

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 4 July 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**

**Decision on the “Requête de la Défense sollicitant l’autorisation d’interjeter appel  
de la Décision sur la confirmation des charges datée du 9 juin 2014”**

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

**The Office of the Prosecutor**

Fatou Bensouda, Prosecutor

James Stewart, Deputy Prosecutor

**Counsel for the Defence**

Marc Desalliers

**Legal Representatives of the Victims**

Sarah Pellet

Dmytro Suprun

**Legal Representatives of the 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**

**Other**

Appeals Chamber

**REGISTRY**

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**Registrar**

Herman von Hebel

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section Other**

**Judge Ekaterina Trendafilova**, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court,<sup>1</sup> hereby renders this decision on the “Requête de la Défense sollicitant l’autorisation d’interjeter appel de la Décision sur la confirmation des charges datée du 9 juin 2014” (the “Application”).<sup>2</sup>

## **I. PROCEDURAL HISTORY**

1. On 8 June 2014, the Single Judge issued the “Decision on Admissibility of Evidence and Other Procedural Matters” (the “8 June 2014 Decision”),<sup>3</sup> in which, *inter alia*, she rejected a request submitted by the Defence on 6 February 2014 concerning the admissibility of certain pieces of evidence.<sup>4</sup>

2. On the same date, the Chamber issued the “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda”,<sup>5</sup> in which it confirmed the charges against Bosco Ntaganda (“Mr. Ntaganda”) to the extent specified in the operative part of the decision (the “Confirmation of Charges Decision”).<sup>6</sup>

3. On 18 June 2014, the Defence submitted the Application in which it sought leave to appeal the Confirmation of Charges Decision on the two following issues:

(a) Whether the Pre-Trial Chamber is able to rely exclusively on evidence that cannot be reasonably challenged by the Defence, such as indirect or anonymous witness statements or the statements of deceased witnesses, to confirm the charges relating to the locations referred to in paragraph 13 of the Application; and

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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.

<sup>2</sup> ICC-01/04-02/06-312.

<sup>3</sup> Pre-Trial Chamber II, ICC-01/04-02/06-308.

<sup>4</sup> Pre-Trial Chamber II, ICC-01/04-02/06-308, p. 15.

<sup>5</sup> Pre-Trial Chamber II, ICC-01/04-02/06-309.

<sup>6</sup> Pre-Trial Chamber II, ICC-01/04-02/06-309, p. 63.

(b) Whether article 8(2)(e)(viii) of the Rome Statute (the “Statute”) requires the Prosecutor to prove that a specific order was given by the perpetrator for the unlawful displacement of the civilian population.<sup>7</sup>

4. On 20 June 2014, the Chamber received the “Response of the Common Legal Representative of the group of victims of the attacks to the ‘*Requête de la Défense sollicitant l’autorisation d’interjeter appel de la Décision sur la confirmation des charges datée du 9 juin 2014*’ dated 16 June 2014”,<sup>8</sup> in which the Common Legal Representative requested that the Single Judge reject the Application.<sup>9</sup> On the same date, the Chamber received the “Prosecution’s Response to Defence Application for Leave to Appeal the Decision Confirming the Charges” (the “Response”),<sup>10</sup> in which the Prosecutor also requested the rejection of the Application.<sup>11</sup>

## II. APPLICABLE LAW

5. The Single Judge notes articles 21(1)(a), (2), (3) and 82(1)(d) of the Statute, rule 155 of the Rules of Procedure and Evidence (the “Rules”) and regulation 65 of the Regulations of the Court.

## III. THE SINGLE JUDGE’S DETERMINATION

6. Article 82(1)(d) of the Statute reads, in relevant part:

1. Either party may appeal any of the following decisions in accordance with the Rules of Procedure and Evidence:

[...]

