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Date: **9 July 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 4 Confidential redacted annexes

Public Redacted Version of "Information related to the death of victims a/00579/13 and a/00712/13 and application for resumption of action submitted by a family member of victim a/00579/13"

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”,¹ 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”.²

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”,³ wherein it authorised victims a/00579/13 and a/00712/13 to participate in the confirmation of charges hearing and related proceedings⁴. In the same decision, the Single Judge also decided to appoint Ms Sarah Pellet as their common legal representative (the “Legal Representative”).⁵

3. From 10 until 14 February 2014, the Pre-Trial Chamber held the confirmation of charges hearing in the present case. 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”, in which it confirmed the charges

¹ 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.

² *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.

³ 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.

⁴ 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.

⁵ See the First Decision on Victims’ Participation, *supra* note 3, paras. 78 and 79 and p. 37.

brought against the suspect and decided to commit him to trial before a trial chamber.⁶

4. 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.⁷

5. On 6 February 2015, Trial Chamber VI (the “Chamber”) issued the “Decision on victims’ participation in trial proceedings”,⁸ wherein it directed the Registry to, *inter alia*, “(i) to consult with the victims who participated in this case during the confirmation stage on the LRVs’ continued representation; and (ii) report back to the Chamber as to the result of this consultation”.⁹

6. On 16 June 2015, the Chamber issued its “Second Decision on victims’ participation in trial proceedings”,¹⁰ wherein it admitted victims a/00579/13 and a/00712/13 as participating victims.¹¹

7. This filing and its accompanying annexes are filed Confidential *ex parte*, only available to the Legal Representative and the VPRS since it contains confidential information concerning victims and their family members. A public redacted version of this filing is filed simultaneously, together with a confidential redacted version of the annexes.

⁶ 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.

⁷ 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.

⁸ See the “Decision on victims’ participation in trial proceedings” (Trial Chamber VI), No. ICC-01/04-02/06-449, 6 February 2015.

⁹ *Idem*, para. 54.

¹⁰ 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.

¹¹ See the “Second decision on victims’ participation in trial proceedings” (Trial Chamber VI), No. ICC-01/04-02/06-650, 16 June 2015 (the “Second Decision on Victims’ Participation”).

II. SUBMISSIONS

8. The Legal Representative hereby informs the Chamber of the death of a/00579/13 on [REDACTED] and of a/00712/13 on [REDACTED]. Both victims had been admitted to participate in the proceedings in accordance with the Second Decision on Victims' Participation.¹² While none of the family members of a/00712/13 is currently willing to participate on behalf of the deceased victim, victim a/00579/13 wife is seeking authorisation to resume the action initiated by her deceased husband, within the limits of the views and concerns expressed by her husband in his initial application.

9. Trial Chamber II established a procedure for resumption of action by the family members of deceased victims. The Legal Representative respectfully requests that the Chamber adopt the same procedural framework for the purpose of these proceedings.

A. Legal basis for resumption of action by family members of deceased victims

10. In various decisions, Trial Chamber II has held *“that the close relatives of a victim authorised to participate who is now deceased may decide to continue the action initiated by the victim before the Court, but that they may do so only on behalf of the deceased victim and within the limits of the views and concerns expressed by the victim in his or her initial application”*.¹³

¹² See the Second Decision on Victims' Participation, *supra* note 11.

¹³ See *inter alia*, the « Motifs de la deuxième décision relative aux demandes de participation de victimes à la procédure » (Trial Chamber II), No. ICC-01/04-01/07-1737, 22 December 2009, para. 30, the « Decision on the applications to resume action submitted by the family members of deceased Victims a/0025/08, a/0051/08, a/0197/08 and a/0311/09 » (Trial chamber II), No. ICC-01/04-01/07-3018-tENG, 14 June 2011 and the « Décision relative aux demandes de reprise d'instance formées par les proches des victimes décédées a/0170/08 et a/0294/09 » (Trial Chamber II), No. ICC-01/04-01/07-3547, 11 May 2015; “Decision on the application to resume action, submitted by a family member of deceased Victim a/0253/09” (Trial chamber II), No. ICC-01/04-01/07-3383-tENG, 27 August 2013, para. 14.

