

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **6 May 2013**

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single Judge
Judge Hans-Peter Kaul
Judge Cuno Tarfusser

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public Redacted Version

Prosecution's Request for Redactions to Applications for Warrants of Arrest

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Counsel for the Defence

Marc Desalliers

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

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Other

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Introduction

1. On 15 April 2013, the Single Judge ordered the Prosecution to “make available the Article 58 applications of the Office of the Prosecutor for the issuance of the two arrest warrants against Mr Ntaganda” (“the Arrest Warrant Applications”).¹ The Single Judge directed the Prosecution to submit any proposed redactions at the latest by Thursday, 25 April 2013.
2. Pursuant to Articles 54(3)(f) and 68 of the Rome Statute (“Statute”) and Rules 81(2) and 81(4) of the Rules of Procedure and Evidence (“Rules”), the Prosecution requests that the Single Judge authorise limited redactions to the two Arrest Warrant Applications and their annexes, including non-disclosure of certain annexes for a limited time.²
3. Should the Single Judge determine that limited redactions or temporary non-disclosure is appropriate, the Prosecution will file a “Confidential – Prosecution and Defence Only” redacted version of the Arrest Warrant Applications and their annexes.
4. In relation to the first arrest warrant application, the Prosecution requests redactions to identifying information of one witness REDACTED, as well as to information that may reveal on-going investigations and arrest strategies, on the basis of Articles 54(3)(f) and 68 of the Statute and Rules 81(2) and 81(4) of the Rules. The Prosecution further requests non-disclosure of one annex related to the same witness.
5. In relation to the second arrest warrant application, the Prosecution requests redactions to REDACTED on the basis of Articles 54(3)(f) and 68 of the Statute

¹ ICC-01/04-02/06-T-3-ENG ET, page 13, lines 15 to 22.

² For the Single Judge’s reference, the proposed redactions to the Arrest Warrant Applications are attached as confidential, *ex parte*, Prosecution and VWU only Annexes A and B in a format that allows the Single Judge to see through the redactions to the text underneath.

and Rule 81(4) of the Rules, REDACTED. The Prosecution further requests non-disclosure of 39 annexes containing witness statements or transcript excerpts of 16 witnesses REDACTED.

Confidentiality

6. Further to Regulation 23*bis* of the Regulations of the Court, the Prosecution submits the current filing and its annexes as “Confidential, *ex parte*, Prosecution and VWU only” pursuant to Rule 81(2) as they contain identifying information of Prosecution witnesses for which redactions are sought. Revealing this information would defeat the purpose for which the redactions are requested and would undermine the relief sought. The Prosecution will file a public redacted version of this filing in due course.

First arrest warrant application: ICC-01/04-98-US-Exp

(a) Proposed redactions to protect REDACTED

7. The Prosecution requests temporary redactions to identifying information related to REDACTED: (i) REDACTED; (ii) REDACTED,³ REDACTED; and (iii) REDACTED.⁴
8. The grounds for this request are threefold. REDACTED⁵ REDACTED. Second, REDACTED:⁶ REDACTED.⁷ REDACTED⁸, REDACTED⁹ REDACTED.¹⁰ Third, REDACTED.

³ Including REDACTED.

⁴ REDACTED.

⁵ REDACTED.

⁶ REDACTED.

⁷ REDACTED.

⁸ REDACTED.

⁹ REDACTED.

9. REDACTED.¹¹

10. In light of these developments, and taking into account REDACTED, the Prosecution requests that specific details of her identity not be disclosed to the Defence REDACTED.

11. REDACTED.¹² REDACTED¹³ REDACTED.

12. The Prosecution will inform the Single Judge as soon as it becomes aware of the REDACTED, so that the information can subsequently be made available to the Defence.

(b) *Proposed redactions to protect ongoing investigations*

13. In addition to the above redaction request, the Prosecution requests discrete redactions to paragraph 211 of the first arrest warrant application, and more specifically to sub-paragraphs (b), (c) and (d). The information concerned is irrelevant to the identifiable issues in the case, the redactions will not impact on the portions that are relevant to the charges against Mr Ntaganda and they are necessary to REDACTED. The Prosecution submits that these redactions are justified under Rule 81(2) of the Rules in that the information may prejudice further investigations.

14. The first arrest warrant application with proposed redactions is attached to the present filing as “Annex A”.

¹⁰ REDACTED.

¹¹ REDACTED.

¹² ICC-01/04-520, page 6.

¹³ REDACTED.

Annexes to the first arrest warrant application: ICC-01/04-98-US-Exp-Anx1 to 10

15. In respect of the annexes to the first arrest warrant application, the Prosecution submits that all annexes can be made available to the Defence, with the exception of Annex 8(v) REDACTED. The Prosecution requests that Annex 8(v) not be made available to the Defence for a limited time for the reasons mentioned above.

Second arrest warrant application: ICC-01/04-611-Conf-Exp

16. In relation to the second arrest warrant application, the Prosecution seeks redactions to REDACTED mentioned in paragraph 90, REDACTED.

17. REDACTED.

18. In light of the above, the Prosecution requests that their names as mentioned in paragraph 90 of the arrest warrant application be redacted REDACTED. The second arrest warrant application with proposed redactions is attached to the present filing as "Annex B".

**Annexes to the second arrest warrant application: ICC-01/04-611-Conf-Exp-AnxA
and Annexes 1 to 26**

19. In respect of the annexes to the second arrest warrant application, the Prosecution requests a brief delay in the communication of the following annexes for the reasons set out below.

Trial Testimonies of *Lubanga* Prosecution Witnesses

20. A significant number of the footnote references to the testimonies refer to the publicly available transcripts to which the Defence currently has access. There are, accordingly, no difficulties with these annexes. The Prosecution had,

however, also annexed the confidential versions of several testimony transcripts to the second arrest warrant application.

21. Regulation 42 of the Regulations of the Court (“Regulations”) provides:

1. Protective measures once ordered in any proceedings in respect of a victim or witness shall continue to have full force and effect in relation to any other proceedings before the Court and shall continue after proceedings have been concluded, subject to revision by a Chamber.

2. When the Prosecutor discharges disclosure obligations in subsequent proceedings, he or she shall respect the protective measures as previously ordered by a Chamber and shall inform the defence to whom the disclosure is being made of the nature of these protective measures.

3. Any application to vary a protective measure shall first be made to the Chamber which issued the order. If that Chamber is no longer seized of the proceedings in which the protective measure was ordered, application may be made to the Chamber before which a variation of the protective measure is being requested. That Chamber shall obtain all relevant information from the proceedings in which the protective measure was first ordered.

*4. Before making a determination under sub-regulation 3, the Chamber shall seek to obtain, whenever possible, **the consent of the person in respect of whom the application to rescind, vary or augment protective measures has been made.*** (emphasis added)

22. Annexes 3.1 to 3.3; 4.1 to 4.3; 5.1 to 5.14; 6.1 to 6.2; 8.1 to 8.6; and 26.2 contain the transcripts of the testimonies of Prosecution witnesses REDACTED; (including

three annexes related to REDACTED¹⁴); and REDACTED. These transcripts are currently classified as “Confidential”. REDACTED.¹⁵

23. The Prosecution will inform the Single Judge REDACTED and the information made available to the Defence.

Statements of Prosecution Witnesses

24. Also annexed to the second arrest warrant application are the statements of 11 Prosecution witnesses, namely REDACTED.

25. REDACTED.

26. In light of the above, the Prosecution requests that the disclosure of the statements be delayed REDACTED.

27. Notwithstanding the above, the Prosecution believes that Annex 12.1 can be made available to the Defence with redactions. Annex 12.1 contains the statement of REDACTED.

