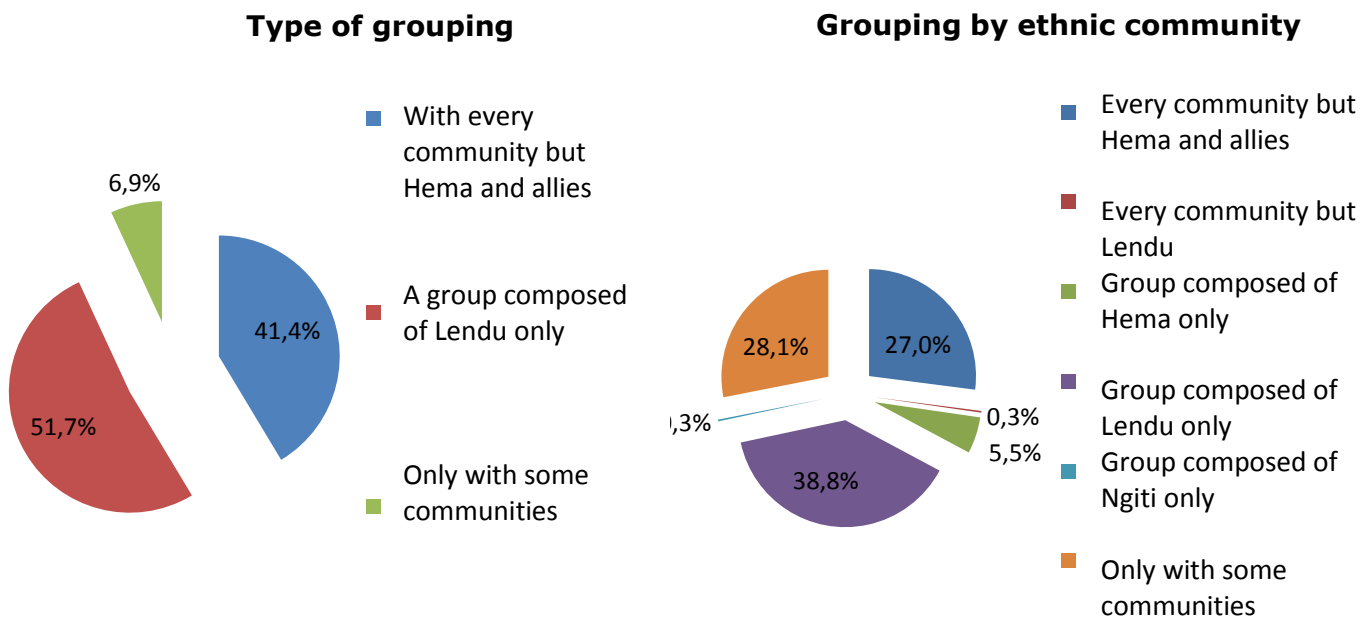
Besides, security remains a matter of concern in Ituri. Many villages are isolated and difficult to access (Buengwe, Matongo, Lipri, etc.). In some areas, the population only has little interaction with the other communities. Therefore, except in rather large cities and towns, local partners could perceive general suspicion towards them. Moreover, some villages showed great defiance towards the work of the ICC. Interviewers thus had to limit their interaction with applicants for security reasons. Such a situation was encountered in Nizi, Nyangaraye, Central Solemania, Iga Barrière, Largu, Bule and Blukwa. In the last three villages, ASF and its partners were threatened by chiefs of the community that supports the UPC. In Sota, a town only populated by Hema, the ICC is very badly perceived and, according to the population, the Court has not conducted any outreach. Despite efforts to secure alternative channels, ASF and its partners failed to meet applicants. Security concerns were also raised in Mandro where the influence of Bosco Ntaganda is still perceptible, leading to a fear of retaliation from supporters of the accused. Lastly, criminality is high in Tchomia and many incidents broke out during the field missions (from 24 June to 22 July 2013), once as a result of a murder by an unknown armed group and another time by the security forces. The situation remains unstable at the time of writing this report.



# FINDINGS

## General Data

Out of the 592 victims interviewed, 9.1% would agree to form one single group. Some victims see common representation as an opportunity for unity and reconciliation: "Le regroupement pourrait favoriser la cohésion, l'unité et la paix" ("Grouping victims could promote cohesion, unity and peace" A victim in Kilo-mission)



6.3% of respondents would favour a grouping by crime or harm suffered. Although at the margin, 5.4% expressed a preference for a grouping by geographical zones, 9.6% by village, 2.0% by gender and 0.8% by profession.

64.7% of respondents expressed their desire to be grouped on an ethnic basis. Among these victims, 38.8% would like to be represented in a group composed of Lendu only and 27% agreed to be with other communities, except the Hema and their allies. We further observed that out of 28.1% who wish to be grouped with specific communities, three main categories emerge: Lendu/Nyali (50.5%), Lendu/Ngiti (53.2%) and Hema/Alur/Bira (7.5%).

Based on those initial general data, the opposition of the majority of the victims to a single grouping is immediately perceptible. A clear line of division between Hema and Lendu, reflecting the division between the First and Second Arrest Warrants can be inferred. The reading of some — rather explicit — answers to the questionnaires confirms this impression:

« On ne peut pas avoir un avocat avec les Hema qui sont des meurtriers. Si l'avocat vient il sera lapidé, il nous trompera au profit des Hema. On va le tuer ! »  
(We can't have a lawyer with Hema who are murderers. If the lawyer comes he would be lambasted, he will betray us in favor of Hema. We are going to kill him!) A victim in Ngbachulu

This situation raises questions regarding the risk of dissenting views and concerns among victims if they are grouped together. In order to refine the results in the present report, data were broken down in order to distinguish between the two Warrants.

### **Reasons for distinguishing the 2 Warrants:**

The distinction between victims of the First Arrest Warrant and victims of the Second Arrest Warrant is supported in the jurisprudence of the Court. In the *Katanga and Ngudjolo Chui* case<sup>59</sup>, the Trial Chamber II stated that since "*applicants who are former child soldiers, (...) may thus have perpetrated some of the crimes that victimised the other applicants*"<sup>60</sup> and "*have a different ethnic background from that of the other applicants*"<sup>61</sup>, they have to be represented separately to prevent conflicting instructions amounting to a conflict of interests.

A similar analysis could be transposed in the present case. Indeed, any grouping needs to take into consideration the fact that the victims' perception of victimisation is sometimes reduced to an either/or alternative (either victims or perpetrators). Some applicants deny the quality of victims to other applicants, especially Lendu vis-à-vis Hema. During the consultations, some applicants were quite explicit on this point:

« Certains sont des victimes et les autres sont des auteurs. Comment nous mettre ensemble ? »  
(Some are victims, other are perpetrators. How can we be together?) A victim in Kobu

« Les Hemas nous ont fait du mal » (Hema hurt us) A victim in Lambi Kitambala

« Ils sont considérés comme nos adversaires » (They are seen as our opponents) A former child soldier

<sup>59</sup>Trial Chamber II, in the case The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, *Order on the organisation of common legal representation of victims*, ICC-01/04-01/07, 22 July 2009

<sup>60</sup>*Ibid.* para. 12- c)

<sup>61</sup>*Ibidem.*

In this context, common legal representation within a single group is seen as impossible without privileging one ethnic group over the other or 'betraying' one to the benefit of the other.

A similar resentment is also expressed by some former child soldiers. Indeed, among the applicants assisted by ASF, half of them voluntarily enlisted within UPC. Narrative answers from the questionnaires indicate that their motivation to join the UPC is often grounded in a desire to take revenge for the crimes committed by Lendu and/or Ngiti armed groups. Those applicants therefore feel uncomfortable with being grouped with Lendu, who are seen as attackers and perpetrators of mass slaughter. This negative perception could cause problems for the Common Legal Representative as some former child soldiers expressed fears that the lawyer who speaks to Lendu would not be impartial or would allow Lendu to "spy on Hema".

Geographically, it also makes sense. Indeed, Hema are all to be found in the East (from the Bunia/Iga-Barrière axis) and South of Ituri. All applicants of the case are therefore spread all around the District. Consequently, one can wonder whether a lawyer could cover such a wide area, especially in a land where two ethnic groups have fought for many years and where there is still dissent between them.

That being said, it has to be noticed that the line dividing the First and Second Warrants is not clear-cut. Indeed, although a small amount, some applicants are at the same time victims of attacks of UPC falling under the Second Arrest Warrant and former child soldiers as described in the First Warrant. Such profiles show the limit of the division between the two Arrest Warrants and should therefore be treated with caution, especially in the organisation of the legal representation. Beyond that, the line dividing the First and Second Arrest Warrants should not be equated with a strictly ethnic line. Ethnic groups other than Hema are concerned by the First Warrant (Alur Bira, Nande, etc.). Ethnic groups other than Lendu faced the UPC attacks. Lastly, the fact that some Hema are also victims of the UPC attacks has to be taken into consideration.





## A. First Arrest Warrant

Issued on 22 August 2006, the First Arrest Warrant charges the accused with the enlistment, conscription and use of children under the age of 15 during the hostilities<sup>62</sup>. The crimes, committed between July 2002 and December 2003, amount to war crimes.

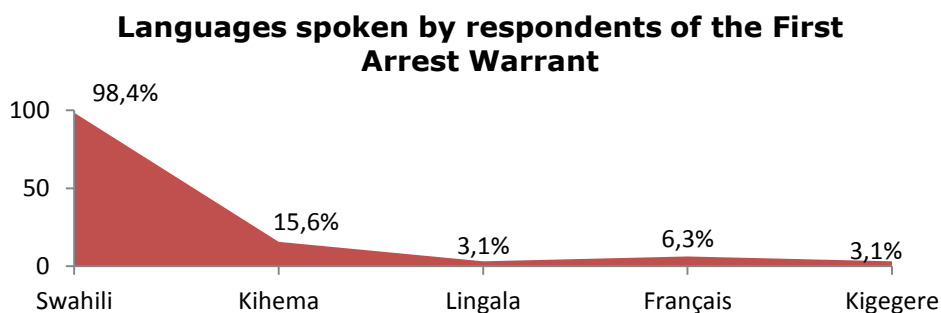
ASF interviewed 69 applicants (58.47% of applicants assisted by ASF) in Rwampara, Bunia, Nyakunde, Shari, Bogoro, Kasenyi and Djugu. Due to somewhat strong defiance towards the ICC, or for the other security reasons mentioned above, some villages such as Nizi, Centrale Solemania, Sota, Mandro, Tchomia, Bule and Blukwa were not, or were barely, accessible to intermediaries. In addition, few victims could be reached in Mandro as former child soldiers from this area are now spread towards the mining quarries of Mongbwalu and Nizi or simply now live in Bunia and Kasenyi.

We should mention that some applicants filled in the VAF in Mongbwalu and Sayo, the place where they work, despite actually living in Dele, a village near Bunia. This parameter should be taken into account in the organisation of the legal representation.

Moreover, as already mentioned, some applicants are at the same time victims of attacks by UPC falling under the Second Arrest Warrant and former child soldiers as described in the First Warrant. Such profile shows the limit of the division between the two Arrest Warrants and should therefore be treated with caution, especially in the organisation of the legal representation.

### ***Total results of first warrant of arrest***

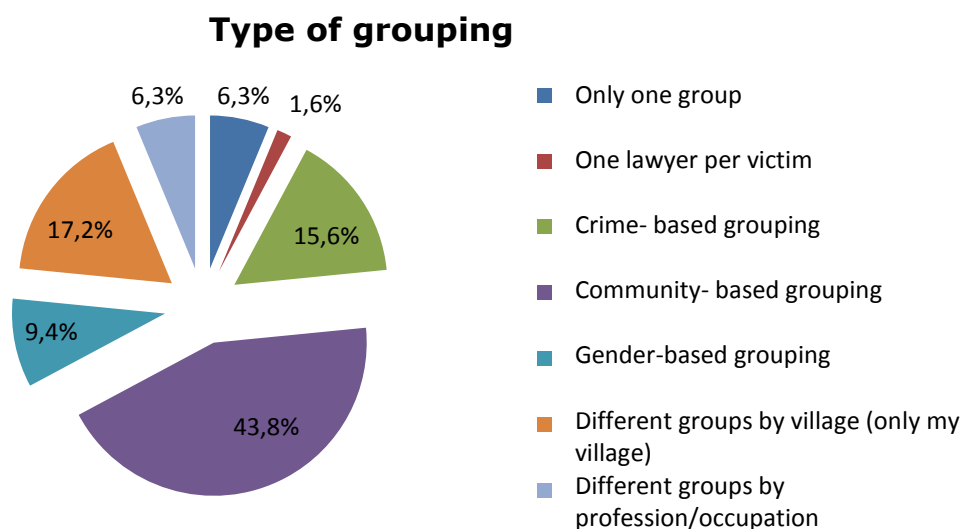
Even though most of the applicants are located in Hema '*Chefferies*' or in '*Secteurs*' populated by many Hema, few speak Kihema (15.6%), while almost everyone uses Swahili, the *lingua franca* of the region, as their first language (98.4%).



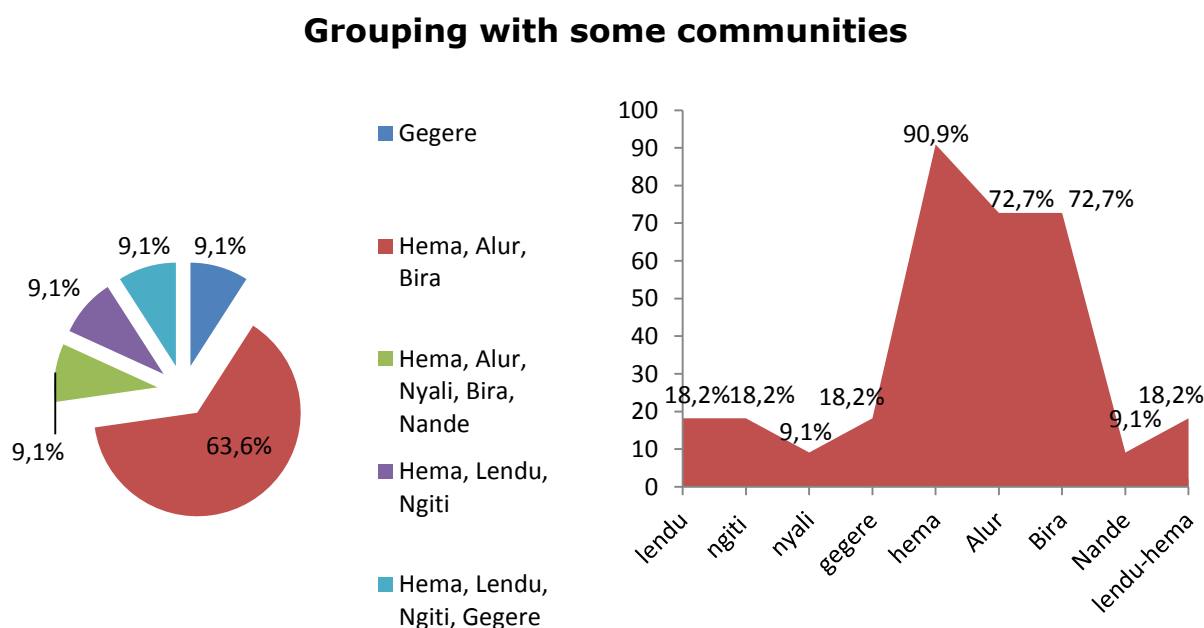
A very small number of applicants interviewed by ASF (1.6%) expressed the desire to be represented by a personal lawyer (under the legal aid system); 6.3% would like to see a single lawyer representing all victims in the case; 6.3% expressed the desire to be grouped by profession; 9.4% would favour a grouping by gender. Conversely, 15.6% of respondents would favour a grouping by crimes or harm suffered; 17.2% by village and,

<sup>62</sup>Article 8(2)(b)(xxvi), or article 8(2)(e)(vii), of the Rome Statute

most significantly, 43.8% by ethnic community. This portion is even higher when this last figure is combined with percentages in favour of a grouping by crimes and by villages (76.6%). Indeed, most of the former child soldiers are Hema and the cities are populated predominantly by this ethnic group. A division by crime or by village thus seems to reflect, *de facto*, a division between Hema and Lendu, bearing in mind that all child soldiers are not Hema and victims of UPC are not only Lendu.



Out of the 43.8% of respondents who expressed a preference for an ethnic grouping, 62.1% understand this term as a grouping within the Hema community or together with communities historically related to Hema such as Alur and Bira. Only 18.2% of respondents wishing to be grouped with 'some communities' would accept a grouping between Hema and Lendu.



What is remarkable is the proportion of applicants who expect a high degree of proximity from the lawyer. This could be interpreted as a need to see their specific situation acknowledged and properly dealt with. Such expectation could also be understood as reflecting a need to express themselves confidentially within a small group. This last parameter might be relevant in light of the fear expressed by some applicants that Lendu might spy if a single lawyer, representing all victims in the case, was appointed.

## **Rwampara and Bunia**

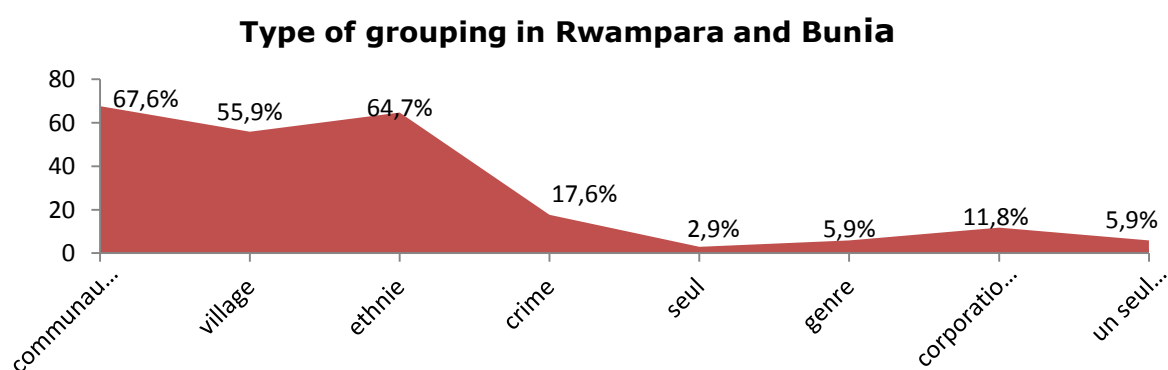
In Rwampara and Bunia, interviewers faced reluctance by the population to fill in VAF and, consequently, ASF questionnaires. Furthermore, an atmosphere of suspicion towards the ICC is perceptible. Beyond that, it should be mentioned that interviews had to be relocated due to the alleged presence of M23 and the ongoing rumours about recruitment from this armed group in which Bosco Ntaganda allegedly played a significant role.

Bunia is the administrative centre of the District of Ituri with a population of more than 350,000 inhabitants. It is also a cosmopolitan centre where many different ethnic groups are represented (including Hema and Lendu). As a consequence, 100% of the applicants interviewed speak Swahili. As for Rwampara, it is located a few kilometres away from Bunia and was a training place for child soldiers during the 2002-03 war.

64.6% of respondents affirmed that they voluntarily joined the UPC as a result of retaliation or to protect their family from attacks led by Lendu and/or Ngiti militias. Applicants were subsequently trained in the camps of Rwampara, Mandro and for some in Bogoro.

Before delving into the analysis, a key parameter that is symptomatic of the complexity of the consultation should be emphasised. Indeed, even though many answers (61.7%) use the word “*communauté*” (“*community*”), the meaning of such a term can vary. Some applicants refer to ethnic community, while others refer to their place of residence. If such polysemy can partly be explained by the difficulty to translate the concept of community from local languages to French, it is also the expression of a variety of feelings as well as the intricacy of the local reality.

Consequently, interviewers faced difficulties filling in questions 2, 3 and 4. During the interviews, many respondents answered “*several groups by ethnic community*” to the second question, but were unable to decide which community they wanted to be grouped with because of the polysemy hidden behind such notion. The interviewer therefore had to offer a cumulative rather than an alternative choice to the respondents. The following graph shows the percentage of every answer given:



Nearly 70% of applicants mention the word “*communauté*”. It can, at first glance, be interpreted as a desire for proximity, in other words a desire to be represented within an environment known by the applicant, with people with whom they interact daily.

« Nous voulons rester dans notre groupe/camp/communauté »  
(We want to stay in our group/camp/community)

Distinction between a grouping by village and by ethnic community is blurred in this regard, and it appears that many are likely to be represented together with other ethnic groups only if they live within the same village. Indeed, many applicants would agree to be grouped with “*other tribes living within [their] environment*”, often in order to “*promote community life*” or “*promote social [and peaceful] cohesion*”.

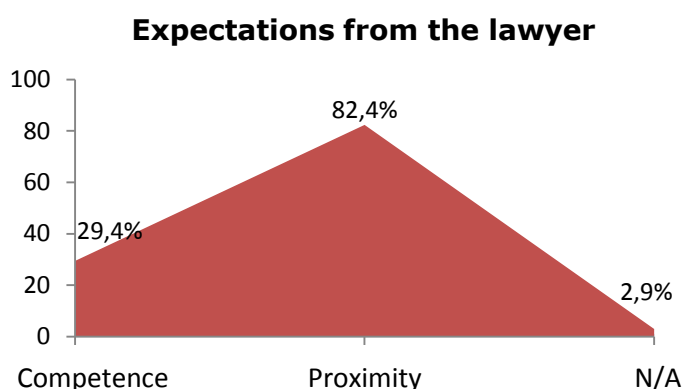
Beyond that, the understanding of what a community means is also influenced by the divisions stemming from the war.

« Parce que chaque ethnie aura à dire à son avocat sinon ça créera toujours des conflits »  
(Because every ethnic group could speak to his lawyer, otherwise it would always create conflicts)

« Parce que chaque tribu était en conflit »  
(Because every tribe was in conflict with each other)

Therefore, the ethnic division is to be understood as a division between Hema and allies versus Lendu and allies. As a consequence, 37.5% of respondents who wished to be grouped “*only with some ethnic groups*” would agree to be grouped together with Hema, Alur and Bira. Here again, this number could be interpreted as a need to be represented with persons they could meet on a daily basis.

Such need is also translated by the high number (82.4%) of respondents who expect close proximity to the lawyer to be appointed.



It seems important to take into account these parameters for the organisation of the legal representation. In the event that one lawyer represented all the former child soldiers, he would be confronted with opposition to being grouped with other unknown applicants, sometimes living in a different area and having a different story.



Beyond that, a single grouping where all victims in the case are represented by a single lawyer is completely rejected. Some respondents cite in this regard the risk of being spied on or, more globally, their reluctance to share anything with members of the opposite side during the war.

« En étant ensemble, les autres ethnies vont être au courant de nos problèmes ou affaires »  
(*If we are together, other ethnic groups will be aware of our problems or concerns*)

« Ils vont nous écouter »  
(*They will listen to us*)

Lastly, animosity aside, a grouping with those who do not share the same history seems unjustified to many respondents. Such answers can be read in parallel with the 11.8% of applicants who preferred a grouping according to the crime or harm suffered.

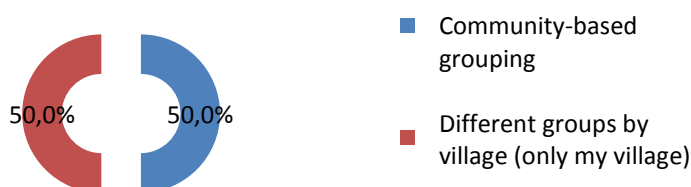
« Il sera difficile pour une communauté de parler de la situation d'autrui à son avocat »  
(*It will be difficult for a community to speak to its lawyer about the situation of others*)

## Shari

Shari is located in the same geographical area as Rwampara and Bunia. Applicants were for the most part enlisted in training camps of Rwampara and Mandro.

Overall, results are similar to those in Rwampara and Bunia. All respondents rule out a single grouping and call for a grouping by village and by ethnic community (50% each). Victims do not mention other criteria.

### Type of grouping in Shari



As in Rwampara and Bunia, respondents expressed a clear desire to be represented only within the close community that surrounds them, “*We want to be in our camp*” or “*we want to stay in our group*” are common answers in Shari. Being grouped together with members of their community is seen as the best way to speak freely about what they actually suffered and also to avoid any interference from the enemies.

« Cela permettra à chaque communauté de parler de ce qu'elle a vécu »  
(*This would enable each community to speak about what she lived*)

« C'est difficile pour un village d'expliquer ce qui s'est passé chez son voisin »  
(*It is difficult for a village to explain what happened to the neighbor*)

« Les autres ethnies risquent d'écouter nos problèmes »  
(*There is a risk that other ethnic groups hear our problems*)

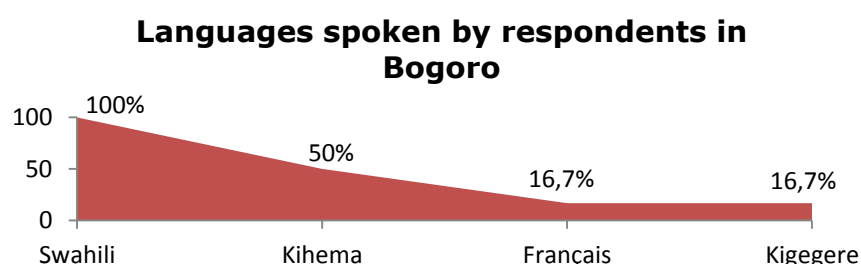
It seems that this desire for proximity is even more important in Shari than Bunia/Rwampara. The fact that 55% were conscripted by force could be a factor explaining this situation. Be that as it may, Shari is to be connected with Rwampara and Bunia, even though the lawyer would need to consider the specificity of Shari.

### ***Bogoro and Kasenyi***

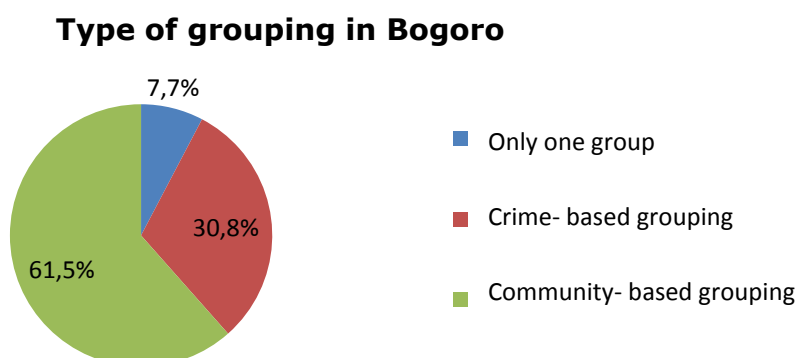
On the way from Bunia to Lake Albert, Bogoro is quite an important village, violently affected by the war. Security is still a matter of concern as FRPI and FARDC are fighting in the sector of Walendu Bindi in the South of Bogoro, such as in Lakpa and Lagabo, only a few kilometres away from Bogoro. Former child soldiers assisted by ASF were enlisted in the camps of Mandro and Shari, as well as in Bogoro.

At the edge of Lake Albert is Kasenyi, a fishing town. It was difficult to make contact with the applicants who were trained in the camps of Kasenyi, Tchomia and Mandro. There is indeed a significant portion, though not the majority, who moved from Mandro to Kasenyi.

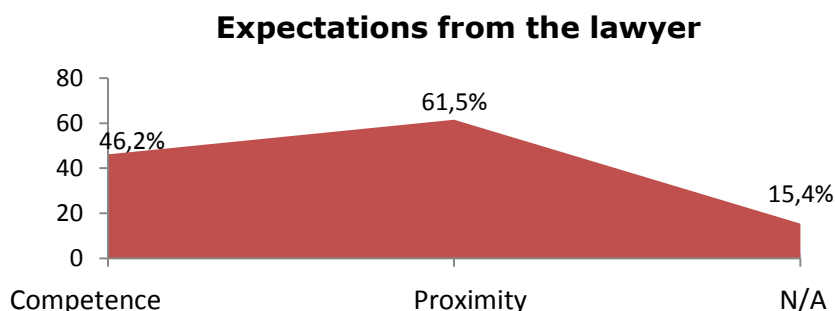
These two villages are part of the Bahema Sud '*Chefferie*' and are geographically in the same area. Even though applicants seem to have a similar profile to those in Rwampara and Bunia, it is important to mention that some of them, assisted in Kasenyi, were trained in different camps. Such particularities need to be taken into account. Moreover, although all applicants speak Swahili, half of them also speak Kihema in Bogoro.



