

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 2 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

Decision Concerning the Organisation of Common Legal Representation of Victims

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

The Office of the Prosecutor

Fatou Bensuda, Prosecutor
James Stewart, Deputy Prosecutor

Defence

Marc Desalliers

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Paolina Massidda
Sarah Pellet
Dmytro Suprun

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Herman Von Hebel

Defence Support Section

Esteban Peralta Losilla

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Fiona McKay

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 issues this decision concerning the organisation of common legal representation of victims for the purposes of the confirmation of charges hearing and related proceedings.

I. Procedural History

1. On 26 March 2013, the hearing for initial appearance of Bosco Ntaganda (“Mr. Ntaganda”) took place.² At the hearing, the Single Judge decided that 23 September 2013 would be the date for the commencement of the confirmation of charges hearing.³ Upon request of the Prosecutor, this date was subsequently postponed until Monday, 10 February 2014.⁴

2. On 28 May 2013, the Single Judge issued the “Decision Establishing Principles on the Victims’ Application Process”⁵ in which she established a victims’ application system tailored to the specific features of the present case, including a one-page application form (the “Simplified Form”), with a view to rationalizing the application process and enhancing its predictability, efficiency and expeditiousness.⁶ In this decision, the Single Judge ordered, *inter alia*:

- (g) the Registry to consult with applicants as to their preferences for legal representation, to assess whether or not they could be represented by a common legal representative(s), including by the OPCV, and to start identifying an appropriate “assistant to counsel” with the involvement or in consultation with the OPCV [...].⁷

¹ Pre-Trial Chamber II, “Decision Designating a Single Judge”, 21 March 2013, ICC-01/04-02/06-40, p. 4.

² ICC-01/04-02/06-T-2-ENG ET WT.

³ ICC-01/04-02/06-T-2-ENG ET WT, p. 12.

⁴ 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, p. 19.

⁵ Pre-Trial Chamber II, ICC-01/04-02/06-67.

⁶ Pre-Trial Chamber II, ICC-01/04-02/06-67, para. 1.

⁷ Pre-Trial Chamber II, ICC-01/04-02/06-67, p. 22.

3. On 13 September 2013,⁸ 20 September 2013⁹ and 31 October 2013¹⁰ the Registry submitted to the Chamber and the Prosecutor reports under regulation 86(5) of the Regulations of the Court (the “Regulations”) together with un-redacted copies of 822 Simplified Forms, in total. Redacted copies of the applications were also submitted to the Defence.

4. On 13 November 2013, the Chamber received the “Registry’s Interim report on the organization of common legal representation” (the “Report”)¹¹, in which the Registry provided its observations on: (i) how the applicants had been consulted to that date about their preferences for legal representation and the results of such consultations; (ii) potential conflicts of interest among groups of applicants; and (iii) steps to be taken to organize the legal representation of those applicants who may be admitted as victims participating in the present case, including a proposal for the criteria which may guide the selection of common legal representatives.

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 confirmation of charges hearing and in the related proceedings”,¹² in which she requested observations from the Office of Public Counsel for Victims (the “OPCV”), in light of its previous experience in other cases before the Court, “on the availability and the possible organization of two legal teams constituted of counsels of the office to represent the two groups of victims foreseen by the Registry.”¹³ In addition, the Single Judge ordered 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, on the basis of appropriate criteria identified by

⁸ ICC-01/04-02/06-106-Conf-Exp and its confidential redacted version.

⁹ ICC-01/04-02/06-122-Conf and its annexes.

¹⁰ ICC-01/04-02/06-122-Conf and its annexes.

¹¹ ICC-01/04-02/06-141-Conf-Exp.

¹² Pre-Trial Chamber II, ICC-01/04-02/06-150-Conf-Exp.

¹³ Pre-Trial Chamber II, ICC-01/04-02/06-150-Conf-Exp, p. 7 and para. 12.

these two specialized units of the Court, including the type of victimization suffered by the individuals in the different groups.¹⁴

6. On 26 November 2013, the OPCV submitted its observations, as ordered (the “OPCV Observations”).¹⁵

7. On 28 November 2013, in compliance with an order of the Single Judge, the Registry transmitted a survey conducted by *Avocats Sans Frontières* concerning the preferences for legal representation of potential victims of crimes allegedly committed by the suspect.¹⁶

II. The Registry’s Submissions

8. The Registry, through the VPRS as the specialized unit in charge of assisting victims, states in its Report to have consulted a total of 462 applicants¹⁷ as to their preference for legal representation.¹⁸ The Registry submits that although the number “does not reflect the totality of applications to participate received or expected to be received in the future, [...] [it] represent[s] a significant proportion of the total applicants expected, and [the Registry] decided to submit the Report at the present moment, in order not to delay the appointment of a common legal representative or representatives”.¹⁹

9. These consultations, in the Registry’s opinion, show that the main criteria identified by the applicants for the selection of a common legal representative are competency and availability, regardless of his or her nationality.²⁰ The Registry notes that while some applicants prefer a Congolese lawyer, others favour a foreigner.²¹ In

¹⁴ Pre-Trial Chamber II, ICC-01/04-02/06-150-Conf-Exp, para. 13 and p. 7.

¹⁵ ICC-01/04-02/06-156-Conf-Exp.

¹⁶ ICC-01/04-02/06-159-Conf-Exp and ICC-01/04-02/06-159-Conf-Exp-Anx1.

¹⁷ This number includes applicants whose application has been either transmitted to the Chamber or received by the VPRS at the seat of the Court.

¹⁸ ICC-01/04-02/06-141-Conf-Exp, para. 7, footnote 12.

¹⁹ ICC-01/04-02/06-141-Conf-Exp, para. 7, footnote 12.

²⁰ ICC-01/04-02/06-141-Conf-Exp, para. 10.

²¹ ICC-01/04-02/06-141-Conf-Exp, para. 10.

general, applicants highlight the importance of appointing someone “who can understand victims, the background of the conflict and of the [c]ase, and the context in which they are living, with some respondents asking that the person has proximity and regular communication with the victims”.²²

10. The Registry observes the serious concerns raised by the applicants with regard to the possibility of having one legal team representing both Hema and Lendu/non-Hema victims or one legal team representing both the former child soldiers and the victims of the attacks allegedly committed by the *Union des patriotes congolais* (the “UPC”) and the *Forces patriotiques pour la libération du Congo* (the “FPLC”).²³ Taking into account these concerns, the Registry recommends the creation of two distinct victims groups, each represented by a legal team: a group consisting of UPC/FPLC child soldiers and another consisting of victims of UPC/FPLC attacks.²⁴

11. The Registry further notes that 213 applicants attached a power of attorney to their application forms in favour of six lawyers.²⁵

12. The Registry recommends providing legal representation to victims participating in the present case that combines

“relevant expertise and experience, including international criminal litigation experience and experience representing large groups of victims, proficiency in the language of the proceedings, a wide knowledge and understanding of the [c]ase 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. The legal representative(s) should also demonstrate abilities to communicate easily and to establish a relationship of trust with victims”.²⁶

13. Finally, the Registry underlines the importance of a team structure around the legal representative(s) “which allows for sufficient support in the field in order to have

²² ICC-01/04-02/06-141-Conf-Exp, para. 10.

²³ ICC-01/04-02/06-141-Conf-Exp, para. 11.

²⁴ ICC-01/04-02/06-141-Conf-Exp, paras 16, 18.

²⁵ ICC-01/04-02/06-141-Conf-Exp, para. 12. This number of applicants includes those whose applications have been submitted to the Chamber and those whose applications have been received by the VPRS at the seat of the Court.

²⁶ ICC-01/04-02/06-141-Conf-Exp, para. 19.

proximity with victims and be able to continuously inform and receive instructions from them”.²⁷

III. The OPCV Observations

14. The OPCV submits that two counsel from the Office can be appointed as common legal representatives of the victims that would be included in the two distinct groups as identified by the Registry.²⁸ It also indicates that it will be able to constitute two separate and autonomous legal teams, which will not share confidential information related to the victims belonging to the two respective groups.²⁹

15. According to the OPCV, both counsel concerned have extensive experience in the field, particularly in the Democratic Republic of the Congo and in the Ituri region and are already working in the present case, which “will optimize the preparation of the confirmation of the charges hearing”.³⁰ The OPCV further submits that both counsel have been involved in the entirety of the case of *The Prosecutor v. Thomas Lubanga Dyilo*, which constitutes an asset “since part of the crimes allegedly committed by Mr Bosco Ntaganda are identical to the ones for which Mr Lubanga was charged [...]”.³¹

16. The OPCV stresses that in order to properly organize the common legal representation of victims in the case, it will be essential for the two counsel of the OPCV to be assisted by a legal assistant in the field for each group of victims.³² In the view of the OPCV, these legal assistants “ought to have an excellent understanding of the situation in the field and of the cultural context, as well as knowledge of the relevant local languages spoken by the victims and possibly previous experience in

²⁷ ICC-01/04-02/06-141-Conf-Exp, para. 20.

²⁸ ICC-01/04-02/06-156-Conf-Exp, para. 10.

²⁹ ICC-01/04-02/06-156-Conf-Exp, para. 12.

³⁰ ICC-01/04-02/06-156-Conf-Exp, para. 11.

³¹ ICC-01/04-02/06-156-Conf-Exp, para. 11.

³² ICC-01/04-02/06-156-Conf-Exp, para. 16.

the proceedings before the Court dealing with the same type(s) of victimization which is specific to this case".³³

17. Finally, the OPCV underlines that this arrangement is financially feasible for the purpose of the confirmation of charges hearing and related proceedings and will have no impact on the mandate of the OPCV in respect of other cases before the Court.³⁴

IV. Determination by the Single Judge

18. The Single Judge notes articles 21(1)(a) and (3), 67(1) and 68(3) of the Rome Statute (the "Statute"), rules 16(1)(c), 22(1), 85, 90 and 121(3) of the Rules of Procedure and Evidence (the "Rules") and regulations 79 and 80 of the Regulations.

19. The Single Judge recalls her duty to ensure that proceedings are conducted in a fair and expeditious manner as provided for in article 67(1) of the Statute. This includes the proper organization of victims' participation and related legal representation. Moreover, it is the Single Judge's responsibility to guarantee the right of victims to meaningfully express their views and concerns through a legal representative in accordance with rule 90 of the Rules, in a manner which is not inconsistent with or prejudicial to the rights of the Defence, as mandated by article 68(3) of the Statute.

20. In light of the above, the Single Judge considers it appropriate to initiate the organization of common legal representation at the current stage of the proceedings. The Single Judge is cognizant of the fact that the application process is ongoing, and that the deadline for submission of applications has not yet expired. She also takes into account that a final determination under rule 85(a) of the Rules as to whether or not any given applicant may participate in the confirmation hearing and related proceedings as victim of crimes allegedly committed by Mr. Ntaganda may only take place once the Prosecutor has filed the Document Containing the Charges (the

³³ ICC-01/04-02/06-156-Conf-Exp, para. 16.

³⁴ ICC-01/04-02/06-156-Conf-Exp, para. 22.

“DCC”), due on 10 January 2014, which defines the scope of the confirmation of charges hearing.³⁵

21. However, the Single Judge considers that the appointment of common legal representative(s) cannot wait until such time when the determination on the status of victims is made after the submission of the DCC. In her view, the period of time between the filing of the DCC and the commencement of the confirmation hearing, may be far too short for the organization of proper legal representation for victims in this particular case, bearing in mind their considerable number, the need to establish two separate teams and the different places where the victims currently reside. The Single Judge deems it imperative to avoid the situation in which common legal representative(s) are left without sufficient time to prepare for the confirmation of charges hearing properly, thereby preventing the victims from participating meaningfully in the proceedings. Therefore, the aim of this decision is to facilitate the proper organization of work for the appointed common legal representatives, including the finalization of the selection process for assistants to counsel, the familiarization with the features of the groups identified by the Registry, and the preparation of the logistical steps to be taken, in particular traveling to the field for the purposes of consulting the victims as soon as they are admitted as participants in the case. Finally, the Single Judge stresses that the procedural rights of the victims, which they may exercise during these proceedings, will be decided upon later, together with the admission of victims.

22. The Single Judge further recalls that rule 90(1) of the Rules stipulates that a victim shall be free to choose a legal representative. Paragraph (2) of the same provision states that where “there are a number of victims, the Chamber may, for the purposes of ensuring the effectiveness of the proceedings, request the victims or particular groups of victims [...] to choose a common legal representative or representatives”. Moreover, rule 90(3) of the Rules reads that “[i]f the victims are unable to choose a

³⁵ 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.

common legal representative or representatives [...] the Chamber may request the Registrar to choose one or more common legal representatives”.

23. The Single Judge has carefully reviewed the submissions of the Registry as well as the preferences, when available, of the 822 applicants, whose applications have been transmitted to the Chamber to date. In this respect, she notes that the applicants have expressed divergent views with regard to their legal representation.³⁶ Additionally, the Single Judge notes that the applicants who have expressed preferences for legal representation, have not indicated that they themselves would pay the designated lawyers – should they be nominated as legal representatives. It must be therefore assumed that should victims be admitted to participate, they will rely on the legal aid scheme of the Court. In light of the foregoing, the Single Judge considers it necessary to appoint two common legal representatives, who will lead two legal teams representing the interests of all victims who are divided into the two distinct groups, as identified by the Registry in its Report and recalled in paragraph 10 above.

24. With regard to the composition and more specifically the profile and expertise of the members of the two legal teams, the Single Judge pays due regard to the preferences common to most applicants, namely that the common legal representative be competent and available, regardless of his or her nationality, and that he or she be capable of understanding the victims, the background of the conflict and of the case and the context in which they live. In addition, the Single Judge takes into consideration the limited scope of the confirmation of charges hearing, and by extension the involvement of legal counsel. She also takes account of the financial implications of having up to six legal representatives, as requested by some of the victims,³⁷ who would be paid from the Court’s legal aid budget.

25. Accordingly, the Single Judge considers that the most appropriate option, on the basis of the specific circumstances and features of this case, is to appoint, pursuant to

³⁶ ICC-01/04-02/06-141-Conf-Exp, para. 12.

³⁷ See above, para. 11.

regulation 80 of the Regulations, two counsel from the OPCV as common legal representatives of the two groups of victims that will be admitted in due course.

26. Each common legal representative will be supported by one or more, as the case may be, assistant(s) to counsel to be designated as soon as possible and on the basis of the criteria developed jointly by the OPCV and the VPRS, as previously ordered by the Single Judge.³⁸ This will ensure that the common legal representatives be assisted by competent individuals with the necessary legal, linguistic, historical and cultural background to communicate directly and closely with the victims on the ground, having due regard for the type(s) of victimization suffered by the victims, in particular victims of sexual violence.

27. Lastly, the Single Judge expects the VPRS jointly with the OPCV and with the assistance of the Counsel Support Section (the "CSS"), to finalize the establishment of the two legal teams, including the selection of the assistants to counsel, and to report to the Chamber on the selection process, the justification of the selected assistants to counsel and the composition of the two teams by 12 December 2013.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

a) decides to appoint two counsel from the OPCV as common legal representatives for the two groups of victims as identified by the Registry for the purposes of the confirmation of charges hearing and related proceedings; and

b) orders the VPRS jointly with the OPCV and with the assistance of the CSS to finalize the establishment of the two legal teams, including the selection of the assistants to counsel and to report to the Chamber as set out in paragraph 27, by **Thursday, 12 December 2013.**

³⁸ Pre-Trial Chamber II, "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", 20 November 2013, ICC-01/04-02/06-150-Conf-Exp, para. 13 and p. 7.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Monday, 2 December 2013

At The Hague, The Netherlands