

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 18 April 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

Order to the Registry Regarding Bosco Ntaganda's Language Proficiency

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

The Office of the Prosecutor
Fatou Bensouda

Counsel for the Defence
Marc Desalliers

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**
Xavier-Jean Keita

States Representatives

Amicus Curiae

REGISTRY

Registrar
Herman Von Hebel

Deputy Registrar
Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

PRE-TRIAL CHAMBER II (the “Chamber”) of the International Criminal Court (the “Court”) issues this order to the Registry regarding Bosco Ntaganda’s (“Mr. Ntaganda”) language proficiency.

I. PROCEDURAL HISTORY

1. On 22 August 2006, Pre-Trial Chamber I, issued the “Decision on the Prosecution Application for a Warrant of Arrest”,¹ along with a corresponding warrant of arrest for Bosco Ntaganda,² 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”).
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, the Chamber issued its “Decision on the Prosecutor’s Application under Article 58”.⁴ In this decision the Chamber issued a second warrant of arrest against Mr. Ntaganda for his alleged responsibility for the crimes against humanity of murder, rape, sexual slavery and persecution based on ethnic grounds under articles 7(l)(a), 7(l)(g) and 7(l)(h) of the Statute; and the war crimes of murder, intentional

¹ Pre-Trial Chamber I, “Decision on the Prosecution Application for a Warrant of Arrest”, 22 August 2006, ICC-01/04-02/06-1-US-Exp-tEN; and redacted version, 6 March 2007, ICC-01/04-02/06-1-Red-tENG.

² Pre-Trial Chamber I, “Warrant of Arrest – Corrigendum”, 7 March 2007, ICC-01/04-02/06-2-Corr-tENG-Red.

³ 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.

⁴ Pre-Trial Chamber II, “Decision on the Prosecutor’s Application under Article 58”, 13 July 2012, ICC-01/04-02/06-36-Conf-Exp; and public redacted version, 13 July 2012, ICC-01/04-02/06-36-Red.

attacks against civilians, pillaging, rape and sexual slavery under articles 8(2)(c)(i), 8(2)(e)(i), 8(2)(e)(v) and 8(2)(e)(vi) of the Statute .⁵

4. On 22 March 2013, the Single Judge⁶ issued the “Decision on Setting the Date for the Initial Appearance and Related Issues”, in which it, *inter alia*, noted Mr. Ntaganda’s voluntary surrender to the Court⁷ and decided to convene a hearing for his initial appearance on 26 March 2013.⁸

5. On 25 March 2013, the Chamber received the “Report of the Registry on the voluntarily surrender of Bosco Ntaganda and his transfer to the Court” (the “Registry’s Report”).⁹

6. On 26 March 2013, before the closure of the hearing on the initial appearance the Single Judge issued an oral decision convening a status conference on Monday 15 April 2013, for the purpose of discussing “issues related to the disclosure of evidence”.¹⁰

7. On 15 April 2013, the Single Judge convened the status conference during which the Office of the Prosecutor indicated that it intends to rely on, *inter alia*, 500 documents amounting to around 9000 pages.¹¹

⁵ Pre-Trial Chamber II, “Decision on the Prosecutor’s Application under Article 58”, 13 July 2012, ICC-01/04-02/06-36-Conf-Exp, p. 37; and public redacted version, 13 July 2012, ICC-01/04-02/06-36-Red, p. 37.

⁶ Pre-Trial Chamber II, “Decision Designating a Single Judge”, 21 March, ICC-01/04-02/06-40.

⁷ Pre-Trial Chamber II, ICC-01/04-02/06-41, p. 4.

⁸ *Ibid.*, p. 5.

⁹ ICC-01/04-02/06-44-Conf-Exp.

¹⁰ Pre-Trial Chamber II, Transcript of Hearing, 26 March 2013, ICC-01/04-02/06-T-2-ENG ET, p. 12, lines 11-13.

¹¹ Pre-Trial Chamber II, Transcript of Hearing, 15 April 2013, ICC-01/04-02/06-T-3-ENG ET, p. 6 lines 5-11.

II. APPLICABLE LAW

8. The Single Judge notes articles 21(1)(a), (2) and (3), 50 (2), (3), 67 (1) (a), (h) of the Statute, rule 42 of the Rules of Procedure and Evidence, and regulation 40(2),(3) and (6) of the Regulations of the Court, and regulation 57 of the Regulations of the Registry.

III. DETERMINATION BY THE SINGLE JUDGE

9. The Single Judge recalls the Registry's Report, in which, it is stated in different parts that Mr. Ntaganda communicated with the "ICC representative" in French¹² and confirmed his understanding of the French language to a certain level.¹³ According to said Report, the "ICC representative" finally indicated that Mr. Ntaganda "does not 'fully' understand French".¹⁴
10. The Single Judge also recalls the hearing on the initial appearance during which she raised the issue of language proficiency as described in the Registry's Report.¹⁵ During said hearing, Mr. Ntaganda responded to the question concerning his language proficiency that "[he] understand[s] French somewhat, but [he] speak[s] Kinyarwanda fluently".¹⁶ Accordingly, the Single Judge decided to proceed with Kinyarwanda for the purpose of that hearing, as it was more comfortable for the suspect.¹⁷ Yet, for the purpose of proceeding with the entire case including the start of the disclosure of evidence to the Defence, the Single Judge must be formally satisfied about the language proficiency of the suspect.
11. In this regard, the Single Judge notes in particular, article 50(2) and (3) of the Statute according to which the working languages of the Court are English and French. However, under article 67(1)(a) of the Statute, the suspect shall have the

¹² ICC-01/04-02/06-44-Conf-Exp, p. 4.

¹³ ICC-01/04-02/06-44-Conf-Exp, pp. 5, 7.

¹⁴ ICC-01/04-02/06-44-Conf-Exp, p. 6.

¹⁵ ICC-01/04-02/06-T-2-ENG ET, pp. 4-5.

¹⁶ ICC-01/04-02/06-T-2-ENG ET, p. 5, lines 12-13.

¹⁷ ICC-01/04-02/06-T-2-ENG ET, p. 5, lines 14-17.

right “[t]o be informed properly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks”. Moreover, article 67(1)(f) of the Statute accords to the suspect the right “[t]o have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings or documents presented to the Court are not in a language which the accused fully understands and speaks”.

12. In this context, the Appeals Chamber has stated:

58. [...] Whether one speaks of article 67 (1) (a) or (f) of the Statute, it seems that the starting point, as far as languages are concerned, will be a working language of the Court. That is, proceedings will in principle be offered in English or French. An accused may state, however that he or she wishes to use another language - presumably on the basis that he or she does not fully understand and speak a working language of the Court.

59. The subject of understanding is exclusively the accused. Thus, the Chamber must give credence to the accused's claim that he or she cannot fully understand and speak the language of the Court. This is because it is the accused who can most aptly determine his or her own understanding and it should be assumed that he or she will only ask for a language he or she fully understands and speaks.

60. The matter does not, however, end there. What if the accused fully understands and speaks the language of the Court? The Chamber may have reasons as to why it does not find it appropriate to grant a request to have interpretation into another language. For example, an accused may fully understand and speak more than one language and it may be evident that he or she is asserting the right to use a different language to that being offered by the Court even though the latter is one of the languages that he or she also fully understands and speaks. The Chamber may consider that the accused is acting in bad faith, is malingering or is abusing his or her right to interpretation under article 67. If the Chamber believes that the accused fully understands and speaks the language of the Court, the Chamber must assess, on the facts on a case-by-case basis, whether this is so.

61. Given the addition of the word fully, and the drafting history, the standard must be high. Therefore, the language requested should be granted unless it is absolutely clear on the record that the person fully understands and speaks one of the working languages of the Court and is abusing his or her right under article 67 of the Statute. An accused fully understands and speaks a language when he or she is completely fluent in the language in ordinary, non-technical conversation; it is not required that he or she has an understanding as if he or she were trained as a lawyer or judicial officer. If there is any doubt as to whether the person fully understands and speaks the language of the Court, the language being requested by the person should be accommodated. Ultimately, the Chamber in question is responsible for ensuring the fair trial of the accused [footnote omitted].¹⁸

¹⁸ Appeals Chamber, “Judgment on the appeal of Mr. Germain Katanga against the decision of Pre-Trial Chamber I entitled ‘Decision on the Defence Request Concerning Languages’”, 27 May 2008, ICC-01/04-01/07- 522, paras 58-61.

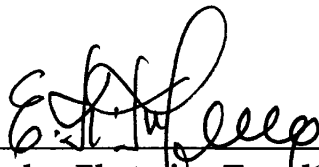
13. In view of the Appeals Chamber's jurisprudence concerning the issue *sub judice* in terms of ensuring that the rights enshrined under article 67(1) (a) and (f) of the Statute are guaranteed, without being abused, and taking into consideration the proper conduct of the proceedings, including their expeditiousness and the interests of victims, the Single Judge deems it essential to order the Registry with the assistance of the Court Interpretation and Translation Section (STIC) to conduct: 1) a language proficiency test to the suspect in French; and 2) another language proficiency test in Kinyarwanda (only reading and writing).

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

a) orders the Registry with the assistance of the STIC to conduct the language proficiency tests in accordance with paragraph 13 of the present order;

b) orders the Registry to file a report with the Chamber outlining its conclusions regarding Mr. Ntaganda's languages proficiency for the sake of continuation of the judicial proceedings against him, no later than Tuesday 23 April, at 1600 hrs.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Thursday, 18 April 2013

At The Hague, The Netherlands