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**International
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Date: 16 February 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

**With Confidential, *EX PARTE* - Annexes A – C3 only available to the Prosecution
and VWU**

**Public redacted version of “Prosecution request for redactions”, 16 February 2015,
ICC-01/04-02/06-462-Conf-Exp**

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Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Introduction

1. As ordered by Trial Chamber VI (“Chamber”),¹ the Office of the Prosecutor (“Prosecution”) submits this request for redactions that, pursuant to the Protocol on Redactions, require approval by the Chamber (“non-standard redactions”).²

2. The Prosecution seeks limited non-standard redactions in relation to the photographs of eight vulnerable witnesses³ whom the Prosecution will include in the final version of its list of witnesses due on 2 March 2015,⁴ and to the screenings or statements of 12 individuals⁵ who are not trial witnesses but whose screenings and/or statements contain information of a potentially exculpatory nature or that could otherwise be material to the Defence's preparation (“Rule 77 material”).

3. For the 12 non-trial witnesses whose screenings or statements contain potentially exonerating or Rule 77 material, the Prosecution specifically requests the Chamber to authorise:

(i) the same redactions as authorised by the Single Judge of Pre-Trial Chamber II (“Single Judge”) in the screening note of witness P-0087, the interview note of witness P-0125 and the statements of witnesses P-0809 and P-0813, until there is a relevant change in circumstances;

(ii) the proposed redactions in the statements of witnesses P-0109, P-0871 and P-0876, and the transcripts of witness P-0882's interview conducted pursuant to

¹ ICC-01/04-02/06-382-Corr, para.9(b), fn.15, p.9 (“Order”).

² ICC-01/04-02/06-411-AnxA, para.3(ii) (“Protocol on Redactions”).

³ P-0018, P-0019, P-0113, P-0758, P-0875, P-0883, P-0888 and P-0898.

⁴ Order, para.9(c).

⁵ P-0013, P-0044, P-0087, P-0109, P-0125, P-0809, P-0813, P-0816, P-0871, P-0876, P-0882 and P-0899.

article 55(2) of the Rome Statute (“Statute”), until there is a relevant change in circumstances;

(iii) the proposed redactions in relation to witness P-0899’s screening note, until [REDACTED]; and

(iv) the disclosure of anonymous summaries of the statements of witnesses P-0013, P-0044 and P-0816 in lieu of the disclosure of their identity and statements, until there is a relevant change in circumstances.

4. For the eight trial witnesses, the Prosecution specifically requests the Chamber to authorise the proposed redactions to the photographs of vulnerable witnesses P-0018, P-0019, P-0113, P-0758, P-0875, P-0883, P-0888 and P-0898 for the duration of the trial (“Request”).

5. The proposed redactions are necessary in order to protect the safety, well-being, dignity and privacy of the witnesses and individuals included in the Request pursuant to articles 54(3)(f), 57(3)(c), 64(2) and (6)(e), and 68(1) and (5) of the Statute, and rule 81(4) of the Rules of Procedure and Evidence (“Rules”). Granting the Request will strike the appropriate balance between the Accused’s rights and the Court’s protection obligations.

Confidentiality

6. This request and its annexes are classified as “Confidential, *EX PARTE*, only available to the Prosecution and the VWU” pursuant to regulation 23*bis*(1) of the Regulations of the Court (“RoC”) because they contain information relevant to the identity and security situation of Prosecution witnesses and other individuals in relation to whom redactions are being sought. Revealing this information would

undermine the requested relief and create security risks to the individuals concerned. The Prosecution will file a confidential, redacted version of this request.

Procedural History

7. On 29 January 2014, the Single Judge authorised redactions in relation to material relevant to witnesses P-0087, P-0125 and P-0809,⁶ and on 17 July 2014, the Single Judge authorised redactions in relation to material relevant to witness P-0813.⁷

8. On 9 October 2014, the Chamber set 31 January 2015 and 2 March 2015 as the deadlines for the disclosure of evidence,⁸ and set 16 February 2015 as the deadline for any applications for delayed disclosure relating to Prosecution witnesses noting that “[t]his includes any requests for redactions that, pursuant to the Redaction Protocol, require approval by the Chamber.”⁹

9. On 12 December 2014, the Chamber issued its “Decision on the Protocol establishing a redaction regime”¹⁰ in which it decided that the parties shall apply the protocol annexed to this decision.¹¹

Prosecution’s Submissions

10. In addition to the submissions in this Request, the Prosecution attaches individual witness security assessments as Confidential, *EX PARTE* Annex A for the 12 individuals in relation to whom redactions are being requested on the basis of risks to their security.¹²

⁶ ICC-01/04-02/06-233-Conf-Exp-AnxII.

⁷ ICC-01/04-02/06-334-Conf-Exp-AnxII.

⁸ Order, para.9(d).

⁹ Order, fn.15.

¹⁰ ICC-01/04-02/06-411.

¹¹ Protocol on Redactions.

¹² P-0013, P-0044, P-0087, P-0109, P-0125, P-0809, P-0813, P-0816, P-0871, P-0876, P-0882 and P-0899.

11. Confidential, *EX PARTE* Annexes B1-B4 contain the relevant excerpts from the Single Judge's decisions on the redactions in relation to witnesses P-0087, P-0125, P-0809 and P-0813.¹³

12. Confidential, *EX PARTE* Annexes B5-B16 contain charts detailing the requested redactions for witnesses P-0018, P-0019, P-0109, P-0113, P-0758, P-0871, P-0875, P-0876, P-0883, P-0888, P-0898 and P-0899.¹⁴ Each chart identifies: (i) the documents for which redactions are sought, (ii) the category of information to which the redactions pertain, (iii) the proposed redactions, and (iv) the justification for the redactions.

13. Each of the documents in respect of which non-standard redactions are proposed are also provided in Confidential, *EX PARTE* Annexes B1-B16 in a format which permits the Chamber to view the information that the Prosecution proposes to redact ("proof version").¹⁵

14. Confidential, *EX PARTE* Annexes C1-C3 contain the proposed anonymous summaries for witnesses P-0013, P-0044 and P-0816 as well as their witness statements. No charts are provided in relation to these three witnesses.

(i) Redactions approved by the Single Judge for P-0087, P-0125, P-0809 and P-0813

15. Witnesses P-0087, P-0125, P-0809 and P-0813 provide information predominantly of an incriminatory nature. Their screening notes and/or witness

¹³ The relevant decision in relation to P-0087 is ICC-01/04-02/06-233-Conf-Exp-AnxII, the relevant excerpt from which is provided at Confidential, *EX PARTE* Annex B1. The relevant decision in relation to P-0125 is ICC-01/04-02/06-233-Conf-Exp-AnxII, the relevant excerpt from which is provided at Confidential, *EX PARTE* Annex B2. The relevant decision in relation to P-0809 is ICC-01/04-02/06-233-Conf-Exp-AnxII, the relevant excerpt from which is provided at Confidential, *EX PARTE* Annex B3. The relevant decision in relation to P-0813 is ICC-01/04-02/06-334-Conf-Exp-AnxII, the relevant excerpt from which is provided at Confidential, *EX PARTE* Annex B4.

¹⁴ No chart is provided in relation to P-0125 and P-0882 for the reasons set out at para. 20 and fn. 21 below.

¹⁵ The Prosecution notes that the proof versions show both the standard redaction applied by the Prosecution, as well as the non-standard redactions proposed. Only the non-standard redactions are included in the corresponding charts.

statements additionally contain information of a potentially exonerating nature or Rule 77 information.

16. The Single Judge previously authorised the non-disclosure of identifying information in materials relevant to each of these four witnesses.¹⁶ For reasons set out below and in the attached annexes, the Prosecution requests that the redactions authorised by the Single Judge be maintained in relation to the screening note of witness P-0087,¹⁷ the interview note of witness P-0125¹⁸ and the statements of witnesses P-0809¹⁹ and P-0813,²⁰ until there is a relevant change in circumstances.

17. Witness P-0087's screening was completed in [REDACTED] and the Prosecution was last in contact with [REDACTED]. Witness P-0125's screening was completed in [REDACTED] and the Prosecution [REDACTED]. The Prosecution does not have either of these individuals' current contact details. Accordingly, the Prosecution has been unable to inform them of disclosure and provide them with the relevant security information in the event of an emergency. The Prosecution requests that the Chamber authorise it to maintain the redactions to P-0087's screening note and P-0125's investigator's note as authorised²¹ by the Single Judge.²² Should the Prosecution manage to obtain either of these individuals' contact information, consent for disclosure, and complete and current security information, it will duly inform the Chamber.

¹⁶ See fn. 13 above.

¹⁷ DRC-OTP-0113-0265, a proof version of which is provided at Confidential, *EX PARTE* Annex B1.

¹⁸ DRC-OTP-0150-0469, a proof version of which is provided at Confidential, *EX PARTE* Annex B2.

¹⁹ DRC-OTP-2062-0217, a proof version of which is provided at Confidential, *EX PARTE* Annex B3.

²⁰ DRC-OTP-2067-1817, a proof version of which is provided at Confidential, *EX PARTE* Annex B4.

²¹ The Prosecution notes that the Single Judge authorised redactions to P-0125's identity under Rule 81(2) since he was considered a lead. The Prosecution now seeks to convert these redactions under Rule 81(4) as "E", i.e. non-standard redactions. For this reason, no chart is being submitted in relation to this witness but the relevant excerpts from the Single Judge's decision and the investigator's note in proof version are provided at Confidential, *EX PARTE* Annex B2.

²² See Confidential, *EX PARTE*, Annex A containing this individual's witness security assessment.

18. Witness P-0809 provided a witness statement in [REDACTED]. He expressed serious security concerns given that [REDACTED].²³ P-0813 provided a witness statement in [REDACTED]. He expressed concerns for [REDACTED] and [REDACTED] family's safety and security given that [REDACTED].²⁴ The Prosecution seeks to maintain the redactions to these two witness statements as authorised by the Single Judge until there is a relevant change in circumstances.

(ii) Non-standard redactions for P-0109, P-0871, P-0876 & P-0882

19. Witnesses P-0109, P-0871, P-0876 and P-0882 provide information predominantly of an incriminatory nature. Their witness statements additionally contain information of a potentially exonerating nature or Rule 77 information.

20. For the reasons set out below and in the annexes, the Prosecution requests that the Chamber authorise non-standard redactions proposed in Confidential, *EX PARTE*, Annex B5-B7 to the witness statements of P-0109,²⁵ P-0871²⁶ and P-0876.²⁷ The Prosecution requests authorisation to submit proposed redactions to the transcripts of P-882's audio recorded interview, conducted pursuant to article 55(2) of the Statute, by 2 March 2015 when these transcripts are finalised.

21. Witness P-0109's statement was completed in [REDACTED] and [REDACTED] recently expressed concerns regarding the disclosure of this statement. The Prosecution will be meeting this individual to discuss [REDACTED] concerns [REDACTED].²⁸

²³ See Confidential, *EX PARTE*, Annex A containing this individual's witness security assessment.

²⁴ See Confidential, *EX PARTE*, Annex A containing this individual's witness security assessment.

²⁵ DRC-OTP-0126-0175.

²⁶ DRC-OTP-2077-0292.

²⁷ DRC-OTP-2079-0019. A chart detailing the proposed redactions, as well as a proof version of the relevant witness statements are provided at Confidential, *EX PARTE* Annex B5 in relation to P-0109, B6 in relation to P-08871, and B7 in relation to P-0876.

²⁸ See Confidential, *EX PARTE*, Annex A containing this individual's witness security assessment.

22. As a former UPC child soldier, witness P-0871, who provided a witness statement in [REDACTED], is vulnerable to retaliatory attacks if [REDACTED] cooperation with the Prosecution is made known.²⁹

23. The Prosecution started an interview with witness P-0876, another UPC child soldier, in [REDACTED], but the witness decided [REDACTED] could not continue with the interview. According to information received from [REDACTED], [REDACTED].³⁰

24. The Prosecution interviewed witness P-0882 pursuant to article 55(2) of the Statute in November 2014. The witness expressed serious security concerns given that [REDACTED].³¹

(iii) Non-standard redactions for P-0899

25. Witness P-0899 was screened in [REDACTED], and [REDACTED] screening note³² contains information of an incriminatory nature as well as information that may be potentially exonerating and/or Rule 77 information.

26. P-0899 expressed security concerns as a result of [REDACTED].³³ [REDACTED]³⁴ [REDACTED].

(iv) Disclosure of anonymous summaries for P-0013, P-0044 and P-0816

27. The statements of witnesses P-0013, P-0044, and P-0816 contain incriminatory information as well as information that could otherwise be material to the Defence's preparation regarding, *inter alia*, the role of foreign parties in the conflict. P-0816's

²⁹ See Confidential, *EX PARTE*, Annex A containing this individual's witness security assessment.

