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

Date: **24 March 2017**

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

**Decision on Defence request for lifting of redactions in documents related to
victims authorised to present evidence**

Order 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 Bosco Ntaganda

Mr Stéphane Bourgon
Mr Christopher Gosnell

Legal Representatives of Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**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**

Others

Trial Chamber VI ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 64, 67 and 68 of the Rome Statute and the 'Decision on the Protocol establishing a redaction regime',¹ issues the following 'Decision on Defence request for lifting of redactions in documents related to victims authorised to present evidence'.

I. Procedural history and submissions

1. On 10 February 2017, the Chamber issued a decision, in which it, *inter alia*, (i) authorised Victim a/30012/15 ('Witness V3'), and, by majority, Victims a/30365/15 ('Witness V2') and a/00256/13 ('Witness V1')² (collectively 'Victims') to present evidence; and (ii) directed the Legal Representative of the Victims of the Attacks ('LRV') to disclose to the parties and Legal Representative of former child soldiers the identities, statements, and lesser redacted versions of the victim application forms of the Victims by 20 February 2017.³
2. On 20 February 2017, the LRV disclosed the relevant information with a number of redactions.⁴
3. On 15 March 2017, following an email exchange with the LRV,⁵ the defence team for Mr Ntaganda ('Defence') filed an expedited request,⁶ seeking the provision of a better electronic version of the electoral card of Witness V3, as

¹ 12 December 2014, ICC-01/04-02/06-411 ('Decision on the Redaction Protocol') and Annex A ('Redaction Protocol').

² The numbering in the shortforms reflects the Victims' anticipated order of appearance, communicated by the LRV via email on 3 March 2017 at 08:19.

³ Decision on the request by the Legal Representative of the Victims of the Attacks for leave to present evidence and victims' views and concerns, ICC-01/04-02/06-1780-Conf, page 20. A public redacted version was filed on 15 February 2017, ICC-01/04-02/06-1780-Red.

⁴ Communication by the Common Legal Representative of the Victims of the Attacks of the Disclosure of Evidence Pursuant to Trial Chamber VI's Decision No. ICC-01/04-02/06-1780-Conf dated 10 February 2017, ICC-01/04-02/06-1795-Conf, with confidential Annexes 1 and 2.

⁵ ICC-01/04-02/06-1824-Conf-AnxA and ICC-01/04-02/06-1824-Conf-AnxB.

⁶ Expedited request on behalf of Mr Ntaganda seeking the lifting of standard redactions applied to the victim application forms and statements of Witnesses a/30012/15, a/30365/15 and a/00256/13, ICC-01/04-02/06-1824-Conf and confidential Annexes A and B.

well as the lifting of certain ‘standard’ Category B⁷ and C⁸ redactions to information in the victim application forms and statements applied to: (i) the names of certain family members of Witness V3; (ii) the identities of the deceased husband and children of Witness V2; and (iii) the identity of Witness V1’s children and the identity of the person who confirmed their identities in his victim application form (‘Request’).

4. On 16 March 2017, the LRV responded to Request, opposing it in part (‘Response’).⁹
5. Also on 16 March 2017, having been invited to do so,¹⁰ the Office of the Prosecutor (‘Prosecution’)¹¹ and the Legal Representative of former child soldiers¹² informed the Chamber that they did not intend to respond to the Request.

II. Analysis

6. At the outset, the Chamber notes that the disputed redactions were applied by one of the Legal Representatives of Victims, who are not explicitly mentioned in the Redaction Protocol, which only refers to the parties. However, considering that the Victims have been authorised to appear as witnesses before the Chamber with a view to presenting evidence, and in view of the apparent agreement by the Defence and the LRV in that regard,¹³ the Chamber considers

⁷ Under the Redaction Protocol, paras 20-23, Category B redactions relate to ‘Identifying and contact information of family member of witnesses’.

⁸ Under the Redaction Protocol, paras 24-27, Category C redactions relate to ‘Identifying and contact information of “other persons at risk as a result of the activities of the Court” (also known as “innocent third parties”)’.

⁹ Response by the Common Legal Representative of the Victims of the Attacks to the Defence Request to lift redactions applied to the victim application forms and statements of victims a/30012/15, a/30365/15 and a/00256/13, ICC-01/04-02/06-1825-Conf and confidential Annex 1.

¹⁰ Email from the Chamber to the parties and participants on 16 March 2017 at 17:04.

¹¹ Email from the Prosecution to the Chamber, Defence and participants at 17:08.

¹² Email from the Legal Representative of former child soldiers to the Chamber, the parties and LRV at 17:08.

