

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/14-01/22
Date: 11 October 2022

PRE-TRIAL CHAMBER II

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. MAXIME JEOFFROY ELI MOKOM GAWAKA***

Public

**Observations on the
“Registry Report in Relation to the Legal Representation of Victims”
(ICC-01/14-01/22-98)**

Source: Office of Public Counsel for Victims

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

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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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I. INTRODUCTION

1. Counsel representing the collective interests of potential victims¹ hereby submit their observations on two discrete matters raised in the “Registry Report on Legal Representation of Victims” (the “Report”).²

2. Firstly, Counsel take note with concern of the information provided by local civil society organisations (“CSOs”) alleging the victims’ lack of knowledge and understanding of their rights, of the relevant judicial proceedings and of the role of their legal representatives. Counsel are equally concerned about the accuracy of said information and whether the Registry had the opportunity to verify its source.

3. Secondly, Counsel certainly share the Registry’s efforts to ensure effective legal representation of victims in the proceedings, as demonstrated by the legal assistance provided so far to applicants and participating victims. However, they posit that the Registry’s proposed “*monitoring scheme*”³ goes far beyond the Registry’s mandate, as a neutral organ of the Court. The scheme lacks any legal basis and has the potential of negatively impacting on a range of legal guarantees for counsel practising before the ICC as enshrined in its statutory instruments. Accordingly, said monitoring scheme is not warranted; would severely jeopardises the independence of counsel representing victims, and would also be redundant - considering the Code of Professional Conduct for Counsel (the “Code of Conduct”) to which legal representatives are bound.

4. Counsel submit that the practice of providing regular reports to the relevant Chamber as followed in other cases guarantees adequate coordination between the Registry and the legal representatives, and also the opportunity for victims to express

¹ See the “Order on the conduct of the confirmation of charges proceedings” (Pre-Trial Chamber II), [No. ICC-01/14-01/22-62](#), 27 June 2022, para. 46 (the “Order”).

² See the “Registry Report on Legal Representation of Victims” with Annex, [No. ICC-01/14-01/22-98](#) and [No. ICC-01/14-01/22-98-Anx](#), 7 October 2022 (the Annex is referred thereafter as the “Report”).

³ See the Report, *supra* note 2, para. 83.

their concerns, as well as for the relevant Chamber to be informed of matters that may require its intervention.

II. PROCEDURAL HISTORY

5. On 27 June 2022, Pre-Trial Chamber II (the “Chamber”) issued the “Order on the conduct of the confirmation of charges proceedings” (the “Order”) *inter alia*, assigning, the Office of Public Counsel for Victims (the “OPCV” or the ‘Office’) to represent the collective interests of potential victims pending the Chamber’s eventual decision on legal representation.⁴

6. On 15 September 2022, the Chamber issued by e-mail an order instructing the Registry to submit its report on legal representation by no later than 7 October 2022.⁵

7. On 7 October 2022, the Registry filed its Report.⁶

III. SUBMISSIONS

a. On the concerns expressed by CSOs

8. Counsel take note with concern of the information provided by civil society organisations (“CSOs”) in the CAR alleging the lack of victims’ knowledge and understanding of their rights, relevant judicial proceedings and the role of their lawyers. Nonetheless, Counsel certainly question the accuracy of said information in relation to the victims they represent in the *Yekatom and Ngaïssona* case and therefore whether the Registry was in a position to independently verify such allegations. In fact, how exactly said organisation(s) were able to research/gather supporting information from victims and make such an overarching conclusion about the level of

⁴ See the Order, *supra* note 1.

⁵ See the reference in the filing of the Report at para. 2 and footnote 2, *supra* note 2. See also the Order, *supra* note 1, paras. 47-48.

⁶ See the Report, *supra* note 2.

collaboration between them and their lawyers is nowhere explained in the Report. Nor is it clear whether the Registry fact checked *at all* said assertions.

