



Original: English

No.: ICC-01/04-02/06
Date: 20 September 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

Public redacted version of “Request on behalf of Mr Ntaganda for disclosure of the video-recording of the preparation session of Witness P-0019 under Article 13 of the Witness preparation protocol”, 29 July 2016, ICC-01/04-02/06-1468

Source: Defence Team of Mr Bosco Ntaganda

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Ms Nicole Samson

Counsel for the Defence

Me Stéphane Bourgon
Me Christopher Gosnell
Me Marlene Yahya Haage

Legal Representatives of Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Further to the “*Decision on witness preparation*” (“Decision”) issued by Trial Chamber VI (“Chamber”) on 16 June 2015,¹ Article 13 of the Witness preparation protocol (“Protocol”),² the disclosure on 12 July 2016 by the Prosecution of Witness P-0019’s preparation session log and disclosure note (“Log”),³ Witness P-0019’s testimony on [REDACTED] July 2016⁴ and correspondence with the Office of the Prosecutor (“Prosecution”),⁵ Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

Request on behalf of Mr Ntaganda for disclosure of the video-recording of the preparation session of Witness P-0019 under Article 13 of the Witness preparation protocol

“Defence Request”

INTRODUCTION

1. The Defence requests an order compelling the Prosecution to disclose specified excerpts of the video-recording of Witness P-0019’s pre-testimonial preparation session. The note of the preparation session suggests, as addressed during cross-examination, that the witness expressed a willingness to lie, including about Mr Ntaganda specifically. The precise language used by the witness during the preparation session may be highly relevant to assessing the witness’s willingness to lie under oath. The disclosure of the verbatim record of what was said by Witness P-0019 is, accordingly, disclosable pursuant to Article 67(2) of the Statute and Rule 77 of the Rules of Procedure and Evidence.

¹ ICC-01/04-02/06-652.

² ICC-01/04-02/06-652-Anx.

³ DRC-OTP-2094-0323.

⁴ ICC-01/04-02/06-T-115-CONF-ENG, ICC-01/04-02/06-T-116-CONF-ENG and ICC-01/04-02/06-T-117-CONF-ENG (“T-117”).

⁵ Email from Me Stéphane Bourgon to Ms Dianne Luping dated 10 July 2016 (“Defence Request”); Email from Ms Dianne Luping to Me Stéphane Bourgon dated 11 July 2016 (“Prosecution Response”).

PROCEDURAL BACKGROUND

2. On [REDACTED], the Prosecution met with Witness P-0019 for four preparation sessions.⁶ A non-verbatim summary of the content of these meetings was disclosed by the Prosecution to the Defence on 4 July 2016.
3. On [REDACTED] July, Witness P-0019 was questioned by the Defence about her specific statements during the witness preparation session, including whether she had expressed a willingness to lie.⁷ The Defence at that time only had possession of the non-verbatim notes of the preparation session.
4. On [REDACTED] July 2016, the Defence asked the Prosecution to disclose excerpts of the video-recording of the witness's pre-testimonial preparation session corresponding to three portions of the summary as follows:
 - a. DRC-OTP-2094-0323, p.1, 3rd paragraph;
 - b. DRC-OTP-2094-0323, p.4, 3rd paragraph; and
 - c. DRC-OTP-2094-0323, p.5, paragraph #6.⁸

The Prosecution refused the request, asserting that "the witness preparation note adequately informs the Defence of the nature of [P-0019's] statements during her witness preparation session." According to the Prosecution, "the three portions of interest to the Defence were included on an almost verbatim basis."⁹

APPLICABLE LAW

5. Pre-testimonial witness preparation sessions, pursuant to the Witness preparation protocol, must be video-recorded by the calling party.¹⁰ Disclosure of the video-recording may be ordered upon a showing by the non-calling

⁶ DRC-OTP-2094-0323.

⁷ T-117, 27:21-30:8.

⁸ Defence Request.

⁹ Prosecution Response.

¹⁰ Protocol, art.12.

party that the “information in its possession, evidentiary or other, demonstrat[es] that access to the video is warranted.”¹¹

6. The Trial Chamber has ruled that in certain cases “the manner in which [the] information was elicited could not be fully ascertained from the log itself”¹² and therefore the relevant excerpts of the video corresponding to the contested parts should be disclosed to the Defence.

SUBMISSIONS

7. Witness P-0019 may have expressed, during her pre-testimonial preparation session with the OTP, a willingness to lie during her testimony. The Prosecution has refused disclosure not because the information sought is irrelevant or not subject to disclosure, but rather because its note communicates the words used by the witness on “an almost *verbatim* basis.”¹³
8. If this is the case, the Prosecution should have no objection to providing the exact, verbatim record of the words spoken by the witness. These words, depending on their exact formulation, could substantially affect the witness’s credibility. Since the Prosecution’s view is that a verbatim record has already been substantially provided, then there surely can be no prejudice and no objection to disclosure of the only accurate records of the exact words used by Witness P-0019. The need for such disclosure is amplified because the willingness to lie appears to have pertained to matters directly related to Mr Ntaganda.
9. The precise words and expressions used by the witness are both relevant to the preparation of the Defence and may affect the credibility of Prosecution evidence. The note of the preparation session is manifestly deficient relative to the video-recording of the statements in question in conveying the sense of the

¹¹ Protocol, art. 13.

¹² ICC-01/04-02/06-T-68-CONF-ENG, 6:9-11.

¹³ Prosecution Response.

witness's expressions. Disclosure of the video-recording is therefore necessary and appropriate under Article 67(2) and Rule 77.

CONFIDENTIALITY

10. Pursuant to Regulations 23*bis* (1) of the Regulations of the Court, this Defence Request is classified as confidential as it refers to matters related to the testimony of witness P-0019.

RELIEF SOUGHT

ORDER the Prosecution to disclose the video-recording of the preparation session of Witness P-0019 to the Defence.

RESPECTFULLY SUBMITTED ON THIS 20TH DAY OF SEPTEMBER 2016

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

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands