

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 21 August 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 Ordering the Parties to Provide Risk Assessment with Respect of
Witnesses and the Victims and Witnesses Unit to Submit Observations Thereupon**

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

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 & Deputy Registrar

Herman Von Hebel, Registrar
Didier Preira, Deputy Registrar

Defence Support Section

Esteban Peralta Losilla

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 (the “Court”)¹ hereby issues this decision ordering the Prosecutor and, as the case may be, the Defence to provide a risk assessment with respect to witnesses on whom they intend to rely for the purposes of the confirmation hearing and the Victims and Witnesses Unit (the “VWU”) to submit observations thereupon.

1. On 22 August 2006, Pre-Trial Chamber I, to which this case had originally been assigned, issued the “Decision on the Prosecution Application for a Warrant of Arrest”,² along with a warrant of arrest for Bosco Ntaganda (“Mr. Ntaganda”).³
2. On 15 March 2012, the Presidency re-assigned the situation in the Democratic Republic of the Congo to this Chamber.⁴
3. On 13 July 2012, the Chamber issued the “Decision on the Prosecutor’s Application under Article 58”,⁵ with which a second warrant of arrest against Mr. Ntaganda was issued.
4. On 26 March 2013, the suspect, who had voluntarily appeared before the Court, made his initial appearance before the Chamber and the confirmation of charges hearing was set to commence on 23 September 2013.⁶
5. 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

¹ Pre-Trial Chamber II, “Decision Designating a Single Judge”, 21 March 2013, ICC-01/04-02/06-40, p. 4.

² Pre-Trial Chamber I, “Decision on the Prosecution Application for a Warrant of Arrest”, 22 August 2006, ICC-01/04-02/06-1-US-Exp-tEN; a redacted version was filed in the record of the case on 6 March 2007 and the decision was made public on 1 October 2010, ICC-01/04-02/06-1-Red-tENG.

³ Pre-Trial Chamber I, “Warrant of Arrest”, 22 August 2006, ICC-01/04-02/06-2-Anx-tENG; a corrigendum was filed into the record of the case on 7 March 2007, see ICC-01/04-02/06-2-Corr-tENG-Red.

⁴ Presidency, “Decision on the constitution of Pre-Trial Chambers and on the assignment of the Democratic Republic of the Congo, Darfur, Sudan and Côte d’Ivoire situations”, 15 March 2012, ICC-01/04-02/06-32.

⁵ Pre-Trial Chamber II, “Decision on the Prosecutor’s Application under Article 58”, 13 July 2012, ICC-01/04-02/06-36-Conf-Exp; and public redacted version, ICC-01/04-02/06-36-Red.

⁶ Pre-Trial Chamber II, Transcript of Hearing, 26 March 2013, ICC-01/04-02/06-T-2-ENG ET, p. 12, lines 2-3.

Calendar for the Disclosure of Evidence Between the Parties” (the “Calendar Decision”),⁷ in which the Single Judge, *inter alia*, postponed the commencement of the confirmation of charges hearing to Monday, 10 February 2014 and established a new calendar for disclosure of evidence between the parties, including the submission of requests for redactions.

6. The Single Judge recalls articles 43(6), 57(3)(c) and 68 of the Rome Statute (the “Statute”) and rules 17, 81, 87 and 88 of the Rules of Procedure and Evidence (the “Rules”).

7. Considering in particular the Prosecutor’s imminent submission of justified proposals for redactions in the evidence on 2 September 2013 and later on 1 November 2013,⁸ the Single Judge recalls that, for the purposes of ruling on the Prosecutor’s redaction requests on the basis of the jurisprudence of the Appeals Chamber,⁹ it is required, *inter alia*, that an assessment be conducted with respect to the existence of an objectively justifiable risk to the safety of a witness and/or a family member arising from the disclosure of identifying information to the Defence.

8. In this regard, the Single Judge notes that when submitting justified requests for redactions or other protective measures, the Prosecutor is expected to provide a security risk assessment carried out by her with respect to each and every witness whom she intends to rely on for the purposes of the confirmation hearing and in respect of whom she will request redactions to be granted pursuant to rule 81(4) of the Rules. The same applies for the Defence if it decides to rely on a witness for the purposes of the confirmation hearing and in respect of whom it seeks the redaction of certain information pursuant to rule 81(4) of the Rules.

⁷ 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”, ICC-01/04-02/06-73.

⁸ *Ibid.*, paragraphs (d)(ii) and (vi) of the operative part, pp. 19 and 20.

⁹ Appeals Chamber, “Judgment on the Appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled ‘First Decision on the Prosecution Request for Authorisation to Redact Witness Statements’”, ICC-01/04-01/06-475, para. 71.

9. The Single Judge deems it necessary, with a view to enabling her to properly rule on any of the redaction requests or other protective measures and in line with the established practice of this Chamber,¹⁰ that the VWU, in exercise of its functions under article 43(6) of the Statute and rule 17 of the Rules, present its observations on the security risk assessment provided by the Prosecutor and, as the case may be, by the Defence, with respect to each witness attached to the submission on redactions. The VWU may also propose any additional or alternative protective measures that might be necessary or appropriate in order to ensure the proper protection of a given witness and/or his/her family members.

10. As the observations of the VWU are essential for the Single Judge's assessment of the justified proposals for redactions, it is necessary that such observations are submitted as early as possible, at the latest one week (7 days) after the submission of the parties' redaction requests. Any difficulties in the implementation of this decision shall be brought immediately to the attention of the Single Judge.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

- a) **ORDERS** the Prosecutor and, as the case may be, the Defence, to submit together with the justified proposals for redactions, a risk assessment with respect to each and every witness whom they intend to rely on for the purposes of the confirmation hearing and in respect of whom they will request redactions to be granted pursuant to rule 81(4) of the Rules;
- b) **ORDERS** the VWU to submit as soon as possible, and no later than Tuesday, 10 September 2013, its observations on the Prosecutor's risk assessment, including any proposals for additional or alternative protective measures which might be necessary or appropriate in order to ensure the protection of a given witness;

¹⁰ Pre-Trial Chamber II, "Decision Ordering the Victims and Witnesses Unit to Submit Observations", 6 June 2011, ICC-01/09-02/11-106; Pre-Trial Chamber II, "Decision Requesting the Victims and Witnesses Unit to Submit Observations", 3 June 2011, ICC-01/09-01/11-103.

- c) **ORDERS** the VWU to submit such observations as soon as possible and no later than one week after any other request for redactions pursuant to rule 81(4) of the Rules filed by the Prosecutor or, as the case may be, by the Defence in accordance with the Calendar Decision.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Wednesday, 21 August 2013

At The Hague, The Netherlands