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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 “Fifth Report to the Pre-Trial Chamber on applications to participate in the proceedings” (ICC-01/04-02/06-179-Conf) dated 13 December 2013

Source: Registry

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

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Section**

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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, Third and Fourth 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” along with two annexes filed as “Confidential *ex parte* only available to the Prosecutor” and “Confidential redacted available to the Parties” 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, ICC-01/04-02/06-122-Conf+Conf-AnxA+Conf-Exp-AnxB, ICC-01/04-02/06-132-Conf+Anxs and ICC-01/04-02/06-154-Conf+Conf-Exp-Anxs + Conf-Red-Anxs.

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, as of 9 December 2013, received a total of 1,418 applications to participate in the proceedings, of which 1,283 applications were received between July and November 2013. Of these, 822 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, on 31 October 2013 (258 applications) as part of the Registry's Third Report and on 21 November 2013 (363 applications) as part of the Registry's Fourth Report;

CONSIDERING that 334 additional applications were respectively received on 3 December 2013 (135 applications) and on 11 December 2013 (199 applications);⁶

CONSIDERING that the Registry expects to receive approximately 98 additional applications by the end of December based on available information;⁷

CONSIDERING that the Registry is currently in the process of collecting supplementary information for 112 applications assessed as incomplete;

CONSIDERING that the Single Judge instructed the Registry to transmit to the Single Judge and to the parties complete applications for participation no later than

⁵ ICC-01/04-02/06-67, paras 33-39.

⁶ These applications were received from the NGO *Avocats Sans Frontière* (the "ASF").

⁷ Information provided by ASF.

30 days before the start of the confirmation hearing, which is set for 10 February 2014;⁸

CONSIDERING that of the applications not yet transmitted, the Registry has allocated 160 applications to three of the groups established and assessed them as complete and linked to the Case;⁹ as to the remaining applications including the applications expected to be received, while the Registry is currently in the process of scanning and registering the applications recently received, the Registry notes that in light of the uncertainty as to the exact dates when further new applications or completed version of incomplete applications will be received, it is difficult to anticipate how many applications will be transmitted with the last transmission of applications scheduled for 9 January 2014, and it is possible that the Registry will not be able to process all applications received in time for transmission;¹⁰

TRANSMITS to the Single Judge and the Parties, 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.

⁸ ICC-01/04-02/06-67, para.40. Besides, the Single Judge considers that complete applications for participation shall be submitted to the VPRS no later than 45 before the start of the confirmation hearing.

⁹ Of a batch of 239 applications, 160 applications appeared to the Registry to meet the requirements of rule 85 of the Rules, of which 137 applications were allocated to the group UPC/FPLC Child soldiers, 49 to the group UPC/FPLC Attacks Incident 2-Lipri-Bambu-Kobu-surrounding villages, and 28 to the group UPC/FPLC Attacks-Incident 2 Kobu. Of the remaining applications, 25 applications were moved to 4 different groups and will be filed at a later stage, 38 applications need supplementary information to be complete, and 18 applications were assessed as falling outside the scope of the Case.

¹⁰ The Registry notes that ASF informed the VPRS that it has informed applicants that their applications may not be transmitted to the Single Judge and the Parties in view of the Confirmation of charges hearing, in light of the date of receipt of their applications by the VPRS and the deadline imposed by the Chamber for filing them.

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).¹¹

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 FARDC¹² and the FRPI¹³ has

¹¹ 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.

¹² 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.¹⁴

9. In April 2013, the VPRS conducted consultations in [REDACTED] with individuals representing populations directly affected by the Case including potential applicants, intermediaries [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. 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.

10. The Registry notes that 97 applicants in the groups featured in the present Report have alleged to have been used as child soldiers by the UPC/FPLC

¹³ Front de Résistance Patriotique.

¹⁴ 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.

forces and 63 applicants have alleged that crimes were committed against them or their family members in Kobu and in other locations surrounding the villages of Lipri, Bambu and Kobu. Notwithstanding that these localities are very small villages with relatively few inhabitants that are, for the most part, from the Lendu ethnic community, they are situated in rural areas and 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 Lipri, [REDACTED] an [REDACTED] where the population is openly hostile to the Court.

11. The information received from the field further indicates that applicants who allege to have been used as child soldiers 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. This is the case in villages where the Hema community forms the majority of the inhabitants and where it was reported to the VPRS that some people tried to prevent former alleged child soldiers to submit an application to participate.¹⁵

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.

¹⁵ These localities include for example the villages of [REDACTED]

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,¹⁶ 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 the legal representative appointed 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.¹⁷ 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 Child soldiers

14. With this transmission are included 97 natural persons (83 males and 14 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 persons from various ethnicities, the largest proportion of whom are Hema but the group also includes *inter alia* persons of the following ethnicities: Bira, Alur, Gegere and Baboa Bakoe. The members of the group allege that while they were under fifteen years of age:

- They were enlisted and or conscripted, in the camps of Bule, Centrale, Mandro, Rwampara, Irumu, Bogoro or Sota, by the armed group of the

¹⁶ 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.

¹⁷ ICC-01/04-02/06-67, paras 29 and 37-44.

