

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 4 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* Annex, Prosecutor and VWU**

**Decision on the "Prosecution's Tenth Application 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**

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**Registrar**

Herman von Hebel

**Defence Support Section**

**Victims and Witnesses Unit**

Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

Soraya Brikci

**Other**

**Judge Ekaterina Trendafilova**, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court”)<sup>1</sup> hereby issues this decision on the “Prosecution’s Tenth Application for Redactions” (the “Application”).<sup>2</sup>

1. The present decision is classified as public, although it refers 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*. The Single Judge considers that the references to the said documents in the present decision are required by the principle of judicial reasoning as well as fairness of proceedings *vis-à-vis* the Defence. Moreover, those references are not inconsistent with the nature of the documents referred to and have been kept to a minimum.

## I. PROCEDURAL HISTORY

2. On 5 December 2013, the Single Judge issued the “Third Decision on the Prosecutor’s Requests for Redactions”, in which she authorised redactions, *inter alia*, to the statement and material pertaining to witness P-0758 (the “Third Decision on Redactions”).<sup>3</sup>

3. On 3 April 2014, the Single Judge rendered the “Decision on the ‘Prosecution’s Urgent Application for Redactions and for a Variation of Protective Measures Applied by Trial Chamber I’” (the “3 April 2014 Decision”).<sup>4</sup> With this decision the Single Judge, *inter alia*, varied the protective measures authorised by Trial Chamber I in respect of witness P-0758’s applications for participation as a victim in the proceedings related to the case of the *Prosecutor v. Thomas Lubanga Dyilo* (the “Lubanga case”), with

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

<sup>2</sup> ICC-01/04-02/06-316-Conf-Exp, with confidential *ex parte* Annex A.

<sup>3</sup> Pre-Trial Chamber II, ICC-01/04-02/06-165-Conf-Exp, paras 27-29 and p. 20, and Annex II, pp. 170-236; a confidential redacted version is available, see ICC-01/04-02/06-165-Conf-Red2; a public redacted version is also available, see ICC-01/04-02/06-165-Red3.

<sup>4</sup> Pre-Trial Chamber II, ICC-01/04-02/06-289-Conf.

a view to disclosing these forms in the present case. The Single Judge also authorised additional redactions to these documents.<sup>5</sup>

4. On 28 May 2014, the Registry, upon instruction of the Appeals Chamber dated 26 May 2014, submitted into the record of this case, as confidential *ex parte* Prosecutor only, an unredacted version of the application for reparations of witness P-0758, filed previously in the *Lubanga* case.<sup>6</sup>

5. 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.<sup>7</sup>

6. On 27 June 2014, the Chamber received the Application, in which the Prosecutor requested the Single Judge to “authorise redactions to witness DRC-OTP-P-0758’s application for *reparations* filed in the *Lubanga* case” in order for it to be made available to the Defence in the present case.<sup>8</sup>

## II. APPLICABLE LAW

7. The Single Judge notes articles 21(1)(a) and (3), 57(3)(c), and 68(1) of the Rome Statute, rule 81(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.

## III. THE PROSECUTOR’S APPLICATION

8. In the Application, the Prosecutor seeks authorization to apply redactions to witness P-0758’s application for reparations which was originally submitted in the *Lubanga* case. More specifically, she seeks to maintain certain redactions which were applied by Trial Chamber I in said reparation form and to extend other redactions

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<sup>5</sup> Pre-Trial Chamber II, ICC-01/04-02/06-289-Conf, paras 12-18, p. 8 and its confidential *ex parte* annex.

<sup>6</sup> ICC-01/04-02/06-306-Conf-Exp, with confidential *ex parte* annex.

<sup>7</sup> Pre-Trial Chamber II, ICC-01/04-02/06-309.

<sup>8</sup> ICC-01/04-02/06-316-Conf-Exp, para. 1.

authorized by the Single Judge in the participation form of witness P-0758 which concern similar information. Moreover, the Prosecutor requests limited additional redactions to the reparation form.<sup>9</sup>

#### IV. THE SINGLE JUDGE'S DETERMINATION

9. At first, the Single Judge will address the redactions in the reparation form of witness P-0758 which have already been authorized by Trial Chamber I. The Single Judge understands the Prosecutor's submission to mean that she seeks a variation of the protective measures in accordance with regulation 42 of the Regulations.

10. The Single Judge notes that Trial Chamber I is no longer seized of the proceedings in the *Lubanga* case, in which protective measures were ordered for witness P-0758. Accordingly, this Chamber is competent to address this part of the Application, in accordance with regulation 42(3) of the Regulations.

11. Having reviewed this aspect of the Application in light of the other requirements imposed by regulation 42 of the Regulations, the Single Judge is satisfied that she has sufficient information in order to rule on the request, as provided by regulation 42(3) of the Regulations. However, it is uncertain whether witness P-0758 consented that the protective measures be varied for the purposes of this case, pursuant to regulation 42(4) of the Regulations. In this respect, the Single Judge observes that such consent must be sought by the Chamber "whenever possible". Further, the Single Judge notes that information contained in the reparation form has already been shared with the Defence through other material pertaining to witness P-0758. Hence, the Single Judge considers that under these circumstances, the renewed consent of the victim is not necessary. Furthermore, the Single Judge is satisfied that the information in the reparation form to be disclosed to the Defence following the variation of protective measures will not put the witness at risk.

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<sup>9</sup> See ICC-01/04-02/06-316-Conf-Exp, paras 10 to 14.

12. In light of the above, the Single Judge decides to vary the protective measures authorized by Trial Chamber I in respect of witness P-0758's application for reparations, as contained in Annex A to the Application.

13. In the following, the Single Judge will address the Prosecutor's request for rule 81(4) redactions of information in the reparation form which corresponds to information contained in witness P-0758's participation forms which have been assessed previously by this Chamber. Having reviewed the redaction proposals, the Single Judge hereby extends the redaction of the same information in the participation forms previously authorized in the 3 April 2014 Decision to the reparation form of witness P-0758.

14. With regard to the new redactions proposed by the Prosecutor, the Single Judge recalls the criteria for non-disclosure of information.<sup>10</sup> The Single Judge considered the justifications in support of those redaction requests and is satisfied that they are necessary and proportionate. In assessing the redaction proposals, the Single Judge also paid heed to the redactions previously granted in relation to other material pertaining to witness P-0758. In light of the above, the Single Judge authorises pursuant to rule 81(4) of the Rules the non-disclosure of identifying information of the witness (category A), her family members (category B), and other persons at risk on account of the activities of the Court (category C), as set out in the annex to the present decision.<sup>11</sup>

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<sup>10</sup> 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.

<sup>11</sup> 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.

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

- a) **grants** the Application;
- b) **orders** the Registrar to apply redactions to witness P-0758's application for reparations, as contained in ICC-01/04-02/06-306-Conf-Exp-Anx, in accordance with the authorization for redactions granted in the annex to this decision; and
- c) **orders** the Registrar to make available to the Defence the confidential redacted version of the reparation form within five days of notification of the present decision.

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



Judge Ekaterina Trendafilova  
Single Judge

Dated this Friday, 4 July 2014

At The Hague, The Netherlands