

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-02/06
Date: 19 September 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***

Confidential

**Decision on the Circumstances Surrounding Bosco Ntaganda's Voluntary Surrender
to the Court and on the Defence's Request for Leave to Reply**

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**

**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 issues this decision on the circumstances surrounding Bosco Ntaganda's ("Mr. Ntaganda") voluntary surrender to the Court, and on the "Requête de la Défense aux fins de solliciter l'autorisation de déposer une réplique à la 'Prosecution's Response to the Requête de la Défense aux fins de mise en liberté provisoire de M. Bosco Ntaganda (ICC-01/04-02/06-87-Conf-Exp)', déposée le 6 septembre 2013" (the "Defence's Request" or "Request").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 Mr. Ntaganda.⁴
2. On 15 March 2012, the Presidency re-assigned 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",⁶ with which a second warrant of arrest was issued against Mr. Ntaganda.
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. Ntaganda's

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

² ICC-01/04-02/06-105-Conf.

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 into 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.

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 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" or "Report").¹¹

6. On 20 August 2013, the Defence filed the "Requête de la Défense aux fins de mise en liberté provisoire de M. Bosco Ntaganda" (the "Application"),¹² 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").¹³

7. On 26 August 2013, the Single Judge issued the "Decision Requesting Observations on the Defence's Application for Interim Release",¹⁴ in which she, *inter alia*, ordered the Registry to transmit the redacted version of the Application to the Kingdom of the Netherlands and invited the latter to submit its observations in accordance with the operative part of the decision no later than Friday, 13 September 2013.

8. On 3 September 2013, the Defence filed the "Requête urgente de la Défense aux fins de reconsideration de la 'Decision Requesting Observations on the Defence's Application for Interim Release', datée du 26 août 2013",¹⁵ in which it mainly

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-01/04-02/06-44-Conf-Exp.

¹² ICC-01/04-02/06-87-Red.

¹³ ICC-01/04-02/06-87-Red, p. 17.

¹⁴ Pre-Trial Chamber II, ICC-01/04-02/06-92.

¹⁵ ICC-01/04-02/06-99-Conf-Exp.

requested the transmission of the confidential version of the Application to the Kingdom of the Netherlands for its observations.¹⁶

9. On 4 September 2013, the Single Judge issued the “*Décision concernant la requête urgente présentée par la Défense de Monsieur Bosco Ntaganda le 3 Septembre 2013 (ICC-01/04-02/06-99-Conf-Exp)*”,¹⁷ in which she, *inter alia*, ordered the Registry to transmit the confidential version of the Application to the Kingdom of the Netherlands and invited the latter to submit its observations in accordance with the operative part of the decision no later than Friday 20 September 2013.¹⁸

10. On 6 September 2013, the Chamber received the “Prosecution’s Response to the ‘Requête de la Défense aux fins de mise en liberté provisoire de M. Bosco Ntaganda’” (the “Prosecutor’s Response”).¹⁹

11. On 13 September 2013, the Chamber received the Defence’s Request, in which the Defence requested leave to reply to the Prosecutor’s Response.²⁰

12. On 18 September 2013, the Chamber received the “Prosecution’s Response to Bosco Ntaganda’s Request to File a Reply”, in which the Prosecutor opposed the Defence’s Request (the “Prosecutor’s Request”).²¹

13. The Single Judge notes articles 60(2) and 67(1) of the Rome Statute, rules 118, 119 and 176 of the Rules, and regulations 23 *bis*, 24(5), 28(3) and 34 of the Regulations of the Court (the “Regulations”).

14. The Single Judge recalls that in the Report, the Registry furnished the Chamber with the process and steps undertaken to transfer Mr. Ntaganda to the seat of the Court.²² According to said Report, Mr. Ntaganda declared twice that it was his desire

¹⁶ ICC-01/04-02/06-99-Conf-Exp.

¹⁷ Pre-Trial Chamber II, ICC-01/04-02/06-100-Conf.

¹⁸ Pre-Trial Chamber II, ICC-01/04-02/06-100-Conf, p. 5.

¹⁹ ICC-01/04-02/06-103-Conf.

²⁰ ICC-01/04-02/06-105-Conf.

²¹ ICC-01/04-02/06-108-Conf.

²² ICC-01/04-02/06-44-Conf-Exp.

to voluntarily appear before the Court.²³ In response to the suspect's statement, the Court's representative "informed the person [...] that he was, as of [that moment], under the responsibility of the ICC and, given the existence of the warrants of arrest, detained by the ICC".²⁴ Nevertheless, the Registry's Report fell short of any explanation or information as to the circumstances or the reasons surrounding Mr. Ntaganda's decision to voluntarily surrender to the Court. It follows that, in order to be in a position to properly rule on the Application, the Single Judge deems it necessary to receive more explanations and information on such circumstances underlying Mr. Ntaganda's voluntary surrender to the Court.

15. As regards the Defence's Request, the Single Judge recalls regulation 24(5) of the Regulations according to which "[p]articipants may only reply to a response with the leave of the Chamber, unless otherwise provided in [the] Regulations".

16. In this regard, the Single Judge notes that the Defence requests leave to reply to certain arguments put forward by the Prosecutor in particular, new arguments and allegations set out in paragraphs 12-43 of her Response, which have not been addressed in the Application.²⁵ Being keen to preserve the fairness of the proceedings, which encompasses the right of the Defence to have the last word on the matter, the Single Judge considers that the particular circumstances of the present Request and the need to receive all relevant information justify granting leave to reply to the Prosecutor's Response.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

- a) orders** the Registrar to file a report with the Chamber in accordance with paragraph 14 of the present decision no later than 3 October 2013;

²³ ICC-01/04-02/06-44-Conf-Exp, pp. 4, 6.

²⁴ ICC-01/04-02/06-44-Conf-Exp, p. 6.

²⁵ ICC-01/04-02/06-105-Conf, pp. 3-4.

- b) **grants** the Defence's Request in accordance with the time limit prescribed in Regulation 34(c) of the Regulations;
- c) **requests** the Prosecutor, should she desire so, to submit observations on the report referred to in paragraph a) above no later than 10 October 2013;
- d) **requests** the Defence, should it desire so, to submit observations on the report referred to in paragraph a) above no later than 17 October 2013; and
- e) **rejects** the Prosecutor's Request.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Thursday, 19 September 2013

At The Hague, The Netherlands