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PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Christine Van den Wyngaert
Judge Cuno Tarfusser

SITUATION IN UGANDA

**IN THE CASE OF
*THE PROSECUTOR v. DOMINIC ONGWEN***

Public

Prosecution's application for leave to appeal the "Decision Setting the Regime for Evidence Disclosure and Other Related Material" and for interim stay of a discrete portion of the Decision

Source: The Office of the Prosecutor

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

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Introduction

1. On 27 February 2015, the Single Judge of Pre-Trial Chamber II (“Single Judge”) issued the “Decision Setting the Regime for Evidence Disclosure and Other Related Matters” (“Decision”),¹ in which she ruled, among other things, that the Parties, when submitting any evidence to the Registry, shall provide “[a]n analysis of each piece of evidence reflecting its relevance as described in [paragraphs 37-42 of the Decision]”.²
2. While the Office of the Prosecutor (“Prosecution”) does not challenge the bulk of the Decision setting out the regime for evidence disclosure in this case, it seeks leave to appeal a discrete issue arising from these paragraphs of the Decision, namely:

whether the Single Judge exceeded her discretionary power under article 61(3) of the Rome Statute (“Statute”) and rule 121(2) of the Rules of Procedure and Evidence (“Rules”) when imposing on the Prosecution a duty to file, together with each disclosure batch, an in-depth analysis chart that includes an analysis of each piece of disclosed incriminating evidence reflecting its relevance, as described in paragraphs 37-42 of the Decision, and a consolidated in-depth analysis chart no later than 30 days prior to the commencement of the confirmation of charges hearing (“Issue”).

3. The Issue meets the criteria for leave to appeal. It impacts on the Prosecution’s independent exercise of its statutory functions and in particular the Prosecution’s prerogative to present its case to the Pre-Trial Chamber in the manner it deems most appropriate. A “law-driven”,³

¹ ICC-02/04-01/15-203.

² Decision, p.21, item g(3).

³ Decision, para.39.

preliminary and partial assessment of the incriminating evidence⁴ that is presented in a format that may amount to thousands of pages is not an effective tool to analyse the evidence or to persuade the Chamber that, based on the evidence, there are substantial grounds to believe that the person committed the crimes charged. The Prosecution would therefore be hampered in presenting its case in the most effective and efficient manner.

4. Any analysis of the evidence must be conducted in a format that assists the Prosecution in its presentation of the case and the evidence during the confirmation of charges hearing. To that end, the Prosecution prefers to present a footnoted document containing the charges (“DCC”). This DCC is only filed once the charges are finalised and precisely identifies and hyperlinks all items of evidence that the Prosecution relies on to establish each of the factual allegations contained in the DCC. The Prosecution may choose to accompany this document with a much simplified version of a law-driven analysis chart, which can be automatically generated from the footnoted DCC.
5. To avoid any detrimental consequences of the Decision, the Prosecution also requests the Pre-Trial Chamber to order an interim stay of the portion of the Decision that relates to in-depth analysis charts until the Chamber has decided on this application for leave to appeal, and if leave is granted, until the Appeals Chamber has decided on whether to grant suspensive effect.

Submissions

6. The Issue arises from the Decision and qualifies as an “issue” under article 82(1)(d). In addition, it meets the criteria for leave to appeal under that provision.

⁴ See para.22 below.

(i) *The Issue arises from the Decision*

7. The Single Judge ordered the parties, when submitting any evidence to the Registry, to provide “[a]n analysis of each piece of evidence reflecting its relevance as described in [paragraphs 37-42 of the Decision]”.⁵ The Decision requires, among others, that

Each piece of evidence must be analyzed [...] by relating each piece of information contained in that page or paragraph with one or more of the constituent elements of one or more of the crimes with which the person is charged, including the contextual elements of those crimes, as well as the constituent elements of the mode of participation in the offence with which the person is charged. The same analysis technique shall apply *mutatis mutandis* to photographs, maps, videodiscs, tangible objects and any other support disclosed by the Prosecutor [...] [This] analysis should be presented in the form of a summary table which shows the relevance of the evidence presented in relation to the constituent elements of the crimes with which the person is charged.⁶

8. To implement this order, the Single Judge instructed the Prosecution to present a consolidated version of its in-depth analysis chart of incriminating evidence following the sample draft model chart attached to the Decision.⁷ The Decision also stated that “it is essential that the parties indicate in the in-depth analysis chart the relevant information *as specific as possible* by referring to the document ID number, the page, paragraph and/or lines, which provide the factual allegation contained in the evidence supporting the particular legal requirement”.⁸
9. The Single Judge further required the Parties to “file with each disclosure batch an analytical chart of the evidence disclosed between the parties and communicated to the Court. A consolidated in-depth analytical chart shall be submitted by the Prosecutor no later than 30 days prior to the

⁵ Decision, p.21, item g(3).

⁶ Decision, para.37.

⁷ Decision, para.38.

⁸ Decision, para.41.

commencement of the confirmation of charges hearing pursuant to rule 121(3) of the Rules [...]"⁹

10. Finally, the Single Judge held that one of the objectives of the in-depth analysis charts is for the Chamber to "know the underlying reasons for a party to rely on a particular piece of evidence"¹⁰ and for the Chamber "to take an informed decision in accordance with its statutory mandate under article 61(7) of the Statute".¹¹ This, according to the Single Judge, "ultimately aims at reaching a proper decision as to whether or not to send the case *sub judice* to trial".¹²

11. The Single Judge is of the view that her power to instruct the parties to provide such in-depth analysis chart "derives directly from article 61(3), second sentence, of the Statute to issue any order regarding the disclosure of evidence", as well as rule 121(2), first sentence, of the Rules entrusting the Single Judge to take "the necessary decisions regarding disclosure".¹³ According to the Single Judge, "the in-depth analysis chart, an auxiliary document next to the document containing the charges and the list of evidence, is embedded in the statutory documents of the Court."¹⁴

(ii) *The Issue falls within the scope of article 82(1)(d)*

12. The question as to whether the Single Judge exceeded her discretionary powers under the Statute and the Rules by ordering the Prosecution to file in-depth analysis charts is an issue within the terms of article 82(1)(d). Its resolution is essential to determine the correctness of the order imposed on the Prosecution as well as the propriety of the Single Judge's requirement

⁹ Decision, para.42; p.21, item h.

¹⁰ Decision, para.40.

¹¹ Decision, para.10.

¹² Decision, para.11.

¹³ Decision, para.39.

¹⁴ Decision, para.39.

that the Pre-Trial Chamber should be provided with an in-depth analysis chart in a precisely prescribed form to inform its decision under article 61(7).¹⁵

13. The Prosecution does not dispute the Chamber's general discretionary power to ensure the efficiency of the disclosure process.¹⁶ However, it is the Prosecution's prerogative to present its case in the manner it deems fit. Article 61 implicitly empowers the Prosecution to select the evidence upon which it intends to rely and to decide the manner in which the evidence should be analysed and presented to the Chamber. It is within the Prosecution's discretion to determine how best to persuade the Chamber that, based on the evidence, there are substantial grounds to believe that the person committed the crimes charged. Although the Chamber may direct the conduct of the proceedings to ensure their fairness and expeditiousness, and to protect the suspect's rights,¹⁷ the Prosecution's autonomy in selecting, analysing and presenting its evidence ensures the independent exercise of the functions of both the Pre-Trial Chamber and the Prosecution. If and when leave to appeal is granted, the Prosecution will argue that the Decision unlawfully interferes with the powers and duties of the Prosecution under article 61, and that the Single Judge therefore erred in the exercise of her discretion.

14. In addition, the Prosecution will argue that the Single Judge exceeded her discretionary power by requiring the Prosecution to provide preliminary

¹⁵ ICC-01/04-168 OA3, para.9. ICC-02/04-01/05-367, para.22; ICC-02/05-02/09-267, p.6; ICC-01/04-01/06-2463, para.8; ICC-01/09-02/11-27, para.7. See also, ICC-01/04-01/06-1433 OA11, (Dissenting Opinion of Judge Song), para.4, specifying that "[a] decision 'involves' an issue if the question of law or fact constituting the issue was essential for the determination or ruling that was made."

¹⁶ Decision, paras.39-40.

¹⁷ The Chamber's powers under article 61(3), second sentence, and rule 121(2), first sentence, to make decisions and orders with respect to disclosure should be read subject to the overall objectives of achieving fairness and expeditiousness of the proceedings, as well as the protection of the rights of the suspect.

and partial assessments of the evidence¹⁸ as each “batch” is disclosed, on the grounds that these will be used by the Chamber “to know the reason for a party to rely on a particular piece of evidence”¹⁹ and “to take an informed decision in accordance with its statutory mandate under article 61(7) of the Statute”.²⁰ Under article 61(5), the Prosecution shall submit the evidence and its analysis of the sufficiency thereof “at the hearing” and the Chamber must make its determination under article 61(7) “on the basis of the hearing”. Any prior evidentiary analysis provided to the Chamber is not a legitimate factor in the Chamber’s determination under article 61(7). This is especially so if it does not reflect the Prosecution’s preferred manner to present its case and the Prosecution may choose to not rely on this prior analysis during the confirmation hearing.

