

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/14-01/22

Date: 25 May 2022

PRE-TRIAL CHAMBER II

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

THE PROSECUTOR v. MAXIME JEOFFROY ELI MOKOM GAWAKA

Public

**Mr. Mokom's Response to OPCV's Application for recognition
of the status of victims in the case of *Prosecutor v. Mokom*
to victims participating in the case of *Prosecutor v. Yekatom and Ngaïssona***

Source: Gregory Townsend, Duty Counsel for Mr. Mokom

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

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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
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I. INTRODUCTION

1. On 7 April 2022, the Office of Public Counsel for Victims (OPCV) filed its ‘Application for recognition of the status of victims in the case of *The Prosecutor v. Maxime Jeoffrey Eli Mokom Gawaka* to victims participating in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaißona*’ (OPCV’s Application).¹

2. Pursuant to the Pre-Trial Chamber’s Order of 17 May 2022,² in which it instructed ‘Duty Counsel...to submit a response..., if any, to the OPCV’s Application by no later than 25 May 2022’, Duty Counsel for Mr Mokom files this response.

II. SUBMISSIONS

3. Mr Mokom, while understanding the best intentions of the Pre-Trial Chamber in its Order of 17 May 2022 to advance the proceedings, in the absence of having permanent counsel appointed (and pending a decision of the Appeals Chamber on a fundamental matter that is procedurally ripe for adjudication), respectfully submits, as a matter of principle, that it is premature for him to address the substance of OPCV’s Application. Duty Counsel nevertheless responds on five points of law.

4. First, OPCV’s Application, at para. 4, cites, as its only legal basis, Regulation 81(4) of the Regulations of the Court. That provision, however, refers to OPCV having standing based on ‘*on the instruction or with the leave of the Chamber*’ (per Regulation 81(4)(a)-(c) and (e)); and ‘*when appointed...*’ (per Regulation 81(4)(d)) Here, based on the Application itself, none of those conditions precedent appear to be satisfied for any persons who may have applied to participate as purported victims of Mr Mokom. There is no instruction, leave or appointment. Thus, the procedural position of this matter is far from the OPCV possessing as it claims a ‘mandate vested’ under Regulation 81(4) to file this Application — standing here is lacking. Thus, the Pre-Trial Chamber should dismiss OPCV’s Application as inadmissible absent such express instruction or leave of this Chamber or formal appointment.

¹ ICC-01/14-01/22-35 (with public annexes ICC-01/14-01/22-35-AnxA and ICC-01/14-01/22-35-AnxB).

² Pre-Trial Chamber II, ‘Order seeking observations on matters related to the conduct of the confirmation proceedings’, 17 May 2022, (ICC-01/14-01/22-50) (Order of 17 May), page 11, para. (v).

5. Second, the relief sought by OPCV's Application is not in conformity with Article 68(3) of the ICC Statute, the first sentence of which reads:

'Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial' (emphasis added).

Duty Counsel submits that an apparent 'cut-and-paste' approach of 'automatically'³ deeming victims in separate proceedings, not joined, and at a different procedural stage, and who have not necessarily applied in this case or ever mentioned the name Mokom, to constitute 'victims' does not comply with the Statute's requirement of victims showing their 'personal interests' being affected in the case in question. Article 68(3) also requires that victim participation not prejudice or be inconsistent with the rights of the accused, including a fair and impartial proceeding. Having a separate Chamber's determinations, namely those of Trial Chamber V, 'automatically' bind Mr Mokom—without that Chamber ever hearing Mr. Mokom—does not, it is respectfully submitted, constitute a fair process. While OPCV's Application, at para. 27, advocates for avoiding the assessing of applications from purported victims because it is a 'burden', Duty Counsel submits that such assessment forms part and parcel of the required legal process that characterizes *fair* pre-trial proceedings. To argue that this process would constitute 're-assessing' applications at this point is speculative because nobody can say or pre-judge with legal certainty which individuals will apply to participate. Duty Counsel would therefore object to the shortcut approach advanced in OPCV's Application.

6. Third, OPCV's Application, at para. 19, goes so far as to suggest that persons who do not presently qualify as victims in the *Yekatom and Ngaiissona* trial should also be automatically deemed victims in this separate case, just to oblige another Chamber to carry out a 'subsequent review' later. This seems far from an applicant

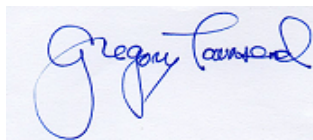
³ ICC-01/14-01/22-35, at paras 2, 22-23, 25, 35, 38-39.

showing a personal interest in this case, and would look more like this Pre-Trial Chamber 'passing the buck' of assessing individual applications to a Trial Chamber.

7. Fourth, OPCV's Application, at paras 29-31, notes that 'a number' [which is not indicated] of persons in *Yekatom and Ngaïssona* case have affirmatively expressed to OPCV an interest in participating in this case, and that for some applicants, OPCV (which has standing in *Yekatom and Ngaïssona* case), during its regular meetings with its clients, can affirmatively check these would-be applicants' 'intention' with respect to this case. These submissions indicate that it is entirely possible for such applicants to 'opt in'. To presume someone is a victim, presume he/she consents, and require him/her to 'opt out' of a separate case, it is respectfully submitted, is too much of a shortcut. Claims of efficiency here do not justify a circumvention of legal process.

8. Fifth, OPCV's Application, at paras 35, 37, requests, in the alternative, that the Pre-Trial Chamber appoint counsel from OPCV to represent all persons applying for victim participation in this case (without hearing their views). Here, Duty Counsel respectfully submits the same argument indicated in paragraph 4. Further, the Pre-Trial Chamber ultimately may wish to consider appointing counsel for those deemed to constitute victims *after* hearing and considering their views on such legal representation, and not just on the basis of OPCV's Application alone.

Respectfully submitted,



Gregory Townsend,
Duty Counsel for Mr. Mokom

Date: 25 May 2022
At The Hague, Netherlands.