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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 “Third Report to the Pre-Trial Chamber on applications to participate in the proceedings” (ICC-01/04-02/06-132-Conf) dated 30 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 the Registry’s Second Report to the Pre-Trial Chamber on applications to participate in the proceedings (the “Registry’s Second Report”) notified on 9 October 2013;⁴

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

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-01/04-02/06-122-Conf+Conf-AnxA+Conf-Exp-AnxB.

without any redaction to the Prosecutor and with limited redaction of the identifying information of the applicant where necessary to the Defence;⁵

CONSIDERING that the Registry is organizing 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;⁶

CONSIDERING that the Registry has to date received a total of 1,254 applications to participate in the proceedings, of which 201 were transmitted to the Single Judge and the parties, respectively on 13 September 2013 (29 applications) as part of the Registry's First Report and on 9 October 2013 (172 applications), as part of the Registry's Second Report;

CONSIDERING that of the 1,053 remaining applications, the Registry has allocated 258 applications to one of the groups established and assessed them as complete and linked to the Case;⁷

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.

⁵ ICC-01/04-02/06-67, paras 29 and 37-44.

⁶ ICC-01/04-02/06-67, paras 33-39.

⁷ Of a batch of 300 applications allocated to the group UPC/FPLC Attacks-Incident 2-Lipri-Bambu-Kobu-surrounding villages, 258 appeared to the Registry to meet the requirements of rule 85 of the Rules, 31 applications were assessed as incomplete and may be filed at a later stage with the necessary supplementary information, 8 applications were moved to another group and will be filed at a later stage, and 3 applications were assessed as falling outside the scope of the Case.

A. Introduction

1. The present Report is divided into four parts. First, it provides some additional information in relation to the content of Annex A of the Report (Section B).⁸ Second, it provides an explanation of the content of Annex B of the Report (Section C). Third, it sets out information about the group of applications transmitted (Section D). Lastly, the Report presents the Registry's Rule 85 assessment for the group of applications transmitted (Section E).

B. Additional information in relation to the content of Annex A of the Report

2. Annex A of the Report comprises the Registry's assessment as to whether the requirements of rule 85 of the Rules are met for each applicant in the group of applications transmitted with the present Report, in accordance with paragraph 37 of the Decision of 28 May. The overall approach taken in making the assessments is described in the Registry's First Report.⁹ The Registry hereby wishes to provide a further explanation of its assessment as to whether or not it appears that the crime(s) alleged by the applicants in this specific group of applications occurred within the geographical locations which delimit the scope of the Case.
3. The VPRS is transmitting with the present Report 258 applications which have been allocated to the group UPC/FPLC Attacks-Incident 2-Lipri-Bambu-Kobu-surrounding villages and which have been assessed as complete and linked to the case. All the applicants in this group allege that they have suffered harm as a result of one or several crimes committed against themselves or their family members in villages located around Lipri, Bambu or Kobu. The

⁸ The content of Annex A of the Report was explained in Section D of the Registry's First Report, ICC-01/04-02/06-106-Conf-Exp, paras 15-32.

⁹ *Ibid.*

Registry notes that the Pre-Trial Chamber concluded in its Decision on the Prosecutor's Application under Article 58 that there are reasonable grounds to believe that crimes¹⁰ were committed by the UPC/FPLC against the non-Hema population, in *inter alia* Lipri, Bambu, Kobu and surrounding villages¹¹ between 17 February and 2 March 2003.¹²

4. In assessing whether or not the place of the commission of the alleged crime(s) indicated in the application form fell within the geographical scope of the Case, the Registry took into consideration the following:
 - a. The information provided by the applicant in the application form;
 - b. Other information available to the Registry regarding the geography of the area and the location of specific places including the Second Corrigendum of the Public Redacted Version of the Prosecutor's Application under Article 58¹³ and maps.¹⁴
5. It should be noted that in certain instances, information provided by applicants or available to the Registry was not always consistent in relation to precise locations.¹⁵ The Registry has therefore sought to gather as much information as possible on the locations referred to by the applicant before making its assessment.

¹⁰ Namely the crimes against humanity of murder, rape and sexual slavery and persecution on ethnic grounds - punishable under articles 7(l)(a), 7(l)(g) and 7(l)(h) of the Statute – and war crimes of murder, attack against a civilian population, pillaging, rape and sexual slavery - punishable under articles 8(2)(c)(i), 8(2)(e)(i), 8(2)(e)(v) and 8(2)(e)(vi) of the Statute. ICC-01/04-02/06-36-Red, paras 43 and 61.

¹¹ As regards the surrounding villages, the Registry notes that no reference is made to a specific village.

¹² ICC-01/04-02/06-36-Red.

¹³ ICC-01/04-611-Red-Corr2, in particular p. 26, footnote 148.

¹⁴ Map of the Djugu territory (*Province orientale*), compiled by GIS Unit, MONUSCO, April 2011; map of the Ituri District (Overview of Administrative units: territories and settlements), MONUC and GeoCommunity, 20 November 2006. Map of the Great Lakes, prepared by OCHA Regional Support Office, Nairobi.

¹⁵ For example, the same village could be situated at different places in different maps.

6. The Registry has also included the information pertaining to the place of the alleged crime in Annex A of the Report, in the field “VPRS rule 85 assessment”. Where the Registry was not able to locate the place of the commission of the alleged crime(s) indicated in the application, or was not able to confirm the information provided by the applicant in this regard, it has made a comment in the said field.

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

7. Paragraph 42 of the Decision of 28 May provides that 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.
8. 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. On-going armed clashes between the FARDC¹⁶ and the FRPI¹⁷ have contributed to the precarious security situation in this region. In addition, consultations conducted with the Registry’s field staff,

¹⁶ Forces Armées de la République Démocratique du Congo.

¹⁷ Front de Résistance Patriotique.

intermediaries and [REDACTED] have indicated that this situation seems to have exacerbated the latent tensions between communities in the area, in particular between Lendus and Hemas and respective allied ethnic groups.¹⁸

9. 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]. The Registry notes that all of the applicants in the group featured in the present Report have alleged that crimes were committed against them or their family members in locations surrounding the villages of Lipri, Bambu and Kobu. Based on the information available, it appears to the Registry that these locations are very small villages with relatively few inhabitants that are, for the most part, from the Lendu ethnic community. The Registry also notes that, according to the information available, most of the victims returned to the villages where the crimes allegedly occurred following the events.

¹⁸ 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.

10. Further, the Registry notes that these localities, which are situated in rural areas surrounding Lipri, Bambu and Kobu, 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] here the population is openly hostile to the Court.

11. 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 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.

In light of the above, the Registry recommends that the identities of the victims in this group not be disclosed to the Defence at the application stage,¹⁹ even where applicants have not indicated specific security concerns in their applications, and that 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. This information was therefore redacted by the Registry in the application forms as well as in Annex A of the Report, in accordance with the Decision of 28 May.²⁰ Unless

¹⁹ 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.

²⁰ ICC-01/04-02/06-67, paras 29 and 37-44.

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

D. Description of the group of applications transmitted

Group UPC/FPLC Attacks-Incident 2-Lipri-Bambu-Kobu-surrounding villages

12. With this transmission are included 258 natural persons (156 males and 102 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-Hema²¹ persons from various ethnicities, the largest proportion of whom are Lendus, but the group also includes persons of the following ethnicities: Walendu Djatsi, Nyali, Nande, Mambisa, Budu and Alur. The members of the group alleged that their village, surrounding either Lipri, Bambu or 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 2003.²² 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, psychological or material harm or substantial impairment of their fundamental rights²³ as a result of the crime(s) committed.

²¹ 1 applicant is from the [REDACTED] ethnic group.

²² It should be noted that some applicants mentioned the beginning of March 2003 and others identified the attack by mentioning that the events occurred during the Chikana Namukono military operation instead of providing exact dates.

²³ 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.

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

13. Based on its assessment of each of the 258 applications transmitted in the group UPC/FPLC Attacks-Incident 2-Lipri-Bambu-Kobu-surrounding villages, the VPRS is of the view that applicants: a/00002/13, a/00012/13, a/00013/13, a/00024/13, a/00029/13, a/00031/13, a/00048/13, a/00052/13, a/00055/13, a/00056/13, a/00058/13, a/00065/13, a/00066/13, a/00067/13, a/00068/13, a/00071/13, a/00072/13, a/00073/13, a/00074/13, a/00075/13, a/00081/13, a/00082/13, a/00084/13, a/00085/13, a/00089/13, a/00090/13, a/00099/13, a/00100/13, a/00103/13, a/00114/13, a/00115/13, a/00131/13, a/00132/13, a/00137/13, a/00145/13, a/00153/13, a/00167/13, a/00197/13, a/00206/13, a/00214/13, a/00215/13, a/00216/13, a/00219/13, a/00220/13, a/00221/13, a/00240/13, a/00348/13, a/00355/13, a/00356/13, a/00357/13, a/00358/13, a/00359/13, a/00360/13, a/00361/13, a/00362/13, a/00363/13, a/00364/13, a/00365/13, a/00366/13, a/00367/13, a/00368/13, a/00369/13, a/00370/13, a/00371/13, a/00372/13, a/00373/13, a/00374/13, a/00375/13, a/00376/13, a/00377/13, a/00378/13, a/00379/13, a/00380/13, a/00381/13, a/00382/13, a/00383/13, a/00384/13, a/00385/13, a/00386/13, a/00387/13, a/00389/13, a/00390/13, a/00392/13, a/00393/13, a/00394/13, a/00396/13, a/00397/13, a/00398/13, a/00399/13, a/00400/13, a/00401/13, a/00402/13, a/00403/13, a/00404/13, a/00405/13, a/00407/13, a/00408/13, a/00409/13, a/00410/13, a/00415/13, a/00416/13, a/00417/13, a/00418/13, a/00419/13, a/00420/13, a/00421/13, a/00422/13, a/00423/13, a/00424/13, a/00425/13, a/00426/13, a/00427/13, a/00429/13, a/00430/13, a/00431/13, a/00432/13, a/00433/13, a/00434/13, a/00439/13, a/00440/13, a/00441/13, a/00442/13, a/00443/13, a/00444/13, a/00445/13, a/00449/13, a/00450/13, a/00455/13, a/00456/13, a/00457/13, a/00458/13, a/00459/13, a/00460/13, a/00462/13, a/00463/13, a/00464/13, a/00465/13, a/00466/13, a/00467/13, a/00468/13, a/00469/13,

a/00471/13, a/00472/13, a/00474/13, a/00475/13, a/00480/13, a/00481/13, a/00483/13, a/00486/13, a/00488/13, a/00489/13, a/00490/13, a/00491/13, a/00492/13, a/00493/13, a/00494/13, a/00495/13, a/00563/13, a/00564/13, a/00566/13, a/00620/13, a/00621/13, a/00622/13, a/00623/13, a/00624/13, a/00638/13, a/00640/13, a/00641/13, a/00642/13, a/00643/13, a/00645/13, a/00646/13, a/00648/13, a/00649/13, a/00650/13, a/00651/13, a/00652/13, a/00653/13, a/00654/13, a/00655/13, a/00656/13, a/00657/13, a/00658/13, a/00659/13, a/00915/13, a/00917/13, a/00918/13, a/00920/13, a/00921/13, a/00922/13, a/00924/13, a/00926/13, a/00927/13, a/00928/13, a/00929/13, a/00930/13, a/00931/13, a/00933/13, a/00934/13, a/00935/13, a/00936/13, a/00937/13, a/00938/13, a/00939/13, a/00940/13, a/00941/13, a/00943/13, a/00944/13, a/00945/13, a/00946/13, a/00947/13, a/00949/13, a/00950/13, a/00951/13, a/00952/13, a/00956/13, a/00957/13, a/00958/13, a/00959/13, a/00960/13, a/00961/13, a/00962/13, a/00964/13, a/00965/13, a/00966/13, a/00967/13, a/00973/13, a/00974/13, a/00975/13, a/00976/13, a/00978/13, a/00979/13, a/00980/13, a/00981/13, a/00982/13, a/00983/13, a/00984/13, a/00985/13, a/00986/13, a/00987/13, a/00990/13, a/00992/13, a/00997/13, a/01004/13, a/01006/13, a/01007/13, a/01009/13, a/01013/13, a/01017/13, a/01019/13, a/01021/13, a/01023/13, a/01024/13, a/01026/13, a/01027/13, a/01029/13, a/01030/13 and a/01032/13 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, psychological, material or other harm which might be categorised as a substantial

impairment of a fundamental right, as a result of the crime(s) with which the suspect is charged which fall under articles 7(1)(a), 7(1)(g), 7(1)(h), 8(2)(c)(i), 8(2)(e)(i), 8(2)(e)(v) and 8(2)(e)(vi) of the Statute.

A handwritten signature in black ink, appearing to read 'M. Dubuisson', is written over a horizontal line.

Marc Dubuisson, Director DCS

per delegation of Mr Herman von Hebel, Registrar

Dated this 1 August 2014

At The Hague, The Netherlands