



Original: **English**

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

Date: **26 May 2016**

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 Annexes A to D**

Public redacted version of “Expedited request on behalf of Mr Ntaganda seeking the lifting of standard redactions applied to material related to Witness P-0815 and findings of disclosure violations”, 18 March 2016, ICC-01/04-02/06-1221-Conf

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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**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
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Further to: (i) electronic correspondence exchanged with the Office of the Prosecutor (“Prosecution”) on 8 March 2016; and (ii) the disclosure of material related to Witness P-0815 by the Prosecution to Counsel representing Mr Ntaganda (“Defence”) on 11 March 2016, the Defence hereby submits this:

Expedited request on behalf of Mr Ntaganda seeking the lifting of standard redactions applied to material related to Witness P-0815 and findings of disclosure violations

“Defence Expedited Request”

INTRODUCTION

1. On 8 March 2016, the Defence requested the Prosecution to lift standard redactions¹ applied to Witness P-0815’s statement (“Statement”)² as well as to an information report concerning leads provided by Witness P-0815 (“Information Report”).³
2. On 8 March 2016, the Prosecution responded to the Defence.⁴ Concerning the Statement, it agreed to lift redactions applied to the name of one investigator and to P-0815’s place of birth. Concerning the Information Report, the Prosecution agreed to lift redactions applied to the occupation of P-0815’s daughter. According to the Prosecution, all remaining redactions are necessary.
3. On 11 March 2016, the Prosecution disclosed lesser redacted versions of these two documents. Additionally, the Prosecution disclosed 13 investigation notes and three other documents related to Witness P-0815.⁵

¹ See Email from Stéphane Bourgon to Nicole Samson, 8 March 2016 enclosed in Annex A.

² DRC-OTP-2062-2260.

³ DRC-OTP-2078-2682.

⁴ See Email from Nicole Samson to Stéphane Bourgon, 8 March 2016 enclosed in Annexes B and C.

⁵ See Email from the Hendrik Van Der Werf to Stéphane Bourgon, 11 March 2016 enclosed in Annex D.

4. Firstly, for the reasons expressed below, the Defence respectfully requests Trial Chamber VI ("Chamber") to order the Prosecution to lift forthwith certain redactions applied to the Statement, to the Information Report, to three investigation notes⁶ and to one document entitled "[REDACTED]".⁷
5. Secondly, for the reasons expressed below, the Defence respectfully requests the Chamber to find that the Prosecution has breached its disclosure obligations.

SUBMISSIONS

I. Lifting of redactions

A. **Lifting of redactions applied to the Statement**

6. The Defence respectfully requests that the category B redaction applied at page 1 of the Statement to the number of children he has, be lifted.
7. According to the Redaction Protocol,⁸ Category B redactions concern *"Identifying information of family members, including photographs, as well as contact information including phone numbers, specific addresses and email addresses"*.
8. The number of children of a witness does not fall into this category.
9. Moreover, this type of information does not fall into any of the eleven standard redactions categories identified in the Redaction Protocol. Accordingly, should the Prosecution wish to maintain this redaction, it must submit an application to the Chamber in accordance with paragraphs 48-50 of the Redaction Protocol.

⁶ DRC-OTP-2067-1758, DRC-OTP-2067-1763, DRC-OTP-2067-2379.

⁷ DRC-OTP-2080-0393.

⁸ "Protocol establishing a redaction regime in the case of *The Prosecutor v. Bosco Ntaganda*", ICC-01/04-02/06-411-AnxA ("Redaction Protocol").

10. This information is material to the Defence, as it would allow to conduct investigations related the witness, more particularly with respect to his family. This is even more so the case since Witness P-0815 claims that [REDACTED].⁹

B. Lifting of redactions applied to the Information Report

11. The Defence respectfully requests that all category B and Rule 81(1) redactions applied at page 1 and 2 of the Information Report be lifted.
12. According to the Redaction Protocol, redactions to identifying information of family members of witnesses shall be ongoing only when the redactions were applied on the basis of their own security and when the family members concerned are of no relevance to any known issue in the case. For any family member falling outside these two scenarios, the application-based procedure laid out at paragraphs 48-50 must be followed.¹⁰
13. The Defence submits that the Prosecution has not demonstrated the existence of security threats to the family members of Witnesses P-0886¹¹ and P-0815. Moreover, the Defence contends that the information sought is relevant to issues in the present case, namely the credibility of Witnesses P-0886 and P-0815.
14. Firstly, the identity of the wife and son of Witness P-0886 are redacted. The Defence submits that this information is material to its preparation to further evaluate the credibility of Witness P-0886.
15. Secondly, the identity of the wife of Witness P-0815 is redacted. This information is material to its preparation for the cross-examination of Witness

⁹ Statement, para.18-24

¹⁰ Redaction Protocol, para.23.

