

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 4 February 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
With Public Annex**

Decision on the Schedule for the Confirmation of Charges Hearing

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 Surprun

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 this decision on the schedule for the confirmation of charges hearing.

I. Procedural History

1. On 12 April 2013, the Single Judge issued the “Decision Setting the Regime for Evidence Disclosure and Other Related Matters”² (the “12 April 2013 Decision”), in which she, *inter alia*, set the principles governing the process of disclosure between the parties and ordered the parties to elaborate an in-depth analysis chart following a Draft Model Chart appended to the decision.³

2. 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”,⁴ in which the Single Judge, *inter alia*, postponed the commencement of the confirmation of charges hearing until Monday, 10 February 2014.⁵

3. On 24 January 2014, the Single Judge issued the “Decision Convening a Status Conference on Disclosure Issues and on the Organisation of the Confirmation Hearing”.⁶

4. On 27 January 2014, the status conference was convened, in which the Single Judge discussed with the parties issues related to, *inter alia*, the organisation of the upcoming confirmation of charges hearing.⁷

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

² Pre-Trial Chamber II, ICC-01/04-02/06-47.

³ Pre-Trial Chamber II, ICC-01/04-02/06-47, para. 30, p. 15.

⁴ Pre-Trial Chamber II, ICC-01/04-02/06-73.

⁵ Pre-Trial Chamber II, ICC-01/04-02/06-73, p. 19.

⁶ Pre-Trial Chamber II, ICC-01/04-02/06-225.

⁷ Pre-Trial Chamber II, ICC-01/04-02/06-T-5-CONF-EXP-ENG ET.

II. Applicable Law

5. The Single Judge notes articles 21(1)(a) and(3), 43(1) and 61 of the Rome Statute (the “Statute”), rule 122 of the Rules of Procedure and Evidence (the “Rules”), regulation 21 of the Regulations of the Court (the “Regulations”) and regulation 64(1) of the Regulations of the Registry.

III. Schedule for the Confirmation Hearing

6. The Single Judge notes in particular rule 122(1) of the Rules according to which “[t]he Presiding Judge shall determine how the hearing is to be conducted and, in particular, may establish the order and the conditions under which he or she intends the evidence contained in the record of the proceedings to be presented”.

7. The Single Judge has taken into account, to the extent possible, the parties’ observations and hereby provides the time schedule for the article 61(7) hearing as appended to this decision. In this context, the Single Judge has indicated in the schedule the exact net time allotted to each party and participant in the present case. It is clarified that it remains the responsibility of the parties and participants to organize their presentation according to the time allotted to them. Moreover, the Single Judge emphasizes that the final schedule for the hearing is subject to change if developments in the proceedings necessitate it. In this context, parties and participants should bear in mind that for the sake of expediting the process and ensuring the conduct of the hearing with full efficiency, in case a party does not fully use the time allotted to it as provided in the appended schedule, the Chamber will automatically move to the next presentation even if it is scheduled for the following day. Thus, the parties are expected to be prepared during the course of the hearing at all times and to be flexible as well. Moreover, it is recalled that some extra time will be needed for resolving technical matters, such as shifting from public to closed or private session, if need be.

IV. Presentation of Evidence

8. At the outset, the Single Judge wishes to point out that the principle of fairness which encompasses the notion of equality of arms entails that the parties be placed on an equal footing and that the Defence always has the final word as prescribed under rule 122(8) of the Rules. Further, bearing in mind the limited purpose of the confirmation of charges hearing, the principle of expeditiousness as well as the need to ensure the efficiency of the proceedings, parties and participants should avoid repetitive arguments and instead they should prepare focused presentations.

9. Turning to the presentation of evidence, the Single Judge expects that the parties organize their arguments and presentation of evidence following the Draft Model Chart appended to the 12 April 2013 Decision consecutively contemplating the contextual elements, the specific constituent elements of the crimes charged and the modes of liability. After the presentation of each of those three main clusters, the Single Judge expects that the Prosecutor provides the Defence, the legal representatives of victims and the Chamber with a footnoted written copy of her presentation, making reference to the evidence on which the Prosecutor relies for the factual allegations she seeks to prove. The Prosecutor should make reference to the relevant EVD number(s), including the last 4 digits of the document ID number, or at a minimum, their page and paragraph numbers. Each presentation should be filed in the record of the case. The Defence is expected to follow the same methodology in organizing its arguments and presentation of evidence.

10. In the event any of the parties wishes to use audio or video material, the Single Judge expects that they will liaise ahead of time with the services of the Registry to avoid any unnecessary delays. For interpretation purposes, the party presenting the audio or video material shall provide the court officer with the transcripts (in English or French) of the material presented sufficiently in advance.

11. The parties shall also provide the court officer at the end of each day of the confirmation of charges hearing with a list of the evidence they intend to present

during the following day and the order in which they intend to present it so that interpreters and court staff are assisted in their work.

12. Moreover, parties and participants should exercise due diligence when referring to witnesses. It is either that they use a pseudonym or the witness code.

13. The Single Judge also notes that in days, where there are more than two sessions required or scheduled, each session should not last more than one hour and a half pursuant to regulation 64(1) of the Regulations of the Registry.

14. Finally, the Chamber expects that the services of the Registry are available *before* the confirmation of charges hearing so as to assist the Chamber, parties and participants in setting up their technical equipment.

V. Presence in the Court Room

15. The Single Judge finally wishes to make clear that only the parties, participants, and the relevant members of the Division of Court Services are permitted to be present in the courtroom during the article 61(7) hearing. This means that those permitted to be present are the Prosecutor and her team, the suspect and his Defence team, the common legal representatives of victims and their team, if any, and members of the Division of Court Services.

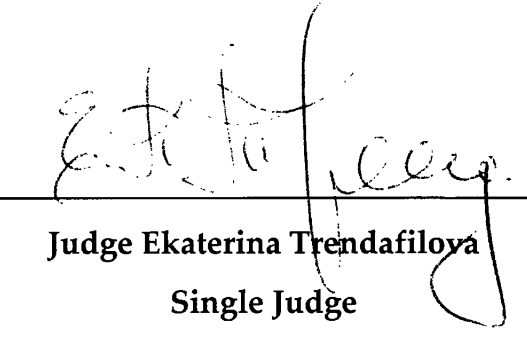
VI. Publicity of Proceedings

16. The Single Judge notes, in particular, that pursuant to regulation 21(1) of the Regulations, the publicity of hearings may extend beyond the courtroom. Accordingly, the Single Judge deems it appropriate to authorize video recording and the taking of photographs in the courtroom at the start of the confirmation of charges hearing.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

- a) **decides** to establish the schedule for the confirmation hearing in accordance with the present decision and as specified in the annex appended thereto; and
- b) **authorizes** the Registrar to inform external applicants that at the start of the confirmation of charges hearing to be held on Monday, 10 February 2014 at 9h30 and after all the parties and participants have taken their seats, video recording and the taking of photographs will be permitted for no longer than one minute and a half.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Tuesday, 4 February 2014

At The Hague, The Netherlands