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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 “Fourth Report to the Pre-Trial Chamber on applications to participate in the proceedings” (ICC-01/04-02/06-154-Conf) dated 21 November 2013

Source: Registry

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

The Office of the Prosecutor

Ms. Fatou Bensouda, Prosecutor

Counsel for the Defence

Mr. Marc Desalliers

Legal Representatives of Victims

Ms Sarah Pellet

Mr Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**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, Second and Third Reports to the Pre-Trial Chamber on applications to participate in the proceedings;³

NOTING article 68 (1) and (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 redaction 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 dated 13 September 2013, ICC-01/04-02/06-122-Conf+Conf-AnxA+Conf-Exp-AnxB dated 9 October 2013 and ICC-01/04-02/06-132-Conf+Anxs dated 31 October 2013.

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

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;⁵

CONSIDERING that the Registry has to date received a total of 1,254 applications to participate in the proceedings, of which 459 were transmitted to the Single Judge and the parties, respectively on 13 September 2013 (29 applications) as part of the Registry's First Report, on 9 October 2013 (172 applications), as part of the Registry's Second Report and on 31 October 2013 (258 applications) as part of the Registry's Third Report;

CONSIDERING that of the 795 remaining applications,⁶ the Registry has allocated 363 applications to three 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 33-39.

⁶ This number includes applications assessed as incomplete until further information is collected, which represents so far a total of 98 applications.

⁷ Of a batch of 423 applications, 132 applications were allocated to the group UPC/FPLC Attacks-Incident 1-Mongbwalu, 71 to the group UPC/FPLC Attacks-Incident 1-Sayo and 207 to the group UPC/FPLC Attacks Incident 2-Lipri-Bambu-Kobu-surrounding villages. Of the 423 applications, 361 appeared to the Registry to meet the requirements of rule 85 of the Rules, 2 applications were assessed as unclear, 43 applications were assessed as incomplete and may be filed at a later stage with the necessary supplementary information, 12 applications were moved to another group and will be filed at a later stage, 1 application was assessed as falling outside the scope of the Case and 4 applications are duplicates.

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 information about the groups of applications transmitted (Section C). Lastly, the Report presents the Registry's Rule 85 assessment for the groups of applications transmitted (Section D).⁸

B. 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 fighting between the FARDC⁹ and the FRPI¹⁰ has

⁸ 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, and Section B of its Third Report, ICC-01/04-02/06-132-Conf, paras 2-6.

⁹ Forces Armées de la République Démocratique du Congo.

contributed to the precarious security situation in this region. 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 communities in the area, in particular between Lendus and Hemas and respective allied ethnic groups.¹¹

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 [REDACTED] and [REDACTED]. In November 2013, the VPRS undertook further consultations with intermediaries in the field who are in direct contact with applicants, with a view to reassessing the security situation in the region. All those consulted confirmed that the security situation in Ituri remains tense, not only due to continuing military operations in the region but also because the proceedings against Bosco Ntaganda are perceived as unfair by UPC supporters still present in or around the localities affected by the Case. For example, certain "chefs de groupement" are from the Hema community and continue to support the UPC. The information received

¹⁰ Front de Résistance Patriotique.

¹¹ 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.

from the field further indicates that people from affected communities living in or around Mongbwalu or Sayo, and who have submitted an application to participate in the Case, do not wish to be identified as applicants and are very concerned not to reveal their interaction with the Court for fear of being perceived as traitors.

10. The Registry notes that all of the applicants in the groups featured in the present Report have alleged that crimes were committed against them or their family members in Mongbwalu, Sayo and surrounding villages and in other locations surrounding the villages of Lipri, Bambu and Kobu. Based on the information available, it appears to the Registry that, while the population in Mongbwalu is quite dense and heterogeneous, the village of Sayo and the localities surrounding Lipri, Bambu and Kobu 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.

11. In addition, the Registry notes that Mongbwalu has long been a centre of gold mining where the population, mostly from the Banyali and Lendu communities, has constantly increased with the massive influx of people from many other ethnic groups who have been attracted by the gold mining opportunities, including former UPC militia and supporters. Similarly, the villages surrounding Lipri, Bambu and Kobu, although situated in rural areas, remain not far from the mining centres where the population is more heterogeneous. 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] where the population is openly hostile to the Court.

12. 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.

13. 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,¹² 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.¹³ Unless the Chamber decides otherwise, therefore, the Registry will transmit redacted versions of all applications to the Defence.

C. Description of the group of applications transmitted

Group UPC/FPLC Attacks-Incident 1-Mongbwalu

¹² 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.

¹³ ICC-01/04-02/06-67, paras 29 and 37-44.

