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Date: **24 June 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**

**Public Redacted Version of the “Joint Submissions on Issues Related to the Legal Representation of Victims”**

**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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## 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”,<sup>1</sup> 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”.<sup>2</sup>

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”),<sup>3</sup> admitting 922 victims applicants listed in annex C thereof to participate in the confirmation of charges hearing and in the related proceedings<sup>4</sup> 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.<sup>5</sup>

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

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<sup>1</sup> 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.

<sup>2</sup> *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.

<sup>3</sup> 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”).

<sup>4</sup> 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.

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

Proceedings” (the “Second Decision on victims’ participation”),<sup>6</sup> admitting further 198 victims applicants to participate in the confirmation of charges hearing and in the related proceedings<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup>

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.<sup>10</sup>

7. On 6 February 2015, Trial Chamber VI (the “Chamber”) issued the “Decision on victims’ participation in trial proceedings”,<sup>11</sup> wherein it directed the Registry to, *inter alia*, “(i) to consult with the victims who participated in this case during the

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<sup>6</sup> 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”).

<sup>7</sup> *Idem*, pp. 19-20.

<sup>8</sup> *Ibid.*, p. 20.

<sup>9</sup> 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.

<sup>10</sup> 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.

<sup>11</sup> See the “Decision on victims’ participation in trial proceedings” (Trial Chamber VI), No. ICC-01/04-02/06-449, 6 February 2015.

*confirmation stage on the LRVs' continued representation; and (ii) report back to the Chamber as to the result of this consultation".*<sup>12</sup>

8. On 16 March 2015, the Registry submitted its "Report on Consultations with victims Pursuant to Decision ICC-01/04-02/06-449" (the "Report").<sup>13</sup>

9. On 20 March 2015, the Chamber shortened the deadline for observations on the Report, to be submitted by 25 March 2015.<sup>14</sup>

10. These submissions are filed Confidential *ex parte*, only available to the OPCV and the VPRS as they contain information concerning the work of the Legal Representatives of victims and their privileged communication with their clients.

## II. SUBMISSIONS

### A. Joint Submissions

#### 1. Composition of the teams and case management issues

11. In accordance with the "Decision Concerning the Organisation of the Common Legal Representation of Victims",<sup>15</sup> for the purpose of the pre-trial proceedings, two teams were composed: one team headed by Ms Pellet representing the group of victims composed by the former child soldiers and assisted in the DRC by Mr Mulenda; and a second team headed by Mr Suprun representing the group of

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<sup>12</sup> *Idem*, para. 54.

<sup>13</sup> See the "Report on Consultations with victims Pursuant to Decision ICC-01/04-02/06-449", No. ICC-01/04-02/06-513-Conf-Exp, 16 March 2015 (the "Report").

<sup>14</sup> See email sent by Trial Chamber VI Communications on behalf of Trial Chamber VI on 20 March 2015.

<sup>15</sup> See the "Decision Concerning the Organisation of the Common Legal Representation of Victims", *supra* note 1.

victims composed by individuals having suffered from the attacks and assisted in the DRC by Ms Luzaisu.

12. Indeed, both appointed common legal representatives considered that one person in the field per team was sufficient to assist counsel in maintaining regular contact with victims, taking instructions and keeping victims regularly updated about the proceedings during the pre-trial stage of the proceedings. At that point in time, said individuals were paid under the Court's legal aid scheme.

13. The Common Legal Representatives inform the Chamber that funds are now available within the OPCV budget for the appointment of said persons and therefore both individuals have been designated as field counsel as of January 2015.

14. Both designated field counsel have extensive experience in the field – in particular in the Ituri region – which has greatly facilitated the identification of suitable safe places to meet with the victims; they also had knowledge of the case and of the proceedings before the Court, knowledge of the local languages spoken by the majority of the victims; understanding of the type of victimisation and of the cultural and ethnic background of the victims. In accordance with article 7 of the Code of Professional Conduct for Counsel, the designated field counsel act under the instructions of the lead counsel based in The Hague and in conformity with the terms of reference previously agreed upon.

