

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 13 November 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 Defence Request for Extension of Time for the Purpose of
Requesting Translation of Witness Statements into Kinyarwanda**

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

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 “Requête de la Défense aux fins de prorogation de délai et Requête de la Défense aux fins de traduction en Kinyarwanda des dépositions écrites des témoins à charge W-0113, W-0018, W-0105, W-0100, W-0019 et W-0107 et de leur communication à la Défense” (the “Application”).²

I. PROCEDURAL HISTORY

1. On 17 May 2013, the Single Judge issued the “Decision Establishing a Calendar for the Disclosure of Evidence Between the Parties” (the “17 May 2013 Calendar Decision”) for the purpose of providing the parties with a precise timetable for disclosure and requests for redactions or translation of evidence.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” (the “17 June 2013 Calendar Decision”),⁴ in which the Single Judge, *inter alia*, postponed the commencement of the confirmation of charges hearing, initially scheduled to take place on 23 September 2013, until Monday, 10 February 2014.⁵ In the same decision, the Single Judge also established a new calendar for the disclosure of evidence, including the submission of redaction and translation requests.⁶
3. On 24 September 2013, the Single Judge issued the “Decision on the ‘Demande de la Défense aux fins de traduction en Kinyarwanda de certains des principaux éléments de preuve’”.⁷

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

² ICC-01/04-02/06-137.

³ 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.

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-01/04-02/06-73, pp. 19-22.

⁷ Pre-Trial Chamber II, ICC-01/04-02/06-115.

4. On 7 November 2013, the Defence submitted the Application which is divided into two parts: first, the Defence seeks an extension of time for the purpose of submitting a request for translation of the statements of witnesses P-0113, P-0018, P-0105, P-0100, P-0019 and P-0107 into Kinyarwanda which have already been disclosed by the Prosecutor (the "Extension Request");⁸ secondly, it also requests that the Prosecutor disclose those witness statements concerned in the Kinyarwanda language to the Defence (the "Translation Request")⁹.

II. THE APPLICATION

5. The Defence explains that it was under the impression that the translation of statements, allegedly requested as early as April 2013, was completed at the end of August 2013.¹⁰ Thus, these statements were available to be disclosed by that time.¹¹ In this context, the Defence makes reference to the translation of the statement of witness P-0022, which also had been requested in April 2013, and which was disclosed to the Defence on 9 September 2013.¹²

6. The Defence further informs the Chamber that it has received the statements of witnesses P-0113, P-0018, P-0105, P-0100, P-0019, P-0107 and P-0027 which have been disclosed in the French language on 7 October 2013 and 1 November 2013 respectively.¹³ Soon after, on 6 November 2013, the Defence purportedly wished to be informed by the Prosecutor when it would be receiving the translation of the statements of witnesses P-0113, P-0018, P-0105, P-0100, P-0019, P-0107 and P-0027.¹⁴ The same day, the Prosecutor allegedly replied that she could only proceed if a formal request was lodged in accordance with the 17 June 2013 Calendar Decision and if the Single Judge authorized the Defence request for translation.¹⁵

⁸ ICC-01/04-02/06-137, para. 10.

⁹ ICC-01/04-02/06-137, paras 20-22.

¹⁰ ICC-01/04-02/06-137, para. 3.

¹¹ ICC-01/04-02/06-137, para. 3.

¹² ICC-01/04-02/06-137, para. 4.

¹³ ICC-01/04-02/06-137, paras 6 and 7.

¹⁴ ICC-01/04-02/06-137, para. 8.

¹⁵ ICC-01/04-02/06-137, para. 9.

7. In light of the above, the Defence seeks an extension of time pursuant to regulation 35 of the Regulations of the Court (the “Regulations”) with a view to permitting it to submit a request for translation of the statements of witnesses P-0113, P-0018, P-0105, P-0100, P-0019 and P-0107 into Kinyarwanda.¹⁶

8. The Defence asserts that, according to its reading of the 17 June 2013 Calendar Decision, it does not apply to evidence which has already been translated into Kinyarwanda.¹⁷ As a result, and based on its exchanges with the Office of the Prosecutor, the Defence believed that the translation of the statements of witnesses P-0022, P-0113, P-0018, P-0027, P-0100, P-0105, P-0019 and P-0107 into Kinyarwanda was completed since August 2013 and ready to be disclosed to the Defence.

9. The Defence also recalls that the Prosecutor disclosed the translated statement of witness P-0022 without awaiting an order from the Chamber.¹⁸ Consequently, the Defence, acting in good faith, believed that it was not necessary to submit a formal request for translation for the witnesses identified above.¹⁹ It was only on 6 November 2013, after the expiry of the deadline established by the Single Judge, that the Defence was informed by the Prosecutor that she could not disclose the witness statements translated into Kinyarwanda in the absence of a formal request.²⁰

10. In justifying its Extension Request, the Defence refers to article 67(1) of the Rome Statute (the “Statute”) and rule 76 of the Rules of Procedure and Evidence (the “Rules”) and reiterates that, having acted in good faith and for the sake of judicial economy, it believed that a formal request for translation did not appear necessary.²¹

11. Along with the Extension Request, the Defence also submitted the Translation Request for the translation of the same witness statements into Kinyarwanda. It

¹⁶ ICC-01/04-02/06-137, paras 10 and 11.

¹⁷ ICC-01/04-02/06-137, para. 13.

¹⁸ ICC-01/04-02/06-137, para. 14.

¹⁹ ICC-01/04-02/06-137, para. 15.

²⁰ ICC-01/04-02/06-137, para. 16.

²¹ ICC-01/04-02/06-137, para. 17.

reiterates its willingness to accept draft versions of translations which are deemed sufficient at this stage of the proceedings.²² In the event that the Prosecutor has not yet prepared any translation, the Defence requests the Chamber to order the Prosecutor to proceed with the translation of the witness statements concerned and disclose them to the Defence, as soon as possible.²³

III. APPLICABLE LAW

12. The Single Judge notes articles 21(1)(a), (2), and (3), and 67 of the Statute, rules 76(3) and 121 of the Rules, and regulation 35 of the Regulations. In particular, regulation 35(2) of the Regulations stipulates:

The Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard. After the lapse of a time limit, an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control.

IV. DETERMINATION BY THE SINGLE JUDGE

13. At the outset, the Single Judge recalls that with the 17 May 2013 Calendar Decision, as amended by the 17 June 2013 Calendar Decision, a progressive calendar for disclosure was established. This calendar included, *inter alia*, specific time limits for translation into Kinyarwanda to be respected by the Defence. It is recalled that the Single Judge took into consideration the rights of the suspect to be furnished with some of the core evidence into Kinyarwanda, the language which the suspect fully understands and speaks. Therefore, the Single Judge held:

[A]ccording to rule 76(1) of the Rules, the Prosecutor shall provide the Defence with the names of witnesses whom she intends to call to testify and the copies of any prior statements made by them “sufficiently in advance to enable the adequate preparation of the defence”. In particular, according to rule 76(3) of the Rules, the Prosecutor is obliged to make available the statements of her witnesses “in original and in a language which the accused fully understands and speaks”. Thus, in the circumstances of the present case, which might call for translations into Kinyarwanda of some of the core evidence of the

²² ICC-01/04-02/06-137, para. 20.

²³ ICC-01/04-02/06-137, para. 22.

Prosecutor, the Single Judge establishes the following calendar with a view to ensuring the fair and expeditious conduct of the proceedings.²⁴

14. More specifically, it is recalled that in relation to witness statements the Single Judge ordered the Defence, in case it required any translation into Kinyarwanda, to file in the case record a translation request within two weeks from the date of receipt of the statement in question.

With respect to the evidence where redactions or protective measures are sought, the Single Judge grants the Defence two weeks from the date of receipt of said redacted evidence to request, to the extent necessary, translations into Kinyarwanda of evidence which is core for the preparation of the defence. In this regard, the Single Judge wishes to make clear that if a request is not submitted within the established deadline she will consider this as a waiver of the suspect's right to translation of the relevant evidence.²⁵

This holding was fully embraced by the 17 June 2013 Calendar Decision.²⁶

15. It is clear from the plain language of the 17 May 2013 Calendar Decision that no differentiation was made between statements for which translation into Kinyarwanda may have existed, even if in draft form, within the Office of the Prosecutor, and statements for which translations would need to be prepared. Indeed, at the time of issuing the 17 May 2013 Calendar Decision, no information of any translation preparations within the Office of the Prosecutor was available to the Single Judge.

16. The 17 May 2013 Calendar Decision also does not foresee that the parties resolve translation issues *inter partes* without a filing. Submitting any problematic issue during the disclosure process by way of a filing will enable the Single Judge to ensure that "disclosure takes place under satisfactory conditions".²⁷ It is equally important to be mindful of the fact that "one of the "[Single Judge's] main duties is

²⁴ 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. 15.

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. 22.

²⁶ Pre-Trial Chamber II, "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", 17 June 2013, ICC-01/04-02/06-73.

²⁷ Rule 121(2)(b) of the Rules; Pre-Trial Chamber II, Decision Setting the Regime for Evidence Disclosure and Other Related Matters, 12 April 2013, ICC-01/04-02/06-47, para. 9.

to ensure that judicial proceedings are conducted in a fair and expeditious manner taking into consideration the competing interests at stake”.²⁸ Consequently, the parties are requested to comply with the orders of the Single Judge as stipulated in the decisions concerned.

The Extension Request

17. The Single Judge notes the Defence’s confirmation that the witness statements, for which translation into Kinyarwanda is requested, have already been disclosed in their original language. The two-week deadline, as established in the 17 May 2013 Calendar Decision, expired some time ago. It is therefore necessary to ascertain whether “the [Defence] was unable to file the [request for translation] within the time limit [specified in the relevant Chamber’s decisions] for reasons outside [its] control”, pursuant to regulation 35(2), second sentence, of the Regulations.

18. In this context, the Single Judge recalls her previous ruling in the 17 May 2013 Calendar Decision that “if any request is not submitted within the established deadline she will consider this as a waiver of the suspect’s right to translation of the relevant evidence”. However, in the present circumstances, the Single Judge must pay heed to the fact that the misinterpretation of her ruling and its consequences should not be attributed to the suspect. Furthermore, the Single Judge is heedful to the right of the suspect, pursuant to rule 76 of the Rules, to receive translations of some of the core evidence into Kinyarwanda. In view of the foregoing and mindful of the fundamental character of this right, as enshrined also in article 67(1)(a) of the Statute, the Single Judge is of the view that the Defence was unable to file the request for translation within the time limit for reasons outside the suspect’s control. Accordingly, granting the Extension Request, on an exceptional basis, is appropriate.

²⁸ Pre-Trial Chamber II, “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”, 17 June 2013, ICC-01/04-02/06-73, para. 13; Pre-Trial Chamber II, “Decision on the ‘Demande de la Défense aux fins de traduction en kinyarwanda de certains des principaux éléments de preuve””, 24 September 2013, ICC-01/04-02/06-115, para. 12.

The Translation Request

19. In relation to the Translation Request, the Single Judge notes that the Defence already identified six witness statements for which translation into Kinyarwanda is sought. She also takes note of the Defence's practical suggestion, as advanced previously in other filings, to accept non-official draft translations. When addressing this part of the Application, the Single Judge is bound to take into account further factors which have a bearing on the matter *sub judice*, including the postponement of the date of the confirmation of charges hearing, which may curtail the rights of the suspect "to be tried without undue delay".²⁹ That said, the Single Judge considers it crucial and reiterates her previous ruling that the Defence, conducts again a thorough review of the statements of witnesses P-0113, P-0018, P-0105, P-0100, P-0019 and P-0107 in order to identify only those relevant parts which are essential or core for the preparation of the defence.³⁰

20. In this regard, the Prosecutor and the Defence shall submit a joint report to the Chamber on the translation process of the statements of witnesses P-0113, P-0018, P-0105, P-0100, P-0019 and P-0107, no later than Wednesday, 20 November 2013.

21. Lastly, the Single Judge authorizes that the redactions previously granted or ordered *proprio motu* in relation to the witness statements mentioned above, be extended to the translation of the statements into Kinyarwanda.

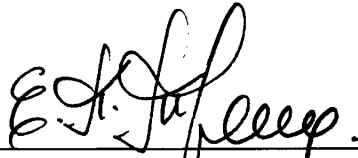
²⁹ Pre-Trial Chamber II, "Decision on the 'Demande de la Défense aux fins de traduction en Kinyarwanda de certains des principaux éléments de preuve'", 24 September 2013, ICC-01/04-02/06-115, para. 12. In this regard, the Single Judge notes that the Defence objected to the Prosecutor's request for postponement of the confirmation of charges hearing, see ICC-01/04-02/06-69-Red, para. 2.

³⁰ Pre-Trial Chamber II, "Decision on the 'Demande de la Défense aux fins de traduction en Kinyarwanda de certains des principaux éléments de preuve'", 24 September 2013, ICC-01/04-02/06-115, para. 12; see also 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, paras 21, 22 and 26; Pre-Trial Chamber II, "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", 17 June 2013, ICC-01/04-02/06-73, paragraph (f)(i) of the operative part, pp. 21-22.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

- a) **grants** the Extension Request;
- b) **grants** the Translation Request subject to the identification by the Defence of those relevant parts of the statements of witnesses P-0113, P-0018, P-0105, P-0100, P-0019 and P-0107 which are essential or core for the preparation of the defence;
- c) **orders** the Prosecutor and the Defence to submit to the Chamber a joint report on the translation process, no later than **Wednesday, 20 November 2013**;
- d) **authorizes** that any redaction previously granted or ordered *proprio motu* in relation to the statements of witnesses P-0113, P-0018, P-0105, P-0100, P-0019 and P-0107, be extended to the translation of the statements into Kinyarwanda.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Wednesday, 13 November 2013

At The Hague, The Netherlands