

**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 Requests for Additional Redactions to the
Statements of Witness P-0290**

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, 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,¹ hereby renders the decision on the “Prosecution’s Urgent Amended Request for Redactions to the Statements of DRC-OTP-P-0290” (the “Request”).²

I. PROCEDURAL HISTORY

1. On 2 September 2013, the Prosecutor submitted the “Prosecution’s First Application for Redactions”³ to which she submitted an addendum on 4 September 2013⁴ (collectively, the “Application”).

2. On 10 September 2013, the Victims and Witnesses Unit (the “VWU”) submitted the “Victims and Witnesses Unit’s Observations pursuant to Decision n° ICC-01/04-02/06-88”⁵ on the Prosecutor’s risk assessment of witnesses, including other proposals for additional or alternative protective measures.

3. 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 certain redactions were approved in the English versions of the statements of witness P-0290. Moreover, the Single Judge authorized that the statements of said witness be disclosed to the Defence no later than 1 November 2013.

4. On 24 October 2013, the Prosecutor submitted the Request in which she seeks additional authorization to the non-disclosure of the current location of the family members of witness P-0290 in the witness statements concerned.⁷

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

² ICC-01/04-02/06-126-Conf-Exp.

³ ICC-01/04-02/06-98-Conf-Exp and its confidential *ex parte* annexes A.1-A.21, B.1-B.5, C and D.

⁴ ICC-01/04-02/06-101-Conf-Exp with one confidential *ex parte* annex A.15.

⁵ ICC-01/04-02/06-104-Conf-Exp.

⁶ Pre-Trial Chamber II, ICC-01/04-02/06-117-Conf-Exp. A confidential redacted version is also available, ICC-01/04-02/06-117-Conf-Red.

⁷ ICC-01/04-02/06-126-Conf-Exp, p. 7.

II. PRELIMINARY REMARKS

5. This decision is rendered subsequent to the First Decision on Redactions. Therefore, the Single Judge makes reference to and incorporates the principles and findings of the First Decision on Redactions, in particular in relation to witness P-0290.

6. The present decision is classified as confidential, *ex parte*, Prosecutor and VWU only. For reasons of fairness of proceedings *vis-à-vis* the Defence, this decision is shared with it, albeit in confidential redacted form. To this end, the Single Judge considers that the references made in the present decision are required by the principle of judicial reasoning. They have been kept to a minimum and are made without endangering the interests concerned and defeating the very purpose of redactions.

III. THE PROSECUTOR'S REQUEST FOR REDACTIONS

7. The Single Judge notes articles 21(1) and (3), 57(3)(c), 61, 67 and 68(1) and (5) of the Rome Statute, rules 76, 81 and 121 of the Rules of Procedure and Evidence (the "Rules"), and article 8 of the Code of Professional Conduct for counsel.

8. The Single Judge recalls that according to rule 81(4) of the Rules, information about the location of family members of a witness may be withheld from the Defence if disclosure of such information to the Defence would pose an objectively identifiable risk to them and the non-disclosure is a necessary and proportionate measure to reduce or overcome this risk.⁸

9. In her Request, the Prosecutor states that she was informed only recently that the immediate family of witness [REDACTED].⁹ Considering the justification provided by the Prosecutor, the individual risk assessment of witness P-0290, and the Single Judge's findings in relation to

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-Red, para. 45.

⁹ ICC-01/04-02/06-126-Conf-Exp, para. 8.

identifying information of family members (category B), as enunciated previously in the First Decision on Redactions, the Single Judge authorizes the non-disclosure of [REDACTED] in the English versions of the witness statements of P-0290 as specified in the Annex to this decision.

10. The Single Judge observes that in footnote 2 of ICC-01/04-02/06-126-Conf-Exp-AnxA2, the Prosecutor “seeks to apply the identical redaction to the French version of this statement (DRC-OTP-0172-0358)”. In this regard, the Single Judge notes that the Prosecutor had not informed her in the previous Application about the existence of translations of witness statements or materials in other languages. For future purposes, the Single Judge deems it important that the Prosecutor explicitly informs the Chamber of the existence of any translation and equally requests the Chamber to authorize that the redactions sought be extended to any translation. In the context of the present decision, the Single Judge authorizes that the redactions authorized by virtue of this decision as well as those previously authorized or ordered in the First Decision on Redactions, be extended to the French version of the statement DRC-OTP-0172-0305 of witness P-0290.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

- a) **GRANTS** the Prosecutor’s requests for redactions to the witness statements of P-0290 as specified in paragraphs 9 and 10, and the Annex to the present decision;
- b) **ORDERS** the Prosecutor to disclose to the Defence the redacted witness statements of witness P-0290 no later than 1 November 2013, in compliance with the First Decision on Redactions and the present decision; and
- c) **ORDERS** the Prosecutor to inform the Chamber of the existence of any translation of witness statements or other material and, if so, to request the Chamber to authorize that redactions sought be extended to any translation.

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