

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 3 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

Redacted Decision Authorising the Defence to Amend the List of Evidence

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

REGISTRY

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,¹ hereby renders the decision on the “Requête de la Défense aux fins d’ajout d’un élément sur son inventaire des preuves” (the “Application”).²

1. On 17 June 2013, the Single Judge issued the “Decision on the ‘Prosecution’s Urgent Request to Postpone the Date of the Confirmation Hearing’ and Setting a New Calendar for the Disclosure of Evidence Between the Parties”,³ in which the Single Judge, *inter alia*, postponed the commencement of the confirmation of charges hearing, initially scheduled to take place on 23 September 2013, until Monday, 10 February 2014 and established a new calendar for the disclosure of evidence between the parties. In particular, the Defence was ordered “to disclose to the Prosecutor the evidence it intends to present at the confirmation of charges hearing, if any, and to file the list of evidence no later than Friday, 24 January 2014”.⁴

2. On 24 January 2014, the Defence submitted the “*Communication de l’inventaire des preuves que la Défense entend déposer dans le cadre de l’audience de confirmation des charges et du tableau analytique relatif à ces éléments de preuve*”,⁵ together with the list of evidence⁶ and related in-depth analysis chart⁷ pursuant to article 61(6) of the Rome Statute (the “Statute”), fifteen days before the commencement of the confirmation of charges hearing according to rule 121(6) of the Rules of Procedure and Evidence (the “Rules”).

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

² ICC-01/04-02/06-236-Conf, with confidential annex.

³ Pre-Trial Chamber II, “Decision on the ‘Prosecution’s Urgent Request to Postpone the Date of the Confirmation Hearing’ and Setting a New Calendar for the Disclosure of Evidence Between the Parties”, 17 June 2013, ICC-01/04-02/06-73.

⁴ *Ibid.*, p. 21.

⁵ ICC-01/04-02/06-227 with three annexes.

⁶ ICC-01/04-02/06-227-Conf-AnxA.

⁷ ICC-01/04-02/06-227-Conf-Exp-AnxB.

3. On 27 January 2014, the Single Judge convened a status conference on, *inter alia*, the issue of disclosure.⁸

4. On 28 January 2014, the Single Judge issued the “Sixth Decision on the Prosecutor’s Requests for Redactions”⁹ (the “Sixth Decision on Redactions”) by way of which she authorised the non-disclosure of information in material under article 67(2) of the Statute and rule 77 of the Rules and authorized the Defence, if deemed necessary, to amend its list of evidence in light of the upcoming disclosure of said evidence.¹⁰

5. On 29 January 2014, the Chamber received the Application.

6. The Single Judge notes articles 21(3), 61(6), 67(1) of the Statute and rule 121(6) of the Rules.

7. The Defence requests that it be authorised to add a two-page statement¹¹ of witness D18-0001, who testified before Trial Chamber I,¹² to its list of evidence.¹³

[REDACTED]

[REDACTED]

[REDACTED]¹⁴ [REDACTED]

[REDACTED]¹⁵ Eventually, on those dates, the interview of the witness took place.¹⁶ Accordingly, the Defence

⁸ Pre-Trial Chamber II, “Decision Convening a Status Conference on Disclosure Issues and on the Organisation of the Confirmation Hearing”, 24 January 2014, ICC-01/04-02/06-225; Pre-Trial Chamber II, Transcript of Hearing, 27 January 2014, ICC-01/04-02/06-T-5-Conf-Exp-FR ET.

⁹ Pre-Trial Chamber II, ICC-01/04-02/06-233-Conf-Exp with two confidential *ex parte* annexes. A confidential redacted version is also available, see ICC-01/04-02/06-233-Conf-Red.

¹⁰ *Ibid.*, para. 24 and p. 11.

¹¹ ICC-01/04-02/06-236-Conf, para. 12.

¹² ICC-01/04-02/06-236-Conf, para. 6.

¹³ ICC-01/04-02/06-236-Conf, para. 5.

¹⁴ ICC-01/04-02/06-236-Conf, para. 7.

¹⁵ ICC-01/04-02/06-236-Conf, para. 8.

¹⁶ ICC-01/04-02/06-236-Conf, para. 9.

asserts that it was not possible for it to include this statement in the list of evidence presented on 24 January 2014.¹⁷

8. The Defence also informs the Single Judge that the statement of witness D18-0001 has already been disclosed to the Prosecutor on 28 January 2014.¹⁸ Lastly, the Defence argues that this addition to the list of evidence does not prejudice the Prosecutor.¹⁹

9. The Single Judge recalls that the Defence list of evidence must be submitted no later than 15 days before the commencement of the confirmation of charges hearing. However, she is also mindful of the fact that the statement of witness D18-0001 could only be obtained on 24 January 2014. The Single Judge also takes into account that the document is only two-pages and has already been disclosed to the Prosecutor on 28 January 2014. Most importantly, the Defence has been authorised, in the Sixth Decision on Disclosure, to amend its list of evidence, if deemed necessary, as the Prosecutor disclosed exculpatory evidence under article 67(2) of the Statute and rule 77 of the Rules after the deadline imposed by rule 121(3) of the Rules. With a view to enabling the Defence to exercise its rights under articles 61(6) and 67(1) of the Statute, the Single Judge is of the view that the Application must be granted, on an exceptional basis.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY


a) grants the Application.

¹⁷ ICC-01/04-02/06-236-Conf, para. 11.

¹⁸ ICC-01/04-02/06-236-Conf, para. 10.

¹⁹ ICC-01/04-02/06-236-Conf, para. 12.

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



Judge Ekaterina Trendafilova

Single Judge

Dated this Thursday, 3 July 2014

At The Hague, The Netherlands