



Original: **English**

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

Date: **4 July 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, *EX PARTE* Annexes A and E – only available to the Prosecution and Victims and Witnesses Unit and Confidential Annexes B to D

Public redacted version of “Prosecution’s proposed redactions to P-0912’s medical records”, 8 April 2016, ICC-01/04-02/06-1260-Conf-Exp

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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Introduction

1. On 22 March 2016, the Prosecution informally disclosed to the Defence medical records related to Prosecution Witness P-0912 [REDACTED] ("Medical Records") [REDACTED].¹ This will be relevant to P-0912's upcoming testimony. The Prosecution seeks authorisation from Trial Chamber VI ("Chamber") to apply non-standard redactions to parts of the Medical Records that concern an unrelated medical condition, namely a [REDACTED]. The Prosecution submits that this information should not be disclosed to the Defence because it is not relevant or material to its preparations pursuant to rule 77 of the Rules of Procedure and Evidence ("Rules"), and in order to protect the witness' psychological well-being, dignity and privacy, pursuant to article 68(1) of the Rome Statute ("Statute").

Confidentiality

2. This filing and two of its annexes are classified as "Confidential, *ex parte* – only available to the Prosecution and the Victims and Witnesses Unit", pursuant to regulation 23*bis*(1) of the Regulations of the Court, as they contain information of a confidential nature. The Prosecution will file confidential and public redacted versions of this filing.

Background

3. Witness P-0912 consented to undergo physical and psychological examination by a medical expert and/or psychological expert and to provide access to her medical records to the Prosecution.² [REDACTED]. [REDACTED].

¹[REDACTED].

² Confidential Annex B: DRC-OTP-2078-2877; and Confidential Annex C: DRC-OTP-2078-2878

4. Whilst the Prosecution was reviewing P-0912's materials for disclosure purposes it found that [REDACTED] appeared to be in possession of medical records of P-0912 that might be material to the Defence's preparation. Without access to the Medical Records, the Prosecution was not aware at that stage what the treatment was for [REDACTED]. Accordingly, the Prosecution was not able at that point to determine whether there was any disclosure obligation related to the Medical Records.
5. On 8 March 2016, the Prosecution contacted Witness P-0912 to seek consent to access her Medical Records related to the [REDACTED] examination and treatment that she had received from [REDACTED].³ The Prosecution sought access to the specific Medical Records [REDACTED].⁴ The Prosecution considered that if the Medical Records contained information [REDACTED], they would be relevant to her upcoming testimony, and accordingly, should be disclosed.
6. On 14 March 2016, the Prosecution received a redacted version of the Medical Records [REDACTED]. [REDACTED] redacted the name of the medical practitioner and medical facility where the examinations were conducted, [REDACTED].
7. On 22 March 2016, the Prosecution informally disclosed the Medical Records to the Defence after assessing that the medical condition [REDACTED] could have originally arisen since the time of Witness P-0912's [REDACTED], so were accordingly relevant for disclosure purposes. The Prosecution disclosed the Medical Records to the Defence prior to receiving the Chamber's authorisation to apply redactions in order to avoid prejudice to the Defence.

³ Confidential Annex D: DRC-OTP-2091-0181, at 0181-0182, para 3.

⁴ DRC-OTP-2078-2863.

Submissions

8. The Prosecution seeks authorisation to redact information from the Medical Records concerning an unrelated medical condition – namely P-0912's [REDACTED] – on the basis that: (a) the information is not disclosable because it is irrelevant to known issues in the case and is not material to the Defence's preparations pursuant to rule 77 of the Rules; and (b) the information should not be disclosed, in order to protect P-0912's psychological well-being, dignity and privacy, pursuant to article 68(1) of the Statute and under Category E of the Redactions Protocol. The redactions do not prejudice the rights of the Defence or a fair and impartial trial.

9. The source provider, [REDACTED], applied redactions to the names of the medical practitioner and medical facility before providing P-0912's Medical Records to the Prosecution. The Prosecution submits that the redactions applied [REDACTED] are legitimate [REDACTED]. [REDACTED].⁵ In any event, the redacted information is not in the Prosecution's possession and, accordingly, cannot be disclosed by it.

10. The Prosecution sets out proposed "non-standard redactions" to the medical report, in accordance with the Redactions Protocol, at Confidential, *ex parte*, Annex E to this filing.⁶

⁵ [REDACTED].

⁶ The chart contained in this annex identifies: (i) the category of information to which the redactions pertain, (ii) the proposed redactions, and (iii) the justification for the redactions.

Request

11. For all the foregoing reasons, the Prosecution requests that the Chamber authorise the proposed non-standard redactions to P-0912's Medical Records.



Fatou Bensouda
Prosecutor

Dated this 4th day of July 2016
At The Hague, The Netherlands