

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 17 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***

Public

With confidential *Ex Parte* Annexes, Prosecutor and VWU

**Redacted Decision on the Prosecutor's Eleventh and Twelfth Applications for
Redactions**

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

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

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Nigel Verrill

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 on the Prosecutor’s eleventh and twelfth applications for redactions.²

I. PROCEDURAL HISTORY

1. On 1 October 2013, the Single Judge issued the “First Decision on the Prosecutor’s Requests for Redactions and Other Related Requests” (“First Decision on Redactions”).³

2. On 9 June 2014, the Chamber issued the “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda” in which it decided to commit Bosco Ntaganda to trial on the charges as confirmed.⁴

3. On 4 July 2014, the Chamber received the “Prosecution’s Eleventh Application for Redactions” (the “Eleventh Application”).⁵

4. On 8 July 2014, the Prosecutor submitted the “Twelfth Application for Redactions” (the “Twelfth Application”).⁶

II. APPLICABLE LAW

5. The Single Judge notes articles 21(1)(a) and (3), 57(3)(c), and 68(1) of the Rome Statute (the “Statute”), rule 81(2) and (4) of the Rules of Procedure and Evidence (the “Rules”), regulation 42 of the Regulations of the Court (the “Regulations”), and article 8 of the Code of Professional Conduct for counsel.

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

² ICC-01/04-02/06-319-Conf-Exp, with confidential *ex parte* annexes; ICC-01/04-02/06-326-Conf-Exp with confidential *ex parte* annexes.

³ Pre-Trial Chamber II, ICC-01/04-02/06-117-Conf-Exp; a confidential redacted version is available, see ICC-01/04-02/06-117-Conf-Red2; a public redacted version is also available, see ICC-01/04-02/06-117-Red3.

⁴ Pre-Trial Chamber II, ICC-01/04-02/06-309.

⁵ ICC-01/04-02/06-319-Conf-Exp with confidential *ex parte* annexes.

⁶ ICC-01/04-02/06-326-Conf-Exp with confidential *ex parte* annexes.

III. THE PROSECUTOR'S APPLICATIONS

6. In the Eleventh Application, the Prosecutor seeks the non-disclosure of the identity of witness [REDACTED] and authorization to apply redactions to the statement of said witness pursuant to rule 81(2) and (4) of the Rules. She contends that the statement provides, alongside incriminating information, also potentially exculpatory information which she seeks to disclose as soon as practicable in order to fulfil her obligations under article 67(2) of the Statute and rule 77 of the Rules.⁷ The Prosecutor also informs the Chamber that she has yet to decide whether the witness will be called at trial.⁸ Once this decision is made, the Prosecutor undertakes to "determine which protective measures need to be put in place to permit disclosure of [the witness' identity] in advance of the trial".⁹

7. The Twelfth Application concerns the transcript of an interview of [REDACTED] who has been re-interviewed earlier this year.¹⁰ The Prosecutor intends to rely on this witness at trial.¹¹ The transcript concerned [REDACTED]
[REDACTED]
[REDACTED].¹² In addition, the Prosecutor requests further redactions to information in accordance with rule 81(2) and (4) of the Rules.¹³ Lastly, the Prosecutor requests that the same information be redacted in the audio recording of the interview of [REDACTED] as in the transcript.¹⁴

IV. DETERMINATION OF THE SINGLE JUDGE

8. The Prosecutor requests the non-disclosure of the identity of witness [REDACTED] on a temporary basis. She explains that, once she has decided whether she will call the

⁷ ICC-01/04-02/06-319-Conf-Exp, para. 17.

⁸ ICC-01/04-02/06-319-Conf-Exp, paras 5 and 9.

⁹ ICC-01/04-02/06-319-Conf-Exp, para. 5.

¹⁰ ICC-01/04-02/06-326-Conf-Exp, para. 1.

¹¹ *Ibid.*

¹² ICC-01/04-02/06-326-Conf-Exp, para. 4.

¹³ ICC-01/04-02/06-326-Conf-Exp, para. 5.

¹⁴ ICC-01/04-02/06-326-Conf-Exp, para. 6.

witness for trial, she “will be in a position to determine which protective measures need to be put in place to permit disclosure of [the witness’] identity in advance of trial”.¹⁵ In annex I to the present decision the Single Judge assessed the security situation for witness [REDACTED].¹⁶ As this assessment is filed confidential *ex parte*, Prosecutor and Victims and Witnesses Unit (the “VWU”) only, it is important that the following minimum information be shared with the Defence. The Prosecutor purports that the witness concerned is [REDACTED].¹⁷ The witness also expressed significant safety and security concerns.¹⁸ It is further alleged that revealing the employment history of the witness could identify him.¹⁹ The Single Judge is also informed that [REDACTED] [REDACTED] [REDACTED] the *Union des Patriotes Congolais* (the “UPC”) in Mongbwalu in late 2002.²⁰

9. Upon careful review of all information available, the Single Judge considers that the non-disclosure of the identity of [REDACTED] is justified as disclosing the identity to the Defence, at this stage, may put the witness at risk. The Single Judge pays particular heed to the fact that the Prosecutor is still to determine which protective measures need to be put in place to permit full disclosure. Moreover, the witness [REDACTED] [REDACTED]. Under these circumstances, the Single Judge is of the view that anonymity is necessary to protect the witness and is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. The Defence will be provided with the witness’ identity in advance of the trial, once protective measures are put in place. As

¹⁵ ICC-01/04-02/06-319-Conf-Exp, para. 5.

¹⁶ The Single Judge has taken into account the email communication of the VWU addressed to the Senior Legal Adviser of the Pre-Trial Division on 8 July 2014 wherein the VWU informs the Chamber that it has no observations to provide on witness [REDACTED].

¹⁷ ICC-01/04-02/06-319-Conf-Exp, para. 17.

¹⁸ ICC-01/04-02/06-319-Conf-Exp-Anx2, p. 4.

¹⁹ ICC-01/04-02/06-319-Conf-Exp, para. 18.

²⁰ *Ibid.*

a consequence, the Prosecutor is authorized to redact all identifying information of witness [REDACTED], on a temporary basis.

10. With reference to [REDACTED], the Single Judge recalls that absent any information to support changed circumstances,²¹ the individual risk assessment of this witness stipulated in annex I to the First Decision on Redactions remains valid.²² This risk assessment reflects the backdrop against which the redaction proposals of the Prosecutor have been assessed.

11. The Single Judge's decision on the individual redaction proposals is provided in annex II to the present decision. It forms part of the Single Judge's reasoning in this decision. It suffices to mention here that the Single Judge's decision has been taken after having assessed the different interests at stake and the relevance of the information concerned to the Defence on a case-by-case basis as encapsulated in the criteria for non-disclosure of information set out in the First Decision on Redactions.²³ The redaction categories A, B, C, and D continue to be applied to the evidence subject to this decision.²⁴ For clarification purposes, only a few selected issues are explained below.

12. [REDACTED]
[REDACTED] the Single Judge recalls that following regulation 42(1) of the Regulations, they "shall continue to have full force and effect in relation to any other proceedings before the Court". Consequently, no decision will be taken in relation to these redactions.

²¹ ICC-01/04-02/06-326-Conf-Exp-Anx2. The Single Judge has also taken into account the email communication of VWU to the Senior Legal Adviser of the Pre-Trial Division on 15 July 2014 wherein the VWU informed the Chamber that it had no further observations to provide in relation to [REDACTED]. It is noted that the VWU already provided its observations on the risk assessment pertaining to [REDACTED] in ICC-01/04-02/06-104-Conf-Exp.

²² ICC-01/04-02/06-117-Exp-Conf-AnxI, paras 17-21.

²³ Pre-Trial Chamber II, "Redacted First Decision on the Prosecutor's Requests for Redactions and Other Related Requests", 3 July 2014, ICC-01/04-02/06-117-Red3, paras 14-24.

²⁴ Pre-Trial Chamber II, "Redacted First Decision on the Prosecutor's Requests for Redactions and Other Related Requests", 3 July 2014, ICC-01/04-02/06-117-Red3, para. 31.

13. With regard to the Prosecutor's redaction request of a particular interview location in the Prosecutor's Eleventh Application,²⁵ the Single Judge wishes to highlight that it has already been ruled upon in the First Decision on Redactions²⁶. Absent any new compelling information, the Single Judge's ruling in relation to this particular interview location remains valid and, as a consequence, extends to the material concerning witness [REDACTED].

14. In the exercise of her statutory duties to protect the safety, wellbeing and privacy of witnesses, members of their families and third persons, the Single Judge also ordered *proprio motu* redactions under rule 81(4) of the Rules following the same criteria as set out in the First Decision on Redactions. The *proprio motu* redactions are individually identified and justified in annex II to the present decision. They may concern information under categories A or B.

15. Lastly, the Single Judge clarifies that the redactions of information in the evidence subject to this decision extends, as the case may be, to the metadata linked to the evidence. The relevant authorization is contained in annex II to the present decision. Equally, any authorisation to redact information in the evidence subject to this decision extends to the corresponding part in any existing or future translation thereof. By the same token, any redaction as authorized in respect of the transcript relating to [REDACTED] extends to the corresponding part in the audio recording.

²⁵ ICC-01/04-02/06-319-Conf-Exp, para. 40.

²⁶ See Pre-Trial Chamber II, "First Decision on the Prosecutor's Requests for Redactions and Other Related Requests", 1 October 2013, ICC-01/04-02/06-117-Conf-Exp, para. 60; Pre-Trial Chamber II, "Second Decision on the Prosecutor's Requests for Redactions", 15 November 2013, ICC-01/04-02/06-145-Conf-Exp, para. 28.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

- a) **partly grants** the Prosecutor's requests for redactions, as specified in annex II to this decision, including their extension, as the case may be, to any translation, audio recording and related metadata;
- b) **grants** the non-disclosure of the identity of witness [REDACTED] on a temporary basis;
- c) **orders** *proprio motu* redactions to the material subject to this decision, as specified in annex II to the present decision;
- d) **orders** the Prosecutor to disclose to the Defence the redacted versions of the material within five days as of the notification of the present decision;
- e) **orders** the Prosecutor to continuously assess the risk to the safety and well-being of the witnesses and to immediately inform the competent chamber of any changes in the current situation of these witnesses;
- f) **orders** the Defence to keep the information disclosed confidential and to ensure that it is not passed on to third parties and the public.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Thursday, 17 July 2014

At The Hague, The Netherlands