

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/04-02/06
Date: 15 February 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

Public redacted version of 'Decision on Prosecution request for authorisation to refer to confidential testimony during a witness interview', 14 December 2017, ICC-01/04-02/06-2157

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

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 68 of the Rome Statute and Regulation 14(b) of the Regulations of the Registry, issues the following 'Decision on Prosecution request for authorisation to refer to confidential testimony during a witness interview'.

I. Procedural history and submissions

1. On 12 December 2017, the Office of the Prosecutor ('Prosecution') requested the Chamber's authorisation to refer to specific portions of Mr Ntaganda's testimony elicited in private session during the course of an investigative interview with a potential rebuttal witness ('Request').¹
2. The Prosecution submits that referring to the relevant portions of Mr Ntaganda's testimony, without revealing the source of the information, may be necessary during the interview.² It further submits that the Request is urgent as the interview is scheduled to take place on [REDACTED].³
3. The Request is classified as *ex parte* as it concerns a prospective investigative step envisaged by the Prosecution.⁴

II. Analysis

4. The Chamber recalls its "Decision on 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'"

¹ Prosecution urgent request for authorisation to refer to a portion of the confidential testimony of the Accused during the course of a witness interview, 12 December 2017, ICC-01/04-02/06-2148-Conf-Exp.

² Request, ICC-01/04-02/06-2148-Conf-Exp, paras 1, 4-11.

³ Request, ICC-01/04-02/06-2148-Conf-Exp, para. 12.

⁴ Request, ICC-01/04-02/06-2148-Conf-Exp, para. 2.

(‘Confidential Information Protocol’).⁵ In particular, the Chamber recalls the definition of ‘confidential information’ set out in paragraph 3(e) of the Confidential Information Protocol and the procedure for the use of confidential information in the course of investigations by the parties and the participants set out in paragraphs 5 to 11 thereof.

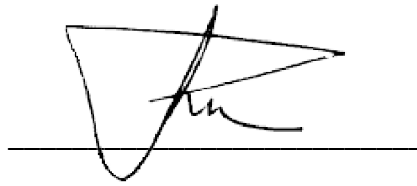
5. The Chamber notes that information elicited from a witness during private session qualifies as ‘confidential information’ for the purposes of the Confidential Information Protocol and that the Prosecution therefore ought to follow the relevant safeguards contained in paragraphs 5 to 11 of the protocol during the course of its investigations. It further notes that the protocol does not provide that the Chamber’s authorisation is necessary for the Prosecution’s intended use of information. In light of the foregoing, no ruling by the Chamber is required and the Request is dismissed *in limine*.

⁵ Decision on 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, 12 December 2014, ICC-01/04-02/06-412, and Annex A.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DISMISSES the Request *in limine*.

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

A handwritten signature in black ink, consisting of a large, stylized 'F' followed by a smaller, cursive signature, positioned above a horizontal line.

Judge Robert Fremr, Presiding Judge

A handwritten signature in black ink, appearing to be 'K. Ozaki', positioned above a horizontal line.

Judge Kuniko Ozaki

A handwritten signature in black ink, consisting of three distinct characters, positioned above a horizontal line.

Judge Chang-ho Chung

Dated this 15 February 2018
At The Hague, The Netherlands