

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/04-02/06  
Date: 26 February 2015

**TRIAL CHAMBER VI**

**Before:** Judge Robert Fremr, Presiding Judge  
Judge Kuniko Ozaki  
Judge Geoffrey Henderson

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO  
IN THE CASE OF  
*THE PROSECUTOR v. BOSCO NTAGANDA***

**Public**

**Fifth decision on Mr Ntaganda's interim release**

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

**The Office of the Prosecutor**

Ms Fatou Bensouda

Mr James Stewart

Ms Nicole Samson

**Counsel for Bosco Ntaganda**

Mr Stéphane Bourgon

Mr Luc Boutin

**Legal Representatives of Victims**

Ms Sarah Pellet

Mr Dmytro Suprun

**Legal Representatives of 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**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

Mr Patrick Craig

**Victims Participation and Reparations  
Section**

**Other**

**Trial Chamber VI** ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda* ('Ntaganda case'), having regard to Articles 58(1), 60(3), 61(11) and 64(6)(a) of the Rome Statute ('Statute') and Rules 118 and 119 of the Rules of Procedure and Evidence ('Rules'), issues the following 'Fifth decision on Mr Ntaganda's interim release'.

## **I. Procedural history**

1. On 18 November 2013,<sup>1</sup> 17 March 2014<sup>2</sup> and 17 July 2014<sup>3</sup>, Mr Ntaganda had his detention reviewed by Pre-Trial Chamber II. On each occasion, Pre-Trial Chamber II's Single Judge decided that Mr Ntaganda shall continue to be detained.
2. On 18 July 2014, the Presidency of the Court constituted Trial Chamber VI and referred to it the *Ntaganda* case.<sup>4</sup>
3. On 31 October 2014, the Chamber reviewed Mr Ntaganda's detention and decided that he shall continue to be detained ('Fourth Interim Release Decision').<sup>5</sup>
4. Following an order of the Chamber to that effect,<sup>6</sup> the defence team for Mr Ntaganda ('Defence'),<sup>7</sup> on 29 January 2015, the Legal Representatives of

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<sup>1</sup> Decision on the Defence's application for interim release, 18 November 2013, ICC-01/04-02/06-147, upheld by the Appeals Chamber, Judgment on the appeal of Mr Bosco Ntaganda against the decision of Pre-Trial Chamber II of 18 November 2013 entitled "Decision on the Defence's Application for Interim Release", 5 March 2014, ICC-01/04-02/06-271-Red, OA (with dissenting opinions of Judges Ušacka and Van den Wyngaert).

<sup>2</sup> Second Decision on Bosco Ntaganda's Interim Release, 17 March 2014, ICC-01/04-02/06-284.

<sup>3</sup> Third Decision on Bosco Ntaganda's Interim Release, 17 July 2014, ICC-01/04-02/06-335.

<sup>4</sup> Presidency, Decision constituting Trial Chamber VI and referring to it the case of *The Prosecutor v. Bosco Ntaganda*, 18 July 2014, ICC-01/04-02/06-337.

<sup>5</sup> Fourth decision on Mr Ntaganda's interim release, 31 October 2014, ICC-01/04-02/06-391.

<sup>6</sup> Order requesting the parties and participants' observations under Article 60(3) of the Statute, 15 January 2015, ICC-01/04-02/06-424.

<sup>7</sup> Observations on Behalf of Mr Ntaganda on the Existence of Changed Circumstances in Relation to his Detention Pursuant to Article 60(3), 29 January 2015, ICC-01/04-02/06-434 ('Defence Submissions').

Victims ('LRVs'),<sup>8</sup> on 30 January 2015, and the Office of the Prosecutor ('Prosecution'),<sup>9</sup> on 3 February 2015, filed their observations on the possible existence of any changed circumstances in relation to Mr Ntaganda's detention pursuant to Article 60(3) of the Statute.

## II. Submissions

5. The Defence submits that, 'to the best of its knowledge, there are no changed circumstances warranting a modification of the Chamber's previous ruling pursuant to Article 60(3) of the Statute'.<sup>10</sup>
6. The Prosecution submits that there has been no change in the facts underlying the Fourth Interim Release Decision and that there are no new facts that would require the Chamber to modify its ruling on detention.<sup>11</sup> In its view, there is a pressing need for the Accused to remain in detention in order: (i) to ensure his appearance at trial; and (ii) to ensure court proceedings are not obstructed, including 'by protecting victims and witnesses from interference and intimidation'.<sup>12</sup>
7. The LRVs are also of the view that Mr Ntaganda must continue to be detained as they consider that the conditions set forth in Article 58(1) of the Statute ('Article 58(1) Conditions') continue to be met. For the LRVs, there have been no changed circumstances in the sense of Article 60(3) of the Statute since the Fourth Interim Release Decision.<sup>13</sup>

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<sup>8</sup> Joint observations on the existence of any changed circumstances in relation to Mr Ntaganda's detention pursuant to Article 60(3) of the Rome Statute, 30 January 2015, ICC-01/04-02/06-436 ('LRVs Joint Submissions').

<sup>9</sup> Prosecution's Observations on the Review of the Pre-Trial Detention of Bosco Ntaganda, 3 February 2015, ICC-01/04-02/06-440 ('Prosecution Submissions').

<sup>10</sup> Defence Submissions, ICC-01/04-02/06-434, para. 2.

<sup>11</sup> Prosecution Submissions, ICC-01/04-02/06-440, para. 8.

<sup>12</sup> Prosecution Submissions, ICC-01/04-02/06-440, paras 10-14.

<sup>13</sup> LRVs Joint Submissions, ICC-01/04-02/06-436, paras 4-5.

### III. Applicable law

8. The Chamber incorporates by reference the applicable law as set out in the Fourth Interim Release Decision.<sup>14</sup>
9. It is recalled, in particular, that, under Article 60(3) of the Statute, a chamber may modify its previous ruling on detention, release or conditions of release if 'it is satisfied that changed circumstances so require'.<sup>15</sup> The previous ruling on detention refers to the initial decision made under Article 60(2), as well as any potential subsequent modifications made to that decision under Article 60(3) of the Statute.<sup>16</sup>
10. Changed circumstances mean a change in some or all of the facts underlying a previous decision on detention, or a new fact satisfying a chamber that a modification of its prior ruling is necessary.<sup>17</sup> If there are changed circumstances, a chamber will need to consider their impact on the factors that formed the basis for the decision to keep the person in detention. If, however, a chamber finds that there are no changed circumstances, it is not required to further review the ruling on release or detention.<sup>18</sup>
11. In circumstances where a State has offered to accept a detained person and to enforce conditions, it is incumbent upon the chamber to consider

<sup>14</sup> Fourth Interim Release Decision, ICC-01/04-02/06-391, para. 5 (a) to (f).

<sup>15</sup> See for example, *The Prosecutor v. Laurent Gbagbo*, Appeals Chamber, Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I of 13 July 2012 entitled "Decision on the 'Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo'", 26 October 2012, ICC-02/11-01/11-278-Red, OA ('Gbagbo OA Judgment'), para. 23.

<sup>16</sup> *The Prosecutor v. Jean-Pierre Bemba Gombo*, Appeals Chamber, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 28 July 2010 entitled "Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence", 19 November 2010, ICC-01/05-01/08-1019, OA 4 ('Bemba OA 4 Judgment'), para. 46.

<sup>17</sup> Bemba OA 4 Judgment, ICC-01/05-01/08-1019, paras 51-52.

<sup>18</sup> See, for example, *The Prosecutor v. Laurent Gbagbo*, Appeals Chamber, Judgment on the appeal of Mr Laurent Gbagbo against the decision of Pre-Trial Chamber I of 11 July 2013 entitled "Third decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute", 29 October 2013, ICC-02/11-01/11-548-Red, OA 4, para. 51; *The Prosecutor v. Jean-Pierre Bemba Gombo*, Appeals Chamber, Public redacted version - Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 6 January 2012 entitled "Decision on the defence's 28 December 2011 'Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo'", 5 March 2012, ICC-01/05-01/08-2151-Red, OA 10, para. 31.

conditional release. On the other hand, where no such proposals for conditional release are presented and none are self-evident, the chamber's discretion to consider conditional release is unfettered.<sup>19</sup>

#### IV. Analysis

12. The Chamber recalls it considers it to be in the interests of justice to continue to review Mr Ntaganda's detention until the commencement of the trial.<sup>20</sup>
13. The Chamber notes, in this regard, that none of the parties and participants has submitted that there were changed circumstances warranting a modification of the Fourth Interim Release Decision. In addition, the Chamber is not aware of any changed circumstances that have transpired which would now render necessary a modification of its prior ruling.<sup>21</sup>
14. The Chamber is also of the view that there is no need to consider conditional release at this point as no proposals have been presented or are self-evident.<sup>22</sup>

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<sup>19</sup> Rule 119 of the Rules; *Gbagbo* OA Judgment, ICC-02/11-01/11-278-Red, OA, para. 79.

<sup>20</sup> Fourth Interim Release Decision, ICC-01/04-02/06-391, para. 5 (c), referring to Article 60(3), 61(11) and 64(6)(1) of the Statute, and Rule 118(2) of the Rules.


<sup>21</sup> Fourth Interim Release Decision, ICC-01/04-02/06-391.

<sup>22</sup> *Gbagbo* OA Judgment, ICC-02/11-01/11-278-Red, OA, para. 79. *See also*, Fourth Interim Release Decision, ICC-01/04-02/06-391, para. 17.

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**DECIDES** that Mr Ntaganda shall continue to be detained.

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



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**Judge Robert Fremr, Presiding Judge**



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**Judge Kuniko Ozaki**



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**Judge Geoffrey Henderson**

Dated 26 February 2015

At The Hague, The Netherlands