



Original: **French**

No.: ICC-01/04-02/06
Date: **4 September 2013**

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single Judge

SITUATION IN DEMOCRATIC REPUBLIC OF THE CONGO

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

Confidential

**Decision on the urgent application submitted by the Defence for Mr Bosco
Ntaganda, 3 September 2013, (ICC-01/04-02/06-99-Conf-Exp)**

Decision 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

Counsel for the Defence

Mr Marc Desalliers

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

**Office of Public Counsel for the
Defence**

States' Representatives

The competent authorities of the
Kingdom of the Netherlands

Amicus Curiae

REGISTRY

Registrar

Mr Herman Von Hebel

Deputy Registrar

Mr Didier Preira

Defence Support Section

Victims and Witnesses Unit

Detention Section

Judge Ekaterina Trendafilova, judge at the International Criminal Court (“the Court”), acting as a Single Judge¹ on behalf of Pre-Trial Chamber II (“the Chamber”), was, on 3 September 2013, seized with a “*Requête urgente de la Défense aux fins de reconsidération de la “Decision Requesting Observations on the Defence’s Application for Interim Release”* dated 26 August 2013” (“the Application”).²

1. On 22 August 2006, Pre-Trial Chamber I, which was at the time responsible for this case, rendered its *Decision on the Prosecution Application for a Warrant of Arrest*³ and issued an arrest warrant⁴ against Mr Bosco Ntaganda (“Mr Ntaganda”) on the same day.
2. On 15 March 2012, the Presidency of the Court assigned the situation in the Democratic Republic of the Congo to Pre-Trial Chamber II.⁵
3. On 13 July 2012, the Chamber issued a second arrest warrant⁶ against Mr Ntaganda.
4. On 26 March 2013, pursuant to the decision of the Single Judge rendered on 22 March 2013,⁷ Mr Ntaganda made his initial appearance.
5. On 20 August 2013, the Defence for Mr Ntaganda filed both a confidential *ex parte* and a public redacted version of its Application⁸ “for the interim release of Mr Bosco Ntaganda” (“the Application for Interim Release”) in which it sought “the interim release of Mr Ntaganda into the territory of the Netherlands” and stated that in the event that the Chamber attached conditions to the interim release, pursuant to rule 119 of the Rules of Procedure and Evidence (“the Rules”), Mr Ntaganda undertook to comply fully with the conditions.

¹ ICC-01/04-02/06-40.

² ICC-01/04-02/06-99-Conf-Exp.

³ ICC-01/04-02/06-1-US. A public redacted version of this decision dated 6 March 2006, was made public on 1 October 2010, ICC-01/04-02/06-1-Red.

⁴ ICC-01/04-02/06-2, made public on 28 April 2008.

⁵ ICC-01/04-02/06-32.

⁶ ICC-01/04-02/06-36-Red.

⁷ ICC-01/04-02/06-41.

⁸ ICC-01/04-02/06-87-Conf-Exp and ICC-01/04-02/06-87-Red.

6. On 26 August 2013, pursuant to rule 118(1) of the Rules and regulation 51 of the Regulations of the Court, the Single Judge requested,⁹ the observations of the Prosecutor as well as those of the Kingdom of the Netherlands which is, in this case, both the host State and the State to which Mr Ntaganda is seeking to be released. In this decision, the Single Judge ordered the Registry to transmit the present decision and the redacted version of the Application the Kingdom of the Netherlands.

7. In its Application, the Defence requests for the first time the “confidential”¹⁰ disclosure of the confidential version of the Application for Interim Release to the Dutch authorities. The Defence submitted that in order to “[TRANSLATION] enable the authorities of the Netherlands to make an informed decision in this case, they must have all the information on which the Defence Application is based, as set out in the confidential *ex parte* version of the Application.”¹¹

8. The Single Judge notes articles 68 and 87(3) of the Rome Statute (“the Statute”), rules 118 and 119 of the Rules and regulations 34 and 51 of the Regulations of the Court.

9. Firstly, the Single Judge notes that although the Defence Application is submitted as an application “for reconsideration”, it is in fact a new Defence application, as the Defence had not initially requested the disclosure of the confidential version of its Application for Interim Release to the authorities of the Kingdom of the Netherlands.

10. The Single Judge notes the Defence’s desire to submit supplementary information to the Kingdom of the Netherlands – information not available in the redacted version of the Application for Interim Release – and considers, as the Defence, that the disclosure of this supplementary and confidential information to the Netherlands is not such as to compromise the physical and mental well-being, dignity and respect for the privacy of the victims and witnesses in this case. The

⁹ ICC-01/04-02/06-92.

¹⁰ ICC-01/04-02/06-99-Conf-Exp, para. 6

¹¹ ICC-01/04-02/06-99-Conf-Exp, para. 2

Single Judge, however, invites the Kingdom of the Netherlands to respect the confidential nature of this supplementary information thus disclosed.

11. Lastly, the Single Judge notes that in light of the disclosure of the supplementary information to the Kingdom of the Netherlands, it is appropriate to grant it additional time to submit its observations on the Application for Interim Release.

FOR THESE REASONS, THE SINGLE JUDGE

- a) **orders** the Registrar to transmit to the competent authorities of the Kingdom of the Netherlands this decision as well as the confidential version of the Application for Interim Release (ICC-01/04-02/06-87-Conf-Exp);
- b) **invites** the competent authorities of the Kingdom of the Netherlands to submit their observations no later than Friday, 20 September 2013 on: (i) the confidential version of the Application for Interim Release and (ii) any conditions that would allow the Kingdom of the Netherlands to accept Mr Ntaganda on its territory.

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

[signed]
Judge Ekaterina Trendafilova
Single Judge

Dated this Wednesday, 4 September 2013

At The Hague, The Netherlands