



Original: **English**

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

Date: **07 April 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**

**with confidential Annexes A and B**

**Public redacted version of “Expedited request on behalf of Mr Ntaganda seeking the lifting of standard redactions applied to the victim application forms and statements of Witnesses [REDACTED], [REDACTED] and [REDACTED]”, ICC-01/04-02/06-1824-Conf, 15 March 2017**

**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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Victims**

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**States' Representatives**

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**REGISTRY**

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**Detention Section**

**Victims Participation and Reparations  
Section**

Further to electronic correspondence exchanged with the Legal Representative of the Victims of the Attacks (“LRV”) on 9 March 2017, Counsel representing Mr Ntaganda (“Defence”) hereby submits this:

**Expedited request on behalf of Mr Ntaganda seeking the lifting of standard redactions applied to the victim application forms and statements of Witnesses [REDACTED], [REDACTED] and [REDACTED]**

**“Expedited Defence Request”**

## INTRODUCTION

1. The Defence respectfully requests Trial Chamber VI (“Chamber”) to issue an order requiring the LRV to lift certain Category B and C redactions applied to the victim application forms and statements of Witnesses [REDACTED], [REDACTED] and [REDACTED].
2. The information requested in relation to Witness [REDACTED] refers to the: (i) name of his [REDACTED]; (ii) names of his [REDACTED]; (iii) names of his [REDACTED]; (iv) name of his [REDACTED]; and (v) names of his [REDACTED].
3. The information requested in relation to Witness [REDACTED] refers to the names of her [REDACTED] and [REDACTED].
4. The information requested in relation to Witness [REDACTED] refers to the: (i) names of his [REDACTED]; and (ii) name of the person confirming the identity of [REDACTED].
5. Upon being requested by the Defence, the LRV refused to lift these redactions. While falling within the standard redactions protocol,<sup>1</sup> these redactions do not

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<sup>1</sup> ICC-01/04-02/06-411-AnxA.

fall in the category of *on-going* redactions and must be lifted since they are material to the preparation of the Defence and relevant to known issues in the case. The Defence requests that the Chamber instruct the LRV to lift these redactions without delay.

## PROCEDURAL HISTORY

6. On 9 March 2017, the Defence requested the LRV to lift redactions<sup>2</sup> applied to material related to Witnesses [REDACTED], [REDACTED] and [REDACTED]. On the same day, the LRV refused to lift the redactions, asserting that the information redacted “is neither material to the preparation of the Defence nor relevant to any known issue in the present case”.<sup>3</sup>

## SUBMISSIONS

### I. Lifting of redactions applied to Witness [REDACTED]

7. As a preliminary matter, the Defence requests the Chamber to order the LRV to provide a better electronic version of p. 22 of Witness [REDACTED]’s [REDACTED],<sup>4</sup> which corresponds to his [REDACTED]. To that request, the LRV replied that it was the only electronic copy in his possession and that he didn’t have the hard copy of the document. Considering that it is imperative for the Defence to be able to verify the identity of the Witness – including not only his name but also the names of his parents, his date of birth to know his age at the time of the events and his place of birth.

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<sup>2</sup> See [REDACTED], enclosed in Annex A.

<sup>3</sup> See [REDACTED], enclosed in Annex B.

<sup>4</sup> DRC-PCV-0001-0020.

*a. Lifting of redactions applied to the name of the [REDACTED] of Witness [REDACTED]*

8. According to Witness [REDACTED]'s statement<sup>5</sup>, his [REDACTED] had been [REDACTED] by UPC soldiers and had been [REDACTED] on the grounds that he was [REDACTED]. According to the witness, BOSCO had asked [REDACTED] to [REDACTED] and when the witness's [REDACTED], BOSCO [REDACTED] whereas [REDACTED] was [REDACTED]. While the [REDACTED] was [REDACTED], this event is said to be a [REDACTED] in the [REDACTED]. According to the Witness, this event would have led to the night when his [REDACTED].<sup>6</sup> Lifting this redaction is necessary to allow the Defence to investigate in order to verify the veracity of the event narrated by Witness [REDACTED].

*b. Lifting of redactions applied to his [REDACTED] and his [REDACTED]*

9. In his statement, Witness [REDACTED] tells that he lives with his [REDACTED]. In his recollection of the events, he alleges that on the night UPC soldiers and BOSCO [REDACTED] and [REDACTED], they were [REDACTED], before [REDACTED]. The witness also tells that [REDACTED], who was [REDACTED] at the time, gave them [REDACTED].<sup>7</sup> According to the "Protocol establishing a redaction regime in the case of *The Prosecutor v. Bosco Ntaganda*" ("Redaction Protocol"),<sup>8</sup> redactions to identifying and contact information of family members of witnesses shall be on-going only when the individuals are of no relevance to any known issue in the case.<sup>9</sup> For any individual falling outside this scenario, the application-based procedure laid out at paragraphs 48-50 must be followed.

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<sup>5</sup> DRC-PCV-0001-0035.

<sup>6</sup> DRC-PCV-0001-0035, at paras. 25 and 26.

<sup>7</sup> DRC-PCV-0001-0035, at para. 26.

<sup>8</sup> ICC-01/04-02/06-411-AnxA.

<sup>9</sup> ICC-01/04-02/06-411-AnxA, para.27.

10. The information that is now concealed from the Defence is obviously relevant to a known issue in the case. His [REDACTED] and the [REDACTED] of Witness [REDACTED]'s [REDACTED] appear to [REDACTED] at the time of the event. In fact, the Witness said that "[REDACTED]".<sup>10</sup> It is imperative for the Defence to be in a position to investigate and verify the veracity of this event, directly implicating Mr Ntaganda, before the testimony of the Witness.

*c. Lifting of redactions applied to his [REDACTED] and his [REDACTED]*

11. In his statement, Witness [REDACTED] tells that he lives with [REDACTED] and his [REDACTED]. While there is no mention of these persons being present in the narrative of the Witness, it is significant that the Witness was [REDACTED] years old at the time. Hence, it is likely that he was already [REDACTED] and had [REDACTED] who would have been in [REDACTED] during the period when the witness's [REDACTED] was [REDACTED] in '[REDACTED]'.<sup>11</sup> The witness's allegation – the presence of BOSCO and KISEMBO in [REDACTED] – is a known issue in the case, which the Defence must be able to investigate.

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<sup>10</sup> DRC-PCV-0001-0035, at para. 26.

<sup>11</sup> DRC-PCV-0001-0035, at para. 21.

## II. Lifting of redactions applied to Witness [REDACTED]

12. In her statement,<sup>12</sup> Witness [REDACTED] states that she was living with her [REDACTED] and her [REDACTED] when the war began.<sup>13</sup> While the redactions applied to the names of her [REDACTED] and [REDACTED] are standard Category B redactions, they must be lifted since they are relevant to a known issue in the case, namely the account of the Witness that she went to hide with her [REDACTED] in the “REDACTED”, which was [REDACTED]. According to the Witness, she would have taken the road to [REDACTED] where she, her [REDACTED] and [REDACTED] were captured by UPC soldiers before members of her family were killed. The identity of the deceased [REDACTED] and [REDACTED] is directly material to investigate and verify the veracity of the Witness’s narrative.

## III. Lifting of redactions applied to Witness [REDACTED]

13. In his statement,<sup>14</sup> Witness [REDACTED] states that he was with his family members when the [REDACTED] causing the death of [REDACTED] in [REDACTED] on [REDACTED] February 2003 occurred.<sup>15</sup> It is thus very likely that the family members of the Witness who were present at the time include [REDACTED] who would have been eye witnesses of this event. The Witness’s narrative is relevant to a known issue in the case. Consequently, the identity of the Witness’s [REDACTED] is material to Defence investigations and preparations for the testimony of the Witness.

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<sup>12</sup> DRC-PCV-0001-0042.

<sup>13</sup> DRC-PCV-0001-0042, at para. 16.

<sup>14</sup> DRC-PCV-0001-0027.

<sup>15</sup> DRC-PCV-0001-0027, at para. 17.

14. What is more, C redactions applied to the name of the person who confirmed the identity of [REDACTED]<sup>16</sup> in his [REDACTED], need to be lifted to allow the Defence to investigate and prepare for the testimony of the Witness. According to the Redaction Protocol, Category C redactions concern “[i]dentifying and contact information of ‘other persons at risk as a result of the activities of the Court’ (also known as ‘innocent third parties’)”.
15. Redactions to identifying and contact information of ‘*innocent third parties*’ shall be on-going only when the individuals are of no relevance to any known issue in the case.<sup>17</sup> The Defence submits that this information is relevant to a known issue to the case. In fact, information regarding the individual who confirmed the identity of [REDACTED] is very important, particularly since these [REDACTED] were most likely present during Witness [REDACTED]’s alleged loss of [REDACTED] of his family. The relevance of this information is even more important considering that the identity of [REDACTED] is currently redacted and unknown to the Defence.
16. As a result, this information is material for Defence investigations and preparations for the upcoming testimony of Witness [REDACTED]. As such, they must be lifted.
17. The Defence notes in this regard that the above C redactions were actually applied to the entirety of pages 0018 and 0019 which in and of itself requires close attention.

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<sup>16</sup> DRC-PCV-0001-0008, at pages 0017, 0018 and 0019.

<sup>17</sup> ICC-01/04-02/06-411-AnxA, at paras. 36-37.

**CONFIDENTIALITY**

18. 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**

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

**ORDER** the LRV to:

- (i) provide a better electronic version of document DRC-PCV-0001-0020 at page 0022;
- (ii) lift the redactions applied to document DRC-PCV-0001-0035 at page 0036 (B redactions) and page 0038 (B redactions);
- (iii) lift the redactions applied to document DRC-PCV-0001-0042 at page 0042 (B redactions), page 0043 (B redactions), and page 0044 (B redactions);
- (iv) lift the redactions applied to document DRC-PCV-0001-0008 at page 0017, 0018, 0019 (B and C redactions); and
- (v) lift the redactions applied to document DRC-PCV-0001-0027 at page 0028 (B redactions) and page 0029 (B redactions).

**RESPECTFULLY SUBMITTED ON THIS 07<sup>TH</sup> DAY OF APRIL 2017**



Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands