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

Date: **08 August 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 C**

Public redacted version of “Expedited request on behalf of Mr Ntaganda seeking the lifting of standard redactions applied to material related to non-trial witness P-0899 and disclosure orders”, 27 May 2016, ICC-01/04-02/06-1339-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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Further to: (i) electronic correspondence exchanged with the Office of the Prosecutor (“Prosecution”) on 16 and 19 May 2016; and (ii) the disclosure of material related to Witness P-0899 by the Prosecution to Counsel representing Mr Ntaganda (“Defence”) on 23 May 2016, the Defence hereby submits this:

**Expedited request on behalf of Mr Ntaganda seeking the
lifting of standard redactions applied to material related
to non-trial witness P-0899 and disclosure orders**

“Defence Expedited Request”

INTRODUCTION

1. On 16 May 2016, the Defence requested the Prosecution to lift standard redactions¹ applied to material related to Witness P-0899 and to disclose certain documents falling within the purview of the Prosecution’s disclosure obligations.
2. On 19 May 2016, the Prosecution responded to the Defence request.² The Prosecution indicated that it would lift certain redactions applied to document DRC-OTP-2078-2323. The Prosecution also indicated that it would disclose two additional investigation notes related to Witness P-0899, but rejected the Defence’s request for disclosure of the relevant Basic Security Questionnaire (‘BSQ’).
3. On 23 May 2016, the Prosecution disclosed three investigation notes related to Witness P-0899.³
4. In light of the above and 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 four documents related to

¹ See Email from Stéphane Bourgon to Dianne Luping, 16 May 2016 enclosed in Annex A.

² See Emails from Dianne Luping to Stéphane Bourgon, 16 and 19 May 2016 enclosed in Annexes B and C.

³ DRC-OTP-2078-2349, DRC-OTP-2078-0022 and DRC-OTP-2087-0022.

Witness P-0899, namely documents (i) DRC-OTP-2078-2349; (ii) DRC-OTP-2087-0022; (iii) DRC-OTP-2077-0067; and (iv) DRC-OTP-2078-2323.

5. Secondly, for the reasons expressed below, the Defence respectfully requests the Chamber to order the Prosecution to disclose Witness P-0899's BSQ.

SUBMISSIONS

6. In its *"Prosecution's thirteenth request for in-court protective measures"* ("Request for Protective measures"), the Prosecution refers to [REDACTED], the [REDACTED] of Witness P-0190.⁴ In the Prosecution's submissions, [REDACTED] *could* know about Witness P-0190's cooperation with the Prosecution as [REDACTED]. Moreover, Witness P-0190 claims that [REDACTED] would have been in contact with [REDACTED].
7. [REDACTED] is also mentioned on several occasions in the conversation between Witness P-0190 and [REDACTED] which was [REDACTED] by Witness P-0190.⁵
8. The Defence observes that [REDACTED] is in fact Prosecution non-trial Witness P-0899.⁶
9. According to information found in a Prosecution investigation note, DRC-OTP-2092-0246, Witness P-0190 claims that in [REDACTED], Witness P-0899 told him that [REDACTED].⁷
10. On 23 May 2016, further to its request addressed to the Prosecution for disclosure and the lifting of redactions related to Witness P-0899, the Prosecution disclosed three investigation notes related to Witness P-0899, including a summary of Witness P-0899's BSQ conducted by the Prosecution on [REDACTED].

⁴ ICC-01/04-02/06-1310-Conf-Exp, para.17.

⁵ DRC-OTP-2087-1073, p.1103 and 1105.

⁶ DRC-OTP-2078-2323

⁷ Request for Protective Measures, para.2.

11. Considering the nature of the relationship between Prosecution Witnesses P-0190 and P-0899, more particularly Witness P-0899's apparent implication in alleged [REDACTED] concerning Witness P-0190, the Defence hereby requests the lifting of standard redactions applied to the screening note and investigation notes related to Witness P-0899.
12. The Defence also requests disclosure of Witness P-0899's BSQ.

I. Request for the lifting of redactions

A. Redactions applied to document DRC-OTP-2078-2323

13. The Defence submits that category 81(1) redactions applied to document DRC-OTP-2078-2323 must now be lifted.
14. In this regard, the Defence refers in particular to the basis for contacting Witness P-0899 as well as to the investigators' conclusions regarding Witness P-0899, which are relevant for the Defence to investigate [REDACTED] alleged by Witness P-0190.
15. This request is further justified by the necessity for the Defence to analyse and understand the reasons underlying the Prosecution's decision not to rely on the information provided by Witness P-0899 during the presentation of its case in chief.

B. Lifting of redactions applied to document DRC-OTP-2078-2349

16. The Defence posits that all category A.1 and C redactions applied to investigation note DRC-OTP-2078-2349 must now be lifted.
17. These standard category A.1 redactions apparently refer to [REDACTED] where Witness P-0899 would [REDACTED] Witness P-0190 and other individuals involved in other alleged [REDACTED]. It follows that this information is not related to Witness P-0899's recent contact information and

that it is not covered by any standard redaction category found in the Redaction Protocol.⁸

18. Moreover, it is noteworthy that the category A.1 redaction applied to paragraph 2 of the Investigation note relates to a place where Witness P-0899 moved [REDACTED]. It is therefore unlikely that this redaction relates to his recent contact information.
19. The standard category C redaction appear to contain the name of a [REDACTED] friend of Witness P-0899 who would have told him that [REDACTED] had travelled to [REDACTED] at the beginning of [REDACTED] in order to [REDACTED].
20. According to the Redaction Protocol, Category C redactions cover *“Identifying and contact information of ‘other persons at risk as a result of the activities of the Court’ (also known as ‘innocent third parties’)”*. Redactions to identifying and contact information of ‘innocent third parties’ shall be ongoing only when the individuals are of no relevance to any known issue in the case. For any individual falling outside this scenario, the application-based procedure laid out at paragraphs 48-50 must be followed.⁹
21. The Defence notes that the individual referred to in this redaction made grave allegations that have the potential to undermine the integrity of Defence investigations. It necessarily follows that his or her identity is relevant and necessary to allow the Defence to investigate his/her allegations.

C. Redactions applied to Investigation note DRC-OTP-2077-0067

22. The Defence submits that the category Rule 81(1), B and A.1 standard redactions applied to this Investigation note must now be lifted.

⁸ ICC-01/04-02/06-411-AnxA, para.15 to 17.

⁹ Redaction Protocol, para.27.

23. Category A.1 redactions at paragraph 3 of the Investigation note appear to include Witness P-0899's location when he would have been approached by [REDACTED], allegedly coming on behalf of [REDACTED], on [REDACTED]. Accordingly, this information does not relate to Witness P-0899's recent contact information, and is not covered by any standard redaction category pursuant to the Redaction Protocol.¹⁰
24. Category B redactions at paragraph 4 apparently contains the contact information of Witness P-0190, more particularly the place where Witness P-0899 went following the alleged [REDACTED]. Hence, this information is relevant and necessary to allow the Defence to investigate this [REDACTED].
25. Lastly, the category 'Rule 81(1)' redaction at paragraph 2 of the Investigation note appears to information related to an individual named [REDACTED], allegedly a [REDACTED] who would also have contacted Witness P-0190. His name is also mentioned in the Request for Protective measures.
26. In light of the above, the Defence submits that this information is both relevant and necessary to allow the Defence to investigate on the alleged [REDACTED] involving Witness P-0190.

D. Redactions applied to document DRC-OTP-2087-0022

27. The Defence posits that all category 81(1) redactions applied to Investigation note DRC-OTP-2087-0022 must now be lifted.
28. These redactions, applied to paragraph 5, apparently refer to an individual called [REDACTED], who appeared to be aware of Witness P-0899's cooperation with the Prosecution.
29. The Defence thus submits that this information is relevant and necessary to investigate on the alleged [REDACTED] involving Witness P-0899.

¹⁰ ICC-01/04-02/06-411-AnxA, paras.15 to 17.

II. Request of disclosure

30. On 23 May 2016, the Prosecution disclosed provided the Defence with a summary of Witness P-0899's biographic data and security questionnaire, namely Investigation note DRC-OTP-2078-2349.
31. Yet, when responding to the Defence's request for disclosure of the BSQ, the Prosecution submitted that it does not contain any information that must be disclosed pursuant to either Rule 77 or Article 67(2).
32. Nonetheless, taking into consideration the content of Investigation note DRC-OTP-2078-2349, it is very likely that Witness P-0899's BSQ also contains information related to Witness P-0190's knowledge of the case or that would put his credibility in doubt or serve to show potential bias. As such, these documents are subject to disclosure pursuant to Rule 77 and Article 67(2) of the Statute.
33. Consequently, the Defence submits that the Prosecution should, at a minimum, disclose a redacted version of the BSQ comprising solely standard redactions authorized pursuant to the Redaction Protocol.

CONFIDENTIALITY

34. 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

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

ORDER the Prosecution to lift redactions applied to documents DRC-OTP-2087-2349; DRC-OTP-2078-2323; DRC-OTP-2077-0067; and DRC-OTP-2087-0022 forthwith; and

ORDER the Prosecution to disclose P-0899's BSQ.

RESPECTFULLY SUBMITTED ON THIS 8TH DAY OF AUGUST 2016

A handwritten signature in black ink, appearing to read 'StB-'.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands