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**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 Version**

**Prosecution's request pursuant to Regulation 35 to vary the time limit for  
submission of an updated expert report on satellite image analysis**

**Source: Office of the Prosecutor**

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

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**Detention Section**

**Victims Participation and Reparations Other  
Section**

## Introduction

1. The Prosecution requests a variation of the time limit for disclosure from 1 November 2013 to disclose an updated version of the expert satellite image analysis report, which includes updated versions of close-range satellite images contained in the report (the “Updated Report”) that it seeks to rely upon for the confirmation hearing, pursuant to regulation 35 of the Regulations of the Court (the “Regulations”). If granted, the Prosecution will disclose the Updated Report within two days of the Single Judge’s decision.
  
2. The Prosecution has disclosed and is relying on a series of satellite images of locations relevant to the charges for the confirmation hearing and a preliminary expert assessment of potential property damage or destruction in these images (the “Report”).<sup>1</sup> The satellite images that the Prosecution disclosed on 1 November 2013 include 25 long-range<sup>2</sup> and 21 close-range satellite images<sup>3</sup> (the “Long-range Images” and “Close-range Images”, respectively).
  
3. On 31 October 2013, the Prosecution realised that it would be necessary to confirm the accuracy of the coordinates and place names for nine of the 21 Close-range Images, by again obtaining coordinates for these locations in the field.<sup>4</sup> Accordingly, on 1 November 2013, out of an abundance of caution, the Prosecution disclosed these nine Close-range Images without identifying the location of the image or providing a more detailed explanation of the methodology used by the expert in his analysis given that it referred to the locations of all 21 Close-range Images.

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<sup>1</sup> DRC-OTP-2059-0177.

<sup>2</sup> DRC-OTP-2059-0204, DRC-OTP-2059-0206, DRC-OTP-2059-0207. *See also* footnote 7 below.

<sup>3</sup> The 21 close range satellite images are all contained in the body of the Report (DRC-OTP-2059-0177).

<sup>4</sup> Figures 1, 5, 6 (top image), 7, 10, 11, 12, 14, and 15 of the Report.

4. The Prosecution undertook a mission in [REDACTED] and is now able to confirm that the coordinates and place names provided to the expert for these nine Close-range Images are accurate.<sup>5</sup>
5. There is good cause to grant a variation of the disclosure deadline in the instant case. First, the Prosecution made reasonable and diligent efforts to submit the Updated Report before 1 November 2013, but was unfortunately unable to do so for reasons beyond its control.
6. Second, the Prosecution has already disclosed: (a) the underlying 25 Long-range Images of the relevant locations used by the expert in the Report; (b) the 21 Close-range Images in which the expert has identified potential property damage or destruction; and (c) the names of the locations of 12 of the 21 Close-range Images.<sup>6</sup> Accordingly, the Updated Report will simply identify the locations of the other nine Close-range Images that have been cross-referenced against the new GPS coordinates obtained in the field, and provide the more detailed explanation of the process undertaken by the expert in analysing the Close-range Images, which was removed from the Report because the explanation included references to the names of all locations.
7. Third, these nine Close-range Images indicate potential property damage or destruction at or nearby key locations named in the second arrest warrant application, including: Mongbwalu-Saio, Lipri, Kobu and Bambu. Accordingly, if this late disclosure is authorised, the Updated Report will provide the parties and

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<sup>5</sup> The Prosecution observes that whilst the name provided of “Wadza” in figure 16 of the Report is correct, in that it is the name provided by open-source databases, as it is not the location of the main “Wadza” (which is located next to Kobu) it will be re-titled in the Updated Report and its distance from Kobu centre indicated. Similarly, whilst the titles “Kilo Mines” in figures 8 and 9 are accurate, to avoid confusion these will be re-titled as Bambu area. *See also* footnote 15 below. Moreover, figures 3 to 4, figure 6, figure 13, figures 16 to 21 will be re-titled to make reference to the broader area for each location, because property damage or destruction was not limited to village/town centres but was identified within a 100 metre to 3.2 kilometre radius of these locations.

<sup>6</sup> Kobu-Wadza (bottom image contained in figure 6); Itende (figure 3); Kabakaba (figure 4); Kilo Mines (figures 8 and 9); Nizi (figure 13); Wadza (figure 16); Bunia (Main street: figures 17, 18 and 19); Songolo (figure 20) and Mambasa (figure 21).

the Chamber with a better visual appreciation of key locations where attacks allegedly occurred as well as a better understanding of the Long-range Images and Close-range Images already disclosed to the Suspect. It will also ensure that all of the satellite images can be used as helpful visual aids during the confirmation hearing. Moreover, the detailed explanation of the expert's methodology in conducting his analysis will enable the parties and the Chamber to better appreciate the manner in which potential property damage or destruction in the Close-range Images has been identified by the expert.

8. Fourth, there will be no prejudice to the Suspect in granting this request. The Suspect has already received the 25 Long-range Images of the locations underlying the expert's analysis,<sup>7</sup> as well as the Report in which the expert identifies potential property damage or destruction in the Close-range Images. The Suspect will receive the Updated Report with the nine additional location names and a more detailed explanation of the methodology employed by the expert, following a short delay, and in any event, two months before the start of the confirmation hearing.

### **Confidential Classification**

9. The Prosecution submits that the classification of the present filing as Confidential is necessary. This filing mentions a mission to the DRC and locations of interest for the Prosecution that go beyond those locations identified in the public versions of the arrest warrants. This information should not be made publicly known at this early stage of the proceedings in order to avoid

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<sup>7</sup> The Prosecution notes that the evidence provided to the Suspect comprises 25 Long-range Images that for technical reasons, namely their excessive size, could neither be disclosed through the usual procedures nor uploaded on e-Court. For this reason, on 1 November 2013, the Prosecution provided the Suspect with three DVDs containing the images as well as hyperlinks from which the images could be downloaded. The Prosecution provided the same images to the Court Management Section on three separate DVDs. The formal disclosure of these items was limited to the disclosure of the images of the DVDs bearing the following ERNs: DRC-OTP-2059-0204, DRC-OTP-2059-0206 and DRC-OTP-2059-0207. Also for reference purposes, the Prosecution will be disclosing individual (although lower quality) versions of the previously disclosed satellite images under Rule 77 (ERN range DRC-OTP-2059-0208 to DRC-OTP-2059-0229).

compromising the Prosecution's further and on-going investigations. The Prosecution will file a public redacted version.

### **Procedural Background**

10. On 17 July 2013, the Single Judge established a disclosure calendar requiring the Prosecution to disclose all evidence collected between 13 July 2012 and 1 November 2013 to the Defence no later than 1 November 2013.<sup>8</sup>

### **Prosecution's Submissions**

11. Under regulation 35(2) of the Regulations, a Chamber may extend time limits ordered by a Chamber or prescribed in the Regulations "if good cause is shown". The Appeals Chamber has held that "[s]uch reasons as may found a good cause are necessarily associated with a party's duties and obligations in the judicial process. A cause is good, if founded upon reasons associated with a person's capacity to conform to the applicable procedural rule or regulation or the directions of the Court. Incapability to do so must be for sound reasons, such as would objectively provide justification for the inability of a party to comply with his/her obligations".<sup>9</sup> The Appeals Chamber has further decided to extend a time limit where it was in the "interest of justice".<sup>10</sup>
12. There is good cause to vary the time limit to receive an updated item of evidence upon which the Prosecution seeks to rely for the confirmation hearing. As set out

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Also for reference purposes, the Prosecution will be disclosing individual (although lower quality) versions of the previously disclosed satellite images under Rule 77 (ERN range DRC-OTP-2059-0208 to DRC-OTP-2059-0229).

<sup>8</sup> "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", ICC-01/04-02/06-73 on page 20, para. (v).

<sup>9</sup> ICC-01/04-01/06-834, para. 7.

<sup>10</sup> ICC-01/04-01/10-505 OA4, *Prosecutor v Mbarushimana*, Decision on the Defence Request for Reconsideration, 23 March 2012, para.11: "[C]onsidering the specific circumstances related to the composition of the Appeals Chamber in this case [a judge was replaced] and their consequences for the issuance of this decision, the Appeals Chamber decides, in the interest of justice, to extend further the time limit for the filing of Mr. Mbarushimana's response to the Document in Support of the Appeal ...".

in greater detail below, the Updated Report (which will include updated titling of certain Close-range Images) could not be completed in advance of 1 November 2013 despite diligent efforts by the Prosecution. It is in the interest of justice to ensure the Updated Report is available for the confirmation hearing as it will provide important information relevant to the charges in the present case. The delay sought by the Prosecution is brief and will not prejudice the Defence's preparation.

