



Original: English

No.: ICC-01/04-02/06
Date: 28 February 2014

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 redacted version of
*“Registry report following the decision of the Single Judge of 19 September 2013
(ICC-01/04-02/06-109-Conf)” (ICC-01/04-02/06-120-Conf) dated 3 October 2013***

Source: Registry

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

The Office of the Prosecutor

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Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
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Detention Section

Harry Tjonk

**Victims Participation and Reparations
Section**

Interpretation and Translation Section

The Registrar of the International Criminal Court (the “Court”);

NOTING the “*Decision on the Prosecution Application for a Warrant of Arrest*”, issued by Pre-Trial Chamber I on 22 August 2006;¹

NOTING the “*Mandat d’arrêt*” issued by Pre-Trial Chamber I on 22 August 2006;²

NOTING the “*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*” issued by the Presidency on 15 March 2012 assigning the situation in the Democratic Republic of the Congo to Pre-Trial Chamber II;³

NOTING the public redacted version of the “*Decision on the Prosecutor’s Application under Article 58*” issued by Pre-Trial Chamber II (the “Chamber”) on 13 July 2012;⁴

NOTING the “*Demande d’arrestation et de remise de Bosco Ntaganda adressee à la République démocratique du Congo*” filed by the Registry on 4 September 2012 ;⁵

NOTING the “*Report of the Registry on the voluntarily surrender of Bosco NTAGANDA and his transfer to the Court*” (“the Report”) submitted by the Registry on 25 March 2013;⁶

NOTING the “*Requête de la Défense aux fins de mise en liberté provisoire de M. Bosco Ntaganda*” submitted by the Defence on 20 August 2013 ;⁷

¹ ICC-01/04-02/06-1-US-Exp-tEN.

² ICC-01/04-02/06-2, reclassified as public pursuant to the “*Decision to unseal the warrant of arrest against Bosco Ntaganda*”(ICC-01/04-02/06-18) dated 28/04/2008.

³ ICC-01/04-02/06-32.

⁴ ICC-01/04-02/06-36-Red.

⁵ ICC-01/04-02/06-38.

⁶ ICC-01/04-02/06-44-Conf-Exp.

NOTING the “*Decision Requesting Observations on the Defence’s Application for Interim Release*”, issued by the Single Judge on 26 August 2013;⁸

NOTING 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*” submitted by the Defence on 3 September 2013 ;⁹

NOTING the “*Décision concernant la requete urgente présentée par la Défense de Monsieur Bosco Ntaganda le 3 Septembre 2013 (ICC-01/04-02/06-99-Conf-Exp)*” issued by the Single Judge on 4 September 2013 ;¹⁰

NOTING the “*Prosecution’s Response to the ‘Requête de la Défense aux fins de mise en liberté provisoire de M. Bosco Ntaganda’*” (“the Prosecution’s submission”) filed by the Prosecution on 6 September 2013 ;¹¹

NOTING 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)’, depose le 6 septembre 2013*” submitted by the Defence on 13 September 2013 ;¹²

NOTING the “*Prosecution’s Response to Bosco Ntaganda’s Request to File a Reply*” submitted by the Prosecution on 18 September 2013;¹³

⁷ ICC-01/04-02/06-87-Red.

⁸ ICC-01/04-02/06-92.

⁹ ICC-01/04-02/06-99-Conf-Exp.

¹⁰ ICC-01/04-02/06-1-Conf.

¹¹ ICC-01/04-01/06-103-Conf.

¹² ICC-01/04-20/06-105-Conf.

¹³ ICC-01/04-02/06-108-Conf.

NOTING the *“Decision on the Circumstances Surrounding Bosco Ntaganda’s Voluntary Surrender to the Court and on the Defence’s request for Leave to Reply”* (“the Decision of 19 September”) issued by the Single Judge on 19 September 2013;¹⁴

NOTING the *“Transmission to the Pre-Trial Chamber II of the observations submitted by the Kingdom of the Netherlands on the request for interim release presented by Bosco Ntaganda”* submitted by the Registry on 20 September 2013;¹⁵

NOTING articles 89 and 91 of the Rome Statute, rules 176(2) and 187 of the Rules of Procedure and Evidence, and regulations 23*bis* of the Regulations of the Court;

CONSIDERING that the Single Judge concluded in its Decision of 19 September that [REDACTED]

CONSIDERING that consequently, the Single Judge ordered the Registrar to file a report with the Chamber no later than 3 October 2013 on the above,

RESPECTFULLY REPORTS AS FOLLOWS:

Surrender process

1. In its Decision of 19 September, the Single Judge observes that [REDACTED].
In this regard, the Registry respectfully submits for the attention of the Single Judge that on 25 March 2013, through its Report, the Registry confirmed to the Chamber all information that was at its disposal regarding the surrender of Mr. Ntaganda. The Registry hereby confirms that no information was withheld from the Chamber emanating directly from Mr. Ntaganda regarding

¹⁴ ICC-01/04-02/06-109-Conf.

¹⁵ ICC-01/04-02/06-113-Conf.

the circumstances underlying his voluntary surrender to the Court, namely because Mr. Ntaganda did not provide any such information. Likewise [REDACTED] did not provide any information or clarification as to any reasons that could shed any light on Mr. Ntaganda's decision to surrender.

2. The Registry takes this opportunity to clarify that its role, as a neutral organ of the Court, during a surrender process is that of a) Confirming the identity of the person concerned, b) Ensuring that the person is notified of the relevant documents, c) Ensuring that the person is informed of his/her rights, d) Ensuring that the person is medically fit to travel, e) Ensuring that the person confirms his/her willingness to surrender and understands that surrendering entails a transfer to the Hague to appear before the Judges of the pertinent Chamber, f) Ensuring that the person has a valid travel document needed for the transfer, g) Noting down any views and concerns that the person may have at this stage in relation to the transfer.

3. In this regard the Registry reiterates that during the surrender process, Mr. Ntaganda did not raise any issues as to the circumstances related to his voluntary surrender directly to the Registry representative in charge of the surrender and transfer operation, now was he asked by this Registry representative to give an explanation as to the reasons for this surrender. Had Mr. Ntaganda tried to discuss any matters related to the reasons for his surrender, the Registry representative would have informed Mr. Ntaganda not to discuss such matters with him but to raise them with an appropriate counsel and would have refrained from entering into any discussion on the subject. This would be consistent with his neutral role as a Registry representative whose aim was to ensure that the surrender of Mr. Ntaganda

was not a forced surrender but a voluntary surrender. The Registry wishes to emphasize that in this context, the role of the Registry is to abstain from collecting any type of information that could serve as evidence and possibly affect the rights of the person concerned.

4. Furthermore, the Registry highlights that at no point during the surrender process of Mr. Ntaganda did the relevant [REDACTED] give any information as to the underlying circumstances explaining his surrender. Moreover, at this stage, and considering the special circumstances under which the Registry representative had to operate [REDACTED], the focus was on ensuring the safety of Mr. Ntaganda.
5. In addition, in view of the above, and considering that the Chamber was aware of the role of the Registry in the arrest and surrender operation through its legal staff and no specific instructions or guidelines were given by the Chamber, the Registry at no point considered entering into any discussion with any relevant actors as to the underlying circumstances that would explain the reason of Mr. Ntaganda to surrender.
6. Therefore, the Registry's view is that the Registry report of March 25th accurately reflects all events of the surrender and transfer operation, including the practical modalities, as they took place. Consistent with the principle of neutrality, the Registry did not consider it its role to provide any background on the possible situation on the ground that may be considered related to the surrender of Mr. Ntaganda.

Additional information required by the Chamber

7. Considering that the Single Judge has requested further information on the circumstances underlying Mr. Ntaganda's voluntary surrender in order to rule on the Application of the Defence requesting interim release, and even though the Registry has never received any confirmation from any particular source as to the underlying reasons for his surrender, the Single Judge may turn to information already available in relation to the possible *background* to his surrender.

8. Due to the lack of primary sources confirming the reasons behind the surrender of Mr. Ntaganda, to the knowledge of the Registry only secondary sources such as media coverage and NGO articles would appear to provide an overview of the situation on the ground at the time of the surrender.

9. Whereas such sources may give an indication of the situation on the ground, no source can confirm with certainty the underlying circumstances of the surrender of Mr. Ntaganda. It is worth mentioning that whereas some of the sources indicate that it is not clear why he surrendered, others *attempt* to provide a motive behind this event.

10. For instance a Human Rights Watch article published on 18 March 2013, indicates that 'a recent outbreak of hostilities between factions of the M23 rebel group, headed by Ntaganda and other commanders, resulted in the faction opposed to Ntaganda apparently gaining the upper hand'¹⁶, however,

¹⁶ See <http://www.hrw.org/news/2013/03/18/send-bosco-ntaganda-icc>.

the article also indicates that *'It is unclear why Ntaganda suddenly turned himself to the US embassy and asked to be transferred to the ICC'*.¹⁷ Likewise, an article published by CNN and written by Sophie Rosenberg¹⁸ indicates that *the 'exact reasons behind his "self-referral," remain unclear'*¹⁹.

11. Other sources giving what the Registry believes are speculative reasons for his surrender are cited in the media. For instance the East Africa correspondent for Al Jazeera, Nazanine Moshiri indicates in her article of 20 March 2013, that there are *'unanswered questions, like why would the former general hand himself over'*²⁰ at the same time she quotes Jason Stearns from the Rift Valley Institute as saying: *'The Rwandan government probably either forced him to hand himself over', "Or he was so afraid of what would happen if they arrested him, (or [Sultani] Makenga got a hold of him) he made a run for the embassy'*.²¹ Presumably on this basis, the journalist continues her article by saying that *'The surrender of Ntaganda, probably has less to do with justice and more about the bloody battles we have seen in recent weeks for control of M23 rebel group based in eastern DR Congo'*.²² In addition, Le Monde reported on 20 March 2013 in its article entitled *"Pourquoi le general congolais Bosco Ntaganda se livre à justice"* that the reasons for his surrender are *not clear*.²³ However, the article affirms that his surrender could be related to the *'récents affrontements armés, dans l'est de la*

¹⁷ Idem.

¹⁸ Sophie Rosenberg is a member of the Democratic Republic of Congo research team for Amnesty International.

¹⁹ See [http://edition.cnn.com/2013/03/28/opinion/amnesty-bosco-ntaganda/index/html](http://edition.cnn.com/2013/03/28/opinion/amnesty-bosco-ntaganda/index.html) .

²⁰ See the Al Jazeera blog "The Surrender of Bosco Ntaganda"- There are a plethora of unanswered questions over why the former general would have chosen to hand himself in- <http://blogs.aljazeera.com/blog/africa/surrender-bosco-ntaganda> .

²¹ Idem. Note: The same individual was cited in the BBC Africa article "Will Bosco Ntaganda's surrender bring peace to DR Congo?", and this is one of the articles cited in footnote 17 of the Prosecution Submission of 6 September.

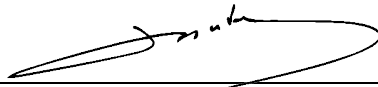
²² Idem.

²³ See http://www.lemonde.fr/afrique/article/2013/02/20/pourquoi-le-general-congolais-bosco-ntaganda-se-livre-a-la-justice_1850854_3212.html .

*RDC, entre les factions du M23*²⁴ and that the situation of Mr. Ntaganda could have also been the result of the loss of support by the Rwandan authorities.²⁵

12. Further sources of information that would indicate the contextual background of the surrender of Mr. Ntaganda appear herein as Annex 1. This list by no means constitutes the only source of information available, it is merely intended as a sample of course that the Registry was able to collect in order to comply with the Single Judge's order to submit additional information.

RESPECTFULLY SUBMITTED,



Marc Dubuisson, Director of the Division of Court Services

On behalf of

Herman von Hebel, Registrar

Dated this 28 February 2014

At The Hague, The Netherlands

²⁴ Idem.

²⁵ Idem.