

ANNEX F

Public Redacted Version

Bittaye, Ramu Fatima

From: caroline buteau
Sent: 15 November 2010 14:07
To: Omofade, Adebawale; Bensouda, Fatou; Bittaye, Ramu Fatima; Renton, Lara; Sachdeva, Manoj; Samson, Nicole; Struyven, Olivia; Zago, Alice
Cc: catherine MABILLE [REDACTED] Jean-Marie Biju-Duval; Marc Desalliers; [REDACTED]
Subject: demande de communication

Cher Confrère,

La Défense souhaite recevoir communication, sans délai, des éléments suivants :

- Les trois ententes signées par le Bureau du Procureur et/ou Greffe avec les gouvernements de Kinshasa et Kampala (ICC-01/04-01/06-T-1-Conf-FRA, du 2 février 2006, p. 63)
- La photographie de l'individu nommé [REDACTED], ou [REDACTED] en possession du Bureau du Procureur, qui aurait été montrée au témoin W-0015 ;
- Le contenu des notes de bas de page 1, 2 et 3 du document DRC-OTP-0233-0051 ;
- Toutes informations de même nature que les informations qui figurent dans les « *Table of Communications with/Related to* », relatives aux contacts entre les intermédiaires W-0316, W-0321 et W-0143 et les enquêteurs Bernard Lavigne et Nicolas Sebire, avant septembre 2007 ;
- Toutes notes, procès-verbal d'audition, ou rapports d'enquêteurs relatifs à [REDACTED] Ruhimura, de même que le nom de l'intermédiaire qui l'a présenté au Bureau du Procureur ;
- Toutes notes ou rapports d'enquêteurs concernant les demandes formulées par le témoin W-0015 afin de consulter un avocat en 2006, 2007 et 2008 ;
- Copie du diplôme d'État du témoin W-0015 ;
- D'une manière générale, toutes notes d'enquêteurs concernant les témoins W-0015 et D01-0016, et toutes notes d'enquêteurs concernant l'intermédiaire W-0183.
- Toutes notes, déclarations ou autres informations relatives à un individu nommé [REDACTED] dont il est fait mention sur le document DRC-OTP-0201-0055 et DRC-OTP-0201-0059 et DRC-OTP-0201-0062 ;
- Toutes notes ou rapports d'enquêteurs concernant le témoin D01-0016, et en particulier ceux établis par l'enquêteur W-0583 lors de ses missions d'enquêtes.

Nous vous remercions vivement par avance.

Cordiales salutations,

Caroline Buteau



Maître Catherine Mabilie

- Counsel for the Defence of Mr Thomas Lubanga Dyilo -

Reference: Thomas Lubanga Dyilo - 19112010Response to Disclosure Requests - MSIr

Date: 19 November 2010

Dear Counsel,

Subject: Consolidated Response to Defence Disclosure Requests

At the outset, the Prosecution would like to re-iterate its objection to many of the recent disclosure requests being made by the Defence, much of which it strongly believes relates to information and material that in principle is not disclosable.

That said, and in order not to delay matters further, the Prosecution hereby responds to the outstanding Defence disclosure queries contained in the requests of 8 November, 9 November, 15 November and 16 November 2010, and provides the following information:

Further to your email request of 8 November 2010 (received at 14:01):

- The Prosecution agrees to disclose the identity of DRC-OTP-WWWW-0022 to the Defence (and to re-disclose the witness' statement with corresponding redactions lifted), but requires formal authorisation from the Trial Chamber in order to do so, as the non-disclosure of the witness' identity was requested and granted under Rule 81(4). An application to lift this redaction is being prepared and will be filed as soon as practicable. As for the identities of DRC-OTP-WWWW-0343 and DRC-OTP-WWWW-0344, the Prosecution is of the view that there is no basis for the Defence to request this information – their identities are not relevant to the Defence abuse of process case; they are not witnesses in the present case and were not involved with any of the witnesses in the present case.
- The OTP does not believe that the [REDACTED] who witnessed the requests for participation of witnesses W-0006, W-0007, W-0008, W-0009, W-0010 and W-0011 is the same person referred to in receipts DRC-OTP-0211-0142 (page 2) and DRC-OTP-0211-0146 (page 2). According to our records the receipts are relevant to expenses incurred for *ia* witness DRC-OTP-WWWW-0176 [REDACTED]. The fact that these individuals share a name in common does not mean that they are the same person.

- The OTP does not consider the request for the disclosure of the birth certificates (and any other information related to these documents) of DRC-OTP-WWWW-0279 and DRC-OTP-WWWW-0280, who are not trial witnesses nor victims in this case, as being founded on any legitimate basis. These materials are not relevant to any issue in the case, and do not fall within the Prosecution's disclosure obligations (cf para 19 of the Decision on the Defence Request for Screening Notes¹).
- The "fiche de service" mentioned in entries 90-91 of DRC-OTP-0233-0406 has already been disclosed to the Defence in Trial Rule 77 package 173 on 11 October 2010. In this regard, the Prosecution notes that there have been a number of Defence requests for documents and information which the Defence already has access to as a result of relevant disclosures having been effected. Such redundant requests require the Prosecution to divert time and resources that could be otherwise utilised, and therefore we urge the Defence to conduct thorough checks of the material in its possession before making such requests.
- All relevant information falling within our disclosure obligations concerning the meeting between [REDACTED] and DRC-OTP-WWWW-0143 on 15 July 2009 has been disclosed. Any additional information contained in the note created by the investigator following this meeting is considered by the Prosecution as protected under Rule 81(1).
- The "ad hoc service record" mentioned in entries 135-137 of DRC-OTP-0233-0406 has already been disclosed to the Defence in Trial Rule 77 package 173 on 11 October 2010. Again, as previously mentioned, we urge the Defence to conduct thorough checks of the material in its possession before making such requests.
- The OTP has no further disclosable information related to the contacts between DRC-OTP-WWWW-0006 and the investigators through DRC-OTP-WWWW-0143 in March and October 2009.
- In relation to the employment documentation for DRC-OTP-WWWW-0143 in 2005 and 2006, 3 records are being disclosed today. The Prosecution is endeavouring to identify and collect any other relevant information. Should any additional information be identified, this will be disclosed as soon as practicable.
- The OTP has no further information on the individual referred to as [REDACTED]
- Any relevant information falling within the Prosecution's disclosure obligations in respect of any meetings between the OTP and the [REDACTED] will be disclosed as soon as practicable.
- All relevant information concerning the incident mentioned in the investigator's note DRC-OTP-0233-0525 has been disclosed.

¹ The information is not "information in the possession of the prosecution that relates to the knowledge of the prosecution about, or its actions or involvement with, intermediaries 143, 316 and 321 in the context of any alleged irregular behaviour is disclosable", ICC-01/04-01/06-2585.

- The OTP has no additional disclosable information related to the entry of 10 November 2007 in the chart of contacts for DRC-OTP-WWWW-0321.
- According to the information available to the OTP at this time, specifically the statement of DRC-OTP-WWWW-0583, DRC-OTP-WWWW-0015 introduced an individual named [REDACTED] to the OTP.
- In relation to DRC-OTP-WWWW-0017, the Prosecution's position is that it is probable, but it cannot be confirmed, that it was DRC-OTP-WWWW-0015 who introduced him to the OTP.
- The OTP has disclosed all relevant information (including circumstances of collection and manner of contact with the mother of DRC-OTP-WWWW-0213) concerning the document DRC-OTP-0198-0019.
- The corrected chain of custody for the documents DRC-OTP-0180-0126 and DRC-OTP-0180-0151 is being re-issued today.

Further to your email request of 9 November 2010 (received at 13:53):

- The new information contained in the 'Chart of contacts between intermediaries and witnesses' relating to intermediary DRC-OTP-WWWW-0316 and witnesses W-0005, W-0021, W-0037, W-0038, W-0161 and W-0166 was based on the information contained in DRC-OTP-0231-0257. This document has already been disclosed. The Prosecution has no additional information on these meetings.
- 3 additional photos of Defence witnesses are being disclosed today.
- As regards all letters and correspondence between the OTP and witnesses DRC-OTP-WWWW-0582 and DRC-OTP-WWWW-0583 concerning their statements and testimony, this is addressed in our response to your requests of 16 November 2010 below.
- The Prosecution does not agree that it has any obligation to confirm whether or not it has approached [REDACTED] and/or the parents of DRC-OTP-WWWW-0555. Any information obtained in the course of the OTP's investigations (whether related to DRC-OTP-WWWW-0555 or any other witness) and which fall within the Prosecution's disclosure obligations would of course be disclosed, but the Prosecution considers that the nature of its investigations themselves is protected under Rule 81(2).
- As stated above, the Prosecution considers the redacted portions of document DRC-OTP-0233-0051 as internal work product and thereby protected against disclosure by the express terms of Rule 81(1).

Further to your email request of 15 November 2010 (received at 14:07):

- The Prosecution does not consider that the agreements between the OTP/Registry and the governments of Kinshasa and Kampala fall within its disclosure obligations and asks the Defence to set out the basis on which it seeks disclosure of this material.

