

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/04-02/06

Date: 24 May 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***

**Public**

**Decision Requesting Observations on the "Prosecution's Urgent Request to Postpone the Date of the Confirmation Hearing"**

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

**The Office of the Prosecutor**

Fatou Bensouda

**Counsel for the Defence**

Marc Desalliers

**Legal Representatives of Victims**

**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**

Herman Von Hebel

**Deputy Registrar**

Didier Preira

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

**Judge Ekaterina Trendafilova**, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court”)<sup>1</sup> hereby renders this decision requesting observations on the “Prosecution’s Urgent Request to Postpone the Date of the Confirmation Hearing” ( the “Prosecutor’s Request”).<sup>2</sup>

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”,<sup>3</sup> along with a corresponding warrant of arrest for Bosco Ntaganda (“Mr. Ntaganda”),<sup>4</sup> for his alleged responsibility for the war crimes of conscripting, enlisting children under the age of fifteen and using them to participate actively in hostilities under either article 8(2)(b)(xxvi) or article 8(2)(e)(vii) of the Rome Statute (the “Statute”).

2. On 15 March 2012, the Presidency re-assigned the situation in the Democratic Republic of the Congo to Pre-Trial Chamber II.<sup>5</sup>

3. On 13 July 2012, the Chamber issued its “Decision on the Prosecutor’s Application under Article 58”.<sup>6</sup> In this decision the Chamber issued a second warrant of arrest against Mr. Ntaganda for his alleged responsibility for the crimes against humanity of murder, rape, sexual slavery, and persecution based on ethnic grounds, under articles 7(l)(a), 7(l)(g) and 7(l)(h) of the Statute; and the war crimes of murder, intentional

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

<sup>2</sup> ICC-01/04-02/06-65.

<sup>3</sup> 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; and redacted version, 6 March 2007, ICC-01/04-02/06-1-Red-tENG.

<sup>4</sup> Pre-Trial Chamber I, “Warrant of Arrest – Corrigendum”, 7 March 2007, ICC-01/04-02/06-2-Corr-tENG-Red.

<sup>5</sup> 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.

<sup>6</sup> 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, 13 July 2012, ICC-01/04-02/06-36-Red.

attacks against civilians, pillaging, rape and sexual slavery under articles 8(2)(c)(i), 8(2)(e)(i), 8(2)(e)(v) and 8(2)(e)(vi) of the Statute.<sup>7</sup>

4. On 22 March 2013, the Single Judge issued the “Decision on Setting the Date for the Initial Appearance and Related Issues”, in which she, *inter alia*, noted Mr. Ntaganda’s voluntary surrender to the Court<sup>8</sup> and decided to convene a hearing for his initial appearance on 26 March 2013.<sup>9</sup>

5. On 26 March 2013, before the closure of the hearing on the initial appearance, the Single Judge decided that “23 September 2013 is the date for the commencement of the confirmation hearing”.<sup>10</sup>

6. On 24 May 2013, the Chamber was notified of the Prosecutor’s Request.<sup>11</sup>

7. The Single Judge notes articles 21(1)(a), and (3), 61(1) and 67 of the Statute, and rule 121(7) of the Rules of Procedure and Evidence and regulations 24(1) and 34(b) of the Regulations of the Court ( the “Regulations”).

8. In her final relief, the Prosecutor requests the Single Judge to:

- a. Abbreviate the time for any response by the Defence, given the urgency of the application further to Regulation 35(2);
- b. Suspend the deadlines in decision ICC-01/04-02/06-64; and
- c. Postpone the confirmation hearing date until mid-February 2014 further to Rule 121(7).<sup>12</sup>

9. In this regard, the Single Judge stresses that one of her main duties is to ensure that judicial proceedings are conducted in a fair and expeditious manner taking into consideration the competing interests at stake. Thus, in order to guarantee the fairness of the judicial process and for the sake of being in a position to properly decide on the

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<sup>7</sup> Pre-Trial Chamber II, “Decision on the Prosecutor’s Application under Article 58”, 13 July 2012, ICC-01/04-02/06-36-Conf-Exp, p. 37; and public redacted version, 13 July 2012, ICC-01/04-02/06-36-Red, p. 37.

<sup>8</sup> Pre-Trial Chamber II, ICC-01/04-02/06-41, p. 4.

<sup>9</sup> Pre-Trial Chamber II, ICC-01/04-02/06-41, p. 5.

<sup>10</sup> Pre-Trial Chamber II, Transcript of Hearing, 26 March 2013, ICC-01/04-02/06-T-2-ENG ET, p. 12, lines 2-3.

<sup>11</sup> ICC-01/04-02/06-65.

<sup>12</sup> ICC-01/04-02/06-65, para. 27.

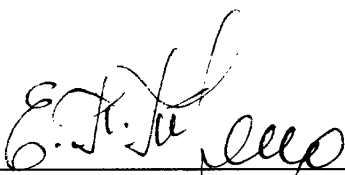
Prosecutor's Request, the Single Judge deems it necessary to provide the Defence with the opportunity to be heard on the matter *sub judice*.

10. According to regulations 24 (1) in conjunction with regulation 34(b) of the Regulations, the Defence "may file a response" to the Prosecutor's Request "within 21 days of notification in accordance with regulation 31 of the document to which the participant is responding", unless otherwise ordered by the Single Judge. Since the Single Judge is keen to expedite the proceedings, to the extent possible and whenever it is feasible, she considers that a variation of the 21 days deadline is warranted in this case.

**FOR THESE REASONS, THE SINGLE JUDGE HEREBY**

- a) **decides** to vary the 21 days deadline provided for filing a response by the Defence in accordance with regulation 34(b) of the Regulations;
- b) **requests** the Defence, should it decide to file a response to the Prosecutor's Request, to submit its observations, **no later than Thursday 30 May 2013**; and
- c) **decides** to defer ruling on the remaining elements of the Prosecutor's Request until the Defence has either, filed its observations or waived the right of doing so within the deadline prescribed in the present decision.

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



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Judge Ekaterina Trendafilova  
Single Judge

Dated this Friday, 24 May 2013

At The Hague, The Netherlands