

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/04-02/06  
Date: 12 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**

**With one Confidential *EX PARTE* Registry and OPCV only Annex**

**Joint Report on the organization of common legal representation of victims**

**Source: Registry  
Office of Public Counsel for Victims**

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

**The Office of the Prosecutor**

Ms Fatou Bensouda, Prosecutor  
Mr James Stewart  
Ms Nicole Samson

**Counsel for the Defence**

Mr Marc Desalliers  
Ms Caroline Buteau  
Ms Andrea Valdivia

**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**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

Mr Esteban Peralta Losilla

**Deputy Registrar**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Ms Fiona McKay

**Other**

The Registrar of the International Criminal Court (the “Court”) jointly with the Principal Counsel of the Office of Public Counsel for Victims (the “OPCV” or “Office”):

NOTING the Single Judge’s Decision in the case of *The Prosecutor v. Bosco Ntaganda* (the “Case”), notified on 28 May 2013, establishing principles on the victims’ application process (the “Decision of 28 May 2013”);<sup>1</sup>

NOTING the Registry’s Interim Report on the organization of common legal representation, notified on 13 November 2013, recommending the creation of two distinct victims groups, each represented by a legal team;<sup>2</sup>

NOTING the Single Judge’s Decision notified on 20 November 2013,<sup>3</sup> requesting observations from the OPCV on the availability and the possible organization of two legal teams constituted of counsel of the Office to represent two groups of victims foreseen by the Registry, and ordering 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;<sup>4</sup>

NOTING the Observations of the OPCV, notified on 26 November 2013, submitting that the Office is able to constitute two separate and autonomous legal teams, which will not share confidential information related to the victims belonging to the two distinct groups, led by two counsel from the Office appointed as common legal representatives;<sup>5</sup>

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<sup>1</sup> See ICC-01/04-02/06-67.

<sup>2</sup> One group of victims composed of UPC/FPLC child soldiers and another group composed of victims of UPC/FPLC attacks. See ICC-01/04-02/06-160, para. 10, referring to ICC-01/04-02/06-141-Conf-Exp.

<sup>3</sup> See ICC-01/04-02/06-160, para. 5 referring to ICC-01/04-02/06-150-Conf-Exp.

<sup>4</sup> *Idem*, para. 5.

<sup>5</sup> *Ibid.*, para.14 referring to ICC-01/04-02/06-156-Conf-Exp.

**NOTING** the Single Judge's Decision, notified on 2 December 2013, appointing two counsel from the OPCV as common legal representatives of the two groups of victims as identified by the Registry for the purposes of the confirmation of charges hearing and related proceedings, and ordering the VPRS, jointly with the OPCV and with the assistance of the Counsel Support Section (the "CSS"), to finalize the establishment of two legal teams, including the selection of assistants to counsel, and to report to the Chamber by 12 December 2013 (the "Decision of 2 December 2013");<sup>6</sup>

**NOTING** article 68(3) of the Rome Statute, rules 16(l)(b) and 90 of the Rules of Procedure and Evidence (the "Rules"), regulations 23 *bis*, 67, 68, 79, 80, 81 and 86(9) of the Regulations of the Court (the "Regulations"); regulations 112, 113, 114, 124 and 125 of the Regulations of the Registry; and the Code of Professional Conduct for Counsel (the "CPCC");

**CONSIDERING** that, as highlighted in the Decision of 2 December 2013, the finalization of the organization of the two legal teams that will represent victims participating in the Case should be done in a timely manner so as to provide the appointed common legal representatives with sufficient time to prepare for the confirmation of charges hearing properly, in order to allow victims to participate meaningfully in the proceedings;<sup>7</sup>

**CONSIDERING** that since the Decision of 2 December 2013, discussions were held between the VPRS, the OPCV and the CSS on the organization and composition of the two legal teams that will represent applicants who may be admitted as participating victims in the present Case;

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<sup>6</sup> *Ibid.*, operative paragraphs a) and b), p. 11.

<sup>7</sup> *Ibid.*, para. 21.

**CONSIDERING** that Annex 1 is filed “Confidential *ex parte* Registry and OPCV only” since it contains personal information related to the members of the proposed legal teams, as well as explanations of the working methods of the OPCV which should remain confidential;

**TRANSMIT** to the Single Judge the following report on the organization of common legal representation of victims in the Case (the “Report”).

1. On 6 December 2013, following discussions held on the composition and organization of the two legal teams, the OPCV sent to the VPRS and to the CSS a memorandum explaining the composition (see Part A below) and organization (see Part B below) of the two legal teams that will represent victims authorized to participate in the Case.<sup>8</sup> This document is filed as Confidential *Ex Parte* OPCV and Registry only Annex 1 of this Report.

#### **A. Composition of the two legal teams**

##### **a. Common legal representatives**

2. Following the Decision of 2 December 2013 and for the purposes of the common legal representation of victims in the Case, the Principal Counsel of the OPCV has designed Ms Sarah Pellet as common legal representative of the group of victims composed of individuals who allege that they were former child soldiers and Mr Dmytro Suprun as common legal representative of the group of victims composed of individuals alleging to have suffered from the attacks. Each common legal representative will be assisted by an assistant to counsel based in the Democratic Republic of the Congo (the “DRC”).

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<sup>8</sup> See the Memorandum DRC-BOSCO-PT-2013-09-PM, sent from the Principal Counsel of OPCV, to the Chief of VPRS and Chief of CSS on 6 December 2013.

**b. Assistants to counsel**

3. In order to identify candidates for the position of an assistant to counsel the OPCV and VPRS agreed on the criteria<sup>9</sup> that should guide the selection of the appropriate candidates. The identified criteria were the following:

- a. Good knowledge of the legal texts of the Court and principles of the Court's jurisprudence related to the participation of victims;
- b. Good drafting skills;
- c. A familiarity/connection with the DRC and a 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;
- d. Experience representing large numbers of clients or groups of victims;
- e. Wide experience of working with victims or with groups composed of vulnerable individuals;
- f. A pre-established relationship of trust with victims eligible to participate in the case, or factors demonstrating a capacity for such a relationship with these individuals, or with vulnerable individuals, such as victims of sexual violence or victims of crimes committed against children;
- g. Excellent knowledge of French and knowledge of one or more languages spoken in the DRC (in particular, Swahili and Lingala);
- h. Immediate availability to work in the field in the DRC, for the duration of the appointment and fulltime;

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<sup>9</sup> When it makes its recommendations on common legal representation of victims pursuant to its responsibilities under rules 16(1)(b) and 90 of the Rules, the Registry applies the minimum requirements for counsel and/or assistant to counsel set out in the Court's legal texts, any criteria established by the relevant Chamber, criteria relevant to each case, in particular, criteria identified in the course of consultations with victims and, in this particular case, criteria identified by the common legal representatives.

- i. Information technology skills, in particular familiarity with the information technology system of the Court.
- j. Experience in previous proceedings before the Court was considered as an asset.

4. Based on these criteria, two assistants to counsel were identified.

5. Both identified assistants to counsel are Congolese lawyers on the Court's list of Counsel. They have extensive experience in the field – in particular in the Ituri region – which will facilitate the identification of suitable safe places to meet victims; knowledge of the Case and of the proceedings before the Court, knowledge of the local languages spoken by the majority of the victims, and understanding of the type of victimization and of the cultural and ethnic background of the victims. They have both confirmed their availability to be part of the OPCV team and to work full time.

6. It is the opinion of the OPCV that the appointment of the two assistants to the two teams will be an important asset in ensuring quality and efficient legal representation of victims in the Case.

7. Based on the information regarding the candidates' profiles provided by the OPCV and the confirmation that they fulfill all the identified criteria, the VPRS and the CSS have no particular concern to raise on this choice of the Office of either assistant to counsel.

