

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **8 January 2018**

**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**

**Further decision on the reclassification of items admitted into evidence**

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 Christopher Gosnell

**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**

**The Office of Public Counsel for the  
Defence**

**States' Representatives**

*Amicus Curiae*

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**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 and 67 to 69 of the Rome Statute ('Statute'), Rules 15 and 137 of the Rules of Procedure and Evidence, and Regulations 20 and 21(7) of the Regulations of the Court, issues the following 'Further decision on the reclassification of items admitted into evidence'.

## **I. Background and submissions**

1. On 22 August 2017, the Chamber indicated its intention to reclassify, to the extent possible, the evidence admitted on the record from 'confidential' to 'public', in the interest of the publicity of the proceedings. It therefore directed the parties and the participants 'to coordinate with each other and the Registry, as appropriate, review the case record and indicate, by 31 October 2017, any items that can be reclassified as "public", with or without redactions, and to provide reasons for any admitted items to remain confidential'.<sup>1</sup>
2. On 31 October 2017, the Office of the Prosecutor ('Prosecution') and the Legal representative of the victims of the attacks ('LRV') filed their respective recommendations ('Prosecution Recommendations' and 'LRV Recommendations', respectively).<sup>2</sup>
3. The Prosecution, after consultation and in agreement with the LRV in relation to items pertaining to dual status individuals, recommends that a total of 585

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<sup>1</sup> Email communication from the Chamber to the parties and the participants on 22 August 2017, at 12:32. *See also* ICC-01/04-02/06-T-231-Red-ENG, page 4, lines 9-15.

<sup>2</sup> Prosecution's recommendations on the reclassification of items admitted into evidence, ICC-01/04-02/06-2091 and confidential Annex A; Observations of the Common Legal Representative of the Victims of the Attacks regarding the reclassification of certain documents admitted into evidence, ICC-01/04-02/06-2089.

items be reclassified as public without redactions, 283 items be reclassified as public with redactions, and 509 items remain confidential.<sup>3</sup>

4. The LRV recommends that two items admitted through Witness V1 be reclassified as public without redactions,<sup>4</sup> three items be reclassified as public with redactions,<sup>5</sup> and three items remain confidential.<sup>6</sup>
5. On 3 November 2017, the defence team for Mr Ntaganda ('Defence') informed the Chamber that it: (i) did not have any proposal for the reclassification of items admitted into evidence from 'confidential' to 'public' at that stage; and (ii) 'intend[ed] to submit as soon as practically possible observations on the Prosecution's and the LRV's recommendations'.<sup>7</sup>
6. On 15 December 2017, the Defence filed its observations on the Prosecution Recommendations ('Defence Observations'),<sup>8</sup> indicating that it does not object to the reclassifications recommended by the Prosecution.<sup>9</sup> However, with regard to certain redactions suggested by the Prosecution, the Defence submits that the current location of expert witnesses, in particular, their place of work, constitutes public knowledge and need not be redacted.<sup>10</sup> The Defence further notes that, concerning transcripts and translations of audio-video material, the Prosecution referred to non-amended versions as being admitted into evidence, while, in the Defence's view, pursuant to the

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<sup>3</sup> Prosecution Recommendations, ICC-01/04-02/06-2091, para. 3 and confidential Annex A. *See also* LRV Recommendations, ICC-01/04-02/06-2089, para. 3.

<sup>4</sup> LRV Recommendations, ICC-01/04-02/06-2089, para. 4.

<sup>5</sup> LRV Recommendations, ICC-01/04-02/06-2089, paras 5-6.

<sup>6</sup> LRV Recommendations, ICC-01/04-02/06-2089, paras 7-8.

<sup>7</sup> Email communication from the Defence to the Chamber on 3 November 2017, at 16:46.

<sup>8</sup> Defence observations on Prosecution recommendations on the reclassification of items admitted into evidence, ICC-01/04-02/06-2160.

<sup>9</sup> Defence Observations, ICC-01/04-02/06-2160, para. 7.

<sup>10</sup> Defence Observations, ICC-01/04-02/06-2160, paras 8-9.

Chamber's orders, only final amended versions of audio-video material, following their review by the Registry, are admitted into evidence.<sup>11</sup>

## II. Analysis and conclusion

7. In the interest of the publicity of the proceedings, and further to the parties' and LRV's submissions, the Chamber finds it appropriate to reclassify from confidential to public those items identified by the Prosecution and the LRV as suitable for such reclassification without redactions.
8. In relation to those items for which the Prosecution and, where applicable, the LRV, recommends that they remain confidential, the Chamber has considered the reasons put forward for the recommended classification, including the need to protect the dignity, safety, and psychological well-being of victims or witnesses and their families,<sup>12</sup> previous directions by the Chamber,<sup>13</sup> and the fact that certain items are subject to confidentiality agreements pursuant to Article 54(3)(e) of the Statute.<sup>14</sup> In light of these reasons, the Chamber decides that the confidentiality of these items shall be maintained at this stage.
9. With regard to the Prosecution's and LRV's recommendations for certain items to be reclassified as public with redactions, while those items will remain confidential, the Chamber directs the Prosecution and the LRV to prepare public redacted versions in line with their submissions, and make them available in eCourt as soon as practicable. In this respect, the Chamber concurs with the Defence's submission that the place of work of expert witnesses, who all testified without protective measures, constitutes public knowledge and does not require redaction. Accordingly, the Chamber

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<sup>11</sup> Defence Observations, ICC-01/04-02/06-2160, para. 10.

<sup>12</sup> See, e.g., ICC-01/04-02/06-2091-Conf-AnxA, pages 1-3, 9-10, 12-15.

<sup>13</sup> See, e.g., Decision on reclassification of documents related to deceased witnesses P-0022 and P-0041, 21 January 2016, ICC-01/04-02/06-1100, para. 9.

<sup>14</sup> See, e.g., ICC-01/04-02/06-2091-Conf-AnxA, pages 24-25, 95, 109, 128, and 132-134.

considers that only the personal contact details of expert witnesses should be redacted.

10. Lastly, the Chamber agrees with the Defence that only final amended versions of certain audio-video material, following their review by the Registry, are admitted into evidence. In this regard, the Chamber observes that the procedure set out in paragraph 4 of its order of 9 May 2017<sup>15</sup> does not appear to have been fully implemented, in so far as the amended version of the relevant transcripts and translations, and only this version, should have been marked as admitted in eCourt. The Chamber therefore instructs the Registry, liaising with the Prosecution where required, to identify the latest version of each item concerned, and to update the relevant metadata,<sup>16</sup> prior to proceeding with the reclassification of the relevant items.

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<sup>15</sup> Second order referring certain transcription and translation matters to the Registry, ICC-01/04-02/06-1897, para. 4.

<sup>16</sup> See also emails from the Chamber to the Registry on 27 September 2017, at 17:20 and on 1 December 2017, at 15:46.

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

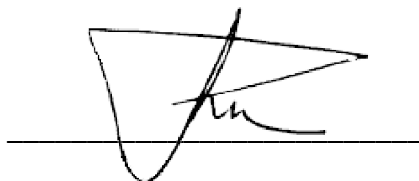
**DIRECTS** the Prosecution and the LRV to communicate to the Registry a list of items to be reclassified as ‘public’ without redactions in accordance with paragraph 7 of the present decision;

**DIRECTS** the Registry to reclassify the relevant items as ‘public’;

**DIRECTS** the Prosecution and the LRV to prepare, as soon as practicable, public redacted versions of the items to be reclassified as ‘public’ with redactions in accordance with paragraph 9 of the present decision, liaising with the Registry, if appropriate; and

**DIRECTS** the Registry, in consultation with the Prosecution where required, to review and, where applicable, amend the metadata for certain transcripts and translations in accordance with paragraph 10 of the present decision.

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 8 January 2018  
At The Hague, The Netherlands