

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **24 January 2014**

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
URGENT**

Joint Request to attend the Status Conference to be held on 27 January 2014

Source: 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
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**

Paolina Massidda

**The Office of Public Counsel for the
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States Representatives

REGISTRY

Registrar

Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

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, 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 2 December 2013, the Single Judge issued the “Decision Concerning the Organisation of the Common Legal Representation of Victims”,⁷ appointing two counsel from the Office as common legal representatives of the two groups of victims identified in the “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” (the “Common Legal Representatives”).⁸

6. On 15 January 2014, the Single Judge issued the “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings” (the “15 January 2014 Decision”),⁹ admitting the victims applicants listed in annex C thereof as victims in the confirmation of charges hearing and in the related proceedings.¹⁰ The Single Judge also established the participatory rights of victims in said proceedings¹¹ specifying *inter alia* that “[i]n respect of those decisions, filings and evidence that are classified as ‘confidential’, the Chamber will retain the option to decide on a case-by-case basis, either upon motivated request by the common legal representatives or proprio motu, whether or not to grant access to these documents”.¹²

7. On 24 January 2014, the Single Judge issued the “Decision Convening a Status Conference on Disclosure Issues and on the Organisation of the Confirmation hearing” (the “Decision”)¹³ convening a status conference on Monday 27 January

⁷ 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.

⁸ *Idem*, paras. 10, 23 and 25. See also the “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” (Pre-Trial Chamber II, Single Judge), No. ICC-01/04-02/06-150, 20 November 2014.

⁹ See the “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings” (Pre-Trial Chamber II, Single Judge), No. ICC-01/04-02/06-211, 15 January 2014.

¹⁰ See the “Annex C to the Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings” (Pre-Trial Chamber II, Single Judge), No. ICC-01/04-02/06-211-AnxC, 15 January 2014.

¹¹ See the “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings”, *supra* note 9, section IX, paras. 81-96.

¹² *Idem*, para. 90.

¹³ See the “Decision Convening a Status Conference on Disclosure Issues and on the Organisation of the Confirmation hearing” (Pre-Trial Chamber II, Single Judge), No. ICC-01/04-02/06-225, 24 January 2014.

2014 to be held in closed session in the presence of the Prosecutor, the Defence and the Registrar or his representative(s).¹⁴

8. The Common Legal Representatives respectfully request the Single Judge to treat this request on an urgent basis considering that the hearing is to be held on Monday 27 January 2014.

II. REQUEST TO ATTEND THE HEARING OR PART THEREOF

9. In accordance with paragraph 85 of the 15 January 2014 Decision “*the Chamber retains the option to decide on a case-by-case basis, upon specific request submitted by the legal representative(s) pursuant to article 68(3) of the Statute or proprio motu, whether they will be authorized to attend [...] sessions [to be held in camera]*”.¹⁵

10. The Common Legal Representatives submit that since the 15 January 2014 Decision expressly applies to the participation of victims in the Confirmation of charges hearing and *related proceedings* they are entitled to submit a request in order to attend the status conference during which “*questions related to the organisation of the confirmation hearing*”¹⁶ will be addressed.

11. The Common Legal Representatives note that one of the issues to be discussed at the status conference, namely “*questions or challenges concerning jurisdiction or admissibility*”,¹⁷ has a clear impact on the interests of victims they represent since rule 59 of the Rules of Procedure and Evidence provides for the possibility for victims to “*make representation*” on said challenges.

¹⁴ *Idem*, p. 6.

¹⁵ See the “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings”, *supra* note 9, para. 85.

¹⁶ See the “Decision Convening a Status Conference on Disclosure Issues and on the Organisation of the Confirmation hearing”, *supra* note 13, para. 11.

¹⁷ *Idem*, para. 13.

12. Furthermore, the Common Legal Representatives note that the Single Judge wishes to address, during the status conference to be held on 27 January 2014 issues such as *“the time needed for the presentation of [the parties’] evidence [...] and whether they intend to call viva voce witnesses”*,¹⁸ and the way she expects *“the Prosecutor [to] organize her arguments and presentation of evidence”*.¹⁹ The Common Legal Representatives respectfully submit that these discussions might be held in public and in their presence. Indeed, said discussions are of general nature and do not call for debating confidential issues or for disclosure of confidential information.

13. The Common Legal Representatives also consider that, in order for the victims they represent to be able to participate meaningfully at the confirmation of charges hearing, information related to these topics are essential, and even more so when considering the very stringent calendar leading to the confirmation of charges hearing to be held starting 10 February 2014. In this context, the Common Legal Representatives note that the Single Judge did not rule on the possibility for them to question witnesses or to challenge the evidence and consequently they will have a possibility to put requests before the Chamber demonstrating that the relevant course of action is justified by the issue(s) under consideration and directly affects the personal interests of the victims they represent.²⁰ This is also perfectly in line with rule 91(3) of the Rules of Procedure and Evidence which provides that *“[w]hen a legal representative attends and participate in accordance with this rule, and wishes to question a witness [...], the legal representative must make an application with the Chamber”*. Absent of these basic information, the Common Legal Representatives will be prevented from participating in the evidentiary debate to be held at the confirmation of charges

¹⁸ *Ibid.*, para. 12. See also para. 15.

¹⁹ *Ibid.*, para. 14.

²⁰ In this sense, see the “Decision on Victims’ Participation at the Confirmation of the Charges Hearing and in the Related Proceedings” (Pre-Trial Chamber II, Single Judge), No. ICC-01/09-01/11-249, 5 August 2011, paras. 99-100. See also the “Decision on Victims’ Participation at the Confirmation of the Charges Hearing and in the Related Proceedings” (Pre-Trial Chamber II, Single Judge), No. ICC-01/09-02/11-267, 26 August 2011, paras. 116-117

hearing²¹ and will not be able to submit any request to question potential witnesses, should this be necessary to represent the interests of their clients.

14. The Common Legal Representatives also respectfully note that they might be entitled to participate in the discussions related to the witnesses to be called at the hearing since they represent three dual status individuals on which the Prosecution intend to rely for the confirmation of charges hearing.²²

FOR THE FOREGOING REASONS

The Common Legal Representatives respectfully request the Single Judge to hold the status conference, or at least parts thereof, in public in accordance with regulation 20 of the Regulations of the Court so as to enable victims to participate meaningfully in the proceedings.



Dmytro Suprun
Common Legal Representative of the
Victims of the Attacks



Sarah Pellet
Common Legal Representative of the
Child soldiers

Dated this 24th day of January 2014

At The Hague, The Netherlands

²¹ In this sense, see the “Decision on the Set of Procedural Rules Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case” (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/07-474, 13 May 2008, par. 151.

²² See the “Joint Request of the Common Legal Representatives to access documents in the *Bosco Ntaganda* case record”, No. ICC-01/04-02/06-222, para. 13. See also the “Prosecution’s provision of information related to DRC-OTP-P-0758 and request to redact information in three victim applications”, No. ICC-01/04-02/06-199-Conf-Exp, 9 January 2014, referred to by the Single Judge in her “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings”, *supra* note 9, paras. 12 and 70-75.