(iii) *The Issue significantly affects the fairness of the proceedings*

15. The Issue affects the fairness of the proceedings²¹ because, as demonstrated in the previous paragraphs, it impacts on the Prosecution’s independent exercise of its statutory functions and in particular the Prosecution’s prerogative to present its case to the Pre-Trial Chamber in the manner it deems most appropriate.²² A “law-driven”,²³ preliminary and partial assessment of the incriminating evidence²⁴ that is presented in a format that

¹⁸ See para.22 below.

¹⁹ Decision, para.40.

²⁰ Decision, para.10.

²¹ In their joint dissenting opinion to the recent Appeals Judgment in the *Ngudjolo* case, Judges Tarfusser and Trendafilova found that the notion of fairness extends to the Prosecution. They concluded that the Trial Chamber violated article 64(2), as it is their “firm conviction that not only did the Trial Chamber prevent the Prosecutor from presenting her case on a par with the defence and from fulfilling her statutory obligations pursuant to article 54(1) of the Statute” (see ICC-01/04-02/12-271-AnxA, para.5).

²² “Fairness” within the terms of article 82(1)(d) requires respect for the procedural and substantive rights and obligations of all participants (ICC-01/04-141, para.48; ICC-02/04-01/05-212, paras.10-11; ICC-01/04-135-tEN, para.38). In particular, that “means that the Prosecutor must be able to exercise the powers and fulfil the duties listed in Article 54” (ICC-01/04-135-tEN, paras.38-39). Fairness is also linked to the ability of a party to present its case (ICC-02/04-01/05-90-US-Exp (reclassified pursuant to ICC-02/04-01/05-135), para.24).

²³ Decision, para.39.

²⁴ See para.22 below.

may amount to thousands of pages²⁵ is not an effective tool to analyse the evidence or to persuade the Chamber that, based on the evidence, there are substantial grounds to believe that the person committed the crimes charged. The Prosecution would therefore be hampered in presenting its case in the most effective and efficient manner.

16. Any analysis of the evidence must be conducted in a format that assists the Prosecution in its presentation of the case and the evidence during the confirmation of charges hearing. To that end, the Prosecution prefers to present a footnoted document DCC, as it did in the cases against Mr Gbagbo²⁶ and Mr Blé Goudé.²⁷ This DCC is only filed once the charges are finalised and precisely identifies and hyperlinks all items of evidence that the Prosecution relies on to establish each of the factual allegations contained in the DCC. The Prosecution may choose to accompany this document with a much simplified version of a law-driven analysis chart, which can be automatically generated from the footnoted DCC.²⁸ While the Decision does not prevent the Prosecution from filing a footnoted DCC in addition to the in-depth analysis chart, it indicates that it is the in-depth analysis chart that will inform the Chamber's determination under article 61(7).²⁹

17. In addition, the Issue affects the fairness of the proceedings because the Decision imposes an inordinately stringent duty on the Prosecution, not contemplated under the Statute or the Rules. The Decision does not consider the scale of the material involved, even adopting the strictest possible

²⁵ See for instance the in-depth analysis chart in the *Kenyatta et al.* case, which amounts to 6,644 pages (ICC-01/09-02/11-257-Conf-Anxs C1 to C5). See also the equivalent chart in the *Ntaganda* case, which amounts to 1,205 pages (ICC-01/04-02/06-217-Conf-AnxC).

²⁶ ICC-02/11-01/11-592-Conf-Anx2-Corr2-tENG.

²⁷ ICC-02/11-02/11-124-Anx2-Corr-Red.

²⁸ See for instance ICC-02/11-01/11-592-Conf-Anx3-Corr; ICC-02/11-01/11-592-Conf-Anx4-Corr; ICC-02/11-02/11-130-Conf-Anx1.

²⁹ Decision, paras.10-11.

approach to the incriminating evidence to be disclosed.³⁰ Experience has shown that the Prosecution cannot comply with this duty by relying on the resources currently available to it in this case.³¹ In fact, as the Prosecution has previously informed this Chamber, a primary reason underpinning its request to postpone the confirmation hearing, was to allow it to review the 17,791 items of evidence (94,620 pages) in its possession in the *Uganda* collection and to disclose them to the Defence. Even before the Decision was issued, the Prosecution estimated that to complete this task before January 2016, it must recruit or re-assign sufficient staff.³² The Decision, however, imposes a significant additional duty on the Prosecution. This will compel the Prosecution to divert resources and prevents it from using those resources effectively for other tasks that it believes are necessary to investigate and prosecute this and other cases. In this sense, the Issue unfairly affects the independence of the Prosecution to determine how to best to use its resources to comply with its statutory duties to investigate and prosecute.

18. While the Decision intends to enhance the efficiency and fairness of the disclosure process,³³ law-driven in-depth analysis charts are not particularly helpful to the Defence. At least one defence team acting in a case where similar charts were required is on the record having said that the chart had “proved less useful”.³⁴

³⁰ The Prosecution notes that the Single Judge ruled that “the Prosecutor should not ‘disclose the greatest volume of evidence, but (...) disclose the evidence which is of true relevance to the case’” (Decision, para.20). Nevertheless, as acknowledged by the Decision, “a typical feature in cases brought before this Court” is that the Prosecution will need to disclose a “voluminous amount of evidence” (Decision, para.40). This is the very reason why the Decision intends to “streamlining the disclosure process” (Decision, para.40).

³¹ For instance, in the case against *Kenyatta et al*, eight legal reviewers worked full time for three months to insert the relevant information into Casemap, which is a preliminary step to produce the in-depth analysis chart. Thereafter, three lawyers, two legal assistants and four legal reviewers worked for two weeks full time to produce the chart.

³² ICC-02/04-01/15-196-Red2, paras.14-18.

³³ Decision, para.40.

³⁴ ICC-01/09-01/11-T-15, p.32, lns.15-17.

(iv) *The Issue significantly affects the expeditious conduct of the proceedings*

19. Although the Decision is intended to “streamline the disclosure process”,³⁵ the additional burden imposed on the Prosecution will delay rather than expedite the confirmation hearing.³⁶

20. The impact of an extra-statutory duty of such a magnitude on the expeditious conduct of the proceedings cannot be overstated. As the Court’s experience establishes, obstacles or difficulties in the disclosure process directly impact on the expeditiousness of the proceedings.³⁷ Even acting with the utmost diligence and speed, and diverting substantial prosecutorial resources from other cases, the Prosecution will not be able to produce the full analysis required by the Decision by the end of the year. As indicated above,³⁸ the Prosecution has applied for a postponement of the commencement of the confirmation hearing.³⁹ This is to enable the Prosecution to effectively comply with its statutory duties. The additional, non-statutory duty imposed by the Decision to file in-depth analysis charts, would leave the Prosecution with no choice but to request a further substantial postponement of the commencement of the confirmation of charges hearing.

(v) *The Issue affects the outcome of the trial*

21. The Issue also affects the outcome of the trial. The stated purpose of the in-depth analysis charts is to inform the Chamber’s decision under article

³⁵ Decision, para.40.

³⁶ Decisions impacting on a participant’s activities and resources have been viewed as affecting the expeditious conduct of the proceedings for the purposes of deciding whether leave to appeal should be granted (ICC-02/05-118; ICC-01/04-01/07-116).

³⁷ See e.g. ICC-01/04-01/06-126, p.3, ICC-01/04-01/07-446, p.5.

³⁸ See para.17 above.

³⁹ The Prosecution applied for a postponement of the commencement of the confirmation of charges hearing until 31 January 2016 (ICC-02/04-01/15-196-Red2). The Single Judge largely granted the Prosecution’s request and decided that the confirmation of charges hearing shall commence on 21 January 2016 (ICC-02/04-01/15-206).

61(7).⁴⁰ However, user-unfriendly charts that analyse the evidence on the basis of its relevance to an abstract legal requirement, as opposed to a specific fact alleged in the charges, are not an effective tool to allow the Pre-Trial Chamber to decide whether there are substantial grounds to believe that the persons who are the subject of the confirmation hearing committed the crimes charged. As a result, the Pre-Trial Chamber, in its determination under article 61(7), may come to a different conclusion from that which it would otherwise reach if the Prosecution was allowed to present its case and the underlying evidence in a more effective way.

22. In addition, there is a risk that the Pre-Trial Chamber may arrive at a wrong conclusion by relying on in-depth analysis charts that do not properly reflect the Prosecution's case or the true nature of the evidence. The analysis conducted in the in-depth analysis charts accompanying each individual disclosure batch⁴¹ is necessarily preliminary and will need to be conducted in the abstract. At that point in time, the Prosecution will not have finalised its charging document and will not know for sure which charges, and which legal requirements thereof, will apply.⁴² Moreover, due to the ongoing investigations, this analysis will be incomplete. It will need to be based on the content of each item of evidence in isolation and the Prosecution will be unable fully to assess its relevance, reliability or weight in the context of the entire record. A final and contextual assessment of the evidence is likely to result in a different outcome. The consolidated in-depth analysis chart filed together with the charging document may not remedy this shortcoming, as it would simply replicate and consolidate in one document the potentially

⁴⁰ Decision, paras.10-11, 40.

⁴¹ Decision, para.42.

⁴² The Decision requires the Prosecution to identify, as specific as possible, which evidence supports "the particular legal requirement" (Decision, para.41).

misleading preliminary and incomplete analysis.⁴³ This further demonstrates that the Issue impacts on the content of the decision under rule 61(7) and thereby directly on the trial that is conducted on the basis of the charges confirmed by the Pre-Trial Chamber.

(vi) *Immediate resolution of the Issue may materially advance the proceedings*

23. Immediate resolution of the Issue by the Appeals Chamber will materially advance these proceedings primarily by ensuring that the system for the disclosure and analysis of incriminating evidence is correct. These are key features of the proceedings and should be placed on a solid footing. If this Issue is not resolved immediately by the Appeals Chamber, then the preparation and conduct of the confirmation hearing may take place on, and be tainted by, an incorrect regime of disclosure and a flawed evidentiary basis.

24. To the extent that the Decision is, as demonstrated above, capable of affecting the fairness of the proceedings, timely intervention of the Appeals Chamber will avert the danger that subsequent proceedings in this case are later nullified, in whole or in part, by challenges brought by the Parties. In this sense, the Prosecution stresses that the very role envisaged for article 82(1)(d) by the Appeals Chamber is to “rid [...] the judicial process of possible mistakes that might taint [...] the fairness of the proceedings”.⁴⁴

25. In addition, the Decision significantly deviates from the practice of the pre-trial disclosure system put in place in other cases, where no in-depth

⁴³ Decision, para.42. To avoid this outcome, the Prosecution would need to conduct a further final and contextual and analysis of the evidence, which would significantly exceed the very taking burden established by the Decision.

⁴⁴ ICC-01/04-168 OA3, para.14. The Prosecution notes that the Appeals Chamber refers to “possible mistakes that might taint” (emphasis added).

analysis charts were required.⁴⁵ In one case, the Single Judge stated that in addition to requiring the Prosecution to file a DCC and a list of evidence, “[t]he Pre-Trial Chamber has no power to order or otherwise impose on either the Prosecutor or the defence additional duties or requirements in this respect”.⁴⁶ Likewise, the Trial Chamber of the Special Tribunal for Lebanon found that to instruct the Prosecution to produce an in-depth analysis chart similar to that required in some of the cases before the ICC, “would be unfairly burdensome”.⁴⁷

26. A core function of the Appeals Chamber is to ensure that the law of the Court evolves in a coherent and standardised manner, and to provide guidance to Pre-Trial and Trial Chambers as to the correct interpretation of the law,⁴⁸ thereby enhancing clarity and predictability in the Court’s proceedings. As found by the Appeals Chamber, “immediate resolution by the Appeals Chamber will settle the matter posing for decision through its authoritative determination”.⁴⁹

27. Finally, because the Issue involved in this Decision cuts across all situations before the Court, granting leave to appeal would also materially advance

⁴⁵ See for instance, cases against *Lubanga* (ICC-01/04-01/06-102); *Katanga and Ngudjolo* (ICC-01/04-01/07-259); *Gbagbo* (ICC-02/11-01/11-30); *Blé Goudé* (ICC-02/11-02/11-57); *Bemba et al.* (ICC-01/05-01/13-134).

⁴⁶ ICC-01/05-01/13-134, para.6.

⁴⁷ *Prosecutor v. Salim Jamil Ayyash et al.*, STL-11-01/T /TC, Decision on Merhi Defence Request for a “Table of Incriminating Evidence”, 9 May 2014, para.3, see also paras.16-32; STL-11-01/T/TC/F1524/20140509/R259005-R259016/EN/dm.

