



Original: **English**

No.: ICC-01/04-02/06
Date: 10 February 2014

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single Judge
Judge Hans-Peter Kaul
Judge Cuno Tarfusser

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public

**Joint Request of the Common Legal Representatives to access Annex B of the
Defence's submission ICC-01/04-02/06-253**

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, 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 7 February 2014, the Single Judge issued the “Second Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings” (the “7 February 2014 Decision”).¹³

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 “Second Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings”, (Pre-Trial Chamber II, Single Judge), No. ICC-01/04-02/06-251, 7 February 2014.

8. On 7 February 2014, the Defence filed its “Communication de l’inventaire des preuves amendé de la Défense et du tableau analytique amendé des éléments que la Défense entend présenter dans le cadre de l’audience de confirmation des charges” with Public Annex A and Confidential Annex B.¹⁴ Annex B – which is the analysis chart of evidence to be used by the Defence at the confirmation of charges hearing – has not been notified to the Common Legal Representatives.

9. The Common Legal Representatives respectfully request the Pre-Trial Chamber to treat this request on an urgent basis considering the fact that the confirmation of the charges hearing is ongoing and the presentation by the Defence will start soon.

II. REQUEST FOR ACCESS TO ANNEX B OF THE DEFENCE’S LIST OF EVIDENCE

10. The Common Legal Representatives submit that in order to fulfill their mandate and to be able to adequately protect the rights and interests of the victims who have been admitted to participate in the confirmation of charges hearing and in the related proceedings,¹⁵ it is necessary that access to Annex B of the Defence’s List of Evidence be granted to them.

11. The Common Legal Representatives recall the arguments put forward in their previous request to access documents in the record of the case and in particular the need to access certain type of documents in order to effectively represent the interests of their clients at the confirmation of the charges hearing.¹⁶

¹⁴ See the “Communication de l’inventaire des preuves amendé de la Défense et du tableau analytique amendé des éléments que la Défense entend présenter dans le cadre de l’audience de confirmation des charges”, No. ICC-01/04-01/06-253, 7 February 2014.

¹⁵ See the “Annex C to the Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings”, *supra* note 10.

¹⁶ See the “Joint Request of the Common Legal Representatives to access documents in the Bosco Ntaganda case record”, No. ICC-01/04-01/06-222, 23 January 2014, paras. 16-19.

12. In this regard, the Common Legal Representatives reiterate that in accordance with the jurisprudence of the Court as developed by Pre-Trial Chambers I and II, *“the interests of victims are affected at [the stage of the confirmation of charges] since this is an essential stage of the proceedings which aims to determine whether there is sufficient evidence providing substantial grounds to believe that the suspects are responsible for the crimes included in the Prosecution Charging Document”*¹⁷ and that *“the issue of the guilt or innocence of the persons charged before this Court is not only relevant, but it also affects the core interests of those granted the procedural status of victim in any case before the Court, because this issue is closely linked to the satisfaction of their right to justice”*.¹⁸ Furthermore, *“the personal interests of victims may be affected by the outcome of the Confirmation Hearing to the extent that it aims at either (i) confirming the charges against those responsible for perpetrating the crimes which caused them to suffer harm; or (ii) declining to confirm the charges for those not responsible for such crimes, so that the search for those who are criminally liable can continue”*.¹⁹

13. The Common Legal Representatives are mindful that the Defence’s List of evidence refers to a number of confidential documents. However, some of the documents quoted in said List and classified as confidential are accessible to them.

14. Moreover, the Common Legal Representatives note that, on 29 January 2014, the Single Judge of the Chamber granted a similar request to have access to the analysis chart filed by the Prosecution in the record of the case. In said decision the Single Judge observed that *“access to the consolidated version of the In-depth Analysis*

¹⁷ 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, para. 45. See also the “Decision on the Requests for Leave to Appeal the Decision on the Application for Participation of Victims in the Proceedings in the Situation” (Pre-Trial Chamber I, Single Judge), No. ICC-02/05-121, 6 February 2008, pp. 6, 8 and 9.

¹⁸ See the “Decision on the Set of Procedural Rules Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case”, *supra* note 17, paras. 31-44. See also the “Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06” (Pre-Trial Chamber II), No. 02/04-01/05-252, 10 August 2007, paras. 9 to 11.

¹⁹ See the “Decision on 138 applications for victims’ participation in the proceedings” (Pre-Trial Chamber I), No. ICC-01/04-01/10-351, 11 August 2011, para. 23.

Chart will provide the common legal representatives with guidance as to what type of material will be used by the Prosecutor at the confirmation of charges hearing to support the charges against Mr Ntaganda. Likewise, granting access to the consolidated version of the In-Depth Analysis Chart does not equal to disclosing to the common legal representatives the entirety of the evidence (more specifically the confidential evidence) included by the Prosecutor in the List of Evidence”²⁰.

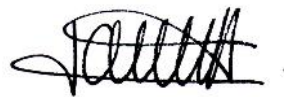
15. The Common Legal Representatives contend that the same *rationale* applies *mutatis mutandis* to the Defence’s analysis chart.

FOR THE FOREGOING REASONS

The Common Legal Representatives respectfully request the Pre-Trial Chamber to grant them access to Annex B of the “Communication de l’inventaire des preuves amendé de la Défense et du tableau analytique amendé des éléments que la Défense entend présenter dans le cadre de l’audience de confirmation des charges” and consequently to order the Registry notification of said document.



Dmytro Suprun
Common Legal Representative of the
Victims of the Attacks



Sarah Pellet
Common Legal Representative of the
Child soldiers

Dated this 10th day of February 2014

At The Hague, The Netherlands

²⁰ See the “Decision on the “Joint request of the Common Legal Representatives to access documents in the Bosco Ntaganda case record”, (Pre-Trial Chamber II, Single Judge), No. ICC-01/04-02/06-371, 29 January 2014, para. 22.