



Original: **French**

No.: ICC-01/04-02/06
Date: 25 November 2013

THE APPEALS CHAMBER

Before: Judge Akua Kuenyehia, Presiding Judge
Judge Sang-Hyun Song
Judge Erkki Kourula
Judge Anita Ušacka
Judge Sanji Mmasenono Monageng

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public Document

**Notice of appeal by the Defence for Mr Bosco Ntaganda against Pre-Trial
Chamber II's *Decision on the Defence's Application for Interim Release* of
18 November 2013**

Source: Defence team for Mr Bosco Ntaganda

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

Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Ms Nicole Samson

Counsel for the Defence

Mr Marc Desalliers

Ms Caroline Buteau

Ms Andrea Valdivia

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

Office of Public Counsel for Victims

**Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

PROCEDURAL BACKGROUND

– Mr Ntaganda’s voluntary surrender

1. On 12 January 2006, the Prosecution submitted a first sealed application for a warrant for Mr Bosco Ntaganda’s arrest (“First Application”).¹
2. On 25 and 27 January 2006, the Prosecution submitted the further information and materials,² directed by Pre-Trial Chamber I on 20 January 2006.³
3. On 22 August 2006, Pre-Trial Chamber I issued a first sealed warrant for Mr Ntaganda’s arrest.⁴ The Defence informs the Court that to date it is in possession only of the 6 March 2007⁵ public redacted version of the *Decision on the Prosecution Application for a Warrant of Arrest*⁶ of 22 August 2006.
4. On 28 April 2008, Pre-Trial Chamber I decided to unseal and make public the warrant of arrest issued by the Court in August 2006.⁷
5. On 14 May 2012, the Prosecution submitted a second application for a warrant of arrest (“Second Application”).⁸
6. On 13 July 2012, Pre-Trial Chamber II issued a second warrant for Mr Ntaganda’s arrest.⁹
7. On 18 March 2013, Mr Ntaganda presented himself at the United States Embassy in Kigali, Rwanda, for the purposes of his voluntary surrender to the Court.

¹ ICC-01/04-02/06-60-Conf-Red.

² ICC-01/04-02/06-74-Conf-AnxA-Red and ICC-01/04-02/06-74-Conf-AnxB-Red.

³ ICC-01/04-102-Red.

⁴ ICC-01/04-02/06-2-tENG.

⁵ ICC-01/04-02/06-1-Red.

⁶ See on this point the observation of the Single Judge, ICC-01/04-02/06-147, para. 18.

⁷ ICC-01/04-02/06-18.

⁸ ICC-01/04-02/06-61-Conf-Red.

⁹ ICC-01/04-02/06-36-RED.

8. On 20 March 2013, Mr Ntaganda met with a representative of the Court at the United States Embassy in Kigali and confirmed his desire to be transferred to The Hague to appear in Court.¹⁰
9. On 22 March 2013, Mr Ntaganda was transferred to the seat of the Court in The Hague. Thenceforth, Mr Ntaganda has remained in custody at the Court's detention centre in The Hague.
10. By a decision of 12 April 2013, the Registrar declared Mr Bosco Ntaganda provisionally indigent pursuant to regulation 85(1) of the Regulations of the Court.¹¹
11. On 18 April 2013, Mr Desalliers was appointed Lead Counsel for Mr Ntaganda.¹²

– The Defence application for release

12. On 20 August 2013, the Defence filed a confidential version and a public redacted version of the "Defence application for the interim release of Mr Bosco Ntaganda".¹³
13. On 6 September 2013, the Prosecution filed the "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)" ("the Response").¹⁴
14. On 13 September 2013, the Defence filed a "*Requête 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)", filed on 6 September 2013.¹⁵

¹⁰ ICC-01/04-02/06-44-Conf-Exp, para. 1.

¹¹ ICC-01/04-02/06-48-Anx.

¹² ICC-01/04-02/06-52-AnxII. Mr Desalliers' appointment was entered into the record of the case on 25 April 2013 (ICC-01/04-02/06-52).

¹³ ICC-01/04-02/06-87-Conf-Exp-tENG and ICC-01/04-02/06-87-Red-tENG.

¹⁴ ICC-01/04-02/06-103-Conf.

¹⁵ ICC-01/04-02/06-105.

15. On 19 September 2013, the Single Judge rendered the *Decision on the Circumstances Surrounding Bosco Ntaganda's Voluntary Surrender to the Court and on the Defence's Request for Leave to Reply*,¹⁶ granting the Defence's request for leave to reply to the Prosecution's Response. She further ordered the Registry to file a report by 3 October 2013 to provide further explanation and information on the circumstances surrounding Mr Ntaganda's voluntary surrender to the Court.
16. On 20 September 2013, the Defence filed its Reply to the Prosecution's Response.¹⁷
17. On 20 September 2013, the Registry transmitted to Pre-Trial Chamber II the observations of the Kingdom of the Netherlands on the Defence's Request.¹⁸
18. On 3 October 2013, the Registry filed the "Registry report following the decision of the Single Judge of 19 September 2013 (ICC-01/04-02/06-109-Conf)".¹⁹
19. On 18 November 2013, the Single Judge of Pre-Trial Chamber II rendered the *Decision on the Defence's Application for Interim Release*,²⁰ rejecting the application for release filed by the Defence for Mr Ntaganda ("the Decision").

¹⁶ ICC-01/04-02/06-109-Conf. See also the Prosecution's Response: ICC-01/04-02/06-108-Conf.

¹⁷ ICC-01/04-02/06-111-Conf-tENG.

¹⁸ ICC-01/04-02/06-113.

¹⁹ ICC-01/04-02/06-120-Conf.

²⁰ ICC-01/04-02/06-147.

NOTICE OF APPEAL

20. In accordance with the joint provisions of article 82(1)(b), rule 154(1) and regulation 64 of the Regulations of the Court, the Defence hereby files notice of appeal against the *Decision on the Defence's Application for Interim Release*²¹ and requests that the Single Judge's findings on article 58(1)(b) be set aside.
21. Pursuant to regulation 64 of the Regulations of the Court, the Defence will set out in its appellate brief the grounds of its appeal as well as the legal and/or factual arguments it will advance in support of those grounds.

FOR THESE REASONS, MAY IT PLEASE THE APPEALS CHAMBER:

TO TAKE NOTE of this notice of appeal;

and

TO SET ASIDE Pre-Trial Chamber II's Decision of 18 November 2013.

[signed]

Mr Marc Desalliers, Lead Counsel

Dated this 25 November 2013

At The Hague

²¹ ICC-01/04-02/06-147.