

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **11 April 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**

**Decision on disclosure concerning an individual previously considered to be  
called as a witness in rebuttal**

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 the Defence**

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**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

**Trial Chamber VI** ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda* ('Ntaganda case'), having regard to Articles 64, 67, and 68 of the Rome Statute ('Statute'), Rules 77 and 81 of the Rules of Procedure and Evidence ('Rules'), and Regulations 23 *bis* and 24(5) of the Regulations of the Court ('Regulations'), issues this 'Decision on disclosure concerning an individual previously considered to be called as a witness in rebuttal'.

## I. Procedural history and submissions

1. On 9 March 2018, the Chamber directed the Office of the Prosecutor ('Prosecution') to file lesser redacted versions of: (i) a filing relating to an investigative step concerning an individual ('Individual') it had previously considered calling as a witness in rebuttal ('Filing 2148');<sup>1</sup> and (ii) the 'Prosecution preliminary submissions concerning the presentation of evidence in rebuttal' ('Filing 2179'),<sup>2</sup> or, alternatively, to provide further information as to why the lifting of certain redactions would lead to the identification of the Individual. It further ordered the Prosecution to review the information provided by the Individual with a view to identifying any information disclosable to the defence team for Mr Ntaganda ('Defence'), and, if applicable, disclose any such information without delay, in line with the regime established in the 'Decision on the Protocol establishing a redaction regime' ('Redaction Protocol').<sup>3</sup> In case of uncertainty concerning the extent of its disclosure obligations, or serious and justified concerns that certain information could not be disclosed without revealing the Individual's identity, the Prosecution was ordered to provide the Chamber with the relevant information in order for the

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<sup>1</sup> 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. A confidential redacted version was filed on 16 February 2018 as ICC-01/04-02/06-2148-Conf-Red.

<sup>2</sup> Second confidential redacted version of "Prosecution preliminary submissions concerning the presentation of evidence in rebuttal", 11 January 2018, ICC-01/04-02/06-2179-Conf-Exp, 25 January 2018, ICC-01/04-02/06-2179-Conf-Red2.

<sup>3</sup> 12 December 2014, ICC-01/04-02/06-411 and Annex A.

Chamber to determine whether, and under which conditions, such information is disclosable to the Defence ('Decision 2252').<sup>4</sup>

*Prosecution Submissions*

2. On 14 March 2018, the Prosecution filed submissions ('Prosecution Submissions')<sup>5</sup> in relation to Decision 2252, including a statement ('Statement')<sup>6</sup> and an investigation report ('Report')<sup>7</sup> related to the Individual. The Prosecution requests that: (i) should the Chamber find that any information provided by the Individual to the Prosecution is disclosable, it authorise the non-disclosure of the relevant information in line with Rule 81 ('Request for Non-disclosure'); and (ii) the Chamber authorise redactions to paragraph 3 of Filing 2179 ('Request to Maintain Redactions'). The Prosecution further provided a second confidential redacted version of Filing 2148, lifting the redactions referred to by the Chamber in Decision 2252, and indicating that it 'awaits the Chamber's confirmation that it deems [this version] to sufficiently protect [the Individual's] identity and well-being'.<sup>8</sup>

(i) Request for Non-disclosure

3. At the outset, the Prosecution argues that a further review of the information provided by the Individual has confirmed its previous conclusion that such information ought not to be disclosed. Specifically, the Prosecution submits that the information: (i) is incriminatory in nature rather than potentially exculpatory, as it contradicts a specific portion of the accused's testimony; (ii) is not

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<sup>4</sup> Decision on Defence requests for lifting of redactions and disclosure, ICC-01/04-02/06-2252. For further details on the procedural history related to this issue, *see also* the Decision on Prosecution request for presentation of evidence in rebuttal (ICC-01/04-02/06-2197-Conf) and related filings, 26 February 2018, ICC-01/04-02/06-2246.

<sup>5</sup> Prosecution's submissions in relation to "Decision on Defence requests for lifting of redactions and disclosure", ICC-01/04-02/06-2252-Conf, ICC-01/04-02/06-2257-Conf-Exp and confidential *ex parte* Annexes A-C. A confidential redacted version was filed on 15 March 2018 as ICC-01/04-02/06-2257-Conf-Red.

<sup>6</sup> ICC-01/04-02/06-2257-Conf-Exp-AnxA.

<sup>7</sup> ICC-01/04-02/06-2257-Conf-Exp-AnxB.