³⁰ See Confidential, *EX PARTE*, Annex A containing this individual's witness security assessment.

³¹ See Confidential, *EX PARTE*, Annex A containing this individual's witness security assessment.

³² DRC-OTP-2078-2323.

³³ See Confidential, *EX PARTE*, Annex A containing this individual's witness security assessment.

³⁴ A chart detailing the proposed redactions, as well as a proof version of the relevant screening note are provided at Confidential, *EX PARTE* Annex B8.

statement also contains information of a potentially exculpatory nature on the age of recruits. The statements of these witnesses cannot be redacted in a manner which ensures full protection of their identity. For reasons of safety and security as set out below and in the annexes to this filing, the Prosecution requests authorisation to disclose anonymous summaries of their statements.

28. Witness P-0044 provided a witness statement in [REDACTED].³⁵ The Prosecution contacted [REDACTED] to inform [REDACTED] of disclosure on [REDACTED]. The witness strongly opposed the disclosure of [REDACTED] name and witness statement to the Accused. [REDACTED].³⁶ On this basis, the Single Judge authorised³⁷ the Prosecution to disclose an anonymous summary containing verbatim extracts of the sections providing the relevant information from P-0044's statement in lieu of disclosing the statement itself.

29. The Prosecution requests that the Chamber authorise it not to disclose P-0044's identity and statement and proposes that the anonymous summary provided at Confidential, *EX PARTE* Annex C1 suffices for the purposes of disclosure since it contains all the information which is of a Rule 77 nature in the statement.

30. Witness P-0013 provided a witness statement in [REDACTED].³⁸ This individual [REDACTED].³⁹ On this basis, the Single Judge authorised the Prosecution to disclose an anonymous summary.⁴⁰

³⁵ DRC-OTP-0066-0059, with French translation at DRC-OTP-0160-0448. The complete, unredacted version of the statement in English and its French translation are provided in Confidential, *EX PARTE* – Prosecution and VWU only, Annex C1.

³⁶ See Annex A containing an individual witness security assessment for P-0044.

³⁷ ICC-01/04-02/06-248-Conf-Exp, with confidential redacted version at ICC-01/04-02/06-248-Conf-Red. The non-disclosure of this statement, and the disclosure of an anonymous summary, was also authorised by the Single Judge of Pre-Trial Chamber I in *Lubanga* (ICC-01/04-01/06-515-Conf-Exp, p.7) and Trial Chamber I (ICC-01/04-01/06-1965-Conf-Exp, paras.72, 98) in *Lubanga*.

³⁸ DRC-OTP-0071-0044. The complete, unredacted version of the statement is provided in Confidential, *EX PARTE* – Prosecution and VWU only, Annex C2.

³⁹ See Annex A containing an individual witness security assessment for P-0013.

⁴⁰ ICC-01/04-02/06-248-Conf-Exp, para. 21, with confidential, redacted version at ICC-01/04-02/06-248-Conf-Red, para.21.

31. The Prosecution met P-0013 again in [REDACTED] but [REDACTED] decided that providing the Prosecution with a statement would pose a high risk to [REDACTED] and [REDACTED] family's security. Therefore, the Prosecution requests that the Chamber authorise it not to disclose [REDACTED] identity and statement and proposes that the anonymous summary⁴¹ provided at Confidential, *EX PARTE* Annex C2 suffices for the purposes of disclosure since it contains all the information which is of a Rule 77 nature in the statement.

32. Witness P-0816 provided a witness statement in [REDACTED].⁴² This individual [REDACTED].⁴³

33. Therefore, the Prosecution requests that the Chamber authorise non-disclosure of [REDACTED] identity and statement and authorise disclosure of the anonymous summary provided at Confidential, *EX PARTE* Annex C3 that contains all the information which is of a Rule 77 and potentially exculpatory nature in the statement.

(v) Non-standard redactions to photographs of P-0018, P-0019, P-0113, P-0758, P-0875, P-0883, P-0888 & P-0898

34. For the reasons set out below and in Confidential, *EX PARTE*, Annexes B9-B16, the Prosecution seeks authorisation to redact the image of trial witnesses P-0018,⁴⁴ P-0019,⁴⁵ P-0113⁴⁶, P-0758,⁴⁷ P-0875,⁴⁸ P-0883⁴⁹, P-0888⁵⁰ and P-0898⁵¹ throughout the trial.⁵²

⁴¹ DRC-OTP-2079-0403.