8. The OPCV further considers that, at this point in time and for the purpose of the pre-trial proceedings, one assistant to counsel based in the field per team is sufficient for maintaining regular contact with victims, taking instructions and keeping victims regularly updated about the proceedings. However, this assessment might be subject to change in the future depending, *inter alia*, on the number of

victims authorized to participate, as well as on the number of locations where victims authorized to participate reside.

9. Finally, the OPCV notes that this system will allow continuous access to victims and will facilitate the collection of views and concerns, information and/or evidence needed to represent the interests of the victims in the proceedings. Furthermore, the assistants to counsel will be able to ensure regular contact with victims in order to inform them about developments in the proceedings and to address their questions and expectations.

### **B. Organization of the two legal teams**

10. Pursuant to the Single Judge's Decision of 2 December 2013 that the two legal teams represent the interests of all victims, who are divided into two distinct groups,<sup>10</sup> the OPCV indicates that the two legal teams are separate and autonomous and that confidential information relating to the victims will not be shared between the two teams. Indeed, an information management system is in place within the OPCV that allows for rigorous segregation of access to such information. This system is currently used in the two Kenyan cases where two staff members of the OPCV are seconded to the respectively appointed common legal representatives. This system has proven to be effective.

11. However, the OPCV underlines that the management of access in this specific Case will be easier to control, insofar as the two teams will presumably share the same access to the evidence as ruled upon by the Chamber when deciding on the modalities of participation of victims in the proceedings. Indeed, according to the practice of the Court, at the confirmation of charges hearing common legal representatives are granted access to public information and the possibility for them

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<sup>10</sup> See ICC-01/04-02/06-160, para. 23.

to access confidential material has been ruled upon on a case-by-case basis. Therefore, initially, the only information which would need to be segregated relates to the applications of victims. In this regard, the OPCV emphasises that said access is granted individually to staff in each case.

12. The OPCV also notes that the separate legal teams may ultimately file substantially similar submissions, depending on the views of their respective groups of clients. Furthermore, they might share resources to the extent of their common interest, as would any other party or participant that identifies a common interest with another party or participant in the course of proceedings.

13. Finally, in relation to the issue of real or perceived conflicts of interests within either of the two groups, the OPCV considers that this matter could be approached along the lines set out by Trial Chamber II in the *Katanga and Ngudjolo Chui* case. In the said case, the Trial Chamber indicated that “[s]hould the common legal representative receives conflicting instructions from one or more groups of victims, he or she shall endeavour to represent both positions fairly and equally before the Chamber. In case the conflicting instructions are irreconcilable with representation by one common legal representative, and thus amount to a conflict of interest, the common legal representative shall inform the Chamber immediately, who will take appropriate measures”.<sup>11</sup> In the OPCV’s submission, said measures might include the appointment of an external counsel.

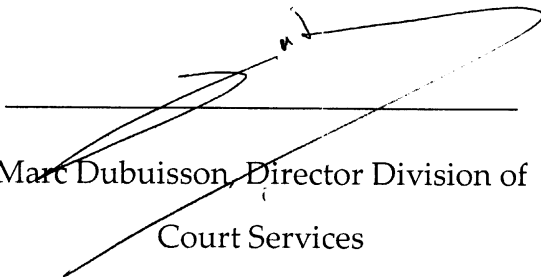
### **C. Further considerations**

14. As stated in the Decision of 28 May 2013, the position of assistant to counsel based in the field shall be paid by the Court’s legal aid budget.<sup>12</sup>

<sup>11</sup> See ICC-01/04-01/07-1328, para. 16.

<sup>12</sup> See ICC-01/04-02/06-67, para. 47.

15. The Registry notes that, based on the texts governing legal assistance paid by the Court, the cost of the proposed team composition would amount to a maximum of 4889 euros per month per team, plus the cost of reasonably necessary activities carried out in the field as approved by the Registrar.



Marc Dubuisson, Director Division of  
Court Services

*per* delegation of Mr Herman

von Hebel, Registrar



Paolina Massidda, Principal Counsel of  
the Office of Public Counsel for Victims

Dated this 12<sup>th</sup> day of December 2013

At The Hague, The Netherlands