9. In this regard, Counsel wish to recall that in the *Yekatom and Ngaïssona* case the common legal representatives inform every three months the Trial Chamber about the activities conducted with the victims - including meetings held in the field - and difficulties encountered, if any. Said information is channelled, as *per* the Trial Chamber's instructions, through the Registry (VPRS).⁷

10. As regards the assertion according to which "*one CSO reported that victims had their last contact with their lawyer in 2019, and another two CSOs mentioned that the last contact occurred in 2020, while one other mentioned that victims had not met with their lawyer after completing their application form*",⁸ Counsel note that, in spite of the pandemic, the extremely volatile security situation in the CAR and the dire road conditions, they were able to maintain regular contact with most of the victims either by phone, video-calls and in some specific instances, through individual meetings held by the field counsel in the CAR.

11. Furthermore, whenever Counsel experienced difficulties in reaching out the participating victims in the *Yekatom and Ngaïssona* case because of the lack or inaccuracy of contact details in their participation forms, they had promptly informed the Registry (VPRS).

12. Therefore, the above mentioned assertions to the effect that the victims had not been contacted or assisted by their lawyers for a significant period of time or without justification - which the Report seems to suggest - are plainly inaccurate and called for a rectification by Counsel.

⁷ The last report was submitted in August 2022. See the "Fifth Periodic Report on the Victims Admitted to Participate in the Proceedings", [No. ICC-01/14-01/18-1541](#), 11 August 2022.

⁸ See the Report, *supra* note 2, footnote 55.

b. On the proposed recommendations on the monitoring of the Common Legal Representation of Victims

13. Counsel note that the Chamber instructed the Registry to provide a report on legal representation addressing several matters listed in paragraph 48 of the its Order.⁹ Yet, the monitoring of the common legal representation of victims is not included in any shape or form in said Order.

14. In this regard, the Registry contends that “[...] *consultations with CSOs have revealed that some victims participating in the Yekatom and Ngaïssona case feel that they have not been sufficiently kept abreast of the proceedings by their lawyer*” and that the “*system [of legal representation] would benefit from a constant assessment of the actual victims’ level of access, trust and confidence in their counsel*”.¹⁰

15. While certainly sharing the Registry’s efforts to ensure effective legal representation of victims in the proceedings, Counsel contend that the Registry - as a neutral organ of the Court providing non-judicial administrative and operational support¹¹ - has no legal standing to act as an oversight mechanism for lawyers representing victims in proceedings before the Court. Such “*monitoring scheme*” is not only unwarranted, but it would also be in clear violation of the Court’s legal framework - and particularly of the fundamental principle of independence of counsel and counsel-client privilege; while in clear conflict with the Registry’s neutral mandate.

16. In addition, Counsel recall that pursuant to regulation 81(2) of the Regulations of the Court, “*the Office of Public Counsel for Victims shall fall within the remit of the Registry solely for administrative purposes [...] and it shall function in its substantive work as a wholly independent office. Counsel and assistants within the Office shall act independently*”.¹² The independence of the Office and its counsel is further guaranteed

⁹ See the Order, *supra* note 1, para. 48.

¹⁰ See the Report, *supra* note 2, paras. 81 and 82.

¹¹ See, *inter alia*, article 43(1) of the Rome Statute.

¹² See regulation 81(2) of the Regulations of the Court.

under regulation 115 of the Regulations of the Registry, according to which they “*shall not receive any instructions from the Registrar in relation to the conduct of the discharge of their tasks as referred to in regulations 80 and 81 of the Regulations of the Court*”.¹³

17. Moreover, when appointed to represent victims in proceedings before the Court, lawyers are bound by the Code of Conduct.¹⁴ This Code sets out ethical and professional standards, requiring lawyers to act in good faith, with fairness, integrity and candour when dealing with clients (as the basis for a relationship “*of candid exchange and trust*”),¹⁵ to consult clients and abide by their decisions;¹⁶ and to keep them informed about the progress of the proceedings and any relevant issues of concern.¹⁷

18. Counsel further recall that the same Code of Conduct already envisages a scheme of complaint mechanism governing situations of victims’ non-satisfaction with their legal representation¹⁸ – a *lex specialis* which must be followed in these circumstances.¹⁹ As such, the Code of Conduct ensures counsel’s accountability to victims, and obviates the need for a separate and *legally devoid* monitoring scheme.

