

• **Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 27 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

**Decision on the “Joint Request to attend the Status Conference to be held on 27
January 2014”**

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

Counsel for the Defence

Marc Desalliers

Legal Representatives of the Victims

Sarah Pellet
Dmytro Surpun

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

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar

Herman von Hebel, Registrar

Defence Support Section

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 renders this decision on the “Joint Request to attend the Status Conference to be held on 27 January 2014” (the “Joint Request”).²

1. On 22 August 2006, Pre-Trial Chamber I to which the situation in the Democratic Republic of the Congo (the “DRC”) had originally been assigned, issued a warrant of arrest for Bosco Ntaganda (“Mr. Ntaganda”) for his alleged responsibility for the war crimes of conscripting, enlisting children under the age of fifteen and using them to participate actively in hostilities under either article 8(2)(b)(xxvi) or article 8(2)(e)(vii) of the Rome Statute (the “Statute”), committed from July 2002 to December 2003 at various locations in the DRC.³ On 13 July 2012, the Chamber to which the same situation has been reassigned,⁴ issued a second warrant of arrest for Mr. Ntaganda for his alleged responsibility for the crimes against humanity of murder under article 7(1)(a) of the Statute, rape and sexual slavery under article 7(1)(g) of the Statute and persecution under article 7(1)(h) of the Statute, and for the war crimes of murder under article 8(2)(c)(i) of the Statute, attack against a civilian population under article 8(2)(e)(i) of the Statute, rape and sexual slavery under article 8(2)(e)(vi) of the Statute, and pillaging under article 8(2)(e)(v) of the Statute, all committed in various locations of the DRC between 1 September 2002 and the end of September 2003.⁵

2. On 22 March 2013, Mr. Ntaganda voluntarily surrendered to the Court. During his first appearance before the Chamber, on 26 March 2013,⁶ the Single Judge scheduled the commencement of the confirmation of the charges hearing for 23

¹ Pre-Trial Chamber II, 21 March 2013, ICC-01/04-02/06-40.

² ICC-01/04-02/06-228.

³ ICC-01/04-02/06-2-Corr-tENG-Red.

⁴ Presidency, “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”, 15 March 2012, ICC-01/04-02/06-32.

⁵ ICC-01/04-02/06-36-Red.

⁶ ICC-01/04-02/06-T-2-ENG, page 12, lines 2-3.

September 2013. The hearing was rescheduled for Monday, 10 February 2014 after the Prosecutor requested its postponement.⁷

3. On 10 January 2014, the Prosecutor filed the document containing the charges, together with a list of evidence and a translation into Kinyarwanda of both documents.⁸

4. On 15 January 2014, the Single Judge issued the “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings”⁹ (the “15 January 2014 Decision”), in which the Single Judge, *inter alia*, admitted 922 applicants as victims participating in the confirmation of charges hearing and in the related proceedings and established the procedural rights that these victims may exercise through their respective common legal representatives.

5. 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 “24 January 2014 Decision”),¹⁰ in which she convened a status conference on Monday 27 January, at 14.30hrs, to be held in closed session, in the presence of the Prosecutor, the Defence and the Registrar or his representative(s).¹¹

6. On 24 January 2014, the Single Judge received the Joint Request, in which the common legal representatives 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”.¹²

⁷ Pre-Trial Chamber II, “Decision on the ‘Prosecution’s Urgent Request to Postpone the Date of the Confirmation Hearing’ and Setting a New Calendar for the Disclosure of Evidence Between the Parties”, 17 June 2013, ICC-01/04-02/06-73.

⁸ ICC-01/04-02/06-203-AnxA, ICC-01/04-02/06-203-Conf-AnxB, ICC-01/04-02/06-203-AnxC.

⁹ Pre-Trial Chamber II, ICC-01/04-02/06-211.

¹⁰ Pre-Trial Chamber II, ICC-01/04-02/06-225.

¹¹ Pre-Trial Chamber II, ICC-01/04-02/06-225, p. 6.

¹² ICC-01/04-02/06-228, p. 7.

7. The Single Judge notes articles 21(1)(a), (3) and 68(3) of the Statute and rules 91 and 121(2) of the Rules of the Procedure and Evidence (the “Rules”).

8. The Single Judge recalls that in the 15 January 2014 Decision, she held that “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 the common legal representatives will be authorized to attend any hearing that is held in camera.¹³

9. In their Joint Request, the common legal representatives submit that they are entitled to attend the status conference because several questions that impact on the interests of the victims that they represent will be discussed, *inter alia*: questions related to the organisation of the confirmation of charges hearing; questions or challenges concerning jurisdiction or admissibility; the time needed by the parties to present their evidence, whether or not they intend to call live witnesses and the manner in which the Prosecutor will organise her arguments and the presentation of the evidence.¹⁴ They further submit that the information to be discussed at the status conference is “essential” and that absent such information the common legal representatives “will be prevented from participating in the evidentiary debate at the confirmation of charges hearing and will not be able to submit any request to question potential witnesses”.¹⁵

10. The Single Judge considers that the Joint Request is predicated on a misrepresentation of the 24 January 2014 Decision and an erroneous interpretation of the law applicable to the rights of the victims to be exercised at the confirmation of charges hearing. At the outset, the Single Judge underlines that questions of jurisdiction and admissibility will not be discussed at the status conference. To the contrary, as expressly mentioned in the 24 January 2014 Decision, the Chamber will only seek “information as to *whether the parties intend* to make any such submission,

¹³ Pre-Trial Chamber II, ICC-01/04-02/06-211, para. 85.

¹⁴ ICC-01/04-02/06-228, paras 10-14.

¹⁵ ICC-01/04-02/06-228, para. 13.

and if so, how much time they anticipate will be necessary to present such issues” (emphasis added).¹⁶

11. Moreover, the Single Judge recalls that, as stated by the Appeals Chamber, “participating victims are not parties to the proceedings; under article 68(3) of the Statute they may only present their “views and concerns”, and this only if their personal interests are affected”.¹⁷ In view of their specific role (participants and not parties to the proceedings) provided by the legal texts of the Court, the Single Judge stresses that participating victims are not entitled to make submissions as to what type of evidence, including live witnesses, the parties intend to present at the confirmation of charges hearing; the amount of time they will need to develop their arguments and the analysis of the relevant evidence.

12. In light of the foregoing, the Single Judge recalls that in the 24 January 2014 Decision, she only requested the parties to provide information as to their intention to call *viva voce* witnesses and, if so, the time required for the questioning of these witnesses.¹⁸ Thus, the issue of deciding whether or not to call *viva voce* witnesses is confined to the parties, subject to the final assessment of the Chamber. Moreover, no information about the topics on which the witnesses, if any, will be called to testify, will be discussed at the status conference.

13. Should the parties intend to call one or more witnesses to testify in court, and if during the questioning some of the topics addressed will affect the interests of the participating victims, the common legal representatives will be able to submit a request to the Chamber to question these witnesses, pursuant to article 68(3) of the Statute and rule 91(3) of the Rules, subject to the directions of the Chamber.

14. Finally, in case the Prosecutor will decide to call any of the three witnesses who are also victims admitted to participate in the confirmation of charges hearing, the

¹⁶ Pre-Trial Chamber II, ICC-01/04-02/06-225, para. 13.

¹⁷ Appeals Chamber, “Judgment on the Appeal of Mr. Katanga Against the Decision of Trial Chamber II Entitled ‘Decision on the Modalities of Victim Participation at Trial’”, ICC-01/04-01/07-2228 OA11, 16 July 2010, para. 39.

¹⁸ Pre-Trial Chamber II, ICC-01/04-02/06-225, paras 12, 15.

legal representatives will be informed in due course so as to be in a position to fulfil their duties *vis-à-vis* their clients.

15. In light of the foregoing, allowing the common legal representatives to attend the status conference and participate in the discussion of the issues scheduled is not warranted. However, the Single Judge remains attentive to the rights of the victims participants in the present case and of their legal representatives, as enshrined in the law and defined in the 15 January 2014 Decision.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

Rejects the Joint Request.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Monday, 27 January 2013

At The Hague, The Netherlands