14. With this transmission are included 122 natural persons (78 males and 44 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 *inter alia* persons of the following ethnicities: Walendu Djatsi, Nyali, Nande, Mambisa, Walese and Alur. The members of the group allege that their village, Mongbwalu, was attacked by the armed group of the UPC or by the soldiers of Bosco Ntaganda, during the period between 18 to 23 November 2002.¹⁴ 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 rights¹⁵ as a result of the crime(s) committed.

Group UPC/FPLC Attacks-Incident 1-Sayo

15. With this transmission are included 55 natural persons (31 males and 24 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 *inter alia* persons of the following ethnicities: Walendu Djatsi, Walendu Tatsi, Walendu Pitsi,

¹⁴ It should be noted that some applicants mentioned the end of November instead of providing exact dates. Based on available information, it appears to the VPRS that apart from a few isolated incidents, which do not correspond to the description of the alleged facts, only the UPC/FPLC attack between 18 and 23 November, as described in the charges brought against the suspect, is reported to have taken place at the end of November 2002 in the location indicated by the applicant. The VPRS is therefore of the view that the alleged events described by these applicants occurred within the temporal scope of the Case.

¹⁵ 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.

Nande, Mambisa, War Palara, Lugbara and Pandoro Mahagi. The members of the group allege that their village, Sayo, was attacked by the armed group of the UPC or by the soldiers of Bosco Ntaganda, during the period between 18 to 23 November 2002.¹⁶ The members of the group allege that during the attacks, several crimes were committed including murder [REDACTED] illage, and persecution. All members of the group allege that they suffered harm, including physical, psychological or material harm or substantial impairment of their fundamental rights¹⁷ as a result of the crime(s) committed.

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

16. With this transmission are included 186 natural persons (115 males and 71 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 *inter alia* persons of the following ethnicities: Walendu Djatsi, Nyali, Nande, Mambisa, Budu and Alur. The members of the group allege 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 and 2 March 2003.¹⁸ 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,

¹⁶ *Op. cit.*, footnote 18.

¹⁷ 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.

¹⁸ 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.

including physical, psychological or material harm or substantial impairment of their fundamental rights¹⁹ as a result of the crime(s) committed.

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

17. Based on its assessment of each of the 363 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 18 to 23 November 2002 in Mongbwalu and Sayo and between 17 February 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:

- in the group UPC/FPLC Attacks-Incident 1-Mongbwalu: a/00021/13, a/00144/13, a/00146/13, a/00151/13, a/00161/13, a/00162/13, a/00164/13, a/00188/13, a/00234/13, a/00248/13, a/00487/13, a/00546/13, a/00553/13, a/00556/13, a/00567/13, a/00617/13, a/00629/13, a/00633/13, a/00797/13, a/00799/13, a/00801/13, a/00802/13, a/00803/13, a/00804/13, a/00805/13,

¹⁹ 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.

a/00806/13, a/00807/13, a/00808/13, a/00810/13, a/00811/13, a/00812/13, a/00813/13, a/00814/13, a/00815/13, a/00816/13, a/00817/13, a/00819/13, a/00820/13, a/00821/13, a/00822/13, a/00823/13, a/00824/13, a/00825/13, a/00826/13, a/00827/13, a/00829/13, a/00830/13, a/00832/13, a/00833/13, a/00834/13, a/00835/13, a/00836/13, a/00837/13, a/00838/13, a/00839/13, a/00840/13, a/00841/13, a/00842/13, a/00843/13, a/00844/13, a/00846/13, a/00847/13, a/00848/13, a/00849/13, a/00851/13, a/00852/13, a/00853/13, a/00854/13, a/00855/13, a/00856/13, a/00857/13, a/00858/13, a/00859/13, a/00860/13, a/00861/13, a/00862/13, a/00863/13, a/00864/13, a/00865/13, a/00866/13, a/00867/13, a/00868/13, a/00869/13, a/00870/13, a/00871/13, a/00872/13, a/00873/13, a/00874/13, a/00875/13, a/00876/13, a/00877/13, a/00879/13, a/00880/13, a/00881/13, a/00882/13, a/00884/13, a/00885/13, a/00886/13, a/00887/13, a/00888/13, a/00889/13, a/00890/13, a/00891/13, a/00893/13, a/00894/13, a/00895/13, a/ 00896/13, a/00897/13, a/00898/13, a/00899/13, a/00900/13, a/00901/13, a/00902/13, a/00903/13, a/00904/13, a/00905/13, a/00906/13, a/00907/13, a/00909/13, a/00910/13, a/00911/13, a/01294/13;

