

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 14 April 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 Prosecutor's Request to Submit a Reply

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 “Prosecution’s Request to File a Reply” (the “Request”).²

I. Procedural History

1. Between 10 and 14 February 2014, the confirmation of charges hearing took place in this case. After the closing statements, the Chamber authorized the participants to submit final written observations on issues discussed during the hearing.³
2. On 7 March 2014, the Prosecutor⁴ as well as the common legal representatives of participating victims⁵ duly lodged their final written observations. On 8 April 2014, the Defence duly submitted its final written observations.⁶
3. On 11 April 2014, the Prosecutor submitted the Request soliciting the Chamber’s leave to submit a reply to the “specific mischaracterisations of evidence and/or the law” in the Defence final written observations.⁷ In particular, she wishes to address the Defence descriptions pertaining to (i) certain decisions taken in the case of the *Prosecutor v Laurent Gbagbo* (the “*Laurent Gbagbo Case*”) “regarding the manner in which the Chamber should assess evidence of the widespread or systematic ‘attack’” within the meaning of article 7 of the Rome Statute (the “Statute”); (ii) the law in relation to cumulative charging, and discuss relevant jurisprudence in the case of the *Prosecutor v Germain Katanga* (the “*Katanga Case*”); and (iii) aspects of the evidence

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

² ICC-01/04-02/06-293.

³ Pre-Trial Chamber II, Transcript of Hearing, 14 February 2014, ICC-01/04-02/06-T-11-ENG ET, p. 11, lines 15-24.

⁴ ICC-01/04-02/06-276-Conf. A public redacted version of this filing (dated 24 March 2014) is also available, ICC-01/04-02/06-276-Red.

⁵ ICC-01/04-02/06-273 and ICC-01/04-02/06-275.

⁶ ICC-01/04-02/06-292-Conf-Exp. A confidential redacted version is also available, ICC-01/04-02/06-292-Conf-Red. The original deadline of 4 April 2014 imposed on the Defence was postponed to 8 April 2014 in the Chamber’s “Decision on the ‘Prosecution’s Urgent Application for Redactions and for a Variation of Protective Measures Applied by Trial Chamber I’”, 3 April 2014, ICC-01/04-02/06-289-Conf.

⁷ ICC-01/04-02/06-293, para. 5.

relating to two witnesses “that are not fully depicted, and which therefore may induce the Chamber into error”.⁸

4. The Single Judge notes articles 21(1), (2), and 61(7) of the Statute, and regulation 24(5) of the Regulations of the Court (the “Regulations”). It is recalled that under regulation 24(5) of the Regulations it is at the discretion of the Chamber to authorize a participant to reply to a response, if deemed necessary by the Chamber in a given instance.

5. In the present case, the Single Judge is of the view that further observations on the points indicated by the Prosecutor in the Request are not required. The Judges of this Chamber are aware of the decisions in the *Laurent Gbagbo* Case and *Katanga* Case and are thus in a position to interpret and apply the law independently without further interpretative assistance by the parties. As regards the Prosecutor’s allegation that the Defence has not “depicted fully” the evidence pertaining to two witnesses, the Single Judge equally holds that further observations are not needed. It is recalled that the Chamber conducts an independent assessment of the evidence which has been communicated to it.⁹ Accordingly, any assessment of the evidence advanced by either party must be viewed as a proposal for the Chamber’s consideration and does not relieve the Chamber from assessing the entirety of the evidence independently in fulfilment of its mandate under article 61(7) of the Statute.¹⁰

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

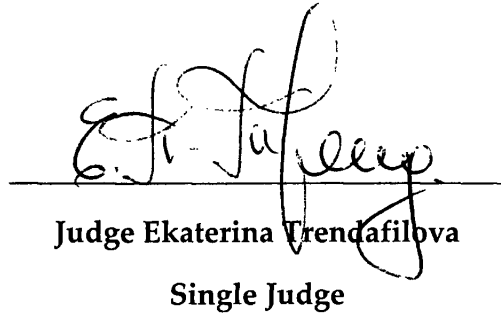
Rejects the Request.

⁸ *Ibid.*

⁹ See, Pre-Trial Chamber II, “Decision Setting the Regime for Evidence Disclosure and Other Related Matters, 12 April 2013, ICC-01/04-02/06-47, paras 10-11; Pre-Trial Chamber III, “Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties”, 31 July 2008, ICC-01/05-01/08-55, paras 16-19.

¹⁰ Similarly, 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’”, ICC-01/04-01/10-514, paras 39 and 41.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Monday, 14 April 2014

At The Hague, The Netherlands