

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 15 August 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

**Decision Requesting Observations from the Defence of Bosco Ntaganda and the
Counsel Support Section**

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor

James Stewart, Deputy Prosecutor

Defence

Marc Desalliers

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Other

Jean-Pierre Kilenda Kakengi Basila

REGISTRY

Registrar & Deputy Registrar

Herman Von Hebel, Registrar

Didier Preira, Deputy Registrar

Defence Support Section

Esteban Peralta Losilla

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

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 observation from the Defence of Bosco Ntaganda ("Mr. Ntaganda") and the Counsel Support Section (the "CSS").

1. On 29 July 2013, Andrea Valdivia ("Ms. Valdivia"), Legal Assistant to the Defence team of Mathieu Ngudjolo Chui ("Mr. Ngudjolo") until 18 July 2013, was appointed in the same position within the Defence team of Mr. Ntaganda.²
2. On 14 August 2013, the Chamber received a request by the Defence of Mr. Ngudjolo, in which Jean-Pierre Kilenda Kakengu Basila ("Mr. Kilenda"), lead counsel for Mr. Ngudjolo, advances several requests related to the appointment of Ms. Valdivia (the "Request").³ More specifically, Mr. Kilenda requests the Chamber:

D'INTERDIRE l'Assistante Juridique Andrea Valdivia, à titre conservatoire et par précaution, de toutes prestations au sein de l'équipe de défense de Bosco Ntaganda jusqu'à élucidation complète par voie judiciaire de la question du conflit d'intérêts ;

D'ENJOINDRE à la Section d'appui aux conseils de suspendre immédiatement, à titre de mesure de précaution, les effets de la désignation de Maître Andrea Valdivia en qualité d'Assistante juridique au sein de l'équipe de défense de Bosco Ntaganda ;

DE FIXER un calendrier d'échanges de mémoires permettant aux parties, à savoir le Procureur, le Greffe, la Section d'appui aux conseils, la Défense de Bosco Ntaganda, Me Andrea Valdivia et la Défense de Mathieu Ngudjolo de débattre de la problématique de l'existence ou non du conflit d'intérêts entre les deux affaires Ntaganda et Ngudjolo dans la situation en République Démocratique du Congo.

D'INVITER les Barreaux de Bruxelles et du Québec auxquels appartiennent Maître Kilenda (Ordre français des avocats de Bruxelles), Mes Marc Desalliers et Andrea Valdivia (Québec) à éclairer éventuellement la Chambre sur les règles déontologiques applicables en l'espèce et de faire toutes propositions utiles susceptibles de favoriser et d'améliorer l'exercice normal du métier d'avocat au sein de la Cour pénale internationale.

DE LIMITER le nombre de pages desdits mémoires à cent (100) étant donné l'importance de cette question pour le bon fonctionnement de la Cour pénale internationale.

DE TENIR COMPTE, dans la fixation du calendrier d'échanges de mémoires, du fait que tant le Procureur que la Défense sont actuellement occupés à échanger leurs écritures finales relativement à l'appel pendant devant la Chambre d'appel contre le jugement d'acquiescement de

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

² Letter of notification No. 2013/382 sent by CSS to Jean-Pierre Kilenda Kakengu Basila, as referred to in ICC-01/04-02/06-82-Conf, para. 5.

³ ICC-01/04-02/06-82-Conf.

Mathieu Ngudjolo rendu par la Chambre de première instance II en date du 18 décembre 2012, les dernières écritures devant être déposées le 29 août 2013.

DE FIXER, après échange de mémoires, une date pour les plaidoiries en vue de permettre aux parties de développer oralement leurs conclusions écrites.⁴

3. The Single Judge notes article 67 of the Rome Statute, regulation 34(b) of the Regulations of the Court, articles 8, 12 and 16 of the Code of Professional Conduct for counsel.

4. The Single Judge notes that the Request of Mr. Kilenda touches upon the procedure followed by the Registry, more specifically by the CSS, when changing the appointment of members of defence teams of suspects or accused persons before the Court. In addition, in the case at hand, the Request involves also the Defence of Mr. Ntaganda, as Mr. Kilenda alleges that the change of appointment of Ms. Valdivia violated the standard procedure to be followed by the Registry and that there exists a conflict of interest that would prevent Ms. Valdivia from performing her functions as Legal Assistant to the Defence of Mr. Ntaganda.⁵

5. The Single Judge recalls her duty to ensure that the proceedings are conducted in a fair manner. In light of the issues raised in the Request and with a view to taking an informed decision, the Single Judge considers it necessary to obtain observations from the Defence of Mr. Ntaganda as well as from the Registry, in particular the CSS, on the Request made by Mr. Kilenda and on the procedure followed for the change of appointment of Ms. Valdivia.

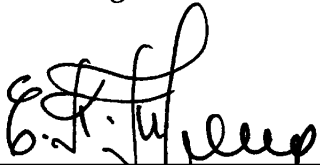
⁴ ICC-01/04-02/06-82-Conf, pp. 14-15.

⁵ ICC-01/04-02/06-82-Conf, paras 9, 11, 16, 22-23, 26-27, 40.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

orders the Defence of Mr. Ntaganda and the CSS to submit their observations on the Request made by Mr. Kilenda and on the procedure followed for the change of appointment of Ms. Valdivia by no later than 23 August 2013;

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Thursday, 15 August 2013

At The Hague, The Netherlands