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**International
Criminal
Court**

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Date: **03 July 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 Redacted Version

**Prosecution's Request to Redact Information in Supplementary
Submissions related to the First Arrest Warrant Application
and to Vary Protective Measures for Three Witnesses**

Source: Office of the Prosecutor

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

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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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Introduction

1. On 10 May 2013, further to an order of the Single Judge,¹ Mr Ntaganda received access to confidential redacted versions of the Prosecution's two applications for warrants of arrest against him.² Thereafter, the Defence contacted the Prosecution requesting access to two supplementary filings by the Prosecution that contain additional information and materials to the first application for a warrant of arrest.

2. Given that the Single Judge previously ordered the Prosecution to submit a request for redactions in relation to the arrest warrant applications,³ the Prosecution is proceeding in the same manner regarding the two filings that contain supplementary information to them. 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 supplementary filings, permit their reclassification into the case against Mr Ntaganda and authorize the Court Management Section ("CMS") to register and notify the redacted versions.⁴

3. In relation to the first supplementary filing,⁵ the Prosecution requests redactions to information contained in the filing and in two annexes related the arrest and detention of Thomas Lubanga Dyilo and three other individuals. This information is not relevant to Mr Ntaganda and the proposed redactions do not impact upon the information that is relevant to him. The Prosecution

¹ ICC-01/04-02/06-58-Conf-Exp.

² ICC-01/04-02/06-61-Conf-Red, ICC-01/04-02/06-60-Conf-Red and ICC-01/04-02/06-62-Corr.

³ ICC-01/04-02/06-T-3-ENG ET, p.13, lines 20-22.

⁴ For the Single Judge's reference, the proposed redactions to the two supplementary filings 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.

⁵ ICC-01/04-104-US-Exp.

also seeks discrete redactions to the dates of meetings between the Prosecution and the competent DRC authorities, on the basis of Article 54(3)(f), to ensure the confidentiality of information and Rule 81(2) of the Rules.

4. In relation to the second supplementary filing,⁶ the Prosecution will implement temporary redactions to information relevant to two individuals [REDACTED] on the basis that the temporary non-disclosure of information related to them has already been approved by the Single Judge.⁷ The Prosecution also seeks to redact information [REDACTED].
5. Lastly, the Prosecution requests that the Single Judge vary the protective measures for three witnesses pursuant to Regulation 42. The protective measures for these witnesses were authorized by Trial Chamber I in the *Lubanga* case. The witnesses have provided their consent to disclosure and a variation of the protective measures will enable the reclassification of their trial transcripts, providing Mr Ntaganda with full access to their accounts.

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 Rules 81(2) and (4) given that they contain information for which redactions are requested and revealing the information would undermine the relief sought. The Prosecution will file a public redacted version of this filing.

⁶ ICC-01/04-106-US-Exp.

⁷ ICC-01/04-02/06-58-Conf-Exp, [REDACTED].

Procedural Background

7. On 12 January 2006, the Prosecution filed an application for warrants of arrest for Thomas Lubanga Dyilo and Bosco Ntaganda.⁸ On 23 January 2006, the Pre-Trial Chamber invited the Prosecution to submit supporting materials,⁹ which the Prosecution did on 25 and 27 January 2006.¹⁰
8. On 22 August 2006, Pre-Trial Chamber I issued a warrant of arrest for Bosco Ntaganda.¹¹ On 13 July 2012, Pre-Trial Chamber II issued a second warrant of arrest against Mr Ntaganda covering additional crimes.¹²
9. Mr Ntaganda surrendered and arrived at the detention centre of the Court on 22 March 2013. His initial appearance took place on 26 March 2013.¹³
10. On 12 April 2013, the Single Judge issued the “Decision Setting the Regime for Evidence Disclosure and Other Related Matters”.¹⁴
11. On 15 April 2013, the Single Judge convened a status conference.¹⁵ Among other matters, the Single Judge ordered that the Defence receive the arrest warrant applications and, for that purpose, that the Prosecution make any applications for redactions by 25 April 2013.¹⁶
12. On 25 April 2013, the Prosecution applied for (a) limited redactions to the two arrest warrant applications, (b) the temporary non-disclosure of the statements or testimony of 16 witnesses annexed in support of the applications, (c) a

⁸ ICC-01/04-98.

