

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/04-02/06**
Date: **17 December 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

Sixth 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**

Ms Paolina Massidda

**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, in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Article 68(1) and (3) of the Rome Statute and Rules 85, 89 and 91(1) of the Rules of Procedure and Evidence ('Rules'), and incorporating by reference the applicable law as set out in the 'Decision on victims' participation in trial proceedings',¹ issues this 'Sixth decision on victims' participation in trial proceedings'.

1. On 2 July 2015, the Chamber issued its 'Third decision on victims' participation in trial proceedings',² wherein it, *inter alia*, decided to grant the application for participation of a/00249/13³ and instructed the Registry to transmit his application form to the Legal representative appointed to represent former child soldiers ('Legal Representative').⁴
2. On 6 October 2015, the Registry filed its 'Second Periodic Report on the Victims and their General Situation',⁵ by which it, *inter alia*, informed the Chamber that it identified 13 applications, including the application of a/00249/13, as having been mistakenly transmitted in a 'Group A' transmission.⁶
3. On 16 November 2015, the Chamber rendered its 'Fifth decision on victims' participation in trial proceedings',⁷ in which it: i) found that the application of a/00249/13 should have been transmitted as 'Group C' and litigated prior to any Chamber's ruling under Rule 85 of the Rules; ii) instructed the Registry to transmit his application form to the parties, in redacted form if appropriate; and

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

² ICC-01/04-02/06-696.

³ Annex 40 to Fifth Transmission to the Trial Chamber of Applications for Participation in the Proceedings, 22 June 2015, notified on 23 June 2015, ICC-01/04-02/06-665-Conf-Exp-Anx40.

⁴ ICC-01/04-02/06-696, para. 5 and Annex A.

⁵ ICC-01/04-02/06-889.

⁶ ICC-01/04-02/06-889-AnxA, para. 4.

⁷ ICC-01/04-02/06-1011.

- iii) set the deadline for the parties' and Legal Representative's observations to 30 November 2015.⁸
4. On 18 November 2015, the Registry transmitted a redacted version of the application form of a/00249/13 to the Prosecution and the Defence.⁹
 5. On 27 November 2015, the Legal Representative submitted her observations,¹⁰ informing the Chamber of her contact with a/00249/13 and of being provided with information indicating a date of birth that would mean that a/00249/13 was under the age of 15 at the time of his alleged recruitment. By way of explanation, the Legal Representative submits that the victim lied about his age in order to obtain a *carte d'électeur* which significantly facilitates moving across Bunia.¹¹
 6. On 30 November 2015, the defence team of Mr Ntaganda submitted its observations requesting the Chamber to reject the application of a/00249/13,¹² arguing that: i) the application was not transmitted to the parties in a timely manner;¹³ and ii) the applicant fails to meet, on a *prima facie* basis, the requirements to qualify as victim in the present case.¹⁴
 7. On the same day, the Office of the Prosecutor ('Prosecution') filed its observations,¹⁵ submitting that a/00249/13 should be requested to provide

⁸ ICC-01/04-02/06-1011, para. 3.

⁹ Third Transmission to the Parties of Applications for Participation in Trial Proceedings, ICC-01/04-02/06-1015 with one confidential annex.

¹⁰ Observations in relation to the application of a/00249/13, ICC-01/04-02/06-1037-Conf-Exp ('Legal Representative Observations') with confidential, *ex parte*, annex, only available to the Legal Representative. Confidential redacted versions of the filing and the annex were filed on the same day (ICC-01/04-02/06-1037-Conf-Red and ICC-01/04-02/06-1037-Conf-Anx-Red) and notified on 30 November 2015.

¹¹ Legal Representative Observations, ICC-01/04-02/06-1037-Conf-Red, paras 9-10.

¹² Observations on behalf of Mr Ntaganda following the transmission of one victim application for participation in the proceedings, ICC-01/04-02/06-1041-Conf ('Defence Observations').

¹³ Defence Observations, ICC-01/04-02/06-1041-Conf, paras 7-10.

¹⁴ Defence Observations, ICC-01/04-02/06-1041-Conf, paras 11-15.

¹⁵ Prosecution's observations on application a/00249/13 for victim participation during trial, ICC-01/04-02/06-1042 ('Prosecution Observations').

further information to establish his age in order to assess if he fully meets the requirements to participate as a victim in the trial proceedings.¹⁶

8. The Chamber notes the submissions before it, particularly the additional information given by the Legal Representative, including in the form of a *Certificat d'Etudes Primaires*.¹⁷ Moreover, and having regard to the Registry's report on the identity documents available in the Democratic Republic of the Congo, which cites to open source material regarding discrepancies that may be encountered with respect of the date of birth indicated in electoral cards,¹⁸ the Chamber notes that a/00249/13 mentioned in his application form that one year had been added to his date of birth as registered on his electoral card.
9. Accordingly, on the basis of the requirements set out in the First Participation Decision, including the fact that a *prima facie* demonstration suffices for the purpose of admission and that as part of this *prima facie* assessment a flexible approach ought to be adopted when assessing the information provided by an applicant,¹⁹ the Chamber is satisfied that a/00249/13 qualifies as a victim in the present case.

¹⁶ Prosecution Observations, ICC-01/04-02/06-1042, paras 20-21.

¹⁷ Annex to Legal Representative Observations, ICC-01/04-02/06-1037-Conf-Anx-Red.

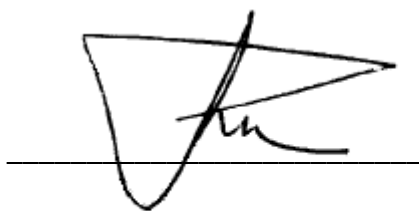
¹⁸ Annex 1 to Transmission to Pre-Trial chamber II of a Registry report on proof of identity documents available in the Democratic Republic of the Congo, 26 March 2015, ICC-01/04-02/06-53-Anx1, pages 5-6.

¹⁹ First Participation Decision, ICC-01/04-02/06-449, paras 41-51.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DECIDES to uphold the status of a/00249/13 as a victim in the present proceedings.

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

A handwritten signature in black ink, consisting of a large, stylized 'F' followed by 'remr', written over a horizontal line.

Judge Robert Fremr, Presiding Judge

A handwritten signature in black ink, appearing to read 'Kuniko Ozaki', written over a horizontal line.

Judge Kuniko Ozaki

A handwritten signature in black ink, consisting of the Korean characters '정오중' (Jeong Oh-jung), written over a horizontal line.

Judge Chang-ho Chung

Dated 17 December 2015

At The Hague, The Netherlands