⁴² DRC-OTP-2067-1843. The complete, unredacted version of the statement is provided in Confidential, *EX PARTE* – Prosecution and VWU only, Annex C3.

⁴³ See Annex A containing an individual witness security assessment for P-0816.

⁴⁴ The photos relevant to this witness are those contained in DRC-OTP-0096-0002, DRC-OTP-0096-0133, DRC-OTP-0096-0134, DRC-OTP-0096-0135, DRC-OTP-0096-0136, DRC-OTP-0096-0137, DRC-OTP-0096-0138, DRC-OTP-0096-0139, DRC-OTP-0096-0140, DRC-OTP-0096-0141, DRC-OTP-0096-0142, DRC-OTP-0096-0143, DRC-OTP-0096-0144, DRC-OTP-0096-0145, DRC-OTP-2052-0207, and DRC-OTP-2059-0117.

⁴⁵ DRC-OTP-0104-0158, DRC-OTP-0108-0155, DRC-OTP-0108-0156, DRC-OTP-0108-0157.

⁴⁶ The photo relevant to this witness is contained in DRC-OTP-2059-0047.

⁴⁷ The photo relevant to this witness is contained in DRC-OTP-2066-0154.

⁴⁸ The photo relevant to this witness is contained in DRC-OTP-2070-0073.

35. Witnesses P-0758, P-0888 and P-0898 have also been included in the Prosecution's request for delayed disclosure, filed on 16 February 2015. In that request, the Prosecution seeks a brief delay in disclosing the identity and identifying information of these witnesses until [REDACTED]. In the present Request, the Prosecution seeks redactions limited to their photographs contained in certain material, and requests that these redactions be maintained throughout the trial.

36. Witnesses P-0018, P-0019, P-0113, P-0875 and P-0883 have not been included in the Prosecution's request for delayed disclosure. Nonetheless, due to the vulnerability of these witnesses, the Prosecution seeks redactions to material containing their photograph, and requests that these redactions be maintained throughout trial.

37. All of these witnesses are particularly vulnerable: they are either victims of sexual violence and/or former child soldiers. Witnesses P-0018,⁵³ P-0019⁵⁴ and P-0113⁵⁵ were captured and sexually assaulted and/or raped by UPC/FPLC soldiers. One of the soldiers who raped P-0018 [REDACTED] as she resisted. P-0019

⁴⁹ The photos relevant to this witness are those contained in DRC-OTP-2075-1004, DRC-OTP-2075-1005, DRC-OTP-2075-1006, and DRC-OTP-2078-2736.

⁵⁰ The photos relevant to this witness are those contained in DRC-OTP-2075-0643, DRC-OTP-2075-0644, and DRC-OTP-2075-0645.

⁵¹ The photos relevant to this witness are those contained in DRC-OTP-2078-2318 and DRC-OTP-2078-2320.

⁵² A number of photos of these witnesses were disclosed or redisclosed to the Defence on 30 January 2015 with non-standard redactions (DRC-OTP-0096-0002, DRC-OTP-0096-0133, DRC-OTP-0096-0134, DRC-OTP-0096-0135, DRC-OTP-0096-0136, DRC-OTP-0096-0137, DRC-OTP-0096-0138, DRC-OTP-0096-0139, DRC-OTP-0096-0140, DRC-OTP-0096-0141, DRC-OTP-0096-0142, DRC-OTP-0096-0143, DRC-OTP-0096-0144, DRC-OTP-0096-0145, DRC-OTP-0104-0158, DRC-OTP-0108-0155, DRC-OTP-0108-0156, DRC-OTP-0108-0157, DRC-OTP-2052-0207, DRC-OTP-2059-0117, DRC-OTP-2070-0073, DRC-OTP-2075-1004, DRC-OTP-2075-1005, DRC-OTP-2075-1006, and DRC-OTP-2078-2736). The Prosecution intends to disclose or redisclose further photos of these witnesses by 2 March 2015 with non-standard redactions (DRC-OTP-2059-0047, DRC-OTP-2078-2318, DRC-OTP-2078-2320, DRC-OTP-2075-0643, DRC-OTP-2075-0644, and DRC-OTP-2075-0645) should the Chamber grant this Request.

