

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 7 April 2015

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 redacted version of

Decision on the Prosecution request for redactions

Decision 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
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Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

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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')¹ of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 64(2), (3), (6)(c) and (e), 67(2) and 68(1) and (5) of the Rome Statute ('Statute'), Rules 76-77, 81(4), 84 and 87 of the Rules of Procedure and Evidence ('Rules') and Regulation 42 of the Regulations of the Court ('Regulations'), issues this 'Decision on the Prosecution request for redactions'.

I. Background and Submissions

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) material and Rule 77 material, save where delayed disclosure had been requested and authorised.²
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*' ('12 December 2014 Decision' and 'Redaction Protocol', respectively),³ according to which redactions not falling under identified standard categories are subject to an application to the Chamber.⁴
3. On 16 February 2015, the Prosecution filed a request for non-standard redactions ('Request'),⁵ whereby it seeks authorisation to apply redactions, in

¹ Where 'Chamber' is used in this decision it refers to both Trial Chamber VI as composed by the Presidency's 'Decision replacing a judge in Trial Chamber VI', 18 March 2015, ICC-01/04-02/06-521 and to the chamber in its previous composition.

² Order Scheduling a Status Conference and Setting the Commencement Date for the Trial, ICC-01/04-02/06-382-Corr, paras 8 and 9(d) and (f).

³ Decision on the Protocol establishing a redaction regime, ICC-01/04-02/06-411 and public annex.

⁴ Redaction Protocol, ICC-01/04-02/06-411-AnxA, paras 48-50.

⁵ Prosecution request for redactions, ICC-01/04-02/06-462-Conf-Exp and 20 confidential, *ex parte*, annexes labelled A-C3. A public redacted version (ICC-01/04-02/06-462-Red2) and confidential redacted version (ICC-01/04-02/06-462-Conf-Red) were also filed on 16 February 2015 and registered on 17 February 2015. Also on 17 February 2015, corrigenda were filed in relation to Annexes C1 and C3 as ICC-01/04-02/06-462-Conf-Exp-

accordance with Rule 81(4) of the Rules, to: i) the photographs of eight Prosecution witnesses (Witnesses P-0018, P-0019, P-0113, P-0758, P-0875, P-0883, P-0888 and P-0898), for the duration of trial; ii) the screening note of Witness P-0087, interview note of Witness P-0125 and statements of Witnesses P-0809 and P-0813, until there is a relevant change in the circumstances; iii) statements of Witnesses P-0109, P-0871 and P-0876, and transcripts of Witness P-0882's interview, until there is a relevant change in the circumstances; and iv) screening note of Witness P-0899, until [REDACTED]. The Prosecution further seeks the Chamber's authorisation not to disclose the statements of Witnesses P-0013, P-0044 and P-0816, submitting that the anonymous summaries proposed suffice for the purpose of disclosure, until there is a relevant change in circumstances.

4. On 23 February 2015, the Prosecution withdrew its request for redactions in relation to Witness P-0109.⁶
5. On 25 February 2015, the VWU filed, as requested by the Chamber,⁷ its observations ('VWU Observations').⁸
6. On 27 February 2015, the Chamber granted an extension of time until 4 March 2015 for the Defence to respond to the Request.⁹

AnxC1-Corr and ICC-01/04-02/06-462-Conf-Exp-AnxC3-Corr respectively. On 19 February 2015, a corrigendum was filed in relation to Annex A as ICC-01/04-02/06-462-Conf-Exp-AnxA-Corr.

⁶ Prosecution withdrawal of request for redactions in relation to P-0109, ICC-01/04-02/06-470.

⁷ Email from Legal Officer of Chamber to parties and participants on 18 February 2015 at 11.58.

⁸ Victims and Witnesses Unit's observations on the "Prosecution request for redactions" ICC-01/04-02/06-462-Conf-Exp, ICC-01/04-02/06-474-Conf.

⁹ 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, ICC-01/04-02/06-481. 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). *See also* Urgent Motion on Behalf of Mr NTAGANDA Requesting an Extension of Time Limit to Respond to the "Prosecution request for redactions" and the "Prosecution application for delayed disclosure", 19 February 2015, ICC-01/04-02/06-466-Conf.

7. On 2 March 2015, and as foreshadowed in the Request, the Prosecution submitted the proposed redactions to the transcriptions of Witness P-0882's interview ('Supplemental Request').¹⁰
8. Also on 2 March 2015, the Defence submitted an urgent request for an extension of page limit to file a consolidated response to, *inter alia*, the Request and the Supplemental Request.¹¹
9. On 3 March 2015, the Chamber granted a Defence request for an extension of page limit and directed that it file a consolidated response to, *inter alia*, the Request and the Supplemental Request, by no later than 9 March 2015.¹²
10. On 9 March 2015, the Defence filed its response to the Request and Supplemental Request ('Response'),¹³ in which it opposes all non-standard redactions sought. It submits that the information available to it is insufficient to respond and therefore requests the Chamber to review and pronounce on the appropriateness of all redactions applied to the Request.¹⁴ The Defence also informs the Chamber that it has not had access to certain material for which non-disclosure is sought.¹⁵ Turning to the merits, the Defence submits:
 - i) that the Chamber must look at both the overall prejudice to the accused, as well as each individual redaction sought;¹⁶
 - ii) that respect for the rights of the Accused must be given priority when deciding on the need to impose

¹⁰ Prosecution request for redactions to P-0882's statement, ICC-01/04-02/06-486 and confidential, *ex parte*, annex.

¹¹ Expedited Request on Behalf of Mr NTAGANDA Seeking an Extension of the Page Limit in Responding to the Prosecution Application and Prosecution Request, ICC-01/04-02/06-490-Conf.

¹² 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, ICC-01/04-02/06-495.

¹³ Consolidated response on behalf of Mr Ntaganda to Prosecution Application and Prosecution Request and seven additional related submissions, ICC-01/04-02/06-502-Conf. A first (ICC-01/04-02/06-502-Conf-Corr) and second (ICC-01/04-02/06-502-Conf-Corr2) corrigendum were notified on 11 and 17 March 2015, respectively. A public redacted version (ICC-01/04-02/06-502-Corr2-Red) was notified on 17 March 2015, removed from circulation (Email from Legal Officer of Chamber to parties and participants on 19 March 2015, 11.14), and filed anew on 19 March 2015 (ICC-01/04-02/06-502-Corr2-Red).

¹⁴ See *e.g.* Response, ICC-01/04-02/06-502-Conf-Corr, paras 4 and 26-31. See also page 50.

¹⁵ Response, ICC-01/04-02/06-502-Corr2-Red, paras 4, 111, 117, 124, 137 and 149.

¹⁶ Response, ICC-01/04-02/06-502-Corr2-Red, para. 77.

protective measures;¹⁷ and iii) that the Chamber should take into consideration the impact of these measures on the ability of the accused to prepare for trial, as well as his right to know the case he has to meet.¹⁸ Moreover, the Defence argues that, [REDACTED].¹⁹ Lastly, the Defence requests, should the Chamber be inclined to give authorisation to apply any of the redactions sought, that the trial schedule be amended to minimise the prejudice to the fair trial rights of Mr Ntaganda.²⁰

11. On 12 March 2015, in light of the Response, the Chamber issued an order for the Prosecution to immediately disclose material which had not yet been provided to the Defence and invited supplemental observations from the Defence.²¹
12. On 16 March 2015, the Prosecution provided updated information on the status of disclosure,²² in which it acknowledged that, due to an oversight, the material related to Witnesses P-0871, P-0876, P-0882, P-0013 and P-0816 was not originally provided to the Defence. The Prosecution also informed the Chamber that, on the morning of 13 March 2015, it provided the Defence with copies of the redacted statements or interview transcripts of non-trial Witnesses P-0871, P-0876 and P-0882 as well as copies of the proposed summaries of the statements of Witnesses P-0013 and P-0816.
13. On 20 March 2015, the Defence filed supplemental observations in which it stressed that the updated information provided by the Prosecution does not affect its opposition to the Prosecution's requests to apply non-standard

¹⁷ Response, ICC-01/04-02/06-502-Corr2-Red, paras 9 and 50-53.

¹⁸ Response, ICC-01/04-02/06-502-Corr2-Red, para. 12.

¹⁹ Response, ICC-01/04-02/06-502-Conf-Corr2, paras 42-43.

²⁰ Response, ICC-01/04-02/06-502-Corr2-Red, page 50.

²¹ Order on the disclosure of material related to Witnesses P-0871, P-0876, P-0882, P-0013, P-0816 and P-0901, ICC-01/04-02/06-506.

²² Prosecution's Provision of the Current Status of Disclosure, ICC-01/04-02/06-517 and confidential annex.

redactions to material related to Witnesses P-0871, P-0876, P-0882, P-0013 and P-0816.²³

II. Applicable Law

14. The Chamber set out the relevant applicable law in the 12 December 2014 Decision and in the Redaction Protocol.²⁴
15. For the purpose of the present decision, it is recalled, in particular, that ‘disclosable material should be served in full and any redactions need to be justified and authorised individually under the provisions of the Statute’.²⁵ Under Rule 81(4) of the Rules, where the disclosure of information may compromise the safety of victims, witnesses, their families, or any ‘other person at risk on account of activities of the Court’, the Prosecution is entitled to request redactions.²⁶
16. Each redaction sought on this basis shall be assessed on a case-by-case basis by the Chamber, with due regard to the competing interests at stake. To this end, the following criteria shall be applied: i) the existence of an ‘objectively justifiable risk’²⁷ to the safety of the person concerned;²⁸ ii) the risk must arise from disclosing the particular information to the Defence;²⁹ iii) the infeasibility or insufficiency of less restrictive protective measures;³⁰ iv) an assessment as to

²³ Supplemental observations on behalf of Mr Ntaganda following the Chamber’s Order on the disclosure of material related to Witnesses P-0871, P-0876, P-0882, P-0013, P-0816 and P-0901, ICC-01/04-02/06-530.

²⁴ 12 December 2014 Decision ICC-01/04-02/06-411, paras 12-15; Redaction Protocol, ICC-01/04-02/06-411-AnxA, paras 48-50.

²⁵ 12 December 2014 Decision, ICC-01/04-02/06-411, para. 13 and footnote 18.

²⁶ *The Prosecutor v. Germain Katanga*, Appeals Chamber, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled “First Decision on the Prosecution Request for Authorisation to Redact Witness Statements”, 13 May 2008, ICC-01/04-01/07-475, OA, (‘*Katanga* OA Judgment’), para. 56.

²⁷ *Katanga* OA Judgment, ICC-01/04-01/07-475, para. 71.

²⁸ *Katanga* OA Judgment, ICC-01/04-01/07-475, para. 97.

²⁹ *Katanga* OA Judgment, ICC-01/04-01/07-475, para. 71(b).

³⁰ *The Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, Judgment on the Prosecutor’s appeal against the decision of Pre-Trial Chamber I entitled “Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 (2) and (4) of the Rules of Procedure and Evidence”, 13 October 2006, ICC-01/04-01/06-568, para. 37; Judgment on the appeal of Mr Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled “First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81”, 14 December 2006, ICC-01/04-01/06-773, OA5 (‘*Lubanga* OA5 Judgment’), para. 33.

whether the redactions sought are ‘prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial’;³¹ and v) the obligation to periodically review the decision authorising the redactions should circumstances change.³²

III. Analysis

17. It is incumbent upon the Chamber to ensure that the trial is conducted with full respect to the rights of Mr Ntaganda and with due regard to the protection of victims and witnesses.³³ To this end, the Chamber has taken into consideration the current stage of the proceedings, insofar as the trial is scheduled to commence in approximately two months. The Chamber has also carefully assessed the relevance, for the Defence, of the information covered by the redactions sought, including whether or not the Prosecution intended to rely on the material in question at trial.

