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**International
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PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single Judge

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Confidential - Prosecution, Defence and VPRS only

**Prosecution's Observations on 29 Applications for Victim Participation in the
Pre-Trial Proceedings**

Source: 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 Prosecution submits observations on 29 applications for victim participation in the proceedings in the case of *The Prosecutor v. Bosco Ntaganda*, pursuant to Rule 89(1) of the Rules of Procedure and Evidence ("Rules") and the Single Judge's "Decision Establishing Principles on the Victims' Application Process".¹
2. The Prosecution supports the granting of authorisation to participate as victims in the proceedings, pursuant to Article 68(3) of the Rome Statute ("Statute"), to all 29 present applicants, namely: a/00094/13, a/00095/13, a/00096/13, a/00097/13, a/00098/13, a/00104/13, a/00105/13, a/00107/13, a/00108/13, a/00109/13, a/00110/13, a/00111/13, a/00112/13, a/00116/13, a/00117/13, a/00118/13, a/00119/13, a/00120/13, a/00122/13, a/00123/13, a/00124/13, a/00125/13, a/00126/13, a/00127/13, a/00128/13, a/00129/13, a/00130/13, a/00133/13, a/00134/13.
3. The Prosecution notes that it has based its submission in part on the summary provided by the Victims Participation and Reparation Section ("VPRS") relating to the proof of identity and kinship of each Applicant. Given that the relevant identity documentation has not been transmitted to the Prosecution, should the Single Judge determine based on a review of the supporting documentation that identity of Applicants or, where applicable, kinship between the Applicants and their family members has not been sufficiently established, the Applicants concerned should be requested to provide further information on those points.

Confidentiality

4. The Prosecution files as "Confidential - Prosecution, Defence and VPRS only" pursuant to Regulation 23 *bis* (2) of the Regulations of the Court, in accordance with the Confidential Redacted version of the filing by the VPRS.

¹ ICC-01/04-02/06-67.

Procedural background

5. On 28 May 2013, the Single Judge rendered its Decision Establishing Principles on the victims' Application Process, in which it, *inter alia*, ordered the parties to submit their observations on the victims' application within a time-limit of fourteen days following their transmission by VPRS.²
6. On 13 September 2013, the Registry provided the Prosecution with 29 victims' applications in unredacted form.³

Legal criteria for victim participation in the proceedings

7. The Prosecution considers that victims' participation before the Court is an essential feature of the Statute and the Rules and an important contribution to international justice. Under the Statute, victims are actors in the administration of international justice rather than its passive subjects. Their participation is a statutory right, not a privilege bestowed on a case-by-case basis.
8. The Prosecution supports victims' participation when all statutory requirements are met. Consistent with its view of the unique and necessary perspective victims lend to the proceedings, the Prosecution supports a liberal approach in permitting applicants to amend or clarify deficient applications, if possible.
9. According to the Appeals Chamber, 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 proceedings at hand, i.e. by the issues, legal or factual, raised therein.⁴

² *Ibid*, page 21.

³ ICC-01/04-02/06-106-Conf-Exp; ICC-01/04-02/06-106-Conf-Exp-AnxA and ICC-01/04-02/06-106-Conf-Exp-AnxB-001 to B-029.

⁴ *See, e.g.*, ICC-01/04-556 [AC], para. 45; ICC-01/04-01/06-1335 [AC], para. 36.

10. With respect to the first requirement of Article 68(3)—qualification as a victim under Rule 85—the established jurisprudence of the Court provides that the following four criteria must be satisfied for victim status to be granted, regardless of the stage of the proceedings in which the applicants wish to participate: (i) the applicant must be a natural person as set forth in Rule 85(a) or an organisation or institution as set forth in Rule 85(b); (ii) the applicant must have suffered harm; (iii) the crime from which the harm resulted must fall within the jurisdiction of the Court; and (iv) there must be a causal link between the crime and the harm.⁵
11. Applicants are only required to make a *prima facie* showing that the four requirements set out in the preceding paragraph are met.⁶ In reviewing applications, Chambers will generally not delve into the credibility of applicants' statements or require rigorous corroboration.⁷ Rather, Chambers will "assess the applicants' statements first and foremost on the merits of their intrinsic coherence, as well as on the basis of the information otherwise available" to the Chamber.⁸
12. The second requirement of Article 68(3)—that the applicant's personal interests are affected by legal or factual issues raised in the proceedings at hand—is considered separately from the victim status.⁹ As indicated by the Appeals Chamber, "[c]lear examples of where the personal interests of victims are affected are when their protection is in issue and in relation to proceedings for reparations."¹⁰ "An assessment will need to be made in each case as to whether

⁵ See, e.g., ICC-01/04-01/06-601-tEN [PTCI], p. 9; ICC-01/04-01/06-228-tEN [PTCI], p. 7.

⁶ See, e.g., ICC-02/05-01/07-58 [PTCI], para. 7; ICC-01/04-01/07-579 [PTCI], para. 67.

⁷ See ICC-01/04-01/07-579 [PTCI], para. 67.

⁸ ICC-01/04-01/07-579 [PTCI], para. 67, 132.

⁹ See, e.g., ICC-01/04-556 [AC], para. 45; ICC-01/04-101-tEN-Corr [TCI], para. 62 (indicating that "personal interests" requirement constitutes an additional criterion to be met by victims, over and above the victim status accorded them).

¹⁰ ICC-01/04-01/06-925 [AC], para. 28.

the interests asserted by victims do not, in fact, fall outside their personal interests and belong instead to the role assigned to the Prosecutor".¹¹

13. The established jurisprudence additionally requires that the harm suffered and the concept of personal interests must be linked to the charges: i.e. the charges confirmed against the accused or, at earlier stages in the proceedings, the offences alleged in the warrant of arrest or summons to appear or the document containing the charges.¹²

14. The first step in the determination of whether the applicant is a "natural person" within the meaning of Rule 85 is an inquiry into whether the applicant has provided adequate proof of identity. Chambers have recognized that a balance must be achieved between the need to establish an applicant's identity with certainty, on the one hand, and the applicant's personal circumstances, on the other. Bearing in mind that the chaotic circumstances present in a given situation may preclude 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 considered non-official identification documents or, in appropriate cases, a statement signed by two credible witnesses attesting to the identity of the applicant.

15. Further, "when assessing whether an applicant has suffered harm as a result of the loss of a family member, the Court requires proof of the identity of the family member and of his or her relationship with the applicant."¹³

16. The Appeals Chamber has defined "harm" within the meaning of Rule 85(a) as "loss, injury or damage"¹⁴ and explained that cognizable harm include material,

¹¹ *Ibid.*

¹² ICC-01/04-01/06-1432 [AC], paras. 2, 62-65 ("For the purposes of participation in the trial proceedings, the harm alleged by a victim and the concept of personal interests under article 68(3) of the Statute must be linked with the charges confirmed against the accused.").

¹³ ICC-02/05-02/09-147-Red. [PTCI], para. 6; see also ICC-02/04-179 [AC], paras. 35-38.

physical and psychological injuries.¹⁵ The single most important requirement isolated by the Appeals Chamber for identifying “harm” is that the loss or injury must be suffered personally by the applicant.¹⁶ A qualifying injury may be direct or indirect, so long as it is the applicant who experiences it.¹⁷ Direct victims are those whose injury or loss is the “result of the commission of a crime within the jurisdiction of the Court,” while indirect victims are “those who suffer harm as a result of the harm suffered by the direct victims.”¹⁸ Indirect harm can arise, *inter alia*, where persons endure psychological suffering or material deprivation when a family member is killed as a result of the crimes for which the Suspect is called to answer.¹⁹

Factual analysis of the applications

Natural persons, harm suffered caused by crimes within the jurisdiction of the Court

17. All twenty-nine Applicants are natural persons acting on their own behalf. The twenty-nine applicants have personally suffered direct and/or indirect physical, material and/or psychological harm. The extent of their individual accounts sufficiently establishes that the harm suffered resulted from crimes committed within the jurisdiction of the Court. The underlying facts constitute one or more of the following crimes: attack against the civilian population, murder, pillaging or persecution;²⁰ these are offenses alleged in the second warrant of arrest against the Suspect.²¹ Applicants all identify the perpetrators as « *le groupe armé UPC* », « *les éléments de Bosco* », « *les éléments dirigés par Bosco* », « *la milice de Bosco* » or « *les éléments de Bosco Ntaganda* ». Further, Pre-Trial Chamber II made specific

¹⁴ ICC-01/04-01/06-1432 [AC], para. 31.

¹⁵ ICC-01/04-01/06-1432 [AC], para. 32. See also ICC-02/04-164 [AC], para. 8 (“treating ‘psychological trauma’ and ‘emotional harm’ as falling within the concept of ‘mental harm’”).

¹⁶ ICC-01/04-01/06-1432 [AC], para. 32.

¹⁷ ICC-01/04-01/06-1432 [AC], paras. 32, 34-35.

¹⁸ ICC-01/04-01/06-1813 [TCI], para. 44 (citation omitted).

¹⁹ ICC-01/04-01/06-1813 [TCI], paras. 50-51.

²⁰ Articles 7(1)(a), 7(1)(h), 8(2)(c)(i), 8(2)(e)(i), 8(2)(e)(v) of the Statute.

²¹ ICC-01/04-02/06-36-Red, page 36, (i), (iii),(iv), (v), (vii).

findings regarding the incident (crimes, dates²² and locations) common to this group of Applicants.²³

Dates of the crimes

18. Applicants a/00104/13; a/00105/13; a/00107/13; a/00108/13; a/00109/13; a/00110/13; a/00111/13; a/00112/13; a/00117/13; a/00119/13; a/00120/13; a/00123/13; a/00124/13; a/00125/13; a/00126/13; a/00127/13; a/00128/13; a/00129/13; a/00130/13; a/00133/13; a/00134/13 solely identify the date of the crimes as follow: “*pendant l’opération Shika na mukono*”. According to the Prosecution’s information, this Swahili expression translates to “take by hands” and was used to designate the UPC attacks on Lipri, Bambu, Kobu and surrounding villages during the period 17 February to 2 March 2003.²⁴ On this basis, the Prosecution submits that it has been sufficiently established that the crimes alleged have occurred within the relevant time frame of the charges.²⁵

Proof of Identity and Kinship

19. The applications transmitted all bear the signature or thumbprint of the applicant; however, the identification documents have not been transmitted to the Prosecution, which only has access to the analysis of completeness and sufficiency done by the VPRS.²⁶ According to the VPRS’s report, all Applicants have provided voting cards as proof of identity and some, an additional letter

²² See further submission on the determination of the date at para.18 below.

²³ ICC-01/04-02/06-36-Red, paras.43, 61.

²⁴ See for example: *MONUC Special report on the events in Ituri, January 2002-December 2003*, DRC-OTP-0074-0422 at 0445, paras 68-70; ICC-01/04-02/06-61-Conf-Anx25.1. See also DRC-OTP-0150-0287 at 0291, para. 6; DRC-OTP-0096-0020 at 0029, para. 41; DRC-OTP-0073-0381, at 0390, para. 43; DRC-OTP-0126-0107 at 0113, para 31 (to be disclosed pending the Single Judge’s decision on its disclosure).

²⁵ ICC-01/04-02/06-36-Red, para.61, page 36, (i), (iii),(iv), (v), (vii).

²⁶ ICC-01/04/02/06-106-Conf-Exp-AnxA.

from local authorities to further establish identity and kinship. The Single Judge considers voting cards as a valid identification document.²⁷

20. In its report, the VPRS has raised several inconsistencies between application forms and the documents presented to prove identity or/and kinship.²⁸ For instance, the spelling of names of Applicants a/00107/13, a/00109/13, a/00123/13, a/00134/13 or their family members' for Applicant a/00094/13 and date of birth of Applicant a/00123/13 vary slightly.²⁹ Applicant a/00124/13 only provides a partial copy of the voting card as a proof of identity, where the signature and part of the reference numbers are said to be cut off but the identity of the applicant is legible. The Prosecution notes that the VPRS has requested a new complete copy from this Applicant. The Prosecution does not oppose the VPRS conclusion that the identities and kinship are sufficiently established, on the basis of its summary of minor spelling discrepancies caused by transcription or copying errors.

21. Given that the Prosecution does not have access to the original supporting documentation, however, it leaves it to the Single Judge to make a determination on the consistency of such documentation with the information provided in the application forms, and to assess the impact of the identified discrepancies to the applications. The Prosecution submits that should the discrepancies require further clarification, the applicants should be requested to submit further information in order to establish identity and kinship.

Conclusion

22. The Prosecution submits that the following Applicants a/00094/13, a/00095/13, a/00096/13, a/00097/13, a/00098/13, a/00104/13, a/00105/13, a/00107/13, a/00108/13, a/00109/13, a/00110/13, a/00111/13, a/00112/13, a/00116/13, a/00117/13, a/00118/13,

²⁷ ICC-01/04/02/06-67, para. 30, point (V) referring to ICC-01/04/02/06-53-Anx1.

²⁸ ICC-01/04/02/06-106-Conf-Exp-AnxA

²⁹ As identified in ICC-01/04/02/06-106-Conf-Exp-AnxA.

a/00119/13, a/00120/13, a/00122/13, a/00123/13, a/00124/13, a/00125/13, a/00126/13, a/00127/13, a/00128/13, a/00129/13, a/00130/13, a/00133/13, a/00134/13 meet all the requirements under Article 68(3) to participate as victims in the pre-trial proceedings in this case, provided the Single Judge is satisfied that the attached identity documentation sufficiently proves identity and kinship.



Fatou Bensouda, Prosecutor

Dated this 1st Day of October 2013
At The Hague, the Netherlands