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No.: ICC-01/04-02/06
Date: 10 November 2014

TRIAL CHAMBER VI

Before: Judge Robert Fremr, Presiding Judge
Judge Kuniko Ozaki
Judge Geoffrey Henderson

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public

Common Legal Representatives' joint observations on the "Public Redacted Version of Prosecution's Proposed Protocol on Redactions" and on the "Prosecution's Proposed Protocol on the Handling of Confidential Information During Investigations and Contact Between a Party and Witnesses of the Opposing Party" dated 31 October 2014

Source: Office of Public Counsel for Victims

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. PROCEDURAL BACKGROUND

1. On 31 October 2014, the Prosecution submitted its “Proposed Protocol on the Handling of Confidential Information During Investigations and Contact Between a Party and Witnesses of the Opposing Party”.¹

2. On the same date, the Prosecution submitted its “Proposed Protocol on Redactions”.²

3. On 6 November 2014, Trial Chamber VI instructed the parties and participants “to file their comments made by email regarding [both protocols] in the record of the case by 10 November 2014”.³

4. Accordingly, the Common Legal Representatives respectfully jointly submit their observations on the Prosecution Proposed Protocols.

II. SUBMISSIONS

5. Although the disclosure regime is mainly an *inter partes* process, the modalities and procedures agreed in both Prosecution Proposed Protocols have direct effects on the participating victims. Disclosure of information to the Defence or to the public inevitably affects the safety and well-being of the victims. Moreover, for those victims benefiting from a dual status, the amendment of the disclosure regime entails, to a certain extent, a variation of the protective measures available to them. These observations are therefore premised on the need to ensure that the disclosure process is not carried out in a manner that is unfairly prejudicial to the interests of the victims.

¹ See the “Prosecution’s Proposed Protocol on the Handling of Confidential Information During Investigations and Contact Between a Party and Witnesses of the Opposing Party”, No. ICC-01/04-02/06-392, 31 October 2014.

² See “Public redacted Version of Prosecution’s Proposed Protocol on Redactions” dated 31 October 2014”, No. ICC-01/04-02/06-393-Red2 (the “Prosecution Proposed Redactions Protocol”).

³ See email of the Chamber entitled “RE: Ntaganda case: Draft Protocol on Handling of Confidential Information and Contact with witnesses of the opposing party”, 6 November 2014.

6. The Common Legal Representatives have been consulted extensively during the drafting of the “Prosecution’s Proposed Protocol on the Handling of Confidential Information During Investigations and Contact Between a Party and Witnesses of the Opposing Party”.⁴ Their comments having been taken into account in the submitted version, they fully endorse the submissions of the Prosecution and respectfully request the Chamber to approve the Protocol as submitted.

7. The Common Legal Representatives will therefore limit their observations to the “Proposed Protocol on Redactions”⁵ on which they have not been consulted.

8. The Legal Representatives note that the parties in the present case have reached agreement on several aspects of the “Proposed Protocol on Redactions” and that only seven redaction categories are in dispute. With respect to the redactions categories agreed upon by the parties, the Common Legal Representatives submit that they are justified and in line with the established practice of the Court. Moreover, the modalities and the procedural framework established under the Protocol ensure efficient and expeditious *inter partes* disclosure. In this regard, the Common Legal Representatives are of the view that the proposal for the adoption of “standard redactions” and “standard justifications” will significantly facilitate the disclosure process and avoid placing an unnecessary burden on the Chamber.⁶ Likewise, the Common Legal Representatives support the proposal for an ongoing review of the materials for the purpose of lifting redactions⁷.

9. As to the remaining seven redaction categories, the Common Legal Representatives fully support the Prosecution’s Proposed Protocol on Redactions. They submit that all seven redaction categories are justified and should therefore be

⁴ See *supra* note 1.

⁵ See *supra* note **Error! Bookmark not defined.**

⁶ See Annex to the Prosecution Proposed Protocol, pp. 1-2.

⁷ *Idem.*, pp. 2-3.

included in the adopted Protocol. In particular, the Common Legal Representatives find it particularly important to include in the Proposed Protocol on Redactions the following redaction categories: (1) the identifying information of family members of witnesses; (2) the identifying information of innocent third parties; (3) the identifying information of intermediaries, sources and leads. As explained below, these redactions are of vital importance in the interest of individuals benefiting of dual status.

Category B: Identifying and contact information of family members of witnesses:

10. The Legal Representatives support the Prosecution's suggestion for the redaction of "*identifying and contact information of family members of witnesses*"⁸. Indeed, this category of information relate to a particularly vulnerable group of individuals, who may be either victims or closely linked to the events under scrutiny in the present case. Most of them do not benefit from the Court's protective measures. Moreover, disclosure of contact information is likely to compromise the safety of the particular witness, as it may lead to, or at least facilitate his or her identification. Early disclosure of information related to family members also places unnecessary psychological pressures on the witness and may therefore affect his or her willingness to testify before the Court. Given the sensitive nature of such information, it is submitted that personal data relating to family members should be withheld from the Defence. For the sake of efficiency, the Legal Representatives also support the Prosecution's proposal for redactions to be made on an ongoing basis.⁹

⁸ See Annex to the Prosecution Proposed Protocol, pp. 7-8.

⁹ See Annex to the Prosecution Proposed Protocol, p. 11.

Category C: Identifying and contact information of “other persons at risk as a result of the activities of the Court” (also known as “innocent third parties”) and their family members

11. The Legal Representatives support the Prosecution’s request for redaction of identifying information of innocent third parties on an ongoing basis.¹⁰ As the Prosecution correctly pointed out, *“innocent third parties are unaware that they are identified in materials”* and may wrongly be perceived as collaborators of the Court¹¹. This may put them at risk without however being entitled to benefit from any form of protection provided by the Court. On the other hand, the effects of these redactions are limited and do not cause any prejudice to the Defence. Personal information related to third parties is by definition *“irrelevant to the known issues in the case”* and thus, redaction should be authorised so long as it *“does not render the document in any way unintelligible or unusable”*¹².

Category D. 4: Identifying and contact information of intermediaries; Category D. 5: Identifying and contact information of leads and sources:

12. The Common Legal Representatives support the Prosecution’s proposal for the redaction of identifying information of leads, sources and intermediaries¹³. These redactions are necessary for the efficient conduct of the Prosecution investigations and will minimize the risk of interference with witnesses. The redactions are equally justified given the overall security conditions prevailing in Ituri. On the other hand, the disclosure of these categories of information may compromise the security of witnesses and lead to the disclosure of their identities. These considerable risks also need to also be balanced against the limited relevance of the information to the issues in this case. The Common Legal Representatives therefore submit that there are no

¹⁰ See Annex to the Prosecution Proposed Protocol, pp. 8-9

¹¹ See the Prosecution Proposed Protocol, paras. 28 and 29.

¹² See the “Redacted Decision on the variation of protective measures under Regulation 42 on referral from Trial Chamber II on 22 July 2009” (Trial Chamber I), No. ICC-01/04-01/06-2209-Red, 16 March 2010, para. 12; the “Redacted Decision on the prosecution’s application for non-disclosure of information filed on 17 July 2009” (Trial Chamber I), No. ICC-01/04-01/06-2186-Red, 10 December 2009, para. 14.

¹³ Annex to the Prosecution Proposed Protocol, p. 11.

reasons to depart from the Court's practice which authorises the Prosecution to redact information pertaining to leads, sources and intermediaries.¹⁴

Respectfully submitted,



Dmytro Suprun
Common Legal Representative of the
Victims of the Attacks



Sarah Pellet
Common Legal Representative of the
Child soldiers

Dated this 10th day of November 2014

At The Hague, The Netherlands

¹⁴ See the "Protocol establishing a redaction regime in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*", No. ICC-01/09-01/11-458-AnxA-Corr, 5 October 2012, paras. 38 *et seq.*; the "Protocol establishing a redaction regime in the case of *The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta*", No. ICC-01/09-02/11-495-AnxA-Corr, 5 October 2012, paras. 38 *et seq.*; the "Redacted Decision on the 'Prosecution's Request for Non-Disclosure of the Identity of Twenty-Five Individuals providing *Tu Quoque* Information' of 5 December 2008" (Trial Chamber I), No. ICC-01/04-01/06-1924-Anx2, 2 June 2009, paras. 34-35 and the "Public Redacted Decision on the Prosecution's Requests for Non-Disclosure of Information in Witness-Related Documents", No. ICC-01/04-01/06-2597-Red, 3 December 2010, para. 50.