

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **12 March 2015**

TRIAL CHAMBER VI

Before: Judge Robert Fremr, Presiding Judge
Judge Kuniko Ozaki
Judge Geoffrey Henderson

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public

**Order on the disclosure of material related to Witnesses P-0871, P-0876, P-0882,
P-0013, P-0816 and P-0901**

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 Luc Boutin

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**

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, in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 64(2), (3) and (6)(c) and (e), 67 and 68(1) and (5) of the Rome Statute ('Statute'), and Rules 77, 81(4), 84 and 87 of the Rules of Procedure and Evidence ('Rules'), issues this 'Order on the disclosure of material related to Witnesses P-0871, P-0876, P-0882, P-0013, P-0816 and P-0901'.

1. On 9 October 2014, the Chamber set the commencement date for trial for 2 June 2015 and directed the Prosecution to complete, by 2 March 2015, full disclosure of all incriminatory material in the form of witness statements and any other material to be relied on at trial, as well as disclosure of all Article 67(2) and Rule 77 material, save where delayed disclosure had been requested and authorised.¹
2. On 12 December 2014, the Chamber issued a decision adopting a 'Protocol establishing a redaction regime in the case of *The Prosecutor v. Bosco Ntaganda*' ('Redaction Protocol').²
3. On 16 February 2015, the Prosecution filed a request for non-standard redactions ('Redactions Request'),³ whereby it sought authorisation to apply redactions, under Rule 81(4) of the Rules, to the photographs of eight witnesses to be called at trial, material related to nine witnesses it does not intend to rely on at trial, as well as authorisation not to disclose three statements, submitting that anonymous summaries of the statements suffice for the purpose of disclosure.

¹ Order Scheduling a Status Conference and Setting the Commencement Date for the Trial, 9 October 2014, ICC-01/04-02/06-382, paras 8 and 9(d) and (f).

² Decision on the Protocol establishing a redaction regime, 12 December 2014, ICC-01/04-02/06-411 and public Annex A.

³ Prosecution request for redactions, 16 February 2015, ICC-01/04-02/06-462-Conf-Exp (public redacted version at ICC-01/04-02/06-462-Red2) and confidential, *ex parte*, annexes. The Prosecution subsequently withdrew its request for redactions in relation to Witness P-0109 (Prosecution withdrawal of request for redactions in relation to P-0109, 23 February 2015, ICC-01/04-02/06-470).

4. Also on 16 February 2015, the Prosecution filed a request for delayed disclosure of the identity of certain witnesses, including Witness P-0901 ('Delayed Disclosure Request').⁴
5. On 25 February 2015, the VWU filed, as requested by the Chamber,⁵ its observations.⁶
6. Also on 25 February 2015, the Prosecution amended its Delayed Disclosure Request in relation to Witness P-0901, seeking authorisation to disclose a summary in lieu of a redacted transcript.⁷
7. On 27 February 2015, the Chamber granted an extension of time until 4 March 2015 for the Defence to respond to the Requests.⁸
8. On 2 March 2015 and as foreshadowed in the Redactions Request, the Prosecution provided the proposed redactions to the transcriptions of P-0882's interview to the Chamber (together with the Redaction Request and the Delayed Disclosure Request, the 'Requests').⁹

⁴ Prosecution application for delayed disclosure, 16 February 2015, ICC-01/04-02/06-461-Conf-Exp, and confidential *ex parte* annexes. Confidential redacted (ICC-01/04-02/06-461-Conf-Red) and public redacted (ICC-01/04-02/06-461-Red2) versions were filed on 17 February 2015.

⁵ Email from Legal Officer of Chamber to parties and participants on 18 February 2015 at 11.58.

⁶ Victims and Witnesses Unit's observations on the "Prosecution request for redactions" ICC-01/04-02/06-462-Conf-Exp, 25 February 2015, ICC-01/04-02/06-474-Conf.

⁷ Prosecution request for authorisation to provide a summary of P-0901's statement, 25 February 2015, ICC-01/04-02/06-473-Conf-Exp, with confidential *ex parte* annexes. Confidential redacted and public redacted versions were filed on the same day.

⁸ Decision on the Defence's urgent motion for an extension of time to respond to the Prosecution's delayed disclosure and non-standard redactions request, 27 February 2015, ICC-01/04-02/06-481 ('27 February 2015 Decision'). The Chamber informed the parties and participant that the extension of deadline was granted on 23 February 2015 (Email from Legal Officer of Chamber to parties and participants on 23 February 2015 at 16.27).

