

**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***

Public

Redacted Fifth Decision on the Prosecutor's Requests 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

Counsel for the 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

Other

REGISTRY

Registrar
Herman von Hebel

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 urgent request for authorisation to redact an investigation note to be disclosed pursuant to article 67(2)” (the “Application”).²

I. Procedural History

1. At the outset, the Single Judge clarifies that the present decision is rendered subsequent to, *inter alia*, the “Corrigendum to ‘Fourth Decision on the Prosecutor’s Requests for Redactions’” dated 16 December 2013.³ The Single Judge, therefore, makes reference to and hereby incorporates the procedural history set out in the Fourth Decision on Redactions and recalls only relevant procedural steps for the purposes of this decision.

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”,⁴ in which the Single Judge, *inter alia*, postponed the commencement of the confirmation of charges hearing, initially 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. The Prosecutor was ordered, *inter alia*, “to disclose to the Defence all exculpatory evidence in her possession or control under article 67(2) of the Statute, as soon as practicable, and on a continuous basis.”⁵

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

² ICC-01/04-02/06-186-Conf-Exp, with one confidential *ex parte* annex.

³ Pre-Trial Chamber II, “Redacted Fourth Decision on the Prosecutor’s Requests for Redactions”, 16 December 2013, ICC-01/04-02/06-180-Conf-Corr-Red.

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 19 December 2013, the Prosecutor submitted the Application in which she seeks “authorisation, pursuant to article 54(3)(f) and rules 81(2) and 81(4), to redact the names of Prosecution and Victims and Witness Unit (“VWU”) staff and information related to the number of the witness’s children in an investigation note which is to be disclosed under article 67(2) as evidence that might affect the credibility of the Prosecution’s evidence”.⁶ She further submits that she intends to disclose the document concerned on 20 December 2013.⁷ The investigation note is attached to the Application as Annex A (the “Investigation Note”).⁸

II. Preliminary Remarks

4. The Single Judge clarifies that this decision is made subsequent to and in line with the previous decisions on redactions. Most importantly, the Single Judge recalls the principles as set out, in particular, in the “First Decision on the Prosecutor’s Requests for Redactions and Other Related Requests” dated 1 October 2013.⁹

5. The present decision is classified as confidential, considering that the references herein pertain to the existence of documents and, as the case may be, to a limited extent to their content, which have been submitted and are currently treated as confidential, *ex parte* Prosecutor and VWU only. In line with the previous practice of the Chamber, this decision is shared with the Defence for reasons of fairness and the references, required by the principle of judicial reasoning, have been made without endangering the interests concerned and defeating the very purpose of redactions.

III. The Application

6. The Single Judge notes articles 21, 57(3)(c), 67(1) and (2) and 68(1) and (5) of the Rome Statute (the “Statute”), rules 81(2) and (4) and 121 of the Rules of Procedure

⁶ ICC-01/04-02/06-186-Conf-Exp, para. 1.

⁷ *Ibid.*

⁸ ICC-01/04-02/06-186-Conf-Exp-AnxA.

⁹ Pre-Trial Chamber II, “Redacted First Decision on the Prosecutor’s Requests for Redactions and Other Related Requests”, 1 October 2013, ICC-01/04-02/06-117-Conf-Red, paras 33-64.

and Evidence (the “Rules”), and article 8 of the Code of Professional Conduct for counsel.

7. The Prosecutor requests, pursuant to rule 81(2) of the Rules, authorisation to redact the names of an investigator of the Office of the Prosecutor (the “OTP”) and two VWU staff members in the Investigation Note.¹⁰ The Single Judge recalls that names of investigators, including the names of VWU staff, have been authorized to be redacted previously.¹¹ Consequently, in light of her earlier findings, the Single Judge accepts that the redactions sought are warranted and, taking into consideration their limited extent and the fact that the Defence will not be prejudiced, grants authorisation to redact the names of the OTP investigator and the two VWU staff members appearing in the Investigation Note.¹²

8. Moreover, the Prosecutor requests, on the basis of rule 81(4) of the Rules, redactions to be granted to references to the number of children of witness P-0030.¹³ However, the Single Judge notes that information about the number of children of witness P-0030, in addition to supplementary identifying information concerning his children, has already been disclosed to the Defence.¹⁴ The Single Judge considers that, in light of the previous disclosure of this information, the disclosure of references to the number of children of witness P-0030 does not “pose an objectively justifiable risk to them”.¹⁵ Therefore, the Single Judge rejects authorization to redact references to the number of children of witness P-0030 in the Investigation Note.¹⁶

¹⁰ ICC-01/04-02/06-186-Conf-Exp, para. 9.

¹¹ [REDACTED]

¹² ICC-01/04-02/06-186-Conf-Exp-AnxA, p. 1 after [REDACTED], paras. 11 (first and third line) and 15 (last line).

¹³ ICC-01/04-02/06-186-Conf-Exp, para. 10.

¹⁴ See, for example, DRC-OTP-0151–0583, at 0585, paras. 10-11 and DRC-OTP-2054-2951, at 2955-2966.

¹⁵ Pre-Trial Chamber II, “Redacted First Decision on the Prosecutor’s Requests for Redactions and Other Related Requests”, 1 October 2013, ICC-01/04-02/06-117-Conf-Red, para. 45.

¹⁶ ICC-01/04-02/06-186-Conf-Exp-AnxA, para. 26 (first and second line).

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

- a) **partly grants** the Prosecutor's requests for redactions, as specified in paragraphs 7 and 8 of the present decision;
- b) **orders** the Prosecutor to disclose to the Defence the redacted version of the Investigation Note on 20 December 2013;
- c) **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, 3 July 2014

At The Hague, The Netherlands