



Original: English

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

Date: 8 May 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***

**Public
With Confidential Annexes A, B and C**

**Registry's Fourth 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 1,120 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, Second and Third Assessment Reports on Applications for Victims' Participation in Trial Proceedings⁶ and the Registry's First, Second and Third Transmissions to the Chamber of 1040 Applications for Participation in Trial Proceedings;⁷

NOTING the Chamber's oral ruling issued on 22 April 2015 during a status conference, ordering deadlines to be recalculated on the basis of a 7 July 2015 commencement date for trial;⁸

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 annexes to the present document are 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 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 8 May 2015, the Registry transmitted 52 complete applications in original version in its Fourth Transmission to the Chamber that include 29 applicants who clearly qualify as victims ("Group A Applications"); 22 applicants who clearly do not qualify as victims ("Group B Applications") and;

⁶ ICC-01/04-02/06-479 ; ICC-01/04-02/06-518 ; ICC-01/04-02/06-540-Conf.

⁷ ICC-01/04-02/06-472 ; ICC-01/04-02/06-514 ; ICC-01/04-02/06-538.

⁸ ICC-01/04-02/06-T-19-ENG.

1 applicant for whom the Registry could not make a clear determination for any reason (“Group C Applications”);

CONSIDERING that on 8 May 2015, the Registry also transmitted one simplified application form in Group C, with the necessary redactions applied, to the parties;

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

Introduction

1. In its first three transmissions, the Registry transmitted the applications of 1,001 applicants that it has assessed as clearly qualifying as victims (Group A) and 39 applications in relation to which the Registry could not make a clear determination and therefore assessed as falling within Group C. In the present report, the Registry has assessed a further 29 applicants as falling within Group A, 22 applicants who clearly do not qualify as victims and therefore fall within Group B and 1 applicant falling within Group C.⁹ These applications 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 how the Registry conducted its assessments in each of the three categories. Annex A comprises a list of the applications falling within Group A, Annex B comprises a further sub-divided list of applications falling within Group B in accordance with footnote 37 of the Participation Decision and, Annex C lists the application falling within Group C.

⁹ This brings the total number filed by the Registry to 1,030 applications in Group A, 22 applications in Group B and 40 applications in Group C.

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

3. Applying the criteria established in Section III(B) of the Participation Decision, the Registry has continued to conduct a *prima facie* assessment of the applications received and considers that an additional 29 applications clearly fall within the scope of the Case.¹⁰ In conducting its assessment, the Registry confirms that each of the applicants falling within Group A has *prima facie*:
 - (i) Established his or her identity as a natural person;¹¹
 - (ii) Has suffered harm; and
 - (iii) The suffered harm is a result of an incident falling within the parameters of the confirmed charges.¹²
4. In relation to point (iii), the Registry notes that each of the 29 applications has been assessed as falling within the territorial, temporal and subject matter jurisdiction of this Case as set out in the Confirmation Decision and as clarified by the Chamber's Updated DCC Decision and the Prosecutor's subsequent Updated DCC. Of the 29 applications, one pertains to a child soldier while the remaining 28 applications pertain to the attacks on the Walendu-Ndjatsi *collectivité*.

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

5. In assessing the applications received, the Registry has identified 22 applicants who fail to meet the criteria established by the Chamber in Section

¹⁰ Participation Decision, para. 30.

¹¹ The Registry has applied the "flexible approach" endorsed by the Chamber in paragraph 45 of the Participation Decision with respect to the different forms of identification documents deemed acceptable to establish the identity of natural persons for the purposes of participation in the Case. Following an email exchange with Trial Chamber VI Communications on 19 February 2015, the Registry notes that the Chamber considers the identity documents listed in paragraph 45 of the Participation Decision as non-exhaustive and that other similar documents may be acceptable consistent with the "flexible approach" the Chamber endorsed. In particular, the Chamber's email specifically mentions as acceptable similar documents such as letters from local authorities and certificates or attestations of loss of official documents, which the Registry had informed the Chamber have been appended to some of the applications covered by the present Report.

¹² Participation Decision, para. 43(i)(ii)(iii).

III(B) of the Participation Decision and who in its assessment clearly do not qualify as victims in the present Case. Of these, the Registry notes that 13 applicants were assessed as having suffered harm outside the temporal scope of the charges (sub-group ii) and 9 applicants were assessed as having been older than 15 years old at the time of the alleged period of enlistment and conscription of child soldiers (sub-group iv).

6. A list of the 22 applications, sub-divided in accordance with footnote 37 of the Participation Decision, has been provided in Annex B of the present report.

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

7. One application has been assessed as falling within Group C and listed in Annex C of the present report. The Registry notes that the applicant has satisfied the first two criteria set out by the Chamber in paragraph 43 of the Participation Decision¹³ and that the reason why the Registry could not make a clear determination surrounds whether or not the personal harm reported by the applicant resulted from “an incident falling within the parameters of the confirmed charges.”¹⁴
8. The issue arising in the application pertains to both the subject matter and territorial jurisdiction of this case, and more specifically, how precisely the events alleged by victim applicants must relate to the wording of paragraph 36 of the Confirmation Decision for the purposes of victim participation. The Registry notes that the applicant claims that loved ones were murdered by UPC militia in Gutsi village during the relevant temporal period. The Registry also notes that the Prosecution, in paragraph 81 of the Updated DCC, reports that the “UPC/FPLC attacked Gutsi”. However paragraphs 36 and 67 of the Confirmation Decision only refer to Gutsi in relation to the crime of forcible

¹³ The applicant established his or her identity as a natural person and the applicant has suffered harm.

¹⁴ Participation Decision, para. 43(iii).

transfer of population and displacing civilians, and not in relation to the crime of murder. Considering the Prosecution's reference to the word "attack" in the Updated DCC and the Chamber's clarification in paragraph 74 of the Updated DCC Decision on the interpretation to be applied to the word "in" in paragraph 36 of the Confirmation Decision, the Registry considers that it is unable to make a clear determination in respect to this application.

9. In conducting its field activities, the Registry has noted the close territorial proximity between Gutsi and Bambu villages and that the alleged crime of murder in Gutsi, if not falling under the Prosecution's usage of the word "attack" under paragraph 81 of the Updated DCC, might be considered to fall under the "immediately neighbouring villages" exception described in paragraph 74 of the Chamber's Updated DCC Decision.
10. In light of the above, the Registry has respectfully submitted the application for determination under Category C.
11. 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 8 May 2015

At The Hague, The Netherlands