

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 20 January 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

Decision on the Defence Request to Lift 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

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 of the International Criminal Court (the “Court”),¹ hereby renders the decision on the “Requête de la Défense aux fins de levée des expurgations affectant certains documents relatifs au témoin P-0022” (the “Application”).²

1. On 7 May 2013, the Single Judge rendered the “Decision on the Prosecutor’s Request and Amended Request for Redactions to Applications for Warrants of Arrest”³ in which she set out the general principles underlying the non-disclosure of information and ruled that the redactions authorized by Trial Chamber I to the statement of witness P-0022⁴ were “warranted and justified”.⁵
2. On 1 October 2013, the Single Judge issued the “First Decision on the Prosecutor’s Requests for Redactions and Other Related Requests” (the “First Decision on Redactions”)⁶ in which she analysed, on a case-by-case basis, the Prosecutor’s requests for redactions in further material related to witness P-0022.
3. On 16 January 2014, the Defence submitted the Application in which it requests that redactions be lifted in the material related to witness P-0022, including reports and photographs and metadata. It alleged that witness P-0022 is deceased and requested that the redactions relating to this witness be lifted as no “objectively identifiable risk” can be discerned.⁷
4. The Single Judge notes articles 57(3)(c), 67 and 68(1) of the Rome Statute and rules 81(2) and (4) of the Rules of Procedure and Evidence.

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

² ICC-01/04-02/06-213.

³ Pre-Trial Chamber II, ICC-01/04-02/06-58-Conf-Exp. A confidential redacted version is also available, see ICC-01/04-02/06-58-Conf-Red.

⁴ The statement of witness P-0022 was disclosed to the Defence on 2 September 2013 and carries the Doc ID number DRC-OTP-0104-0026-R01.

⁵ Pre-Trial Chamber II, “Decision on the Prosecutor’s Request and Amended Request for Redactions to Applications for Warrants of Arrest”, 7 May 2013, ICC-01/04-02/06-58-Conf-Red, para. 34.

⁶ Pre-Trial Chamber II, ICC-01/04-02/06-117-Conf-Exp with two confidential *ex parte* annexes. A confidential redacted version of the decision is also available, see ICC-01/04-02/06-117-Conf-Red.

⁷ ICC-01/04-02/06-213, para. 9.

5. The Single Judge recalls that witness P-0022 is indeed deceased. For that reason, an individual risk assessment of P-0022 was therefore not produced in the First Decision on Redactions.⁸ However, as summarized in said decision, non-disclosure of information may be warranted to protect family members of the witness (category B), third persons put at risk on account of the activities of the Court (category C), including non-governmental organisations (the “NGO”), or the Prosecutor’s further or ongoing investigation (category D). The Single Judge informs the Defence that it conducted a careful case-by-case analysis of each redaction request in all material related to witness P-0022 and authorized limited redactions, where necessary, under categories B, C and D.⁹

6. In particular, parts of the photographs disclosed were authorized to be redacted as it was considered that, “even though the identity of the witness has been disclosed to the Defence and the witness is deceased, revealing parts of photographs showing the face of the witness could lead to the identification of the witness’ family members and put them at risk”.¹⁰ In the view of the Single Judge, disclosing the photograph of the deceased witness could significantly facilitate the identification of family members, and thereby put them at risk. Considering that all other identifying information of witness P-0022 has been disclosed to the Defence, the Single Judge opined that these limited redactions are necessary and proportionate.

⁸ 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-AnxI, p. 28.

⁹ The redactions in material pertaining to witness P-0022 were reviewed and authorized in 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-AnxII, pp. 123-132. Redactions in (i) DRC-OTP-0152-0111-R01 fall under category B; (ii) DRC-OTP-0104-0039-R01 fall under category B; (iii) DRC-OTP-0104-0040-R01 fall under category B; (iv) DRC-OTP-0104-0046-R01 fall under category B; (v) DRC-OTP-0104-0047-R01 fall under category B; (vi) DRC-OTP-0104-0048-R01 fall under category B; (vii) DRC-OTP-0077-0012-R01 fall under categories B and C; and (viii) DRC-OTP-0087-0175-R01 fall under category B. The redactions pertaining to DRC-OTP-0104-0026-R01, which fall under category B, were reviewed in Pre-Trial Chamber II, “Decision on the Prosecutor’s Request and Amended Request for Redactions to Applications for Warrants of Arrest”, 7 May 2013, ICC-01/04-02/06-58-Conf-Red, para. 34.

¹⁰ As noted in 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-AnxII, p. 123.

7. Moreover, in relation to the non-disclosure of the “source identity” of two items of evidence in the metadata, the Single Judge informs the Defence that the “person concerned is a former intermediary/source of the Prosecutor who has received a number of threats due to his NGO work” and that therefore “revealing this information would compromise his safety and thereby prejudice further or ongoing investigations by hindering his continued cooperation with the Prosecutor”.¹¹ Accordingly, the Single Judge opined that these limited redactions are necessary and proportionate.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

rejects the Application.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Monday, 20 January 2014

At The Hague, The Netherlands

¹¹ As noted in 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-AnxII, pp. 125 and 127. Redactions in (i) DRC-OTP-0152-0111-R01 fall under categories C and D; and (ii) DRC-OTP-0077-0012-R01 fall under categories C and D.