18. From the outset, the Chamber wishes to clarify that it has reviewed the redactions sought individually and reached its conclusions in light of the circumstances of the present case.

A. Preliminary Issues

19. The Chamber further notes the Defence requests that the Chamber ‘review and pronounce on’ the appropriateness of the redactions applied to the Request and Supplemental Request.³⁴ The Chamber is satisfied that the Prosecution provided, in the Request, all information which could be made available to the Defence without defeating the purpose of the redactions

³¹ *Lubanga* OA5 Judgment, ICC-01/04-01/06-773, para. 34.

³² *Katanga* OA Judgment, ICC-01/04-01/07-475, para. 73(c); *The Prosecutor v. Germain Katanga*, Appeals Chamber, Judgment on the appeal of Mr Germain Katanga against the decision of Pre-Trial Chamber I entitled “First Decision on the Prosecution Request for Authorisation to Redact Witness Statements”, 13 May 2008, ICC-01/04-01/07-476, OA2, para. 64.

³³ See Articles 64(2), (3) and (6)(c), and (e), as well as Articles 67 and 68(1) of the Statute.

³⁴ See Response, ICC-01/04-02/06-502-Corr2-Red, paras 26-31, 122, 129, 136, 142, 148 and 154.

sought. Having found that the redactions applied to the confidential redacted version of the Request were necessary, and in light of the fact that the Defence had access to all redacted underlying material, the Chamber further considers that the Defence was in a position to respond meaningfully to the Request.

20. The Chamber has also noted the Defence's submissions that the notion of 'changed circumstances' is too vague and that non-disclosure of information should be periodically reviewed.³⁵ The Chamber agrees with the Defence that its determination on non-disclosure should be kept under review, but considers that an automatic periodical review is not warranted. The Chamber is of the view that periodical review shall be triggered by the existence of changed circumstances and stresses that the Prosecution 'should assist the [...] Chamber in bringing to its attention factors that may cause it to reconsider its ruling on non-disclosure.'³⁶

21. The Chamber further notes the Defence's submissions [REDACTED]. [REDACTED],³⁷ [REDACTED]. [REDACTED].³⁸

B. Witnesses P-0018, P-0019, P-0113, P-0758, P-0875, P-0883, P-0888 and P-0898

22. The Prosecution seeks authorisation to redact, for the duration of the trial, the images of eight witnesses³⁹ who, it contends, are particularly vulnerable as they are victims of sexual violence and/or former child soldiers.

23. The Defence submits that the Prosecution should demonstrate an objectively identifiable risk to the *safety* of the witnesses concerned and therefore argues that risks to the well-being, dignity and privacy of witnesses are not, in and of

³⁵ Response, ICC-01/04-02/06-502-Corr2-Red, paras 61-65.

³⁶ *Katanga* OA Judgment, ICC-01/04-01/07-475, para. 73(c); *The Prosecutor v. Germain Katanga*, Appeals Chamber, Judgment on the appeal of Mr Germain Katanga against the decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Request for Authorisation to Redact Witness Statements", 13 May 2008, ICC-01/04-01/07-476, OA2, para. 64.

³⁷ Decision on Prosecution application for delayed disclosure, ICC-01/04-02/06-537-Conf-Exp-Red, para. 25.

³⁸ See e.g. [REDACTED].

³⁹ Request, ICC-01/04-02/06-462-Red2, paras 34 and 37.

themselves, sufficient to justify the adoption of a measure such as non-disclosure.⁴⁰ The Defence is of the view that the Prosecution failed to demonstrate an objectively identifiable risk to the safety of Witnesses P-0018, P-0019, P-0113, P-0758, P-0875, P-0883, P-0888 and P-0898⁴¹ and submits that the redactions sought to their images will inevitably impede its ability to effectively investigate or, at a minimum, seriously render such investigations 'more complicated, resource consuming and longer'.⁴² In this regard, the Defence contends such non-disclosure will prejudice Mr Ntaganda as his team will not be able to prepare adequately for trial.⁴³

24. The Chamber notes the Prosecution intends to rely at trial on these eight witnesses and on most of the material it is requesting redactions in relation to.⁴⁴ The Chamber also notes the VWU's observations which indicate that using these witnesses' photographs in the course of investigations may impact on their vulnerable psychological state, dignity and privacy.⁴⁵

25. In addition, the Chamber recalls that the protocol regulating the handling of confidential information during investigations ('Confidentiality Protocol') provides that photographs can only be used 'when no satisfactory alternative investigative avenue is available'.⁴⁶ Although it was decided that 'their use does not require the leave of the Chamber',⁴⁷ the parties and participants have

⁴⁰ Response, ICC-01/04-02/06-502-Corr2-Red, paras 10 and 54-58.

⁴¹ Response, ICC-01/04-02/06-502-Corr2-Red, paras 159, 167, 172 and 179.

⁴² Response, ICC-01/04-02/06-502-Corr2-Red, para. 79.

⁴³ Response, ICC-01/04-02/06-502-Corr2-Red, para. 80. *See also* paras 159, 167, 172 and 179.

⁴⁴ Most material have been included on its List of evidence. *See* Annex C to Prosecution's Lists of Witnesses, Summaries, and Evidence, 2 March 2015, ICC-01/04-02/06-491-Conf-AnxC. The exceptions are the images in documents DRC-OTP-2078-2318, DRC-OTP-2078-2320 and DRC-OTP-2075-0643. The Chamber also notes that the document DRC-OTP-2075-0644 was not on the Prosecution's List of Evidence but that the copy of the identifying document it depicts nonetheless figures on the List of Evidence as DRC-OTP-2075-0645.

