

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 2 April 2015

TRIAL CHAMBER VI

Before: Judge Robert Fremr, Presiding Judge
Judge Kuniko Ozaki
Judge Chang-ho Chung

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

**Confidential
With Confidential Annex A**

**Registry's Third Assessment Report on Applications for Victims' Participation in
Trial Proceedings**

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 of Bosco

Ntaganda

Mr Stéphane Bourgon

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

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 Pre-Trial Chamber II's Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings in the case of *The Prosecutor v. Bosco Ntaganda* (the "Case"), notified on 15 January 2014 and the Second Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings, notified on 7 February 2014 (the "Pre-Trial Victims Decisions") granting victim status to a total of 1120 applicants;¹

NOTING Pre-Trial Chamber II's Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda notified on 9 June 2014 (the "Confirmation Decision");²

NOTING Trial Chamber VI's (the "Chamber") Decision on victims' participation in trial proceedings notified on 6 February 2015 (the "Participation Decision");³

NOTING the Chamber's Decision on the updated document containing the charges notified on 6 February 2015 (the "Updated DCC Decision");⁴

NOTING the Prosecution's Submission of an Updated Document Containing the Charges pursuant to ICC-01/04-02/06-450 notified on 16 February 2015 (the "Updated DCC");⁵

¹ ICC-01/04-02/06-211; ICC-01/04-02/06-251.

² ICC-01/04-02/06-309.

³ ICC-01/04-02/06-449.

⁴ ICC-01/04-02/06-450.

⁵ ICC-01/04-02/06-458.

NOTING the Registry's First and Second Assessment Reports on Applications for Victims' participation in Trial Proceedings⁶ and the Registry's First and Second Transmissions to the Chamber of 1001 Applications for Participation in Trial Proceedings;⁷

NOTING article 68 (1) and (3) of the Rome Statute, rules 89(1) and 91(1) of the Rules of Procedure and Evidence and regulations 23 *bis* and 86(8) of the Regulations of the Court;

CONSIDERING that the annex to the present document is notified with the status "Confidential" in accordance with the instructions provided by the Chamber at paragraph 24(iv) of the Participation Decision;

CONSIDERING that the Chamber in paragraph 24 of the Participation Decision adopted an admission system for victims to participate in trial proceedings;

CONSIDERING that the VPRS is assessing and organising applications received in different groups, according to the criteria set out in paragraph 24(ii) of the Participation Decision, and transmitting them on a rolling basis;

CONSIDERING that on 2 April 2015, the Registry transmitted 39 complete applications in original version in its Third Transmission to the Chamber in relation to applicants for whom the Registry could not make a clear determination for any reason "Group C Applications";

⁶ ICC-01/04-02/06-479 ; ICC-01/04-02/06-518.

⁷ ICC-01/04-02/06-472 ; ICC-01/04-02/06-514.

CONSIDERING that on 2 April 2015, the Registry also transmitted these 39 simplified application forms in Group C, with the necessary redactions applied, to the parties;

TRANSMITS to the Chamber, parties and participants the Registry's third assessment report on victims' applications for participation in trial proceedings.

Introduction

1. In its first two transmissions, the Registry transmitted applications of 1001 applicants that it has assessed as clearly qualifying as victims (Group A). The present report covers 39 applications in relation to which the Registry could not make a clear determination and has therefore assessed as falling within Group C. These have been transmitted to the Chamber and the parties in accordance with paragraphs 24(iv) and (v) of the Participation Decision.
2. The present report includes a brief overview of the reasons why the Registry could not make a clear determination. Annex A comprises a list of the applications.

Details on the Assessment Criteria and List of Applications Falling within Group C

3. The Registry notes that the 39 applications listed in Group C have each satisfied the first two criteria set out by the Chamber in paragraph 43 of the Participation Decision⁸ and that the reason why the Registry could not make a clear determination surrounds whether or not the personal harm reported by the applicants resulted from "an incident falling within the parameters of the confirmed charges."⁹

⁸ The applicant established his or her identity as a natural person and the applicant has suffered harm.

⁹ Participation Decision, para. 43(iii).

4. Furthermore, the Registry notes that the issues raised by these applications can broadly be categorised as issues pertaining to the territorial scope of the Case. Namely, how to interpret “*in or around*”¹⁰ in the context of responses provided in the applications relating to Kilo village itself, and to its neighbourhood. In conducting its field activities, the Registry has noted the close territorial proximity between Kilo village and Kobu village (approximately 3-5 kilometres). The Registry also notes that despite Kilo village being named in relation to the alleged attacks on the Banyali-Kilo *collectivité*, the applications in Group C all contain information that seemingly describes the alleged attacks on the Walendu-Ndjatsi *collectivité*.
5. It the Registry’s view, based on the geographic proximity between Kilo and Kobu villages, the number of applications received from Kilo and its environs and the context on the ground, the victim applicants have not confused the two alleged attacks. Victims coming from Kilo and its environs alleging harm in relation to the attack on the Walendu-Ndjatsi *collectivité* could be considered to fall under the “immediately neighbouring villages” exception described in paragraph 74 of the Chamber’s Updated DCC Decision.
6. However, considering that applications from Kilo were both accepted and rejected by the Pre-Trial Chamber in its Decision on applications ahead of the Confirmation of Charges Hearing, the Registry respectfully submits the applications mentioning this location as applications on which it could not make a clear determination.¹¹
7. The Registry has provided a table below with extracts from some of the 39 applications, as examples of the two issues outlined above.

¹⁰ The Updated DCC, *See for example*, para. 85.

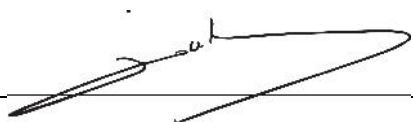
¹¹ ICC-01/04-02/06-211-AnxC: Accepted – a/00471/13; Rejected – a/00363/13.

Legal Issues	Examples	Application Number
1. In relation to the attack on the Walendu-Ndjatsi <i>collectivité</i> , the Registry is seeking guidance on whether Kilo village can be considered to be “ <i>in or around</i> ” Kobo village?	1) « Avec l’attaque de Kobo dans l’opération Shika Na Mukono nous étions à Kilo avec mes enfants » 2) « Lors de l’attaque du village Kilo que les militaires de l’UPC sont arrivés [...] fin février 2003 lors de l’opération Shika Na Mukono » 3) « Les hemas de l’UPC ont fait une attaque contre les Lendus vers la fin de l’année 2002 à Kilo [...] En février 2003 nous sommes revenus au village [...] ils ont fait une autre attaque » 4) « En début 2003, les militaires avaient attaqué les populations civiles de Kilo » [...] « Lors de l’opération Shika Na Mukono »	1) a/00598/13 2) a/00363/13 3) a/00471/13 4) a/01278/13
2. In relation to the attack on the Walendu-Ndjatsi <i>collectivité</i> , the Registry is seeking guidance on	1) « J’étais établi à Lambo/Kilo lors de l’attaque dénommée « Shika Na	1) a/00386/13 2) a/00459/13 3) a/01270/13

whether the environs of Kilo village can be considered to be “in or around” Kobu village?	Mukono »dirigée par l’UPC contre les Lendus » 2) « Lors de l’opération Shika Na Mukono menée par les miliciens Hema de l’UPC [...] Matongo/1 km de Kilo Mission » 3) « C’était au moment de l’opération Shika Na Mukono menée par les miliciens hema de l’UPC menés par Bosco Ntaganda [...] Emanemata/ 1km de Kilo Mission » 4) « C’était lors de la prise de notre village Bungachu/ Kilo Mission par les miliciens Hema de l’UPC en mars 2003 lors de l’opération Shika Na Mukono » 5) « On nous avait dit qu’ils étaient les miliciens de l’UPC [...] Enzani/ localité Kilo 1500m de Kilo » 6) “A l’arrivée des homes de Bosco à Kilo [...] Localité Sau à Kilo Etat »	4) a/01268/13 5) a/01250/13 6) a/00214/13 7) a/00206/13
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	7) "C'était au mois de février ici à Kilo Etat [...] Kilo Etat localité Bendi »	
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8. The Registry will continue to assess all applications in its possession according to the criteria established by the Chamber and will transmit all complete applications on a rolling basis in accordance with the deadlines set out in the Chamber's Participation Decision.



Marc Dubuisson, Director, Division of Court Services
per delegation of Herman von Hebel, Registrar

Dated this 2 April 2015

At The Hague, The Netherlands