



Original : English

N° : ICC-01/04-02/06
Date : 21 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 Redacted Version

**Response on Behalf of Mr Ntaganda
to Prosecution's Proposed Protocol on Redactions**

Source : Defence Team of Mr Bosco Ntaganda

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

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Further to the submission of the « *Prosecution's Proposed Protocol on Redactions* » on 31 October 2014 ("Proposed Protocol"), Counsel representing Mr Ntaganda ("Mr Ntaganda" or "Defence") hereby submit this:

**Response on behalf of Mr Ntaganda
to Prosecution's Proposed Protocol on Redactions
("Defence Response")**

OVERVIEW

1. Mr Ntaganda acknowledges the potential advantages of the Proposed Protocol. Accordingly, the Defence has entered into *bona fide* negotiations with the Prosecution with a view to possibly agreeing on a common proposal.
2. However, the Defence cannot agree with the Proposed Protocol in its present form, which *inter alia*, goes even further than the similar protocol adopted in the Kenya cases ("Kenya Protocol").
3. The Proposed Protocol's underlying principle, *i.e.* allowing the Prosecution to redact information without first seeking the Trial Chamber's authorization: (i) is contrary to the principle of full disclosure; (ii) reverses the Prosecution's obligation to justify the need for redactions into an obligation on the Defence to justify the need for lifting redactions of information it is not privy to; (iii) hinders the ability of the Defence to investigate the charges laid against the Accused; and, more importantly, (iv) allows the redaction of information without any legitimate purpose as the Defence is already under an enforceable obligation not to disclose the same.
4. The Defence thus posits that allowing the Prosecution to redact information without first seeking the Trial Chamber's authorization must be restricted to the most basic and obvious of cases not likely to impact the ability of the Defence to investigate and not likely to give rise to a dispute, which is certainly not the case here.

5. Accordingly, the Defence is prepared to agree with the implementation of certain sections of the Proposed Protocol. However, the Defence opposes the seven proposed standard redaction categories highlighted in the Proposed Protocol (“Seven Categories”). The Defence also opposes the provision “including with the accused” at paragraph 15.¹
6. Regarding these seven categories, Mr Ntaganda respectfully submits that in accordance with the default redaction regime provided for in the Rules, the parties should always have to submit an application to the Chamber before applying any redaction.

SUBMISSIONS

I. The Potential Advantages of the Proposed Protocol

7. Mr Ntaganda acknowledges the potential advantages of the Proposed Protocol which could assist in expediting the disclosure of information to the Defence. Indeed, requesting the parties to apply for every single redaction, even in the most basic and obvious of cases, is time consuming and can be counter-productive. In this regard, the Defence underscores that Mr Ntaganda is looking forward to a trial within a reasonable time.²
8. However, allowing a party to redact information without first seeking authorization from the Chamber in the name of expeditiousness must not infringe on the rights of the Accused to a fair trial.
9. In fact, authorizing a party to apply unsupervised redactions of information having the potential to affect the rights of the Accused is likely to cause extensive litigation and significant delays.

¹ The Defence overlooked this phrase in the course of its discussions with the Prosecution. Nevertheless, a similar provision was highlighted and discussed in the Prosecution’s Proposed Protocol on the Handling of Confidential Information During Investigations and Contact Between a Party and Witnesses of the Opposing Party, para.11. Accordingly, the Defence refers to ICC-01/04-02/06-400, para.19-29.

² ICC-01/04-02/06-T-13-ENG, p.7, l.3-4.

II. The Proposed Protocol Goes Further than the Kenya Protocol

10. During the Status Conference held on 17 October 2014, the Chamber considered that where possible, achieving some degree of uniformity with regards to protocols used at trial level would be beneficial.³ It recommended to take the Kenya case as an inspiration or as a starting point.⁴
11. The Prosecution recognizes that three of the Seven Categories differ from the Kenya Protocol.⁵ Yet, the Prosecution gives no reasons to depart from the Kenya Protocol in the present case.

III. The Proposed Protocol's Underlying Principle must be Restricted to the Most Basic and Obvious Cases

A. The Proposed Protocol is Contrary to the Principle of Full Disclosure

12. The Appeals Chamber has recognized on numerous occasions the importance of the principle of total disclosure.⁶ Pursuant to this principle, the Prosecution has the obligation to disclose to Mr Ntaganda any document material to the preparation of the Defence or intended for use by the Prosecutor as evidence for the purpose of trial.⁷ As stated by the Appeals Chamber, redactions should remain the exception for which prior authorization must be sought from the Trial Chamber.⁸
13. Thus, the Proposed Protocol which aims at allowing the Prosecution to redact information which can be material to the preparation of the case for the Defence -without seeking prior authorization from the Chamber- is *per se* contrary to the principle of full disclosure.

³ ICC-01/04-02/06-T-15-ENG, p.16, l.10-12.

⁴ ICC-01/04-02/06-T-15-ENG, p.16, l.13-16.

⁵ ICC-01/04-02/06-393-Conf-Red.

⁶ ICC-01/04-01/06-568 OA, para.36 ; ICC-01/04-01/07-475 OA, para.70.

⁷ Rule 77 of the Rules of Procedure and Evidence.

⁸ ICC-01/04-01/07-475 OA, para.70.

B. The Proposed Protocol Reverses the Burden of Justification for Redactions

14. Pursuant to the default redaction regime provided for in the Rules, a party seeking to redact information from material it has an obligation to disclose must seek prior authorization from the Trial Chamber before doing so.
15. The Proposed Protocol reverses the requesting party's (most of the time the Prosecution) obligation to justify the need for redactions into an obligation on the receiving party (most of the time the Defence) to justify the need for the lifting of a redaction.
16. Firstly, while this relieves the Prosecution from having to submit time consuming applications for redactions, it imposes a heavy burden on the Defence - to request and justify the lifting of redactions - for which it has neither the resources nor the time.
17. Secondly, whereas the Prosecution is in a position to justify the need for a redaction of information in its possession, it is much more difficult for the Defence to justify the need for the lifting of a redaction related to information it is not privy to. Even if the Defence is made aware of the general nature of the redaction it wishes to lift, as proposed by the Prosecution, this remains a difficult undertaking when the actual information is unknown.
18. Lastly, imposing on the Defence the need to justify the lifting of redactions of information it is not privy to, is likely to trigger extensive time-consuming litigation.
19. Hence, contrary to its aim, the Proposed Protocol is likely to result in significant delays as well as longer rather than expeditious proceedings.

C. The Proposed Protocol Hinders the Ability of the Defence to Investigate

20. The duty of the Defence to pursue every possible avenue of investigation is well established.

21. By allowing the Prosecution to redact information which is material to the preparation of the case for the Defence, without seeking prior authorization from the Chamber, the Proposed Protocol hinders the ability of the Defence to fulfil its duty.
22. The ability of the Defence to investigate depends to a large extent on the material disclosed by the Prosecution. Much of the information covered by the Proposed Protocol is essential for Defence investigations. For instance, information directly linked to witnesses, such as identifying and contact information of his or her family members, is central to the witnesses' narrative.
23. Another example is D categories⁹ which relate to information concerning the surrounding of the recording and taking of a witness statement as well as identifying information of everyone who has met with a witness. It is necessary for the Defence to know the circumstances of a witness interview as well as the identity of everyone who has met with a witness. This information is essential in order to investigate in relation to the credibility of a witness and the possible interference and influence over his or her testimony.

D. The Proposed Protocol is Directed at the Wrong Target

24. The main contentious issue regarding the Proposed Protocol is that many of its provisions are neither necessary nor useful because they are directed at the wrong target.
25. It is not disputed that maintaining the confidentiality of certain information and ensuring that such information is not made available to third parties, including the public, is necessary for the purpose of protecting witnesses and other persons involved in the activities of the Court.

⁹ Pages 8 to 12 of the Proposed Protocol.

26. However, redacting this information from material disclosed to the Defence is of no assistance in this regard as all members of the Defence team are already bound by the obligation not to disclose confidential information to third parties, including the public.
27. Consequently, many provisions of the Proposed Protocol are superfluous and not necessary.
28. The same applies to the Accused. While the Accused has a right to receive all information related to the charges laid against him, he is bound by the obligation not to disclose any confidential information to third parties, including the public.
29. Should the Accused and/or members of the Defence team disclose confidential information to the public, they are liable to be prosecuted pursuant to Article 70 of the Statute.
30. Whether the Prosecution does not trust the Accused or members of the Defence is beside the point. There is no need to “hide” information from persons already under an obligation not to disclose the same.
31. The Accused and members of his Defence team cannot be considered as third parties or members of the public.
32. Once this false premise is understood, it becomes evident that many provisions in the Proposed Protocol cannot be justified.
33. The ICC is a judicial body; it is neither a company nor a non-governmental organization. Accordingly, the Prosecution’s argument that it wishes to manage the risk of confidential information being disclosed must be firmly rejected.

IV. The Defence Takes Issue with and Opposes the Seven Categories in the Proposed Protocol

34. Concerning the Seven Categories, the Defence submits that the parties should seek a specific authorization from the Chamber prior to applying the redaction.

The procedure recommended by the Appeals Chamber in pre-trial should apply.¹⁰

35. In its decision, the Appeals Chamber has indicated which factors the Pre-Trial Chamber should take into account before deciding on a request for redaction.¹¹ This decision was rendered at pre-trial phase. Nevertheless, the Appeals Chamber stated that “it may be permissible to withhold the disclosure of certain information from the Defence prior to the hearing to confirm the charges that could not be withheld prior to trial”.¹² The Defence submits that the factors and procedure defined by the Appeals Chamber should apply all the more so to the trial phase.

36. Furthermore, the Defence notes as a preliminary matter that several references are redacted in the Prosecution’s submissions, which only goes to show the far reaching consequences of the self-redaction mechanism sought and the associated difficulties for the Defence. As a result, it is not possible to address the Prosecution’s arguments without these redactions being lifted.

A. Categorie B: Identifying and contact information of family members of witnesses.

37. The Defence opposes the redaction of identifying information of family members of witnesses on an ongoing basis. This category is not found in the Kenya Protocol and the Prosecution has not given any reasons to depart from the practice in that case.

38. The Defence does not oppose the redaction of the identifying information of family members of anonymous witnesses until the identity of the witness is disclosed.

¹⁰ ICC-01/04-01/06-568 OA, para.36-37; ICC-01/04-01/07-475 OA, para.60.

¹¹ ICC-01/04-01/07-475 OA, para.68-73.

¹² ICC-01/04-01/07-475 OA, para.68.

39. In paragraph 19 of its submissions, the Prosecution refers to [REDACTED]. Once again,¹³ the Defence recalls that [REDACTED] is still pending. Thus, the Chamber cannot take the allegation put forward in this reference into account. Moreover, it is significant that [REDACTED].¹⁴
40. In its submissions, the Prosecution also refers to [REDACTED].¹⁵ The Defence submits that this reference is irrelevant and misleading [REDACTED]. To the contrary [REDACTED].¹⁶
41. Moreover, the Prosecution refers to several decisions of Pre-Trial Chambers and Trial Chambers in this case and in other cases.¹⁷ Strikingly, all those decisions were made on case-by-case applications for redactions. Thus, using those decisions to support a mechanism authorizing the Prosecution to redact information without any input from the Trial Chamber is not relevant as well as unconvincing.
42. More particularly, Trial Chamber I in the *Lubanga* case authorized redactions on the basis that the information was irrelevant to the known issues in the case. In particular, Trial Chamber I authorized the redaction of names and whereabouts of family members of anonymous witnesses.¹⁸ Moreover, the paragraph referred to by the Prosecution relates to authorization for redactions of family members' names of 7 witnesses made on a case-by-case basis.¹⁹
43. Significantly, the jurisprudence referred to by the Prosecution illustrates the practice suggested by the Defence, which is to apply for every redaction sought

¹³ ICC-01/04-02/06-T-16-ENG, p.11, l.19-24.

¹⁴ ICC-01/04-02/06-396-Conf-Anx1, p.7.

¹⁵ ICC-01/04-02/06-383-Conf-Anx-Red.

¹⁶ ICC-01/04-02/06-396-Conf-Anx1.

¹⁷ See ICC-01/04-02/06-393-Conf-Red, footnotes 14, 17, 21, 22-24.

¹⁸ ICC-01/04-01/06-2208-Red-Corr, para.19.

¹⁹ See ICC-01/04-01/06-2208-Red-Corr, para.28 in relation to witness DRC-OTP-WWWW-0001, para.39 in relation to witness DRC-OTP-WWWW-0132, para.42 in relation to witness DRC-OTP-WWWW-0149, para.63 in relation to witness DRC-OTP-WWWW-0268, para.69 in relation to witness DRC-OTP-WWWW-0280, para.77 in relation to witness DRC-OTP-WWWW-0280 and para.80 in relation to witness DRC-OTP-WWWW-0102/0122.

for family members' identity. In their decisions, Pre-Trial and Trial Chambers took several factors into account. In particular, Pre-Trial Chambers took into account the fact that the family member did not have information on the crimes before authorizing a specific redaction.²⁰ Moreover, the Trial Chamber in the *Katanga* case considered that "it cannot authorize [the redactions] through to the end of the trial since, in its opinion, such a measure seems, in the circumstances and in the absence of any indication to the contrary, excessive in relation to the exercise of the rights of the Defence." Thus, it authorized some redactions on a temporary basis until the 30th day prior to the date of trial.²¹

44. The Defence opposes the general assumption that family members are not involved in the Court's activities and that in most cases, they are not part of the witness' account and not relevant to the case against the Accused.²² As recognized by the Prosecution, there are numerous instances where the identity of family members is relevant for Defence investigations as well as material for the preparation of the Defence.
45. For instance, the identity of parents of alleged former child soldiers is necessary to investigate on the identity and age of the children.²³ On other instances, family members can be aware of the very occurrence of the material fact supporting a specific crime. Other Chambers have already rejected some requests for redactions of family members' identities since they were considered to be relevant for the Defence.²⁴ In any case, it is not for the Prosecution to assess whether specific information is relevant for the Defence.

²⁰ See all the decisions referred to by the Prosecution in footnote 14 : ICC-01/04-01/07-160, para.47; ICC-01/04-01/07-249, para.18; ICC-01/04-01/07-361, para.14; ICC-01/04-01/07-427, para.28; ICC-01/04-01/07-425, para.12; ICC-01/04-01/07-568, para.18. See also Pre-Trial Decisions referred to in footnote 21: ICC-01/04-01/07-249, para.18; ICC-01/04-01/10-167, para.29; ICC-02/05-03/09-58, para.7.

²¹ ICC-01/04-01/07-888-tENG, para.34; ICC-01/04-01/07-1240-tENG, para.37; ICC-01/04-01/07-1096-tENG, para.39; ICC-01/04-01/07-1100, para.34

²² ICC-01/04-02/06-393-Conf-Red, para.14.

²³ ICC-01/04-02/06-393-Conf-Red, para.24.

²⁴ ICC-01/04-01/06-2597, para.74.

46. Thus, the Defence requests the Chamber to reject category B related to identifying information of family members of witnesses on an ongoing basis.

47. As a possible alternative, the Defence underscores the approach of the Kenya protocol: where the family members' identifying information was redacted to protect an anonymous witness, the redactions shall be lifted when the identity of the witness is disclosed.²⁵ Where the identifying information was redacted on the basis of the family member's own security, they shall be lifted 60 days prior to trial. Moreover, the Defence respectfully suggests that automatic redactions be limited to family members who do not have information on the crimes.

B. Categorie 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)

48. The Defence opposes the redaction of identifying information of "other persons at risk as a result of the activities of the Court and their family members" on an ongoing basis. This category was not in the Kenya Protocol and the Prosecution has not given any reasons to depart from that case.

49. In paragraphs 28 and 29 of its submissions, the Prosecution refers to a Decision of the Single Judge in the pre-trial phase of this case.²⁶ This decision was rendered following a specific application from the Prosecution for redactions. In particular, the Single Judge took into account several factors including the fact that disclosure to the Defence would expose such persons to an objectively identifiable risk,²⁷ that the persons concerned may be perceived to collaborate with the Court and that they may not know that they are mentioned in witness statements and documents.²⁸ Thus, using it to support an automatic right to redaction is without merit. In fact, this decision actually supports the practice

²⁵ ICC-01/09-02/11-495-AnxA-Corr, para.55-56.

²⁶ ICC-01/04-02/06-117-Red3.

²⁷ ICC-01/04-02/06-117-Red3, para.51.

²⁸ ICC-01/04-02/06-117-Red3, para.52.

suggested by the Defence, which is to apply for every redaction sought to third persons identifying and contact information.

50. The Defence opposes the allegation that individuals falling into this category are not involved in the Court's activity and that in most cases, they are not relevant to the case.²⁹ There are numerous instances where this information can be relevant for Defence investigation and material to the preparation of the case for the Defence, in particular concerning the credibility of witnesses mentioning these persons. Other Chambers have already rejected some requests for redactions of identities of other persons at risk as a result of the activities of the Court and their family members since they were considered to be relevant for the Defence.³⁰ The relevance of the information is only one of several factors to be taken into account by the Chamber.³¹ In any case, it is not for the Prosecution to assess whether specific information is relevant for the Defence or not.
51. In relation to Rule 81(4) redactions and more specifically to innocent third parties redactions, the Appeals Chamber has stated that "the Prosecutor may only redact information from material and evidence that it must disclose to the Defence after obtaining authorization from the competent Chamber to do so".³² Moreover, the Chamber "must take into account the individual facts and circumstances of each specific request for any individual redaction before it."³³
52. Thus, the Defence requests the Chamber to reject category C of identifying information of other persons at risk as a result of the activities of the Court and their family members on an ongoing basis.
53. As a possible alternative, the Defence underscores the Kenya Protocol approach: redaction to identifying information of other persons at risk as a result of the

²⁹ ICC-01/04-02/06-393-Conf-Red.

³⁰ ICC-01/04-01/06-2597, para.80.

³¹ ICC-01/04-01/07-475 OA, para.71-13.

³² ICC-01/04-01/07-475 OA, para.60.

³³ ICC-01/04-01/07-475 OA, para.69.

activities of the Court should be lifted 60 days prior to the commencement of trial.³⁴

C. Categorie D.6: Identifying and contact information of investigators

54. The Defence opposes the redaction of identifying and contact information of investigators on an on-going basis. This standard category for redaction was not in the Kenya Protocol and the Prosecution has not given any reasons to depart from that case.
55. In its submissions, the Prosecution refers to a Decision in the *Ruto and Sang* case which is confidential for the Defence in this present case.³⁵ Nevertheless, as this category is not a standard redaction category in the *Ruto and Sang* protocol, the Defence assumes that this decision must have been rendered after a specific request for redaction. Thus, using it to support a mechanism authorizing the Prosecution to redact information without any input from the Trial Chamber is not relevant as well as unconvincing.
56. In the *Gbagbo* Decision referred to in paragraph 63 of the Prosecution's submissions, the Single Judge specifically stated that "to authorize redactions by type and on a prospective basis, rather than individually and upon review, would be inconsistent with the duty of the Chamber to review redaction proposals on a case-by-case basis as prescribed by the Appeals Chamber."³⁶ In this case, the Single Judge authorized the Prosecution to disclose to the Defence the evidence with redactions and to present to the Chamber, preferably simultaneously, proper reasoning for each individual redaction, in order for the Chamber to review the redactions.³⁷ Significantly, this decision supports the practice suggested by the Defence, which is to apply for every redaction sought for investigators identifying and contact information.

³⁴ ICC-01/09-02/11-495-AnxA-Corr, para.58.

³⁵ See ICC-01/04-02/06-393-Conf-Red, footnotes 50-52.

³⁶ ICC-02/11-01/11-106, para.16.

³⁷ ICC-02/11-01/11-106, para.17.

57. The Defence submits that the identity and contact information of investigators is highly relevant for its investigations, in particular when it comes to evaluate the credibility of a witness or the specific circumstances of his or her interview. In the *Kenyatta* case, the Chamber specifically found that given the potential relevance of the identities of OTP investigators, and in view of the fact that investigators are not permanently based in the field, redactions to the names of OTP investigators must be applied for by the Prosecution and implemented after a decision of the Chamber.³⁸
58. Moreover, the identity of the investigators present during questioning of a witness is information covered by Rule 111 on record of questioning. As pointed out by Judge Pikis in his dissenting opinion to the Appeals Chamber's Decision in the *Katanga* case pre-cited, "deletion of particulars from a witness statement referable to the manner it was taken and the circumstances surrounding its taking, is impermissible by virtue of the provisions of Rule 111".³⁹ Judge Pikis stated that "the obligation to keep a record of the circumstances surrounding the making of a written statement in the course of the investigations is not a mere formality but an essential element of the statement itself."⁴⁰ Moreover, in relation to this type of information, the Appeals Chamber stated that "it will have to be determined on a case-by-case basis whether the non-disclosure of information is required to be recorded pursuant to Rule 111(1) may be authorized by a Chamber."⁴¹
59. Thus, the Defence requests the Chamber to reject category D.6 related to the redaction of identifying and contact information of investigators on an ongoing basis.

³⁸ ICC-01/09-02/11-495, para.23.

³⁹ ICC-01/04-01/07-475, Dissenting opinion of Judge Pikis, para.20.

⁴⁰ ICC-01/04-01/07-475, Dissenting opinion of Judge Pikis, para.23.

⁴¹ ICC-01/04-01/07-475 OA, para.93.

D. Categories D.2: Identifying and contact information of parties' staff (specifically, translators, interpreters, stenographers and psycho-social experts), VWU and other Court staff members (including VWU partners), who travel frequently to, or are based in, the field and D.3: Identifying and contact information of translators, interpreters, stenographers and psycho-social experts assisting during interviews who are not OTP staff members but who travel frequently to, or are based in, the field

60. The Defence opposes the ongoing redaction by the Prosecution of information contained in categories D.2 and D.3 of the Proposed Protocol without seeking prior authorization from the Chamber.

61. In its submissions, the Prosecution refers to a Pre-Trial Chamber's Decision in this case⁴² as well as to Trial Chamber III's Decision in the *Bemba* case.⁴³ Importantly, those Decisions were made on case-by-case applications from the Prosecution for redactions. In particular, the Chambers took into account the fact that there was an objectively identifiable risk to the investigations of the Prosecution and that redactions were adequate to minimize the risks. In the *Bemba* case, Trial Chamber III took into account the fact that the information sought to be redacted was irrelevant and that it did not render the document unintelligible.⁴⁴ Thus, using them to support the implementation of a mechanism authorizing the Prosecution to redact information without seeking prior authorization from the Chamber is neither relevant nor useful. More importantly, these Decisions support the practice suggested by the Defence, which is to apply for every redaction sought to investigators information covered by categories D.2 and D.3.

62. The Defence opposes the assumption that information falling in these two categories is usually irrelevant. Similarly to investigator's names, such information can be highly relevant in order to investigate a witness's credibility as well as to understand the specific circumstances of his or her interview. Other

⁴² ICC-01/04-02/06-117-Red3.

⁴³ ICC-01/05-01/08-813-Red, para.71.

⁴⁴ ICC-01/05-01/08-813-Red, para.71.

Chambers have decided against the redaction of VWU staff and that disclosure of the statements without the names and functions of the employees is prejudicial to the Defence.⁴⁵ In any case, it is not for the Prosecution to assess whether a specific information is relevant or not for the Defence.

63. Moreover, such information might also be covered by Rule 111 related to recording of questioning.⁴⁶ In paragraph 42 of its submissions, the Prosecution refers to the Appeals Chamber in the *Katanga and Ngudjolo* case cited above. Even though the Defence recognize that information covered by Rule 111 can be withheld from the Defence, this can only happen in appropriate circumstances,⁴⁷ namely a determination by the Chamber on a case-by-case basis.⁴⁸

64. Thus, the Defence requests the Chamber to reject the adoption of standard redactions categories D.2 and D.3 in the Proposed Protocol.

E. Categorie D.4: Identifying and contact information of intermediaries

65. The Defence opposes the redaction of identifying and contact information of intermediaries on an ongoing basis.

66. In its submissions, the Prosecution refers to [REDACTED].⁴⁹ The Defence submits that this reference is irrelevant and of no assistance [REDACTED].