A large majority of respondents is in favour of a grouping according to ethnical background (61.5%), all of them wishing to be grouped only within the Hema community. 7.7% of respondents would favour a representation with one group while 30.8% back a grouping by crime or harm suffered.



From this perspective, the conclusion drawn for Rwampara and Bunia could be transposed. Applicants expressed a need to be represented within a known group. Here again, 61.5% expect close proximity to the lawyer to be appointed.



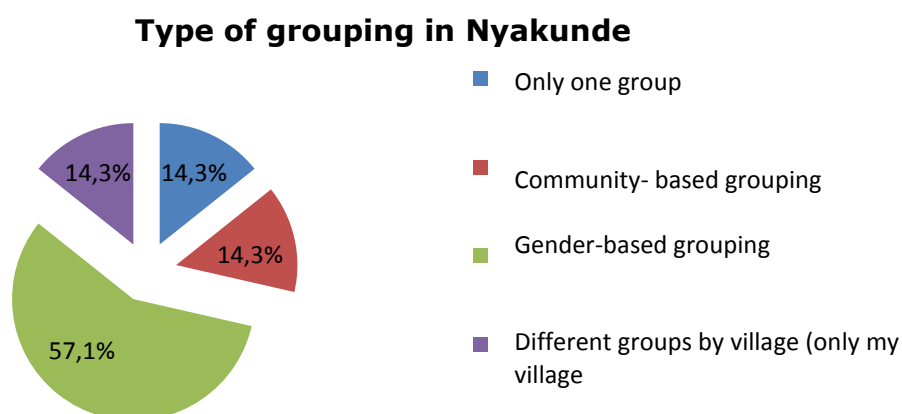
However, we note a peculiarity regarding the choice of grouping by crime or harm suffered. This category of applicants would not reject a single group with Lendu, but rather considers that *“every crime has its own consequences”* and should be treated differently.

While organising the legal representation, it seems important to consider the specificities of applicants living in the region of Bogoro and Kasenyi who, despite appearances, have a different profile from applicants in other cities.

## Nyakunde

Situated South-West of Bunia in the sector of Andisoma in the territory of Irumu, Nyakunde is a significant centre on the way to Beni in North Kivu. Applicants speak only Swahili and were forcibly conscripted in the training camps of Sota and Marabo. The profile of applicants is therefore different from the previous ones.

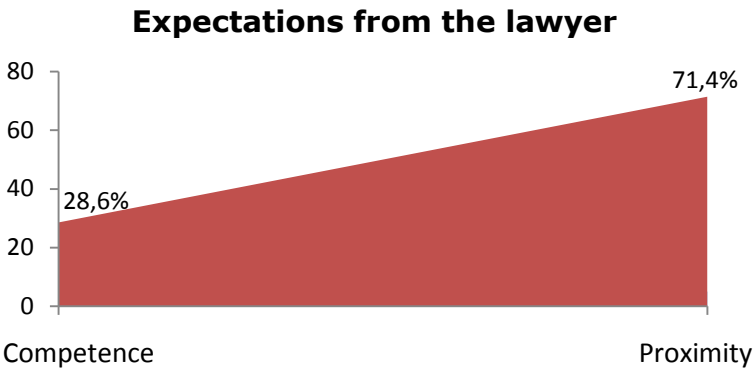
For this reason, results of the consultation are also different from the previous villages. A vast majority would indeed favour a grouping according to gender (57.1%), while 14.3% (each) would prefer a grouping by ethnic community, village and a single group.



This over-representation of a grouping by gender is largely due to the fact that applicants who filled in the questionnaires happened to be women who suffered from sexual violence. The proportion of victims who suffered sexual violence is higher in Nyakunde than in any other villages. The main reason for being grouped together given by women interviewed is their marginalisation within their community. Raped, these girls have been

abducted or forcibly conscripted, as 89.47% of all applicants in Nyakunde. As a consequence, being grouped with victims of other crimes creates the risk of inhibiting them from freely interacting with the lawyer.

However, these applicants would not oppose a larger grouping with different ethnic groups, mostly Hema, Alur and Bira. They nevertheless clarify that these ethnic groups must live within the same village, thus confirming the general need for proximity expressed by the former child soldiers. Figures concerning their expectations from the lawyer to be appointed confirm this need.



**Djugu**

Djugu is the administrative centre of the Djugu territory. It is the only locality north of Bunia that could be reached by ASF as Largu, Bule, Blukwa, Nizi and Centrale were not accessible for security reasons. Only two applicants could be assisted and interviewed. Both were trained in Bule.

Both applicants stated a preference for a grouping by crime *“because not everyone was forcibly conscripted”*, while rejecting a grouping with other ethnic groups *“because realities were not the same”*.

The profile of former child soldiers is not homogeneous. Specific elements were highlighted in this report, depending on: the geographical situation, the demographic composition of the population, the forced conscription or the voluntary enlistment, the gender or the location of the training camps. Such heterogeneity should be kept in mind when devising the best way to reflect the interests of applicants, sometimes diverging even within the same group of applicants.

General observations can nevertheless be made. First, the general opposition to a grouping where a single group would represent all victims in the case has to be highlighted. Beyond that, the often expressed need for proximity is striking. The preference for a grouping within the *“community”* reflects this wish. Such term is sometimes assimilated to *“village”*, sometimes to *“ethnic group”*, but most of the time the two notions are intertwined.

## B. Second Arrest Warrant

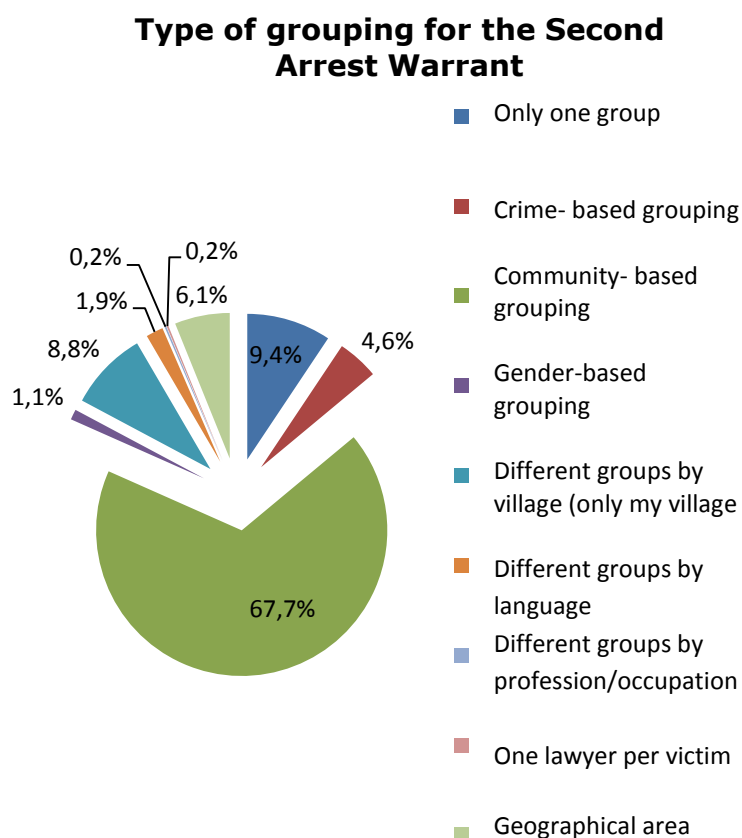
The Second Arrest Warrant confirmed by the Pre-Trial Chamber II on 13 July 2012 describes attacks against the civilian population, murder, rape and sexual slavery, pillaging perpetrated by the UPC/FPLC in Mongbwalu and Sayo between 18 and 23 November 2002, and in Lipri, Bambu, Kobu and surrounding villages between 17 February and 2 March 2003.

Those figures need to be considered with great caution. Even though the nature of the crimes committed, as well as the extent of victimisation, seems quite similar, the very fact that the Second Warrant is divided between two distinct attacks in two distinct geographical zones makes it difficult to envisage a similarity of views between all victims of the attacks.

The Second Warrant indeed covers a wide area, straddled between different territories (Djugu and Irumu), as well as several 'Secteurs' and cities (Lendu sectors, Mambisa, Nyali). Perceptions and expectations vary from one 'Secteur' to the other depending on the proximity to other ethnic communities, the demographic composition, the quality of infrastructure or even the image of the International Criminal Court. The overall result is therefore only indicative and results have to be assessed depending on the geographic area.

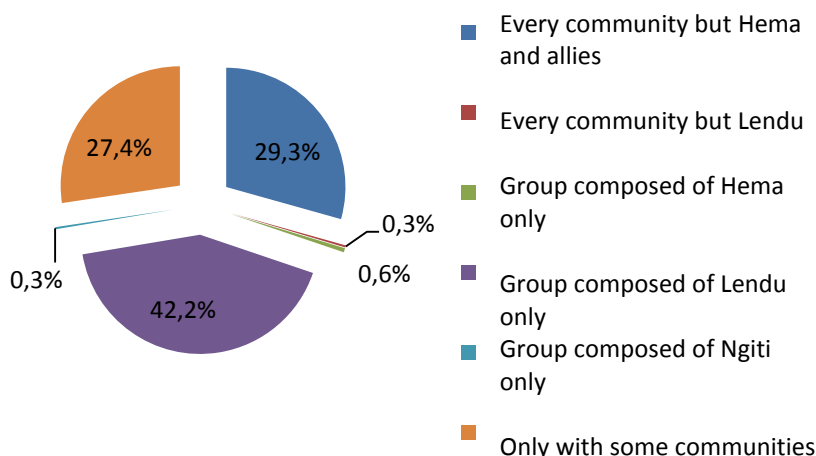
### ***Overall results of the second warrant***

523 questionnaires were collected, (71.7% of applicants assisted by ASF). Overall, 67.7% of victims interviewed expressed their preference for a grouping based on ethnic consideration. Only 9.4% of victims interviewed wished to be represented by a single Common Legal Representative, together with all the victims of the case. 4.6% of respondents expressed the desire to be grouped by type of crimes or harm suffered, 6.1% opted for a geographically-based grouping, 8.8% favoured a grouping by village, 1.1% by gender and 1.1% by language..





## Grouping by ethnic community



Among the 67.7% of victims who expressed their preference for a grouping based on ethnic criteria, only 42.2% understand the notion of “ethnic grouping” as the grouping of the members of one ethnic community, to the exclusion of any other community. 29.3% of respondents understand the notion of ethnic grouping rather as meaning a group comprising any communities other than the Hema. By the same

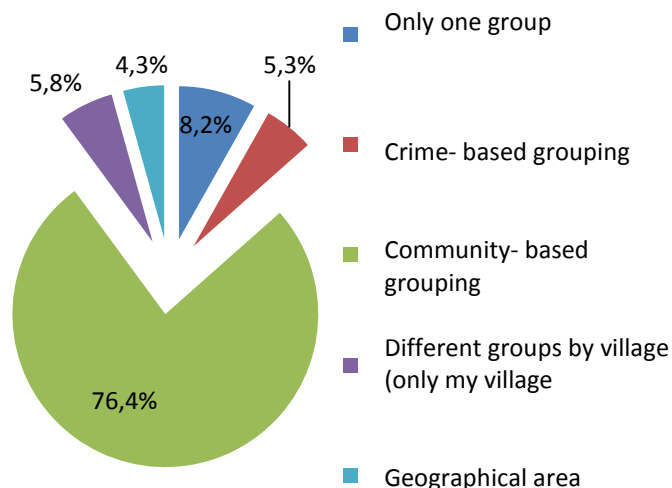
token, when respondents opted for a grouping with “only some communities” (27.4%), the Hema are almost never mentioned (1%). The communities referred to are Lendu (84.4%), Nyali (62.5%), Ngiti (58.3%) and Alur (16.7%). Although, as already mentioned, the results vary greatly once broken down by village, depending on the demographic composition of the area, it is nevertheless important to point out that an overwhelming majority opposes any grouping with the Hema.

## Region of Lipri

### ❖ Lipri and surrounding villages (Tsili, Ngbachulu, Bbukpa, Ndr’Chukpa, Bunde, Mbidjo, Petsi, LambiKitambala, Dhekpa, Loyi, Wikpa and Bambu)

Lipri is located North-West of Bunia, in the Walendu-Djatsi “Secteur”. The *Secteur* is predominantly a Lendu one, even though some members of the Nande and Alur community live in the area. Rather isolated, Lipri is poorly served in terms of infrastructure. From Bunia, the main road to Lipri is the one to Kolomani via Shari. Although passable during the dry season, it is difficult to drive during the rainy one. The secondary road through Miala can only be used by motorbike or on foot.

## Type of grouping in the Lipri area



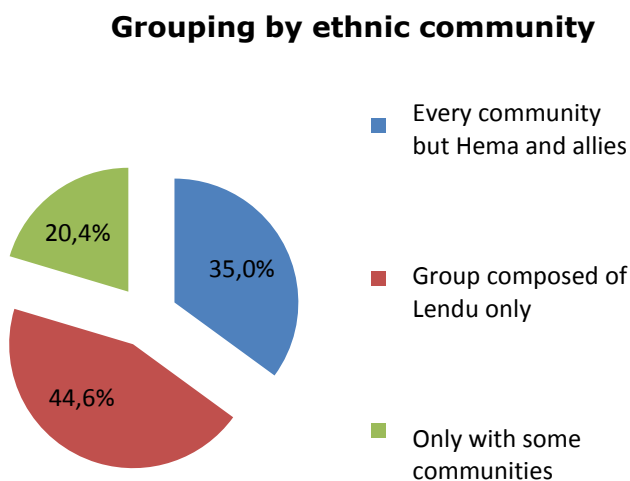
208 victims were interviewed, i.e. 87% of applicants assisted by ASF.

The Lipri area is characterised by a strong predominance of the ethnic criteria (76.4%). Only 8.2% of respondents would agree to be represented by a single lawyer representing all victims of the case, while 5.8% favoured a grouping by village, 5.3% by crime or harm suffered and 4.3% by geographical zone.

It is interesting to note that percentages vary depending on the village, even though the variation was not considered important enough to justify a specific analysis. From this perspective, we note that in Ngbachulu, 88.9% of respondents favoured an ethnic grouping (11.1% were in favour of a single group). Conversely, in Tsili, while 95% of respondents opted for an ethnic grouping, 5% expressed a preference for a single group encompassing all victims of the case. The same goes for Bbukpa where “only” 66.7% of respondents favoured an ethnic grouping, 11.1% of respondents opted for a division based on the type of crimes and harm suffered and 8.3% favoured one single group

Among the victims who expressed their preference for a grouping based on ethnic criteria, 44.6% of respondents understand the notion of “*ethnic grouping*” as the grouping of the members of the Lendu community. This number rises to 58.3% in Ngbachulu.

A significant number of applicants (35%) would agree to be grouped with any communities other than the Hema. The number of those who understand the ethnic grouping as a “*coalition of interests*” in opposition to the Hema varies among the different villages, ranging from 4.2% (Ngabchulu) to 29.2% (Bbukpa).



Beyond, it has to be noticed that among the 20.4% of the respondents who would accept to be grouped only with some communities, Hema are never mentioned. The ‘other communities’ referred to are Ngiti (21.9%), Nyali (17.7%), Alur (7.3%) and Bira (4.2%). The results nevertheless vary depending on the village, the ‘other communities’ with which the respondents would accept to be grouped. For example, in the Lipri zone, the term “*other communities*” refers to Lendu [100%], Ngiti [64%], Nyali [52%], Alur [20%] and Bira [12%] while in Tsili it designates the Lendu [100%], Ngiti [100%], Nyali [50%], Bira [25%]. In Ngbachulu, only Lendu and Ngiti were mentioned.

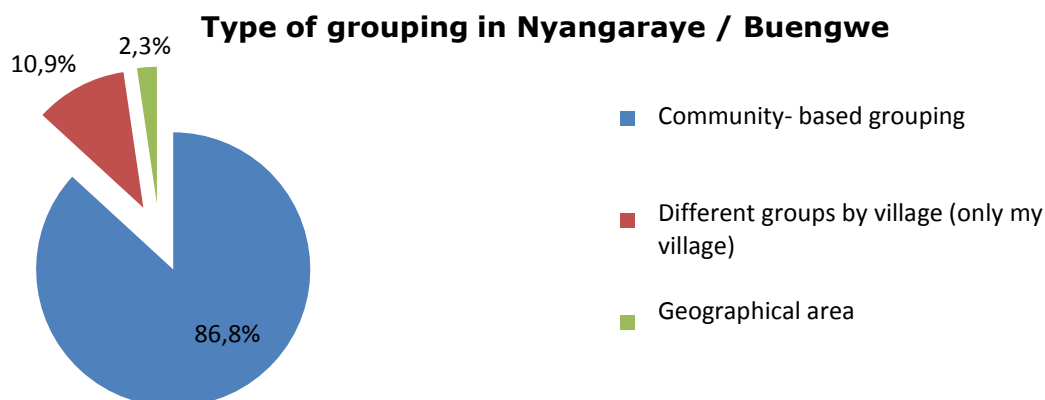
The fact that a grouping with Hema is either explicitly rejected or simply not envisioned is significant. Such findings can partly be explained by the demographic characteristics of the region which is rather isolated, with few accesses to it. Lipri and surrounding villages are situated in a sector called ‘Walendu Djatsi’ where the population is historically almost exclusively Lendu. Beyond that, the statements collected tend to indicate that a specific perception of their own victimization plays an important role (see below).

Bambu is explicitly mentioned in the Second Arrest Warrant. Unfortunately, only six questionnaires were collected by ASF and its partners. This number was not considered significant enough to justify a separate analysis. Out of those six questionnaires, 50% of respondents expressed a preference for ethnic grouping (understood as a grouping between Lendu, Alur, Ndo, Nyali, Bira, Mambisa and Walese). 33.3% favoured a geographical-based grouping; 16.7% wish to be grouped within their village.

## ❖ **Nyangaraye and Buengwe**

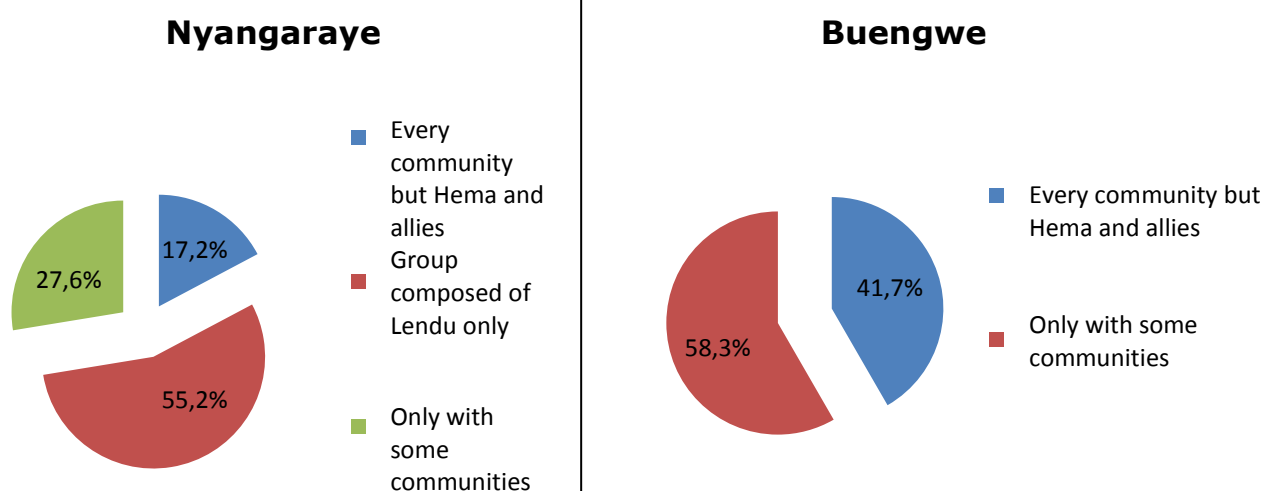
Nyangaraye is located relatively close to Lipri at the border between the “Walendu Djatsi” and “Baniari Kilo” *Secteurs*. Buengwe is the administrative centre of the Anyolo Fataki *groupement*. It is located South of the KabaKaba *groupement*, on the road to Kilo from Nyangaraye in the Baniari Kilo *Secteur*.

129 questionnaires were collected (73.2% of applicants assisted by ASF). A strong majority of respondents (86.8%) opted for an ethnic grouping. No respondents expressed a wish to be grouped together with all victims in the case



Despite this apparent similarity, the notion of “ethnic community” differs between the two villages. In Nyangaraye, 55.2% understand this term as a group composed of only one ethnic group: Lendu. Only 27.6% would agree to be grouped with some other communities, namely Lendu (95.8%), Ngiti (83.3%), Nyali (83.3%) and Nande (58.3%). Conversely, no respondents in Buengwe wished to be grouped only within their own communities. 41.7% of them understand the ethnic grouping as a grouping with all communities other than the Hema, while 58.3% would be in favour of a group composed of Lendu (100%), Nyali (78.6%), Ngiti (71.4%) and Bira (7.1%).

### **Grouping by ethnic community**



Such difference could probably be explained by the geographical and demographic specificities observed in the two localities. Nyangaraye used to be a Nyali village. It now hosts a predominantly Lendu population. Some members of the Nyali community still claim that Nyangaraye “belongs to” their community. Consequently, an overwhelming majority of the applicants assisted by ASF in Nyangaraye are Lendu, but the village is mixed and hosts a strong Nyali community. Buengwe is a Nyali village and most of the applicants assisted by ASF are Nyali.

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These observations, in turn, raise questions regarding the organisation of the common legal representation. Indeed, the inward-looking trend noticed in Lipri, Bbukpa and Ngbachulu often finds roots in a feeling that Lenduwere more victimised than any other communities and thus that the suffering should not be equalised. Applicants who expressed this feeling do not usually deny the fact that other communities were victimised, but establish categories of victims and categories of victimisations along ethnic lines. Some statements made by the applicants are very explicit in this regard and raise doubts as to whether they would agree to be represented together.

« Nous avons souffert plus que d'autres groupes ethniques c'est difficile d'associer nos revendications à eux »

(We have more suffered than other ethnic groups. It is difficult to mix our claims to theirs) A victim in Bbukpa

« D'autres ethnies n'étaient pas victimes à la même ampleur que nous »  
(Other ethnic groups were not victims to the same extend than us) A victim in Lipri

« C'est difficile de défendre au même moment le groupe ethnique qui n'a pas connu des graves atrocités comme nous Lendu »  
(It is difficult to defend at the same time an ethnic group that did not suffered the same atrocities we faced, we Lendu) A victim in Bbukpa

Conversely, when it comes to the relations with Hema, this inward-looking trend is mainly explained by the refusal to see Hema as victims. For most applicants in Lipri, Hema can only be seen as perpetrators. One victim in Ngbachulu stated that « *les hema ont tué ma famille, on ne peut pas se réconcilier avec eux* » (“Hema killed my family, we cannot reconcile with them”). This feeling is often translated in general terms: victims in Lipri cannot be grouped together with the Hema because « *les Hema sont méchants* » (“Hema are nasty”) or because « *les Hema sont des meurtriers* » (“Hema are murderers”). Sometimes, economic or social considerations are put forward in order to justify such general statements: « *Les Lendu sont marginalisés par les Hema* » (“Lendu are marginalized by Hema”) .

It is important to note that the feelings expressed could directly impact on the work and even the security of the Common Legal Representative. Many victims pointed out the suspicions and lack of trust that would arise if he/she were to represent both Lendu and Hema: « *Les Hema nous ont agressés. Notre avocat ne peut pas rencontrer les Hema sinon il jouera un double jeu* » (“Hema attacked us. Our lawyer cannot meet the Hema without double-dealing”); « *On ne peut pas avoir un avocat avec les Hema qui sont des meurtriers, il nous trompera au profit des Hema* » (“We cannot have a lawyer together with the Hema who are murderers, he will betray us to the Hema”). Some applicants are more threatening and promised to “kill” or “stone” the Common Legal Representative if he/she meets the Hema.

## Region of Kilo and Kobu

Kilo is located at the crossing towards Mongbwalu, Kobu and Kaba-Kaba. The Kilo 'collectivité' encompasses Kilo-Etat, the administrative centre called this because it houses the municipality offices; Kilo-mission is so named as a result of the presence of a church and a Catholic mission. Both are located in the Kama 'groupeement', together with the villages of Bongochu, Emanemanta, Kangama, Bonde, Sau II, Kau-Loba, Jambisi, Kpenyoko, Batata, Bese, Mangedu, Sianga, Ayao, Djomdjom, Enzani, Ombuanza, Penge, Agonzi, Bruxelles, Bwanga II, Liogo, KamaII and Matongo.

Even though Lendu are predominant (some villages are entirely Lendu), the population in the Kilo 'groupeement' is mixed and includes a strong presence of Nande, specialised in trade and gold-mining, as well as members of many other ethnic communities working in gold-mining companies. This ethnic diversity is reflected in the VAF collected by ASF. Out of the 94 VAF collected by ASF, 76.6% were filled in by Lendu; 14.9% by Nyali; 2.1% by Hema; 2.1% by Alur; and 4.3% by Mululu, Gerere and Bira.

Relatively close to Kilo, Kobu is located in the 'Walendu Djatsi' Sector and hosts a predominantly Lendu population alongside other ethnic groups, in particular during market days as it is one of the biggest in the area. Moreover, like Nyangaraye, Kobu used to be a Nyali village but the population has now changed in favour of Lendu. Such characteristics make Kobu quite similar to Kilo. The results will nevertheless be broken down to better reflect the distinctive features.

### ❖ Kilo

59 questionnaires have been collected in Kilo and its surrounding villages (44% of applicants assisted by ASF).

Results in Kilo appear somewhat paradoxical. The specific demographic composition in the Kilo zone probably explains the relatively high number of respondents (40.7%) who would accept to be represented by a single lawyer together with every other victim in the case. Nevertheless, this figure has to be balanced against the — also high — number of respondents who expressed a preference for an ethnic grouping (49.2%).

### Type of grouping in Kilo and surrounding villages

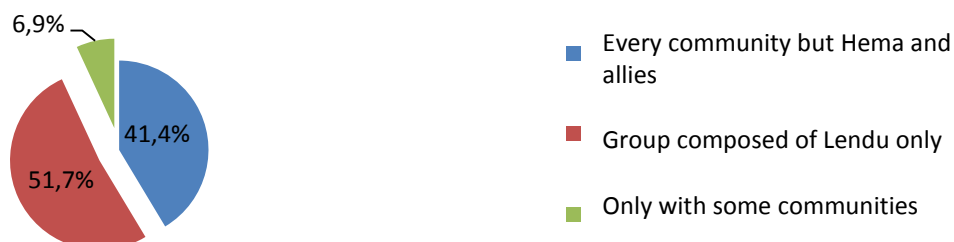


Beyond that, and despite the mixed composition of the locality, a slight majority (51.7%) of respondents who favoured an ethnic grouping only refer to a grouping within the Lendu community. Such ethnical fallback expressed by some Lendu could be explained by a specific perception of victimisation, Lendu often being the first target of the Shikana Namukono attack



It also seems important to mention that even the respondents who did not opt for a strictly ethnic grouping marked their opposition to the Hema. 41.4% of those who wished to be grouped according to ethnic criteria would indeed accept to be grouped with any community other than the Hema.

### Grouping by ethnic community

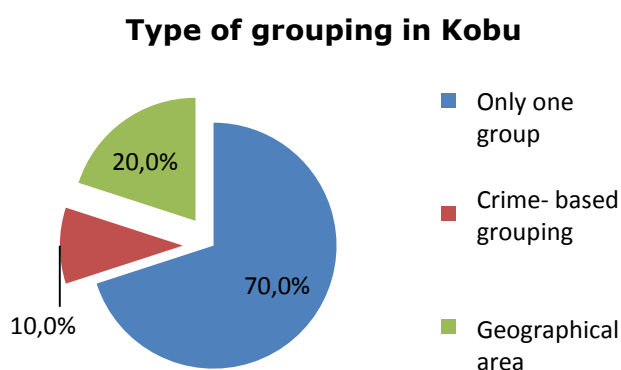


The fact that some applicants in Kilo are Hema raises questions in this regard, especially since some of the victims interviewed expressed clear doubts about the impartiality of the Common Legal Representative if he/she were to represent both Hema and Lendu, or expressed concerns about the fact that Hema could hear their discussions with the lawyer. The difficulties for the Common Legal Representative in organising consultations with the victims in this context should not be underestimated.

