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No.: ICC-01/04-02/06
Date: 9 September 2015

TRIAL CHAMBER VI

Before: Judge Robert Fremr, Presiding Judge
Judge Kuniko Ozaki
Judge Chang-ho Chung

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public

**With Confidential, *EX PARTE*, Annex A – only available to the Prosecution
and Confidential Redacted Annex A**

**Prosecution Submission of Additional Evidence concerning Witness P-22
in support of “Prosecution’s application under rule 68(2)(c) to admit the statements
and related documents of deceased witnesses P-22, P-41 and P-103”**

ICC-01/04-02/06-659

Source: The Office of the Prosecutor

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

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Introduction

1. The Prosecution sought to admit the witness statement and related material of Witness P-22, who is deceased.¹ In its response, the Defence suggested that Witness P-22 may be alive.² The Defence also requested a lesser redacted version of the official report on Witness P-22's death.³ The Prosecution conducted additional inquiries and confirmed the death of Witness P-22. On 4 September 2015, further to the Defence's request, the Prosecution disclosed an unredacted version of the official report of Witness P-22's death.
2. The Prosecution attaches the recent statement of the *Chef de localité* confirming P-22's suicide⁴ and requests that Trial Chamber VI accept the recent statement in deciding whether to admit P-22's statement and material under rule 68(2)(c) of the Rules of Procedure and Evidence.⁵

Confidentiality

3. Annex A to this filing is classified as "Confidential, *EX PARTE*, only available to the Prosecution" pursuant to regulation 23*bis*(1) of the Regulations of the Court as it provides information revealing the identity of family members of witnesses and interpreter. A redacted version of Annex A, which is classified as "Confidential" as it contains redactions to information that identifies witnesses, family members of witnesses and third parties, is simultaneously filed.

¹ ICC-01/04-02/06-659.

² ICC-01/04-02/06-736, esp. paras.11-14.

³ « *Rapport circonstancié sur le suicide de ... (omitted)* »: DRC-OTP-0152-0111, DRC-OTP-2078-2526.

⁴ Confidential, *ex parte* Annex A to this filing. The Confidential Redacted version is attached as AnxA-Red.

⁵ ICC-01/04-02/06-659, ICC-01/04-02/06-796-Conf.

Procedural history

4. On 19 June 2015, the Prosecution submitted an application under rule 68(2)(c) to admit statements and related documents of deceased witnesses. This application includes Witness P-22's material.⁶
5. On 20 July 2015, the Defence responded and opposed the application in its entirety. The Defence stated that it "came across information that Witness P-22 would not be deceased",⁷ specified it could not yet verify the information, and questioned the authenticity of the report confirming her death.⁸
6. On 28 July 2015, the Prosecution sought leave to reply to the Defence's response.⁹ On 20 August 2015, the Chamber partially granted the Prosecution's request to reply.¹⁰ The Prosecution filed its reply on 27 August 2015.¹¹

Prosecution's Submissions

7. The Prosecution applied to have P-22's statement and related documents admitted under rule 68(2)(c), on the ground that she is deceased.¹² It submitted a report drafted by the *Chef de localité* – the Chief of the locality where the witness and her family resided - detailing the circumstances of her death.¹³ In its response, the Defence claimed to have unconfirmed information that P-22 is alive,¹⁴ and requested an unredacted report to further investigate the matter.

⁶ ICC-01/04-02/06-659.

⁷ ICC-01/04-02/06-736, esp. paras.11-14.

⁸ « *Rapport circonstancié sur le suicide de ...* (omitted) »: DRC-OTP-0152-0111, DRC-OTP-2078-2526.

⁹ ICC-01/04-02/06-751-Conf-Exp.

¹⁰ Email from Trial Chamber VI Communications, sent on 20 August 2015 at 13:43.

¹¹ ICC-01/04-02/06-796-Conf.

¹² ICC-01/04-02/06-659, ICC-01/04-02/06-796-Conf.

¹³ ICC-01/04-02/06-659.

¹⁴ ICC-01/04-02/06-736, paras.11-14.

8. The Prosecution sought to verify the current location of Witness P-22's remaining family members, to assess the feasibility of lifting the redactions applied on the report.¹⁵ Further to this inquiry, the Prosecution disclosed an unredacted version of the report on 4 September 2015.
9. Investigators have collected a statement from the *Chef de localité* who confirmed the details of P-22's death.
10. The Prosecution requests that the Chamber accept and consider this statement in deciding the Prosecution's pending request to admit P-22's witness statement and related material. The statement is necessary to the determination of the truth by further confirming Witness P-22's death and the authenticity of the report, which are disputed issues in the litigation on the Prosecution application under rule 68(2)(c).

Conclusion

11. The Prosecution submits the additional annexed statement, and requests that the Chamber consider it when deciding the admissibility of P-22's statement and related documents submitted under rule 68(2)(c).



Fatou Bensouda
Prosecutor

Dated this 9th day of September 2015
At The Hague, The Netherlands

¹⁵ Protocol establishing a redaction regime in the case of *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06-411-AnxA, page 5, paras.20-23: Category B (Contact information of family members of witnesses).