

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



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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 and Amended Request for  
Redactions to Applications for Warrants of Arrest**

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

**The Office of the Prosecutor**

Fatou Bensouda

**Counsel for the Defence**

Marc Desalliers

**Legal Representatives of Victims**

Sarah Pellet

Dmytro Suprun

**Legal Representatives of 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

**Deputy Registrar**

**Victims and Witnesses Unit**

Patrick Craig

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

**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 Request for Redactions to Applications for Warrants of Arrest” (the “Prosecutor’s Request” or “Request”)<sup>2</sup>, and the “Prosecution’s Update to its Request for Redactions to Applications for Warrants of Arrest and Request for a Variation of Protective Measures” (the “Amended Request”)<sup>3</sup>.

## **I. PROCEDURAL HISTORY**

1. On 22 August 2006, Pre-Trial Chamber I, to which this case had originally been assigned, issued the “Decision on the Prosecution Application for a Warrant of Arrest”,<sup>4</sup> along with a corresponding warrant of arrest for Bosco Ntaganda (“Mr. Ntaganda”),<sup>5</sup> for his alleged responsibility for the war crimes of conscripting, enlisting children under the age of fifteen and using them to participate actively in hostilities under either article 8(2)(b)(xxvi) or article 8(2)(e)(vii) of the Rome Statute (the “Statute”).

2. On 15 March 2012, the Presidency re-assigned the situation in the Democratic Republic of the Congo to Pre-Trial Chamber II.<sup>6</sup>

3. On 13 July 2012, the Chamber issued its “Decision on the Prosecutor’s Application under Article 58”.<sup>7</sup> In this decision the Chamber issued a second warrant of arrest

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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-01/04-02/06-51-Conf-Exp and its annexes (A-E).

<sup>3</sup> ICC-01/04-02/06-56-Conf-Exp.

<sup>4</sup> Pre-Trial Chamber I, “Decision on the Prosecution Application for a Warrant of Arrest”, 22 August 2006, ICC-01/04-02/06-1-US-Exp-tEN; and redacted version, 6 March 2007, ICC-01/04-02/06-1-Red-tENG.

<sup>5</sup> Pre-Trial Chamber I, “Warrant of Arrest – Corrigendum”, 7 March 2007, ICC-01/04-02/06-2-Corr-tENG-Red.

<sup>6</sup> Presidency, “Decision on the constitution of Pre-Trial Chambers and on the assignment of the Democratic Republic of the Congo, Darfur, Sudan and Côte d’Ivoire situations”, 15 March 2012, ICC-01/04-02/06-32.

against Mr. Ntaganda for his alleged responsibility for the crimes against humanity of murder, rape, sexual slavery, and persecution based on ethnic grounds under articles 7(l)(a), 7(l)(g) and 7(l)(h) of the Statute; and the war crimes of murder, intentional attacks against civilians, pillaging, rape and sexual slavery under articles 8(2)(c)(i), 8(2)(e)(i), 8(2)(e)(v) and 8(2)(e)(vi) of the Statute.<sup>8</sup>

4. On 22 March 2013, the Single Judge issued the “Decision on Setting the Date for the Initial Appearance and Related Issues”, in which she, *inter alia*, noted Mr. Ntaganda’s voluntary surrender to the Court<sup>9</sup> and decided to convene a hearing for his initial appearance on 26 March 2013.<sup>10</sup>

5. On 26 March 2013, before the closure of the hearing on the initial appearance the Single Judge issued an oral decision convening a status conference on Monday 15 April 2013, for the purpose of discussing “issues related to the disclosure of evidence”.<sup>11</sup>

6. On 15 April 2013, the status conference took place during which the Single Judge ordered the Prosecutor, if possible, to immediately “make available” to the Defence the two applications for warrants of arrest.<sup>12</sup> According to this order, should redactions to these applications be necessary, proposals for redactions should be submitted to the Chamber no later than Thursday 25 April 2013.<sup>13</sup>

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<sup>7</sup> Pre-Trial Chamber II, “Decision on the Prosecutor’s Application under Article 58”, 13 July 2012, ICC-01/04-02/06-36-Conf-Exp; and public redacted version, 13 July 2012, ICC-01/04-02/06-36-Red.

<sup>8</sup> Pre-Trial Chamber II, “Decision on the Prosecutor’s Application under Article 58”, 13 July 2012, ICC-01/04-02/06-36-Conf-Exp, p. 37; and public redacted version, 13 July 2012, ICC-01/04-02/06-36-Red, p. 37.

<sup>9</sup> Pre-Trial Chamber II, ICC-01/04-02/06-41, p. 4.

<sup>10</sup> *Ibid.*, p. 5.

<sup>11</sup> Pre-Trial Chamber II, Transcript of Hearing, 26 March 2013, ICC-01/04-02/06-T-2-ENG ET, p. 12, lines 11-13.

<sup>12</sup> Pre-Trial Chamber II, Transcript of Hearing, 15 April 2013, ICC-01/04-02/06-T-3-ENG ET, p. 13, lines 15-18.

<sup>13</sup> Pre-Trial Chamber II, Transcript of Hearing, 15 April 2013, ICC-01/04-02/06-T-3-ENG ET, p. 13, lines 20-22.

7. On 25 April 2013, the Prosecutor filed the Request together with five confidential *ex parte* annexes appended to it.<sup>14</sup>

8. On 2 May 2013, the Chamber received the Amended Request, in which the Prosecutor sought withdrawal of part of her Request concerning the “non-disclosure of the witness statements and trial testimony of [witnesses P-0041, P-0038 and P-0017] attached to the second arrest warrant application as annexes 4.1 to 4.3; 5.1 to 5.14; and 6.1 to 6.2, respectively”.<sup>15</sup> Moreover, the Prosecutor sought a variation of the protective measures initially imposed by Trial Chamber I, pursuant to regulation 42 of the Regulations of the Court (the “Regulations”).<sup>16</sup> In support of her Amended Request, the Prosecutor averred that after filing the initial Request, her Office was able to reach these witnesses who consented to the disclosure of their “trial testimony and prior statements in the case against [Mr. Ntaganda]”.<sup>17</sup>

## II. APPLICABLE LAW

9. The Single Judge notes articles 21(1)(a), (2) and (3), 57(3)(c), 58, 67 and 68(1) of the Statute, rules 81 and 121 of the Rules of Procedure and Evidence (the “Rules”), and regulations 23 *bis* and 42 of the Regulations.

## III. DETERMINATION BY THE SINGLE JUDGE

10. The present decision is classified as confidential *ex parte* as 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* Prosecutor only or *ex parte* Prosecutor and Victims and Witnesses Unit (“VWU”) only.

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<sup>14</sup> ICC-01/04-02/06-51-Conf-Exp and its annexes (A-E).

<sup>15</sup> ICC-01/04-02/06-56-Conf-Exp., para. 3.

<sup>16</sup> ICC-01/04-02/06-56-Conf-Exp., para. 5.

<sup>17</sup> ICC-01/04-02/06-56-Conf-Exp., para. 3.

11. The Single Judge recalls that one of the fundamental principles underlying the fairness of the proceedings lies in the right of the person to be informed promptly and in detail of the nature, cause and content of the charges against him and the right to have adequate time and facilities for the preparation of his defence, pursuant to article 67(1)(a) and (b) of the Statute and rule 121(1) of the Rules. These rights are triggered as of the person's first appearance and continue throughout the different stages of the proceedings. Consistent with internationally recognized human rights, an effective exercise of these rights at the present phase of the proceedings entitles the suspect to receive as soon, as practicable, access to the document on the basis of which a warrant of arrest has been issued against him namely, the applications submitted under article 58 of the Statute (the "Article 58 Applications" or "First/Second Article 58 Application") and the annexes related thereto, subject to the application of any necessary protective measure(s).

12. Nonetheless, an effective exercise of these rights should not lead to compromising other competing interests dictated by law, and which are equally essential in conducting any criminal proceedings. In this respect, the Single Judge wishes to point out that by virtue of articles 57(3)(c) and 68(1) of the Statute, the Chamber is duty bound to take appropriate measures to protect the victims and witnesses in such a manner which does not impinge on the rights of the suspect. Among such accepted measures of protection are those which involve the redactions of some parts of one or more documents or materials within the possession of the Prosecutor.

13. In this regard, the Single Judge recalls that in the Request, the Prosecutor, relying on articles 54(3)(f) and 68 of the Statute and rule 81(2) and (4) of the Rules, sought authorization to apply limited redactions to the Article 58 Applications "and their annexes, including the non-disclosure of certain annexes for a limited time".<sup>18</sup> In setting out the specificities of her Request, the Prosecutor divided it in two main parts. The first part of the Request relates to the First Article 58 Application and the annexes

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<sup>18</sup> ICC-01/04-02/06-51-Conf-Exp, paras 2, 38.

appended thereto, while the second part concerns the Second Article 58 Application and the annexes attached thereto.

14. In this context, the Single Judge wishes to clarify that although rule 81 of the Rules concerns primarily restrictions on disclosure of evidence, and thus, is not directly applicable to the question of redactions to filings in the record of the case, such as the Article 58 Applications, this Chamber has previously acknowledged and accepted that the “two matters are related and that essentially the same guiding principles are applicable”.<sup>19</sup> Thus, the Single Judge considers that restricting the right of the Defence to have access to filings or documents in the record of the case by way of, imposing a certain level of classification, or applying redactions to these documents may be permitted “when there is an objectively identifiable risk to the relevant protected interest”.<sup>20</sup> The adopted measure must also “be necessary to reduce that risk [and] proportionate to the rights of the [Defence]”.<sup>21</sup> Accordingly, the Single Judge shall address the Prosecutor’s Request and Amended Request in light of these guiding principles.

15. With respect to the First Article 58 Application, the Prosecutor requested “temporary redactions” of some identifying information provided therein and which relates to witness P-0010. According to the Prosecutor, said witness [REDACTED]

[REDACTED]. The Prosecutor further argued that the witness is

<sup>19</sup> Pre-Trial Chamber II, “Decision on the Confidential Redacted Version of the Article 58 Application”, 22 July 2011, ICC-01/09-01/11-216-Conf-Exp., para. 10.

<sup>20</sup> Pre-Trial Chamber II, “Decision on the Confidential Redacted Version of the Article 58 Application”, 22 July 2011, ICC-01/09-01/11-216-Conf-Exp., para. 11; see also Appeals Chamber, “Judgment on the Appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled ‘First Decision on the Prosecution Request for Authorisation to Redact Witness Statements’”, 13 May 2008, ICC-01/04-01/07-475, paras 67 and 71-73.

<sup>21</sup> Pre-Trial Chamber II, “Decision on the Confidential Redacted Version of the Article 58 Application”, 22 July 2011, ICC-01/09-01/11-216-Conf-Exp., para. 11; Appeals Chamber, “Judgment on the Appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled ‘First Decision on the Prosecution Request for Authorisation to Redact Witness Statements’”, 13 May 2008, ICC-01/04-01/07-475, paras 67, 72.

[REDACTED] and that based on the foregoing reasons the request for redactions is warranted.

16. Based on a review of the Prosecutor's proposed redactions of information relating to witness P-0010 as reflected in Annex A appended to the Request and in view of the guiding principles referred to in paragraph 14 above and the reasons put forward by the Prosecutor, the Single Judge considers that said redactions are justified.

17. The Prosecutor also proposed redactions on the basis of rule 81(2) of the Rules to paragraph 211, sub-paragraphs (b), (c) and (d) of the First Article 58 Application, in order to protect ongoing investigations.<sup>22</sup> According to the Prosecutor, the proposed redactions "will not impact on the portions that are relevant to the charges against Mr Ntaganda and [that] they are necessary to [REDACTED] [REDACTED] [...] and to protect confidential information".<sup>23</sup>

18. The Single Judge recalls that in its judgment of 13 May 2008, the Appeals Chamber stated that, "pursuant to [rule 81(2) of the Rules], it [is] for the Prosecutor seeking redactions to establish that such redactions are warranted and in particular, that disclosure of the information for which redactions are sought 'may prejudice further or ongoing investigations'".<sup>24</sup>

19. Based on a review of the Prosecutor's proposed redactions and the reasons provided in support, and in view of the guiding principles referred to in paragraphs 14 and 18 above, the Single Judge considers that the proposed redactions are warranted and justified.

<sup>22</sup> ICC-01/04-02/06-51-Conf-Exp, para. 13.

<sup>23</sup> ICC-01/04-02/06-51-Conf-Exp, para. 13.

<sup>24</sup> Appeals Chamber, "Judgment on the Appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled 'First Decision on the Prosecution Request for Authorisation to Redact Witness Statements'", 13 May 2008, ICC-01/04-01/07-475, para. 97.



20. In relation to the annexes to the First Article 58 Application, the Prosecutor submitted that “all annexes can be made available to the Defence”, save for annex 8(v), which includes the name, date of birth and two photographs of witness P-0010. According to the Prosecutor, the disclosure of this annex should not take place for the time being due to the security concerns summarized in paragraph 15 of the present decision.<sup>25</sup>

21. In this regard, the Single Judge wishes to remind that as a matter of principle full disclosure is the rule and that withholding the disclosure of certain information is exceptional, and subject to prior authorization of the Chamber, in accordance with rule 81 of the Rules.<sup>26</sup> Authorizing the non-disclosure of certain material or information requires an assessment based on the guiding principles referred to in paragraph 14 above,<sup>27</sup> which takes into consideration the protection of witnesses as well as the rights of the Defence.<sup>28</sup>

22. The Single Judge also recalls that an assessment of the danger resulting from the disclosure of a witness identity to the Defence should be conducted with respect to each individual witness taking into consideration “his or her specific situation”.<sup>29</sup> Several factors may be relevant in making this assessment, such as, the personal

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<sup>25</sup> Also ICC-01/04-02/06-51-Conf-Exp, paras 10-11.

<sup>26</sup> Appeals Chamber, “Judgment on the Prosecutor’s appeal against the decision of Pre-Trial Chamber I entitled ‘Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 (2) and (4) of the Rules of Procedure and Evidence’”, 13 October 2006, ICC-01/04-01/06-568, paras 36 and 39; Appeals Chamber, “Judgment on the Appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled ‘First Decision on the Prosecution Request for Authorisation to Redact Witness Statements’”, 13 May 2008, ICC-01/04-01/07-475, para. 70; Pre-Trial Chamber II, “First Decision on the Prosecutor’s Requests for Redactions and Related Requests”, 24 June 2011, ICC-01/09-01/11-145-Conf-Exp, para. 23.

<sup>27</sup> These factors are referred to in the, Appeals Chamber, “Judgment on the Appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled ‘First Decision on the Prosecution Request for Authorisation to Redact Witness Statements’”, 13 May 2008, ICC-01/04-01/07-475, paras 67 and 71-73.

<sup>28</sup> Pre-Trial Chamber II, “First Decision on the Prosecutor’s Requests for Redactions and Related Requests”, 24 June 2011, ICC-01/09-01/11-145-Conf-Exp, para. 23.

<sup>29</sup> Pre-Trial Chamber II, “First Decision on the Prosecutor’s Requests for Redactions and Related Requests”, 24 June 2011, ICC-01/09-01/11-145-Conf-Exp, para. 39.

circumstances of the witness, and whether there are protection or security measures in place.<sup>30</sup>

23. In view of the information provided by the Prosecutor regarding said witness and in light of the guiding principles referred to in paragraphs 14, 21 and 22 of the present decision, the Single Judge considers that the non-disclosure of annex 8(v), which contains information related to the identity of witness P-0010, is justified. With regard to the remaining annexes, the Single Judge agrees with the prosecutor that they can be made available as such to the Defence.

24. As to the Second Article 58 Application, the Prosecutor has requested redactions to two witnesses' names referred to in paragraph 90 of said Application, [REDACTED]  
[REDACTED].<sup>31</sup> According to the Prosecutor, these witnesses were initially interviewed [REDACTED] and the Office of the Prosecutor [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].<sup>32</sup>

25. Based on a review of the Prosecutor's proposed redactions relating to the two witnesses as reflected in Annex B appended to the Request, and the reasons provided in support, and in view of the guiding principles referred to in paragraph 14 of the present decision, the Single Judge considers that the proposed redactions are warranted and justified.

26. With respect to the 26 annexes appended to the Second Article 58 Application, the Prosecutor requested a brief delay in the communication of a number of them.

<sup>30</sup> Pre-Trial Chamber II, "First Decision on the Prosecutor's Requests for Redactions and Related Requests", 24 June 2011, ICC-01/09-01/11-145-Conf-Exp, para. 39.

<sup>31</sup> ICC-01/04-02/06-51-Conf-Exp, paras 16-18.

<sup>32</sup> ICC-01/04-02/06-51-Conf-Exp, para. 17.

27. In the Request, the Prosecutor sought a delay in communicating to the Defence the transcripts of the testimonies of Prosecution witnesses P-0016, P-0017, P-0038, P-0041, P-0055 (including three annexes related to P-0055) and P-0030.<sup>33</sup> According to the Prosecutor, in order to make these transcripts available to the Defence, her Office “is in the process of contacting these individuals to seek their consent” for the purpose of variation of protective measures, pursuant to regulation 42 of the Regulations.<sup>34</sup> Yet, in paragraph 37 of the Request and paragraph 4 of the Amended Request, the Prosecutor stated that he contacted P-0030 and P-0055 [REDACTED]

[REDACTED]. Further, in the Amended Request, the Prosecutor stated that members of her Office were able to obtain the consent of witnesses P-0017, P-0038 and P-0041 for the disclosure of their trial testimony and prior statements.<sup>35</sup> Accordingly, the Prosecutor withdrew her initial Request “for non-disclosure of the witness statements and trial testimony of these three witnesses [included in] annexes 4.1 to 4.3; 5.1 to 5.14; and 6.1 to 6.2 respectively” and sought a variation of the protective measures imposed by Trial Chamber I.<sup>36</sup>

28. The Single Judge notes regulation 42 of the Regulations according to which:

1. Protective measures once ordered in any proceedings in respect of a victim or witness shall continue to have full force and effect in relation to any other proceedings before the Court and shall continue after proceedings have been concluded, subject to revision by a Chamber.
2. When the Prosecutor discharges disclosure obligations in subsequent proceedings, he or she shall respect the protective measures as previously ordered by a Chamber and shall inform the defence to whom the disclosure is being made of the nature of these protective measures.
3. Any application to vary a protective measure shall first be made to the Chamber which issued the order. If that Chamber is no longer seized of the proceedings in which the protective measure was ordered, application may be made to the Chamber before which a variation of the protective measure is being requested. That Chamber *shall obtain all relevant information from the proceedings in which the protective measure was first ordered* (emphasis added).
4. Before making a determination under sub-regulation 3, the Chamber shall seek to obtain, whenever possible, the consent of the person in respect of whom the application to rescind, vary or augment protective measures has been made.

<sup>33</sup> ICC-01/04-02/06-51-Conf-Exp, para. 22 (Annexes 3.1 to 3.3 ; 4.1 to 4.3 ; 5.1 to 5.14 ; 6.1 to 6.2 ; 8.1 to 8.6; and 26.2). As to annex 8.4, the Single Judge addresses it also in paragraph 39.

<sup>34</sup> ICC-01/04-02/06-51-Conf-Exp, para. 22.

<sup>35</sup> ICC-01/04-02/06-56-Conf-Exp, para. 3.

<sup>36</sup> ICC-01/04-02/06-56-Conf-Exp, paras 3, 5.

29. The Single Judge considers that regulation 42(2) and (3) of the Regulations imposes two cumulative requirements. First, that the Chamber receiving a request for variation of protective measures “shall obtain all relevant information from the proceedings in which the protective measures was first ordered”; and second, that the Chamber “shall seek to obtain, whenever possible, the consent of the person of whom the application to [...] vary [...] protective measures has been made”.

30. In the case *sub judice*, the Single Judge authorizes the temporary non-disclosure of the annexes containing, inter alia, the transcripts of the testimonies of witnesses P-0016, P-0017, P-0030, P-0038, P-0041 and P-0055, until a determination on the variation of the protective measures imposed can be made by the Single Judge. For the purpose of making such a determination, the Single Judge deems it necessary that the Prosecutor provides the Chamber with all relevant information regarding the protective measures imposed in relation to these witnesses, from the proceedings of Trial Chamber I. The Single Judge also requests the Prosecutor to obtain, to the extent possible, the consent of witness P-0016 and report to the Chamber as soon as practicable. With regard to witnesses P-0030 and P-0055, [REDACTED]

31. The Prosecutor also requested the delay in communicating to the Defence the statements of witnesses: W-0018, W-0019, W-0027, [REDACTED] W-0100, [REDACTED] W-0105, W-0107, W-0113 and [REDACTED].<sup>37</sup> According to the Prosecutor, these witnesses were interviewed [REDACTED]

[REDACTED]<sup>38</sup>

32. Based on a review of the Prosecutor’s Request, the annexes related thereto and the reasons provided in support of temporary non-disclosure and in view of the guiding

<sup>37</sup> ICC-01/04-02/06-51-Conf-Exp, para. 24.

<sup>38</sup> ICC-01/04-02/06-51-Conf-Exp, para. 25.

principles referred to in paragraphs 14, 21 and 22 of the present decision, the Single Judge considers that the Request is justified and should be granted, while assuring that the Prosecutor will make the necessary undertakings in order to lift said temporary non-disclosure.

33. With respect to annex 12.1 (also appearing as Annex C appended to the Request) and which contains the statement of W-0022, the Prosecutor argued that it can be communicated to the Defence with the limited redactions as initially authorized by Trial Chamber I.<sup>39</sup> The witness statement with the proposed redactions appears in Annex C appended to the Request. According to the Prosecutor, these redactions should be maintained, given that the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].<sup>40</sup> Thus, in case of disclosure, [REDACTED]

[REDACTED].<sup>41</sup>

34. Based on a review of the Prosecutor's proposed redactions relating to the statement of W-0022 as reflected in Annex C appended to the Request, and the reasons provided in support, and in view of the guiding principles referred to in paragraph 14 of the present decision, the Single Judge considers that the proposed redactions are warranted and justified.

35. In relation to the testimonies of the Defence witnesses who testified in the *Lubanga* trial, the Prosecutor stated that annexes 21.1, 22.1 and 23.1 contain public transcripts of these testimonies and since these witnesses testified publicly without protective measures, said transcripts are available to the Defence.<sup>42</sup> However, with respect to annex 22.2, the Prosecutor highlighted that it contains a confidential transcript of the

<sup>39</sup> ICC-01/04-02/06-51-Conf-Exp, para. 27.

<sup>40</sup> ICC-01/04-02/06-51-Conf-Exp, para. 29.

<sup>41</sup> ICC-01/04-02/06-51-Conf-Exp, para. 29.

<sup>42</sup> ICC-01/04-02/06-51-Conf-Exp, para. 31.

testimony of [REDACTED] and this level of classification was given due to the “sensitive information discussed during [a] private session”.<sup>43</sup> The Prosecutor further mentioned that it interviewed this witness [REDACTED] and that the Defence requested specific disclosure of the statement which was added to its list of evidence. According to the Prosecutor, “there are no security concerns regarding communication of [the] information to the Defence in this case” and the information included in the “confidential part of the transcript can be made available to the Defence”, without having sought the witness’s consent to vary the protective measure.<sup>44</sup>

36. With regard to annex 22.2, the Single Judge notes that the issue at stake is the classification of a particular transcript due to the sensitive nature of the information discussed, as opposed to the protection of the witness appearing before the Court. Therefore, the Single Judge is of the view that regulation 42 of the Regulations is not applicable. Accordingly, the Single Judge considers that the transcript may be made available to the Defence. As to annexes 21.1, 22.1 and 23.1, the Single agrees with the Prosecutor that they can be made available as such to the Defence.

37. The Prosecutor also mentioned that annexes 24.1 to 24.13 which contain “UPC/FPLC documents” could be made available to the Defence with two exceptions related to annexes 24.2 and 24.12.<sup>45</sup> With respect to annex 24.2 (attached in a redacted form to the Request as Annex D), the Prosecutor stated that Trial Chamber I has approved one redaction to the first page of this annex which was disclosed in the “*Lubanga* case”.<sup>46</sup> According to the Prosecutor, the authorized redaction should be maintained “so as not to put the [person] at risk due to his cooperation with the Court”.<sup>47</sup> With regard to annex 24.12 (attached in a redacted form to the Request as

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<sup>43</sup> ICC-01/04-02/06-51-Conf-Exp, para. 32.

<sup>44</sup> ICC-01/04-02/06-51-Conf-Exp, paras 31-33.

<sup>45</sup> ICC-01/04-02/06-51-Conf-Exp, para. 34.

<sup>46</sup> ICC-01/04-02/06-51-Conf-Exp, para. 34.

<sup>47</sup> ICC-01/04-02/06-51-Conf-Exp, para. 34.

Annex E), the Prosecutor provided the same explanation as to the redaction sought to be maintained with respect to the individual who cooperated with the Court.<sup>48</sup>

38. Based on a review of the Prosecutor's proposed redactions as reflected in Annexes D and E appended to the Request, and the reasons provided in support, and in view of the guiding principles referred to in paragraph 14 of the present decision, the Single Judge considers that the proposed redactions are warranted and justified. Accordingly, they should be maintained. With regard to annexes 24.1 to 24.13, the Single Judge agrees with the Prosecutor that they can be made available as such to the Defence with the exception of these annexes discussed above (annexes 24.2 and 24.12).

39. Nonetheless, the Single Judge observes that there is an apparent inconsistency in relation to one of the annexes which the Prosecutor proposes to make available to the Defence namely, annex 24.11. According to paragraph 34 of the Prosecutor's Request, annex 24.11 (relating to witness P-0055) can be made available to the Defence. However, by reviewing the content of annex 24.11 and comparing it to that of annex 8.4, the Single Judge observes that the content of these annexes is identical. According to paragraph 22 of the Request, the Prosecutor suggests the non-disclosure of annex 8.4. In light of the foregoing, the Single Judge decides that the Prosecutor shall not disclose said annex related to P-0055, until a determination on the variation of the protective measures imposed can be made by the Single Judge, once she has received the necessary information requested, in accordance with paragraph 30 of the present decision.

40. With respect to "UN Documents and NGO related material", the Prosecutor stated that annexes 25.1 to 25.26 can be made available to the Defence, save for annex 25.2, which contains redacted summarized information of a confidential filing related to crime base witnesses, presented by the [REDACTED] in the

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<sup>48</sup> ICC-01/04-02/06-51-Conf-Exp, para. 34.

“*Lubanga* case”.<sup>49</sup> Accordingly, the Prosecutor is requesting “permission [...] under Regulation 42(3) to communicate the filing to the Defence”[...].<sup>50</sup>

41. With respect to annex 25.2, the Single Judge has stated earlier in this decision that according to regulation 42 (3) and (4) of the Regulations, variation of protective measures requires, *inter alia*, “obtain[ing] all relevant information from the proceedings in which the protective measure was first ordered”. In the case at hand, the Single Judge lacks such information in order to make a determination on the variation of the protective measure. Therefore, the Prosecutor is requested to submit to the Chamber sufficient information on whether Trial Chamber I ordered the redactions in this report, the circumstances and the reasons for having a summarized redacted report. With regard to annexes 25.1 to 25.26, the Single agrees with the Prosecutor that they can be made available as such to the Defence with the exception of the annex discussed above (annex 25.2).

42. Finally, the Prosecutor stated that annexes 26.1 to 26.6 can be made available to the Defence, save for annex 26.2 which contains the transcript of witness P-0030 [REDACTED]

[REDACTED].<sup>51</sup> The Single Judge has already addressed the Prosecutor’s Request with respect to P-0030 in paragraph 30 of the present decision. With regard to annexes 26.1 to 26.6, the Single agrees with the Prosecutor that they can be made available as such to the Defence, with the exception of the annex discussed above (annex 26.2).

<sup>49</sup> ICC-01/04-02/06-51-Conf-Exp, para. 35.

<sup>50</sup> ICC-01/04-02/06-51-Conf-Exp, para. 35.

<sup>51</sup> ICC-01/04-02/06-51-Conf-Exp, para. 36.



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

**a) approves** the redactions proposed by the Prosecutor to the Article 58 Applications and the relevant annexes appended to the Request, to the extent specified in the present decision;

**b) orders** the Prosecutor to file in the record of the case confidential redacted versions of the Article 58 Applications and the relevant annexes, including those with the approved proposed redactions, by no later than Friday 10 May 2013;

**c) requests** the Prosecutor to provide the Chamber with all relevant information regarding the protective measures imposed in relation to witnesses P-0016, P-0017, P-0030, P-0038 and P-0041, from the proceedings of Trial Chamber I;

**d) requests** the Prosecutor to obtain, to the extent possible, the consent of witness P-0016 and report to the Chamber as soon as practicable;

**e) requests** the Prosecutor [REDACTED]  
[REDACTED] and report to the Chamber any developments in due course; and

**f) requests** the Prosecutor to provide the Chamber with sufficient information on whether Trial Chamber I ordered the redactions in document ICC-01/04-611-Conf-Exp-Anx25.2, the circumstances and the reasons for the redactions contained in this document.

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

  

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**Judge Ekaterina Trendafilova**  
Single Judge

Dated this Thursday, 3 July 2014

At The Hague, The Netherlands