15. The teams also avail themselves of the support of the legal staff of the Office. While two separate legal teams are composed in order to avoid any possible conflict of interests amongst the different categories of represented victims, said teams share resources when preparing joint submissions.

16. In relation to case management issues and, more particularly, the access to the confidential information related to the specific category of victims represented

by each team, an information management system is in place and allows for rigorous segregation of access to such information.

2. *Communication with victims for the purpose of keeping them informed and collecting their views and concerns*

17. Field counsel act as the point of contact with victims in the DRC in order to collect their views and concerns, including on matters related to their safety, security and well-being; meet with victims on a regular basis to keep them informed and explain the procedural developments in the case; and act also as focal point for the *liaison* and coordination with staff in the field of other organs or Registry sections.

18. From the issuance of the Decision on victims' participation at the confirmation of charges hearing and in the related proceedings<sup>16</sup> in January 2014 until December 2014, the Common Legal Representatives and field counsel have undertaken a total of 29 missions in the field travelling to the locations in the Ituri region where victims reside, including remote villages. Victims have been met in particular in [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. The designated Common Legal Representatives also undertook several missions in the field travelling to the locations where victims reside in order to gain a better knowledge of the places where the events occurred and of the current situation of their clients. Out of the 980 victims of the attacks authorised to participate at the pre-trial stage of the proceedings, 960 were met on several occasions, the other victims were not met mainly because they were not any longer available at addresses specified in their application forms. Out of the 140 former child soldiers authorised to participate at the pre-trial stage of the proceedings, 134 victims met with their legal representatives, on one or several occasions. Meetings took place in safe locations and were held in groups and individually. Specific attention was given to

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<sup>16</sup> See the First Decision on victims' participation, *supra* note 3.

particularly vulnerable victims and individuals enjoying the dual status and advice were requested to the VWU, when necessary. Victims enjoying dual status were assisted by either Common Legal Representative or field counsel during their meetings with the OTP.

19. Victims are aware that they can contact field counsel at any time and dedicated local phone lines have been set up to this effect available 24/7.

20. In relation to the communication with victims, information sheets for general distribution in order to clarify and explain the proceedings have been regularly provided to victims, intermediaries and other stakeholders. This information complement the information provided directly to victims during individual gatherings and meetings with them in the field, mostly in between missions.

21. Upon conclusion of the preliminary phase of the case, the Common Legal Representatives assessed the working method with the team and verified with the victims whether they are satisfied of the system.

22. Victims have indicated that they value the efforts made by their legal representatives and field counsel to regularly travel to the locations where they reside to meet with them and have expressed their satisfaction for the system in place, underling in particular that they feel that their views and interests are duly taken into account and that they can trust their lawyers.

23. Concerning the working method, the system of common legal representation implemented in the *Bosco Ntaganda* case has shown that the added value deriving from the synergies of the combined collaboration between lawyers of the OPCV and external lawyers is substantial, particularly for the purpose of strengthening the effectiveness and the meaningfulness of victims' participation, and that such a system addresses the needs of victims in an efficient manner. The teams have

indicated that the sharing of knowledge and expertise has been particular rich and the fact of having a member of the team based in the field renders the exchange of information with the victims much more rapid and efficient.

## **B. Observations pertaining specifically to the Group of former Child Soldiers**

24. The legal representation of former Child soldiers raise challenges<sup>17</sup>, albeit not related to the number of victims represented since the group is manageable in terms of number of people composing said group.

25. The first challenge is the fact that a lot of victims composing the group are of hema origin – which was not the case in the *Lubanga* case. This change of ethnicity can be explained by the fact that Mr Ntaganda is largely viewed as a foreigner, as opposed to Mr Lubanga.

