

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 3 July 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***

Confidential

Redacted Decision on the "Prosecution's Request pursuant to Regulation 35 to Vary the Time Limit for Two Items of Evidence"

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 Dessaliers

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, Registrar

Defence Support Section

Victims and Witnesses Unit
Patrick Craig

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 pursuant to Regulation 35 to Vary the Time Limit for Two Items of Evidence" (the "Request").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") with the purpose of providing the parties with a precise timetable for disclosure and related 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, originally scheduled to take place on 23 September 2013, until Monday, 10 February 2014 and established a new calendar for the disclosure of evidence between the parties as well as the submission, if any, of requests for redactions. In this context, the Prosecutor was ordered, *inter alia*, "to submit to the Chamber, no later than Friday, 1 November 2013, justified proposals for redactions or other protective measures, if any, in relation to the evidence [...] collected between 13 July 2012 and 1 November 2013".⁵

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

² ICC-01/04-02/06-131-Conf-Exp. A confidential redacted version was notified to the Chamber on 31 October 2013, ICC-01/04-02/06-131-Conf-Red.

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, "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.

⁵ 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, p. 20.

3. On 30 October 2013, the Prosecutor submitted the Request in which she seeks the variation of the 1 November 2013 deadline for the submission of redaction requests concerning two statements of witnesses.

II. THE PROSECUTOR'S REQUEST

4. With a view to justifying her Request, the Prosecutor advances that the interviews of the two witnesses "could not be scheduled in advance of 1 November 2013, despite diligent efforts" by her Office.⁶

5. More specifically, with reference to the statement of witness P-0002, the Prosecutor argues that the interview became necessary after another piece of evidence was collected on 9 October 2013.⁷ She further states that a meeting with said witness was requested [REDACTED]

[REDACTED].⁸ The Prosecutor undertakes to submit any necessary redaction proposals to the statement of this witness by 6 November 2013.⁹

6. With regard to the statement of [REDACTED], [REDACTED]
[REDACTED]
[REDACTED]¹⁰ the Prosecutor confirms that she testified at trial in the case of *The Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui* in 2010.¹¹ It is further stated that efforts have been made to schedule an interview with the witness since April 2013.¹² More specifically, the Prosecutor said that [REDACTED]
[REDACTED] on 1 July 2013 to which [REDACTED] only responded on 25 September 2013.¹³ Contact was allegedly

⁶ ICC-01/04-02/06-131-Conf-Red, para. 7.

⁷ ICC-01/04-02/06-131-Conf-Exp, para. 8.

⁸ ICC-01/04-02/06-131-Conf-Exp, para. 8.

⁹ ICC-01/04-02/06-131-Conf-Red, para. 11.

¹⁰ [REDACTED]

¹¹ ICC-01/04-02/06-131-Conf-Exp, para. 14.

¹² ICC-01/04-02/06-131-Conf-Red, para. 15.

¹³ ICC-01/04-02/06-131-Conf-Red, paras 16 and 17.

established on [REDACTED] between a representative of the Prosecutor and the witness during which the witness agreed to be interviewed between [REDACTED] November 2013.¹⁴ The Prosecutor also submits that [REDACTED]

[REDACTED].¹⁵
Against this backdrop, the Prosecutor undertakes to submit any necessary redaction proposals to the statement of [REDACTED] by 15 November 2013.¹⁶

III. APPLICABLE LAW

7. The Single Judge notes articles 61 and 67 of the Rome Statute, rules 76(3) and 121 of the Rules of Procedure and Evidence (the "Rules"), and regulation 35 of the Regulations of the Court (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

8. At the outset, the Single Judge recalls that the commencement of the confirmation of charges hearing, initially scheduled for 23 September 2013, was postponed upon request of the Prosecutor, to 10 February 2014.¹⁷ A specific calendar for disclosure was established by this Chamber with a view to ensuring that all intermediate procedural steps are taken which will enable the Prosecutor (i) to comply with the 30-day deadline in rule 121(3) of the Rules and (ii) respect the rights of the Defence in providing it with the evidence in time and, at least in part, in a language which the suspect "fully understands and speaks".¹⁸ It is recalled that in the 17 May 2013

¹⁴ ICC-01/04-02/06-131-Conf-Exp, para. 18.