¹¹ In an email dated 8 March 2016, the Prosecution confirmed [REDACTED].

P-0815. P-0815 refers to his wife on multiple occasions in his statement¹² as she allegedly [REDACTED] and told P-0815 about it.

16. The Defence respectfully requests that the Rule 81(1) redaction applied at page 1 of the Information Report be lifted.
 17. There is no justification as to the reasons why internal work product is included in an information report. The Defence respectfully submits that this information is material to its preparation to evaluate the credibility of Witnesses P-0886 and/or Witness P-0815.
- C. Lifting of redactions applied to Investigator note DRC-OTP-2067-2379 and document DRC-OTP-2080-0393**
18. The Defence posits that Category B redactions applied to these documents be lifted.
 19. According to the Redaction Protocol, redactions to identifying information of family members of witnesses shall be ongoing only when the redactions were applied on the basis of their own security and when the family members concerned are of no relevance to any known issue in the case. For any family member falling outside these two scenarios, the application-based procedure laid out at paragraphs 48-50 must be followed.¹³
 20. Redactions applied to investigator note DRC-OTP-2067-2379 appear to concern the identifying information of P-0815's wife and aunt.
 21. As indicated above, the identity of P-0815's wife is paramount for the Defence's preparation to cross-examine P-0815.¹⁴ Moreover, his aunt is also [REDACTED], who was presumably [REDACTED] by the Prosecution. Accordingly, her identity is required to enable the Defence to conduct

¹² See Statement, para.19-24.

¹³ Redaction Protocol, para.23.

¹⁴ See above para.15.

investigations in relation to P-0815's credibility (in particular, concerning the death of [REDACTED]) as well as in respect of the [REDACTED].

22. For the same reasons, the identity of [REDACTED], redacted at page 2 of document DRC-OTP-2080-0393, is also relevant for the case for the Defence.

D. Lifting of redactions applied to Investigator notes DRC-OTP-2067-1758 and DRC-OTP-2067-1763

23. The Defence respectfully requests that all category C redactions applied to these investigator notes be lifted.

24. According to the Redactions Protocol, category C redaction concern *"Identifying and contact information of 'other persons at risk as a result of the activities of the Court' (also known as innocent third parties)"*. Such redactions shall be ongoing for contact information and for identifying information of individuals who are of no relevance to any known issue in the case. For any individual falling outside these two scenarios, the application-based procedure laid out at paragraphs 48-50 shall be followed.¹⁵

25. Redactions applied to investigator note DRC-OTP-2067-1758 appear to be relevant, as they concern family members of Colonel Lusala. While Mr Ntaganda is not charged with the murder of Colonel Lusala in the Updated Document containing the charges, the Chamber decided that it could hear evidence related to the death of Colonel Lusala as it bears some relevance to the charges.¹⁶ Accordingly, the Defence will have to conduct investigations on Colonel Lusala's death. It follows that identifying information of family members of Colonel Lusala is relevant and paramount for the investigations of the Defence.

26. As for redactions applied to investigator note DRC-OTP-2067-1763, they are extensive and seem to go beyond the mere contact information of

¹⁵ Redaction Protocol, para.27.

¹⁶ Oral ruling of the Chamber, ICC-01/04-02/06-T-37-CONF-ENF, p.44, l.3-14.

[REDACTED]. From the information available in this investigator note, [REDACTED].¹⁷ The Defence must conduct investigations on the [REDACTED], more particularly in respect of every individual presumably [REDACTED]. It follows that identifying information of family members of [REDACTED] is relevant and paramount for the investigations of the Defence.

27. Considering that Witness P-0815 is expected to testify very soon, it is of the utmost importance that all relevant information in the possession of the Prosecution related to Witness P-0815, in whatever form, be disclosed forthwith.

II. Findings of disclosure violations

28. On 11 March 2016, the Prosecution disclosed 17 new documents related to Witness P-0815. All of these documents relate to P-0815 cooperation with the Prosecution when organising and conducting [REDACTED].
29. These documents include: (i) nine investigator notes; (ii) four “[REDACTED]” (“[REDACTED]”); (iii) three “[REDACTED]”; and (iv) one note entitled “[REDACTED]”.
30. Six of the nine investigator notes date back to 2013¹⁸ and 2014.¹⁹ The three remaining notes are dated [REDACTED] but refer to expenses paid to witness P-0815 in [REDACTED],²⁰ [REDACTED] and [REDACTED] 2013,²¹ [REDACTED] 2014,²² and [REDACTED] 2015.²³

¹⁷ See also DRC-OTP-2067-2379.

¹⁸ DRC-OTP-2070-0175 dated [REDACTED].

¹⁹ DRC-OTP-2067-1758, DRC-OTP-2067-1761, DRC-OTP-2067-1763 dated [REDACTED]; DRC-OTP-2067-2379 dated [REDACTED]; DRC-OTP-2067-2377 date [REDACTED].

²⁰ DRC-OTP-2091-0174.

²¹ DRC-OTP-2091-0179.

²² DRC-OTP-2091-0179.

²³ DRC-OTP-2091-0177.

31. Three of the four [REDACTED] were filled in on [REDACTED]²⁴ while the remaining one was filled in on [REDACTED].²⁵
32. The three documents entitled “[REDACTED]” were filled in following an interview between the Prosecution and three individuals including Witness P-0815 on [REDACTED].²⁶
33. Finally, the note entitled “[REDACTED]” was prepared by the Prosecution on [REDACTED] 2015.
34. This late disclosure of these documents is prejudicial to the Accused as they provide information for the first time related to the involvement of Witness P-0815 in the [REDACTED], three weeks before his testimony. Moreover, the investigator notes provide pseudonyms for no less than ten individuals who were involved in the [REDACTED] and whose identity has not been disclosed to the Defence.²⁷ The documents also provide information on the circumstances of Colonel Lusala’s death.²⁸
35. Not only is this information paramount to assess the credibility of Witness P-0815, it is also essential to understand and conduct investigations on the circumstances surrounding the [REDACTED] and the death of Colonel Lusala.
36. In its *“Order Scheduling a Status Conference and Setting the Commencement Date for the Trial”*, the Chamber set deadlines for completion of all disclosure by the Prosecution to 31 January and 2 March 2015, save where delayed disclosure has been specifically requested and authorised.²⁹

²⁴ DRC-OTP-2070-0041 ; DRC-OTP-2070-0045 ; DRC-OTP-2070-0052.

²⁵ DRC-OTP-2070-0048.

²⁶ DRC-OTP-2080-0393 ; DRC-OTP-2080-0385; DRC-OTP-2080-0401.

²⁷ Namely P-0786, P-0795 ([REDACTED]), P-0796 ([REDACTED]), P-0837, P-0838, P-0839 ([REDACTED]), P-0842, P-0843, P-0852 ([REDACTED]) and P-0853 ([REDACTED]).

²⁸ DRC-OTP-2070-0175, para.11.

²⁹ ICC-01/04-02/06-382, para.9(d).

37. The Defence contends that when disclosing these notes less than one month before the beginning of P-0815's testimony, the Prosecution has violated its disclosure obligations.
38. Accordingly, while additional time to prepare for the cross-examination of witness P-0815 is not requested at this juncture, the Defence submits that it might very well be necessary to recall witnesses who testified on events occurring during the attack in Sayo, the death of Colonel Lusala and the [REDACTED], namely witnesses P-0886, P-0800 and P-0017, at a later time. Accordingly, the Defence reserves its right to recall these witnesses for further cross-examination, as the appropriate remedy for the Prosecution's violations of its disclosure obligations.

CONFIDENTIALITY

39. Pursuant to Regulation 23*bis* (1) of the Regulations of the Court, this Defence Expedited Request is classified as confidential, as it refers to confidential material related to Prosecution witnesses.

RELIEF SOUGHT

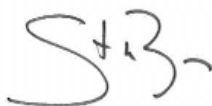
40. In light of the above submissions, the Defence respectfully requests the Chamber to:

ORDER the Prosecution to lift redactions applied to documents DRC-OTP-2062-2260 at page 1 (category B), DRC-OTP-2078-2682 (category B and Rule 81(1)), DRC-OTP- 2067-1758 (category C), DRC-OTP-2067-1763 (category C), DRC-OTP-2067-2379 at page 1 (category B) and DRC-OTP-2080-0393 at page 2 (category B) forthwith;

FIND that the Prosecution has breached its disclosure obligations; and

AUTHORISE the Defence to recall witnesses P-0886, P-0800 and P-0017 at a later time, if necessary.

RESPECTFULLY SUBMITTED ON THIS 26TH DAY OF MAY 2016

A handwritten signature in black ink, appearing to read 'StB' with a flourish at the end.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands