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

Date: **20 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

**Observations on behalf of Mr Ntaganda following the transmission of one victim
application for participation in the proceedings**

Source: Defence Team of Mr Bosco Ntaganda

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

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**Victims Participation and Reparations
Section**

Further to: (i) the “*Second Transmission to the parties of Applications for Participation in Trial Proceedings*” submitted by the Registry on 8 May 2015 (“Transmission”);¹ and (ii) the “*Registry’s Fourth Assessment Report on Applications for Victims’ Participation in Trial Proceedings*” submitted by the Registry on 8 May 2015 (“Fourth Assessment Report”),² Counsel representing Mr Ntaganda (“Defence”) hereby submit these:

Observations on behalf of Mr Ntaganda following the transmission of one victim application for participation in the proceedings

“Defence Observations”

OVERVIEW

1. At the outset, the Defence takes issue with the high number of redactions applied to the individual application appended to the Transmission (“the Individual Application”). Moreover, the Defence stresses that its capacity to submit meaningful observations on the merits of the Individual Application is hindered by the fact that it does not have access to the identification documents transmitted by the individual seeking to participate in the proceedings as victim.
2. That being said, with the scarce information it is provided with, the Defence is nonetheless in a position to oppose the admission of this individual as a victim participating in the proceedings against Mr Ntaganda. Indeed, the application does not satisfy on a *prima facie* basis the third criterion set out in Trial Chamber VI’s (“Chamber”) “*Decision on victim’s participation in trial proceedings*” (“Participation Decision”).³ The individual’s alleged harm falls outside the geographical scope of the charges laid against by Mr Ntaganda by the Prosecution, and as confirmed by Pre-Trial Chamber II in its “*Decision*

¹ ICC-01/04-02/06-593.

² ICC-01/04-02/06-540-Conf.

³ ICC-01/04-02/06-449, paras.49-51.

Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda” (“Confirmation of Charges Decision”).⁴

SUBMISSIONS

I. Redactions and non-transmission of documents.

3. The Defence notes that the Individual Application has been transmitted to the Defence with a significant number of redactions applied to it. In particular, the identity as well as the day and month of birth of the individual are redacted.
4. Furthermore, the documentation transmitted by the applicant as a proof of its identity has not been transmitted to the Defence. This prevents the Defence from being able to provide meaningful submissions on the merits of the Individual Application.

II. The Individual Application does not meet the third criterion set out in the Participation Decision

5. Pronouncing on the third criterion, the Chamber previously held that “[...] as stated by the Appeals Chamber, the Confirmation Decision ‘defines the parameters of the charges at trial’. The link between the commission of the crime and the harm suffered by the applicant shall be assessed in light of the information available and established on a *prima facie* basis.”⁵

The Individual Application falls outside the geographical scope of the confirmed charges

6. In its Fourth Assessment Report, the Registry submits that the Individual Application falls within Group C⁶ as it “could not make a clear determination surrounds whether or not the personal harm reported by the applicant

⁴ ICC-01/04-02/06-309.

⁵ Participation Decision, paras.49-50.

⁶ Namely, “applicants for whom the Registry could not make a clear determination for any reason”: Participation Decision, para.24(ii).

resulted from ‘an incident falling within the parameters of the confirmed charges’”.⁷

7. As a preliminary remark, the Defence notes that the Registry’s admission that it cannot not make a final determination on the admissibility of the Individual Applications on its face value⁸ constitutes a powerful indication that the standard for participation, namely the *prima facie* standard, is obviously not met.
8. The applicant claims that “loved ones” have been killed by UPC militia in Gutsi village. The Defence submits that Gutsi cannot be considered as being “in or around” Bambu and/or as falling within the geographical scope of the crime of murder in the Walendu-Ndjatsi *collectivité*.
9. In its “*Decision on the updated document containing the charges*”,⁹ the Chamber held that “[the wording of ‘in or around’] should be understood as also encompassing, where further specific locations are either upheld in the Confirmation Decision or are pleaded in the DCC and not ruled upon in the Confirmation Decision, the geographic areas between the villages in question and, in certain exceptional cases, immediately neighbouring villages within that geographic area”.¹⁰ It follows from the Chamber’s holding that the phrase “in or around” is not meant to encompass *any* surrounding villages not mentioned in paragraph 36 of the Confirmation of Charges Decision, but only those villages which are either: (i) upheld in the Confirmation of Charges Decision; (ii) are pleaded in the Updated Document Containing the Charges;¹¹ or, (iii) [in certain *exceptional* cases,] *immediately* neighbouring villages within that geographical area.

⁷ Fourth Assessment Report, para.7.

⁸ Fourth Assessment Report, paras.7.

⁹ ICC-01/04-02/06-450 (“Decision on the Updated DCC”).

¹⁰ Decision on the Updated DCC, para.74.

¹¹ ICC-01/04-02/06-458-AnxA (“Updated DCC”).

10. While both the Confirmation Decision and the updated DCC allege that the crimes of persecution (count 10)¹² and forcible transfer of population (count 12 and 13)¹³ were committed in Gutsi. The Defence notes that neither the documents make any reference to the crime of murder having been committed in Gutsi in relation to the attack on the Walendu-Djatsi *collectivité*.¹⁴
11. Moreover, contrary to the Registry's view,¹⁵ the Defence submits that Gutsi does not fall within the "immediately neighbouring villages" category set out in the Decision on the Updated DCC.
12. The Confirmation Decision refers to three events of murder in Bambu.¹⁶ None of those events can be considered as referring to the events described in the Individual Application.
13. Consequently, the Defence respectfully submits that for these reasons only, the Individual Applications should be rejected.
14. The word attack is not sufficient to imply that crimes of murder have been committed in Gutsi. Indeed, in paragraph 81 of the Updated DCC, the word "attack" refers to the contextual elements of war crimes and crimes against humanity and not to any crime allegedly committed.

¹² Updated DCC, para.79, 81 and page 62 Count 10; Confirmation Decision para.36 and 58 referring to count 12 and 13.

¹³ Updated DCC, para.79, 81 and page 63 Count 12 and 13; Confirmation Decision, para.67.

¹⁴ Updated DCC, para.63-75.

¹⁵ Fourth Assessment Report, para.9.

¹⁶ Confirmation Decision, para.44.

RELIEF SOUGHT

In light of the above submissions, the Defence respectfully requests the Chamber to:

REJECT the Individual Application.

RESPECTFULLY SUBMITTED ON THIS 20TH DAY OF MAY 2015

A handwritten signature in black ink, appearing to read 'StB' with a flourish at the end.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands