

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-02/06
Date: 1 September 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

Fourth decision on victims' participation in trial proceedings

Decision to be notified, in accordance with Regulation 31 of the Regulations of the Court, to:

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Ms Nicole Samson

Counsel for Bosco Ntaganda

Mr Stéphane Bourgon
Mr Luc Boutin

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**

**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

Trial Chamber VI ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Article 68(1) and (3) of the Rome Statute and Rules 85-86 and 89 of the Rules of Procedure and Evidence, and incorporating by reference the applicable law as set out in the 'Decision on victims' participation in trial proceedings',¹ issues the 'Fourth decision on victims' participation in trial proceedings'.

1. On 9 July 2015, the Registry filed its 'Notification Following the Appointment of Common Legal Representatives for Victims Participating at Trial',² whereby it informed the Chamber of the total number of participating victims represented, respectively, by Mr Dmytro Suprun and Ms Sarah Pellet.
2. Also on 9 July 2015, the Legal Representative of the child soldier victims, Ms Pellet, filed a motion informing the Chamber of the death of victims a/00579/13 and a/00712/13, and further transmitting to the Chamber the request of victim a/00579/13's wife to resume the action initiated before the Court by her deceased husband ('Request').³
3. On 31 July 2015, the defence team for Mr Ntaganda ('Defence') filed its response to the Request,⁴ in which it objects on the basis that the material submitted by the applicant does not meet the requirements set out by Trial Chamber II for the resumption of action by family members of deceased victims.

¹ 6 February 2015, ICC-01/04-02/06-449 ('First Victim Decision'), paras 41-51.

² ICC-01/04-02/06-708 ('Notification').

³ 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, ICC-01/04-02/06-704-Conf-Exp with four confidential, *ex parte*, annexes, available only to the LRV and the Registry. A public redacted version of the filing, as well as confidential redacted versions of its annexes, were filed on the same date (ICC-01/04-02/06-704-Red).

⁴ Response on behalf of Mr Ntaganda to 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, ICC-01/04-02/06-758-Conf.

4. On 18 August 2015, the Registry transmitted to the Chamber 13 applications for participation of applicants who, in its view, clearly qualified as victims ('Group A'),⁵ together with an assessment report thereon.⁶
5. On 31 August 2015, the Registry informed the Chamber, by way of email, that victim a/00179/13, represented by Mr Suprun, had passed away.⁷

A. Sixth transmission of Group A applications

6. The Chamber has not identified any error in the Registry's assessment of the 13 Group A applications transmitted and thus deems it appropriate to admit them as participating victims. In line with the majority decision in relation to the legal representation of victims,⁸ the Chamber also decides that Ms Pellet shall represent the child soldier victim admitted by way of the present decision and Mr Suprun, the remaining 12 victims who have suffered harm as a result of the charged attack on the Walendu-Njatsi *collectivité*.

B. Application to resume action of deceased victim a/00579/13

7. The Chamber will now consider the request to resume the action initiated by victim a/00579/13 before the Court.
8. The Chamber considers that, in line with the jurisprudence of Trial Chamber II,⁹ any closely-connected individual, such as a close relative of a participating victim who is now deceased, may seek leave to continue the action initiated by the participating victim, but may do so only on behalf of the deceased victim

⁵ Sixth Transmission to the Trial Chamber of Applications for Participation in the Proceedings, ICC-01/04-02/06-783 and 13 confidential *ex parte*, available to the Registry only, Annexes.

⁶ Registry's Sixth Assessment Report on Applications for Victims' Participation in Trial Proceedings, ICC-01/04-02/06-784 and confidential Annex A.

⁷ Email from Registry to Chamber on 31 August 2015 at 14:35.

⁸ Second decision on victims' participation in trial proceedings, 16 June 2015, ICC-01/04-02/06-650 ('Second Victim Decision'), paras 28-32 and page 14. *See also* Partly dissenting opinion of Judge Ozaki, ICC-01/04-02/06-650-Anx.

¹⁰ The Chamber considers that such a presumption can, for example, be drawn where the applicant is: the spouse of a deceased victim; an only surviving child of a deceased victim, where the child has reached the age of eighteen and the deceased victim was either unmarried or the victim's spouse is already deceased; or the parents of an unmarried deceased victim who either has no children or whose children are below the age of eighteen.

and within the limits of the views and concerns expressed by the victim in his or her initial application. To be authorised to resume the action on behalf of a deceased victim, the Chamber considers that an applicant must provide evidence: (i) of the death of the victim; (ii) of his or her relationship to the victim; and (iii) where the applicant cannot easily be presumed to be entitled to continue the action or represent the family,¹⁰ he or she must demonstrate his or her appointment by the deceased victim's family members.

9. The Chamber received an application submitted by victim a/00579/13's wife, who wishes to resume the action initiated before the Court by her deceased husband. The Chamber recalls that victim a/00579/13 was admitted to participate at the confirmation stage of the proceedings,¹¹ that his application was transmitted to the Chamber on 25 February 2015¹² and that he was authorised to participate in the trial proceedings on 16 June 2015.¹³
10. The Chamber notes that victim a/00579/13 is reported to have died in 2014 and takes note of the death certificate provided by the applicant.¹⁴ It further takes note of the statement attesting to the relationship between the applicant and victim a/00579/13, and notes that the two signatory family members, as well as the applicant, provided a copy of their identity documents.¹⁵
11. Turning now to the third requirement, the Chamber takes note of the Defence's submission that the applicant has not been mandated by the deceased victims'

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¹¹ Annex C to Decision on victims participation at the confirmation of charges hearing and in the related proceedings, 15 January 2014, ICC-01/04-02/06-211-AnxC, page 2; Annex B-41 to Fifth Report to the Pre-Trial Chamber on applications to participate in the proceedings, 13 December 2013, ICC-01/04-02/06-179-Conf-Exp-AnxB-41.

¹² Annex 199 to First Transmission to the Chamber of Applications for Participation in Trial Proceedings, 25 February 2015, ICC-01/04-02/06-472-Conf-Exp-Anx199.

¹³ Annex A to Second Victim Decision, ICC-01/04-02/06-650, page 4.

¹⁴ Annex 2 to Request, ICC-01/04-02/06-704-Conf-Exp-Anx2; and Request, ICC-01/04-02/06-704-Conf-Exp, para. 8.

¹⁵ Annex 3 to the Request, ICC-01/04-02/06-704-Conf-Exp-Anx3; and Annex 4 to the Request, ICC-01/04-02/06-704-Conf-Exp-Anx4, pages 3 and 4.

family to continue the action initiated before the Court.¹⁶ The Chamber however notes that the statement attesting to the relationship between victim a/00579/13 and the applicant, signed by two family members, clearly refers to the applicant's intention to resume the action initiated by her deceased husband.¹⁷ In this regard, the Chamber considers that, where there is a spousal relationship between the deceased victim and the person willing to act on his or her behalf, such as in the present case, no formal mandate may be required. Accordingly, the Chamber authorises victim a/00579/13's wife to participate in the present proceedings on behalf of her deceased husband.

12. Recognising the importance of effective and meaningful victim participation in the proceedings, the Chamber deems it important to outline the application process for the purposes of this case for family members or individuals closely connected with deceased victims who wish to resume the victim's action. To this aim, the Registry is instructed to prepare, if appropriate in consultation with the Legal Representatives of Victims ('LRVs'), a 'resumption of action' application form together with statement template. These forms are to be made available to the LRVs as soon as practicable.
13. In line with the Chamber's decision adopting a system for the admission of participating victims,¹⁸ the Chamber adopts the following procedure:
 - i. Should a participating victim pass away and family members or individuals closely connected with the victim indicate that they wish to resume the action before the Court, the LRVs shall assist such individuals to submit an application to resume the action, using the aforementioned templates, and with the preparation of any relevant supporting document(s). The LRVs shall then submit

¹⁶ Response, ICC-01/04-02/06-758-Conf, para. 11.

¹⁷ Annex 4 to the Request, ICC-01/04-02/06-704-Conf-Anx4-Red.