Two additional constraints should also be taken into consideration. First, some of the villages in the Kilo zone cannot be accessed by car. Kama and Matongo can only be accessed by foot or by motorbike, when it does not rain. Beyond that, from Bunia, as mentioned above, in order to reach Kilo, the road passes through villages defiant to the work of the ICC such as Iga Barrière or Nizi.

### ❖ *Kobu*

As already mentioned, the population in Kobu is mixed. Unfortunately, due to time constraints, only 10 questionnaires were collected. All of them were filled in by members of the Lendu community. In this sense, the results displayed cannot be considered as representative and should be analysed with great caution.



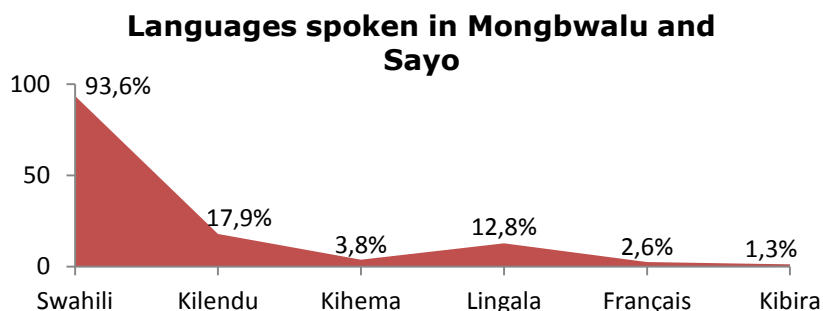
Whilst Kobu is demographically relatively similar to Kilo and geographically close, this locality is characterised by the solid majority that sees no objection to a common grouping with all the victims of the case (70%). The fact that only members of the Lendu community were interviewed makes this result even more striking. 10% of

respondents opted for a crime-based grouping and 20% favoured a geographical grouping. No respondent opted for an ethnic grouping.

## Region of Mongbwalu and Sayo

Located within the Baniari-Kilo sector, Mongbwalu is a rather big city (around 50,000 inhabitants) and its own administrative centre. The population is mixed and many ethnic communities co-exist, including Hema, divided up by neighbourhood and sector of activities. Thus, for example, in the Kilo-Moto neighbourhood, Nande and Hema are predominant and specialise in trade activities, while Lendu and Nyali mainly run gold-mining businesses. Conversely, Sayo (sometimes written Saïo) is mostly populated by Lendu and Nande (descendants of the former workers of the SOKIMO Company), and Hema only represent a small minority.

78 questionnaires have been collected in Mongbwalu/Sayo (45% of applicants assisted by ASF). Reflecting the ethnic diversity of the localities, questionnaires were filled in by members of the Aluba, Alur, Bira, Hema, Kusu, Lendu, Lokele, Luba, Lugbara, Mambisa, Nande, Ndo, Nyali, Rega and Walese communities. This mixed composition is also reflected in the variety of languages spoken, especially Swahili, and to a lesser extent Lingala, both *lingua franca* of the region.



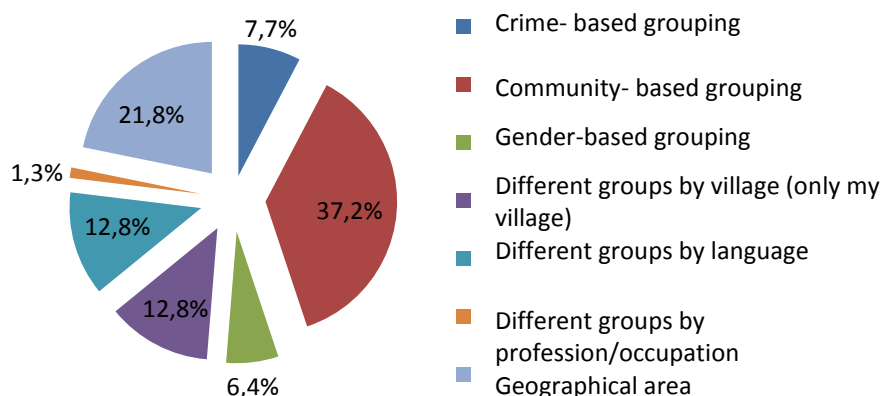
The mixed character of the population is also reflected in the VAF. Indeed, it should be highlighted that, of the 110 applicants assisted by ASF in Mongbwalu, 10 are Hema (9%). Some of them were specifically targeted because they were accused of “*helping the Lendu*”. Others were randomly attacked. This fact questions the very possibility of grouping the applicants living in Mongbwalu with applicants living in villages where a great animosity towards Hema was expressed. This is even more true given that, of the 10 applicants, two are victims of the First and Second Warrant, i.e. former child soldiers forcefully conscripted during the November 2002 attack on Mongbwalu. These two applicants suffered harm from the attack (pillaging and loss of close family members) and from the forced conscription.

In the questionnaires collected by ASF, many respondents expressed their preference for a grouping based on a geographical criterion, understood either as a city-based group (12.8%) or a geographical-based group (21.8%). The main reason given is the “*ignorance of the realities in other areas*” (“*nous ignorons les réalités qui sont chez les autres*”).

We also note the number of applicants who expressed their preference for a grouping based on the nature of crimes suffered (7.7%). This last item of data cannot be explained by the specificity of the crimes committed in the city. The victimisation in Mongbwalu/Sayo is quite similar to that observed in other sectors, i.e. a predominance of pillaging and destruction of property and loss of close family members. As most applicants assisted by ASF suffered both damages, the authors of the present report interpret such results as reflecting the difference between the First and Second Arrest Warrants rather than as a precise difference between material, physical and

psychological harm. No specific perception of victimisation was expressed during the interviews.

### Type of grouping in Mongbwalu/Sayo

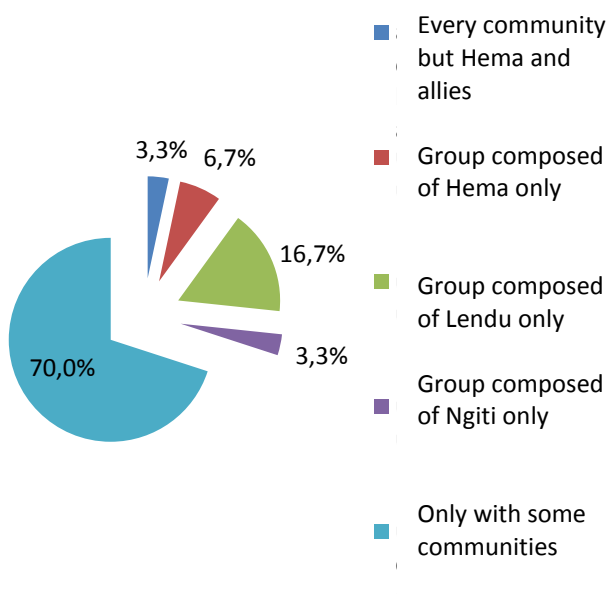


Mongbwalu/Sayo is characterised by the fact that no respondent would accept being part of a single group where a single lawyer would represent all victims in the case.

In the questionnaires, the percentage of applicants wishing to be grouped according to ethnic criteria (37.2% of respondents) appears to be lower in Mongbwalu/Sayo than in most of the villages analysed above. The most striking feature though is the extreme diversity of choices expressed by those who favoured an ethnic grouping. Mongbwalu/Sayo is indeed the only example in which respondents expressed the wish to be grouped only with Hema (6.7%) or only with Ngiti (3.3%). Those respondents (and especially the members of the Hema community) emphasised the particular nature of their situation, which cannot be adequately reflected if they are to be merged with other groups. Beyond that, when asked to clarify whether their choice to be grouped “*only with*

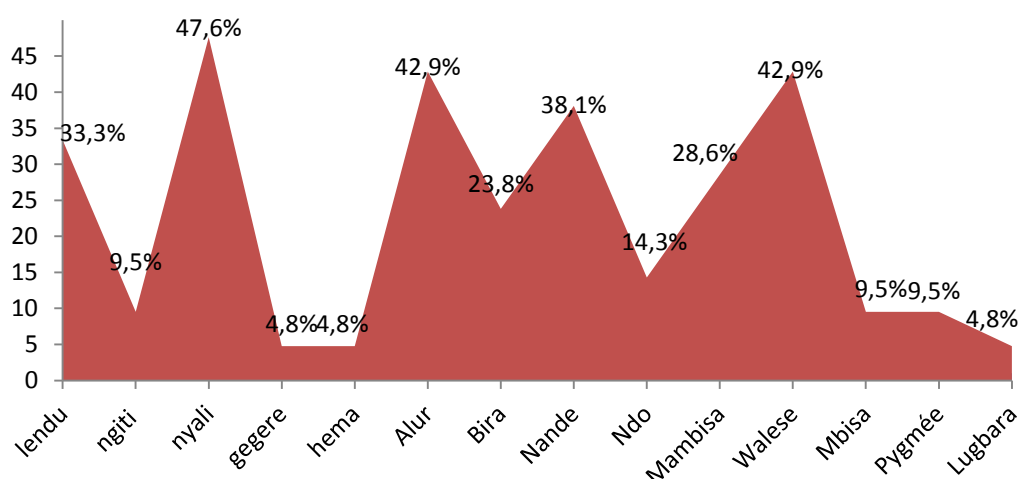
*Hema*” implied that they would agree to be grouped with former child soldiers, members of their community, all of them refused. Some expressed security concerns as, in their view, participating in the proceedings before the ICC could be seen as a betrayal. This specific situation has to be taken into account.

