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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 application a/00249/13 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 its observations on application a/00249/13, pursuant to rule 89(1) of the Rules of Procedure and Evidence (“Rules”) and Trial Chamber VI (“Chamber”)’s first and fifth decisions on victims’ participation in trial proceedings.¹
2. The Prosecution submits that the Chamber should invite Applicant a/00249/13 to provide further information to establish his date of birth, in order to determine whether he qualifies as a child soldier victim. The remaining requirements to be granted participatory rights at trial under article 68(3) of the Rome Statute (“Statute”) are met for this applicant.

Procedural Background

3. On 6 February 2015, the Chamber issued its “Decision on victims’ participation in trial proceedings”. The Registry was instructed to assess and 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 the Registry could not make a clear determination for any reason (“Group C”). Only applications falling within Group C are to be transmitted to the Parties who may make observations on whether the applicants fulfil the legal requirements to be granted victim status. The Chamber reviews the Registry’s conclusions with regards to Groups A and B, and assesses Group C applications individually.²

¹ ICC-01/04-02/06-449, ICC-01/04-02/06-1011.

² ICC-01/04-02/06-449, para. 24, (ii)-(vii).

4. On 26 February and 17 March 2015, the Registry transmitted 1001 applications falling within Group A.³
5. On 2 and 7 April 2015, the Registry transmitted 39 applications falling within Group C.⁴ On 28 April 2015, the Parties filed their observations.⁵
6. On 8 May 2015, the Registry transmitted 29 Group A applications, 22 Group B applications, and one Group C application.⁶ The Parties filed their observations on 20 May.⁷
7. In its Second decision on victim participation on 16 June 2015, the Chamber, *inter alia*, admitted 1070 applicants to participate in trial proceedings, rejected 22 applications, and defined the system of legal representation of victims at trial.⁸
8. On 22 June 2015, the Registry transmitted 1079 Group A applications, and 48 Group B applications.⁹
9. In its Third decision on victim participation, on 2 July 2015, the Chamber admitted 1079 applicants and rejected 48 applications to participate in trial proceedings.¹⁰
10. In its Fourth decision on victim participation, on 1 September 2015,¹¹ the Chamber admitted 13 Group A applications filed by the Registry on 18 August.¹² The Chamber also, *inter alia*, terminated the victim status of two deceased victims,¹³

³ ICC-01/04-02/06-472 (626 applications) and ICC-01/04-02/06-514 (375 applications); ICC-01/04-02/06-479, ICC-01/04-02/06-518.

⁴ ICC-01/04-02/06-538, ICC-01/04-02/06-539-Conf-Exp; ICC-01/04-02/06-540-Conf.

⁵ ICC-01/04-02/06-575-Conf.

⁶ ICC-01/04-02/06-592 and ICC-01/04-02/06-593.

⁷ ICC-01/04-02/06-601; ICC-01/04-02/06-602.

⁸ ICC-01/04-02/06-650.

⁹ ICC-01/04-02/06-664 and ICC-01/04-02/06-665.

¹⁰ ICC-01/04-02/06-696.

¹¹ ICC-01/04-02/06-805.

¹² ICC-01/04-02/06-783, ICC-01/04-02/06-784.

¹³ a/00712/13 and a/00179/13.

and noted that one applicant had been admitted twice due to the submission of a duplicate application.¹⁴

11. On 6 November 2015, the Registry informed the Chamber that it had mistakenly transmitted 13 applications as part of Group A, and identified three duplicate applications.¹⁵ It also informed the Chamber that five applicants had died without resumption of action.¹⁶

12. On 16 November 2015, the Chamber rendered its fifth decision on victims' participation in trial proceedings.¹⁷ The Chamber terminated the status of 12 applicants,¹⁸ clarified that the total number of victims in the case is – at the moment - 2144,¹⁹ and invited the Parties to submit observations on application a/00249/13.²⁰

Submissions

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.²¹

14. In this case, the Chamber reiterated these requirements, and the *prima facie* standard²² that must be met to establish that a person is a victim when stating that:

¹⁴ a/00351/13 and a/01482/13.

¹⁵ a/00120/13 and a/01028/13; a/00118/13 and a/01484/13; a/00215/13 and a/01565/13.

¹⁶ ICC-01/04-02/06-889.

¹⁷ ICC-01/04-02/06-1011.

¹⁸ ICC-01/04-02/06-1011, para. 3: a/00584/13; a/00585/13; a/00588/13; a/00589/13; a/00590/13; a/00592/13; a/00593/13; a/00594/13; a/00596/13; a/00607/13; a/01310/13; and a/00582/13.

