

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Confidential

**Confidential redacted version of "Prosecution request for variation of protectives
measures for three documents", 17 November 2017,
ICC-01/04-02/06-2118-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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**Victims Participation and Reparations
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Other

Introduction

1. The Prosecution requests that Trial Chamber VI lift several redactions approved by Trial Chambers I and II in the *Lubanga* and the *Katanga and Ngudjolo* cases, pursuant to regulation 42(3) of the Regulations of the Court, on the basis that certain of the protective measures are no longer necessary.
2. The three documents concerned, DRC-OTP-0037-0204, DRC-OTP-0037-0206 and DRC-OTP-0037-0451, are annexed to this submission with the approved redactions identified in grey highlights.

Confidentiality

3. This filing is classified as "Confidential, *EX PARTE* - only available to the Prosecution, and the Victims and Witnesses Unit" pursuant to regulation 23*bis*(1) and (2) of the Regulations, since it refers to material not currently available to the Defence, the Legal Representatives or to the public. The Prosecution will file a confidential redacted version of this request.

Background

4. On 23 March 2009, Trial Chamber I approved redactions to be applied to document DRC-OTP-0037-0451.¹
5. On 8 April 2009, Trial Chamber II approved redactions to be applied to document DRC-OTP-0037-0206.²
6. On 21 June 2011, Trial Chamber I approved redactions to be applied to document DRC-OTP-0037-0204.³

¹ ICC-01/04-01/06-1803-Conf-Exp-Anx1, page 99 and public annex 3, pages 94-95.

² ICC-01/04-01/07-1036-Conf-Exp, the document was referenced in the Prosecution's original request as ICC-01/04-01/07-902-Conf-Exp-AnxM.

³ ICC-01/04-01/06-2763-Conf-Exp and ICC-01/04-01/06-2763-Red.

7. On 9 November 2017, the Defence requested the Prosecution to review the need for the redactions applied to documents DRC-OTP-0037-0204, DRC-OTP-0037-0206 and DRC-OTP-0037-0451.⁴

Submissions

8. Pursuant to Regulation 42(1), the protective measures ordered in the *Lubanga* and the *Katanga and Ngudjolo* cases continued to have “full force and effect” in the case against Bosco Ntaganda. However, the Prosecution no longer assesses there to be an ongoing risk to certain named individuals who are not staff of the protected NGO. The persons whose identity can be disclosed are [REDACTED]. The Prosecution assesses that their safety is not put at risk by disclosure of their identity to the Defence.

DRC-OTP-0037-0204

9. In this document, the Prosecution requests the lifting of:
- The identity of the drafter [REDACTED] (at page 0204), and [REDACTED] (at page 0205);
 - A handwritten note: [REDACTED] (at page 0204).
10. The document, entitled “*Rapport succinct sur les violations de droits de l’homme par la brigade de l’Ituri: tortures et traitements inhumains*», is dated 20 January 2004 and lists alleged human rights violations committed by Ituri Brigade MONUC forces from 15 September 2003 to 3 February 2004. The Prosecution assesses that revealing the identity of the author of this report and the handwritten note neither puts the drafter’s safety at risk, nor reveals the identity of the NGO that provided the document to the Prosecution.

⁴ Email sent by the Defence to the Prosecution at 15:59.

DRC-OTP-0037-0206

11. In this document, the Prosecution requests the lifting of the redactions to the nickname of the drafter [REDACTED] (at 0209). The drafter cites a UPC memorandum and lists human rights violations allegedly committed by perpetrators other than the UPC. For this reason, the Prosecution does not believe the disclosure could put this person's safety at risk.

12. The Prosecution assesses, however, that the redactions applied to [REDACTED] (mentioned twice each at page 0207) should remain, because these individuals appear to be staff members of the NGO receiving the report.

DRC-OTP-0037-0451

13. In this document, the Prosecution requests the lifting of:

- The name and identifying information of [REDACTED]:⁵ [REDACTED] (at page 0451);
- [REDACTED]'s name: [REDACTED]⁶ (at pages 0451 and 0452,);
- The following sentence: [REDACTED] (at 0452) ;
- The names of two individuals: [REDACTED] and [REDACTED] (at page 0453);

14. These persons all provide information about alleged crimes committed by groups opposed to the UPC; the Prosecution does not believe the disclosure would put these persons at risk.

⁵ [REDACTED].

⁶ [REDACTED].

15. The Prosecution notes that the metadata redactions to [REDACTED], the NGO that provided the documents to the Prosecution, must remain pursuant to regulation 42(1), in accordance with Trial Chamber I's decision.⁷ The Prosecution notes that [REDACTED] and as such assesses that the risk remains to the safety of the staff who are and have collaborated with it.

Conclusion

16. For the foregoing reasons, the Prosecution requests the Chamber to lift the redactions identified above in the three documents.



Fatou Bensouda
Prosecutor

Dated this 20th day of November 2017

At The Hague, The Netherlands

⁷ ICC-01/04-01/06-1803-Conf-Exp.