

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/14-01/18

Date: 4 March 2024

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-Ho Chung

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
THE PROSECUTOR *v.* ALFRED YEKATOM AND PATRICE-ÉDOUARD
NGAISSONA**

Public

Public Redacted Version of the “Response of the Common Legal Representative of the Former Child Soldiers to the Registry’s Submissions (No. ICC-01/14-01/18-2290-Conf, dated 8 January 2024) and Urgent Request for an order to the VWU to complete the security risk assessment with respect to Witnesses [REDACTED] and [REDACTED] and implement protective measures as appropriate” (No. ICC-01/14-01/18-2305-Conf, dated 17 January 2024)

Source: Office of Public Counsel for Victims (CLR1)

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

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I. INTRODUCTION

1. The Common Legal Representative of the Former Child Soldiers (the “Legal Representative” or the “CLR1”) herewith submits his response to the “Registry’s submission regarding material obtained by VWU in the course of the execution of its mandate” (the “Registry’s Submissions”).¹

2. The VWU exceeded the scope of its mandate when handling the CLR1’s requests [REDACTED] with respect to Witnesses [REDACTED] and [REDACTED] (together the “Witnesses”). By engaging in investigative and evidentiary analysis activities and thereby interfering with a legal matter in dispute in the proceedings, the VWU is in breach of its statutory duty of neutrality. Furthermore, the VWU’s [REDACTED] is in violation of the Witnesses’ right to correspondence and private life. The material was thus obtained by means of a violation of the Rome Statute (the “Statute”) and internationally recognised human rights, and its admission would be antithetical to and would seriously damage the integrity of the proceedings. Accordingly, [REDACTED] as collected by the VWU shall not be admissible as evidence.

3. In addition, the VWU failed to fulfil its protection mandate promptly, diligently and in good faith towards Witnesses [REDACTED] and [REDACTED]. Given the VWU’s prolonged failure to take any measure to address the Witnesses’ safety concerns - and in light of the recent deterioration of the security situation of Witness [REDACTED] - the CLR1 respectfully requests that the Chamber order the VWU to complete as a matter of urgency the security risk assessment with respect to Witnesses [REDACTED] and [REDACTED] and to implement protective measures as appropriate.

¹ See the “Registry’s submission regarding material obtained by VWU in the course of the execution of its mandate”, [No. ICC-01/14-01/18-2290-Conf](#), 8 January 2024 (the “Registry’s Submissions”). A public redacted version was filed on 29 February 2024 as [No. ICC-01/14-01/18-2290-Red](#).

II. PROCEDURAL BACKGROUND

4. On 3 August 2023, Trial Chamber V (the “Chamber”) issued the “Decision on the Common Legal Representatives of Victims Requests for Leave to Present Evidence and Further Order on the Remainder of the Prosecution Presentation of Evidence”, finding it appropriate and necessary to hear the evidence of victims a/20722/21 ([REDACTED]) and a/65991/19 ([REDACTED]).²

5. On 18 August 2023, the CLR1 submitted to the VWU [REDACTED] with respect to Witnesses [REDACTED] and [REDACTED].³

6. Witnesses [REDACTED] and [REDACTED] testified at the seat of the Court respectively on [REDACTED]⁴ and on [REDACTED].⁵

7. On 9 October 2023, the VWU informed the CLR1 that [REDACTED].⁶

8. On 13 October 2023, the VWU [REDACTED].⁷

9. On 24 October 2023, the CLR1 [REDACTED].⁸

10. On 25 October 2023, the VWU [REDACTED].⁹

11. On 27 October 2023, the CLR1 informed the Chamber [REDACTED].¹⁰ On the same date, the VWU informed the Chamber [REDACTED].¹¹

² See the “Decision on the Common Legal Representatives of Victims Requests for Leave to Present Evidence and Further Order on the Remainder of the Prosecution Presentation of Evidence” (Trial Chamber V), [No. ICC-01/14-01/18-2016-Conf](#), 3 August 2023, para. 26. A public redacted version was filed on 6 September 2023 as [No. ICC-01/14-01/18-2016-Red](#).

³ [REDACTED]

⁴ [REDACTED]

⁵ [REDACTED]

⁶ [REDACTED]

⁷ [REDACTED]

⁸ [REDACTED]

⁹ [REDACTED]

¹⁰ [REDACTED]

¹¹ [REDACTED]

12. On 30 October 2023, the Chamber encouraged the CLR1 and the VWU to continue communicating with each other “*with a view to conducting the risk assessment without undue delay*”.¹²
13. On 31 October 2023, the CLR1 [REDACTED].¹³
14. On 8 November 2023, the CLR1 [REDACTED].¹⁴
15. On 24 November 2023, the CLR1 [REDACTED].¹⁵ On the same day, the VWU [REDACTED].¹⁶
16. On 15 December 2023, the VWU [REDACTED].¹⁷
17. On 19 December 2023, the CLR1 [REDACTED].¹⁸ The VWU [REDACTED].¹⁹
18. On 21 December 2023, the Single Judge instructed the VWU to share this information with the parties and participants, on the record, by 8 January 2024.²⁰
19. On 8 January 2024, the VWU filed the Registry’s Submissions.²¹

III. CLASSIFICATION

20. Pursuant to regulation 23bis and (2) of the Regulations of the Court, the present submissions are classified as confidential *Ex Parte* – only available to the CLR1 and the VWU since they refer to [REDACTED] post-testimony security situation and the content of the correspondence between the CLR1 and the VWU to which the other participants are not privy. A confidential redacted version will be filed forthwith.

¹² [REDACTED]

¹³ [REDACTED]

¹⁴ [REDACTED]

¹⁵ [REDACTED]

¹⁶ [REDACTED]

¹⁷ See the Registry’s Submissions, *supra* note 1, para. 3.

¹⁸ [REDACTED]

¹⁹ [REDACTED]

²⁰ See the Email correspondence from the Chamber on 21 December 2023 at 17:09.

²¹ See the Registry’s Submissions, *supra* note 1.

IV. SUBMISSIONS

1. Response to the Registry's Submissions

- a) *The VWU exceeded the scope of its mandate and is in breach of its statutory duty of neutrality by engaging in investigative and evidentiary analysis activities and thereby interfering with a disputed legal matter*

21. Under article 43(1) of the Statute, “[t]he Registry shall be responsible for the non-judicial aspects of the administration and servicing of the Court”. Accordingly, the Registry is a neutral organ within the Court. The primary focus of its mandate is to provide relevant services in full neutrality and impartiality, without interfering in legal matters in the proceedings.

22. As an entity of the Registry, the VWU shall perform its mandate in full neutrality and impartiality. The VWU operates in accordance with the Court’s duty under article 68(3) of the Statute, with a primary focus on protecting and ensuring the security, safety, dignity, privacy and well-being of victims and witnesses. The VWU’s mandate is clearly delimited by article 43(6) of the Statute and rule 17 of the Rules of Procedure and Evidence (the “Rules”). Any case related investigative or evidentiary analysis activities – including assessing the integrity and credibility of witnesses - fall outside its functions and mandate. Expressing views on legal matters in the ongoing proceedings, especially those materially in dispute, goes far beyond the VWU’s authority. Instead, it may lead to a violation of its duty of neutrality and be prejudicial to the integrity of the proceedings.

23. In the Registry's Submissions, the VWU indicated that [REDACTED]²² and that [REDACTED].²³ The VWU previously submitted that it [REDACTED],²⁴ [REDACTED],²⁵ and [REDACTED].²⁶

24. However in the present instance - contrary to the legal framework governing its mandate and in stark contrast with its usual practice - the VWU vested itself with the legal authority [REDACTED]. The VWU deliberately interfered in a legal issue materially in dispute in the present proceedings, which in itself constitutes a breach of its statutory duty of neutrality.

25. As evidenced in the Registry's Submissions, the VWU seems to have been engaging in investigating specific elements [REDACTED]. Indeed, the VWU [REDACTED]. In addition, [REDACTED],²⁷ and [REDACTED].²⁸

26. By presenting before the Chamber its conclusion – [REDACTED] - the VWU is in a further breach of its statutory duty of neutrality. Especially so in the present circumstances of the case, [REDACTED].

27. Furthermore, the VWU indicated that [REDACTED]. Nonetheless, the VWU went beyond its neutral role stating that [REDACTED].²⁹ In fact, the VWU suggests [REDACTED].³⁰ This suggestion again goes far beyond the VWU's protection mandate and is in violation of the Unit's statutory duty of neutrality.

²² See the Registry's Submissions, *supra* note 1, para. 6.

²³ *Idem*, para. 7.

²⁴ See the "Victims and Witnesses Unit's Observations following the 'Request for an order directing VWU to provide a report' (ICC-01/14-01/18-2111-Conf)", [No. ICC-01/14-01/18-2135-Conf](#), 9 October 2023, para. 8. A public redacted version was filed on 14 November 2023 as [No. ICC-01/14-01/18-2135-Red](#).

²⁵ *Idem*, para. 16.

²⁶ *Idem*, para. 18.

²⁷ See the Registry's Submissions, *supra* note 1, para. 11.

²⁸ *Idem*, para. 12.

²⁹ *Idem*, para. 14.

³⁰ *Idem*, para. 11.

28. Finally, the VWU misrepresents the CLR1's requests [REDACTED] with respect to the Witnesses. The referrals for both Witnesses [REDACTED] and [REDACTED] were initially submitted on 11 August – with a corrigendum on 18 August 2023 – and not on 28 August 2023, as indicated in the Registry's Submissions.³¹ In addition, contrary to the VWU's suggestion, [REDACTED].³² In fact, it is not within the referring participant's discretion to determine appropriate protective measures to be put in place. Instead, it is the VWU's primary responsibility to do so on the basis of its security risk assessment. The CLR1 never requested or suggested [REDACTED]. Rather, in his requests [REDACTED], the CLR1 sought [REDACTED]. The VWU failed to take any action in this regard. Moreover, by stating that [REDACTED],³³ the VWU impermissibly makes assumptions which again go far beyond its protection mandate and are in breach of the Unit's duty of neutrality.

b) The VWU's [REDACTED] is in violation of the Witnesses' right to correspondence and private life

29. As discussed above, any VWU's case related investigative or evidentiary analysis activities fall outside its role and mandate. The VWU acknowledged that it [REDACTED],³⁴ [REDACTED],³⁵ and [REDACTED].³⁶ These considerations shall apply even more strictly to those witnesses [REDACTED].

30. As a neutral entity with a specifically defined mandate, the VWU had no legal authority [REDACTED] of Witnesses [REDACTED] and [REDACTED]. The VWU has no legal basis to do so. [REDACTED] constitutes an interference with their right to correspondence and private life. Being a particularly intrusive measure, it can only be either authorised by a competent judicial authority for compelling reasons or based on the individual's informed consent. In the present instance, [REDACTED] was not

³¹ *Idem*, para. 9.

³² *Idem*, para. 10.

³³ *Idem*, para. 10 (Emphasis added).

³⁴ See the "Victims and Witnesses Unit's Observations following the 'Request for an order directing VWU to provide a report' (ICC-01/14-01/18-2111-Conf)", *supra* note 24, para. 8.

³⁵ *Idem*, para. 16.

³⁶ *Idem*, para. 18.

authorised by the Chamber. Accordingly, the VWU should have informed the CLR1 or told the Witnesses they have the right to consult their counsel, but it failed to do so. In this regard, [REDACTED].

31. Accordingly, [REDACTED] of Witnesses [REDACTED] and [REDACTED], the VWU not only went beyond its mandate but also infringed upon the Witnesses' right to correspondence and private life.

c) The material collected by the VWU shall be found inadmissible as evidence

32. Pursuant to article 69(7) of the Statute, “[e]vidence obtained by means of a violation of this Statute or internationally recognized human rights shall not be admissible if: (a) The violation casts substantial doubt on the reliability of the evidence; or (b) The admission of the evidence would be antithetical to and would seriously damage the integrity of the proceedings”.

33. Since the material at hand goes to the substantive and core issue pertaining to Count 29 which is materially in dispute – [REDACTED] - the admission of said evidence would be contrary to the principle of a fair and equitable trial. Indeed, being obtained outside the adversarial process, it will seriously affect the integrity of the proceedings. Consequently, the CLR1 respectfully requests the Chamber to find the material collected by the VWU inadmissible as evidence.

2. Urgent Request for an order to the VWU to complete its security risk assessment with respect to Witnesses [REDACTED] and [REDACTED] and implement protective measures as needed

34. The CLR1 is particularly concerned with the VWU handling of his requests [REDACTED] with respect to Witnesses [REDACTED] and [REDACTED]. In this regard, the VWU failed to fulfil its protection mandate promptly, diligently and in good faith. Regrettably, despite the passing of time and repeated requests by the

CLR1,³⁷ the VWU did not carry out the security risk assessment with respect to both Witnesses.

35. The CLR1's requests [REDACTED] were submitted on 11 August 2023, seeking [REDACTED].³⁸ On [REDACTED] August 2023, during a meeting [REDACTED], the CLR1 informed the VWU that [REDACTED]. The CLR1 requested [REDACTED]. However, the CLR1 was told that [REDACTED]. The CLR1's requested [REDACTED] were never implemented by the VWU.

36. The Witnesses testified at the seat of the Court [REDACTED].³⁹ On 13 October 2023, [REDACTED]. The CLR1 reported to the Chamber these circumstances and the VWU's decision [REDACTED].⁴⁰ Following the Chamber's decision encouraging the CLR1 and the VWU to continue communicating with each other with a view to conducting the risk assessment without undue delay,⁴¹ the CLR1 [REDACTED].⁴² The CLR1 also [REDACTED].⁴³

37. As to date, the VWU [REDACTED]. Five months after the requests [REDACTED] were submitted, the VWU still has not issued any decision with respect to both Witnesses. Such a delay in addressing security-related issues is plainly irreconcilable with the VWU's duty to protect the security, safety and well-being of the witnesses at risk on the account of their testimony before the Court.

38. In this regard, the VWU merely stated that [REDACTED],⁴⁴ thereby suggesting that [REDACTED]. The CLR1 submits that this stance is unacceptable as it leads to an unsound outcome: a witness who faces security risks due to their testimony, would be left behind by the Court on the mere basis that [REDACTED]. In addition, the CLR1

³⁷ See *supra* paras. 5-16.

³⁸ See *supra* para. 5.

³⁹ [REDACTED]

⁴⁰ [REDACTED]

⁴¹ [REDACTED]

⁴² [REDACTED]

⁴³ [REDACTED]

⁴⁴ See the Registry's Submissions, *supra* note 1, para. 10.

recalls that VWU's lack of actions in addressing the security concerns of both Witnesses dated since early August 2023 – well before [REDACTED].

39. The Court's duty to protect safety, security and well-being of witnesses cannot be contingent upon [REDACTED] – which might come at a much later stage of the proceedings. Rather, it should be rooted in a comprehensive risk assessment, particularly when a witness faces threats due to their testimony before the Court. In situations where [REDACTED], the Court shall at all times prioritize the safety, security and well-being of the concerned individual. The absence [REDACTED] shall not serve as grounds for neglecting the Court's duty to provide adequate protection to individuals at risk due to their interaction with the Court.

40. Lastly, the CLR1 wishes to convey to the Chamber information that he most recently obtained during his meeting with [REDACTED] on [REDACTED]. [REDACTED]. In the CLR1's view, this further shows the VWU's lack of neutrality, diligence and good faith in assessing the security situation of the concerned Witness.

41. The CLR1 deplores the VWU's failure to fulfil its protection mandate promptly, diligently and in good faith with respect to Witnesses [REDACTED] and [REDACTED] before and after their testimony before the Court. The VWU is perpetuating its reticence in taking any measure to address the Witnesses' security situation – despite [REDACTED] and the Chamber's instructions to conduct the security risk assessment without undue delay.⁴⁵

42. The VWU's failure to take appropriate action seems even more unreasonable in relation to Witness [REDACTED] whose concrete security threats were reported to the VWU and [REDACTED] in the Registry's Submissions.⁴⁶

⁴⁵ [REDACTED]

⁴⁶ See the Registry's Submissions, *supra* note 1, para. 14.

43. In addition, the security situation of Witness [REDACTED] has further worsen. During the last meeting, the Witness reported [REDACTED].

44. The CLR1 [REDACTED]. A situation, where a Counsel has to take over the very duties of the VWU – to ensure security, safety and well-being of the Witness at risk due to his testimony before the Court - is untenable.

45. In light of the above, the CLR1 respectfully requests the Chamber to issue an order to the VWU to complete as a matter of urgency the security risk assessment with respect to Witnesses [REDACTED] and [REDACTED] and to implement protective measures as appropriate.

V. RELIEF SOUGHT

46. For the foregoing reasons, the CLR1 respectfully requests that the Chamber:

- **FIND** inadmissible as evidence [REDACTED] collected by the VWU in the Registry's Submissions with respect to Witnesses [REDACTED] and [REDACTED] since they were obtained by means of a violation of the Statute and internationally recognized human rights, and their admission would be antithetical to and would seriously damage the integrity of the proceeding;

and
- **ORDER** the VWU to complete as a matter of urgency the security risk assessment with respect to Witnesses [REDACTED] and [REDACTED] and to implement protective measures as appropriate.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read 'Dmytro Suprun', with a period at the end.

Dmytro Suprun
Common Legal Representative of the Former Child Soldiers

Dated this 4th Day of March 2024
At The Hague, The Netherlands