⁹ ICC_01/04-102-Red.

¹⁰ ICC-01/04-104-US-Exp and ICC-01/04-106-US-Exp.

¹¹ ICC-01/04-02/06-1-US-Exp.

¹² ICC-01/04-02/06-36-Conf-Exp; public redacted version at ICC-01/04-02/06-36-Red.

¹³ ICC-01/04-02/06-T-2- ENG ET.

¹⁴ ICC-01/04-02/06-47.

¹⁵ ICC-01/04-02/06-T-3-ENG ET.

¹⁶ ICC-01/04-02/06-T-3-ENG ET, p.13, lines 20-22.

variation of protective measures to give access to the Defence to the statements or testimony of 6 witnesses annexed to the applications, and (d) limited redactions to one witness statement, where the identity of the witness is not redacted.¹⁷

13. On 10 May 2013, the two arrest warrant applications and supporting evidence from 5 witnesses and 68 documents was re-classified as Confidential in the case against Mr Ntaganda.¹⁸

First Submission of Further Information: ICC-01/04-104-US-Exp

Redactions to protect confidential and private information

14. The Prosecution requests redactions to the supplementary information contained in paragraphs 8-15 and 22(i) because it is solely relevant to the arrest of a different individual, Thomas Lubanga Dyilo. The details are not relevant to Mr Ntaganda and there is no reason why he should have access to them. The redaction request is made on the basis of Article 54(3)(f) and Rule 81(4) to protect confidential and private information.
15. The Prosecution additionally requests redactions to footnotes 19 and 21, which provide the dates of discussions between the Prosecution and the DRC authorities. Where dates of meetings are not in themselves relevant to a known issue in the case, the Prosecution will seek to redact such information as it may impact on the security of witnesses or, as in this case, on the confidentiality of its operations. The dates of the discussions are not relevant to known issues in this case. Importantly, there is no prejudice to the Defence as the redactions do not impact upon the information emanating from these discussions, which is unredacted at paragraph 23 and footnote 22.

¹⁷ ICC-01/04-02/06-51-Conf.

¹⁸ ICC-01/04-02/06-60-Conf-Red and ICC-01/04-02/06-61-Conf-Red.

16. The Prosecution also seeks non-disclosure, to protect confidential information under Article 54(3)(f), of Annexes 1 and 3. These are the judicial files relevant to the arrest of Thomas Lubanga Dyilo and three other individuals, but not to Mr Ntaganda. REDACTED. The Prosecution stresses that none of the documents contained in Annexes 1 or 3 are relevant to Mr Ntaganda or to known issues in the case.

17. For the Single Judge's reference, the filing and its annexes, containing the proposed redactions, is attached as confidential, *ex parte*, Prosecution and VWU only Annex A.

Second Submission of Further Information: ICC-01/04-106-US-Exp

(a) Redactions to protect [REDACTED]

18. The Single Judge has already authorized the temporary non-disclosure of information related to witnesses [REDACTED].¹⁹ Accordingly, the Prosecution will implement temporary redactions to the same class of identifying information for [REDACTED] as has already been authorized by the Single Judge for these two witnesses.²⁰ [REDACTED].

(b) Proposed redactions to protect innocent third parties

19. The Prosecution requests discrete redactions to the place of residence of family members of 5 witnesses mentioned in the filing, in paragraphs 4(i), (ii), (iii), (iv) and (vi). The place of residence of the family members is not relevant to the present case and they are innocent third parties for whom the Court owes a duty of protection.

¹⁹ ICC-01/04-02/06-58-Conf-Exp, REDACTED.

²⁰ REDACTED.

20. In the case of the *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, the Appeals Chamber has held that:

[P]ersons other than witnesses, victims and members of their families, may, at this stage of the proceedings, be protected through the non-disclosure of their identities by analogy with other provisions of the Statute and the Rules. The aim is to secure the protection of individuals at risk. Thus, by necessary implication, rule 81(4) should be read to include the words “persons at risk on account of the activities of the Court” so as to reflect the intention of the States that adopted the Statute and the Rules of Procedure and Evidence, as expressed in article 54(3)(f) of the Statute, and in other parts of the Statute and Rules, to protect people at risk.²¹

21. In accordance with the Appeals Chamber jurisprudence, the Trial Chamber in the *Lubanga* case authorized redactions to protect third parties who are at risk on account of the activities of the Court.²² The Pre-Trial Chamber in the *Kenyatta* case also approved redactions under article 54(3)(f) to protect such individuals.²³

(c) *Proposed redactions to protect confidential information*

22. The Prosecution requests redactions to the [REDACTED]. The request is made under articles 54(3)(f) and 68 and Rule 81(4) in order to keep confidential the security processes that the Prosecution utilizes to protect witnesses at risk. The information does not impact on known issues in the case and does not detract from the information that is relevant to Mr Ntaganda.