⁴⁸ See e.g. *Prosecutor v. Krnojelac*, IT-97-25-A, Judgement, 17 September 2003, para. 7: one concern of the Appeals Chamber “is to ensure the development of the Tribunal’s case-law and the standardisation of the applicable law”; <http://www.icty.org/x/cases/krnjelac/acjug/en/krn-aj030917e.pdf>. See also *Prosecutor v. Aleksovski*, IT-95-14/1-A, Judgement, 24 March 2000, para. 113(ii): “The fundamental mandate of the Tribunal to prosecute persons responsible for serious violations of international humanitarian law cannot be achieved if the accused and the Prosecution do not have the assurance of certainty and predictability in the application of the applicable law”; <http://www.icty.org/x/cases/aleksovski/acjug/en/ale-asj000324e.pdf>.

⁴⁹ ICC-01/04-168 OA3, paras.14, 18. See also e.g. *Prosecutor v. Blagojević et al*, IT-02-60-PT, Decision on Joint Defence Motions for Certification of Decision on Joint Defence Motions for Reconsideration of Trial Chamber’s Decision to Review All Discovery Materials Provided to the Accused by the prosecution, and Request for Stay of Execution of Decision, 10 February 2003; http://www.icty.org/x/cases/blagojevic_jokic/tdec/en/030210-2.pdf.

other proceedings,⁵⁰ by giving the Appeals Chamber an opportunity to confirm the procedural framework within which pre-confirmation disclosure is to be dealt with. This would significantly reduce the amount of litigation on the Issue and allow future pre-trial proceedings to be dealt with promptly and in a streamlined fashion.

Request for interim stay

28. The Prosecution requests the Pre-Trial Chamber to order an interim stay of the portion of the Decision that relates to the Prosecution's duty to file in-depth analysis charts until it has decided on this application for leave to appeal, and if leave is granted, until the Appeals Chamber has decided on whether to grant suspensive effect.
29. The Prosecution emphasises that the Pre-Trial Chamber is not itself requested to authorise suspensive effect, which is a power confined to the Appeals Chamber,⁵¹ but only to take the necessary measures to prevent the Appeals Chamber's power being frustrated. Pre-Trial Chambers and Trial Chambers must have the power to stay their own decisions in order to preserve a power expressly granted to the Appeals Chamber under article 82(3) of the Statute. The *Lubanga* Trial Chamber recognised the correctness of this approach.⁵²
30. There is good reason to believe that the Appeals Chamber may grant suspensive effect once requested. This is to ensure that the Prosecution can independently carry out its statutory powers and duties and does not need

⁵⁰ It has been previously recognised that in certain circumstances, the potential impact on other proceedings may be "invoked as an additional argument in support of the alleged significant impact on the current proceedings": see ICC-01/05-20-US-Exp, para.54 (unsealed pursuant to ICC-02/04-01/05-52).

⁵¹ ICC-01/04-01/10-469, p.5.

⁵² ICC-01/04-01/06-2536, para.2 (citing the oral decision of the Trial Chamber: "This order shall not be enforced until the five day time limit for an appeal has expired. If an appeal is filed within the five day time limit against this order granting release, and if a request is made to suspend its effect, the accused shall not leave detention until the Appeals Chamber has resolved whether this order granting release is to be suspended"). See also ICC-01/04-01/06-2536, para.11.

to divert resources to prepare a preliminary and incomplete evidentiary analysis that may taint or even mislead the Pre-Trial Chamber in its determination under article 61(7).

31. Granting an interim stay will not cause any delay to the proceedings or unfair prejudice to the Defence. Subject to an application and determination on suspensive effect of the disputed portions of the Decision by the Appeals Chamber, the Prosecution proposes that, as an interim solution, it will disclose all necessary information pursuant to the Decision, but without accompanying in-depth analysis charts. If and when the Appeals Chamber upholds the Decision, the Prosecution will file an in-depth analysis chart for all incriminating evidence already disclosed and it will continue to do so in relation to further disclosures.

Conclusion

32. For the above reasons, the Prosecution requests the Pre-Trial Chamber to grant it leave to appeal the Decision on the above Issue and to order an interim stay of the portion of the Decision that relates to the Prosecution's duty to file in-depth analysis charts until it has decided on this application for leave to appeal, and if leave is granted, until the Appeals Chamber has decided on whether to grant suspensive effect.



Fatou Bensouda,
Prosecutor

Dated this 9th day of March 2015
At The Hague, The Netherlands