(d) A decision that involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

7. In this regard, the Chamber recalls the first decision on interlocutory appeals dated 19 August 2005, in which this Chamber, albeit in a different composition, held

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<sup>7</sup> ICC-01/04-02/06-312, pp. 4 and 8.

<sup>8</sup> ICC-01/04-02/06-313.

<sup>9</sup> ICC-01/04-02/06-313, p. 19.

<sup>10</sup> ICC-01/04-02/06-314.

<sup>11</sup> ICC-01/04-02/06-314, p. 11.

that when examining an application for leave to appeal under article 82(l)(d) of the Statute, it must be guided by three main principles: a) the restrictive nature of the remedy provided in this provision; b) the need for the applicant to satisfy the Chamber as to the fulfilment of the requirements embodied in this provision; and c) the irrelevance of addressing arguments concerning the merits of the appeal.<sup>12</sup> The Chamber also recalls the Appeals Chamber's judgment of 13 July 2006 (the "13 July 2006 Judgment"), which specifies that the object of the remedy provided in article 82(1)(d) of the Statute is to "pre-empt the repercussions of erroneous decisions on the fairness of the proceedings or the outcome of the trial".<sup>13</sup> The Chamber shall therefore assess the Defence's Application in light of these principles.

8. Having laid down the main principles underlying interlocutory appeals, the Single Judge turns to the requirements regulating the granting or rejection of an application for leave to appeal.

9. The Single Judge recalls that for leave to be granted, the following specific requirements must be met:

a) the decision must involve an "issue" that would significantly affect (i) *both* the "fair" and "expeditious" conduct of the proceedings; *or* (ii) the outcome of the trial; and

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<sup>12</sup> Pre-Trial Chamber II, "Decision on Prosecutor's Application for Leave to Appeal in Part Pre-Trial Chamber II's Decision on the Prosecutor's Applications for Warrants of Arrest under Article 58", ICC-02/04-01/05-20-US-Exp, unsealed pursuant to Decision ICC-02/04-01/05-52 dated 13 October 2005, para. 15; "Decision on the Prosecution's Application for Leave to Appeal the Decision on Victims' Applications for Participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06", ICC-02/04-112, para. 16; see also Trial Chamber I, "Decision on two requests for leave to appeal the 'Decision on the request by DRC-D01-WWWW-0019 for special protective measures relating to his asylum application'", ICC-01/04-01/06-2779, para. 10.

<sup>13</sup> Appeals Chamber, "Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber's 31 March 2006 Decision Denying Leave to Appeal", ICC-01/04-168, para. 19.

b) in the view of the Pre-Trial Chamber, an immediate resolution by the Appeals Chamber is warranted as it may materially advance the proceedings.<sup>14</sup>

10. According to established jurisprudence, an “issue” is an identifiable subject or topic requiring a decision for its resolution, not merely a question over which there is disagreement or conflicting opinion. An “issue” is constituted by a subject, the resolution of which is essential for the determination of matters arising in the judicial cause under examination.<sup>15</sup> Most importantly, the “issue” identified by the appellant must emanate from the relevant decision itself and cannot represent a hypothetical concern or abstract legal question.<sup>16</sup>

11. “Fairness” in the context of article 82(1)(d) of the Statute “is associated with the norms of a fair trial, the attributes of which are an inseverable part of the corresponding human right, incorporated in the Statute by distinct provisions of it (articles 64(2) and 67(1)) and article 21(3)”.<sup>17</sup> “Expeditionness”, an “attribute of a fair trial”,<sup>18</sup> is closely linked to the concept of proceedings “within a reasonable time”,

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<sup>14</sup> See also, for example, Appeals Chamber, “Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal”, 13 July 2006, ICC-01/04-168, paras 9-19; Pre-Trial Chamber II, “Decision on the Prosecutor’s Request for Leave to Appeal the Decision Rejecting the Amendment of the Charges (ICC-01/09-01/11-859)”, 6 September 2013, ICC-01/09-01/11-912, para. 16 with further references in footnote 22.

<sup>15</sup> Appeals Chamber, “Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal”, 13 July 2006, ICC-01/04-168, para. 9.

<sup>16</sup> Pre-Trial Chamber II, “Decision on the Prosecutor’s Application for Leave to Appeal the ‘Decision Pursuant to Articles 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo’”, 18 September 2009, ICC-01/05-01/08-532, para. 17; Pre-Trial Chamber I, “Decision on the Prosecutor’s and Defence requests for leave to appeal the decision adjourning the hearing on the confirmation of charges”, 31 July 2013, ICC-02/01-01/11-464, para. 8.

<sup>17</sup> Appeals Chamber, “Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal”, 13 July 2006, ICC-01/04-168, para. 11.

<sup>18</sup> Appeals Chamber, “Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal”, 13 July 2006, ICC-01/04-168, para. 11.

namely the speedy conduct of proceedings, without prejudice to the rights of the parties concerned.<sup>19</sup>

12. According to the jurisprudence of the Appeals Chamber, the “outcome of the trial” is affected “where the possibility of error in an interlocutory or intermediate decision may have a bearing thereupon”.<sup>20</sup> In deciding a request under article 82(1)(d) of the Statute, the Pre-Trial Chamber “must ponder the possible implications of a given issue being wrongly decided on the outcome of the case. The exercise involves a forecast of the consequences of such an occurrence”.<sup>21</sup>

13. A determination that the issue significantly affects the fair and expeditious conduct of the proceedings or the outcome of the trial does not automatically qualify it as a subject of appeal. Pursuant to article 82(1)(d) of the Statute, the issue must be such “for which, in the opinion of the Pre-Trial [...] Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings”. To materially “advance” the proceedings has been defined by the Appeals Chamber as to “move forward” “by ensuring that the proceedings follow the right course”.<sup>22</sup> Whether this is the case involves an assessment by the relevant Chamber as to whether the authoritative decision by the Appeals Chamber will rid “the judicial process of possible mistakes that might taint either the fairness of the proceedings or mar the outcome of the trial”.<sup>23</sup>

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<sup>19</sup> Pre-Trial Chamber III, “Decision on the Prosecutor’s application for leave to appeal Pre-Trial Chamber III’s decision on disclosure”, 25 August 2008, ICC-01/05-01/08-75, para. 18.

<sup>20</sup> Appeals Chamber, “Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal”, 13 July 2006, ICC-01/04-168, para. 13.

<sup>21</sup> Appeals Chamber, “Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal”, 13 July 2006, ICC-01/04-168, para. 13.

<sup>22</sup> Appeals Chamber, “Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal”, 13 July 2006, ICC-01/04-168, para. 15.

<sup>23</sup> Appeals Chamber, “Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal”, 13 July 2006, ICC-01/04-168, para. 14.

14. Concerning the requirements set out in paragraph 9 (a) and (b) above, the Single Judge recalls that they are cumulative. Failure in demonstrating that one of the requirements in (a) or (b) is fulfilled makes it unnecessary for the Single Judge to address the remaining requirements under article 82(1)(d) of the Statute.

*First Issue*

15. As stated earlier in paragraph 3(a) of the present decision, the Defence wishes to appeal the issue of whether the Pre-Trial Chamber is able to rely exclusively on evidence that cannot be reasonably challenged by the Defence, such as indirect or anonymous witness statements or the statements of deceased witnesses, to confirm the charges relating to the locations referred to in paragraph 13 of the Application.

16. In supporting its view, the Defence argues that the Confirmation of Charges Decision was erroneous in confirming a number of charges in relation to various locations referred to in paragraphs 4 and 13 of the Application.<sup>24</sup> According to the Defence, the Chamber committed an error by relying “exclusively on evidence that the Defence was unable to reasonably challenge, without examining whether [...] [it] was corroborated or whether the admission thereof could prejudice the Defence”.<sup>25</sup>

17. In the opinion of the Defence, relying on indirect evidence is not sufficient to meet the evidentiary threshold required at the confirmation of charges phase and places the Defence in a difficult position to “investigate and test the trustworthiness of the source of the information”,<sup>26</sup> thus “limiting its right” to challenge the Prosecutor’s evidence under article 61(6)(b) of the Statute.<sup>27</sup>

18. Referring to the Pre-Trial Chambers’ jurisprudence regarding the usage of anonymous witness statements or summaries, the Defence further argues that

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<sup>24</sup> ICC-01/04-02/06-312, para. 4.

<sup>25</sup> ICC-01/04-02/06-312, para. 7.

<sup>26</sup> ICC-01/04-02/06-312, para. 10.

<sup>27</sup> ICC-01/04-02/06-312, para. 10.



relying on evidence of this nature “could” prevent it from challenging the credibility and reliability of the evidence presented. For the Defence, this evidence is deemed to have low probative value and require corroboration, and for this reason Pre-Trial Chambers “may even decline to confirm allegations that are supported only by anonymous or summary witness statements”.<sup>28</sup>

19. The Single Judge wishes to point out that, in principle, she is not supposed to respond to the merits of the Defence’s arguments in ruling on the Application. Rather, the Single Judge is merely to determine whether the requirements of article 82(1)(d) of the Statute have been met. Nevertheless, making such a determination pursuant to article 82(1)(d) of the Statute might entail that the Single Judge engages to a certain extent with some of the core arguments of the Application. This is in order to determine whether there exists an “appealable issue” arising from the Confirmation of Charges Decision, which meets the requirements specified in paragraph 9 (a) and (b) referred to above.<sup>29</sup>

20. In this regard, the Single Judge disagrees with the Defence’s assertion that the question of relying on indirect or anonymous witness statements or statements of diseased witnesses constitutes an appealable issue arising from the Confirmation of Charges Decision within the meaning of article 82(1)(d) of the Statute.

21. In particular, the core of the Defence’s argument revolves around the type of evidence used by the Chamber for confirming the charges. This is no more than a disagreement with the Chamber regarding the kind of evidence relied upon for the purposes of the Confirmation of Charges Decision. Thus, by claiming that the

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<sup>28</sup> ICC-01/04-02/06-312, para. 11 and paras 12-13.

<sup>29</sup> Pre-Trial Chamber II, “Decision on the Defences’ Applications for Leave to Appeal the Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute”, 9 March 2012, ICC-01/09-01/11-399, para. 14; “Decision on the Prosecutor’s Application for Leave to Appeal the ‘Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo’”, 18 September 2009, ICC-01/05-01/08-532, paras 14-16.

Chamber committed an error in this regard, the Defence is objecting to the Court's established legal framework (*lex lata*) and jurisprudence.

22. More specifically, the Defence is challenging the Chamber's discretionary powers provided by virtue of articles 64(9) and 69(4) of the Statute, and rule 63(2) of the Rules, which govern the principle of free assessment of evidence by the relevant Chamber. Rule 63(2) of the Rules particularly stipulates that "[a] Chamber shall have the authority, in accordance with the discretion described in article 64, paragraph 9, to assess freely all evidence submitted in order to determine its relevance or admissibility in accordance with article 69".

23. This principle has been endorsed by the Appeals Chamber when it stated that the Pre-Trial Chamber is vested with the discretion to determine the relevance, admissibility and the weight to be given to the evidence.<sup>30</sup> Certainly, the Chamber's ability to evaluate the evidence at this stage is not unlimited and is not to be compared with the assessment that takes place at trial.<sup>31</sup> Nevertheless, the Chamber still has the discretion in making its final assessment as to the sort of evidence it intends to *disregard* or *rely* upon in the course of its determination under article 61(7) of the Statute.

24. In this context, the Single Judge deems it necessary to recall also article 61(5) of the Statute which states that during the confirmation of charges proceedings, "[t]he Prosecutor may rely on documentary or summary evidence and need not call the witnesses expected to testify at the trial". The Appeals Chamber has clarified that the "use of such summaries, even where the identities of witnesses are unknown to the defence and their underlying statements are not fully disclosed, is not necessarily

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<sup>30</sup> Appeals Chamber, "Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled 'Decision on the confirmation of charges'", 30 May 2012, ICC-01/04-01/10-514, para. 42.

<sup>31</sup> Appeals Chamber, "Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled 'Decision on the confirmation of charges'", 30 May 2012, ICC-01/04-01/10-514, para. 47.

prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial”.<sup>32</sup>

25. Thus, to argue that relying on indirect evidence, anonymous witness statements or statements of deceased witnesses to confirm certain charges was erroneous, and accordingly constitutes an appealable issue arising from the Confirmation of Charges Decision, is misleading. In essence, the Defence is disputing both the factual findings of the Chamber as well as the existing legal provisions under the Statute which govern the evidentiary debate at the pre-trial phase of the proceedings. As the Prosecutor correctly puts it, the first issue “simply represents the Defence’s disagreement with the manner in which the Chamber appraised the evidence before it”.<sup>33</sup>

26. Finally, the Single Judge observes that the Defence has previously presented similar arguments concerning the prejudice that the suspect might suffer as a result of not being in a position to properly challenge the “relevance” or “admissibility” of evidence at the pre-trial stage.<sup>34</sup> In the present Application, the Defence reiterates similar arguments concerning the alleged limitation to his right to challenge the “credibility” and “reliability” of the evidence. In the 8 June 2014 Decision, the Single Judge explicitly stated that “Mr. Ntaganda does not suffer any prejudice as he can advance any of the challenges regarding the ‘relevance’ or ‘admissibility’ of evidence at the trial stage”.<sup>35</sup> Thus, by introducing a similar argument, the Defence is clearly attempting to re-litigate or reconsider the same question which was previously ruled upon by the Single Judge in the 8 June 2014 Decision. The same holds true with respect to the Defence’s argument related to the Chamber’s reliance on statements of deceased witnesses and the impossibility of challenging them. The Defence is trying

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<sup>32</sup> Appeals Chamber, “Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled ‘Decision on the confirmation of charges’”, 30 May 2012, ICC-01/04-01/10-514, para. 47.

<sup>33</sup> ICC-01/04-02/06-314, paras 2 and 8; see also ICC-01/04-02/06-313, para. 21.

<sup>34</sup> ICC-01/04-02/06-250-Red.

<sup>35</sup> Pre-Trial Chamber II, ICC-01/04-02/06-308, para. 28.

again to re-litigate the exact question ruled upon by the Single Judge in the 8 June 2014 Decision, where she said, “[a]dmittedly, the Defence will not be able to examine [deceased witnesses] at trial. However, [...] [t]he Single Judge pays heed to article 61(5) of the Statute which allows the Prosecutor to present [...] documentary or summary evidence. It follows that statements and material pertaining to deceased persons can be considered as any other documentary evidence”.<sup>36</sup>

27. In this context, it should be noted that this Chamber has made it explicitly clear in its previous jurisprudence that requests for reconsideration are not permitted.<sup>37</sup> Instead, the correct procedural avenue for the Defence would have been to present an application for leave to appeal the 8 June 2014 Decision, which however, was not done.

28. Finally, and apart from the above arguments, nothing in the course of the confirmation proceedings shows that the suspect was deprived of the right to challenge the evidence presented against him as asserted. To the contrary, the suspect was given all opportunities to object to the charges brought, challenge the evidence presented by the Prosecutor, or present evidence in accordance with article 61(6) of the Statute. Further, with the start of the confirmation hearing on 10 February 2014, the suspect was entitled to rebut all of the Prosecutor’s allegations during the hearing and in its written submissions thereafter.

29. In light of the foregoing, the Single Judge does not consider that this sort of “disagreement” or “conflict of opinion” constitutes an “appealable issue” within the

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<sup>36</sup> Pre-Trial Chamber II, ICC-01/04-02/06-308, para. 31.

<sup>37</sup> Pre-Trial Chamber II, “Decision on the Defence Request for Leave to Appeal”, 13 January 2014, ICC-01/04-02/06-207”, p. 16, fn. 50; “Decision on the ‘Defence Request for Leave to Appeal the *Urgent Decision on the Urgent Defence Application for Postponement of the Confirmation Hearing and Extension of Time to Disclose and List Evidence (ICC-01/09-01/11-260)*’”, 29 August 2011, ICC-01/09-01/11-301, para. 18; “Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute”, 30 May 2011, ICC-01/09-01/11-101, para. 42; “Decision on the ‘Prosecution’s Application for Extension of Time Limit for Disclosure’”, 10 May 2011, ICC-01/09-01/11-82, para. 11; see also Pre-Trial Chamber I, “Decision on the Prosecution Motion for Reconsideration and, in the alternative, Leave to Appeal”, 23 June 2006, ICC-01/04-01/06-166, paras 10-12.

meaning of article 82(1)(d) of the Statute. It follows that there is no need to delve into the remaining requirements of article 82(1)(d) of the Statute.

### *Second Issue*

30. As stated earlier in paragraph 3 of the present decision, the Defence wishes to appeal the issue of whether article 8(2)(e)(viii) of the Statute requires the Prosecutor to prove that a specific order was given by the perpetrator for the unlawful displacement of the civilian population.

31. In substantiating its claim, the Defence asserts that the Chamber confused the mode of liability and the element of the crime of displacing civilians (article 8(2)(e)(viii) of the Statute).<sup>38</sup> In the opinion of the Defence, the Elements of Crimes “are clear and unambiguous” in the sense that an order is required by the perpetrator of the crime. Thus, the fact that the Chamber ruled that this crime does not require proof that a specific order be given amounts to an error.<sup>39</sup> By so doing, the Chamber erroneously confirmed charge 13 of the Document Containing the Charges (the “DCC”), in the absence of any order by the suspect to displace the civilian population.<sup>40</sup>

32. In this regard, the Single Judge also does not find that the second issue presented by the Defence amounts to an appealable issue within the meaning of article 82(1)(d) of the Statute.

33. Again, the Defence is simply disputing the Chamber’s findings in the Confirmation of Charges Decision, but this time it is challenging the legal interpretation provided to a certain provision relied upon in confirming the charge under count 13 of the DCC. In particular, the Defence is disputing the scope of application of the war crime of displacing civilians under article 8(2)(e)(viii) of the

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<sup>38</sup> ICC-01/04-02/06-312, para. 22.

<sup>39</sup> ICC-01/04-02/06-312, para. 24.

<sup>40</sup> ICC-01/04-02/06-312, para. 27.

Statute as envisaged by the Chamber. By so doing, the Defence's submission on this point does not reveal more than a difference of opinion regarding the question *sub judice* or another disagreement with the legal interpretation provided by the Chamber with respect to a different part of the Confirmation of Charges Decision. As correctly pointed out by the Common Legal Representative, the "Defence's arguments in this respect amount to no more than a mere disagreement or a difference of opinion as to the approach applied by the Chamber to interpret the relevant provisions of the legal texts of the Court".<sup>41</sup> It follows that the Defence fails to show that the second issue constitutes an appealable issue under article 82(1)(d) of the Statute. Therefore, there is no need to proceed in examining the remaining requirements of this provision.

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

**rejects** the Application.

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



**Judge Ekaterina Trendafilova**  
**Single Judge**

Dated this Friday, 4 July 2014

At The Hague, The Netherlands

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<sup>41</sup> ICC-01/04-02/06-313, para. 28.