

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-02/06
Date: 24 September 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 on the «*Demande de la Défense aux fins de traduction en kinyarwanda de certains des principaux éléments de preuve*»

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

Defence

Marc Desalliers

Legal Representatives of the Victims

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

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar

Herman Von Hebel
Didier Preira

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Interpretation and Translation Section

Alexandra Tomic
Aida Camara

Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court”)¹ hereby issues this decision on the «*Demande de la Défense aux fins de traduction en kinyarwanda de certains des principaux éléments de preuve*» (the “Request”).²

1. 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 Bosco Ntaganda’s (“Mr. Ntaganda”) voluntary surrender to the Court³ and decided to convene a hearing for his initial appearance on 26 March 2013.⁴ During the initial appearance, it was decided that “23 September 2013 is the date for the commencement of the confirmation hearing”.⁵
2. On 12 April 2013, the Single Judge established the regime for evidence disclosure in the present case.⁶
3. On 17 May 2013, the Single Judge issued the “Decision Establishing a Calendar for the Disclosure of Evidence Between the Parties” (the “Calendar Decision”).⁷ With regard to the issue of translation of evidence into Kinyarwanda and in particular, the evidence disclosed from the first batch for which no redactions or protective measures are sought, the Single Judge stated that the Defence of Mr. Ntaganda may “request, to the extent necessary, the translation of evidence which is core for the preparation of the defence”.⁸

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

² ICC-01/04-02/06-107.

³ Pre-Trial Chamber II, ICC-01/04-02/06-41, p. 4.

⁴ Pre-Trial Chamber II, ICC-01/04-02/06-41, p. 5.

⁵ Pre-Trial Chamber II, Transcript of Hearing, 26 March 2013, ICC-01/04-02/06-T-2-ENG ET, p. 12, lines 2-3.

⁶ Pre-Trial Chamber II, “Decision Setting the Regime for Evidence Disclosure and Other Related Matters”, 12 April 2013, ICC-01/04-02/06-47.

⁷ Pre-Trial Chamber II, ICC-01/04-02/06-64.

⁸ Pre-Trial Chamber II, “Decision Establishing a Calendar for the Disclosure of Evidence Between the Parties”, 17 May 2013, ICC-01/04-02/06-64, para. 21.

4. On 17 June 2013, the Single Judge issued the “Decision on the ‘Prosecution’s Urgent Request to Postpone the Date of the Confirmation Hearing’”.⁹ In that decision, the Single Judge decided, *inter alia*:

- a) [...] to postpone the initial date set for the commencement of the confirmation hearing;
- b) [...] that the new date for the confirmation of charges hearing is Monday, 10 February 2014;
- c) [...] to retain the principles established in the Calendar Decision and suspend *only* the remaining deadlines set out in that decision;¹⁰

5. In addition, with regard to the issue of translation of evidence into Kinyarwanda, the Single Judge decided that the Defence:

- (i) should submit, no later than Tuesday, 17 September 2013, a request for translation to the Chamber if it wishes to have translated into Kinyarwanda the core evidence of the first batch, where no redactions or protective measures are sought, and which is essential for the preparation of the defence;¹¹

6. On 17 September 2013, the Defence filed the Request,¹² in which it sought the translation into Kinyarwanda of the transcripts of the testimonies rendered by certain witnesses before Trial Chamber I in the course of the trial proceedings against Thomas Lubanga Dyilo.¹³ In particular, the Defence requested the translation of the following pieces of evidence:

- Concernant le témoin P-0016 : les pièces DRC-OTP-2054-1538 et DRC-OTP-2054-1703;
- Concernant le témoin P-0017 : les pièces DRC-OTP-2054-2007, DRC-OTP-2054-2192, DRC-OTP-2054-2370 et DRC-OTP-2054-2524;
- Concernant le témoin P-0038 : les pièces DRC-OTP-2054-4774 et DRC-OTP-2054-4939;
- Concernant le témoin P-0055 : les pièces DRC-OTP-2054-7372, DRC-OTP-2054-7516, DRC-OTP-2054-7697, DRC-OTP-2054-7855 et DRC-OTP-2054-8008.¹⁴

⁹ Pre-Trial Chamber II, ICC-01/04-02/06-73.

¹⁰ Pre-Trial Chamber II, “Decision on the ‘Prosecution’s Urgent Request to Postpone the Date of the Confirmation Hearing’”, 17 June 2013, ICC-01/04-02/06-73, p. 19.

¹¹ Pre-Trial Chamber II, “Decision on the ‘Prosecution’s Urgent Request to Postpone the Date of the Confirmation Hearing’”, 17 June 2013, , pp. 21-22.

¹² ICC-01/04-02/06-107.

¹³ ICC-01/04-02/06-107, para. 5.

¹⁴ ICC-01/04-02/06-107, para. 9.

7. On 19 September 2013, the Single Judge issued the “Decision Requesting Observations from the Interpretation and Translation Section”,¹⁵ in which she requested, *inter alia*, that the Interpretation and Translation Section (the “ITS”) submit to the Chamber, no later than Monday 23 September 2013, a report containing information estimating the amount of days required to translate into Kinyarwanda the evidence referred to by the Defence in its Request (the “19 September 2013 Decision”).¹⁶

8. On 23 September 2013, the Chamber received the “Observations from the Interpretation and Translation Section” (the “ITS’s Observations” or “ITS’s Report”).¹⁷

9. The Single Judge notes articles 21(1)(a) and (3), 43(1), 61 and 67 of the Rome Statute, and rules 20(1) and 76(3) of the Rules of Procedure and Evidence.

10. The Single Judge also notes the ITS’s Observations which point out a number of practical problems facing the ITS in translating the material requested by the Defence of Mr. Ntaganda.¹⁸ According to ITS’s Observations, the requested material amounts to 1051 pages of translation which requires an estimate of 210.2 days, *i.e.*, “42 weeks of five working days, or 35 weeks of six working days (should two translators accept to work on six days a week)”.¹⁹ Moreover, according to the ITS’s Report, the requested translation will have a great financial impact given that the translation of “1051 pages [is] estimated to cost €47,295. And at urgent rate [...] [which involves the translation of more than five pages] *per* day, the estimation is €70,942”.²⁰ The translation of the requested material was unforeseen in the 2013 budget, and furthermore it would require “outsourcing” due to the current available capacity, the ITS added.²¹

¹⁵ Pre-Trial Chamber II, ICC-01/04-02/06-110.

¹⁶ Pre-Trial Chamber II, ICC-01/04-02/06-110, pp. 5-6.

¹⁷ ICC-01/04-02/06-114.

¹⁸ ICC-01/04-02/06-114.

¹⁹ ICC-01/04-02/06-114, para. 8.

²⁰ ICC-01/04-02/06-114, para. 9.

²¹ ICC-01/04-02/06-114, paras 11-12.

11. In its Request, the Defence of Mr. Ntaganda submits that a draft translation of the pieces of evidence referred to in paragraph 6 above will suffice to put the suspect in a position to understand the evidence that is essential for the preparation of his defence.²² In paragraph 8 of the Request, the Defence of Mr. Ntaganda clarifies that it is not necessary to translate irrelevant parts of the requested material: «qu'il ne serait pas nécessaire de procéder à la traduction des interventions de la Chambre, des parties et des participants survenues lors ces audiences qui n'ont aucun lien direct avec les dépositions des témoins visées par la présente demande».²³

12. In this respect, the Single Judge agrees with the Defence's practical approach towards the translation of the requested material and recalls one of the Chamber's recent decisions in which it stressed that "one of [the Single Judge's] main duties is to ensure that judicial proceedings are conducted in a fair and expeditious manner taking into consideration the competing interests at stake".²⁴ Given that the ITS's Observations make it clear that the translation of the full material requested by the Defence of Mr. Ntaganda, as mentioned in paragraph 6 above, would have a direct and substantial impact on the expeditiousness of the proceedings including the right of the suspect to be tried without undue delay, the Single Judge considers it crucial that the Defence conducts a thorough review of said material in order to identify only those relevant parts which are essential or core for the preparation of his defence.²⁵ As a follow up, the Defence of Mr. Ntaganda should liaise with the Prosecutor as well as with the ITS on the final amount of pages to be translated into Kinyarwanda and the estimate time required.

²² ICC-01/04-02/06-107, para. 7.

²³ ICC-01/04-02/06-107, para. 8.

²⁴ Pre-Trial Chamber II, "Decision Requesting Observations on the 'Prosecution's Urgent Request to Postpone the Date of the Confirmation Hearing'", 24 May 2013, ICC-01/04-02/06-66, para. 9; also Pre-Trial Chamber II, "Decision on the 'Prosecution's Urgent Request to Postpone the Date of the Confirmation Hearing'", 18 June 2013, ICC-01/04-02/06-73, para. 13.

²⁵ Pre-Trial Chamber II, "Decision Establishing a Calendar for the Disclosure of Evidence Between the Parties", 17 May 2013, ICC-01/04-02/06-64, para. 21.

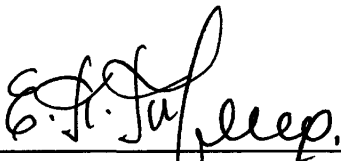
FOR THESE REASONS, THE SINGLE JUDGE HEREBY

a) grants the Defence's Request to the extent specified in paragraph 12 of the present decision;

b) requests the Defence to liaise with the Prosecutor and the Interpretation and Translation Section on the final amount of pages to be translated into Kinyarwanda and the estimate time required as specified in paragraph 12 of the present decision; and

c) requests the Prosecutor and the Interpretation and Translation Section to submit to the Chamber a joint report on the translation process, no later than **Monday, 14 October 2013**.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Tuesday, 24 September 2013

At The Hague, The Netherlands