

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 16 March 2015

**TRIAL CHAMBER VI**

**Before:** Judge Robert Fremr, Presiding Judge  
Judge Kuniko Ozaki  
Judge Geoffrey Henderson

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

**IN THE CASE OF  
THE PROSECUTOR *v.* BOSCO NTAGANDA**

**Confidential *EX PARTE*,  
Available only to Registry and the Legal Representatives of the victims from the  
Office of Public Counsel for Victims**

**Registry's Report on Consultations with Victims Pursuant to Decision ICC-01/04-  
02/06-449**

**Source: Registry**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

**The Office of the Prosecutor**

**Counsel for the Defence**

**Legal Representatives of the Victims**

Ms Sarah Pellet

Mr Dmytro Suprun

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

**States' Representatives**

**Amicus Curiae**

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## **REGISTRY**

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**Registrar**

M. Herman von Hebel

**Counsel Support Section**

**Deputy Registrar**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Ms Fiona McKay

**Other**

**The Registrar of the International Criminal Court (the "Court");**

**NOTING** the Decision of Pre-Trial Chamber II in the case of *The Prosecutor v. Bosco Ntaganda* (the "Case"), notified on 2 December 2013, appointing as common legal representatives for the two groups of participating victims at the confirmation of charges hearing two counsel from the Office of Public Counsel for Victims (the "OPCV"), each to be assisted by an individual with "the necessary legal, linguistic, historical and cultural background to communicate directly and closely with the victims on the ground";<sup>1</sup>

**NOTING** the OPCV and Registry Joint Report, notified on 12 December 2013 detailing, *inter alia*, the organization of the two separate and autonomous legal teams and the appointment of assistants for each team based in the field;<sup>2</sup>

**NOTING** the Decision of Trial Chamber VI (the "Chamber") on victims' participation in trial proceedings in the Case notified on 6 February 2015, whereby the Chamber directed the Registry to *inter alia*: (i) consult with the victims who participated in the Case during the confirmation stage on the Legal Representatives' continued representation (the "consultation"); and (ii) report back to the Chamber as to the result of this consultation within 21 days (the "Decision of 6 February 2015");<sup>3</sup>

**NOTING** the Chamber's decision granting the Registry an additional 15 days to report back on the consultation, notified on 27 February 2015;<sup>4</sup>

**NOTING** article 68 (3) of the Rome Statute, rules 16 and 90 of the Rules of Procedure and Evidence, regulations 23*bis*, 24*bis*, 79 and 86(9) of the Regulations of the Court (the "Regulations") and regulation 112 of the Regulations of the Registry;

**CONSIDERING** that, in order to implement the Decision of 6 February 2015, the Victims Participation and Reparations Section (the "VPRS") conducted a mission in the East of the Democratic Republic of the Congo (DRC) and consulted victims both in groups and individually between 25 February and 03 March 2015;

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<sup>1</sup>ICC-01/04-02/06-160, para. 26.

<sup>2</sup>ICC-01/04-02/06-176.

<sup>3</sup>ICC-01/04-02/06-449, paragraph 54 and page 24.

<sup>4</sup>ICC-01/04-02/06-480.

**CONSIDERING** that during this mission the VPRS conducted group meetings as well as individual meetings with, respectively, 211 and 173 victims<sup>5</sup> who had participated in the proceedings at the pre-trial stage of the Case, in order to receive their views on their continued representation by their current legal representatives;<sup>6</sup>

**CONSIDERING** that the Registry is filing this Report Confidential *EX PARTE*, pursuant to the order of the Chamber in its Decision of 6 February 2015,<sup>7</sup> and since it concerns the work of legal representatives of victims;

**TRANSMITS** to the Chamber the Registry's Report on the results of the consultation of victims on the continuation of the current system of legal representation in the case (the "Report").

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<sup>5</sup> Not all the victims who attended the group meetings filled in an individual questionnaire referred to in paragraph 8 below.

<sup>6</sup> 29 persons from the group constituted of Child Soldiers Victims and 144 individuals from the group of Victims of the Attacks of UPC/FPLC troops.

<sup>7</sup> Paragraph 54 *in fine*.

1. The present document provides the Chamber with the main findings of the consultation, followed by preliminary observations (part A), a description of the conduct of the victim consultation exercise ordered by the Chamber (Part B), results of the consultation (Part C), conclusions (Part D) and recommendation (Part E).

### **Main findings**

2. The main finding of the consultation is that a substantial majority of the victims wish to continue to be represented by the current legal representatives. In light of some issues raised by the victims in the course of the consultation, the Registry also found that 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.

### **A. Preliminary observations**

3. The Registry notes that in directing the Registry to conduct the consultation, the Chamber in the Decision of 6 February 2015 highlights the need to ensure that participation of victims, through their legal representative, is as meaningful as possible, as opposed to symbolic; the importance of a constant flow of information between the Common Legal representatives and their clients; and proximity between the Common legal representatives and their clients. The Registry consequently took these factors into account in particular when designing the consultation exercise.
4. The Registry further notes that the system adopted in the present case at the pre-trial stage represents one of several different models for organising common legal representation of victims adopted at the Court.<sup>8</sup> The model consists of a team comprising a counsel from the OPCV based in The Hague and an external Legal Assistant based in the field.<sup>9</sup> A similar model has been put in place in other cases,

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<sup>8</sup> The Registry notes that to date none of these systems have been evaluated from a victim/client satisfaction perspective.

<sup>9</sup> Decision of 6 February 2015, para. 52. The same model was adopted at the pre-trial stage of the *Gbagbo* case.

with the common legal representative based at the seat of the Court and an external counsel.<sup>10</sup> A different model adopted in two cases is to appoint an (external) common legal representative based in the field where he can “maintain contact with a large number of clients”<sup>11</sup> and who may appear in person on behalf of victims at critical junctures of the trial, with the OPCV appearing in day to day proceedings.<sup>12</sup> Some of these models also include field assistants or resource persons based in the field who support the conduct of activities in the field in particular by facilitating communication with victims.<sup>13</sup> The Registry was mindful of these different models when conducting the present exercise.

5. Finally, the Registry notes that the number of potential victim participants in this case is substantial, particularly in the group of victims of the attacks of UPC/FPLC troops where already at the pre-trial stage there were almost 1,000 participating victims. The Registry acknowledges the enormous challenges, practical and otherwise, for legal representatives to organise effective communication with the victims they represent and make participation meaningful for the victims. In the present case the communications challenges include the very difficult economic and/or personal situation faced by many victims, the time elapsed since the alleged crimes, low-literacy levels, and unfamiliarity with legal proceedings. Logistical and security issues, limitations on means of contact such as telephones and the victims’ geographic location further complicate communication. The outcome of the present consultation should be assessed in light of these factors.

## **B. Conduct of the victim consultation exercise ordered by the Chamber**

### **1. Preparation of the consultation exercise**

#### *(i) Selecting a representative sample*

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<sup>10</sup> The *Katanga* case and the *Bemba* case at the trial stage, respectively ICC-01/04-01/07-1328, ICC-01/04-01/07-1488 and ICC-01/05-01/08-1005.

<sup>11</sup> ICC-01/09-01/11-460 para. 61 (v) and ICC-01/09-02/11-498 para. 60(v).

<sup>12</sup> ICC-01/09-01/11-460 para. 43. and ICC-01/09-02/11-498 para. 42.

<sup>13</sup> See ASP-12-13 of 4 June 2013, Registry’s single policy document on the Court’s legal aid system, para. 62, which highlights the importance of resources in the legal representatives of victims’ teams to facilitate communication with victims.

6. In view of the practical challenges associated with consulting all 1,120 victims who had participated at the pre-Trial stage, located in numerous localities in Ituri, within a short time frame, the VPRS aimed at consulting a representative sample of victims. The VPRS aimed to meet around 10-15% of the victims, as far as possible representing the main characteristics of the victims as a whole and the harm suffered.<sup>14</sup>

*(ii) Consultation with the LRV on the sample of victims*

7. A meeting was held in The Hague on 11 February 2015 between the VPRS and the common legal representatives of victims in order to explain the approach of the VPRS for the consultation. Preliminary lists of victims to be consulted were then shared with the respective common legal representatives, who provided practical advice on how to reach their clients, as well as information regarding particular measures that should be put in place when meeting specific victims.<sup>15</sup>

*(iii) Methodology used to consult victims*

8. The VPRS decided that a combination of group discussions followed by the administration of individual questionnaires would be the most effective and comprehensive way of surveying the participating victims' experience with their legal representation during the pre-trial stage of the proceedings. The VPRS held an initial meeting with intermediaries who regularly assist the legal representatives and who are familiar with the victims. The purpose was to explain the objective of the consultation and obtain the input of intermediaries on how best to frame questions so as to be understood by the victims.
9. The Registry took into account the timing of the consultation (at the end of the pre-trial stage of the proceedings), and the fact that it would not be expected, at this point, that victims would have experienced a high number of interactions

