

**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 “Prosecution’s Request for a Variation of Protective
Measures for Three 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

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

Registrar & Deputy Registrar
Herman Von Hebel, Registrar

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 (the “Court”)¹ hereby issues this decision on the “Prosecution’s Request for a Variation of Protective Measures for Three Witnesses”(the “Request”).²

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”,³ along with a corresponding warrant of arrest for Bosco Ntaganda (“Mr. Ntaganda”).⁴
2. On 15 March 2012, the Presidency re-assigned the situation in the Democratic Republic of the Congo to this Chamber.⁵
3. On 13 July 2012, the Chamber issued the “Decision on the Prosecutor’s Application under Article 58”, with which a second warrant of arrest was issued against Mr. Ntaganda.⁶
4. On 26 March 2013, the suspect, who had voluntarily appeared before the Court, made his initial appearance before the Chamber.⁷
5. On 7 May 2013, the Single Judge issued the “Decision on the Prosecutor’s Request and Amended Request for Redactions to Applications for Warrants of Arrest” (the “7 May 2013 Decision”).⁸

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

² ICC-01/04-02/06-93-Conf-Exp.

³ 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; a redacted version was filed in the record of the case on 6 March 2007 and the decision was made public on 1 October 2010, ICC-01/04-02/06-1-Red-tENG.

⁴ Pre-Trial Chamber I, “Warrant of Arrest”, 22 August 2006, ICC-01/04-02/06-2-Anx-tENG; a corrigendum was filed into the record of the case on 7 March 2007, see ICC-01/04-02/06-2-Corr-tENG-Red.

⁵ 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.

⁶ 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, ICC-01/04-02/06-36-Red.

⁷ Pre-Trial Chamber II, Transcript of Hearing, 26 March 2013, ICC-01/04-02/06-T-2-ENG ET, p. 12, lines 2-3.

6. On 15 July 2013, the Single Judge issued the “Decision on the ‘Prosecution’s Request to Redact Information in Supplementary Submissions related to the First Arrest Application and to Vary Protective Measures for Three Witnesses’” in which she, *inter alia*, authorized the temporary non-disclosure of the witness statement of witness P-0010, and determined that “the protective measures [ordered by Trial Chamber I] in respect of witness P-0030 [...] continue to have full force and effect in accordance with regulation 42(1) of the Regulations”, [REDACTED]

[REDACTED].⁹

7. On 27 August 2013, the Prosecutor filed the Request, in which she requested the Single Judge to vary the protective measures authorized by Trial Chamber I in respect of witnesses P-0002, P-0010 and P-0030 in order to allow the disclosure of their identity and trial testimony to Mr. Ntaganda.¹⁰

8. The Single Judge notes articles 21(1), (3) and 68(1) of the Rome Statute and regulation 42 of the Regulations of the Court (the “Regulations”).

9. According to regulation 42 of the Regulations:

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.

⁸ 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-Exp.

⁹ Pre-Trial Chamber II, “Decision on the ‘Prosecution’s Request to Redact Information in Supplementary Submissions related to the First Arrest Application and to Vary Protective Measures for Three Witnesses’”, 15 July 2013, ICC-01/04-02/06-78-Conf-Exp, paras 34-36.

¹⁰ ICC-01/04-02/06-93-Conf-Exp, para. 16.

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.

10. At the outset, the Single Judge notes that Trial Chamber I is no longer seized of the proceedings in the case of the *Prosecutor v. Thomas Lubanga Dyilo*, in which protective measures were ordered for witnesses P-0002, P-0010 and P-0030.¹¹ Accordingly, this Chamber is competent to address the Request, in accordance with regulation 42(3) of the Regulations.

11. With respect to the remaining requirements set out in regulation 42(3) and (4) of the Regulations, the Single Judge recalls the 7 May 2013 Decision, in which she stated that:

[R]egulation 42(3) and (4) 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 measure 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”.¹²

12. Having reviewed the Request in light of the two cumulative requirements of regulation 42 of the Regulations, the Single Judge finds that the Prosecutor provided sufficient relevant information in relation to witnesses P-0002, P-0010 and P-0030. Moreover, the Prosecutor has also succeeded in obtaining the consent of said witnesses for the requested variation.

13. Since the witnesses’ consent has been obtained together with all other relevant information as required by virtue of regulation 42(3) and (4) of the Regulations, the Single Judge sees no reason to withhold the identity of the three witnesses and their trial testimony from the suspect.

¹¹ ICC-01/04-02/06-93-Conf-Exp, paras 10-11.

¹² 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-Exp, para. 29.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

grants the Request.

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