

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-02/06

Date: 23 June 2016

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 “Response of the Common Legal Representative of Victims of the Attacks to the ‘Request on behalf of Mr Ntaganda seeking the admission into evidence of Witness P-0887’s victim application form’”

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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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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**The Office of Public Counsel for the
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**Victims Participation and Reparations
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I. INTRODUCTION

1. The Common Legal Representative of the Victims of the Attacks (the “Legal Representative”) represents Prosecution Witness P-887 in her capacity as participating victim [REDACTED] in the proceedings. He therefore respectfully submits his response to the “Request on behalf of Mr Ntaganda seeking the admission into evidence of Witness P-0887’s victim application form” (the “Request” or “Defence Request”) filed confidentially on 10 May 2016.¹

2. The Defence Request is untimely and should be rejected *in limine*, as it does not comply with the procedure set out in Trial Chamber VI’s (the “Chamber”) decision on the conduct of the proceedings.

3. If, however, the Chamber is minded to consider the merits of the Defence Request, the Legal Representative respectfully requests that the Request be nonetheless rejected, as the document in question is not one that may appropriately be admitted as evidence.

4. Alternatively, if the Chamber were to consider the merits of the Defence Request and consider the admission of the five pages of the document the Defence seeks to have admitted, the Legal Representative posits that the passages of the form that were discussed during cross-examination should only be admitted into evidence in light of the explanations provided by the witness during her testimony.

5. Finally, the Legal Representative submits that the Defences Request for admission of said pages of the victim application form is improperly based on the assertion that they would serve the purpose of impeachment in light of the explanations provided by the witness during her testimony before the Chamber.

¹ See the “Request on behalf of Mr Ntaganda seeking the admission into evidence of Witness P-0887’s victim application form”, No. ICC-01/04-02/06-1314-Conf, 10 May 2016 (the “Defence Request”).

II. PROCEDURAL BACKGROUND

6. On 2 and 3 May 2016, Prosecution Dual Status Witness P-887 testified before the Chamber.²

7. On 10 May 2016, the Defence filed the Request, whereby it seeks the admission into evidence of P-887's victim application form for the limited purpose of impeachment.³

III. SUBMISSIONS

8. The Legal Representative submits first that the Defence Request is untimely in that Defence Counsel should have tendered the document for admission during his cross-examination in accordance with the decision on the conduct of the proceedings, which provides that "[t]he tendering party shall request admission into evidence at the first opportunity during the examination of the witness, on an individual basis".⁴ The Request should therefore be dismissed *in limine*.

9. If, however, the Chamber were minded to consider the merits of the Request, the Legal Representative avers that the victim application form is an administrative document and not, as such, suitable for admission into evidence as a form of prior statement which could appropriately be introduced into evidence for impeachment purposes. As previously held by Pre-Trial Chamber II, "*the information provided by the applicants in their applications for participation can under no circumstances be considered as evidence [...]. Indeed, such information has been provided by the applicants to the Chamber only for the purposes of substantiating an application for participation.*"⁵ Likewise, Trial

² See the transcripts of the hearings held on 2 and 3 May 2016, Nos. ICC-01/04-02/06-T-93-CONF-ENG-ET; ICC-01/04-02/06-T-94-CONF-ENG-ET.

³ See the Defence Request, *supra* note 1, paras. 3 and 11.

⁴ See the "Decision on the conduct of the proceedings" (Trial Chamber VI), No. ICC-01/04-02/06-619, 2 June 2015, para. 35 (emphasis added).

⁵ See the "Decision on the Defence Request in Relation to the Victims' Applications for Participation in the Present Case" (Pre-Trial Chamber II), No. ICC-01/09-01/11-169, 8 July 2011, para. 9.

Chamber III has emphasised that “[u]nlike evidence collected to support or challenge the substantive criminal charges in the case, the application forms are administrative in nature [...]. They are intended to serve a limited purpose: to provide the Chamber with a basis for determining whether individual victims should be permitted to participate in the proceedings pursuant to Rule 89 of the Rules.”⁶ Trial Chamber III further elaborated that “no formal requirements govern their creation”⁷ and that “third parties often fill out the application forms on behalf of victim applicants or assist them in doing so; a process that may increase errors.”⁸ As recognised by these Chambers, a victim application form cannot be said to constitute a prior statement that would appropriately be admissible for the purposes of impeachment, as it is recorded in different circumstances as ‘prior statements’ taken by the Office of the Prosecutor, as was rightly pointed out by Trial Chamber III. The Defence Request should be rejected on this basis alone.

10. The Legal Representative further notes that thus far the victim application forms of dual status witnesses have not been admitted into evidence despite the fact that the Defence has consistently explored discrepancies between the information contained in these forms and the testimony of the respective witnesses who have been admitted to participate in the proceedings as victims on the basis of the information contained in their application forms. In the instant case, it should equally suffice to have Witness P-887’s explanations as regards her victim application form on record without the form itself being introduced into evidence. It should in this context also be noted that the extensive questioning about her application form covers most aspects of the information contained therein⁹ and renders the introduction of the form, at the very minimum, unnecessary.

⁶ See the “Public redacted version of the First decision on the prosecution and defence requests for the admission of evidence, dated 15 December 2011” (Trial Chamber III), No. ICC-01/05-01/08-2012-Red, 9 February 2012, para. 100.

⁷ *Idem*.

⁸ *Ibid* (Internal citations omitted).

⁹ See the transcripts of the hearings held on 2 and 3 May 2016, Nos. ICC-01/04-02/06-T-93-CONF-ENG-ET, 2 May 2016, pp. 44-52 and ICC-01/04-02/06-T-94-CONF-ENG ET, 3 May 2016, pp. 75-88.

11. If the Chamber is, however, minded to grant the Defence Request, the Legal Representative opposes the admission of the full five pages as requested by the Defence. As discussed above, the form is an administrative document, and not a prior statement. Only those parts discussed during her testimony are therefore relevant and should only – if at all – be admitted in light of the explanations she provided during the hearing.¹⁰

12. Finally, as regards impeachment, the Legal Representative avers that the Defence Request lacks proper foundation. During her cross-examination and re-examination, as well as in response to questions put by the Presiding Judge, the witness unequivocally and repeatedly stated that the form had been filled in by a third party who misunderstood what P-887 told him.¹¹ Moreover, she stated that the form had not been read back to her prior to signature.¹² While the application form indeed concerns the *application* for participation of P-887, it is quite incorrect for the Defence to assert that “*Witness P-887 recognized the Victim Application Form as hers*”,¹³ given the circumstances in which the form was filled out. Instead, the witness only recognised to “*remember filling out a victim participation form in this case*”.¹⁴ Furthermore, the Defence’s assertion that there exist “*material inconsistencies*”¹⁵ between the Witness’s victim application form and her testimony is ill-founded, thus eliminating the appropriate basis for the application form being introduced into evidence for the purpose of impeachment. The Defence Request should therefore be rejected.

¹⁰ See the “Decision No. 2 on the Conduct of Trial Proceedings (General Direction)” (Trial Chamber V(A), No. ICC-01/09-01/11-900, 3 September 2013, para. 19.

¹¹ See the transcripts of the hearings held on 2 and 3 May 2016, Nos. ICC-01/04-02/06-T-93-CONF-ENG-ET, 2 May 2016, pp. 51, 52, 54 and ICC-01/04-02/06-T-94-CONF-ENG ET, 3 May 2016, pp. 77-83.

¹² See the transcript of the hearing held on 3 May 2016, No. ICC-01/04-02/06-T-94-CONF-ENG ET, 3 May 2016, p. 83.

¹³ See the Defence Request, *supra* note 1, para. 4.

¹⁴ See the transcript of the hearing held on 2 May 2016, No. ICC-01/04-02/06-T-93-CONF-ENG-ET, 2 May 2016, p. 50, lines 23-25.

¹⁵ See the Defence Request, *supra* note 1, para. 6.

IV. CONFIDENTIALITY

13. Pursuant to regulations 23bis(1) and (2) of the Regulations of the Court, the present submissions are classified as “confidential” as they refer to other documents classified as confidential.

FOR THE FOREGOING REASONS the Legal Representative respectfully requests that the Chamber

REJECT the Defence Request in its entirety.

A handwritten signature in black ink, appearing to read 'Dmytro Suprun', followed by a period.

Dmytro Suprun
Common Legal Representative of the Victims of the Attacks

Dated this 23rd Day of June 2016

At The Hague, The Netherlands