⁴⁵ VWU Observations, ICC-01/04-02/06-474-Conf, para. 4. *See also* para. 3. *See also* Request, ICC-01/04-02/06-462-Red2, para. 37.

⁴⁶ Annex A to Decision on adoption of a 'Protocol on the Handling of Confidential Information investigations and Contact Between a Party or Participant and Witnesses of the Opposing Party or a Participant', 12 December 2014, ICC-01/04-02/06-412, para. 9.

⁴⁷ Decision on adoption of a 'Protocol on the Handling of Confidential Information investigations and Contact Between a Party or Participant and Witnesses of the Opposing Party or a Participant', 12 December 2014, ICC-01/04-02/06-412, para. 14 and public annex, para. 9.

not been authorised to use photographs which contain elements which tend to reveal the involvement of the witness in the activities of the Court.⁴⁸

26. As regard Witnesses P-0018, P-0019 and P-0883, the Chamber notes that they reported having been captured, sexually assaulted and [REDACTED].⁴⁹ Some images [REDACTED]⁵⁰ and [REDACTED].⁵¹ The Chamber is not persuaded that the application of the redactions sought is the lesser measure available to address the risks identified by the Prosecution. In this regard, it recalls that the Confidentiality Protocol contains specific provisions governing the use of photographs. The Chamber observes that most of the images depicting Witnesses P-0018, P-0019 and P-0883 contain elements which tend to reveal their cooperation with the Court, notably on the basis that the images appear to have been taken for a forensic purpose, and therefore, in accordance with the Confidentiality Protocol, are not to be used during investigations.⁵² Moreover, as concerns the remaining photographs, which do not tend to reveal the witnesses' cooperation with the Court, the Chamber considers that the potential adverse psychological impact the use of their photographs may have on these vulnerable witnesses warrants departure from the general procedure set out in the Confidentiality Protocol. The Chamber considers that, in this specific instance, a case-by-case assessment is suitable in order to ensure the competing interests at stake are individually considered and ruled upon. The Chamber therefore dismisses the Prosecution's request to redact the images throughout trial of Witnesses P-0018, P-0019 and P-0883, whose identities have been disclosed to the Defence, but nonetheless decides that the

⁴⁸ Request, ICC-01/04-02/06-462-Red2, para. 38 referring to Confidentiality Protocol, ICC-01/04-02/06-412-AnxA, para. 9.

⁴⁹ Request, ICC-01/04-02/06-462-Conf-Red, para. 37.

⁵⁰ ICC-01/04-02/06-462-Conf-Exp-AnxB9.

⁵¹ ICC-01/04-02/06-462-Conf-Exp-AnxB14.

⁵² Request, ICC-01/04-02/06-462-Red2, para. 39. *See also* ICC-01/04-02/06-462-Conf-Exp-AnxB9; ICC-01/04-02/06-462-Conf-Exp-AnxB10; ICC-01/04-02/06-462-Conf-Exp-AnxB14.

parties shall seek the leave of the Chamber before using an image depicting one of these witnesses in the course of their investigations.

27. Turning now to the redactions sought to the material related to Witnesses P-0875, P-0898 and P-0113, the Chamber notes that these three trial witnesses' identities have been disclosed to the Defence. It further observes that all photographs for which protective measures are sought appear on proof of identity documents and therefore considers that their use, in the course of investigations, is likely to reveal involvement with the Court.⁵³ The Chamber acknowledges the specific security concerns in relation to Witness P-0898,⁵⁴ but also notes VWU's advice to the Prosecution, [REDACTED].⁵⁵ In light of the nature of the photos for which redactions are sought, recalling that the utmost caution shall always be exercised when showing any kind of visual material depicting a witness, and having found that the Prosecution did not sufficiently motivate its request in this regard, the Chamber is satisfied that the procedure set out in the Confidentiality Protocol will suffice to protect the safety of Witnesses P-0875, P-0898 and P-0113, and therefore dismisses the Prosecution request in this regard.

28. The Chamber is also of the view that the photograph depicting Witness P-0758⁵⁶ need not be redacted. It is of the view that the procedure governing the handling of confidential information set out in the Confidentiality Protocol sufficiently protects this witness whose identity has been disclosed to the Defence.⁵⁷ The Chamber therefore decides that the

⁵³ ICC-01/04-02/06-462-Conf-Exp-AnxB11; ICC-01/04-02/06-462-Conf-Exp-AnxB13; ICC-01/04-02/06-462-Conf-Exp-AnxB16.

⁵⁴ ICC-01/04-02/06-461-Conf-Exp-AnxA-Corr, pages 23-27.

⁵⁵ Victims and Witnesses Unit's observations on the "Prosecution application for delayed disclosure" ICC-01/04-02/06-461-Conf-Exp, 25 February 2015, ICC-01/04-02/06-476-Conf-Exp, para. 8. A confidential redacted version (ICC-01/04-02/06-476-Conf-Red) was filed on 25 February 2015 and notified on 26 February 2015. A second confidential redacted version (ICC-01/04-02/06-476-Conf-Red2) was filed on 10 March 2015 and notified on 12 March 2015.

⁵⁶ ICC-01/04-02/06-462-Conf-Exp-AnxB12.

⁵⁷ See Prosecution withdrawal of its application for delayed disclosure in relation to P-0758, P-0761, P-0887, P-0898, P-0907, P-0914 and P-0918, 25 February 2015, ICC-01/04-02/06-475-Conf-Exp. The Chamber also

redaction to Witness P-0758's photograph should be lifted and the material disclosed to the Defence.

