

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 30 August 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 on the "Request to appear before the Chamber on the Defence's
Application for interim release"**

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

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

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

States Representatives

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar
 Herman Von Hebel, Registrar
 Didier Preira, Deputy 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 is seized of the “Request to appear before the Chamber on the Defence’s Application for interim release” (the “Request”) submitted by the Office of Public Counsel for Victims (the “OPCV”) on 29 August 2013.²

1. On 22 August 2006, Pre-Trial Chamber I, to which this case had originally been assigned, issued the “Decision on the Prosecution Application for a Warrant of Arrest”,³ along with a corresponding warrant of arrest for Bosco Ntaganda (“Mr. Ntaganda”).⁴
2. On 15 March 2012, the Presidency reassigned the situation in the Democratic Republic of the Congo to this Chamber.⁵
3. On 13 July 2012, the Chamber issued the “Decision on the Prosecutor’s Application under Article 58”, with which a second warrant of arrest was issued against Mr. Ntaganda.⁶
4. On 22 March 2013, the Single Judge issued the “Decision on Setting the Date for the Initial Appearance and Related Issues”,⁷ in which she, *inter alia*, noted Mr.

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

² ICC-01/04-02/06-96.

³ 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; a redacted version was filed in the record of the case on 6 March 2007 and the decision was made public on 1 October 2010, ICC-01/04-02/06-1-Red-tENG.

⁴ Pre-Trial Chamber I, “Warrant of Arrest”, 22 August 2006, ICC-01/04-02/06-2-Anx-tENG; a corrigendum was filed in the record of the case on 7 March 2007, see ICC-01/04-02/06-2-Corr-tENG-Red.

⁵ 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.

⁶ 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, ICC-01/04-02/06-36-Red.

⁷ Pre-Trial Chamber II, “Decision on Setting the Date for the Initial Appearance and Related Issues”, 22 March 2013, ICC-01/04-02/06-41.

Ntaganda's voluntary surrender to the Court⁸ and decided to convene a hearing for his initial appearance,⁹ which took place on 26 March 2013.¹⁰

5. On 20 August 2013, the Defence filed the "Requête de la Défense aux fins de mise en liberté provisoire de M. Bosco Ntaganda" (the "Defence's Application") in which it requested the immediate interim release of Mr. Ntaganda to the Kingdom of the Netherlands and, where necessary, the application of those conditions which the Chamber considered necessary in accordance with rule 119 of the Rules of Procedure and Evidence (the "Rules").¹¹

6. On 26 August 2013, the Single Judge issued the "Decision Requesting Observations on the Defence's Application for Interim Release", in which she, *inter alia*, requested the Prosecutor and invited the Kingdom of the Netherlands to submit observations on the Defence's Application no later than 6 September 2013 and 13 September 2013 respectively.¹²

7. On 29 August 2013, the Chamber received the Request, in which the Principal Counsel of the OPCV requested "to be allowed to appear before [the Chamber] on the issue of the interim release of Mr Bosco Ntaganda, within a deadline established by the Chamber, in order to represent the interests of victims having communicated with the Court in the case".¹³

8. The Single Judge notes articles 21(1) and (3), 60(2) and 67(1) of the Rome Statute, rules 118 and 119(3) of the Rules, and regulation 51 of the Regulations of the Court (the "Regulations").

⁸ Pre-Trial Chamber II, "Decision on Setting the Date for the Initial Appearance and Related Issues", 22 March 2013, ICC-01/04-02/06-41, p. 4.

⁹ Pre-Trial Chamber II, "Decision on Setting the Date for the Initial Appearance and Related Issues", 22 March 2013, ICC-01/04-02/06-41, p. 5.

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

¹¹ ICC-01/04-02/06-87-Red, p. 17.

¹² Pre-Trial Chamber II, "Decision Requesting Observations on the Defence's Application for Interim Release", 26 August 2013, ICC-01/04-02/06-92, pp. 4-5.

¹³ ICC-01/04-02/06-96, p. 10.

9. In paragraphs 7-10 of the Request, the Principal Counsel of the OPCV argues that her submission to appear before the Chamber is grounded on rule 119(3) of the Rules and regulation 81(4)(b) of the Regulations.¹⁴

10. In this respect, the Single Judge notes, in particular, rule 119(3) of the Rules which stipulates that “[b]efore imposing or amending any conditions restricting liberty, the Pre-Trial Chamber shall seek the views of the [...] victims that have communicated with the Court in that case and whom the Chamber considers could be at risk as a result of a release or conditions imposed”.

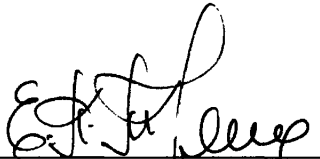
11. According to the plain wording of rule 119(3) of the Rules, the Chamber is duty bound to seek the views of the “victims that have communicated with the Court in that case” prior to “imposing [...] any conditions” or “amending any conditions restricting [Mr. Ntaganda’s] liberty”. The Single Judge is still in the process of receiving observations on the Defence’s Application pursuant to rule 118 of the Rules and regulation 51 of the Regulations, which are due on 6 and 13 September 2013 respectively. The Single Judge shall seek the views of the victims provided for in rule 119(3) of the Rules, after considering the forthcoming observations. In light of the above, the Request of the OPCV is premature and must therefore be rejected.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

rejects the Request.

¹⁴ ICC-01/04-02/06-96, paras 7-10.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Friday, 30 August 2013

At The Hague, The Netherlands