26. Moreover, the ethnicity of the victims also has an impact in terms of security since most of them do participate without their family being aware of said participation. Accordingly, and in order to avoid any issue in terms of security or confidentiality, former child soldiers [REDACTED] and [REDACTED] despite their willingness for their legal representatives to do so. The only exception is to [REDACTED] since it would be too cumbersome for the victims [REDACTED]. Accordingly, the legal representative and/or field counsel [REDACTED] meet with the victims.

27. Another challenge concerns the expectations of the former child soldiers *vis-à-vis* the Court in general and, by extension, on their legal representatives in particular. Indeed, the vast majority of them have been struggling with their life ever since they were demobilized from the UPC/FPLC. A lot of them were not able to resume their

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<sup>17</sup> The Legal Representative will elaborate on a number of issues only touched upon by the Registry in its Report, *supra* note 13, para. 5.

studies. And many struggle to overcome drug and alcohol abuse, addiction they are facing since they were in the militia. But more importantly, all of them await justice eagerly since 11 years.<sup>18</sup> This context is of crucial importance to understand the state of mind of these young adults. Indeed, as pointed out in the Report, there exist “*a sense among many victims of general disempowerment and impotence, which seemed to be influenced by their daily struggle to meet primary needs and the fact that they had suffered repeated human rights violations over a long period of time*”.<sup>19</sup>

28. But their daily struggle also has an impact on the way they apprehend the actions, if not the work, of the persons appointed to represent them. Indeed, when meeting their lawyers, their first interest is not always to listen to the latest developments of the proceedings but for their lawyers to contribute financially to alleviate their daily struggles. The explanations provided as to why this is impossible might be seen by victims as a non-recognition or a refusal to understand their daily reality as suggested by the results of the consultation conducted by the Registry<sup>20</sup> but the explanation is obviously very far from this perception. Incidentally, the fact that the Legal Representative only reimburse the costs induced by the travel of victims explains the fact that they blame their lawyers for not taking “*sufficiently [...] into consideration the inconvenience to victims of having to travel sometimes long distances to meet with them, disturbing their daily activities and livelihood and having to spend a lot of time in meeting without food or refreshment*”.<sup>21</sup>

29. As put forward by the Report, the timing of the consultation is also to be kept in mind when analysing the results.<sup>22</sup> Indeed, said consultation was made at a time when the developments of the proceedings did not justify a high number of missions

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<sup>18</sup> In this sense, see the opening statements of the Legal Representative during the confirmation of the charges hearing, transcripts No. ICC-01/04-02/06-T-7-ENG ET, 10 February 2014, p. 18, line 14 to p. 22, line 11.

<sup>19</sup> See the Report, *supra* note 13, para. 14.

<sup>20</sup> *Idem*, para. 12 *in fine*.

<sup>21</sup> *Ibid.*, para. 22.

<sup>22</sup> *Ibid.*, para. 9.

to be carried out in the field to meet with victims. Relevant consultations on their views and concerns had been effected on relevant aspects of the preparation of the trial and the last mission concerning the former Child Soldiers, apart from missions to assist dual status victims, was conducted in November 2014. Accordingly, some of the victims might have felt they have not been in contact with their legal representative frequently or regularly, as put in the Report.<sup>23</sup>

30. The Report seems to question the availability and skills of the field counsel<sup>24</sup> and the fact that the communication with victims might not be effective, advocating for *“a team member or members who are close to the victims not only geographically”*<sup>25</sup> *“with a view to making participation as meaningful as possible to the victims”*.<sup>26</sup> The field counsel of the Legal Representative is fully available<sup>27</sup> and has a great experience in the proceedings before the Court and in dealing with victims, and most importantly with former child soldiers.<sup>28</sup> He daily responds to phone calls from the victims.

31. The Report emphasises the *“some adjustments to the system for legal representation of victims at the trial stage would be appropriate in order to ensure closer proximity and a more continuous flow of information”*.<sup>29</sup> The Legal Representative contends that for security reasons, it is not possible to benefit from the assistance of a field counsel based in Bunia, as it seems to be recognised by the VPRS whose field assistant is based in Kinshasa. Moreover, as explained *supra*, the proximity and continuous flow of information in relation to the proceedings is maintained through various means, whether meetings in person regularly with the victims or through answering daily questions by the victims by phone.

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<sup>23</sup> *Ibid.*, para. 19.

<sup>24</sup> *Ibid.*, para. 24.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*, para. 26.

<sup>27</sup> See *supra* para. 19.

<sup>28</sup> Me Mulenda is representing victims in the *Lubanga* case since the pre-trial stage of said case.

<sup>29</sup> See the Report, *supra* note 13, para. 2.

32. The Legal Representative and field counsel have, to date, undertaken 12 missions in the field to meet with the victims they represent, whether in the Ituri region or elsewhere and met with 134 clients out of 140 participating former child soldiers and to assist dual status victims during meetings/interviews with the OTP. Accordingly, the number of victims currently composing the group of former child soldiers does not call for additional resources.

33. While agreeing with the statement of the Registry according to which there exists a *“need for the Registry to target outreach activities specifically towards the communities where the participating victims live”*,<sup>30</sup> the Legal Representative notes that it is her duties to update the victims regarding the developments of the proceedings. Therefore, in order to avoid any duplication of the tasks and well as a coherent action between all services of the Court involved, consultation with the Common Legal Representatives should take place before undertaking any outreach activities.

### **C. Observations pertaining specifically to the Group of the victims of the attacks**

34. The Common Legal Representative of the victims of the attacks (the “Legal Representative”) notes first that under the current system of legal representation he did not face challenges in the fulfilment of his mandate due to a large number of the victims admitted to participate at pre-trial stage of the proceedings. Furthermore, while being based in The Hague, the Legal Representative has managed to maintain a regular and in-person contact with the victims he represents.

35. In particular, between January 2014 to date, the Legal Representative undertook, together with field counsel, 11 missions to the Ituri region and met 960 victims out of 980 on several occasions to keep them informed about the developments in the proceedings, to answer their questions, to collect their views

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<sup>30</sup> *Idem*, para. 25.

and concerns and to discuss with them various issues arising out of their involvement in the proceedings before the Court, including security and well-being issues. In order to meet with the victims, the Legal Representative travelled to the locations where the victims reside, namely [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

36. In addition to assisting the Legal Representative during all his missions in the field, the field counsel undertook 6 further missions to assist dual status victims during their meetings with the OTP.

37. The field counsel who is in charge of the phone line dedicated to the victims and available 24/7, has spent an average of 4 hours per day to calling the victims and answering their calls, including often at night, and has interacted with an average of 15 victims per day.

38. Should the current system of legal representation be maintained at trial, the Legal Representative is of the view that, even with a foreseen increase of the number of the victims admitted to participate, no additional resources in the field will be needed to maintain a regular contact with the victims and to ensure their meaningful participation in the proceedings, especially not the one of *“a member of the legal team, not necessarily a lawyer”*, as suggested by the Registry.<sup>31</sup>

39. Indeed, as it seems to be acknowledged by the Registry, the mandate of a legal representative is not to address the primary needs of the victims due to the fact they had suffered repeated human rights violations over a long period of time.<sup>32</sup> The role of a legal representative is to address the substantive issues related to the participation of victims in the proceedings, which in the present case has in all instances required an in-person involvement of either the Legal Representative or

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<sup>31</sup> *Ibid.*, note 28.

<sup>32</sup> *Ibid.*, paras. 13-14.

the field counsel, for instance, to be able, in addition to keep the victims updated about the proceedings, either to comprehensively answer the victims' questions or to deal with specific needs of the victims.

40. Moreover, the Legal Representative does not foresee challenges in the fulfilment of his mandate due to an increase of the number of the victims admitted to participate, and is of the view that the current *modus operandis* to maintain contact with victims should apply at trial, with the caveat that the Legal Representative will not be able to travel frequently to the field due to his daily involvement in the trial proceedings in The Hague. A regular liaison with the victims will be therefore mostly ensured by the field counsel and the Legal Representative will travel to the field as much as possible during periods of judicial recesses.

41. While the legal representation of the victims of the attacks did not raise challenges related to the number of the victims forming the group, the Legal Representative does face a challenge to address wrong expectations by the victims to obtain a rapid and positive outcome, such as obtaining immediate support and assistance from the Court to meet their primary needs. In this regard, the Legal Representative observes that during his very first interactions with the victims, a large number of them explained that they accepted to fill in an application form in order to receive reparations (certain victims even perceived the Court as a NGO rather than a jurisdiction) and accordingly expressed their disappointment due to the fact that this is only the very first stage of the proceedings which does not imply any possibility for reparations yet.

42. Irrespective of the origins of said expectations and/or misperceptions of the victims, the Legal Representative observes that, as a result of the events covered by the charges, the quasi-entirety of the victims of the attacks lost one or more of their family members, their houses and property were destroyed or pillaged. The majority of the victims have since several years lived in misery. Most of the victims

need a medical and/or psychological support and assistance. Since the events they suffered from, the victims have never received any sort of assistance from either government or NGOs. They have neither benefited from any projects set out by the Trust Fund for Victims.

43. Despite being disappointed of not being able to receive any sort of assistance from the Court to meet their primary needs at the current stage, it is the Legal Representative's view that the victims in their majority have understood their interest to participate in the proceedings, as well as the need to contribute to the research for the truth. In this regard, for the purpose of forming a correct perception about the Court, the Legal Representative welcomes the Registry's intention to *"target outreach activities specifically towards the communities where the participating victims live, in order to provide up-to-date and regular general and tailored information about the Court in interactive sessions where questions would be addressed."*<sup>33</sup>

44. As far as certain victims seem to have raised a need for individual meetings with their lawyer, the Legal Representative observes that he has not to date received many requests for individual meetings and has satisfied all the requests received. While being unable to meet individually with every particular victim because of the large number of clients represented and some security constraints, the Legal Representative observes that to date victims have been met individually for specific reasons, to assist the victims during their interactions with the OTP, to address particular issues arising out of the victims involvement in the proceedings before the Court and to monitor the situation of the victims with dual status or having express concerns in relation to the proceedings, their security and their well-being. In addition, the Legal Representative has already started to hold individual meetings to identify amongst the victims those who may potentially be selected to appear before the Chamber to present views and concerns in person. This process is

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<sup>33</sup> *Ibid.*, para. 25.

ongoing and will be fully dependent on the scope of the evidence to be presented by the OTP during the trial proceedings.

45. Regarding logistical issues raised by certain victims, in particular related to their travel to places of meetings, the Legal Representative observes that, as already specified *supra*, in order to avoid for the victims to travel much to meet with their lawyer, the Legal Representative has chosen to travel to the localities where the victims reside. The meetings with the victims have usually been held in places on a walking distance from the victims' houses and the majority of the victims did not encounter any travel expenses. Only a number of victims who reside in remote areas have received reimbursement of their travel expenses.

46. Finally, based on the lists of victims the Registry intended to consult, the Legal Representative is satisfied that the main locations where the victims reside were targeted. However, the Legal Representative wonders as to the reasons for which the victims residing in [REDACTED] were not consulted, although they constitute about [REDACTED] the victims of the attacks admitted to participate.

Respectfully submitted,



Dmytro Suprun  
Common Legal Representative of the  
Victims of the Attacks



Sarah Pellet  
Common Legal Representative of the  
Child soldiers

Dated this 24<sup>th</sup> Day of June 2015

At The Hague, The Netherlands