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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

Prosecution's observations on one application for victim participation during trial

Source: The Office of the Prosecutor

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

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Introduction

1. The Office of the Prosecutor (“Prosecution”) submits observations in support of one application for victim participation during trial, pursuant to rule 89(1) of the Rules of Procedure and Evidence (“Rules”) and Trial Chamber VI (“Chamber”)’s “Decision on victims’ participation in trial proceedings”.¹
2. The applicant has suffered harm as a consequence of conduct falling within the parameters of the confirmed charges: (i) alleged persecution in Gutsi; and (ii) murder and attacks against civilians in or around Bambu and Kobu. As the remaining requirements are also met, the applicant should be granted victim status at trial.

Procedural Background

3. On 15 January and 7 February 2014, the Single Judge of Pre-Trial Chamber II (“Single Judge”) granted victim status to 1120 applicants to participate in pre-trial proceedings relating to the confirmation of charges hearing.²
4. On 9 June 2014, Pre-Trial Chamber II issued the decision on the confirmation of charges, committing the Accused to trial.³
5. On 6 February 2015, the Chamber issued its “Decision on victims’ participation in trial proceedings”. As part of the admission procedure for victims to participate at trial, the Chamber directed the Registry to assess all applications including those from new applicants as well as applicants who were granted victim status at the pre-trial stage. The Registry was instructed to classify the applicants as follows: (a) applicants who clearly qualify as victims (“Group A”); (b) applicants who clearly do not qualify as victims (“Group B”); and (c) applicants for whom

¹ ICC-01/04-02/06-449.

² ICC-01/04-02/06-211 and ICC-01/04-02/06-251.

³ ICC-01/04-02/06-309.

the Registry could not make a clear determination for any reason (“Group C”). The Registry reports and analysis of the applications must be transmitted to the participants. Applications which fall into Group C are transmitted to the Parties and the latter may make observations on whether the applicants fulfil the legal requirements to be granted victim status. The Chamber will review the Registry’s conclusions with regards to Groups A and B, and assess Group C applications individually.⁴

6. On 6 February 2015, the Chamber issued its “Decision on the updated document containing the charges” settling litigation between the Parties on the parameters of the charges as confirmed and, notably, on their geographical scope.⁵
7. On 16 February 2015, the Prosecution submitted its Updated Document Containing the Charges (“UDCC”).⁶
8. On 26 February 2015 and 17 March 2015, the Registry filed its First and Second transmissions of 1001 applications falling within Group A,⁷ and its assessment reports⁸ to the participants.
9. On 2 and 7 April 2015, the Parties were notified of the Registry’s Third transmission⁹ and assessment report¹⁰ on 39 applications falling within Group C. On 28 April 2015, the Parties filed their observations.¹¹
10. On 22 April 2015, the Chamber postponed the start of the trial and directed the Parties and participants to take 7 July 2015 as a commencement date for trial until the Chamber decides otherwise.¹²

⁴ ICC-01/04-02/06-449, para.24, (ii)-(vii).

⁵ ICC-01/04-02/06-450, esp. paras.69-82.

⁶ ICC-01/04-02/06-458.

⁷ ICC-01/04-02/06-472 (626 applications) and ICC-01/04-02/06-514 (375 applications).

⁸ ICC-01/04-02/06-479, ICC-01/04-02/06-518.

⁹ ICC-01/04-02/06-538, ICC-01/04-02/06-539-Conf-Exp.

¹⁰ ICC-01/04-02/06-540-Conf.

¹¹ ICC-01/04-02/06-575-Conf.

11. On 8 May 2015, the Registry filed its Fourth transmission of applications and assessment report,¹³ within the deadline set by the Chamber.¹⁴ The Chamber set 20 May 2015 as the deadline for the Parties to file observations.¹⁵

Legal criteria for victim participation in the proceedings

12. The Prosecution supports victim participation when all statutory requirements are met. Consistent with the unique and necessary perspective victims lend to the proceedings, the Prosecution supports a liberal approach in permitting applicants to amend or clarify incomplete applications, if possible.
13. According to the Appeals Chamber in the *Lubanga* case, a person has the right to participate as a victim in the proceedings under article 68(3) if (i) he/she qualifies as a victim pursuant to rule 85; and (ii) his/her personal interests are affected by the issues, legal or factual, raised in the proceedings at hand.¹⁶
14. With respect to the first requirement of article 68(3)—qualification as a victim under rule 85—the established jurisprudence of the Court provides that the following four criteria must be satisfied *prima facie* for victim status to be granted,¹⁷ regardless of the stage of the proceedings in which the applicants wish to participate: (i) the applicant must be a natural person as set forth in rule 85(a) or an organisation or institution as set forth in rule 85(b); (ii) the applicant must have suffered harm; (iii) the crime from which the harm resulted must fall within the jurisdiction of the Court; and (iv) there must be a causal link between the crime and the harm.¹⁸

¹² ICC-01/04-02/06-T-19-ENG, p.7, lns.7-15 (open session).

¹³ ICC-01/04-02/06-592 and ICC-01/04-02/06-593.

¹⁴ ICC-01/04-02/06-449, para.24 (v).

¹⁵ Email from the Chamber to the Parties, dated 8 May 2015, at 11:09 a.m.

¹⁶ See, e.g., ICC-01/04-556, para.45; ICC-01/04-01/06-1335, para.36.

¹⁷ See, e.g., ICC-02/05-01/07-58, para.7; ICC-01/04-01/07-579, para.67.

¹⁸ See, e.g., ICC-01/04-556, para.45; ICC-01/04-01/06-1335, para.36.

15. In reviewing applications, Chambers do not generally delve into the credibility of applicants' statements or require rigorous corroboration.¹⁹ Rather, Chambers "assess the applicants' statements first and foremost on the merits of their intrinsic coherence, as well as on the basis of the information otherwise available" to the Chamber.²⁰

16. The established jurisprudence requires that the harm suffered and the personal interests of the victim must be linked to the charges confirmed against the accused or, at earlier stages in the proceedings, the offences alleged in the warrant of arrest or summons to appear or the document containing the charges.²¹

17. In this case, the Chamber reiterated these requirements, and the *prima facie* standard that must be met to establish that a person is a victim when stating that:

"[...] only those persons who are victims of the crimes charged may participate in trial proceedings. In order to qualify as victims in the present case, applicants will have to meet the following criteria:

- i. his or her identity as a natural person must be established
- ii. he or she has suffered harm; and
- iii. the suffered harm is as a result of an incident falling within the parameters of the confirmed charges."²²

Factual analysis of the application

18. The applicant is a natural person acting on her own behalf. She personally suffered direct and indirect material and psychological harm. Her account sufficiently establishes that the harm suffered resulted from crimes falling within the jurisdiction of the Court: persecution, murder and attacks against a civilian

¹⁹ See ICC-01/04-01/07-579, para.67.

²⁰ ICC-01/04-01/07-579, paras.67, 132.

²¹ ICC-01/04-01/06-1432, paras.2, 62-65 ("For the purposes of participation in the trial proceedings, the harm alleged by a victim and the concept of personal interests under article 68(3) of the Statute must be linked with the charges confirmed against the accused.").

²² ICC-01/04-02/06-449, paras.43-44.

population, all of which are charged in the UDCC in relation to the Second Attack.²³

Scope of these observations

19. Applicant a/00058/13 was allowed to participate in the proceedings at the stage of the confirmation of charges.²⁴ The Prosecution will therefore not re-assess the establishment of identity²⁵ or whether the person suffered harm, as it considers that these requirements were analysed by the Single Judge at the time.

20. These observations focus on the potential impact of the variation of the parameters of the case as confirmed: whether the locations of the crimes suffered are encompassed in the geographical scope of the UDCC and whether the harm occurred as a result of events falling within the parameters of the confirmed charges.

The harm suffered falls within the parameters of the charges

21. Applicant a/00058/13 suffered harm arising from the killing of her family members in Gutsi, a village neighbouring Kobu and Bambu. Both the crimes of murder and attack against civilians are charged, *inter alia*, in locations “in and around Kobu” and “in or around Bambu”. Gutsi was targeted during the UPC/FPLC’s Second Attack, known also as “*shika na mukono*”. Further, Gutsi is specifically listed by the Pre-Trial Chamber as one of the locations in which UPC/FPLC forces committed the crimes of forcible transfer of population, displacement of civilians, and persecution.

²³ ICC-01/04-02/06-458, paras.76-91 and counts 1, 2, 3, 10 (pp. 61-66).

²⁴ See ICC-01/04-02/06-211-AnxC.

²⁵ Identity and proof of kinship documentation were not been transmitted to the Prosecution, that was therefore unable to make exhaustive comments on this criteria.

22. In defining the geographical scope of the charges, the Chamber held that:

“[...] the Prosecution's alternative wording of 'in or around' is appropriate. The Chamber finds that this 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.”²⁶

23. Gutsi, situated less than 8 kilometres away from Bambu and Kobu,²⁷ is encompassed by the phrase “in and around Bambu and Kobu”. In the Prosecution’s assessment, the applicant suffered harm as a result of crimes of murder and attacks against civilians committed by the UPC/FPLC during an incident that is materially, temporally and geographically defined in the charges against the Accused.

24. Further, at the pre-trial stage, the Single Judge determined that the applicant additionally suffered harm from UPC/FPLC’s commission of the crime of persecution, through the murder of her family members and the attack against civilians at Gutsi.²⁸ The crime of persecution has been expressly confirmed in relation to Gutsi²⁹ and forms part of the charges against the Accused.³⁰ The specific material elements of the crime of persecution as charged require UPC perpetrators to have severely deprived individuals of their fundamental rights, targeting them by reason of their ethnic identity. Pursuant to article 7(1)(h) such conduct must have taken place “*in connection with any act referred to*” in article 7, paragraph 1, of the Statute “*or any crime within the jurisdiction of the Court*”.

²⁶ ICC-01/04-02/06-450, para.74.

²⁷ P-0863, DRC-OTP-2068-0251, para. 15; P-0804, DRC-OTP-2058-1128, para. 29.

²⁸ ICC-01/04-02/06-211-Conf-Exp-AnxB, page 226.

²⁹ ICC-01/04-02/06-309, para. 36 (v).

³⁰ ICC-01/04-02/06-458-AnxA, page 62.

25. Applicant a/00058/13 suffered harm from persecution: UPC/FPLC troops killed her family members because of their Lendu ethnicity in Gutsi, a Lendu inhabited area.

Conclusion

26. The Prosecution submits that the applicant meets the requirements under article 68(3) to participate as victim in the trial proceedings in this case.



Fatou Bensouda
Prosecutor

Dated this 20th day of May 2015
At The Hague, The Netherlands