

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 28 May 2013

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul
Judge Cuno Tarfusser

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

PUBLIC

with Confidential, Prosecution and Defence Only, Annexes A, B and C

Prosecution's Communication of the Disclosure of Evidence

Source: Office of the Prosecutor

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

The Office of the Prosecutor

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

Registrar

Mr Herman von Hebel

Counsel Support Section

Deputy Registrar

Mr Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

1. The Prosecution herewith submits its communication of the disclosure of incriminatory evidence pursuant to Articles 61(3)(b), and 67(1)(a) and (b) of the Rome Statute (the “Statute”); of evidence pursuant to Article 67(2); and, of material falling within Rule 77 of the Rules of Procedure and Evidence (the “Rules”).

Background

2. On 12 April 2013, Judge Trendafilova, acting as the Single Judge for Pre-Trial Chamber II (“the Single Judge”), established the regime for evidence disclosure and related matters for this case (“the First Decision”).¹
3. On 17 May 2013, the Single Judge issued the “Decision Establishing a Calendar for the Disclosure of Evidence Between the Parties” (“the Second Decision”).² In the Second Decision, the Single Judge ordered the Prosecution to disclose to the Defence any evidence on which it intends to rely for the purposes of the confirmation of charges hearing, that has been collected until 13 July 2012 and for which no redaction is needed, no later than Friday, 7 June 2013.³
4. The Single Judge also ordered the Prosecution to permit the Defence to inspect any books, documents, photographs and other tangible objects in its possession or control which either he intends to use at the confirmation of charges hearing or were obtained from or belonged to the suspects within the meaning of Rule 77 of the Rules of Procedure and Evidence and that have been collected until 13 July 2012, no later than Friday, 7 June 2013.⁴

¹ ICC-01/04-02/06-47.

² ICC-01/04-02/06-64.

³ ICC-01/04-02/06-64, paras.19-20.

⁴ ICC-01/04-02/06-64, para.27.

5. Lastly, the Single Judge ordered the Prosecution to disclose to the Defence any evidence of a potentially exculpatory nature under Article 67(2) of the Statute as soon as practicable and on a continuous basis.⁵
6. On 27 May 2013, the Prosecution disclosed to the Defence a total of 2197 items without redactions, listed in Confidential Annex A.⁶ In compliance with the Single Judge's decisions, the Prosecution provided the material to the Registry.
7. These items include incriminatory evidence and Rule 77 material collected until 13 July 2012 which can be disclosed unredacted without jeopardizing the safety and well-being of witnesses, victims, and other persons at risk.⁷ The Prosecution informed the Defence that evidence disclosed for its prevailing incriminating value may also contain information relevant under article 67(2) or that may be material to the preparation of the defence.
8. The Prosecution also submits its communication of disclosure to the Defence of evidence under Article 67(2) of the Statute and for which no redaction is needed.
9. The Prosecution further informs the Chamber of its provision to the Defence of a courtesy copy of the keyword search terms that it has used to identify potentially relevant material within its collection.⁸ The Prosecution has invited the Defence to provide additional search terms to focus its ongoing review.

⁵ ICC-01/04/02/06-64, para.28.

⁶ As required by the Single Judge, the three lists of evidentiary items contained in Confidential Annex A reflect the level of confidentiality applicable to each item. The Prosecution will inform the Court Management System of the recipients - at this stage the Defence only - to whom the material should be released on e-Court.

⁷ The Prosecution notes that some of the material disclosed to the Defence is subject to protective measures imposed by Trial Chamber I (ICC-01/04-01/06-T-302, p.75, line 23 to p.76, line 17). It has informed the Defence of these protective measures.

⁸ The keyword search terms are attached to the present filing as Confidential Annex B. There is overlap between the documents in each of the individual search results, meaning that the same document may be responsive to two or more searches. This inflates the overall number of documents when calculating the combined search results.

10. Lastly, the Prosecution herewith provides the Chamber with the in-depth analysis chart of incriminating evidence that accompanied the disclosure, attached in Confidential Annex C, which it has already provided to the Defence.⁹



Fatou Bensouda,
Prosecutor

Dated this 28th day of May 2013
At The Hague, The Netherlands

⁹ For technical reasons, hyperlinks to the relevant material cannot be included in Confidential Annex C to this filing. However, the Prosecution will, via e-mail, provide both the Chamber and the Defence with a version containing hyperlinks as soon as the Court Management System confirms that the disclosed material is uploaded in e-Court.