¹⁸ First Victim Decision, ICC-01/04-02/06-449, para. 24.

any such request to the Registry and bring to its attention any additional relevant information;

- ii. Upon receipt of any such application, the Registry shall assess it in accordance with paragraph 8 of the present decision;
 - a. Should it consider that the above-mentioned requirements are met with respect to an application to resume action, the Registry shall transmit it, with any relevant document in its possession, to the Chamber. This transmission may be completed by way of the Registry's periodic reports on the victims admitted to participate in the proceedings¹⁹;
 - b. Should the Registry consider that a resumption application is incomplete or does not, for any other reason, meet the above requirements, the Registry must inform the LRV concerned so that, if appropriate, the applicant is given a further opportunity to provide the necessary information or supporting documents;
- iii. Upon receipt of the applications, and barring a clear and material error apparent in the Registry's assessment, the Chamber will ratify the assessment regarding the applications;
- iv. When the Chamber has granted an application to resume an action initiated before the Court by a deceased victim, the Registry must register and update the relevant information contained in its database.²⁰

¹⁹ See, First Victim Decision, ICC-01/04-02/06-449, para. 24-ix

²⁰ First Victim Decision, ICC-01/04-02/06-449, para. 24-viii.

C. Victims a/00712/13 and a/00179/13

14. The Chamber takes note of the death of victims a/00712/13²¹ and a/00179/13, who were admitted to participate in the present case on 16 June 2015.²² In light of these circumstances, the Chamber considers it appropriate to terminate their status as victims participating in the present case.²³

D. Applicants a/00351/13 and a/01482/13

15. The Chamber also notes that the Registry indicated that 'two applications belonging to the same individual were mistakenly transmitted to the Chamber'²⁴ and that, on the basis of the Registry's assessment thereof, the Chamber therefore admitted twice the same person to participate in the trial proceedings.²⁵ The Chamber further notes that the Registry merged these two applications.²⁶ Consequently, and in light of the present decision to terminate the victim status of two applicants²⁷ and to admit 13 additional applicants as participating victims,²⁸ the Chamber clarifies that the total number of victims admitted to participate in these proceedings amounts to 2,159.²⁹

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DECIDES to admit the applicants listed in Annex A as participating victims;

DECIDES that Ms Pellet shall represent the child soldier victim hereby admitted;

²¹ Request, ICC-01/04-02/06-704-Red, paras 8

²² Annex A to Second decision on victims' participation in trial proceedings, ICC-01/04-02/06-650-AnxA, pages 3-4.

²³ This is without prejudice to any application to resume the action initiated by victims a/00712/13 and a/00179/13.

²⁴ Notification, ICC-01/04-02/06-708, footnote 5.

²⁵ Annex A to Second decision on victims' participation in trial proceedings, 16 June 2015, ICC-01/04-02/06-650-AnxA, page 2; Annex A to Third decision on victims' participation in trial proceedings, 2 July 2015, ICC-01/04-02/06-696-AnxA, page 5.

²⁶ Notification, ICC-01/04-02/06-708, footnote 5. The Registry clarified that the master application is a/00351/13.

²⁷ See above, para. 14.

²⁸ See above, para. 6.

²⁹ 1,862 victims of the attack and 297 child soldier victims.

DECIDES that Mr Suprun shall represent the 12 victims of attacks carried out by UPC/FPLC hereby admitted;

INSTRUCTS the Registry to transmit to the legal representatives of victims copies of the applications for participation submitted by victims they are hereby appointed to represent;

GRANTS the Request;

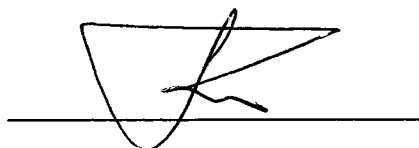
AUTHORISES a/00579/13's wife to resume the action initiated before the Court by her deceased husband;

ADOPTS the procedure for the resumption of action by family members or closely-connected individuals of deceased victims set out in paragraph 13 of the present decision;

DECIDES to terminate the status of applicants a/00712/13 and a/00179/13 as victims in the present proceedings; and

ORDERS the Defence to file a public redacted version of ICC-01/04-02/06-758-Conf by 30 September 2015.

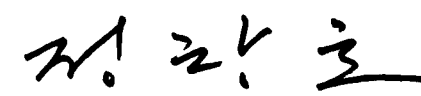
Done in both English and French, the English version being authoritative.



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Chang-ho Chung

Dated 1 September 2015

At The Hague, The Netherlands