⁵³ A chart detailing the proposed redactions, as well as a proof version of the relevant photos are provided at Confidential, *EX PARTE* Annex B9.

⁵⁴ A chart detailing the proposed redactions, as well as a proof version of the relevant photos are provided at Confidential, *EX PARTE* Annex B10.

⁵⁵ A chart detailing the proposed redactions, as well as a proof version of the relevant photos are provided at Confidential, *EX PARTE* Annex B11.

[REDACTED] by another soldier. P-0758,⁵⁶ P-0875,⁵⁷ P-0883,⁵⁸ P-0888,⁵⁹ and P-0898⁶⁰ are former UPC/FPLC child soldiers. P-0758 and P-0883 were both raped and sexually enslaved by UPC/FPLC soldiers. P-0875, P-0888 and P-0898 were used in active hostilities and witnessed a number of crimes.⁶¹

38. The Prosecution notes that, in its Decision on the adoption of a “Protocol on the Handling of Confidential Information During Investigations and Contact Between a Party or Participant and Witnesses of the Opposing Party or a Participant”,⁶² the Chamber decided that the use of photographs during investigations does not automatically require the leave of the Chamber in all cases.⁶³ However, the Chamber also recalled its responsibility to protect the safety and well-being of witnesses,⁶⁴ and the Protocol orders the parties to use material such as photographs only when they do not contain elements which tend to reveal the subject’s involvement with the Court.⁶⁵

39. Several of the photographs of witnesses P-0018 and P-0019 were taken by the Prosecution during its interview with them.⁶⁶ The photographs contain elements that tend to reveal that they were taken for a forensic purpose, [REDACTED]. These photographs could reveal the witnesses’ involvement with the Court as they are

⁵⁶ A chart detailing the proposed redactions, as well as a proof version of the relevant photos are provided at Confidential, *EX PARTE* Annex B12.

⁵⁷ A chart detailing the proposed redactions, as well as a proof version of the relevant photos are provided at Confidential, *EX PARTE* Annex B13.

⁵⁸ A chart detailing the proposed redactions, as well as a proof version of the relevant photos are provided at Confidential, *EX PARTE* Annex B14.

⁵⁹ A chart detailing the proposed redactions, as well as a proof version of the relevant photos are provided at Confidential, *EX PARTE* Annex B15.

⁶⁰ A chart detailing the proposed redactions, as well as a proof version of the relevant photos are provided at Confidential, *EX PARTE* Annex B16.

⁶¹ In relation to P-0758, P-0888, and P-0898, the Prosecution also refers to its 16 February 2015 Request for delayed disclosure, including Annex A thereof, which contain detailed reasons as to why these witnesses are particularly vulnerable.

⁶² ICC-01/04-02/06-412 (“Decision on Protocol on the Handling of Confidential Information”).

⁶³ Decision on Protocol on the Handling of Confidential Information, para.14.

⁶⁴ ICC-01/04-02/06-412, para.15.

⁶⁵ ICC-01/04-02/06-412-AnxA, para.7 (“Protocol on the Handling of Confidential Information”).

⁶⁶ See DRC-OTP-0096-0133, DRC-OTP-0096-0134, DRC-OTP-0096-0135, DRC-OTP-0096-0136, DRC-OTP-0096-0137, DRC-OTP-0096-0138, DRC-OTP-0096-0139, DRC-OTP-0096-0140, DRC-OTP-0096-0141, DRC-OTP-0096-0142, DRC-OTP-0096-0143, DRC-OTP-0096-0144, DRC-OTP-0096-0145, and DRC-OTP-2052-0207 in relation to P-0018, and DRC-OTP-0108-0155, DRC-OTP-0108-0156, and DRC-OTP-0108-0157 in relation to P-0019.

found in ICC documents forensically analysing their content,⁶⁷ or in ICC victim applications.⁶⁸

40. The VWU has previously noted that:

Re (3): The use of photos potentially has a very high impact on the level of risk for the individuals concerned. This may be the case both for witnesses who are participants in the Court's protection programme and witnesses who benefit from procedural protective measures. By the use of photos a much larger group of people may identify an individual by sight (rather than by name), thus much less intricate knowledge of the individual concerned is required and a link to the Court can be established far more easily.