¹⁹ 1859 victims of attacks and 285 child soldier victims.

²⁰ Transmitted by the Registry on 18 November 2015, ICC-01/04-02/06-1015-Anx.

²¹ See, e.g., ICC-01/04-556, para. 45; ICC-01/04-01/06-1335, para. 36.

²² See, e.g., ICC-02/05-01/07-58, para. 7; ICC-01/04-01/07-579, para. 67.

“[...] 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.”²³

15. With regards to proving the identity of applicants as natural persons, Chambers of this Court have recognised that a balance must be achieved between this requirement and the situation of the applicant.²⁴ Because of circumstances precluding applicants from obtaining or producing copies of official identity papers - and to ensure that victims are not unfairly deprived of the opportunity to participate - Chambers have accepted non-official identification documents.²⁵ Chambers have also adopted flexible approaches to inconsistencies between information provided in the application forms and in official documentation.²⁶

16. In particular, in the present case, the Chamber adopted a flexible approach towards identity documentation:²⁷

“As regards possible discrepancies between the application and identity documents submitted, the Chamber considers, as did other chambers of the Court, that a certain degree of flexibility must be adopted. Minor discrepancies which do not call into question the overall credibility of the information provided by the applicants may be accepted.”²⁸

²³ ICC-01/04-02/06-449, paras. 43-44.

²⁴ ICC-01/04-01/06-1119, para. 87.

²⁵ ICC-01/04-01/06-1119, para. 88; ICC-01/04-01/07-579, paras. 44-59; ICC-01/04-01/07-933, para. 30; ICC-02/11-01/11-138, para. 25.

²⁶ ICC-02/05-03/09-231-Corr, para. 24 ; ICC-01/04-01/07-933, paras 33-34; ICC-01/04-01/07-1491, para. 32; ICC-01/04-02/06-211, para. 23.

²⁷ Items accepted as proof of identification in this case include: Passport; birth certificate; driving license; electoral card; marriage certificate; consular identity card; death certificate; document pertaining to medical treatment, rehabilitation or education; church membership card; family registration booklet; employee identity card; political party membership card; pension booklet; or a signed declaration from two witnesses accompanied by their proof of identity attesting to the identity of the applicant, ICC-01/04-02/06-449, para. 45.

²⁸ ICC-01/04-02/06-449, para. 46, footnote omitted.

17. Applicant a/00249/13 is a natural person acting on his own behalf, who claims to have been conscripted, and used in hostilities when he was 14 years old by the UPC/FPLC. He suffered direct harm resulting from the crimes of conscription and use as a child soldier, crimes falling within the jurisdiction of the Court for which the Accused is charged.²⁹
18. The electoral card provided by the applicant indicates that he was born in 1987, making him 15 years old at the alleged time of conscription, in the second half of 2002. The applicant specifies in the application form that he had declared himself a year older than he actually was, in order to obtain the electoral card. The Prosecution proposes that Applicant a/00249/13 be asked to advise whether he first obtained an election card in 2006 when he was a minor and whether it was re-issued in 2011 using the same identification details as contained in the original election card.
19. At the beginning of this case, the Registry submitted a Report to Pre-Trial Chamber II analysing the proof of identity documents available in the Democratic Republic of the Congo (DRC).³⁰ This report highlights the endemic difficulty for applicants to provide official documents in support of their applications, due to various structural obstacles. Electoral cards are commonly held by Congolese nationals, and they are readily supported by testimonial evidence of identity and civil status rather than through written documentation.³¹ The Registry stressed that the dates of birth indicated on electoral cards may not be accurate as, notably, minors provided false information to obtain voting cards³² since they are important and officially considered as valid proof of identity in the DRC.

²⁹ ICC-01/04-02/06-458, counts 14, 15, and 16 (pp. 64-65).

³⁰ ICC-01/04-02/06-53-Anx1.

³¹ ICC-01/04-02/06-53-Anx1, pages 2, 3 and 5.

³² ICC-01/04-02/06-53-Anx1, page 6.

20. The accuracy of Applicant a/00249/13's date of birth is particularly relevant to his victim application. Additional information is required to establish the applicant's date of birth, such as a signed statement by two witnesses accompanied by their proof of identity.

Conclusion

21. The Prosecution submits that Applicant a/00249/13 should be requested to provide further information to establish his age in order to assess if he fully meets the requirements under article 68(3) to participate as victim in the trial proceedings.



Fatou Bensouda, Prosecutor

Dated this 30th day of November 2015
At The Hague, The Netherlands