28. Limited redactions to REDACTED were authorised by Trial Chamber I,¹⁶ which remain in force under Regulation 42.

29. REDACTED.

30. The statement with the redactions is attached to the present filing as “Annex C”.

¹⁴ REDACTED.

¹⁵ REDACTED.

¹⁶ Both Pre-Trial Chamber I and Trial Chamber I authorised redactions to the identity of REDACTED. On 6 December 2010, the Prosecution requested authorisation to lift redactions to the identity of REDACTED but to maintain redactions to REDACTED.

Testimonies of Defence witnesses

31. Annexes 21.1, 22.1 and 23.1 contain public transcripts of the testimonies of Defence witnesses who testified in the *Lubanga* trial. As these witnesses testified publicly without protective measures, they are available to the Defence.
32. Annex 22.2 contains a confidential transcript of the testimony of D-0019 (REDACTED). The reason for the confidentiality level is the private session contained in pages 27 (lines 22-25), 28 (lines 1-25) and 29 (lines 1-19) of the transcript. The sensitive information discussed during this private session concerns REDACTED.
33. REDACTED.¹⁷ REDACTED, the Prosecution believes that information contained in the confidential part of the transcript can be made available to the Defence.

UPC/FPLC related material

34. Annexes 24.1 to 24.13 contain UPC/FPLC documents that can be made available to the Defence with the following exceptions:
- a. Annex 24.2 was disclosed in the *Lubanga* case with one redaction on the first page. The redaction concerned was approved by Trial Chamber I,¹⁸ and remains in force under Regulation 42. The redaction relates to REDACTED appearing on the bottom margin of the first page of the document. REDACTED. The redaction does not affect the content of the document and the Prosecution submits that the justification for these redactions remains applicable to date. The document with the redaction is attached to the present filing as “Annex D”.

¹⁷ REDACTED.

¹⁸ REDACTED.

- b. Annex 24.12 was disclosed in the *Lubanga* case with one redaction on the first page. The redaction concerned was approved by Trial Chamber I,¹⁹ and remains in force under Regulation 42. The redaction relates to REDACTED appearing on the bottom margin of the first page of the document. REDACTED.²⁰ The redaction does not affect the content of the document and the Prosecution submits that the justification for these redactions remains applicable to date. The document with the redaction is attached to the present filing as “Annex E”.

UN documents and NGO related material

35. Annexes 25.1 to 25.26 contain UN documents and NGO related material. They can all be made available to the Defence with the following exceptions:

- a. Annex 25.2 contains a Confidential filing, submitted by the REDACTED in the *Lubanga* case. The filing contains redacted summarised information from crime base witnesses. The Prosecution seeks the permission of the Single Judge under Regulation 42 (3) to communicate the filing to the Defence in this case.
- b. Annex 25.26 contains a document that was collected under Article 54(3)(e). However, the document is publicly available at REDACTED. Accordingly, instead of making the registered document with the Electronic Registration Number (“ERN”) available via the annex, the Prosecution will annex the exact publicly available copy to the filing for communication to the Defence.

¹⁹ REDACTED.

²⁰ REDACTED.

Other material

36. Annexes 26.1 to 26.6 contain “other material” that can be made available to the Defence with the exception of Annex 26.2.

37. As mentioned in paragraph 22 above, Annex 26.2 contains the transcript of the testimony of Prosecution witness REDACTED. REDACTED and inform the Single Judge of any developments in this respect.

Conclusion

38. Based on the foregoing, the Prosecution requests that the Single Judge authorise the proposed redactions and grants the request for delayed disclosure pursuant to Articles 54(3)(f) and 68 of the Statute and Rules 81(2) and 81(4) of the Rules.

39. Should the Single Judge determine that limited redactions or short-term non-disclosure is appropriate, the Prosecution will file a “Confidential – Prosecution and Defence Only” redacted version of the Arrest Warrant Applications and their annexes.



Fatou Bensouda, Prosecutor

Dated this 6th Day of May 2013
At The Hague, the Netherlands