

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-02/06
Date: 20 November 2013

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
***Ex parte* VPRS and OPCV only**

Decision Requesting the VPRS and the OPCV to take steps with regard to the legal representation of victims in the confirmation of charges hearing and in the related proceedings

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

The Office of the Prosecutor

Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Paolina Massidda

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Herman Von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Fiona McKay

Other

Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber II (the "Chamber") of the International Criminal Court (the "Court")¹ hereby issues this decision requesting the Victims Participation and Reparations Section (the "VPRS") and the Office of Public Counsel for Victims (the "OPCV") to take steps with regard to the legal representation of victims in the confirmation of charges hearing and in the related proceedings.

1. On 26 March 2013, the initial appearance hearing of Bosco Ntaganda took place.² At the hearing, the Single Judge, decided that 23 September 2013 would be the date for the commencement of the confirmation of charges hearing.³ Upon request of the Prosecutor, this date was subsequently postponed until Monday, 10 February 2014.⁴

2. On 28 May 2013, the Single Judge issued the "Decision Establishing Principles on the Victims' Application Process"⁵ in which she established a victims' application system tailored to the specific features of the present case, including a one-page application form (the "Simplified Form"), with a view to rationalizing the application process and enhancing its predictability, efficiency and expeditiousness.⁶ In this decision, the Single Judge ordered, *inter alia*:

(g) the Registry to consult with applicants as to their preferences for legal representation, to assess whether or not they could be represented by a common legal representative(s), including by the OPCV, and to start identifying an appropriate "assistant to counsel" with the involvement or in consultation with the OPCV [...]⁷

3. On 13 September 2013,⁸ 20 September 2013⁹ and 31 October 2013¹⁰ the Registry submitted to the Chamber and the Prosecutor reports under regulation 86(5) of the

¹ Pre-Trial Chamber II, "Decision Designating a Single Judge", 21 March 2013, ICC-01/04-02/06-40, p. 4.

² ICC-01/04-02/06-T-2-ENG ET WT.

³ ICC-01/04-02/06-T-2-ENG ET WT, p. 12.

⁴ Pre-Trial Chamber II, "Decision on the 'Prosecution's Urgent Request to Postpone the Date of the Confirmation Hearing' and Setting a New Calendar for the Disclosure of Evidence Between the Parties", 17 June 2013, ICC-01/04-02/06-73, p. 19.

⁵ Pre-Trial Chamber II, ICC-01/04-02/06-67.

⁶ Pre-Trial Chamber II, ICC-01/04-02/06-67, para. 1.

⁷ Pre-Trial Chamber II, ICC-01/04-02/06-67, p. 22.

⁸ ICC-01/04-02/06-106-Conf-Exp and its confidential redacted version.

⁹ ICC-01/04-02/06-122-Conf and its annexes.

¹⁰ ICC-01/04-02/06-122-Conf and its annexes.

Regulations of the Court (the "Regulations") together with un-redacted copies of 459 Simplified Forms, and redacted copies thereof to the Defence.

4. On 13 November 2013, the Chamber received the "Registry's Interim report on the organization of common legal representation" (the "Report"), in which the Registry provides its observations on: (i) how the applicants have been consulted so far about their preferences for legal representation and their results; (ii) potential conflicts of interest among groups of applicants, (iii) steps to be taken to organize the legal representation of those applicants who may be admitted as victims participating the present case, including the criteria proposed to guide the selection of common legal representatives.¹¹

5. The Single Judge notes articles 21(1)(a), (3), 67(1), 68(3) of the Rome Statute (the "Statute"), rules 16(1)(c) and 90 of the Rules of Procedure and Evidence (the "Rules") and regulations 79 and 80 of the Regulations.

6. At the outset, the Single Judge recalls her duty to ensure that proceedings are conducted in a fair and expeditious manner as provided for in article 67(1) of the Statute. Moreover, it is the Single Judge's responsibility to guarantee the rights of victims to meaningfully express their views and concerns through a legal representative in accordance with rule 90 of the Rules, in a manner which is not inconsistent with or prejudicial to the rights of the Defence, as mandated by article 68(3) of the Statute.

7. In the Report, the Registry recommends providing legal representation to victims participating in the present case that combines

"relevant expertise and experience, including international criminal litigation experience and experience representing large groups of victims, proficiency in the language of the proceedings, a wide knowledge and understanding of the Case and of its context, as well as of the victims' situation in the field, including expertise relating to the type of victimization suffered by individuals in the group. The legal representative(s) should also

¹¹ ICC-01/04-02/06-141-Conf-Exp.

demonstrate abilities to communicate easily and to establish a relationship of trust with victims".¹²

8. The Single Judge observes the serious concerns raised by the applicants so far, as reflected in the Report, with regard to the possibility to have one legal team representing both Hema and Lendu/non-Hema victims or one legal team representing both the former child soldiers and the victims of the attacks allegedly committed by the *Union des patriots congolais* (the "UPC") and the *Forces patriotiques pour la libération du Congo* (the "FPLC").¹³ Taking into account these concerns, the Registry recommends the creation of two distinct victims groups, each represented by a legal team: a group composed of UPC/FPLC child soldiers and another with victims of UPC/FPLC attacks.¹⁴

9. Finally, the Registry underlines the importance of a team structure around the legal representative(s) "which allows for sufficient support in the field in order to have proximity with victims and be able to continuously inform and receive instructions from them".¹⁵

10. In light of the above observations, the Registry proposes the following steps to be taken, with a view to defining the most appropriate legal representation for victims who may be admitted to participate in the confirmation of charges hearing and in the related proceedings:

- a. Request OPCV to indicate the potential availability of more than one counsel of the Office as well as the arrangements the Office would put in place to avoid any conflict of interest, or appearance of conflict of interest, between the legal teams, in the event that the Single judge decides that the OPCV shall represent more than one group of victims in the Case;
- b. In the event that the Chamber decides that there should be more than one group of victims and that the OPCV will not represent both groups, circulate a call for expressions of interest to the Registry's list of counsel;
- c. Proceed with a selection process aimed at identifying an assistant to counsel and, if relevant, counsel from those who expressed their interest, which will be accomplished as

¹² ICC-01/04-02/06-141-Conf-Exp, para. 19.

¹³ ICC-01/04-02/06-141-Conf-Exp, para. 11.

¹⁴ ICC-01/04-02/06-141-Conf-Exp, paras 16, 18.

¹⁵ ICC-01/04-02/06-141-Conf-Exp, para. 20.

rapidly as possible, the Registry making every effort to complete the process within one month;

d. Submit to the Single Judge its recommendation on the appointment of common legal representatives of victims.¹⁶

11. The Single Judge has carefully considered the submissions of the Registry, in particular with regard to the need to have two legal teams representing two distinct groups of victims with conflicting interests. The Single Judge has paid equal attention to the criteria identified by the Registry for the purpose of selecting counsels to act as legal representatives of victims as well as the criteria identified in consultation with the OPCV for the selection of assistants to counsel.¹⁷

12. In this respect, the Single Judge considers it appropriate to request observations from the OPCV, on the basis of its previous experience in other cases before the Court, on the availability and the possible organization of two legal teams constituted of counsels of the office to represent the two groups of victims foreseen by the Registry.

13. With regard to the position of assistant to counsel, the Single Judge considers that the VPRS jointly with the OPCV shall proceed without delay with the selection of several candidates, including associations whose members fulfill the requirements for assistants to counsel, for the two legal teams as mentioned above, regardless of what legal representation scheme will be considered the most appropriate for the present case by the Single Judge. The candidates for the position of assistants to counsel must meet the criteria identified by the Registry in consultation with the OPCV as well as other criteria that may appear relevant for the identification and selection of the candidates, including the type of victimization suffered by the individuals in the different groups.¹⁸

¹⁶ ICC-01/04-02/06-141-Conf-Exp, para. 22.

¹⁷ ICC-01/04-02/06-141-Conf-Exp, paras 4, 19.

¹⁸ ICC-01/04-02/06-141-Conf-Exp, para. 19.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

- a) **requests** the OPCV to provide its observations on the issue identified in paragraph 12 of the present decision by no later than 27 November 2013;
- b) **orders** the VPRS jointly with the OPCV to proceed without delay with the selection of several candidates for the position of assistants to counsel, in accordance with paragraph 13 of the present decision; and
- c) **orders** the VPRS to file in the record of the case the documents mentioned in paragraph 9 of the registry's interim report filed on 13 November 2013.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Wednesday, 20 November 2013

At The Hague, The Netherlands