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No.: ICC-01/04-02/06

Date: **1 August 2014**

TRIAL CHAMBER VI

Before: Judge Robert Fremr, Presiding Judge
Judge Kuniko Ozaki
Judge Geoffrey Henderson

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

PUBLIC

Public redacted version of the “Second Report to the Pre-Trial Chamber on applications to participate in the proceedings” (ICC-01/04-02/06-122-Conf) dated 8 October 2013

Source: Registry

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

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**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

The Registrar of the International Criminal Court (the “Court”);

NOTING the Single Judge’s Decision issued in the case of *The Prosecutor v. Bosco Ntaganda* (the “Case”), notified on 28 May 2013, establishing principles on the victims’ application process (the “Decision of 28 May”);¹

NOTING the Single Judge’s Decision issued on 26 June 2013, clarifying certain aspects of the Decision of 28 May (the “Decision of 26 June”);²

NOTING the Registry’s First Report to the Pre-Trial Chamber on applications to participate in the proceedings (the “Registry’s First Report”) dated 13 September 2013;³

NOTING article 68 (3) of the Rome Statute, rules 85 and 89 of the Rules of Procedure and Evidence (the “Rules”), and regulations 86 (5), 23 *bis* and 24 *bis* (2) of the Regulations of the Court;

CONSIDERING that the present Report is filed with the status “Confidential and *ex parte* only available to the Prosecutor” in accordance with the Decision of 28 May which provides that the Registry’s report shall be transmitted with its two annexes without any redaction to the Prosecutor and with limited redactions of the identifying information of the applicant where necessary to the Defence;⁴

¹ ICC-01/04-02/06-67.

² ICC-01/04-02/06-75.

³ ICC-01/04-02/06-106-Conf-Exp.

⁴ ICC-01/04-02/06-67, paras 29 and 37-44.

CONSIDERING that the Registry is organising applications received in different groups, according to criteria developed by the Registry in accordance with the Decision of 28 May, and transmitting them on a rolling basis;⁵

CONSIDERING that the Registry has to date received a total of 1,254 applications to participate in the proceedings, of which 29 were transmitted to the Single Judge and the parties on 13 September 2013 as part of the Registry's First Report;

CONSIDERING that of the 1,225 remaining applications, the Registry has allocated 172 applications to three of the groups established and assessed them as complete and linked to the Case;⁶

TRANSMITS to the Single Judge and the Prosecutor the present report on applications to participate in the Case (the "Report") together with two annexes: (1) Annex A containing a table presenting the Registry's Rule 85 assessment for each individual application transmitted with the Report; and (2) Annex B containing copies of the applications transmitted.

A. Introduction

1. The present report is divided into three parts. First, it provides an explanation of the content of Annex B of the Report (Section B). Thereafter, it sets out

⁵ ICC-01/04-02/06-67, paras 33-39.

⁶ The Registry notes that the number of applications filed with this transmission is less than the minimum of 200 *per* transmission indicated in the Registry's First Report. Of 539 applications processed to date, 198 could be allocated to three groups according to the following breakdown: 40 applications in group UPC/FPLC Attacks-Incident 2-Lipri; 57 applications in group UPC/FPLC Attacks-Incident 2-Bambu and 101 applications in group UPC/FPLC Attacks-Incident 2-Kobu. Of these applications, 172 appeared to the Registry to meet the requirements of rule 85 of the Rules; the remaining applications appeared either to be outside the scope of the case or were assessed as incomplete and may be filed at a later stage with the necessary supplementary information. In light of the overall numbers of applications received and expected, the Registry does not anticipate filing more than approximately 300 applications *per* transmission, as indicated in the Registry's First Report.

information about the groups of applications transmitted (Section C). Lastly, the report sets forth the Registry's Rule 85 assessment for the groups of applications transmitted (Section D).⁷

B. Explanation of the content of Annex B of the Report

2. Paragraph 42 of the Decision of 28 May provides that the Victims Participation and Reparations Section (the "VPRS") will make limited redactions of identifying information of applicants in its report, in Annex A or Annex B, whenever a need for protection is detected by the VPRS or where an applicant expresses the wish that his or her identity not be disclosed. All applicants were asked, when completing an application, to indicate whether they have reason to be concerned about their security as a result of their interaction with the Court. Some applicants among the present group indicate that they do have such concerns. For the following reasons, even where applicants have not indicated specific security concerns in their applications, the Registry recommends that at this early stage a cautious approach should be taken.

3. The Registry notes that the prevailing security situation in Ituri remains volatile. The weekly security updates provided by the Registry's Field Security Unit during 2013 have consistently indicated a moderate threat level for this region. Fighting between the FARDC⁸ and the FRPI⁹ persists in the region, with intermittent firing towards isolated targets in different locations. In addition, consultations conducted with the Registry's field staff, intermediaries and [REDACTED] have indicated that this situation seems to have exacerbated the latent tensions between

⁷ For the explanation of Annex A of the Report, the Registry's refers to Section D of its First Report, ICC-01/04-02/06-106-Conf-Exp, paras 15-32.

⁸ Forces Armées de la République Démocratique du Congo.

⁹ Front de Résistance Patriotique.

communities in the area, in particular between Lendus and Hemas and respective allied ethnic groups.¹⁰

4. In April 2013, the VPRS conducted consultations in [REDACTED] with individuals representing populations directly affected by the Case including potential applicants, intermediaries, [REDACTED] [REDACTED] and [REDACTED] of the affected communities. One of the aims of these consultations was to assess the prevailing political and security context in Ituri, in order to prepare the ground to facilitate victim participation in the Case. Those met were asked what risks were foreseen for participating victims and for people assisting victims. The input received was that participation of victims living in certain localities loyal to Bosco Ntaganda and Thomas Lubanga could give rise to fear of retaliation, since former UPC militants are concentrated there and the population is hostile to the ICC. This is the case, for instance, in Lipri and [REDACTED]. While Lipri, Bambu and Kobu are very small villages with a majority Lendu population, these localities are not far from the mining centres where the population is more heterogeneous because of the intense business activities that attract people from other areas, including former UPC militia and supporters. For instance, Bambu, which is located on a main axis on the road to important mining centres such as Kilo, is very close to UPC strongholds such as [REDACTED] and [REDACTED]. [REDACTED] here the population is openly hostile to the Court.

5. Further, at the time when victims submit an application, taking into account that they were assisted by local intermediaries, do not have experience of judicial proceedings, and have not yet been advised by a lawyer, in the Registry's experience, they may not be aware of the implications of their identities being disclosed to the parties to the proceedings, and are not able to

¹⁰ For instance, in the chefferie Bahema-Nord, which is part of the Djugu territory where Lipri, Bambu and Kobu are, there is a large concentration of FRPI supporters.

accurately assess threats to their security. Finally, the non-disclosure of the identity of the applicants appears to the Registry to be, at the application stage, the only available protection measure.

6. In light of the above, the Registry recommends the following:

- 1) the identities of the victims in this group not be disclosed to the Defence at the application stage,¹¹ even where applicants have not indicated specific security concerns in their applications; and
- 2) the matter of disclosure be considered at a later stage in relation to those that are accepted as victim participants by the Chamber, after a legal representative has been appointed and has had the opportunity to advise the victims and take instructions on this matter.

Unless the Chamber decides otherwise, therefore, the Registry will transmit redacted versions of all applications to the Defence.

Management of duplicates

7. The Registry has identified 6 duplicates¹² in this batch of applications and has treated them as follows:
8. Where two simplified application forms submitted by the same applicant contain minor inconsistencies in any aspect of the application, which appear merely to be a mistake made by the applicant or the person assisting in the completion of the application form, or where the reasons for an inconsistency are explained by the applicant,¹³ only one of the two applications will be filed

¹¹ The Single Judge decided, in paragraph 44 of the Decision of 28 May that no redactions should be made to the report and annexes to be transmitted to the Prosecutor.

¹² Applications are considered as duplicates when the same applicant has submitted more than one simplified application form.

¹³ Where the discrepancy does not appear to be minor or explicable, the applications will not be filed and clarification and/or supplementary information will be requested from the applicant.

and reference will be made to the other application, in the Registry's Rule 85 assessment, along with a description of the inconsistency found in the duplicate. The Chamber will be given access to the entire file.¹⁴

9. Where two application forms are submitted by the same applicant and the description of the alleged crimes, including the alleged date and place of the commission the crimes, appear to fall within different groups, the two applications will be merged and filed together, so long as no major discrepancy in any aspect of the application is found.¹⁵

C. Description of the group(s) of applications transmitted

Group UPC/FPLC Attacks-Incident 2-Lipri

10. With this transmission are included 34 natural persons (23 males and 11 females) belonging to this group, who supported their application with a copy of a voting card and/or letter of a local authority. The vast majority of this group is comprised of non-Hema persons from various ethnicities, the largest proportion of whom are Lendus. The members of the group alleged that their village, Lipri, was attacked by the armed group of the UPC or by the soldiers of Bosco Ntaganda, during the period between 17 February 2003 and 2 March 2003, or at the beginning of March 2003, or instead of precise dates the applicants mention that the events occurred during the Chikana Namukono military operation. The members of the group allege that during the attacks, several crimes were committed including murder, pillage, and persecution. All members of the group allege that they suffered harm,

¹⁴ The following applications appear to fall within this category: a/00970/13 (duplicate of a/00050/13); a/00482/13 (duplicate of a/00086/13); a/00136/13 (duplicate of a/00435/13); a/00014/13 (duplicate of a/00569/13); a/00183/13 (duplicate of a/01076/13).

¹⁵ The following applications appear to fall within this category: a/00077/13 and a/00076/13; a/01075/13 and a/00171/13.

including physical, moral, material harm or substantial impairment of their fundamental rights¹⁶ as a result of the crime(s) committed.

Group UPC/FPLC Attacks-Incident 2-Bambu

11. With this transmission are included 50 natural persons (27 males and 23 females) belonging to this group, who supported their application with a copy of a voting card and/or letter of a local authority. The vast majority of this group is comprised of non-Hema persons from various ethnicities, the largest proportion of whom are Lendus, but the group also includes persons of the following ethnicities: Bira and Alur. The members of the group alleged that their village, Bambu, was attacked by the armed group of the UPC or by the soldiers of Bosco Ntaganda, during the period between 17 February 2003 and 2 March 2003, or at the beginning of March 2003, or instead of precise dates the applicants mention that the events occurred during the Chikana Namukono military operation. The members of the group allege that during the attacks, several crimes were committed including murder [REDACTED] pillage, and persecution. All members of the group allege that they suffered harm, including physical, moral, material harm or substantial impairment of their fundamental rights, as a result of the crime(s) committed.

Group UPC/FPLC Attacks-Incident 2-Kobu

12. With this transmission are included 85 natural persons (46 males and 38 females) belonging to this group,¹⁷ who supported their application with a copy of a voting card and/or letter of a local authority. The vast majority of this group is comprised of non-Hema persons from various ethnicities, the largest proportion of whom are Lendus. The vast majority of this group is comprised of non-Hema persons from various ethnicities, the largest

¹⁶ Including for example the loss of educational opportunities, or social stigmatization. See footnote 35 of the Registry's First Report, ICC-01/04-02/06-106-Conf-Exp, p. 15.

proportion of whom are Lendus, but the group also includes persons of the following ethnicities: Walendu Djatsi, Walendu Pitsi, Bira and Alur. The members of the group alleged that their village, Kobu, was attacked by the armed group of the UPC or by the soldiers of Bosco Ntaganda, during the period between 17 February 2003 and 2 March 2003, or at the beginning of March 2003, or in March 2003, or instead of precise dates the applicants mention that the events occurred during the Chikana Namukono military operation. The members of the group allege that during the attacks, several crimes were committed including murder [REDACTED]¹⁸ pillage, and persecution. All members of the group allege that they suffered harm, including physical, moral, material harm or substantial impairment of their fundamental rights, as a result of the crime(s) committed.

D. Registry Rule 85 assessment for the groups of applications transmitted

13. Based on its assessment of each of the 172 applications transmitted, the VPRS is of the view that the following applicants are natural persons, that their identities appear to be duly established, that the event(s) described in their applications for participation constitute(s) one or more crimes within the jurisdiction of the Court with which the suspect is charged, namely attack against the civilian population, murder, rape, pillage and persecution by way of attack against civilians, murder, rape or sexual slavery and pillage, by the UPC/FPLC forces between 17 February 2003 and 2 March 2003 in Lipri, Bambu and Kobu (Ituri District, Province Orientale of the Democratic Republic of the Congo), and that all the applicants have suffered harm, including physical, moral, material or other harm which might be categorised as a substantial impairment of a fundamental right, as a result of the crime(s)

¹⁸ One member of the group alleges [REDACTED]

with which the suspect is charged which fall under articles 7(1)(a), 7(1) (g)-1, 7(1)(h), 8(2)(c)(i), 8(2)(e)(i), 8(2)(e)(v) and 8(2)(e)(vi) of the Statute:

- in the group UPC/FPLC Attacks-Incident 2-Lipri:
a/00025/13, a/00102/13, a/00113/13, a/00454/13, a/00602/13,
a/00988/13, a/00991/13, a/00993/13, a/00994/13, a/00996/13,
a/00998/13, a/00999/13, a/01000/13, a/01001/13, a/01002/13,
a/01003/13, a/01010/13, a/01011/13, a/01012/13, a/01014/13,
a/01015/13, a/01016/13, a/01022/13, a/01025/13, a/01033/13,
a/01034/13, a/01036/13, a/01037/13, a/01038/13, a/01041/13,
a/01042/13, a/01045/13, a/01048/13, a/01051/13, a/01052/13;
- in the group UPC/FPLC Attacks-Incident 2-Bambu:
a/00001/13, a/00004/13, a/00005/13, a/00007/13, a/00008/13,
a/00009/13, a/00017/13, a/00020/13, a/00022/13, a/00023/13,
a/00027/13, a/00028/13, a/00030/13, a/00032/13, a/00033/13,
a/00040/13, a/00041/13, a/00043/13, a/00047/13, a/00050/13,
a/00051/13, a/00053/13, a/00057/13, a/00059/13, a/00061/13,
a/00062/13, a/00063/13, a/00077/13, a/00079/13, a/00083/13,
a/00088/13, a/00091/13, a/00092/13, a/00476/13, a/00477/13,
a/00484/13, a/00565/13, a/00569/13, a/00570/13, a/00571/13,
a/00597/13, a/00599/13, a/00600/13, a/00601/13, a/00942/13,
a/00969/13, a/00971/13, a/00972/13, a/00989/13, a/01005/13,
a/01063/13; and
- in the group UPC/FPLC Attacks-Incident 2-Kobu:
a/00010/13, a/00044/13, a/00045/13, a/00046/13, a/00049/13,
a/00054/13, a/00060/13, a/00070/13, a/00086/13, a/00093/13,

a/00101/13, a/00138/13, a/00139/13, a/00140/13, a/00143/13,
 a/00148/13, a/00149/13, a/00150/13, a/00152/13, a/00154/13,
 a/00155/13, a/00156/13, a/00158/13, a/00166/13, a/00168/13,
 a/00169/13, a/00172/13, a/00173/13, a/00174/13, a/00176/13,
 a/00177/13, a/00178/13, a/00179/13, a/00180/13, a/00181/13,
 a/00182/13, a/00184/13, a/00186/13, a/00187/13, a/00189/13,
 a/00235/13, a/00236/13, a/00239/13, a/00242/13, a/00244/13,
 a/00435/13, a/00437/13, a/00438/13, a/00446/13, a/00447/13,
 a/00448/13, a/00451/13, a/00452/13, a/00478/13, a/00485/13,
 a/00496/13, a/00543/13, a/00550/13, a/00557/13, a/00559/13,
 a/00603/13, a/00637/13, a/00644/13, a/00912/13, a/01031/13,
 a/01053/13, a/01054/13, a/01055/13, a/01058/13, a/01059/13,
 a/01060/13, a/01061/13, a/01062/13, a/01064/13, a/01065/13,
 a/01066/13, a/01067/13, a/01068/13, a/01073/13, a/01074/13,
 a/01075/13, a/01076/13, a/01077/13, a/01078/13, a/01084/13,
 a/01086/13.



Marc Dubuisson, Director DCS

per delegation of

Mr Herman von Hebel, Registrar

Dated this 1 August 2014

At The Hague, The Netherlands