### Grouping by ethnic community



Almost all respondents who expressed their preference for a grouping with “*some communities*” (70%) seem to understand such grouping along the line dividing the First and Second Arrest Warrants. Almost all the applicant interviewed would accept being grouped with all other communities present in the area except the Hema. Only 4.8% of respondents agreed to be part of a general group encompassing members of the Hema community. When they did so, they mentioned that it was in order to “*to avoid discrimination*” (“*éviter les discriminations*”).

### Grouping with other ethnic groups

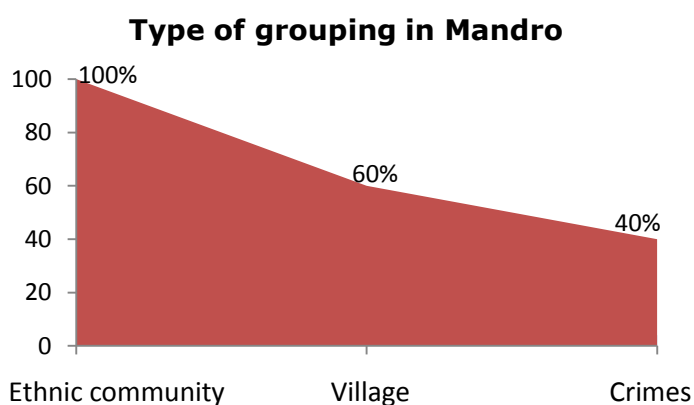


### The specific case of Mandro

Mandro is located in the Bahema-Banywagi 'Chefferie', predominantly inhabited by members of the Hema community. The village was known from the first period of the conflict as a stronghold of UPC and was the location of a military and training camp for newly recruited children<sup>64</sup>. Mandro was attacked by UPC on 4 March 2003<sup>65</sup> and, as such, is not included in the Second Warrant of Arrest limited to crimes committed between 17 February 2003 and 2 March 2003. However, applicants assisted by ASF in Mandro refer to crimes suffered in Lita, Lonyo and Chumbu in January 2003.

Only 13 applicants were assisted by ASF and its partners. All of them were interviewed and filled in a questionnaire.

70% of applicants assisted by ASF are themselves members of the Hema community. Special attention should therefore be paid to these applicants, geographically separated from most of the victims of the crimes described in the Second Arrest Warrant and living in a polarised city between Hema and Lendu. The reality in Mandro is complex. To understand such complexity, it appeared necessary to give applicants a multiple-choice questionnaire. Indeed, at first glance, every respondent would oppose a grouping where a single lawyer represents every victim in the case. Every applicant would opt for an ethnic grouping.



Nevertheless, although all applicants favoured an ethnic grouping, every one of them also wanted to subdivide this ethnic grouping, using a geographic or crime-based

<sup>64</sup> See Special report on the events in Ituri, January 2002-December 2003, UN Doc. S/2004/573, para 71.

<sup>65</sup> See Special report on the events in Ituri, January 2002-December 2003, UN Doc. S/2004/573, para 72

criterion in order to adequately reflect the reality in Mandro. From this perspective, data had to be analysed cumulatively rather than alternatively.

The reasons given to justify this subdivision nevertheless diverge. Some applicants understand the term “community” as referring to the “Mandro community”, as opposed to any other community. In this regard, applicants often point out the specificity of the attack in Mandro and on the particular nature of their situation. From this perspective, the preference for an ethnic grouping has to be read in conjunction with the preference for a grouping based on the geographical criterion. Justified by the fact that “realities of the facts are different” (“les réalités des faits sont différentes”) or that “attacks were different” (“les attaques sont différentes”), the choice for such grouping is exclusive/inclusive. It includes every group within Mandro that suffered from the attack and excludes any grouping with applicants located in other ‘Secteurs/Chefferies’.

Conversely, some applicants understand the term “community” as an ethnic grouping “within the Mandro community”. Respondents point out that even though both Hema and Lendu were attacked, both were targeted for different reasons. One applicant mentioned in this regard that “realities of the facts are completely different from one target to another” (“Les réalités des faits sont tout à fait différentes d’une cible à l’autre”). Be that as it may, such choice does not reveal a preference for an ethnic grouping in the literal sense of the term and should be read in parallel with the preference for a grouping based on the nature of the crimes committed. Victims who opted for such criteria did so either to single themselves out from applicants from a different ethnic background who were attacked for different reasons or from former child soldiers who often share a similar ethnic background.

The specificity of the situation in Mandro is reflected in the victims’ expectations towards their lawyer. In the VAF collected by ASF, all victims in Mandro insisted on the fact that the lawyer to be appointed “should know the event well” (“doit bien connaître l’événement”). This requirement, when detailed in the questionnaire, is often equated with the capacity to effectively represent the specific interests of the applicants in Mandro.

Meeting with victims in Mandro could nevertheless prove difficult for the lawyer. The influence of the UPC is still perceptible. Armed supporters of the accused are still present in the area. The population showed great defiance towards the ICC — sometimes conveyed by a strong animosity towards intermediaries. Even though ASF and its intermediaries decided to use a focal point in Mandro to reach the victims, only a handful of them could be met due to security concerns.





## CONCLUSION AND RECOMMENDATIONS

The case *The Prosecutor v. Bosco Ntaganda* involves a diverse area of about 2,500km<sup>2</sup>, from the mining quarries of Mongbwalu to the harbour of Kasenyi, and from the centre of Djugu Territory to Nyakunde on the road to North-Kivu, through the hilly meadows of Lipri. The population is mixed, and the land fragmented and uneven. Furthermore, two Arrest Warrants were issued for a total of 10 counts of war crimes and crimes against humanity

It would then seem illusory to draw clear-cut lines and/or try to create homogeneous groups in which applicants share similar views and concerns. We cannot do so because the complexity of the region forces us to distinguish without breaking it down and, conversely, to merge without reducing the complexity. The aim of this report was only to highlight overall tendencies and point out pitfalls in order to successfully map out a legal representation that would not be unidimensional.

In this regard, the figures displayed tend to indicate that:

- Answers from applicants of the First Arrest Warrant demonstrate certain similarities. A need for proximity is, for example, highlighted, rejecting *de facto* a grouping with “enemies” of the 2002-03 war (Lendu, Ngiti in particular). Preferences nevertheless vary depending on the respondents’ profile: place of origin, place of training or the fact that some applicants were forcibly conscripted, such as in Nyakunde, while others were voluntarily enlisted (Rwampara, Bunia, Bogoro).
- The Second Arrest Warrant encompasses a wider number of applicants divided between two attacks. Accordingly, results show a significant disparity. Respondents in Lipri and surrounding villages (including Nyangaraye and Buengwe) tend to favour a grouping by ethnic community. This preference generally implies a strong rejection of a common grouping with “Hema and allies”. The openness to a grouping with communities other than the Hema nevertheless varies. An overwhelming majority of respondents in Lipri and surrounding villages expressed a preference for a grouping narrowed to members of their own ethnic communities. Conversely, respondents in Nyangaraye and Buengwe would be prone to be represented together with members of different ethnic groups. In the Kilo and Matongo area, more applicants would accept a single legal representation, but this result is balanced with a significant portion of respondents rejecting any grouping with Hema. In Mongbwalu and Sayo, a geographical-based grouping is widely backed. Lastly, the specific case of Mandro, by itself, illustrates the complexity of the grouping due to its 70% of applicants from Hema community. Here, the preference mostly favours a community-based grouping, understood as a grouping between members of their ethnic community “*living in the same area*”.

**The following conclusions can then be drawn:**

- Generally, a single grouping where all victims in the case are represented by a single lawyer should be avoided. Representation by a single lawyer is seen by many victims as impossible without privileging one ethnic group over the other or 'betraying' one to the benefit of the other.

***Regarding the First Arrest Warrant:***

- The geographical distance between victims, as well as the variety of situations (place of origin, place of training or the fact that some applicants were forcibly conscripted while others were voluntarily enlisted), should be taken into consideration for the organisation of legal representation.
- Security constraints in Nyakunde, Tchomia, Kasenyi, Djugu, Mandro and Bogoro should be taken into consideration for the organisation of legal representation.
- Opposition to the ICC, as well as the persistent influence of the UPC in many Hema localities, should be taken into consideration for the organisation of legal representation.

***Regarding the Second Arrest Warrant:***

- The specific preferences expressed in Lipri and surrounding villages should be duly considered. A common grouping with victims living in villages where multiple ethnic groups co-exist or are predominantly inhabited by non-Lendu communities could raise tensions and suspicions.
- Preference expressed by victims in Nyakunde for a representation based upon gender should be given due consideration given social stigma likely to be attached to gender-based crimes.
- The presence of members of the Hema community in Mongbwalu and Kilo would justify a specific analysis as a great majority of respondents would oppose any grouping with "Hema and their allies".
- The difficulties in accessing some villages (Lipri, Buengwe, Matongo, etc.) should be taken into consideration for the organisation of legal representation.
- Security concerns in Nizi and Iga-Barrière — two localities situated on the main road to Mongbwalu — and, to a lesser extent, in Nyangaraye should be taken into consideration for the organisation of legal representation.
- The specific situation of Mandro could require specific treatment.

This report does not claim to be representative of the opinion of *all applicants in the case*. Consultations conducted by ASF and its partners are only representative of the 69.8% of applicants assisted. The results obtained are therefore only a general guide for dealing with theoretical issues concerning the reality in the field. This report is not intended to draw general conclusions which could be extended beyond those interviewed.

Grouping of victims in the case *The Prosecutor v. Bosco Ntaganda* implies many challenges stemming from the variety of parameters to be taken into account. The consultation carried out by ASF has the sole aim of looking into the large number of elements at stake and of warning against any leaning towards simplification, reduction and the obtaining of a unidimensional picture. As such, the result displayed needs to be complemented by a wide and specific consultation conducted by the Court.



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