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<sup>14</sup> Individuals were selected according to factors such as the type of crime the participating victims suffered from (more particularly, whether they were Child Soldiers Victims or Victims of the Attacks of UPC/FPLC troops), as well as criteria such as gender, age and ethnic minority. The VPRS endeavoured to consult, as much as possible, individuals who are likely to participate at the trial stage of the proceedings. Except for women from the group of Child Soldiers Victims (only 2 were met in the consultation whereas 21 were participating at the Pre-Trial stage of the proceedings), the Registry considers the sample to be broadly representative of the overall participating victim population.

<sup>15</sup> Emails from Counsel to the VPRS, respectively dated 17 February 2015, 19 February 2015, 23 February 2015 and 24 February 2015.

with their legal representatives, who had been appointed to represent them a little more than a year prior to the consultation.

10. The VPRS prepared a questionnaire comprising the following five questions:

1. Does the victim think that she/he has a good understanding of the case because of the explanations provided by the lawyer?<sup>16</sup>
2. Does the victim have the opportunity to communicate his or her opinions to the lawyer?
3. Does the victim feel that the lawyer treats her/him with respect and consideration?
4. Is the victim happy<sup>17</sup> with the quality of the services provided by the lawyer?
5. Does the victim want the lawyer to continue representing her/him in the proceedings?

## **2. Implementation of a Field Mission for the Purpose of Meeting with Victims**

11. The meetings with victims were held between 25 February and 03 March 2015 in selected locations in Djugu and Irumu territories. The groups were composed of between 14 to 51 victims.<sup>18</sup> A total of 211 individuals were met in groups, and 173 completed individual questionnaires.<sup>19</sup> The completed questionnaires were entered into the VPRS database for the purpose of generating results for the present report.

12. In the Registry's experience in the context of the current Case as well as in other proceedings, the issue of common legal representation at the Court remains a complex and abstract concept for many victims, who have rarely had previous experience or understanding of judicial proceedings, even within their own

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<sup>16</sup>The Registry notes that since it would have been too complicated to ask the victims to make a distinction between the Common Legal Representative from the OPCV and the Legal Assistant based in the DRC, the answers provided often did not specifically refer to one or the other. The results of the consultation must be interpreted accordingly.

<sup>17</sup> The VPRS was advised by intermediaries to use the word "happy" rather than "satisfied" for ease of understanding.

<sup>18</sup> Sometimes the groups were divided further into smaller groups.

<sup>19</sup> The interviews were generally conducted by VPRS staff, with the assistance of an interpreter, when relevant. In a minority of cases (4 interviews) there was an insufficient number of VPRS staff to administer questionnaires to all the victims. In those 4 cases, and with the approval of the victim, a trained intermediary administered the questionnaire.



communities. During the consultation the VPRS found that indeed, many of the victims consulted seemed to have a relatively low level of understanding about the Court, the different actors of the Court, participation of victims and the role of common legal representatives. The VPRS did not have the impression that the lack of knowledge and understanding was due to a failure on the part of the legal representatives to explain these issues, but rather was due to other factors such as, as noted, the fact that the proceedings before the Court seem to the victims to be far from their daily reality.

13. The Registry found that the expectations of the victims as to the speed of proceedings also may have affected their answers. While throughout the consultation exercise the VPRS staff endeavoured to explain to victims that proceedings before the Court take a long time and it is not within the power of their legal representatives to change this, some victims still seemed to associate the performance of their lawyer with obtaining a rapid and positive outcome, such as obtaining reparations quickly.
14. The Registry team conducting the consultation observed that it was not easy for the victims to measure satisfaction and quality of legal representation. Many victims indicated in one way or another that they did not feel that they were in a position to assess the performance of their legal representative and make an informed decision concerning the legal representative's appointment at the trial stage of proceedings. This appeared to be due in part to the fact that they had not yet met with their legal representative a sufficient number of times, because they felt they were ill-equipped to assess the quality of their legal representative's work or did not have sufficient information to do so (having not seen their work in The Hague and/or not seeing tangible results so far), as the judicial process seemed to be happening far away from their communities. The VPRS team also encountered 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 they had suffered repeated human rights violations over a long period of time. This seemed to have had a general impact on their

sense of their own ability and entitlement to evaluate the quality of lawyers who they had not chosen but who had been appointed to represent them. That said, the VPRS team also had a strong sense that the victims did have ideas about what they saw as important qualities, and what they wanted from their legal representatives. The most frequently mentioned were frequent interactions, the opportunity for individual meetings, regular information, outcomes, being treated as individuals and not just another file, to feel that they are known personally by their lawyer and that their lawyer recognizes and understands their daily reality.

### C. Results of the consultation

15. A total of 173 questionnaires were administered. As mentioned above, the Registry has taken into account observations made in the course of group meetings as well as the answers provided in the individual questionnaires.
16. As shown in figure 1 below, a majority of the victims (81%) answered in their questionnaire that they wished to continue being represented by their current common legal representative.<sup>20</sup> 69% of victims answered that they were overall content with their legal representative, mentioning *inter alia*, that they provided good advice, and that their explanations were clear.<sup>21</sup> Around 22% victims mentioned that they appreciated their lawyer's communication skills, including the fact that they feel that their lawyer listens to them.
17. Among the victims who expressed their wish to retain their current lawyer, around 12% explained their position on the basis that they wanted to continue being represented by those who had already started the work and were familiar with their file (or, *a contrario*, they did not want to bring in someone new).

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<sup>20</sup> 10% said that they wished to change legal representation, 6% did not have an opinion and 3% did not answer this question.

<sup>21</sup> 14% said they were not happy with the quality of services provided by their lawyer, 13% had no opinion and 4% did not answer this question.

**Responses in relation to question 5**

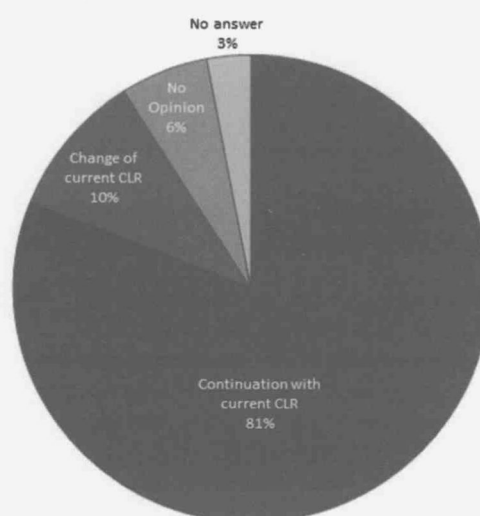


Fig. 1: Answers provided by consulted victims to question 5: "Do you want your lawyer to continue representing you in the proceedings?"

18. During the group and individual meetings victims raised a range of issues and wishes.<sup>22</sup> The main issues raised were the following.

(i) *More access and regular interactions*

19. Around 27 % of victims mentioned that they have not met or been in contact with their legal representative frequently or regularly. The same percentage of victims reported that they feel their lawyer<sup>23</sup> is unavailable or difficult to access. This includes, *inter alia*, victims who experienced difficulties contacting their lawyer due to geographical distance, victims who report not having their lawyer's contact details, and victims who do not have a telephone. The wish for more interactions and access to the lawyers was also expressed during the group meetings.

(ii) *Flow of information*

<sup>22</sup>At least 70 % of the victims raised issues in their individual questionnaires including, for example, lack of availability of the lawyer, issues relating to communication, which will be detailed below.

<sup>23</sup> See footnote 16, explaining that a distinction between the Common Legal Representative and Legal Assistant could often not be made in the answers provided in the questionnaires.

20. 55% of the victims said they understood the Case because of the information provided to them by their lawyer,<sup>24</sup> and of those who do not feel that way, around 70% said they believe that they do not receive sufficient information, updates and/or feedback on what is happening in the Case or regarding the concerns they shared with their legal representatives.
21. 53% said they do not have the opportunity of communicating their opinions<sup>25</sup> to their lawyers. Of those, around 30% linked this issue with the fact that they cannot communicate their opinions in a group setting (one in four of the women consulted). Approximately 25% said in their questionnaires that they would like to have individual meetings with their lawyers. During the group discussions, victims further explained that meeting individually with their lawyer would provide them with a feeling that they are known and listened to by their legal representative. Individual meetings would also provide them with the feeling that they can express themselves as opposed to only receiving information, which is the sentiment expressed by a number of victims who have only experienced communication with their lawyers through group meetings.<sup>26</sup>

(iii) *Lawyer's understanding of the victims' personal situation*

22. In the group meetings victims highlighted the importance for them that their lawyer shows understanding of their individual circumstances, their realities and the complexities that they face. 78% of the victims answered in their questionnaire that they considered that their lawyer treated them with respect and consideration.<sup>27</sup> Around 10% of the victims said that their lawyer did not do so, mentioning, *inter alia*, a lack of understanding of their personal situation. In the group meetings, it became apparent that for some victims, this concern related to issues such as that they did not consider that their lawyers sufficiently took into account the inconvenience to victims of having to travel sometimes long

<sup>24</sup> It is important to note that the Registry did not aim at verifying the extent of the knowledge of the applicant regarding the proceedings. The response is thus to be interpreted in the sense that the victim feels, or does not feel that he or she has understood the proceedings because of the explanations provided by their lawyer.

<sup>25</sup> During individual interviews, the VPRS staff noticed that for many victims, providing an opinion means telling the legal representative about the harm that they suffered.

<sup>26</sup> Around 32% of all victims interviewed mentioned that they only met their lawyers in group meetings.

<sup>27</sup> 10% replied negatively, 8% had no opinion and 4% did not answer this question.

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. Victims were also particularly vocal, generally, about the reimbursement of their travel fares.

#### D. Conclusions

23. In light of the views expressed by participating victims during the consultation and the possibility that a larger number of victims could participate in trial proceedings than at the pre-trial stage, the Registry concludes that the composition of and resources available to the legal representatives' teams should allow for frequent and quality contact between the legal representatives' teams and their clients.<sup>28</sup> This should be such as to make the victims feel accompanied meaningfully through their engagement with the Court.<sup>29</sup>
24. The question arises whether at the trial stage, a model of representation involving a counsel based in The Hague and a second counsel based in the field is the best way to achieve this. What seems essential is that the common legal representative spends sufficient time in the field to meet the victims on a regular basis, including giving more opportunities for individual meetings with victims, possibly in the context of group meetings, and when necessary. Second, the team would need to include the capacity, from close to where the victims live, to maintain effective communication with the victims, as much as possible in person, on a regular basis, in the languages spoken by the victims and in a venue close to the victims' locations. It seems to the Registry that this could be done by a legal assistant if they were sufficiently available and had the appropriate skills, but perhaps more appropriately by field assistants or resource persons with appropriate skills.<sup>30</sup> In other words, the most important factor is not whether the

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<sup>28</sup> This would include, for instance, making sure that a member of the legal team, not necessarily a lawyer, is contactable between the times that the legal representative meets with the victims.

<sup>29</sup> During the consultation several victims referred to a feeling of being forgotten by the lawyer if they did not hear from their team other than when they meet with the lawyer.

<sup>30</sup> See for example ICC-ASP-12-3 of 4 June 2013, Registry's single policy document on the Court's legal aid system, para. 63: the qualifications of field assistants, pursuant to the Court's jurisprudence, should preferably have an established relationship with the victims in question, possess "a background in outreach or victim

legal representative is based in The Hague or in the field, but rather the establishment of a system allowing effective communication with the victims, including a team member or members who are close to the victims not only geographically.

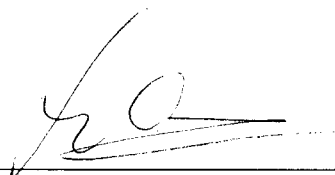
25. The Registry also notes that the consultation exercise revealed the need for the Registry to target outreach activities specifically towards the communities where the participating victims live, in order to provide up-to-date and regular general and tailored information about the Court in interactive sessions where questions would be addressed.<sup>31</sup> This would be additional, and complementary, to the communication by the legal representatives.

#### **E. Recommendation**

26. The Registry recommends to maintain the current system for legal representation during the trial phase, with modifications so as to allow for closer proximity and more continuous flow of information, with a view to making participation as meaningful as possible to the victims.

27. The Registry stands ready to file a confidential or public version of this report, if the Chamber so orders.

Respectfully submitted,



Mr. Herman von Hebel, Registrar

Dated this 16 March 2015

At The Hague, The Netherlands

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support” and familiarity with the work of the Court, and they should be able to communicate with victims in a language they understand.

<sup>31</sup> Please refer to the Integrated Strategy for External Relations, Public Information and Outreach. Available : [http://www.icc-cpi.int/NR/rdonlyres/425E80BA-1EBC-4423-85C6-D4F2B93C7506/185049/ICCPIDSWBOR0307070402\\_IS\\_En.pdf](http://www.icc-cpi.int/NR/rdonlyres/425E80BA-1EBC-4423-85C6-D4F2B93C7506/185049/ICCPIDSWBOR0307070402_IS_En.pdf)