¹⁵ ICC-01/04-02/06-131-Conf-Red, para. 19.

¹⁶ ICC-01/04-02/06-131-Conf-Red, para. 19.

¹⁷ 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, p. 19.

¹⁸ Rule 76(3) of the Rules. 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; Pre-Trial Chamber II, "Decision

Calendar Decision, the evidence to be disclosed was divided into two main batches, depending on when a piece of evidence came into the Prosecutor's possession.¹⁹ Accordingly, in the 17 June 2013 Calendar Decision, the Prosecutor was ordered, *inter alia*, to submit to the Chamber any redaction request by 1 November 2013 in relation to evidence collected between 13 July 2012 and 1 November 2013.²⁰ This ensures that there is sufficient time (i) for the Chamber to authorize any proposed redaction(s) to this evidence; (ii) for the Prosecutor to implement the redactions and disclose the evidence within 5 days; (iii) for the Defence to be provided, if necessary, with any translation into Kinyarwanda of evidence "which is core for the preparation of the defence"²¹.

9. The Single Judge observes that the two witness statements concerned, for which redactions will be requested, will be available after 1 November 2013. However, preparatory investigative steps have been taken to collect these pieces of evidence prior to the 1 November 2013 deadline. Consequently, the Single Judge accepts that the Request is a proper application for an extension of time in accordance with regulation 35 of the Regulations.

10. In assessing whether "good cause" has been shown by the Prosecutor, the Single Judge takes note of the Prosecutor's arguments which seek to explain why she was unable to collect the evidence prior to the 1 November 2013 deadline. The Single Judge also notes that this exceptional request concerns the statements of only two witnesses. She also takes into account that circumstances beyond the Prosecutor's control were decisive for not receiving those statements in time and to apply for redactions, if necessary, in conformity with the 17 June 2013 Calendar 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.

¹⁹ 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. 16.

²⁰ 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, p. 20.

²¹ 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. 21.

Further, the Prosecutor confirmed that she would request any redactions by 6 and 15 November 2013 respectively. In the view of the Single Judge, this short extension of time would still ensure that all intermediate procedural steps are taken within the confines of the 30-day deadline pursuant to rule 121(3) of the Rules and without compromising the rights of the Defence.

11. More specifically, the Single Judge is bound to take into account further factors which have a bearing on the matter *sub judice*. At first, the Single Judge is concerned about the implications of this Request on the judicial proceedings as a whole. As a principle, it is the Single Judge's duty to ensure that "judicial proceedings are conducted in a fair and expeditious manner taking into consideration the competing interests at stake".²² In the present context, it is her duty that the calendar is not disturbed by requests which have the potential to curtail the rights of the Defence and jeopardize the commencement of the confirmation of charges hearing.

12. Special attention must be paid to the fact that the commencement of the confirmation hearing was originally scheduled for 23 September 2013 but, upon the Prosecutor's request, it was postponed to 10 February 2014 so as to provide her with additional time, almost 5 months, to prepare properly for the hearing. A further important consideration is the fact that the Defence may request translation of the evidence, or parts thereof, into Kinyarwanda which will further impact on the calendar of disclosure and the compliance with the 30-day deadline pursuant to rule 121(3) of the Rules.

13. Having carefully considered all of the above, the Single Judge accepts that "good cause" was shown by the Prosecutor and grants, on an exceptional basis, an extension of time for the submission of justified proposals for redactions in relation to the statements of witnesses P-0002 and [REDACTED].

²² 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.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

grants the Prosecutor's request for extension of time for the submission of justified proposals for redactions in relation to the statement of witnesses P-0002 until 6 November 2013 and to that of [REDACTED] until 15 November 2013.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Thursday, 3 July 2014

At The Hague, The Netherlands