19. Accordingly, under no circumstance should the Registry be authorised to intervene in counsel’s professional activities and legal representation of victims – even under the guise of “*regular communications/meetings*” with counsel.²⁰ Said course of action would ultimately lead to the Registry’s unlawful interference in counsel’s independence. It would also establish a discriminatory treatment between lawyers

¹³ See regulation 115(1) of the Regulations of the Registry.

¹⁴ See regulation 115(2) of the Regulations of the Registry.

¹⁵ See article 14(1) of the Code of Conduct.

¹⁶ See article 14(2) of the Code of Conduct.

¹⁷ See article 15(1) of the Code of Conduct.

¹⁸ See Chapter 4 (Disciplinary regime) of the Code of Conduct, in particular article 34.

¹⁹ See, *mutatis mutandis*, the “PUBLIC REDACTED VERSION OF ICC-01/05-01/08-295-Conf Decision on the Prosecutor’s Applications to Open an Inquiry with Respect to Witnesses [REDACTED]” (Pre-Trial Chamber III), [No. ICC-01/05-01/08-295-Red](#), 22 September 2009 (dated 27 November 2008), paras. 14-15. See also the “Decision on the ‘Libyan Government Request for Status Conference and Extension of Time to file a Reply to the Responses to its Article 19 Admissibility Challenge’” (Pre-Trial Chamber I), [No. ICC-01/11-01/11-200](#), 9 August 2012, para. 14.

²⁰ See the Report, *supra* note 2, para. 83.

appearing before the Chamber, since the defence counsel would not be similarly monitored.

20. Plus, the Registry's proposed "*monitoring scheme*" has no support in the Court's practice. In fact, the reporting system implemented in other cases²¹ is only limited to recording victims' potential complaints and reporting those to the Chamber, after consultations with the concerned legal representative. Such system does not imply or provide justification for what is proposed in the present instance – namely, the Registry's intended role to hold periodical meetings with counsel to discuss challenges;²² and to periodically seek victims' views and concerns on their participation to identify areas requiring special attention and improvements, and propose any adjustments.²³

21. Lastly, regarding the specific proposal to hold regular communications/meetings,²⁴ Counsel further reiterate that they are bound to professional secrecy and confidentiality under the Code of Conduct.²⁵ The practice of providing regular reports to the relevant Chamber,²⁶ as applied in other cases, already guarantees adequate coordination between the Registry and the legal representatives, while ensuring that victims can regularly express their concerns and that the relevant Chamber is informed of matters that may require its intervention. In conclusion, Counsel suggest to take the same approach in the present case, so that the Chamber may regularly receive reports on the activities of the legal representatives.

²¹ *Ibid.*

²² *Ibid.*

²³ *Idem*, para. 28.

²⁴ See the Report, *supra* note 2, para. 83.

²⁵ See article 8 of the Code of Conduct.

²⁶ See, *inter alia*, in the *Ntaganda* case, the "Thirteenth Periodic Report on Victims in the Case and their General Situation", [No. ICC-01/04-02/06-2353](#), 6 June 2019; and, in the *Yekatom & Ngaïssona* case, the "Third Periodic Report on the Victims Admitted to Participate in the Proceedings", [No. ICC-01/14-01/18-1209](#), 13 December 2021.

Respectfully submitted.

A handwritten signature in black ink, appearing to read 'Dmytro Suprun', enclosed within a thin black rectangular border.

Dmytro Suprun

A handwritten signature in black ink, appearing to read 'Paolina Massidda', enclosed within a thin black rectangular border.

Paolina Massidda

Dated this 11th day of October 2022
At The Hague (The Netherlands)