UPC or by the soldiers of Bosco Ntaganda, during the period between July 2002 to December 2003;

- or/and that they were used to participate actively in hostilities, by the armed group of the UPC or by the soldiers of Bosco Ntaganda, in Libi and Mbau in October 2002, in Largu in the beginning of 2003, in Lipri and Bogoro in February and March 2003, in Bunia in May 2003 or in Djugu and Mongbwalu in June 2003.

All members of the group allege that they suffered harm, including physical, psychological or material harm or substantial impairment of their fundamental rights,¹⁸ as a result of the crime(s) committed.

Group UPC/FPLC Attacks-Incident 2- Kobu

15. With this transmission are included 27 natural persons (16 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, 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]⁹ pillage, and persecution. All members of the group allege that they suffered harm, including physical,

¹⁸ 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.

¹⁹ One member of the group alleges [REDACTED]

moral, material harm or substantial impairment of their fundamental rights, 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 36 natural persons (19 males and 17 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 2003.²⁰ 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 rights 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 160 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

²⁰ 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.

applications for participation constitute(s) one or more crimes within the jurisdiction of the Court with which the suspect is charged, namely:

- (1) 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 and 2 March 2003 in Kobu and villages surrounding Lipri, Bambu and Kobu (Ituri District, Province Orientale of the Democratic Republic of the Congo),
- (2) enlistment and conscription of children under the age of fifteen in the camps of Bule, Centrale, Mandro, Rwampara, Irumu, Bogoro or Sota, by the UPC/FPLC forces, during the period between July 2002 to December 2003 and,
- (3) use of children under the age of fifteen by the UPC/FPLC forces, to participate actively in hostilities in Libi and Mbau in October 2002, in Largu in the beginning of 2003, in Lipri and Bogoro in February and March 2003, in Bunia in May 2003 and in Djugu and Mongbwalu in June 2003;

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) and 8 (2) (b) (xxvi), or article 8 (2) (e) (vii), and article 8 (2) (b) (xxvi), or article 8 (2) (e) (vii) of the Statute,

- in the group UPC/FPLC Attacks- Incident 2-Kobu: a/01085/13, a/00069/13, a/00194/13, a/00195/13, a/00625/13, a/00026/13, a/00237/13, a/00353/13, a/00042/13, a/00087/13, a/00159/13, a/01208/13, a/00163/13, a/01241/13, a/01244/13, a/01248/13, a/00948/13, a/00968/13, a/00175/13, a/01107/13, a/01183/13, a/01201/13, a/00925/13, a/00932/13, a/00245/13, a/00436/13, a/00170/13;
- in the group UPC/FPLC Attacks- Incident 2-Lipri-Bambu-Kobu surrounding villages: a/00003/13, a/01083/13, a/00019/13, a/01240/13, a/01243/13, a/01273/13, a/00919/13, a/00953/13, a/01279/13, a/00923/13, a/00955/13, a/00016/13, a/00479/13, a/00354/13, a/00391/13, a/00572/13, a/00406/13, a/00598/13, a/00411/13, a/00412/13, a/00350/13, a/00413/13, a/00349/13, a/00414/13, a/00428/13, a/00470/13, a/01274/13, a/01280/13, a/01281/13, a/01277/13, a/01282/13, a/01296/13, a/01321/13, a/00209/13, a/00661/13, a/00647/13;
- and in the group UPC/FPLC Child soldiers: a/00078/13, a/00738/13, a/00706/13, a/00704/13, a/00581/13, a/00580/13, a/00579/13, a/00725/13, a/00231/13, a/00739/13, a/00740/13, a/00752/13, a/00741/13, a/00696/13, a/00753/13, a/00712/13, a/00698/13, a/00754/13, a/00699/13, a/00716/13, a/00717/13, a/00700/13, a/00728/13, a/00575/13, a/00729/13, a/00710/13, a/00577/13, a/00627/13, a/00723/13, a/00730/13, a/00578/13, a/00630/13, a/00701/13, a/00702/13, a/00721/13, a/00703/13, a/00733/13, a/00724/13, a/00734/13, a/00722/13, a/00751/13, a/00080/13, a/00748/13, a/00749/13, a/00750/13, a/00744/13, a/00745/13, a/00727/13, a/00726/13, a/00746/13, a/00673/13, a/00662/13, a/00676/13, a/00742/13, a/00743/13, a/00663/13, a/00674/13, a/00664/13, a/00670/13, a/00034/13, a/00035/13, a/00675/13, a/00672/13, a/00667/13, a/00671/13, a/00668/13, a/00669/13, a/00685/13, a/00632/13, a/00635/13, a/00665/13, a/00747/13, a/01312/13, a/00678/13, a/01313/13, a/00677/13, a/00679/13, a/00680/13, a/01295/13, a/00681/13, a/00682/13, a/00683/13, a/00684/13, a/00686/13, a/00692/13, a/00687/13, a/00695/13,

a/00689/13, a/00690/13, a/01308/13, a/00732/13, a/01309/13, a/01311/13,
a/00719/13, a/00666/13, a/01324/13, a/00038/13.



Mr. Marc Dubuisson, Director of Division of Court Services

per delegation of Mr Herman von Hebel, Registrar

Dated this 1 August 2014

At The Hague, The Netherlands