23. The Prosecution also requests discrete redactions in paragraph 8 [REDACTED]. The information is irrelevant to the identifiable issues in the case and the redactions will not impact on the portions that are relevant to the charges against Mr Ntaganda.

²¹ ICC-01/04-01/07-475, para.56.

²² ICC-01/04-01/06-1560-Conf-Exp, ICC-01/04-01/06-1561-Conf-Exp, ICC-01/04-01/06-2763-Red.

²³ ICC-01/09-02/11-165-Conf-Exp-Anx2 ; ICC-01/09-02/11-205-Conf-Exp-AnxII.

24. For the Single Judge's reference, the filing and its annexes, containing the proposed redactions, is attached as confidential, *ex parte*, Prosecution and VWU only Annex B.

Request to vary protective measures for three witnesses

25. The Prosecution has obtained the consent of [REDACTED] to disclosure of their identity, statements and trial testimony in the case against Mr Ntaganda.

26. The Prosecution set out the relevant details related to the nature of protective measures [REDACTED].²⁴

27. As for [REDACTED], he is in the ICC Protection Program ("ICCPP"). On 9 January 2009, the Prosecution requested in-court protective measures for all its witnesses in the ICCPP.²⁵ More specifically, the Prosecution requested that these witnesses be afforded voice and image distortion and the assignment of a pseudonym during the trial to ensure that their admission into the ICCPP would not be compromised by public disclosure of their identity, while at the same time safeguarding the rights of the Accused.²⁶

28. On 16 January 2009, Trial Chamber I granted the Prosecution's request in respect of all ICCPP witnesses, [REDACTED].²⁷ Accordingly, while the parties and participants had access to the identity of these witnesses, all other identifying information has been withheld from the public. This included the use of closed or private sessions when the parties elicited testimony that could lead to their identification.

²⁴ [REDACTED].

²⁵ ICC-01/04-01/06-1591-Conf, [REDACTED].

²⁶ ICC-01/04-01/06-1591-Conf, [REDACTED].

²⁷ ICC-01/04-01/06-T-104-ENG ET WT [REDACTED].

29. In respect of [REDACTED]. Prior to his trial testimony, the Prosecution requested the three above-mentioned in-court protective measures [REDACTED] on the basis that:

- [REDACTED].
- [REDACTED].

30. [REDACTED].²⁸

31. In order to provide Mr Ntaganda and his Defence team with the confidential transcripts of the testimony of [REDACTED] during the *Lubanga* trial, the Prosecution seeks a variation of the protective measures imposed by Trial Chamber I, pursuant to Regulation 42 of the Regulations of the Court. Without such a variation, Mr Ntaganda and his counsel can only receive the public redacted version of the transcripts, where all information related to the identity of the witnesses has been removed.

32. [REDACTED].

33. [REDACTED].

34. The Prosecution will continue to update the Single Judge on its efforts to obtain the consent of these two witnesses to disclosure.

²⁸ [REDACTED].

Request

35. Based on the foregoing, the Prosecution requests that the Single Judge:

- (a) authorise the proposed redactions pursuant to Articles 54(3)(f) and 68 and Rules 81(2) and 81(4) to these filings to permit a confidential redacted version to be transmitted to Mr Ntaganda;
- (b) vary the protective measures authorized by Trial Chamber I to allow disclosure of the identities of three witnesses and their trial testimony to Mr Ntaganda; and
- (c) authorise CMS to reclassify the two supplementary filings in the record of the case against Mr Ntaganda and, thereafter, to register and notify the confidential redacted versions submitted by the Prosecution.



Fatou Bensouda, Prosecutor

Dated this 3rd Day of July 2013

At The Hague, the Netherlands