

Annex 3

**General criteria for the selection of common legal representatives under
rule 90(3) of the Rules of Procedure and Evidence**

1. This document is intended to set out general basic criteria which would be applicable in most proceedings before the Court. These criteria are based on the jurisprudence of the Court as well as the Registry's experiences to date in assisting victims to select legal representatives and organizing common legal representation. They are intended as general (non-case/situation specific) criteria which can form a starting point in a particular case. The Registry considers that there is a need to ensure flexibility and responsive to the specific circumstances of a given situation or case. The proposed general criteria may therefore be adapted, for example based on input from victims, legal representatives, intermediaries or others.

(1) *Relationship of trust with the victims*

2. The counsel should demonstrate an established relationship of trust with the victims or the ability to establish such a relationship.¹ This could mean for example, that the lawyer:
 - already represents and has engaged actively with victims in the case/situation before the ICC;
 - has an engagement with them in other litigation or another forum; and/or
 - is known to the victims as a human rights advocate or community leader.
3. While not an overriding consideration, it is usually preferable to have continuity of legal representation, and for this reason lawyers who are already representing victim participants might (depending on their performance in relation to other criteria) be preferred. Where lawyers have another basis for trust with the victim, this could be sufficient.

¹ ICC-01/04-01/07-1328, paragraph 15.

4. In considering a lawyer's potential to establish trust with his/her clients, other factors may include:
 - the existence of a shared cultural/ethnic/linguistic heritage with the victims or some of them;²
 - the lawyer's gender and whether it will enable victims to speak frankly about the crimes experienced by them, especially in relation to sexual crimes.
5. However the Registry notes that some care is required in applying this criteria, since in some instances a lawyer's close relationship with part of a victim population might even have a divisive effect *vis-à-vis* other victims included in the same grouping.

(2) *Demonstrated commitment to working with vulnerable persons*

6. Counsel should demonstrate an ability and willingness to take a victim-centred approach to their work. Preference may be given to counsel who have experience or expertise in working with victims or who have sought out relevant training in field. Experience or expertise in working with other vulnerable groups, such as children, would also be an asset.

(3) *Familiarity/connection with the situation country*³

7. This criteria would be most easily established by lawyers from the situation country, but could also be demonstrated for example by lawyers who
 - Are part of a diaspora living outside the situation country;
 - Have substantial experience living/working in the situation country;
 - Are highly familiar with the situation country through study or work experience;

² ICC-01/05-01/08-1005, paragraph 11.

³ ICC-01/04-01/07-1328, paragraph 15; ICC-01/05-01/08-1005, paragraph 11.

- Have established relationships with national or local organizations in the situation country;
- Know the national or local languages of the situation country.

(4) *Relevant litigation expertise/experience*⁴

8. This would preferably include:

- Experience at the ICC or in ICC proceedings;
- Experience in international criminal trials at an ad hoc or hybrid tribunal;
- Previous involvement in trials of international crimes before national courts;
- Experience representing large groups of victims in public interest litigation, class actions, etc;
- Specialized study, academic experience or publications in the field of international criminal law, international humanitarian law, human rights, criminal procedure or another related field.

9. Experience in representing victims or civil parties would be seen as a particular advantage as would experience in leading and managing a team of legal staff in the context of complex litigation.

(5) *Sufficient availability*⁵

10. Counsel need to be ready to commit a significant time (even at the pre-trial stage) in order to:

- Maintain contact with a large number of clients;
- Follow developments in proceedings;
- Take any appropriate active steps in the proceedings;

⁴ ICC-01/05-01/08-1005, paragraph 12.

⁵ ICC-01/05-01/08-1005, paragraph 12.

- Maintain adequate contact with the Court.

11. During trial and reparations proceedings, counsel should be available full-time and able to be present for significant periods in The Hague.⁶ This may also be a basis on which to prefer counsel who are not involved in other proceedings at the Court which are likely to be heard concurrently.⁷

(6) *Information technology skills*

12. A minimum level of access to information technology is necessary for counsel. This would include for example the ability to utilize email and word processing and to implement good practices regarding information security in an e-Court context. A counsel should preferably possess these skills him/herself, but demonstrated support from secretarial/administrative staff may suffice. More developed or advanced computer skills, including use of information and document management programs and databases would be an asset. Previous experience in using the ICC e-Court system or similar systems would also be an asset.

⁶ See ICC-01/04-01/07-1328, paragraph 14; ICC-01/05-01/08-1005, paragraph 10.

⁷ See ICC-01/04-01/07-1328, paragraph 14 ICC-01/05-01/08-1005, paragraph 10.