- in the group UPC/FPLC Attacks-Incident 1-Sayo: a/00141/13, a/00147/13, a/00185/13, a/00461/13, a/00520/13, a/00522/13, a/00544/13, a/00545/13, a/00547/13, a/00548/13, a/00551/13, a/00552/13, a/00554/13, a/00555/13, a/00561/13, a/00562/13, a/00615/13, a/00618/13, a/00619/13, a/00756/13, a/00757/13, a/00760/13, a/00761/13, a/00762/13, a/00763/13, a/00764/13, a/00765/13, a/00766/13, a/00767/13, a/00768/13, a/00769/13, a/00770/13, a/00771/13, a/00772/13, a/00773/13, a/00774/13, a/00776/13, a/00777/13, a/00779/13, a/00780/13, a/00784/13, a/00785/13, a/00787/13, a/00788/13, a/00790/13, a/00791/13, a/00793/13, a/00794/13, a/00795/13, a/00796/13, a/00798/13, a/00800/13, a/00818/13, a/00831/13, a/00850/13;

- in the group UPC/FPLC Attacks-Incident 2-Lipri-Bambu-Kobu-surrounding villages: a/01072/13, a/01080/13, a/01079/13, a/01071/13, a/01070/13, a/01151/13, a/01190/13, a/01189/13, a/01187/13, a/01182/13, a/01179/13, a/01178/13, a/01177/13, a/01176/13, a/01175/13, a/01174/13, a/01173/13, a/01172/13, a/01171/13, a/01139/13, a/01087/13, a/01138/13, a/01137/13, a/01035/13, a/01140/13, a/01039/13, a/01040/13, a/01043/13, a/01141/13, a/01044/13, a/01046/13, a/01049/13, a/01163/13, a/01164/13, a/01165/13, a/01166/13, a/01050/13, a/01056/13, a/01057/13, a/01069/13, a/01153/13, a/01154/13, a/01155/13, a/01156/13, a/01081/13, a/01082/13, a/01157/13, a/01158/13, a/01159/13, a/01180/13, a/01160/13, a/01181/13, a/01161/13, a/01162/13, a/01185/13, a/01184/13, a/01186/13, a/01147/13, a/01148/13, a/01149/13, a/01150/13, a/01152/13, a/01088/13, a/01089/13, a/01230/13, a/01222/13, a/01231/13, a/01101/13, a/01091/13, a/01223/13, a/01102/13, a/01232/13, a/01233/13, a/01224/13, a/01092/13, a/01214/13, a/01103/13, a/01215/13, a/01216/13, a/01093/13, a/01217/13, a/01225/13, a/01234/13, a/01218/13, a/01104/13, a/01219/13, a/01235/13, a/01094/13, a/01220/13, a/01105/13, a/01221/13, a/01236/13, a/01226/13, a/01227/13, a/01095/13, a/01237/13, a/01106/13, a/01212/13, a/01238/13, a/01213/13, a/01108/13, a/01229/13, a/01109/13, a/01099/13, a/01100/13, a/01097/13, a/01142/13, a/01143/13, a/01144/13, a/01145/13, a/01146/13, a/01110/13, a/01111/13, a/01096/13, a/01098/13, a/01188/13, a/01112/13, a/01120/13, a/01113/13, a/01121/13, a/01249/13, a/01242/13, a/01122/13, a/01114/13, a/01250/13, a/01116/13, a/01123/13, a/01251/13, a/01124/13, a/01252/13, a/01115/13, a/01125/13, a/01126/13, a/01245/13, a/01246/13, a/01117/13, a/01247/13, a/01127/13, a/01118/13, a/01253/13, a/01128/13, a/01254/13, a/01129/13, a/01130/13, a/01131/13, a/01133/13, a/01194/13, a/01195/13, a/01255/13, a/01135/13, a/01262/13, a/01256/13, a/01196/13, a/01257/13, a/01258/13, a/01259/13, a/01263/13, a/01260/13, a/01261/13, a/01264/13, a/01197/13, a/01198/13, a/01265/13, a/01199/13, a/01266/13, a/01132/13,

a/01191/13, a/01134/13, a/01192/13, a/01228/13, a/01200/13, a/01206/13,
a/01267/13, a/01207/13, a/01268/13, a/01202/13, a/01209/13, a/01269/13,
a/01270/13, a/01210/13, a/01205/13, a/01211/13, a/01276/13, a/01283/13,
a/01284/13, a/01271/13.



Marc Dubuisson, Director DCS

per delegation of Mr Herman von Hebel, Registrar

Dated this 1 August 2014

At The Hague, The Netherlands