29. Finally, concerning the redaction sought to the material related to Witness P-0888, the Chamber recalls that it authorised delayed disclosure of the witness's identity until [REDACTED].⁵⁸ Being of the view that the procedure set out in the Confidentiality Protocol is otherwise sufficient to protect Witness P-0888's safety and security after identifying information has been disclosed to the Defence, the Chamber decides not to authorise the redactions sought for the duration of the trial. The photographs depicting Witness P-0888⁵⁹ are therefore to be disclosed to the Defence together with all identifying information.

C. Witnesses P-0087 and P-0125

30. The Prosecution seeks authorisation to maintain redactions, as authorised by the Single Judge of Pre-Trial Chamber II, to identifying information contained in the screening note of Witness P-0087 and interview notes of Witness P-0125.⁶⁰

31. The Defence opposes the redactions sought to the material relating to Witnesses P-0087 and P-0125. It submits that the Prosecution failed to demonstrate objectively identifiable risks to the safety of these witnesses and contends that non-disclosure would unduly prejudice the fair trial rights of Mr Ntaganda. In this regard, it submits that the redactions sought would

notes VWU's submissions that this witness's identity can be disclosed to the Defence (ICC-01/04-02/06-476-Conf-Exp, para. 7).

⁵⁸ Decision on Prosecution application for delayed disclosure, ICC-01/04-02/06-537-Conf-Exp-Red, para. 38. In this regard, the Chamber notes that [REDACTED].

⁵⁹ ICC-01/04-02/06-462-Conf-Exp-AnxB15.

⁶⁰ Request, ICC-01/04-02/06-462-Red2, paras 15-17.

hamper Defence investigations, including its ability to identify, locate and obtain information from Witnesses P-0087 and P-0125.⁶¹

32. The Chamber notes that the Prosecution does not intend to rely on Witnesses P-0087 and P-0125 at trial and that it was last in contact with them in [REDACTED] and in [REDACTED], respectively.⁶² Consequently, these two individuals did not recently have the opportunity to express or negate their willingness to be part of the Court proceedings and may not be aware that their identity could be disclosed to Mr Ntaganda.

33. The Chamber is of the view that, in the particular circumstances, until the Prosecution is able to contact these individuals, to inform them of disclosure and to provide them with relevant security information, disclosing to the Defence potentially identifying information of Witnesses P-0087 and P-0125 may put them and their respective families at risk. Given the absence of information regarding these witnesses' location and the location of their family members, the Chamber is persuaded that, until there is a relevant change in circumstances, redactions to identifying information of Witnesses P-0087 and P-0125, and their family members, shall be maintained.

34. The Chamber however wishes to clarify that non-standard redactions are only granted by virtue of this decision for 'contact and identifying information' related to the witnesses and their family.⁶³ The Chamber recalls that redactions may otherwise only be maintained when covered by standard justifications and shall be identified with the relevant category code in the material disclosed to the Defence. In this regard, lifting deadlines provided in the

⁶¹ Response, ICC-01/04-02/06-502-Corr2-Red, paras 91 and 96, referring to paras 82-84.

⁶² Request, ICC-01/04-02/06-462-Conf-Red, para. 17.

⁶³ The Chamber has noted that the some charts annexed to the Request consist of excerpts from decisions of the Single Judge of the Pre-Trial Chamber which go beyond redactions sought in the Request. The Chamber has therefore limited its determination to redactions for which authorisation to apply non-standard redactions was specifically requested. *See e.g.* ICC-01/04-02/06-462-Conf-Exp-AnxB2; ICC-01/04-02/06-462-Conf-Exp-AnxB3.

Redaction Protocol, such as for identifying information of Prosecution investigators, are to be strictly respected.

D. Witness P-0809

35. The Prosecution requests authorisation to maintain redactions authorised at the confirmation stage of the proceedings to the statement of non-trial Witness P-0809, until there is a relevant change in circumstances.⁶⁴

36. The Defence submits that the Prosecution fails to demonstrate an objectively identifiable risk to the safety of the Witness P-0809 and ignores that certain information which may appropriately be redacted during the confirmation stage of the proceedings must be disclosed at the trial stage. It argues that applying the redactions sought would unduly prejudice Mr Ntaganda as the Defence would be deprived of the necessary time and facilities to prepare adequately for trial.⁶⁵

37. The Chamber notes that the witness: i) has expressed security concerns given that [REDACTED];⁶⁶ and ii) indicated that [REDACTED].⁶⁷ The Chamber also takes note of the fact that Witness P-0809 [REDACTED] and [REDACTED].⁶⁸ The Chamber further notes that Witness P-0809 will not be relied on at trial and, as mentioned by the Prosecution, this witness's statement mainly provides incriminatory information, with limited potentially exculpatory and Rule 77 information.⁶⁹

38. Taking into consideration [REDACTED],⁷⁰ the Chamber is of the view that, until there is a relevant change in the circumstances, maintaining the redactions

⁶⁴ Request, ICC-01/04-02/06-462-Red2, paras 15-16 and 18. *See also* ICC-01/04-02/06-462-Conf-Exp-AnxB3.

⁶⁵ Response, ICC-01/04-02/06-502-Corr2-Red, para. 101, referring to paras 44-49 and 66-77.

⁶⁶ Request, ICC-01/04-02/06-462-Conf-Exp, para. 18.

⁶⁷ ICC-01/04-02/06-462-Conf-Exp-AnxA-Corr, page 2.

⁶⁸ ICC-01/04-02/06-462-Conf-Exp-AnxA-Corr, pages 2-3.

⁶⁹ ICC-01/04-02/06-462-Conf-Exp-AnxA-Corr, page 3. *See also* Request, ICC-01/04-02/06-462-Red2, para. 15.

⁷⁰ [REDACTED].

applied at the confirmation stage of the proceedings is the most appropriate measure to ensure Witness P-0809's safety, as well as of the witness's family. Having reviewed the 15-page detailed statement given by the witness,⁷¹ and considering that the redactions sought do not render it unintelligible or unusable, the Chamber is also satisfied that no undue prejudice will result from the maintenance of these redactions.