*The Updated Satellite Image Analysis Report*

13. On 26 April 2013, the Prosecution contacted [REDACTED] of [REDACTED], an expert in satellite image analysis. The Prosecution asked [REDACTED] whether satellite images were available in key locations and areas of interest on or around the dates of alleged incidents relevant in the case against Bosco NTAGANDA.<sup>11</sup>
14. On 24 July 2013, the Prosecution provided [REDACTED] with an updated list of places of interest and their coordinates which included additional locations and the dates of alleged attacks in these locations.<sup>12</sup>
15. The initial coordinates that the Prosecution provided for all of these locations were based on a number of open-source databases.<sup>13</sup> From [REDACTED], OTP staff conducted a mission in the field and during this mission obtained GPS coordinates for eight locations of interest.<sup>14</sup> These coordinates were provided to [REDACTED] on 13 September 2013.

<sup>11</sup> Mongbwalu, Saio, Lipri, Kobu, Bambu, Sangi and Buli.

<sup>12</sup> Mongbwalu, Saio, Lipri, Kobu, Bambu, Dala, Itende, Kabakaba, Kilo (Vieux-Kilo and Kilomines), Lalo, Mabanga, Mbijo, Nizi, Wadza, Zumba, Bunia, Mwanga, Nyakunde, Songolo, Komanda and Eringeti.

<sup>13</sup> The initial geo-coordinates were obtained from ArcGIS Shapefiles (a database operated by the International Peace Information Service); Acme Mapper 2 and Google Maps.

<sup>14</sup> Mongbwalu [REDACTED]; Saio (*village*); Lipri; Kobu [REDACTED]; Bambu (*main thoroughfare*); Sangi (*Sangi-Nyinga* [REDACTED]); Kilo (*Vieux-Kilo and Kilo-Mission*) and Bunia (*main street*).

16. On 13 September 2013, [REDACTED] was asked to provide a written report in which he, *inter alia* (i) confirmed which satellite images were available for the locations for which coordinates were provided on or around the dates of alleged attacks in those areas; and (ii) analysed any available satellite images, indicating any potential property damage or destruction [REDACTED] On 17 October 2013, [REDACTED] was asked to also include an analysis of any available satellite image for Mambasa, an additional location of interest.
17. On 20 October 2013, the Prosecution provided [REDACTED] with an official letter of instruction requesting a satellite image analysis of all locations of interest.<sup>15</sup>
18. On 31 October 2013, [REDACTED] provided a draft of the Report based on the available Long-range Images, confirming that he had identified potential property damage or destruction in the Close-range Images in a number of the locations of interest indicated by the Prosecution.<sup>16</sup> The Prosecution reviewed the Close-range Images the day it received the Report and determined that it would need to verify the place names and coordinates for nine of the 21 Close-range Images, namely those based on the coordinates obtained in the field and provided to [REDACTED]. The Prosecution could not be certain without obtaining coordinates in the field again, that the GPS coordinates provided for those nine Close-range Images were accurate.

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<sup>15</sup> Mongbwalu [REDACTED]; Saio (*village*); Lipri; Kobu [REDACTED]; Bambu (*main thoroughfare*); Dala; Itende; Kabakaba; Kilo (*Vieux-Kilo; Kilo mines and Kilo-mission*); Lalo; Mabanga; Mbijo; Nizi; Sangi (*Sangi-Nyinga and Sangi-Bodi church/school*); Wadza; Zumbe; Bunia; Mwanga; Songolo; Komanda; Eringeti and Mambasa. An updated letter of instruction was provided on 22 October 2013.

<sup>16</sup> Mongbwalu [REDACTED]; Saio (*village*); Lipri; Kobu [REDACTED]; Bambu (*main thoroughfare*); Itende; Kabakaba; Kilo (*Kilo-Vieux-Kilo, Kilo-Kilo mines and Kilo-Kilo Mission*); Lipri; Nizi; Sangi (*Nyinga* [REDACTED]); Wadza; Bunia (*main street*) and Songolo. [REDACTED] confirmed that there were no satellite images available for the relevant period for Dala, Lalo, Komanda and Eringeti. He confirmed that [REDACTED] was unable to confirm the coordinates as accurate for Mabanga and was unable to purchase or analyse images for Mbijo or Zumbe in time. No figure was produced in relation to Mwanga, where a satellite image was obtained but the expert did not identify any possibly damaged or destroyed structures.

19. Accordingly, to avoid disclosing evidence with potentially inaccurately named locations the Prosecution asked [REDACTED] to remove the place names for these nine Close-range Images<sup>17</sup> in the Report and instead refer to these locations as X1, X2, and so forth. The Prosecution also asked that the Report not include the in-depth analysis on these images until the Prosecution could verify the GPS coordinates for these locations.
20. The Prosecution undertook a mission to Ituri and returned to The Hague on [REDACTED], from which it was able to confirm that the coordinates and place names it initially provided to [REDACTED] for the nine Close-range Images were accurate. The Prosecution further met with [REDACTED] on 25 and 26 November 2013 to provide him with the additional coordinates it had obtained from the field during the [REDACTED] mission.<sup>18</sup>
21. Accordingly, the Prosecution requests an extension of time to disclose an updated version of the Report with updated titles for the locations in the Close-range Images (including for potential destruction identified in Bambu and Kobu centre), and the expert's explanation of the methodology he used when analysing the Close-range Images. In some instances, the expert has identified potential property damage or destruction within a 300 metre to 2.8 kilometre radius of the city centre or other relevant point within key locations (such as Kobu, Bambu, Lipri, Saio and Mongbwalu).<sup>19</sup> As stated in the second arrest warrant application,

<sup>17</sup> These locations are identified in the Report as Figure One: Location X1 (Bambu); Figure 2: Location X1 (Location 2 km south of Bambu roundabout); Figure 5: Location X2 (location about 2.8 kilometres from Kobu centre); Figure 6 top image - Location X3: (Kobu centre); Figure 7 top image -Location X4 (Location 1.3 kilometres from Kobu centre); Figure 7 bottom image-Location X4 (756 metres of Kobu centre); Figure 10 top image Location X5 (860 metres from Lipri); Figure 10 bottom image Location X5 (1.8kilometres from Lipri point); Figure 11 top image Location X5 (3.6 kilometres from Lipri point); Figure 11 bottom image Location X5 (3.2 kilometres from Lipri point); Figure 12 top and bottom image Location X6 (Mongbwalu), Figure 14 top image Location X7 (1.3 kilometres from Sangi Nyinga and 2.5 kilometres from Bambu roundabout), Figure 14 bottom image Location X7 (2 kilometres from Sangi and 2.1 kilometres from Bambu roundabout); Figure 15 top image Location X8 (400 metres from Saio [REDACTED]), Figure 15 bottom image Location X8 (400 metres from Saio [REDACTED]).

<sup>18</sup> The Prosecution provided additional coordinates of slightly different points within the key locations of interest on the basis of which it could conclude that the original coordinates from the same locations are accurate.

<sup>19</sup> *Supra* footnote 14.

the Prosecution contends that the attacks on Mongbwalu and Saio in November 2002 and on Kobu, Bambu and Lipri in February to March 2003<sup>20</sup> extended to surrounding areas.<sup>21</sup> Accordingly, indication of property damage or destruction to these surrounding areas is also highly relevant and important in establishing the truth. It is not envisaged that any redactions will be required to the Updated Report.

22. The Prosecution submits that it has shown “good cause” as required by regulation 35(2) of the Regulations to warrant the extension of time sought. The variation of the time limit is not prejudicial to the Suspect as the requested extension of time is brief. Such a short delay for one item of evidence will not “derail the proceedings from their ordained course”.<sup>22</sup> Moreover, the Prosecution will meet its obligation under rule 121(3) of the Rules of Procedure and Evidence to disclose all evidence it intends to present no later than 30 days before the commencement of the confirmation hearing. Indeed, the Suspect will get the Updated Report after only a brief delay to the disclosure calendar and almost two months in advance of the confirmation hearing date.

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<sup>20</sup> ICC-01/04-611-Conf-Exp, paras.73, 82.

<sup>21</sup> ICC-01/04-611-Conf-Exp, paras. 59 and 68.

<sup>22</sup> ICC-01/04-01/07-653 OA7, para. 6.

### Relief Requested

23. Based on the foregoing, and pursuant to regulation 35 of the Regulations, the Prosecution requests that the Single Judge vary the 1 November 2013 deadline to permit the Prosecution to disclose the Updated Report, which contains an updated section with the expert's explanation of his methodology in conducting his analysis of the Close-range Images as well as updated descriptions of locations of Close-range Images, as set out herein.



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Fatou Bensouda,  
Prosecutor

Dated this 6<sup>th</sup> day of December 2013  
At The Hague, The Netherlands