

Situation in Democratic Republic of the Congo

The Prosecutor v. Bosco Ntaganda

ICC-01/04-02/06

Opening of the trial in the Ntaganda case, 2 September 2015

WHO IS BOSCO NTAGANDA AND WHY IS HE BEING PROSECUTED BEFORE THE ICC?

Bosco Ntaganda is the former Deputy Chief of the General Staff of the Force Patriotiques pour la Libération du Congo [*Patriotic Force for the Liberation of Congo*] (FPLC). He is accused of 13 counts of war crimes (murder and attempted murder; attacking civilians; rape; sexual slavery of civilians; pillaging; displacement of civilians; attacking protected objects; destroying the enemy's property; and rape, sexual slavery, enlistment and conscription of child soldiers under the age of fifteen years and using them to participate actively in hostilities) and five crimes against humanity (murder and attempted murder; rape; sexual slavery; persecution; forcible transfer of population) allegedly committed in Ituri, Democratic Republic of the Congo (DRC), in 2002-2003.

WHEN AND WHERE WERE THESE CRIMES ALLEGEDLY COMMITTED?

The crimes were allegedly committed between August 2002 and December 2003 as part of a non-international armed conflict which took place in Ituri. Some of these crimes were allegedly specifically perpetrated on the occasion of a widespread and systematic attack between August 2002 and May 2003 against the civilian population in Ituri, pursuant to an organisational policy adopted by the Union des Patriotes Congolais/Forces Patriotiques pour la Libération du Congo (UPC/FPLC).

The trial which is about to start only concerns crimes allegedly committed in what was then the district of Ituri, eastern Province, in the northeast of the Democratic Republic of Congo. This trial does not concern the allegations of crimes within the jurisdiction of the Court which could have been committed by Bosco Ntaganda or persons under his command, in the North Kivu province. Although the Office of the Prosecutor continues its investigations in the Kivu Provinces, they are not the subject of the current proceedings.

WHO ARE THE JUDGES CONDUCTING THE TRIAL?

The trial is conducted by Trial Chamber VI, which is composed of Presiding Judge Robert Fremr (Czech Republic), Judge Kuniko Ozaki (Japan) and Judge Chang-ho Chung (Republic of Korea).

ICC judges are persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices. They all have extensive experience relevant to the judicial work of the Court and established competence in criminal law and procedure.

IS MR NTAGANDA PRESENT DURING THE TRIAL?

Yes. The accused has to be present at his trial unless the Chamber excuses him or her from attending specific trial sessions, in exceptional circumstances.

WHERE WILL THE TRIAL TAKE PLACE AND IS IT PUBLIC?

The trial will take place at the seat of the Court in The Hague, the Netherlands.

While it was initially considered whether to hold the opening statements of the trial in Bunia (DRC), the ICC Presidency decided that it was not in the interests of justice to do so, considering in particular concerns on the witnesses and victims' safety and well-being, the security of the local communities, the concerns expressed by the victims that the accused's return would remind them of the suffering and trauma, as well as additional financial and logistical issues.

The trial is held in public, unless the Chamber determines that certain hearings should be held in closed session to protect the safety of victims and witnesses or the confidentiality of sensitive evidentiary material.

WHICH LANGUAGE WILL BE USED IN PROCEEDINGS?

The trial will be held in English and French which are the working languages of the ICC. In addition, interpretation will be provided in Kinyarwanda, which is the language that the accused fully understands and speaks.

WHAT ARE THE RIGHTS GRANTED TO THE ACCUSED, MR NTAGANDA?

The accused before the ICC is presumed innocent. He is present in the courtroom during the trial, and has a right to a public, fair and impartial hearing of his case. To this end, a series of guarantees are set out for the accused in the Court's legal documents, including, to mention a few:

- to be defended by the counsel (lawyer) of his choice, present evidence and witnesses of his own and to use a language which he fully understands and speaks;
- to be informed in detail of the charges in a language which he fully understands and speaks;
- to have adequate time and facilities for the preparation of his defence and to communicate freely and in confidence with his Counsel;
- to be tried without undue delay;
- not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;
- to have the Prosecutor disclose evidence in his possession to the defence or control which he believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence.

HOW LONG WILL THE TRIAL LAST?

The trial will last several months. Opening statements will be made by the Prosecutor, the Defence and the Legal Representatives of Victims on 2- 4 September 2015. The Prosecution and the Defence will then successively present their cases and witnesses before the judges. The start of the Prosecution's presentation of evidence, with the testimony of the first witness, is scheduled on 15 September 2015.

The Legal Representatives of the Victims will also be authorised to present their observations and to ask questions to the witnesses of both parties. The three judges will ensure the fairness of the trial and that the rights of both parties and of the victims are respected. While the Prosecution must prove the guilt of the accused, the Trial Chamber will convict someone only if it is satisfied that the charges have been proven beyond reasonable doubt.

At the end of the trial hearings, the judges will render their decision within a "reasonable period of time". The verdict will be read out in public and will either acquit or convict the accused.

The various parties will then be able to appeal the decision before the ICC's Appeals Chamber.

HOW ARE WITNESSES PROTECTED?

The Court has a number of protective measures that can be granted to witnesses who appear before the Court and other persons at risk on account of testimony given by a witness. Protective measures are essential to make witnesses safe and comfortable and hence enable them to appear without fear to tell the truth. These measures apply for both the Prosecution and the Defence equally.

These measures may range from operational protective measures where witnesses reside, to procedural protective measures in the Courtroom, such as face/voice distortion or the use of a pseudonym, or holding closed sessions during the hearings to keep the identity of the witness confidential, to relocation of the witness, which is a measure of last resort.

Interfering with an ICC witnesses is a crime which can be prosecuted. The Court has already brought cases in relation to such offences.

HOW CAN THE VICTIMS EXPRESS THEIR CONCERNS AND ENSURE THAT THEIR VOICES ARE HEARD BEFORE THE COURT?

The Statute of the Court is innovative in several respects, one of the most significant points being that it grants victims the right to participate in proceedings. Participation is not the same as being called as a witness and involves the victims providing the Court with their views throughout the course of proceedings, usually through their legal representatives (i.e. their lawyers). This voluntary

participation enables victims to express an opinion independently of the parties and offers them the opportunity to communicate directly to the judges about their own concerns and interests.

HOW WILL THE AFFECTED COMMUNITIES AND THE DRC POPULATION BE INFORMED OF THE PROGRESS AND OUTCOME OF THE TRIAL?

The publicity of the proceedings is crucial to guarantee a fair trial and thus high-quality justice. Special efforts are undertaken by the Court in order to ensure that the proceedings are accessible to the communities affected by the crimes allegedly committed in DRC. The Court continues to elaborate and to broadcast audio-visual programmes which enable the DRC people to follow and understand the legal proceedings taking place in The Hague, including via radio and television stations.

Furthermore, the Court's staff in DRC will continue to regularly hold Outreach sessions addressing key social groups during which audio-visual summaries of the proceedings will be screened in order to encourage public involvement in an interactive debate. These meetings will provide an opportunity to listen to the concerns and expectations of the local communities, to explain the mandate of the Court and its sphere of activity, to answer questions and to correct any misinformation.