- Our records do not indicate that witness DRC-OTP-WWWW-0015 was shown a photo of an individual named [REDACTED] [REDACTED]
- The information contained in the "Table of Communications With / Related to" sets out relevant information from the OTP's "situation contacts management system" (see Decision #2585). The OTP did not have this system (or any comparable system) prior to September 2007.
- The Prosecution has no additional information related to [REDACTED] [REDACTED] other than that which has already been disclosed in the statement of DRC-OTP-WWWW-0583 (see para. 50)
- The Prosecution has no record of witness DRC-OTP-WWWW-0015 having requested a lawyer in 2006, 2007 or 2008.
- The only 'diplôme d'Etat' related to witness DRC-OTP-WWWW-0015 that the Prosecution is aware of is DRC-D01-0003-1744, the 'Souche de l'Examen d'Etat'. This document was in fact disclosed to the Prosecution by the Defence and is placed in eCourt.
- At this time, the Prosecution has not identified any additional investigator's notes concerning witnesses DRC-OTP-WWWW-0015, DRC-D01-WWWW-0016 or intermediary DRC-OTP-WWWW-0183 other than that which has already been disclosed. Moreover, pursuant to our obligations, the Prosecution has conducted thorough searches for any other materials related to these three individuals, and disclosed all relevant information pursuant to our obligations.
- The Prosecution has no further information on the individual referred to as [REDACTED] in documents DRC-OTP-0201-0155, DRC-OTP-0201-0059 and DRC-OTP-0201-0062. The Prosecution notes that [REDACTED] is a very common name, nonetheless we have conducted searches for [REDACTED] in connection with witness DRC-OTP-WWWW-0015 and have retrieved no additional disclosable materials.
- As stated above, at this time the Prosecution has not identified any additional investigator's notes concerning defence witness DRC-D01-WWWW-0016 other than what has already been disclosed. We have conducted searches for materials related to this witness and disclosed all relevant information pursuant to our obligations.

Further to your email request of 16 November 2010 (received at 16:11):

- The Prosecution has already provided – as a courtesy – the presentation structure guidelines that were relayed to DRC-OTP-WWWW-0582 and DRC-OTP-WWWW-0583 to guide them in the preparation of their statements. These will be disclosed formally forthwith. In respect of any other information/notes/reports exchanged between the OTP and DRC-OTP-WWWW-0583 – as referred to in para. 10 of his statement DRC-OTP-0234-0212 – the Prosecution considers these communications as falling within Rule 81(1) and 81(2) (please see email of M Sachdeva to C Buteau on 17 November 2010 at 9:20am and further email on 18 November 2010 at 1:53pm).

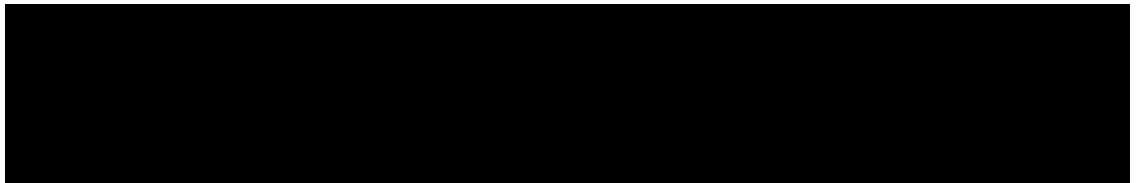
Further to your email request of 16 November 2010 (received at 16:49):

- In respect of the documents accessed by DRC-OTP-WWWW-0583 in preparing his statement – as referred to in para. 9 of his statement DRC-OTP-0234-0212 – the Prosecution considers the disclosure of these materials as being unnecessary given the witness's confirmation that he did not use any of the material made available to him for preparation of his statement (please see email of M Sachdeva to C Buteau on 18 November 2010 at 1:53pm).

Disclosure relevant for DRC-OTP-WWWW-0583

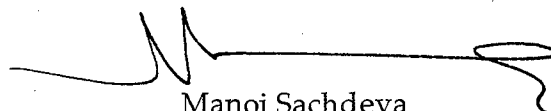
- In anticipation of DRC-OTP-WWWW-0583's testimony, the Office of the Prosecutor re-reviewed the materials in its possession, and pursuant to the Trial Chamber's 13 October decision (#2585), the Prosecution discloses the following information:

In an internal communication of May 2006, DRC-OTP-WWWW-0583 wrote in relation to DRC-OTP-WWWW-0316's work on matters unrelated to the Accused:



- By disclosing this information in accordance with the Court's order, the Prosecution is not waiving our position that internal assessments and opinions are protected from disclosure by the express terms of Rule 81(1).

Yours sincerely,



Manoj Sachdeva
Trial Lawyer