

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 30 December 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 “Demande de la Défense aux fins de traduction en kinyarwanda des dépositions écrites des témoins à charge P-0055, P-0315, P-0317, P-0758, P-0761, P-0773, P-0792, P-0804, P-0805 et P-0806”

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 this decision on the “Demande de la Défense aux fins de traduction en kinyarwanda des dépositions écrites des témoins à charge P-0055, P-0315, P-0317, P-0758, P-0761, P-0773, P-0792, P-0804, P-0805 et P-0806” (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” 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”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’” (the “24 September 2013 Decision”).⁷

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

² ICC-01/04-02/06-187.

³ Pre-Trial Chamber II, 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 18 November 2013, the Single Judge issued the “Decision on the ‘Demande de la Défense aux fins de traduction en kinyarwanda de la déposition écrite du témoin à charge P-0027’”.⁸

5. On 5 December 2013, the Single Judge rendered the “Third Decision on the Prosecutor’s Requests for Redactions” (the “Third Decision on Redactions”).⁹

6. On 19 December 2013, the Defence submitted the Application, in which it requests the translation into Kinyarwanda of the following pieces of evidence:

- Concernant le témoin P-0055 : les pièces DRC-OTP-2058-0718-R01, DRC-OTP-2058-0745-R01, DRC-OTP-2058-0772-R01, DRC-OTP-2058-0792-R01, DRC-OTP-2058-0815-R01 DRC-OTP-2058-0851-R01, DRC-OTP-2058-0873-R01, DRC-OTP-2058-0900-R01, DRC-OTP-2058-0904-R01 et DRC-OTP-2058-0942-R01 dans leur intégralité;

- Concernant le témoin P-0315 : les par. 11 à 151 de la pièce DRC-OTP-2058-0990-R01;

- Concernant le témoin P-0317 : les par. 10 à 94 de la pièce DRC-OTP-2059-0287-R01;

- Concernant le témoin P-0758 : les par. 7 à 124 de la pièce DRC-OTP-2058-0194-R01;

- Concernant le témoin P-0761 : les par. 7 à 25 de la pièce DRC-OTP-2054-8283-R01;

- Concernant le témoin P-0773 : les par. 7 à 23 de la pièce DRC-OTP-2057-0127-R01;

- Concernant le témoin P-0792 : les pages 4 à 26 de la pièce DRC-OTP-2058-0132-R01 ;

- Concernant le témoin P-0804 : les par. 8 à 62 de la pièce DRC-OTP-2058-1128-R01;

- Concernant le témoin P-0805 : les par. 7 à 47 de la pièce DRC-OTP-2058-1094-R01;

- Concernant le témoin P-0806 : les par. 7 à 22 de la pièce DRC-OTP-2058-1087-R01.¹⁰

7. On 23 December 2013, the Prosecutor submitted the “Prosecution’s Response to the ‘Demande de la Défense aux fins de traduction en kinyarwanda des dépositions écrites des témoins à charge P-0055, P-0315, P-0317, P-0758, P-0761, P-0773, P-0792, P-0804, P-0805 et P-0806’” (the “Response”).¹¹

⁸ ICC-01/04-02/06-148.

⁹ Pre-Trial Chamber II, ICC-01/04-02/06-165-Conf-Exp with two confidential *ex parte* annexes. A confidential redacted version is also available, 6 December 2013, ICC-10/04-02/06-165-Conf-Red.

¹⁰ ICC-01/04-02/06-187, para. 8.

¹¹ ICC-01/04-02/06-192.

II. The Submissions

8. In its Application, the Defence reiterates at the outset that the translation into Kinyarwanda of the Prosecutor's witness statements should not cause any delay to the commencement of the confirmation of charges hearing.¹² It therefore requests the translation of the witness statements which are essential to the preparation of the defence.¹³ The Defence reiterates that a draft translation will suffice at this stage.¹⁴

9. The Defence also requests that any other statement, of which a translation into Kinyarwanda has been prepared by the Prosecutor and which is not explicitly mentioned by the Defence, be disclosed as well.¹⁵

10. The Prosecutor confirms in her Response that she has completed the translation into Kinyarwanda of the statements of witnesses P-0761 and P-0773, and that those pertaining to witnesses P-0758, P-0792, P-0804, P-0805 and P-0806 will be completed by 24 December 2013.¹⁶ In relation to the statements of witnesses P-0315 and P-0317, the Prosecutor submits that she will be able to provide a translation into Kinyarwanda by 10 January 2014.¹⁷ With regard to all those statements, the Prosecutor submits that the translations, to which the approved redactions will be applied, can be disclosed by 10 January 2014.

11. With regard to the statement of witness P-0055, the Prosecutor informs the Single Judge that the audio recording of the interview can be disclosed to the Defence, in redacted form, by 10 January 2014.¹⁸ Due to the length of the statement, the need to outsource its translation and other preparatory acts, the disclosure of the corresponding transcript in Kinyarwanda, to which the appropriate redactions will be applied as authorized, can only take place on 22 January 2014.¹⁹ It is further

¹² ICC-01/04-02/06-187, para. 4. See also ICC-01/04-02/06-69-Conf-tENG, para. 56.

¹³ ICC-01/04-02/06-187, para. 7.

¹⁴ ICC-01/04-02/06-187, para. 6.

¹⁵ ICC-01/04-02/06-187, para. 9.

¹⁶ ICC-01/04-02/06-192, para. 4.

¹⁷ ICC-01/04-02/06-192, para. 5.

¹⁸ ICC-01/04-02/06-192, para. 7.

¹⁹ ICC-01/04-02/06-192, paras 6 and 8.

mentioned that the Single Judge authorized previously that disclosure of the audio recording take place together with the disclosure of the corresponding transcript.²⁰

12. In relation to any other statement of which a translation into the Kinyarwanda language was not requested specifically by the Defence, the Prosecutor submits that she completed the translation of the statements pertaining to witnesses P-0018, P-0019 and P-0108.²¹ Those statements can also be disclosed, in redacted form, by 10 January 2014, “should the Single Judge deem it appropriate”.²²

III. Determination of the Single Judge

13. The Single Judge notes articles 21(1)(a), (2) and (3), 61 and 67 of the Rome Statute, and rules 76(3) and 121 of the Rules of Procedure and Evidence (the “Rules”).

14. The Single Judge observes that the Defence identified the relevant parts of the pieces of evidence to be translated into Kinyarwanda, which are essential or core to the preparation of the defence, with the exception of the evidence relating to witness P-0055. She also takes note of the Defence’s continued practical approach to translation issues according to which draft translations of witness statements suffice to put the suspect in a position to understand the pieces of evidence that are essential for the preparation of the defence.²³ Considering that the Prosecutor is in a position to disclose to the Defence a translation into Kinyarwanda of the relevant parts of the statements of witnesses P-0758, P-0761, P-0773, P-0792, P-0804, P-0805, P-0806, P-0315 and P-0317 by 10 January 2014 and thus 30 days before the commencement of the confirmation of charges hearing, the Single Judge deems it appropriate to grant the Application in relation to those statements.

15. In relation to the statement of witness P-0055, the situation is different. Redactions to the transcript of the interview and, by extension, to the corresponding audio recording, which contains utterances in both Swahili and English, have been

²⁰ ICC-01/04-20/06-192, footnote 6.

²¹ ICC-01/04-02/06-192, para. 9.

²² *Ibid.*

²³ ICC-01/04-02/06-192, para. 6.

authorized or ordered *proprio motu* by the Single Judge in the framework of the Third Decision on Redactions.²⁴ In that decision, it is recalled that the Single Judge based her determinations on the draft transcription of the audio recording. The Prosecutor undertook to prepare a final (quality controlled) version of the transcript until 20 December 2013.²⁵ The disclosure of the “redacted” audio recordings was authorized by the Single Judge to be temporarily delayed “until such time that the Prosecutor finalizes her review of the Swahili portions of the audio recordings but no later than 30 days before the commencement of the confirmation hearing”.²⁶ Accordingly, the Prosecutor was authorized to withhold the audio recordings of the interview of witness P-0055 until 10 January 2014 at the latest. It is noted that, in the meantime, the redacted draft transcript of the interview of witness P-0055 has been disclosed to the Defence.

16. Turning to the issue at hand, the Single Judge observes that disclosure of the redacted transcription in the Kinyarwanda language of the entire interview can only take place on 22 January 2014. This is a consequence of the fact that the Defence requests the translation of the transcription of the entire interview and not only the relevant parts which are essential or core to the preparation of the defence. In deciding on this particular request, the Single Judge is also mindful of the fact that the Defence has already received the redacted draft transcription of the interview of witness P-0055.²⁷ Further, the Prosecutor will have disclosed by 10 January 2014 the redacted (i) audio recording of the interview and (ii) the final (quality controlled) version of the transcript, which was completed by 20 December 2013, and thus within the deadline prior to the commencement of the confirmation of charges hearing as established by rule 121(3) of the Rules. Considering the above together with the Defence’s recurrent affirmation that its translation requests should not cause any delay to the commencement of the confirmation of charges hearing, the

²⁴ Pre-Trial Chamber II, “Redacted Third Decision on the Prosecutor’s Requests for Redactions”, 6 December 2013, ICC-01/04-02/06-165-Conf-Red, para. 16.