⁹ Prosecution request for redactions to P-0882's statement, 2 March 2015, ICC-01/04-02/06-486 and confidential, *ex parte*, annex.

9. On 3 March 2015, the Chamber granted a Defence request for an extension of page limit¹⁰ and directed that it file a consolidated response to, *inter alia*, the Requests, by no later than 9 March 2015.¹¹
10. On 9 March 2015, the Defence filed its response to the Requests ('Response'),¹² in which it, *inter alia*, informs the Chamber that it has not had access to certain material relating to witnesses for whom redactions are sought.¹³
11. The Chamber recalls that the Redaction Protocol provides that material shall be disclosed in redacted form when seeking authorisation to apply non-standard redactions.¹⁴ The Chamber specifically referred to this obligation in its 27 February 2015 Decision and further indicated that 'in addition to disclosing this redacted material' and 'pending the Chamber's determination', the Prosecution 'may also provide further information [...], such as summaries, to assist the Defence's understanding of the redacted material'.¹⁵
12. The Defence informed the Chamber that it had not been provided with any material in relation to Witnesses P-0871, P-0876, P-0882, P-0013 and P-0816,¹⁶ and only a summary of investigator's notes of an interview with Witness P-0901.¹⁷ On the basis of the information currently available to the Chamber, it appears that the redacted statements of Witnesses P-0871, P-0876, the redacted transcriptions of Witness P-0882's interview,¹⁸ and the redacted

¹⁰ Expedited Request on Behalf of Mr NTAGANDA Seeking an Extension of the Page Limit in Responding to the Prosecution Application and Prosecution Request, 2 March 2015, ICC-01/04-02/06-490-Conf.

¹¹ Decision on the Defence's urgent motion for an extension of page limit to respond to the Prosecution's delayed disclosure and non-standard redactions requests, 3 March 2015, ICC-01/04-02/06-495.

¹² Consolidated response on behalf of Mr Ntaganda to Prosecution Application and Prosecution Request and seven additional related submissions, 9 March 2015, ICC-01/04-02/06-502-Conf.

¹³ Response, ICC-01/04-02/06-502-Conf, paras 4, 111, 117, 124, 137 and 149.

¹⁴ Redaction Protocol, ICC-01/04-02/06-411-AnxA, para. 49 ('[...] disclosure of the relevant material must be accompanied by an application justifying the requested redactions').

¹⁵ 27 February 2015 Decision, ICC-01/04-02/06-481, paras 12-13.

¹⁶ Response, ICC-01/04-02/06-502-Conf, paras 4, 111, 117, 124, 137 and 149.

¹⁷ Response, ICC-01/04-02/06-502-Conf, paras 186 and 189.

¹⁸ It is noted that these only became available on 2 March 2015, ICC-01/04-02/06-486.

disclosable material related to Witnesses P-0901, P-0013 and P-0816¹⁹ were not provided to the Defence.

13. In light of the above, the Chamber notes with concern what appears to be a breach of the redaction regime set out in the Redaction Protocol, and of the disclosure deadline set by the Chamber on 9 October 2014.

14. The Prosecution is ordered to immediately disclose the relevant redacted material to the Defence. The Defence will be given an opportunity to make supplemental submissions relevant to the Requests following any such disclosure.

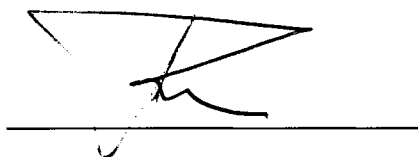
¹⁹ It is noted that the Prosecution has sought disclosure of summaries of the statements, or transcripts, in respect of Witnesses P-0901, P-0013 and P-0816 as a complete replacement to disclosure of the redacted statements or transcripts. However, pending the Chamber's determination on the Requests, disclosure in accordance with the Chamber's direction in the 27 February 2015 Decision is appropriate.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

ORDERS the Prosecution to immediately disclose the material mentioned at paragraph 12 above, or to otherwise provide explanations as to the current status of disclosure, by the filing deadline on 16 March 2015; and

INVITES the Defence to provide any supplemental observations relevant to the Requests by the filing deadline on 23 March 2015.

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



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Geoffrey Henderson

Dated this 12 March 2015

At The Hague, The Netherlands