11. Furthermore, Trial Chamber II held that the participating family members were also entitled to protective measures. It observed that all *“protective measures granted to victims authorised to participate in the proceedings also apply to persons authorised to participate on behalf of deceased victims”*.¹⁴ In this regard, it emphasised the need to grant *“anonymity vis-à-vis the public to all of the victims authorised to participate in these proceedings, including persons authorised to participate on behalf of deceased victims”*.¹⁵ Likewise, Trial Chamber II determined that the Decision on the “Protocol on investigations in relation to witnesses benefiting from protective measures” and the “Decision on the arrangements for contact between represented victims and the parties” apply to all victims, both protected and represented; including persons authorised to participate in the proceedings on behalf of deceased victims.¹⁶

12. The Legal Representative notes that, in the *Ngudjulo* case, the Appeals Chamber has addressed the question related to the maintenance of deceased victims on the list of participating victims in appellate proceedings. In its decision, the Appeals Chamber concluded that the *“resumption of a deceased victim’s participation by an heir / successor is not deemed appropriate”*.¹⁷

13. It is submitted that this specific finding by the Appeals Chamber is inapposite to the present request, which concerns the resumption of action by a family member of a victim who died before the start of trial. Indeed, a careful review of the Appeals Chamber’s reasoning reveals that the context and facts underlying the decision are

¹⁴ See the transcription No. ICC-01/04-01/07-T-104-Red-FRA WT 18-02-2010, pp. 33 and 34 and the “Decision on the applications to resume action submitted by the family members of deceased Victims a/0025/08, a/0051/08, a/0197/08 and a/0311/09”, *supra* note 13, para. 33.

¹⁵ *Idem*.

¹⁶ See the “Decision on the applications to resume action submitted by the family members of deceased Victims a/0025/08, a/0051/08, a/0197/08 and a/0311/09”, *supra* note 13, para. 35 and the “Decision on the application to resume action, submitted by a family member of deceased Victim a/0253/09”, *supra* note 13, para. 14.

¹⁷ See the “Decision on the participation of anonymous victims in the appeal and on the maintenance of deceased victims on the list of participating victims”, No. ICC-01/04-02/12-140, 23 September 2013, para. 26.

markedly different, and thus cannot be transposed to the case at hand. First, the Appeals Chamber's ruling is explicitly limited to the resumption of a deceased victim's action *in appellate proceedings* and therefore, does not apply to the case of resumption of action before a trial chamber.¹⁸ Second, the Appeals Chamber did not rule out, as a matter of principle, the possibility for resuming actions on behalf of deceased victims, but rather found that such resumption would "*not [be] deemed appropriate*" in the specific circumstances of said case.¹⁹ The Appeals Chamber specifically stated that this finding is "*without prejudice to any determination on the resumption of participation on behalf of deceased victims in relation to reparation proceedings*".²⁰ Third, the Appeals Chamber's rejection of the request to resume participation was premised on the fact that the victims concerned had "*actively participated in the trial by expressing their views and concerns*" and that "*the views and concerns of deceased victims continue to be considered in the appellate proceedings as part of the case record under review*".²¹ This is clearly not the case in the instant proceedings, where death has occurred prior to the commencement of the trial and without the victims having had the opportunity to be heard on the substantive issues related to this case.

14. On the other hand, other aspects of the Appeals Chamber's decision are relevant to this Request for resumption of action. It is clear from the Appeals Chamber's ruling "*that the views and concerns expressed by the victims prior to their death [cannot be] disregarded*" and must be "*ultimately considered by the Trial Chamber*".²² In order to give full effect to these requirements, the Legal Representative submits that it is necessary to allow family members to resume the action initiated by the deceased victim. This appears to be entirely "*appropriate*" in the circumstances of

¹⁸ *Idem.*, para. 25: "*The Appeals Chamber considers that the issue for determination is whether victims who died prior to the conclusion of the proceedings may be maintained on the List of participating victims in the appeal*".

¹⁹ *Ibid.*, para. 26.

²⁰ *Ibid.*, note 48.

²¹ *Ibid.*, para. 25.

²² *Ibid.*

this case, where victims' hope for justice has been dashed by significant delays and prolonged periods of judicial inactivity.

15. Although it may be accepted that the *"victims who are [now] deceased can no longer be said to be participating"*,²³ their views and concerns must still be considered by the Trial Chamber. As the Appeals Chamber has emphasised, deceased victims' applications form part of the case record. Consistent with this approach, Trial Chamber III ruled that the *"death of a victim should not extinguish the opportunity for the Chamber to consider his or her views and concerns, in that it would be markedly unjust if an alleged perpetrator in these circumstances prevented the ICC from receiving relevant representations from the person fatally affected"*.²⁴ Hence, the death of one or more victims during the proceedings does not prevent the Legal Representative from continuing to seek their personal interests, to engage with their families and to rely on their views and concerns with a view to ensuring that the truth is ultimately established. At this stage of the proceedings, this can only be done through the mechanism of resumption of action, as established by Trial Chamber II. Moreover, the proposed procedure would not impinge on the requirements that victims' participation be based on their *"personal interests"*, since the resumed action would be strictly limited to the views and concerns expressed by the deceased victim in his or her initial application.

B. Request for leave to resume the action initiated by victim a/00579/13

16. As stated above, a/00579/13's wife seeks the Chamber's leave to resume the action initiated by her deceased husband,²⁵ strictly within the limits the views and concerns raised by her husband in his initial application.²⁶

²³ *Ibid.*

²⁴ See "Corrigendum to Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings" (Trial Chamber III), No. ICC-01/05-01/08-807-Corr, 12 July 2010, para. 83.

²⁵ See Annex 1.

17. To this aim, victim a/00579/13's wife submits the following documents:

- A request signed by the applicant seeking authorisation to resume the action initiated by the deceased victim a/00579/13,²⁷
- A document establishing the identity of the applicant,²⁸
- A death certificate certifying the death of victim a/00579/13 on [REDACTED],²⁹
- A declaration signed by two witnesses certifying the family relationship between victim a/00579/13 and his wife. This declaration is provided along with the identity documents of said witnesses *in lieu* of a marriage certificate.³⁰

C. Death of victim a/00712/13

18. The Legal Representative hereby informs the Chamber that victim a/00712/13 passed away on [REDACTED]. However, due to practical difficulties, the Legal Representative has not been able to collect an official death certificate.³¹ To date, none of the family members of a/00712/13 has expressed willingness to act on behalf of the deceased victim or to pursue the action initiated by him before the Court. The Legal

²⁶ See *supra* para. 8.

²⁷ See Annex 1.

²⁸ See Annex 3

²⁹ See Annex 2.

³⁰ See Annex 4. The possibility to establish the family relationship by means of a declaration made by two credible witnesses was also upheld by Trial Chamber II in the specific context of Ituri. It stated: *"the Chamber is of the view that it is not possible to ignore the difficulties encountered by applicants living in Ituri in providing documents proving the death of a family member or their family relationship with that person. It therefore considers that the submission of a certificate signed by two credible witnesses is sufficient, at this stage in the proceedings, to establish the death of a person or that individual's family relationship with the applicant"*. See "Grounds for the Decision on the 345 Applications for Participation in the Proceedings Submitted by Victims" (Trial Chamber II), No. ICC-01/04-01/07-1491-Red-tENG, 23 September 2009, para. 38.

³¹ Both the Single Judge of Pre-Trial Chamber I and Trial Chamber I terminated the participating status of victim a/20163/12 based on the information provided by the Common Legal Representative according to which the victim passed away but she was unable to provide a death certificate. See the "Requête aux fins d'admission dans l'affaire *Le Procureur c. Charles Blé Goudé* des victimes qui participent aux procédures dans l'affaire *Le Procureur c. Laurent Gbagbo* », No. ICC-02/11-02/11-62-Anx1, 16 avril 2014, footnote 7. See also the « Decision on victim participation » (Trial Chamber I), No. 02/11-01/11-800, 6 March 2014, para. 40 and p. 24 and the "Second Decision on victims' participation in the pre-trial proceedings and related issues" (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-02/11-111, 1st August 2014, para. 29 and p. 16.

Representative therefore requests the Chamber to withdraw a/00712/13 from the list of participating victims, without prejudice to the family's right to resume his action should they wish to do so in the future.

FOR THE FOLLOWING REASONS, the Legal Representative respectfully requests the Chamber:

- to take note of the death of victim a/00712/13 and to order his subsequent withdrawal from the list of participating victims, and
- to authorise victim a/00579/13's wife to resume the action on behalf of her deceased husband, within the limits of the views and concerns raised by her husband in his initial application.



Sarah Pellet
Common Legal Representative of the
Child soldiers

Dated this 9th day of July 2015

At The Hague, The Netherlands