

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/04-02/06

Date: 16 March 2015

**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  
With Confidential Annex A**

**Prosecution's Provision of the Current Status of Disclosure**

**Source:** Office of the Prosecutor

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

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**REGISTRY**

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**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Other  
Section**

## Introduction

1. The Office of the Prosecutor (“Prosecution”) provides an explanation as to the current status of disclosure, as instructed by Trial Chamber VI (“Chamber”).<sup>1</sup>

## Procedural History

2. On 9 October 2014, the Chamber ordered the Prosecution to file any requests for delayed disclosure as well as any requests for “non-standard” redactions by 16 February 2015.<sup>2</sup>
3. On 11 December 2015, the Chamber issued a decision adopting a “Protocol establishing a redaction regime in the case of *The Prosecutor v. Bosco Ntaganda*”, in which it ordered that when a Party seeks to apply “non-standard” redactions to disclosable materials, “the relevant material shall be disclosed in redacted form and each redaction that does not fall under the standard categories shall be marked with letter code 'E'”.<sup>3</sup>
4. On 16 February 2015, the Prosecution filed a request for non-standard redactions in respect of materials related to nine individuals whom the Prosecution does not intend to call as witnesses at trial, including Witnesses P-0871, P-0876 and P-0882. The Prosecution also requested the authorisation not to disclose the statements of three other witnesses whom the Prosecution does not intend to call at trial, namely Witnesses P-0013, P-0044 and P-0816, and to disclose anonymous summaries of their materials instead.<sup>4</sup>
5. On the same day, the Prosecution filed a request for the delayed disclosure of the identity of, *inter alia*, trial Witnesses P-0888, P-0901 and P-0911.

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<sup>1</sup> ICC-01/04-02/06-506.

<sup>2</sup> ICC-01/04-02/06-382, para.9(b).

<sup>3</sup> ICC-01/04-02/06-411-AnxA, para.49.

<sup>4</sup> ICC-01/04-02/06-462-Conf-Red.

6. On 25 February 2015, the Prosecution filed a request for authorisation to provide a summary of Witness P-0901's interview in lieu of redacted versions of the interview transcripts, given that redactions alone would have been insufficient to protect the identity of the witness.<sup>5</sup>
7. On 2 March 2015, the Prosecution filed its proposed redactions to the interview transcripts of Witness P-0882.<sup>6</sup>
8. On the same day, the Prosecution filed a request for authorisation not to disclose the statement of one additional witness, P-0040, whom the Prosecution will not call at trial, and to disclose an anonymous summary instead.<sup>7</sup>
9. On 4 March 2015, the Prosecution filed its proposed summary of the statement of Witness P-0040.<sup>8</sup>
10. On 10 March 2015, the Defence filed its "Consolidated response on behalf of Mr Ntaganda to Prosecution Application and Prosecution Request and seven additional related submissions".<sup>9</sup>
11. On 12 March 2015, the Chamber issued its "Order on the disclosure of material related to Witnesses P-0871, P-0876, P-0882, P-0013, P-0816 and P-0901",<sup>10</sup> wherein it ordered the Prosecution to immediately disclose to the Defence "the redacted statements of Witnesses P-0871, P-0876, the redacted transcriptions of Witness P-0882's interview, and the redacted disclosable material related to Witnesses P-0901, P-0013 and P-0816".<sup>11</sup>

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<sup>5</sup> ICC-01/04-02/06-473-Conf-Red.

<sup>6</sup> ICC-01/04-02/06-486.

<sup>7</sup> ICC-01/04-02/06-492-Red.

<sup>8</sup> ICC-01/04-02/06-497.

<sup>9</sup> ICC-01/04-02/06-502-Conf.

<sup>10</sup> ICC-01/04-02/06-506.

<sup>11</sup> ICC-01/04-02/06-506, paras.12 and 14.

## **Confidentiality**

12. Annex A is filed confidentially as it contains identifying information about Prosecution witnesses.

## **Prosecution's Submissions**

13. The Prosecution acknowledges that, due to an oversight, the materials from non-trial Witnesses P-0871, P-0876, P-0882, P-0013 and P-0816 with proposed redactions and/or proposed summaries were not provided to the Defence at the same time as the Prosecution filed its requests. The Prosecution notes that this oversight is limited to the statements of individuals whom the Prosecution will not be calling as witnesses at trial.
14. On Friday morning, 13 March 2015, the Prosecution provided the Defence with copies of the redacted statements or interview transcripts of non-trial Witnesses P-0871, P-0876 and P-0882 as well as copies of the proposed summaries of the statements of non-trial Witnesses P-0013 and P-0816. The Prosecution also provided the Defence with advance copies of the proposed summaries of the statements of non-trial Witnesses, P-0040<sup>12</sup> and P-0044,<sup>13</sup> who were not specifically mentioned in the Chamber's order. The Prosecution will proceed to the formal disclosure of these materials on Tuesday afternoon, 17 March 2015.
15. In respect of trial Witness P-0901, a witness for whom the Prosecution is seeking delayed disclosure, the Prosecution provided the Defence with a summary of the non-identifying portions of his interview on 2 March 2015. In addition to this summary, on Friday, 13 March 2015, the Prosecution provided the Defence with

<sup>12</sup> The Prosecution filed a request to disclose a summary of Witness P-0040's statement on 2 March 2015 (ICC-01/04-02/06-492-Red) and filed the proposed summary on 4 March 2015 (ICC-01/04-02/06-497).

<sup>13</sup> The Prosecution notes that the Defence was already in possession of an earlier version of the summary of the statement of Witness P-0044, which was prepared in the *Lubanga* case (DRC-OTP-0164-0281 and DRC-OTP-0216-0634). The Prosecution prepared an updated summary to reflect all information of potential relevance to the present case (DRC-OTP-2079-0419) and provided an advance copy to the Defence.

the summary of expected testimony of this witness with limited redactions applied to identifying information.

16. There are three other witnesses for whom the Prosecution has sought delayed disclosure: P-0806, P-0888 and P-0911. The Prosecution disclosed the redacted statement of Witness P-0806 to the Defence on 16 December 2013 and the summary of the witness's expected testimony was disclosed to the Defence on 2 March 2015 without redactions. As for P-0888 and P-0911, the Prosecution disclosed the redacted statement of Witness P-0888 as well as two summary notes of the interview of Witness P-0911 on 2 March 2015, with proposed redactions to identifying information.

17. For the sake of completeness, on 13 March 2015, the Prosecution provided the Defence with redacted versions of the summaries of expected testimony for P-0888 and P-0911. These three summaries of anticipated evidence are appended in Confidential Annex A.



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Fatou Bensouda, Prosecutor

Dated this 16<sup>th</sup> day of March 2015  
At The Hague, The Netherlands