²⁵ ICC-01/04-02/06-134-Conf-Exp, para. 46.

²⁶ Pre-Trial Chamber II, Redacted Third Decision on the Prosecutor’s Requests for Redactions, 6 December 2013, ICC-10/04-02/06-165-Conf-Red, para. 41.

²⁷ See DRC-OTP-2058-0682, DRC-OTP-2058-0718 and DRC-OTP-2058-0745.

Single Judge deems it appropriate that the Defence be furnished, on an exceptional basis, with the translation into Kinyarwanda of the final (quality controlled) transcription by 22 January 2014.

17. In relation to the generic request by the Defence to be provided with any other translation into Kinyarwanda of any statement which has been prepared by the Prosecutor, the Single Judge observes that the Defence does not identify any particular statement and any part of the evidence which it deems essential or core to the preparation of the defence to be translated into the Kinyarwanda language as stipulated in the 24 September 2013 Decision.²⁸ Nonetheless, the Single Judge is mindful of the Prosecutor's readiness to disclose the relevant statements of witnesses P-0018, P-0019 and P-0108 translated into Kinyarwanda in redacted form, as previously authorized, by 10 January 2014. In light of these circumstances, considering that this will not have an impact on the commencement of the confirmation of charges hearing and the rights of the Defence, the Single Judge deems it appropriate that the Prosecutor disclose the relevant statements of witnesses P-0018, P-0019 and P-0108, in redacted form as previously authorized, in the Kinyarwanda language by 10 January 2014.

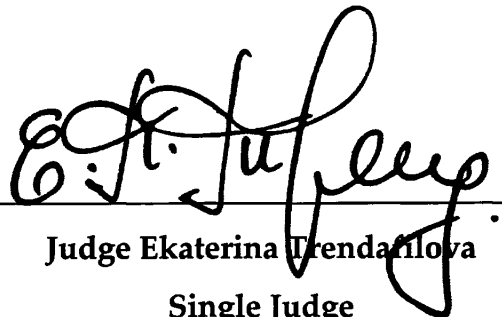
18. Lastly, the Single Judge clarifies again that any redactions previously granted or ordered *proprio motu* in relation to the statements/transcriptions pertaining to witnesses P-0055, P-0315, P-0317, P-0758, P-0761, P-0773, P-0792, P-0804, P-0805 and P-0806, be extended to the translation of the statements/transcriptions into Kinyarwanda.

²⁸ See the Chamber's instruction in 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, paras 11 and 12; see also Pre-Trial Chamber II, "Decision on the Defence Request for Extension of Time for the Purpose of Requesting Translation of Witness Statements into Kinyarwanda", 13 November 2013, ICC-01/04-02/06-140, para. 19; Pre-Trial Chamber II, "Decision on the 'Demande de la Défense aux fins de traduction en kinyarwanda de la déposition écrite du témoin à charge P-0027'", 18 November 2013, ICC-01/04-02/06-148, para. 7.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

- a) **grants** the Application in relation to the statements of witnesses P-0315, P-0317, P-0758, P-0761, P-0773, P-0792, P-0804, P-0805 and P-0806;
- b) **grants** the Application in relation to the transcription of the interview of witness P-0055 and **authorizes** that its disclosure take place on 22 January 2014;
- c) **authorizes** the Prosecutor to disclose the relevant statements of witnesses P-0018, P-0019 and P-0108 by 10 January 2014;
- d) **orders** the Prosecutor to disclose the redacted audio recording of the interview of witness P-0055 and the redacted final (quality controlled) version of the transcription of the interview of witness P-0055 by 10 January 2014 at the latest;
- e) **orders** that any redaction previously granted or ordered *proprio motu* in relation to the statements of witnesses P-0018, P-0019, P-0055, P-0108, P-0315, P-0317, P-0758, P-0761, P-0773, P-0792, P-0804, P-0805 and P-0806 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 Monday, 30 December 2013

At The Hague, The Netherlands