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

**Joint response to the “Application by the Redress Trust and Avocats sans Frontières
for leave to submit observations pursuant to
Rule 103 of the Rules of Procedure and Evidence” dated 29 August 2014**

Source: Office of Public Counsel for Victims

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

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Legal Representatives of Victims

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**Unrepresented Applicants for
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**Victims Participation and Reparations
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Other

I. PROCEDURAL BACKGROUND

1. On 2 December 2013, the Single Judge of Pre-Trial Chamber II (the “Pre-Trial Chamber”) issued the “Decision Concerning the Organisation of the Common Legal Representation of Victims”,¹ appointing two counsel from the Office of Public Counsel for Victims (the “Office” or the “OPCV”) as common legal representatives of the two groups of victims identified in the “Decision Requesting the VPRS and the OPCV to take steps with regard to the legal representation of victims in the confirmation of charges hearing and in the related proceedings”.²

2. On 15 January 2014, the Single Judge of the Pre-Trial Chamber (the “Single Judge”) rendered the “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings” (the “First Decision on victims’ participation”),³ admitting 922 victims applicants listed in annex C thereof to participate in the confirmation of charges hearing and in the related proceedings⁴ and deciding to appoint Ms Sarah Pellet as the common legal representative of the group of former child soldiers and Mr Dmytro Suprun as the common legal representative of the group of victims of the attacks of UPC/FPLC troops.⁵

3. On 7 February 2014, the Single Judge issued the “Second Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related

¹ See the “Decision Concerning the Organisation of the Common Legal Representation of Victims” (Pre-Trial Chamber II, Single Judge), No. ICC-01/04-02/06-160, 2 December 2013.

² *Idem*, paras. 10, 23 and 25. See also the “Decision Requesting the VPRS and the OPCV to take steps with regard to the legal representation of victims in the confirmation of charges hearing and in the related proceedings” (Pre-Trial Chamber II, Single Judge), No. ICC-01/04-02/06-150, 20 November 2014.

³ See the “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings” (Pre-Trial Chamber II, Single Judge), No. ICC-01/04-02/06-211, 15 January 2014 (the “First Decision on victims’ participation”).

⁴ See the “Annex C to the Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings” (Pre-Trial Chamber II, Single Judge), No. ICC-01/04-02/06-211-AnxC, 15 January 2014.

⁵ See the First Decision on victims’ participation, *supra* note 3, paras. 78 and 79 and p. 37.

Proceedings” (the “Second Decision on victims’ participation”),⁶ admitting further 198 victims applicants to participate in the confirmation of charges hearing and in the related proceedings⁷ and deciding that the appointment of Ms Sarah Pellet and Mr Dmytro Suprun shall extend to said victims falling within the two groups as identified in the First Decision on victims’ participation.⁸

4. From 10 until 14 February 2014, the Pre-Trial Chamber held the confirmation of charges hearing in the present case.

5. On 9 June 2014, the Pre-Trial Chamber issued the “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda”, deciding to confirm the charges brought against the suspect and to commit him to trial based on the charges as confirmed.⁹

6. On 18 July 2014, the Presidency issued the “Decision constituting Trial Chamber VI and referring to it the case of *The Prosecutor v. Bosco Ntaganda*”, deciding, *inter alia*, to refer the present case to Trial Chamber VI.¹⁰

7. On 21 July 2014, Trial Chamber VI (the “Chamber”) issued the “Order Scheduling a Status Conference and Setting a Provisional Agenda”,¹¹ wherein it scheduled a status conference on 20 August 2014 pursuant to rule 132(1) of the Rules of Procedure and Evidence and instructed “*the parties and participants to submit their*

⁶ See the “Second Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings”, (Pre-Trial Chamber II, Single Judge), No. ICC-01/04-02/06-251, 7 February 2014 (the “Second Decision on victims’ participation”).

⁷ *Idem*, pp. 19-20.

⁸ *Ibid.*, p. 20.

⁹ See the “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda” (Pre-Trial Chamber II), No. ICC-01/04-02/06-309, 9 June 2014.

