

**Cour
Pénale
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**International
Criminal
Court**

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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 "Prosecution's request for authorisation to lift
Category 'F' redactions", 26 October 2016, ICC-01/04-02/06-1595-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. Pursuant to regulation 42(3) of the Regulations of the Court (“Regulations”) and the Protocol on Redactions (“Redaction Protocol”), the Prosecution seek the authorisation of Trial Chamber VI (“Chamber”) to lift certain category ‘F’ redactions to 39 documents that were authorised by Trial Chambers I and II during the *Lubanga* and *Katanga* cases, respectively, and were carried over to the *Ntaganda* case pursuant to regulation 42(1) of the Regulations.

Confidentiality

2. This filing and its annexes are classified as *Confidential – Ex parte*, Prosecution and VWU only. This classification is necessary because the information the Prosecution seeks to disclose to the Defence by way of the lifting of category ‘F’ redactions cannot be disclosed to it in advance of the Chamber’s ruling on the matter.

Request to lift category ‘F’ redactions

3. Pursuant to regulation 42(3) of the Regulations and the Protocol on Redactions,¹ the Prosecution seeks the Chamber’s authorisation to lift certain redactions to 39 documents which were authorised by Trial Chamber I during the *Lubanga* case and Trial Chamber II in the *Katanga* case and were carried over to the *Ntaganda* case under regulation 42(1).
4. In the present case, the Prosecution has disclosed approximately 260 documents with redactions authorised by Trial Chamber I in the *Lubanga* case

¹ ICC-01/04-02/06-411-AnxA, paragraph 8: “In respect of redactions authorised by another Chamber, the Prosecution shall also review such redactions to determine whether the circumstances justifying their application in the previous case are relevant in the context of the current proceedings. If not, the Prosecution shall make appropriate applications pursuant to Regulation 42 of the Regulations for the lifting of the redactions for the purposes of the proceedings in this case.”

and Trial Chamber II in the *Katanga* case, pursuant to regulation 42(1) of the Regulations and paragraph 8 of the Protocol on Redactions. Following the adoption of the Protocol on Redactions, these redactions were marked with the redaction category code 'F'.²

5. The Prosecution routinely reviews its evidence, in particular prior to the testimony of its witnesses, with a view to disclosing information that is material to the preparation of the Defence under rule 77 of the Rules of Procedure and Evidence ("Rules"), or disclosable pursuant to article 67(2), including by way of the lifting of redactions applied to previously disclosed evidence. In this context, it has on several occasions requested the Chamber's authorisation to lift category 'F' redactions to certain documents, in particular in relation to Witnesses P-0190³ and P-0024.⁴
6. Further to *inter partes* discussions with the Defence since July 2016, the Prosecution has completed a comprehensive review of the 260 documents bearing category 'F' redactions with a view to determine whether the circumstances justifying these redactions in *Lubanga* still apply.
7. Based on this review, the Prosecution considers that circumstances have changed with respect to certain redactions applied to 39 of the 260 documents and, accordingly, requests the Chamber's authorisation to lift these redactions and re-disclose lesser redacted versions of these 39 documents to the Defence.

² ICC-01/04-02/06-411-AnxA, paragraph 8: "Redactions authorised by another Chamber which are not covered by the categories approved in this Protocol but are retained by reason of Regulation 42 of the Regulations do not require approval of the Chamber but shall be marked with letter code 'F'."

³ See e-mails from Dianne Luping to Trial Chamber VI on 16 May 2016 (at 18:58) and 8 June 2016 (at 10:11).

⁴ See e-mail from Nicole Samson to Trial Chamber VI on 3 October 2016 (at 18:40).

8. The information covered by these redactions includes information which has already been disclosed to the Defence through other evidence⁵ as well as outdated information, such as former places of residence of witnesses or former interview locations which are no longer being used.⁶ The redactions also cover information which the Prosecution considers immaterial to the preparation of the Defence, as it does not address any factual matters related to the charges, but can be disclosed to the Defence because disclosure would not create or increase any security risk to the witnesses or their family members.⁷ These redactions are therefore no longer necessary and may be lifted.
9. Additionally, the Prosecution has identified several redactions that, although still necessary for the protection of certain non-trial witnesses whose identity has not been disclosed to the Defence and who remain at risk, cover information that the Prosecution deems relevant to the charges against Bosco Ntaganda. Accordingly, whilst the Prosecution considers it necessary to retain redactions to the identity of the concerned witnesses, it seeks the lifting of redactions to discrete portions of their statements.⁸

⁵ DRC-OTP-0070-0340 (Annex 2), DRC-OTP-0070-0380 (Annex 3), DRC-OTP-0105-0177 (Annex 4), DRC-OTP-0171-1259 (Annex 5), DRC-OTP-0219-0067 (Annex 9) and DRC-OTP-0231-0257 (Annex 22).

⁶ DRC-OTP-0147-0336 (Annex 7) bears a redaction to a former interview location, which is no longer being used. DRC-OTP-0206-0255 (Annex 8), DRC-OTP-0221-0452 (Annex 10), DRC-OTP-0221-0476 (Annex 11), DRC-OTP-0221-0531 (Annex 12), DRC-OTP-0222-0540 (Annex 13), DRC-OTP-0222-0564 (Annex 14), DRC-OTP-0222-0587 (Annex 15), DRC-OTP-0224-0218 (Annex 16), DRC-OTP-0224-0245 (Annex 17), DRC-OTP-0224-0287 (Annex 18), DRC-OTP-0224-0312 (Annex 19), DRC-OTP-0224-0334 (Annex 20), DRC-OTP-0229-0058 (Annex 21), DRC-OTP-1017-0067 (Annex 24) and DRC-OTP-0231-0061 (Annex 39) all bear redactions to the former places of residence of non-trial witnesses. DRC-OTP-2075-0652 (Annex 29) bears a redaction to [REDACTED].

⁷ DRC-OTP-0038-0582 (Annex 1), DRC-OTP-0106-0169 (Annex 6), DRC-OTP-2092-0531 (Annex 30) and DRC-OTP-2092-0613 (Annex 31).

⁸ In respect of non-trial witness P-0292, the Prosecution seeks to lift redactions to references to the [REDACTED], as well as to certain information that is considered too generic to identify the witness: DRC-OTP-1017-0086 (Annex 25), DRC-OTP-1017-0119 (Annex 26), DRC-OTP-1020-0122 (Annex 27) and DRC-OTP-1020-0286 (Annex 28). The Prosecution also seeks to lift redactions to the statement of non-trial witness P-0051, who [REDACTED]. The Prosecution seeks the lifting of certain redactions to a reference to [REDACTED]: DRC-OTP-0147-0336 (Annex 7).

10. Lastly, the Prosecution seeks to lift redactions applied to the identity of two non-trial witnesses, namely P-0025 and P-0110.⁹ Whilst all the relevant information disclosable under rule 77 or article 67(2) contained in their statements and related documents has been provided to the Defence, the Prosecution assesses that no currently known security risks exist to these two witnesses, such that their identity can now also be provided to the Defence.

11. Pre-Trial Chamber I and Trial Chamber I authorised non-disclosure of the identity of these two witnesses, pursuant to rule 81(4) of the Rules, because of security risks that existed at the time of the *Lubanga* case and because the redactions did not affect any potentially exonerating information or cause prejudice to the accused.¹⁰ Indeed, the redactions applied to these documents, which the Prosecution seeks to lift, cover information of an identifying nature which does not affect the readability of the relevant documents. Nor did the redactions cover information that is either material to the Defence's preparation or potentially exculpatory.

12. However, whilst the Prosecution has not been in contact with P-0025 and P-0110 since, respectively, 2005 and 2008 and has been unable to reach them to inquire about their current security situation, it assesses that no currently known security risks exist to these two witnesses.

13. In *Lubanga*, Witnesses P-0025 and P-0110 were, at least for some time, Prosecution witnesses [REDACTED]. In the end, neither witness testified in the *Lubanga* case. In the *Ntaganda* case, however, neither witness is a trial or Court

⁹ Witness P-0025: DRC-OTP-0104-0107 (Annex 32) and Witness P-0110: DRC-OTP-0162-0060 (Annex 33), DRC-OTP-0162-0101 (Annex 34), DRC-OTP-0162-0103 (Annex 35), DRC-OTP-0162-0105 (Annex 36), DRC-OTP-0160-0172 (Annex 37), DRC-OTP-0162-0056 (Annex 38) and DRC-OTP-0193-0074 (Annex 39).

¹⁰ For P-0025, see ICC-01/04-01/06-453-Conf-Exp, pages 9-10; For P-0110, see ICC-01/04-01/06-2033-Anx2-RSC, paragraphs 70-75.

witness and their redacted materials have only been disclosed under rule 77 of the Rules. [REDACTED].

14. Although their cooperation with the Court has not been disclosed, the Prosecution assesses that a further factor mitigating the potential risk to these witnesses is the fact that their identity and role at the time of the events relevant to the charges is known to the Defence through several documents already disclosed in this case.¹¹
15. In the absence of currently known security risks to these witnesses, the Prosecution assesses that the redactions to their identity may be lifted.
16. Confidential, *ex parte*, Annex A contains a chart detailing the redactions which the Prosecution seeks to lift for each of the 39 documents. This chart identifies: (1) the documents for which the lifting of redactions is sought, (2) the type of document concerned, (3) the decision authorising the relevant redactions in the *Lubanga* and/or *Katanga* case, (4) the page references of the redactions within the document, (5) the redacted information itself, and (6) a justification for the lifting of the redactions.
17. For ease of reference, the Prosecution also appends, as confidential, *ex parte*, annexes 1-39 the 39 documents in a format which permits the Chamber to view the information that the Prosecution seeks to disclose to the Defence by way of the lifting of category 'F' redactions.¹² The first column of the chart contained in Annex A indicates the number of the annex where each document can be found.

¹¹ [REDACTED].

¹² The Prosecution notes that the first column of the chart contained in Annex A also indicates the number of the annex that corresponds to each document.

Relief Requested

18. Based on the foregoing, the Prosecution requests that the Chamber authorise the lifting of the category 'F' redactions specified in annex A to this filing.



Fatou Bensouda
Prosecutor

Dated this 14th day of December 2016
At The Hague, The Netherlands