

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: **31 May 2013**

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding 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

Prosecution's Urgent Request to File a Reply

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Counsel for the Defence

Marc Desalliers

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

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Victims and Witnesses Unit

Patrick Craig

Detention Section

Introduction

1. The Prosecution seeks leave to file a reply to the Defence's response to the request to postpone the confirmation hearing, as provided under Regulation 24(5), in order to assist the Single Judge in her decision.

Procedural Background

2. On 22 August 2006, Pre-Trial Chamber I issued a warrant of arrest for Bosco Ntaganda.¹ On 13 July 2012, Pre-Trial Chamber II issued a second warrant of arrest against Mr Ntaganda covering additional crimes.²
3. Mr Ntaganda voluntarily surrendered and arrived at the detention centre of the Court on 22 March 2013. His initial appearance took place on 26 March 2013.³
4. On 12 April 2013, the Single Judge issued the "Decision Setting the Regime for Evidence Disclosure and Other Related Matters".⁴
5. On 15 April 2013, the Single Judge convened a status conference.⁵ On 18 April 2013, the Single Judge ordered the Registry to test Mr Ntaganda's language proficiency.⁶
6. On 25 April 2013, Mr Marc Desalliers was appointed as counsel for Mr Ntaganda.⁷

¹ ICC-01/04-02/06-40.

² ICC-01/04-02/06-36-Conf-Exp; public redacted version at ICC-01/04-02/06-36-Red.

³ ICC-01/04-02/06-T-2- ENG ET.

⁴ ICC-01/04-02/06-47.

⁵ ICC-01/04-02/06-T-3-ENG ET.

⁶ ICC-01/04-02/06-50.

7. On 1 May 2013, the Registry submitted its report on Mr Ntaganda's language proficiency.⁸
8. On 17 May 2013, the Single Judge issued the "Decision Establishing a Calendar for the Disclosure of Evidence Between the Parties".⁹
9. On 23 May 2013, the Prosecution requested postponement of the confirmation hearing.¹⁰ On 30 May 2013, the Defence responded to this request (the "Defence Response").¹¹

Application for Leave to Reply

10. The Prosecution requests that the Single Judge grant it leave to reply to the Defence Response, pursuant to Regulation 24(5), in order to address specific misconceptions in the Defence's submissions. In particular, the Prosecution wishes to address the Defence's arguments pertaining to the Prosecution's explanations regarding (a) the documents that require review, including documents collected under article 54(3)(e),¹² and (b) the analysis of evidence for the purpose of disclosure, as distinct from the analysis of evidence for the purpose of seeking a warrant of arrest.¹³
11. Briefly, the Prosecution wishes to expand on the marked difference between analyzing evidence for the purpose of preparing an arrest warrant as compared to ensuring disclosure of *all* materials that are either relevant to the preparation of the Defence or upon which the Prosecution may wish to

⁷ ICC-01/04-02/06-52.

⁸ ICC-01/04-02/06-55.

⁹ ICC-01/04-02/06-64.

¹⁰ ICC-01/04-02/06-65.

¹¹ ICC-01/04-02/06-69, with public redacted version at ICC-01/04-02/06-69-Red.

¹² ICC-01/04-02/06-69-Red, paras.28, 36-40.

¹³ ICC-01/04-02/06-69-Red, paras.21, 44-46.

rely. As the Prosecution will develop, if leave is granted, the former is an analytical product to consider the strength of evidence to seek a warrant of arrest, weighing both exonerating and incriminating evidence; the latter requires a review of all items of evidence to meet specific disclosure obligations (including whether any document is material to the preparation of the Defence under Rule 77) considering content and source redactions, conditions of collection and protective measures. It is reasonable for the Prosecution to undertake this complete disclosure review only once a suspect has been detained.

12. Secondly, and as the Prosecution can explain in greater detail, the keyword searches conducted by the Prosecution in April 2013 are necessary to ensure that every potentially relevant document has been retrieved and reviewed. This does not mean that the Prosecution has never reviewed any of those documents in the past for other cases, but it is not sufficient that a prior review be relied upon for a different case. Documents must be reviewed afresh for *each case* to which they may be relevant.

13. The Prosecution submits that its reply will assist the Chamber in its assessment of the Prosecution's request. Should the Single Judge grant leave, the Prosecution will set out its substantive submissions in its reply.

Request

14. Based on the foregoing and pursuant to Regulation 24(5), the Prosecution requests that the Single Judge grant leave to file a reply.



Fatou Bensouda, Prosecutor

Dated this 31st Day of May 2013
At The Hague, the Netherlands