E. Witness P-0813

39. The Prosecution requests authorisation to maintain redactions, as authorised by the Single Judge of Pre-Trial Chamber II, to the statement of non-trial Witness P-0813, until there is a relevant change in circumstances.⁷²

40. The Defence opposes the Prosecution's request to apply redactions to identifying information contained in the statement of Witness P-0813. It contends that the Prosecution did not demonstrate an objectively identifiable risk to the safety of that witness and submits that non-disclosure would hamper Defence investigations.⁷³

41. The Chamber notes that the Prosecution indicates that Witness P-0813 mainly provides incriminating information, but that his statement also contains some information material to the preparation of the Defence.⁷⁴ The Chamber also takes note of the fact that this non-trial witness [REDACTED] and that [REDACTED].⁷⁵

42. In light of the above, and recalling [REDACTED],⁷⁶ the Chamber is of the view that non-disclosure of identifying and potentially identifying information is the least intrusive protective measure currently feasible in order to ensure

⁷¹ ICC-01/04-02/06-462-Conf-Exp-AnxB3.

⁷² Request, ICC-01/04-02/06-462-Red2, paras 15-16 and 18.

⁷³ Response, ICC-01/04-02/06-502-Corr2-Red, para. 107.

⁷⁴ ICC-01/04-02/06-462-Conf-Exp-AnxA-Corr, pages 6-7.

⁷⁵ Request, ICC-01/04-02/06-462-Conf-Exp, para. 18; ICC-01/04-02/06-462-Conf-Exp-AnxA-Corr, pages 6-10.

⁷⁶ [REDACTED].

Witness P-0813's safety and security, and that of the witness's family. Having reviewed the redactions sought,⁷⁷ the Chamber is persuaded that, as the full content of the statement is otherwise to be disclosed, and noting that the redactions proposed do not render the statement unintelligible or unusable, the requested measures are not inconsistent with the rights of the accused or a fair and impartial trial.

F. Witness P-0109

43. The Prosecution informed the Chamber that it met with Witness P-0109, 'who stated that there no longer were any concerns in relation to disclosure', and withdrew its request in relation to Witness P-0109.⁷⁸

G. Witness P-0871

44. The Prosecution seeks authorisation to apply non-standard redactions to Witness P-0871's identifying information, until there is a relevant change in circumstances.⁷⁹ The Prosecution submits that the information contained in Witness P-0871's statement is predominantly of an incriminatory nature⁸⁰ and that, as a former UPC child soldier, the witness is particularly vulnerable to retaliation.⁸¹

45. The Defence opposes the request to apply non-standard redactions to identifying information contained in the material relating to Witness P-0871 as, in its view, the Prosecution failed to establish an objectively identifiable

⁷⁷ ICC-01/04-02/06-462-Conf-Exp-AnxB4.

⁷⁸ Prosecution withdrawal of request for redactions in relation to P-0109, 23 February 2015, ICC-01/04-02/06-470, para. 4.

⁷⁹ Request, ICC-01/04-02/06-462-Red2, paras 20 and 22.

⁸⁰ Request, ICC-01/04-02/06-462-Red2, para. 19. *See also* ICC-01/04-02/06-462-Conf-Exp-AnxA-Corr, page 11.

⁸¹ Request, ICC-01/04-02/06-462-Red2, para. 22. *See also* ICC-01/04-02/06-462-Conf-Exp-AnxA-Corr, page 12.

risk to his/her safety. The Defence further submits that depriving it of essential information causes prejudice to the fair trial rights of the accused.⁸²

46. The Chamber observes that the proposed redactions are strictly limited to potentially identifying information and that the content of the statement of Witness P-0871 is otherwise to be disclosed to the Defence.⁸³ In light of the fact that the information contained in the statement will not be relied on at trial, and noting that Witness P-0871 is a particularly vulnerable former child soldier, the Chamber is satisfied that the redactions sought are the least intrusive protective measures feasible to ensure the witness's safety. In reaching this conclusion, the Chamber has duly balanced the competing interests at stake and considered that the redactions would not cause undue prejudice to the Defence.

H. Witness P-0876

47. The Prosecution seeks authorisation from the Chamber to apply non-standard redactions to identifying information in the unfinished and unsigned statement of Witness P-0876, who decided not to continue cooperation with the Prosecution.⁸⁴

48. The Defence opposes the request to apply these redactions as, in its view, the Prosecution failed to establish an objectively identifiable risk to his/her safety. It further submits that denying the Defence essential information for its investigations causes prejudice to the fair trial rights of the accused.⁸⁵

49. The Prosecution indicates that the information provided by this witness is mainly incriminatory in nature, but that part of it may also be considered

⁸² Response, ICC-01/04-02/06-502-Corr2-Red, para. 115.

⁸³ ICC-01/04-02/06-462-Conf-Exp-AnxB6.

⁸⁴ Request, ICC-01/04-02/06-462-Red2, paras 19-20 and 23. *See also* ICC-01/04-02/06-462-Conf-Exp-AnxA-Corr, pages 19-23.

⁸⁵ Response, ICC-01/04-02/06-502-Corr2-Red, para. 121.

material for the preparation of the Defence.⁸⁶ Witness P-0876 is a former UPC child soldier, who declined cooperating further with the Prosecution [REDACTED].⁸⁷ The Prosecution also informs the Chamber that Witness P-0876's present location is unknown.⁸⁸

50. Noting the risks related to the fact that this witness is a former UPC child soldier whose present location is unknown, the Chamber is convinced, for the reasons advanced by the Prosecution, that non-disclosure of potentially identifying information of Witness P-0876 is necessary to ensure the witness's safety, until there is a change in the relevant circumstances. The Chamber is of the view that the redactions sought do not affect the utility of the information disclosed, which retains its readability,⁸⁹ and, given that the information provided by Witness P-0876 will not be relied on at trial, considers that the protective measures will not unduly affect the fairness of the trial against Mr Ntaganda.

I. Witness P-0882

51. The Prosecution also seeks authorisation to redact identifying and contact information contained in the statement of Witness P-0882,⁹⁰ who it does not intend to rely on at trial.

52. The Defence submits that significant information is redacted from the Prosecution's Request in relation to the redactions sought to the statement of Witness P-0882.⁹¹ It contends that the Prosecution failed to demonstrate an objectively identifiable risk to the safety of the witness and, stressing the

⁸⁶ Request, ICC-01/04-02/06-462-Red2, paras 19. *See also* ICC-01/04-02/06-462-Conf-Exp-AnxA-Corr, page 19.

⁸⁷ Request, ICC-01/04-02/06-462-Conf-Exp, para. 23. *See also* ICC-01/04-02/06-462-Conf-Exp-AnxA-Corr, pages 20-21.

⁸⁸ ICC-01/04-02/06-462-Conf-Exp-AnxA-Corr-page 19.

⁸⁹ ICC-01/04-02/06-462-Conf-Exp-AnxB7.

⁹⁰ Request, ICC-01/04-02/06-462-Red2, paras 19-20 and 24. *See also* Supplemental Request related to P-0882, ICC-01/04-02/06-486 and confidential, *ex parte*, annex.

⁹¹ Response, ICC-01/04-02/06-502-Corr2-Red, para. 126.

necessity of conducting investigations on the witnesses' narrative, credibility, and motivations, that authorising the redactions sought would prejudice the Defence.⁹²

53. The Chamber notes that Witness P-0882 is an insider witness who, as reported by the Prosecution, was [REDACTED].⁹³ The Chamber notes that [REDACTED].⁹⁴ Moreover, the witness reported that [REDACTED] and that [REDACTED].⁹⁵

54. In the particular circumstances, and noting the risks related to the fact that this insider witness provided highly incriminating information, the Chamber considers that there is an objectively justifiable risk warranting the adoption of protective measures. The Chamber finds that the non-disclosure of identifying information contained in the transcript of the interview of Witness P-0882, who will not be relied on at trial, appears to be the least restrictive measure possible and therefore grants the Prosecution request in this regard. The Chamber is further of the view that the limited redactions proposed do not affect the intelligibility or the usability of the document to be disclosed to the Defence.

J. Witness P-0899

55. The Prosecution seeks the Chamber's authorisation to apply non-standard redactions to Witness P-0899's screening note, until [REDACTED].⁹⁶ In this regard, [REDACTED].⁹⁷

⁹² Response, ICC-01/04-02/06-502-Corr2-Red, para. 81. *See also* para. 128.

⁹³ ICC-01/04-02/06-462-Conf-Exp-AnxA-Corr, pages 39.

⁹⁴ Request, ICC-01/04-02/06-462-Conf-Exp, para. 24; ICC-01/04-02/06-462-Conf-Exp-AnxA-Corr, pages 28-42.

⁹⁵ ICC-01/04-02/06-462-Conf-Exp-AnxA-Corr, pages 39.

⁹⁶ Request, ICC-01/04-02/06-462-Conf-Red, para. 26.

⁹⁷ [REDACTED].

56. The Defence opposes the redactions sought, submitting that the Prosecution failed to demonstrate the existence of an objectively identifiable risk to Witness P-0899's safety and that non-disclosure of identifying information at this stage would unduly prejudice the fair trial rights of the accused.⁹⁸
57. The Defence also indicated that the Prosecution was well aware of the timeline set by the Chamber on 9 October 2014⁹⁹ and of [REDACTED].¹⁰⁰ In the event that the Chamber grants the related request, the Defence submits that Mr Ntaganda should not be penalised for this reason and that the trial scheduled be adjusted accordingly.¹⁰¹
58. The Chamber notes that all redactions sought in relation to non-trial Witness P-0899 are limited to information which would identify him and are requested pursuant to Rule 81(4) of the Rules. When balancing the interests at stake, the Chamber has particularly taken into consideration the temporary nature of the measures sought, as well as the fact that Witness P-0899 is [REDACTED].¹⁰² The Chamber has also carefully assessed the utility of the information provided in the 3-page screening note, which it notes is not extensive, and recalls that this material will not be relied on at trial by the Prosecution. Of importance in the Chamber's determination is the fact that Witness P-0899 is an insider witness who also reported [REDACTED].¹⁰³
59. In light of the above, and until [REDACTED], the Chamber authorises the redactions sought. The Chamber also decides that, [REDACTED], the Prosecution shall report back to the Chamber and [REDACTED].

⁹⁸ Response, ICC-01/04-02/06-502-Corr2-Red, para. 135.

⁹⁹ Response, ICC-01/04-02/06-502-Corr2-Red, para. 59.

¹⁰⁰ Response, ICC-01/04-02/06-502-Corr2-Red, para. 59.

¹⁰¹ Response, ICC-01/04-02/06-502-Corr2-Red, para. 60.

¹⁰² ICC-01/04-02/06-462-Conf-Exp-AnxB8; ICC-01/04-02/06-462-Conf-Exp-AnxA-Corr-pages 25-26.

¹⁰³ Request, ICC-01/04-02/06-462-Conf-Exp, para. 26; ICC-01/04-02/06-462-Conf-Exp-AnxA-Corr, pages 25-26.