¹⁰ See the “Decision constituting Trial Chamber VI and referring to it the case of *The Prosecutor v. Bosco Ntaganda*” (Presidency), No. ICC-01/04-02/06-337, 18 July 2014.

¹¹ See the “Order Scheduling a Status Conference and Setting a Provisional Agenda” (Trial Chamber VI), No. ICC-01/04-02/06-339, 21 July 2014.

*written observations on the [...] provisional agenda and to inform the Chamber of any items they wish to be added to it by 14 August 2014".*¹²

8. On 14 August 2014, the Legal Representatives of the victims admitted to participate in the present case (the "Legal Representatives") filed their "Joint submissions in accordance with the 'Order Scheduling a Status Conference and Setting a Provisional Agenda' issued on 21 July 2014".¹³

9. On 15 August 2014, the Chamber rescheduled the status conference for 18 September.¹⁴ This date was subsequently changed to accommodate the schedule of the newly appointed lead counsel for the Defence and fixed to 11 September 2014.¹⁵

10. On 29 August 2014, the Redress Trust and *Avocats sans Frontières* filed an "Application [...] for leave to submit observations pursuant to Rule 103 of the Rules of Procedure and Evidence" (the "Application").¹⁶

11. In accordance with regulation 24(2) of the Regulations of the Court, the Legal Representatives respectfully submit their joint response to the Application.

II. SUBMISSIONS

12. As a preliminary matter, the Legal Representatives welcome and encourage all efforts aimed at promoting and enhancing victims' participation before the Court. In this regard, the Legal Representatives support all proposals and suggestions

¹² *Idem*, p. 6.

¹³ See the "Joint submissions in accordance with the 'Order Scheduling a Status Conference and Setting a Provisional Agenda' issued on 21 July 2014", No. ICC-01/04-02/06-351, 14 August 2014.

¹⁴ See the "Order postponing and setting a new date for the status conference" (Trial Chamber VI), No. ICC-01/04-02/06-354, 15 August 2014.

¹⁵ See the "Order revising dates for the status conference and for receipt of observations" (Trial Chamber VI), No. ICC-01/04-02/06-358, 26 August 2014.

¹⁶ See the "Application by the Redress Trust and *Avocats sans Frontières* for leave to submit observations pursuant to Rule 103 of the Rules of Procedure and Evidence", No. ICC-01/04-02/06-359, 1 September 2014 (dated 29 August 2014) (the "Application").

designed to alleviate the impediments faced by victims when applying for participation in the proceedings before the Court.

13. While the Legal Representatives do not oppose the applicants' request for leave to submit observations as *amicus curiae*, they wish to highlight a number of issues that are relevant for the purpose of the Chamber's determination.

14. Pursuant to rule 103(1) of the Rules of Procedure and Evidence (the "Rules"), the Chamber has the discretion to grant leave to an organisation to submit observations "*if it considers it desirable for the proper determination of the case*". The Appeals Chamber has clarified that the main requirement for allowing the submission of observations pursuant to rule 103 of the Rules, is that the proposed submissions be of assistance to the Chamber in making its determination.¹⁷

15. The applicants essentially seek to submit 1) "*factual information regarding victims' communities' experiences' with the new application model implemented in the Kenya cases*", as well as 2) observations concerning "*practical issues [...] that may impact on the modalities for a possible tiered application and participation process*".¹⁸

16. The Legal Representative note the Application was filed more than one month after the Chamber issued the first scheduling order for a status conference on 21 July 2014.¹⁹ As of said date, the applicants should have been aware that one of the agenda items relates to the "*applications and the procedure for allowing victims to participate in the trial proceedings*".²⁰ Moreover, given that the applicants propose to conduct "*detailed*"²¹ field consultations with hundreds of individuals and "*other stakeholders*"²² both in

¹⁷ See the "Reasons for 'Decision on the Application of 20 July 2009 for Participation under Rule 103 of the Rules of Procedure and Evidence and on the Application of 24 August 2009 for Leave to Reply'" (Appeals Chamber), No. ICC-02/05-01/09-51 OA, 9 November 2009, para. 9.

¹⁸ See the Application, para. 15.

¹⁹ See *supra* note 11.

²⁰ *Idem.*, p. 4.

²¹ See the Application, para. 32.

²² *Idem.*, p. 9.

Ituri and in Kenya, it is unlikely that such a survey would only be conducted efficiently within the timeline suggested by the applicants (*i.e.* 15 days for the processing and 15 days for the analysis).²³ Moreover, the nature and extent of the proposed exercise may have unforeseen and/or prejudicial effects on the conduct of the proceedings. This is more so given the late submission of the Application.

17. On the other hand, the benefits that may result from the conduct of such an extensive survey are uncertain. The applicants indicate that the information presented would reflect the outcome of the consultations with victims' communities in the field.²⁴ However, the applicants do not clarify what these consultations can add to the submissions already received by the Chamber, namely from the Registry and the Legal Representatives. Indeed, the Legal Representatives' submissions are based on regular contacts and consultations between participating victims and counsel. They therefore provide an accurate reflection of victims' views and concerns. Likewise, the Registry provided its observations on the procedure for allowing victims to participate at trial.²⁵ Although the Legal Representatives and the victims themselves might not necessary agree with said submission, the Legal Representatives simply deem it necessary to recall that the *ad hoc* tribunals have clarified that *amici curiae* must not be "linked" or "affiliated" with any party to the case,²⁶ and are required not to "repeat[s] the task undertaken by the [...] Chamber and the parties in their submissions".²⁷

²³ *Ibid.*, paras. 32-34.

²⁴ *Ibid.*, pp. 8-9.

²⁵ See the "Registry submission pursuant to "Order Scheduling a Status Conference and Setting a provisional Agenda", No. ICC-01/04-02/06-350, 14 August 2014, paras. 9 *et seq.*

²⁶ See ICTR, *The Prosecutor v. Kayishema*, Case No. ICTR-2001-67-I, "Decision on the Request for Permission to File an Amicus Curiae Brief, International Criminal Defence Attorneys Association (ICDAA) Concerning the Prosecutor's Request for Referral of the Case of Fulgence Kayishema to Rwanda Pursuant to Rule 11 *Bis* of the Rules", 6 December 2007, para. 14; ICTR, *The Prosecutor v. Gatete*, Case No. ICTR-2001-61-11bis, "Decision on *Amicus Curiae* Requests (IBUKA, AVEGA and ICDAA)", 30 June 2008, para. 6; and ICTR, *The Prosecutor v. Kayishema*, Case No. ICTR-01-67-R11bis, "Decision on the International Criminal Defence Attorneys Association for Leave to Appear as Amicus Curiae and Invitation to the Republic of Rwanda to File Submissions", 18 February 2011, para. 5.

²⁷ See ICTY, *The Prosecutor v. Gotovina and Markač*, Case No. IT-06-90-A, "Decision on Application and Proposed *Amicus Curiae* Brief", 14 February 2012, para. 11. See also ICTY, *The Prosecutor v. Karadžić*,

18. Moreover, the suggested consultations and gathering of information from victims may not be legally viable. The Legal Representatives emphasise that they have been appointed to represent participating victims and although some of them were originally represented by lawyers working on behalf of Redress and *Avocats sans Frontières*, the latter cannot contact the participating victims without the Legal Representatives' approval.²⁸ More importantly, approaching participating victims and/or victims who have already communicated with the Court without following the procedures implemented at the Court may amplify the security risks and may cause serious prejudice to them.

Respectfully submitted,



Dmytro Suprun
Common Legal Representative of the
Victims of the Attacks



Sarah Pellet
Common Legal Representative of the
Child soldiers

Dated this 8th day of September 2014

At The Hague, The Netherlands

Case No. IT-95-5/18-AR98bis.1, "Decision on Application for Leave to Submit an *Amicus Curiae* Brief", 21 September 2012, p. 3.

²⁸ Incidentally article 15(2) of the Code of Conduct for Counsel provides that upon termination of the representation agreement, the former counsel "*shall convey to replacement counsel any communication received related to the representation*".