Re (4): Due to the higher likelihood that individuals will be identified by the use of family names, the risk could also be elevated. In general and depending on the concrete circumstances of the case, the increase of risk for the witness concerned would not be as high as it may be in case of photos being used in the course of the investigations. It has to be noted, however, that the level of risk for the individuals whose identities are being used to verify the identity of the witness could be elevated through this investigative technique.

Re (5): There is a high risk of adverse psychological impact if photos are used without prior knowledge and consent of the concerned witness. These concerns are amplified in the circumstance of witnesses who are considered to be vulnerable. A key factor for traumatising is the loss of control and a sense of intrusion. Using the photos, in particular if this done without informing and seeking the consent of the respective witnesses first, may reinforce their helplessness and sense of intrusion and as such be experienced as a reviolation. In addition, some witness might feel deceived or betrayed by the Court.

From a psychological point of view, it would be imperative to explain to the witness upfront what may happen to the pictures they have provided and to seek their informed consent. Should this not be possible, from a psychological point of view, it would be imperative to inform the witnesses as swiftly as possible about the use of the photos.

It is also important to note that many witnesses perceive themselves to be at a very high level of risk. While this does not always correspond to the objective level of risk, it may still cause extreme difficulties in the management of witnesses and ultimately

⁶⁷ See DRC-OTP-0096-0002 and DRC-OTP-2059-0117 in relation to P-0018, and DRC-OTP-0104-0158 in relation to P-0019.

⁶⁸ See DRC-OTP-2066-0154 in relation to P-0758.

*their willingness to cooperate with the Court. The investigative activities of the defence thus far have already led to an increased perceived level of risk for some witnesses. The use of photos could further elevate this perceived level of risk.*⁶⁹

41. It is on the basis of the same risks of unnecessarily associating witnesses (and their family members) with the Court and the adverse psychological impact on these particularly vulnerable individuals, that the Prosecution requests that the images of these vulnerable witnesses in the photos be redacted.

42. P-0018, P-0019 and P-0113, civilian victims of sex and gender-based crimes, have [REDACTED].

43. In relation to victims of sex and gender-based crimes in particular, the Protocol on the Handling of Confidential Information provides that where this fact has not been communicated to others, the confidentiality of this information should be ensured and that “[w]here there are no suitable alternative investigative avenues available, the investigating party or participant may communicate the information that the witness suffered sexual or gender based crimes to those individuals that the witness has stated she or he has informed or has confirmed are aware of the sexual and gender based crimes suffered, provided that in doing so the investigating party or participant does not reveal that she or he is a Court witness.”⁷⁰

44. As noted above, the nature of a number of these documents containing photos of these vulnerable witnesses is such that their use tends to reveal their cooperation with the Court.

45. The Chamber has also previously stated that “[REDACTED]”⁷¹ and [REDACTED].⁷²

⁶⁹ ICC-01/04-01/07-2148, para.3.

⁷⁰ Protocol on the Handling of Confidential Information, para. 25.

⁷¹ ICC-01/04-02/06-410-Conf-Exp, para.49 with confidential redacted version at ICC-01/04-02/06-410-Conf-Exp-Red.

⁷² ICC-01/04-02/06-410-Conf-Exp, para.49 with confidential redacted version at ICC-01/04-02/06-410-Conf-Exp-Red.

46. The Prosecution makes this request pursuant to article 68(1) of the Statute since it constitutes an appropriate measure to protect the safety, physical and psychological well-being, dignity and privacy of these witnesses. This article is particularly relevant as it explicitly refers to crimes involving sexual or gender violence or violence against children. All these witnesses fall into one or more of these categories. Granting this request will not be unduly prejudicial to, or inconsistent with, the rights of the Accused and a fair and impartial trial.

47. The Accused will have access to the identity and other identifying information of witnesses P-0018, P-0019, P-0113, P-0875 and P-0888. The redaction of their images from photographs is the only measure being sought in their regard. The Prosecution has also requested the delayed disclosure of the identity and identifying information of witnesses P-0758, P-0888 and P-0898 for a limited time [REDACTED].

Conclusion

48. Based on the foregoing, the Prosecution asks that the Chamber grant its Request.



Fatou Bensouda,
Prosecutor

Dated this 16th day of February 2015
At The Hague, The Netherlands