K. Witnesses P-0013, P-0044 and P-0816

60. The Prosecution submits that the statements of these non-trial witnesses 'cannot be redacted in a manner which ensures full protection of their identity'.¹⁰⁴ For reasons of safety and security, and pursuant to Rule 81(4) of the Rules, it therefore seeks the Chamber's authorisation not to disclose their statements to the Defence, submitting that the anonymous summaries contained in Annexes C1 to C3¹⁰⁵ suffice for the purpose of disclosure.
61. The Defence submits that, while the Prosecution may rely on anonymous or summarised versions of witness interviews at pre-trial, it is 'not permissible at trial'.¹⁰⁶ It argues that, at the current stage of proceedings, it is preparing for witnesses who will be called to testify at trial, an exercise which 'requires more information than what is found in a summary'.¹⁰⁷
62. As concerns Witnesses P-0013 and P-0044, the Prosecution submits that they are [REDACTED] and that their statements [REDACTED]. These two witnesses [REDACTED].¹⁰⁸
63. The Defence submits that the Prosecution failed to demonstrate an objectively identifiable risk to the safety of Witnesses P-0013 and P-0044 and that, if granted, the request would impede the Defence investigations.¹⁰⁹
64. In light of the above, the Chamber is persuaded, for the reasons provided for by the Prosecution, that non-disclosure of potentially identifying and contact information of Witnesses P-0013 and P-0044 is the most appropriate measure until there is a relevant change in the circumstances, to ensure their continued

¹⁰⁴ Request, ICC-01/04-02/06-462-Red2, para. 27.

¹⁰⁵ ICC-01/04-02/06-462-Conf-Exp-AnxC1-Corr; ICC-01/04-02/06-462-Conf-Exp-AnxC2; ICC-01/04-02/06-462-Conf-Exp-AnxC3-Corr.

¹⁰⁶ Response, ICC-01/04-02/06-502-Corr2-Red, para. 48.

¹⁰⁷ Response, ICC-01/04-02/06-502-Corr2-Red, para. 48.

¹⁰⁸ ICC-01/04-02/06-462-Conf-Exp, paras 28 and 30; ICC-01/04-02/06-462-Conf-Exp-AnxA-Corr, pages 52 and 33-35.

¹⁰⁹ Response, ICC-01/04-02/06-502-Corr2-Red, paras 141 and 147.

safety and the safety of their families. The Chamber however considers that the Defence is entitled to receive, even if in heavily redacted form, these witnesses' statements. It therefore rejects the Prosecution's request in this regard and orders that it disclose, as soon as feasible, redacted versions of the statements of Witnesses P-0013 and P-0044. Should the Defence contest the extent of the redactions applied, it may seek the Chamber's intervention through a written application.

65. Further, given that the proposed summaries corresponding to Witnesses P-0013 and P-0044 would further assist the Defence's preparation, the Chamber, pursuant to Rule 84 of the Rules, directs the Prosecution to provide these summaries along with the redacted statements.

66. As concerns Witness P-0816, the Prosecution indicates that the witness is an insider who provided a highly incriminatory statement, [REDACTED].¹¹⁰ In addition, the Prosecution submits that it is impossible to disclose the potentially exculpatory information also contained in its statement without the broader incriminating material.

67. The Defence indicates that the Prosecution's request is based entirely on reasons that have been redacted.¹¹¹ The Defence further submits that the Prosecution failed to demonstrate an objectively identifiable risk to the safety of the witness concerned and that, if granted, the request would impede the Defence investigations.¹¹²

68. The Chamber notes that Witness P-0816 and his/her family members [REDACTED].¹¹³ In light of the specific security concerns presented by the Prosecution, the Chamber is of the view that redaction of potentially

¹¹⁰ ICC-01/04-02/06-462-Conf-Exp-AnxA-Corr, pages 15-16.

¹¹¹ Response, ICC-01/04-02/06-502-Corr2-Red, para. 151.

¹¹² Response, ICC-01/04-02/06-502-Corr2-Red, para. 153.

¹¹³ Request, ICC-01/04-02/06-462-Conf-Exp, para. 32; ICC-01/04-02/06-462-Conf-Exp-AnxA-Corr, pages 15-16.

identifying information is the most appropriate measure, until there is a relevant change in the circumstances, to ensure Witness P-0816's continued safety. The Chamber also considers, in light of the fact that the Prosecution does not intend to rely on this material at trial, that no undue prejudice will be caused to Mr Ntaganda as a result of the non-disclosure of this information.

69. The Chamber is however of the view that the Prosecution shall also disclose, in addition to the summary prepared, a redacted version of this witness's statement. As provided above, should the Defence disagree with the extent of the redactions applied, it shall seek the Chamber's intervention through a written application.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

AUTHORISES, until there is a relevant change in the circumstances, the redactions sought to:

- the screening note of Witness P-0087;
- the interview notes of Witness P-0125;
- the statement of Witness P-0809;
- the statement of Witness P-0813;
- the statement of Witness P-0871;
- the unsigned statement of Witness P-0876;
- the statement of Witness P-0882;

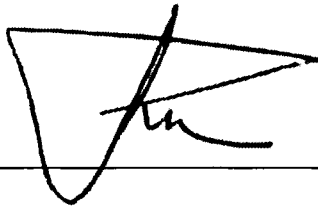
AUTHORISES, in accordance with paragraph 59 above, the redaction sought to the screening note of Witness P-0899;

ORDERS the Prosecution to disclose, together with the relevant summaries, redacted version of the statements of Witnesses P-0013, P-0044 and P-0816 within 3 days of notification of this decision;

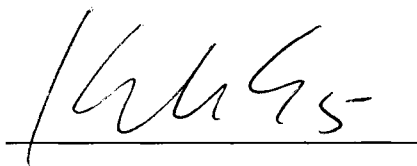
DECIDES that the parties shall seek the leave of the Chamber before using an image depicting Witnesses P-0018, P-0019 and P-0883 in the course of their investigations; and

REJECTS all other requests.

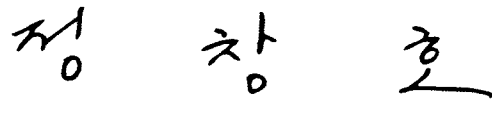
Done in both English and French, the English version being authoritative.



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Chang-ho Chung

Dated this 7 April 2015

At The Hague, The Netherlands