¹³ The Chamber notes that in their respective submissions, both the Defence and the LRV refer to the provisions of the Redaction Protocol. See, for example, Request, ICC-01/04-02/06-1824-Conf, paras 9, 14 and 15 and Response, ICC-01/04-02/06-1825-Conf, para. 13.

it appropriate for the present Request to be adjudicated in line with the regime set out in the Redaction Protocol. Accordingly, for the purpose of the present Request, the Chamber will apply any references to the parties in the Redaction Protocol by analogy to the LRV.

7. The Chamber further notes that the LRV, when approached by the Defence on an *inter partes* basis, 'oppose[d]' the lifting of any redactions on the basis that '[t]he redacted information is neither material to the preparation of the Defence nor relevant to any known issue in the present case',¹⁴ but, in his Response, withdraws some of the objections.¹⁵ Taking note of these submissions, the Chamber directs the LRV to lift the relevant redactions forthwith.
8. The Chamber further notes that subsequent to the filing of the Request, the LRV provided a better electronic version of the electoral card of Witness V3.¹⁶ In view of the foregoing, the Chamber considers that the request for provision of a better electronic version of the electoral card of Witness V3 as well as the request for the lifting of certain redactions has become moot, and it will therefore confine its assessment to the remaining disputed objections.
9. That notwithstanding, the Chamber recalls that the Redaction Protocol requires the parties to consult in good faith with a view to resolving the matter before seising the Chamber.¹⁷ In this regard, the Chamber finds that part of the dispute could have been adequately resolved at an earlier stage before seeking the Chamber's involvement.
10. In line with its obligation to ensure that the trial is conducted with full respect for the rights of the accused and with due regard to the protection of victims

¹⁴ ICC-01/04-02/06-1824-Conf-AnxB.

¹⁵ Response, ICC-01/04-02/06-1825-Conf, paras 10 and 11.

¹⁶ Response, ICC-01/04-02/06-1825-Conf, para. 7 and ICC-01/04-02/06-1825-Conf-Anx1.

¹⁷ Redaction Protocol, para. 5.

and witnesses,¹⁸ the Chamber has reviewed the remaining disputed redactions in order to determine: (i) whether the information is material to the preparation of the Defence; and (ii) whether the redactions are necessary to ensure the protection of witnesses, victims or other individuals at risk on account of the activities of the Court. In this regard, the Chamber also recalls that in the event of a challenge being raised, the burden is on the disclosing party, in the present case the LRV, to justify the specific redaction.¹⁹

(i) Redactions to the names of the four children of Witness V3

11. The Defence requests the lifting of Category B redactions to the names of Witness V3's four children in his statement,²⁰ arguing that, given the victim's age at the time of the events, 'it is likely that he [...] already had children' who would have been present during the events, including events involving Mr Ntaganda and Kisembo, and that the presence of Mr Ntaganda and Kisembo is 'a known issue in the case, which the Defence must be able to investigate'.²¹ The LRV objects to the lifting of the redactions on the basis that the four children are minors, were born after the events at issue, and accordingly, their names are 'of no relevance to any known issue in the case'.²²
12. In light of the LRV's submissions, the Chamber has no reason to doubt that the four children were not born at the time of the events. The Chamber therefore agrees with the LRV that their identities are not material to the preparation of the Defence. Accordingly, the relevant redactions may be maintained.

¹⁸ See Article 64(2), (6)(c) and (e), as well as Articles 67 and 68(1) of the Statute.

¹⁹ Decision on the Redaction Protocol, ICC-01/04-02/06-411, para. 22.

²⁰ DRC-PCV-0001-0035.

²¹ ICC-01/04-02/06-1824-Conf, para. 11.

²² Response, ICC-01/04-02/06-1825-Conf, paras 8-9.

(ii) Redactions to the names of Witness V1's children other than those who were killed during the events

13. The Defence requests the lifting of Category B redactions to the identities of Witness V1's children in his statement,²³ arguing that the victim stated that he was with his family members when the detonation causing the death of six of them occurred, and that it is thus 'very likely' that the family members who were present at the time 'include his children who would have been eye witnesses of this event'.²⁴ According to the Defence, Witness V1's narrative is relevant to a known issue in the case, and, accordingly, the identities of his children are material to the Defence's investigations and preparations.²⁵
14. The LRV maintains his objection to the lifting of the redactions to the names of Witness V1's children other than those who were killed by the detonation, arguing that the Defence's contention that it is very likely that the family members who were present at the time include his children who would have been eye witnesses is 'purely speculative and with no merit', and, accordingly, the Defence failed to demonstrate that the names would be relevant to any known issue in the case.²⁶
15. The Chamber considers that the identities of any close family members that lived with Witness V1 or were present at the time of the incident referred to in his statement are relevant to the Defence's ability to investigate the victim's account, and therefore material to the preparation of the Defence. Accordingly, absent any indication to the effect that the children were not born at the time of the events, the Chamber directs the LRV to lift the redactions to their identities.

²³ DRC-PCV-0001-0027.

²⁴ Request, ICC-01/04-02/06-1824-Conf, para. 13.

²⁵ Request, ICC-01/04-02/06-1824-Conf, para. 13.

²⁶ Response, ICC-01/04-02/06-1825-Conf, para. 12.

(iii) Redactions to the name of the person who confirmed the identity of Witness V1's children other than those who were killed during the events

16. The Defence requests the lifting of Category C redactions applied to the name of the person who confirmed the identity of Witness V1's children in his victim application form.²⁷ According to the Defence, the identity of that individual is material to the Defence's preparations and relevant to a known issue in the case, 'particularly since these children were most likely present during [Witness V1's] alleged loss of six members of his family' and because the identity of the children is currently redacted and unknown to the Defence.²⁸
17. The LRV objects to the lifting of the contested redactions, arguing that: (i) they are 'necessary to protect said person's safety, dignity, privacy and well-being' as they relate to 'an innocent third person who has not agreed to be part of the Court process and may not even be aware of it, and is at risk of being perceived as a potential witness or collaborator with the Court'; and (ii) the identity of the person is of 'no relevance to the case', insofar as the Defence failed to demonstrate the relevance of the identity of Witness V1's children other than those who were killed.²⁹
18. On the basis of the unredacted version of Witness V1's victim application form,³⁰ the Chamber notes that the Category C redactions at pages 17 to 19 relate to two different individuals. However, having ordered the lifting of redactions to the identities of Witness V1's children, the Chamber is of the view that the materiality of the identities of the individuals who confirmed their identities has not been demonstrated, and further considers that disclosure of

²⁷ DRC-PCV-0001-0008, at pages 0017, 0018 and 0019.

²⁸ Request, ICC-01/04-02/06-1824-Conf, paras 14-16.

²⁹ Response, ICC-01/04-02/06-1825-Conf, para. 13.

³⁰ ICC-01/02-04/06-665-Exp-Anx42.

their identities might unnecessarily put their security, privacy and well-being at risk. Accordingly, the relevant redactions may be maintained.

19. Finally, with reference to the Defence's observations that the relevant Category C redactions were applied to the entirety of pages 0018 and 0019, which 'in and of itself requires close attention',³¹ the Chamber notes that the redactions relate to identity documents of the aforementioned individuals and are therefore justified.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

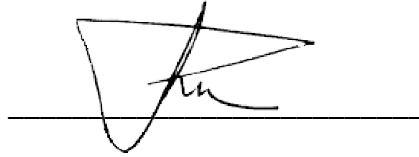
GRANTS the Request in part;

DIRECTS the LRV to lift redactions in the relevant Victims' statements and application forms in accordance with the directions in this decision, and provide lesser redacted versions thereof forthwith; and

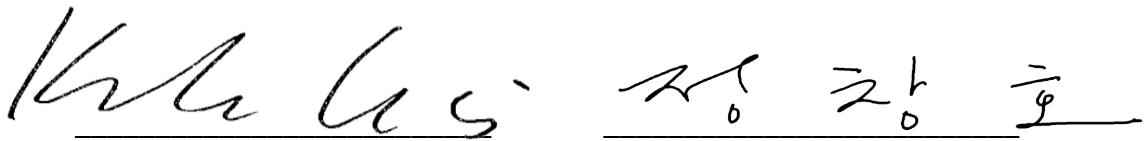
DIRECTS the LRV and the Defence to file lesser redacted versions of their submissions within two weeks of issuance of this decision.

³¹ Request, ICC-01/04-02/06-1824-Conf, para. 17.

Done in both English and French, the English version being authoritative.

A stylized signature consisting of a large, bold, downward-pointing triangle with a horizontal line extending to the right, and a smaller, more fluid signature below it.

Judge Robert Fremr, Presiding Judge

Two signatures are shown side-by-side. The first is a cursive signature, and the second is a signature in Korean characters.

Judge Kuniko Ozaki

Judge Chang-ho Chung

Dated 24 March 2017

At The Hague, The Netherlands