

**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 Decision on the Prosecutor's Request for a Variation of Protective  
Measures for Two Witnesses**

**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**

**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,<sup>1</sup> hereby renders the decision on the “Prosecution’s Request for a Variation of Protective Measures for Two Witnesses” (the “Application”).<sup>2</sup>

1. On 17 May 2013, the Single Judge issued the “Decision Establishing a Calendar for the Disclosure of Evidence Between the Parties”<sup>3</sup> in which she addressed, *inter alia*, the underlying meaning of rule 77 of the Rules of Procedure and Evidence (the “Rules”) and decided that “for inspection of said material, [she] sets up the same deadlines established for the two batches (...). The criterion is again the time when the material has been collected and has come into the Prosecutor’s possession”.<sup>4</sup>

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”,<sup>5</sup> 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.

3. On 24 January 2014, the Defence submitted its list of evidence<sup>6</sup> and related in-depth analysis chart<sup>7</sup> pursuant to article 61(6) of the Rome Statute (the “Statute”), fifteen days before the commencement of the confirmation of charges hearing according to rule 121(6) of the Rules.

---

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

<sup>2</sup> ICC-01/04-02/06-238-Conf.

<sup>3</sup> Pre-Trial Chamber II, ICC-01/04-02/06-64.

<sup>4</sup> *Ibid.*, para. 27.

<sup>5</sup> 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.

<sup>6</sup> ICC-01/04-02/06-227-Conf-AnxA.

<sup>7</sup> ICC-01/04-02/06-227-Conf-Exp-AnxB.

4. On 3 February 2014, the Single Judge issued the “Decision Authorising the Defence to Amend the List of Evidence” (the “3 February 2014 Decision”) in which the Defence was authorised to amend its list of evidence by adding a statement of witness D18-0001.<sup>8</sup>

5. The Single Judge notes articles 21(3), 61(6), 67(1) and 68(1) of the Statute, rule 77 of the Rules and regulation 42 of the Regulations of the Court (the “Regulations”).

6. The Prosecutor requests a variation of protective measures authorized by Trial Chamber I formerly seized of the case of *The Prosecutor v Thomas Lubanga Dyilo* (the “*Lubanga Case*”) in relation to two witnesses, so as to disclose to the Defence further transcripts from the *Lubanga Case*, as requested by the Defence on 23 and 24 January 2014.<sup>9</sup>

7. With regard to witness [REDACTED], the Prosecutor informs the Chamber that this witness consented that the relevant transcript containing her testimony in the *Lubanga Case* be disclosed to the Defence.<sup>10</sup> In the *Lubanga Case*, Trial Chamber I granted in-court protective measures to this witness.<sup>11</sup>

8. With regard to witness [REDACTED], the Prosecutor informs the Chamber that this witness was a prosecution witness in the *Lubanga Case* but on whom the Prosecutor does not intend to rely in these proceedings.<sup>12</sup> She further states that a statement of this witness was disclosed by the Defence on 28 January 2014.<sup>13</sup> As this witness is a defence witness in these proceedings,<sup>14</sup> the Prosecutor therefore assumes that the witness consented that his identity and his testimony in the *Lubanga Case* be

---

<sup>8</sup> Pre-Trial Chamber II, ICC-01/04-02/06-242-Conf.

<sup>9</sup> ICC-01/04-02/06-238-Conf, paras 1, 4, 9, 15 and 16.

<sup>10</sup> ICC-01/04-02/06-238-Conf, paras 2 and 14.

<sup>11</sup> ICC-01/04-02/06-238-Conf, para. 8.

<sup>12</sup> ICC-01/04-02/06-238-Conf, para. 3.

<sup>13</sup> ICC-01/04-02/06-238-Conf, paras 3 and 13.

<sup>14</sup> ICC-01/04-02/06-238-Conf, para. 13.

disclosed to the Defence.<sup>15</sup> In the *Lubanga* Case, the witness was afforded, *inter alia*, voice and image distortion and the assignment of a pseudonym.<sup>16</sup>

9. At the outset, it is clarified that the in-court protective measures in relation to witnesses [REDACTED] and [REDACTED] were ordered by Trial Chamber I in the *Lubanga* Case which is no longer seized of these proceedings. Accordingly, this Chamber is competent to address the Application. Having reviewed the Application in light of the requirements of regulation 42(3) and (4) of the Regulations,<sup>17</sup> the Single Judge takes note of the consent given by witness [REDACTED]. In relation to witness [REDACTED], the Single Judge observes that the Defence already knows the identity of the witness, as it obtained a statement of said witness which has been already disclosed to the Prosecutor. In light of the above, the Single Judge varies the protective measures in relation to both witnesses allowing for the disclosure of the identities of the two witnesses.

10. The Single Judge observes that the Prosecutor intends to disclose to the Defence the transcripts containing the testimonies of the two witnesses at this advanced stage of the proceedings. However, the Single Judge notes that this occurs at the express request of the Defence, which seeks to obtain the relevant transcripts from the *Lubanga* Case. Mindful of the fact that the transcripts concerned are material for the preparation of the Defence within the meaning of rule 77 of the Rules, the Single Judge agrees that transcripts from the *Lubanga* Case, in which the identities of the two witnesses concerned are revealed to the suspect, be made available to the Defence on a confidential basis.

11. Lastly, the Single Judge observes that witness [REDACTED] is witness D18-0001. Considering that the Defence has been authorised in the 3 February 2014

---

<sup>15</sup> ICC-01/04-02/06-238-Conf, para. 3.

<sup>16</sup> ICC-01/04-02/06-238-Conf, paras 6 and 7.

<sup>17</sup> See also Pre-Trial Chamber II, "Redacted Decision on the Prosecutor's Request and Amended Request for Redactions to Applications for Warrants of Arrest", 16 July 2013, ICC-01/04-02/06-58-Conf-Red, para. 29; Pre-Trial Chamber II, "Redacted Decision on the 'Prosecution's Provision of Information further to Decision ICC-01/04-02/06-58-Conf-Exp and Request for Variation of Protective Measures'", 16 July 2013, ICC-01/04-02/06-63-Conf-Red, paras 8 to 10.

Decision to add the recent statement of witness D18-0001 to its list of evidence, the Single Judge finds it appropriate that the Defence be also authorised, if deemed necessary, to add also those transcripts subject to this Application. Mindful of the commencement of the confirmation of charges hearing on 10 February 2014, the Single Judge holds that the final Defence list of evidence must be submitted by Friday, 7 February 2014.

**FOR THESE REASONS, THE SINGLE JUDGE HEREBY**

- a) **grants** the Application;
- b) **orders** the Prosecutor to disclose the transcripts from the *Lubanga* Case no later than **Wednesday, 5 February 2014**;
- c) **authorises** the Defence, if deemed necessary, to amend its list of evidence in light of the upcoming disclosure of the transcripts subject to this Application;
- d) **orders** the Defence to submit its final list of evidence until Friday, 7 February 2014.

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