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No.: ICC-01/04-02/06
Date: 10 December 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***

Public

**Observations on the reclassification of documents Nos.
ICC-01/04-02/06-156-Conf-Exp and ICC-01/04-02/06-159-Conf-Exp**

Source: Office of Public Counsel for Victims

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

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Other

I. Procedural Background

1. On 22 August 2006, Pre-Trial Chamber I, which the present case had originally been assigned to, issued the “Decision on the Prosecution Application for a Warrant of Arrest”,¹ along with a corresponding warrant of arrest for Mr Bosco Ntaganda.²

2. On 15 March 2012, the Presidency re-assigned the situation in the Democratic Republic of the Congo to Pre-Trial Chamber II.³

3. On 13 July 2012, Pre-Trial Chamber II (the “Chamber”) issued the “Decision on the Prosecutor’s Application under Article 58”,⁴ issuing a second warrant of arrest against Mr Bosco Ntaganda.

4. On 28 May 2013, the Single Judge of the Chamber (the “Single Judge”) issued the “Decision Establishing Principles on the Victims’ Application Process”⁵ in which she established, *inter alia*, a victims’ application process and ordered the Registry to consult with applicants in relation to their preference for legal representation and to start identifying appropriate assistant to counsel with the involvement or in consultation with the Office of Public Counsel for Victims (the “OPCV” or the “Office”).⁶

¹ See the “Decision on the Prosecution Application for a Warrant of Arrest” (Pre-Trial Chamber I), No. ICC-01/04-02/06-1-US-Exp-tEN, 22 August 2006; a redacted version was filed in the record of the case on 6 March 2007 and the decision was made public on 1st October 2010, No. ICC-01/04-02/06-1-Red-tENG.

² See the “Warrant of Arrest”, No. ICC-01/04-02/06-2-Anx-tENG, 22 August 2006; a corrigendum was filed into the record of the case on 7 March 2007: see No. ICC-01/04-02/06-2-Corr-tENG-Red.

³ See the “Decision on the constitution of Pre-Trial Chambers and on the assignment of the Democratic Republic of the Congo, Darfur, Sudan and Côte d’Ivoire situations” (Presidency), No. ICC-01/04-02/06-32, 15 March 2012.

⁴ See the “Decision on the Prosecutor’s Application under Article 58” (Pre-Trial Chamber II), No. ICC-01/04-02/06-36-Conf-Exp, 13 July 2012; and public redacted version No. ICC-01/04-02/06-36-Red.

⁵ See the “Decision Establishing Principles on the Victims’ Application Process” (Pre-Trial Chamber II, Single Judge), No. ICC-01/04-02/06-67, 28 May 2013.

⁶ *Idem*, p. 22.

5. On 20 November 2013, the Single Judge issued the “Decision Requesting the VPRS and the OPCV to take steps with regard to the legal representation of victims in the conformation of the charges hearing and in related proceedings” (the “Decision”)⁷ in which she requested the OPCV *“to provide observations, on the basis of its previous experience in other cases before the Court, on the availability and the possible organization of the legal teams constituted of counsels of the office to represent the two groups of victims foreseen by the Registry [in its Report]”* and orders the Victims Participation and Reparations Section (the “VPRS”) jointly with the OPCV *“to proceed without delay with the selection of several candidates for the position of assistants to counsel”*.⁸

6. On 2 December 2013, the Single Judge issued the “Decision Concerning the Organisation of the Common Legal Representation of Victims”,⁹ appointing two counsel from the Office as common legal representatives of the two groups of victims identified in the Decision.¹⁰

7. On 9 December 2013, the Senior Adviser of the Pre-Trial Division on behalf of the Single Judge of the Chamber requested the Principal Counsel of the OPCV by e-mail to provide observations on the reclassification of documents Nos. ICC-01/04-02/06-156-Conf-Exp and ICC-01/04-02/06-159-Conf-Exp by Monday 16 December 2013.¹¹

8. In compliance with the said instruction, the Principal Counsel submits the following observations.

⁷ See the “Decision Requesting the VPRS and the OPCV to take steps with regard to the legal representation of victims in the conformation of the charges hearing and in related proceedings” (Pre-Trial Chamber II, Single Judge), No. ICC-01/04-02/06-150-Conf-Exp, 20 November 2013.

⁸ *Idem*, paras. 12 and 13.

⁹ See the “Decision Concerning the Organisation of the Common Legal Representation of Victims” (Pre-Trial Chamber II, Single Judge), No. ICC-01/04-02/06-160, 2 December 2013.

¹⁰ *Idem*, para. 10.

¹¹ See the e-mail dated 9 December 2013 sent at 20:08.

II. Observations on the reclassification of documents Nos. ICC-01/04-02/06-156-Conf-Exp and ICC-01/04-02/06-159-Conf-Exp

9. The Principal Counsel submits that both documents can be re-classified as "Public".

10. In relation to the document No. ICC-01/04-02/06-156-Conf-Exp, the Principal Counsel notes that said document was submitted by the OPCV Confidential – *Ex parte* only available to the OCPV and the VPRS in accordance with regulation 23bis (2) of the Regulations of the Court following the classification assigned by the Single Judge to her Decision. However, the submission does not contain information which should be kept confidential.

11. In relation to the document No. ICC-01/04-02/06-159-Conf-Exp, the Principal Counsel submits that the filing was submitted by the Registry Confidential – *Ex parte* only available to the OCPV and the VPRS following the classification assigned by the Single Judge to her Decision. Annex 1 of the filing contains a Report which has been recently published. Therefore, the Principal Counsel considers that the submission and the Annex could be reclassified as "Public".

Respectfully submitted.



Paolina Massidda
Principal Counsel

Dated this 10th day of December 2013

At The Hague, The Netherlands