67. Further in its submission, the Prosecution refers to two decisions of Trial Chamber I in the *Lubanga* case.⁵⁰ Again, these Decisions were rendered in the specific context of applications for redaction in relation to specific

⁴⁵ ICC-01/04-01/06-2597-Red, para.57 referring to ICC-01/04-01/06-T-261-CONF-ENG CT, page 3, line 15 to page 4, line 21.

⁴⁶ See *supra* para.58.

⁴⁷ ICC-01/04-01/07-475-OA, para.91.

⁴⁸ ICC-01/04-01/07-475 OA, para.93.

⁴⁹ ICC-01/04-02/09-383-Conf-Anx-Red.

⁵⁰ See footnote 44.

intermediaries. Thus, using them to support the self-redaction mechanism sought by the Prosecution is not helpful.

68. In the *Lubanga* case, Trial Chamber I ordered disclosure of the identity of several Prosecution intermediaries' identities as the role of intermediaries became an issue of major importance in that case.⁵¹ Trial Chamber I ruled that "there was extensive opportunity for the intermediaries, if they wished, to influence the witnesses as regards the statements they provided to the Prosecution [...] In the circumstances, it would be unfair to deny the Defence the opportunity to research this possibility with all of the intermediaries used by the prosecution for the relevant witnesses in this trial, where the evidence justifies that course."⁵²

69. The Defence submits that the question of intermediaries is a highly sensitive one, especially in view of the *Lubanga* case.⁵³ Importantly, many witnesses are similar in the *Ntaganda* case. Contrary to the Prosecution assumption⁵⁴ the identities and contact information of intermediaries can be highly relevant in order to evaluate the credibility of a witness and any interference he could have encountered. In any case, it is not for the Prosecution to assess whether specific information is relevant for the Defence or not.

70. Thus, the Defence submits that the Chamber should closely monitor the redaction of any intermediary's identifying and contact information. Consequently, the Defence opposes its adoption as a standard justification category of redaction.

F. Category D.5: identifying and contact information of leads and sources

71. The Defence opposes the redaction of identifying and contact information of leads and sources on an ongoing basis.

⁵¹ ICC-01/04-01/06-2434-Red2.

⁵² ICC-01/04-01/06-2434-Red2, para.138; ICC-01/04-01/06-2597-Red, para.46.

⁵³ See the conclusions of Trial Chamber I in the *Lubanga* Judgement about intermediaries 143, 316 and 321: ICC-01/04-01/06-2842, para.291, 372-374, 448-450 and 483.

⁵⁴ ICC-01/04-02/06-393-Conf-Red, para.51.

72. Further in its submission, the Prosecution refers to several Decisions of the Single Judge during Pre-Trial phase of the proceedings as well as to two Decisions of Trial Chamber I in the *Lubanga* case.⁵⁵ Again, those Decisions were rendered in the specific context of applications for redaction in relation to specific leads and sources. Thus, these Decisions do not support the adoption of the mechanism sought by the Prosecution.
73. The Defence opposes the assumption that leads and sources are irrelevant to the Defence. They can be highly relevant in order to investigate on a specific document's authenticity and/or on an information's credibility. In any case, it is not for the Prosecution to assess whether specific information is relevant for the Defence or not.
74. Thus, the Defence requests the Chamber to reject the standard redaction category D.5 and to reject the automatic redaction of such information on an on-going basis.

CONFIDENTIALITY

Pursuant to regulation 23 bis (2), this Response is classified as Confidential *ex parte* – Defence, Prosecution and VWU only. The Defence will file a public redacted version following the submission of this document.

⁵⁵ See footnote 48 and 49.

RELIEF SOUGHT

75. In light of the above submissions, Mr Ntaganda respectfully requests the Chamber to:

DENY the adoption of categories B, C and D.2 to D.6 of the Proposed Protocol;

ADOPT the remaining parts of the Protocol;

RESPECTFULLY SUBMITTED ON THIS 21st DAY OF NOVEMBER 2014

A handwritten signature in dark ink, appearing to read 'S.B.' with a stylized flourish at the end.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

Montréal, Canada