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No.: **ICC-01/04-02/06**
Date: **6 September 2017**

TRIAL CHAMBER VI

Before: Judge Robert Fremr, Presiding Judge
Judge Kuniko Ozaki
Judge Chang-ho Chung

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public

with Confidential, *EX PARTE* Annex A, only available to Prosecution

Public redacted version of “Prosecution’s Response to the ‘Expedited Request on behalf of Mr Ntaganda seeking Trial Chamber VI to issue an order addressed to the Prosecution to lift all redactions contained in draft statement DRC-OTP-0150-0111’, ICC-01/04-02/06-2021-Conf”, 31 August 2017, ICC-01/04-02/06-2023-Conf

Source: Office of the Prosecutor

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

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Other

Introduction

1. The Prosecution opposes the Defence request to lift the limited redactions remaining in the Draft Statement¹ of Defence Witness D-0013 (formerly Prosecution Witness P-0049).² These redactions fall squarely within a category of redactions Trial Chamber VI (“Chamber”) permitted the Prosecution to maintain on an ongoing basis in its Decision on the Protocol establishing a redaction regime,³ namely references that constitute internal work product under rule 81(1) of the Rules of Evidence and Procedure (“Rules”).⁴
2. The Defence request fails to demonstrate the contrary and should be rejected.

Confidentiality

3. This filing is classified as “Confidential” pursuant to regulation 23bis(2) as it responds to a filing of that classification, with an annex that is “Confidential, *ex parte* – only available to the Prosecution.”

Procedural History

4. The Prosecution met with and interviewed Prosecution Witness P-0049 (now Defence Witness D-0013) on [REDACTED]. The interview was never completed and the statement remained in draft form, unsigned by the witness (“Draft Statement”).
5. On 20 December 2013, the Prosecution disclosed the Draft Statement to the Defence, having redacted the internal comments and follow-up questions inserted

¹ DRC-OTP-0150-0111.

² ICC-01/04-02/06-2021-Conf, (“Defence Request”).

³ ICC-01/04-02/06-411 (“Decision on Redactions”), paras. 35-36.

⁴ ICC-01/04-02/06-411-AnxA (“Redaction Protocol”), para. 23.

by a Prosecution investigator in preparation for an anticipated further interview (that never occurred).

6. On 26 July 2017, the Defence requested by email that the Prosecution lift all remaining redactions in the Draft Statement.⁵
7. On 11 August 2017, the Prosecution responded to the Defence email, agreeing to lift certain redactions and providing a courtesy copy of the lesser redacted version of the Draft Statement. On 14 August 2017, this version was formally disclosed.
8. On 30 August 2017, the Defence filed a request to the Chamber for an order to lift the remaining redactions applied to the Draft Statement (“Defence Request”).⁶

Prosecution’s Submissions

9. The remaining redactions in the Draft Statement properly fall under rule 81(1). As required by rule 81(1), the redacted portions are all “prepared by a party, its assistants or representatives in connection with the investigation or preparation of the case are not subject to disclosure.” Unlike the discrete redactions that the Prosecution agreed to lift (further to the Defence request of 26 July 2017), all of the remaining redacted portions are written comments, proposed lines of inquiry and the internal thought processes of Prosecution investigators concerning the investigation of the case.
10. The Defence requests the lifting of redactions applied under rule 81(1) to the Draft Statement, arguing that the redacted information is “fact based”.⁷ The Defence further suggests that at least some of the redacted portions of the Draft Statement

⁵ Email from the Defence, 26 July 2017 at 18:42.

⁶ ICC-01/04-02/06-2021-Conf.

⁷ Defence Request, para. 20.

“describe facts”.⁸ However, the Defence’s speculation about the nature of the redacted information is incorrect.

11. The Prosecution provides the Chamber with an *ex parte* version of the Draft Statement⁹ and invites the Chamber to scrutinise the remaining redactions. The Prosecution is confident that the Chamber will conclude that those portions are properly redacted under rule 81(1) and should remain redacted under the unambiguous terms of the Redaction Protocol.
12. The Prosecution has, accordingly, discharged its disclosure obligations with respect to the above information.

Conclusion

13. For the foregoing reasons, the Prosecution requests that the Chamber reject the Defence request.



Fatou Bensouda
Prosecutor

Dated this 6th day of September 2017
At The Hague, The Netherlands

⁸ Defence Request, para. 15.

⁹ Annex A.