<sup>8</sup> Prosecution Submissions, ICC-01/04-02/06-2257-Conf-Exp, para. 28.

disclosable under Rule 76 since the Prosecution does not intend to rely on it; (iii) is not disclosable under Article 67(2) since it does not tend to show the innocence of the accused, mitigate his guilt, or affect the credibility of Prosecution evidence; and (iv) is not disclosable under Rule 77 because it is not material to the preparation of the Defence, was neither obtained from nor belonged to the accused, and is expected to be within the personal knowledge of the accused, who will not be altering his testimony on this basis or need to respond thereto.<sup>9</sup>

4. The Prosecution further submits that disclosure of the information provided by the Individual would lead to his identification, noting that certain statements, in isolation or in combination, would considerably narrow the pool of individuals to whom the Individual could belong.<sup>10</sup> According to the Prosecution, given 'the specificity of the information provided on a discrete issue, no lesser means are available to protect [the Individual] than to order non-disclosure of the totality of the information he provided'. In these circumstances, and in the event that the Chamber finds any of the information provided by the Individual disclosable, it requests that the Chamber authorise non-disclosure under Rule 81(4) and in accordance with the Chamber's previous decision to protect the Individual's identity.<sup>11</sup>

(ii) Request to Maintain Redactions

5. With regard to the Chamber's consideration that the redactions in paragraph 3 of Filing 2179 can be limited to references to the Individual without revealing his identity, the Prosecution asserts that lifting any of the redactions will identify the Individual because narrowing the pool of potential individuals, in combination

<sup>9</sup> Prosecution Submissions, ICC-01/04-02/06-2257-Conf-Exp, paras 8-11.

<sup>10</sup> Prosecution Submissions, ICC-01/04-02/06-2257-Conf-Exp, paras 14-19.

<sup>11</sup> Prosecution Submissions, ICC-01/04-02/06-2257-Conf-Exp, paras 12-13 and 20, referring to Decision on expedited Defence request for reclassification of *ex parte* documents, 15 February 2018, ICC-01/04-02/06-2230, para.11, wherein the Chamber held that non-disclosure of the Individual's identity was justified and necessary.

with other details now being provided to the accused, would lead to his identification, contravening the Chamber's decision to protect the Individual's identity as well its obligation to protect persons who are at risk on account of their cooperation with the Court as set out in Article 68(1).<sup>12</sup> Lastly, the Prosecution argues that its security concerns for the Individual are heightened in light of his personal security-related circumstances.<sup>13</sup> In relation to the lifting of any of the redactions identified by the Chamber in Filing 2148, the Prosecution expresses concerns that this may identify the Individual, on the basis that it would narrow down the relevant portion of the accused's testimony to a context in which only very few individuals were discussed.<sup>14</sup>

### *Defence Response*

6. On 26 March 2018, the Defence responded to the Prosecution Submissions, opposing the Prosecution's requests, and seeking further relief ('Defence Response').<sup>15</sup> Specifically, the Defence requests: (i) disclosure of all notes or statements provided by the Individual to the Prosecution; (ii) reclassification of the Statement and the Report; and (iii) reclassification of Filing 2148 and Filing 2179, 'and all other related Prosecution filings that are to any extent *ex parte*' (collectively, 'Request for Disclosure').
7. In the alternative, if non-disclosure of the Individual's identity 'is deemed necessary and justified under Rule 81(4) or on any other basis', the Defence requests that the Chamber order the Prosecution to provide 'the least redacted version' of the Statement and the Report 'consistent with preserving [the Individual's] identity', as well as lesser redacted versions of Filing 2148 and

<sup>12</sup> Prosecution Submissions, ICC-01/04-02/06-2257-Conf-Exp, para. 26.

<sup>13</sup> Prosecution Submissions, ICC-01/04-02/06-2257-Conf-Exp, para. 23.

<sup>14</sup> Prosecution Submissions, ICC-01/04-02/06-2257-Conf-Exp, para. 22.

<sup>15</sup> Response to "Confidential redacted version of 'Prosecution's submissions in relation to 'Decision on Defence requests for lifting of redactions and disclosure', ICC-01/04-02/06-2252-Conf", 14 March 2018, ICC-01/04-02/06-2257-Conf", ICC-01/04-02/06-2262-Conf.

Filing 2179, the Prosecution Submissions, and any other related Prosecution filings that are to any extent *ex parte* ('Alternative Defence Request'). Finally, the Defence requests that the Prosecution Submissions<sup>16</sup> and the Defence Response be reclassified as public.<sup>17</sup>

8. In support of its requests, the Defence argues that in submitting the entirety of the Individual's testimony to the Chamber, the Prosecution exceeded the scope of submissions envisaged in Decision 2252, and undermined its purpose in that the Chamber 'has now been more fully exposed *ex parte* to all of the information provided by the [Individual]', which the Prosecution has characterised as incriminatory. As a result, the Defence argues that 'the extent of prejudice arising from the *ex parte* submissions is now greater than before the Prosecution Submissions.'<sup>18</sup>
9. The Defence further argues that Rule 81(4) does not justify non-disclosure of the substantive information now conveyed to the Chamber. In this regard, the Defence questions whether the Prosecution's claim that none of the substantive information can be communicated without revealing the Individual's identity is substantiated, and urges the Chamber to: (i) scrutinise all filings in relation to this matter to assess whether all facts adverse to the Prosecution are available for the Chamber's consideration; (ii) re-evaluate its previous finding that non-disclosure of the Individual's identity is justified and necessary and not unduly prejudicial to the accused; and (iii) scrutinise whether the protection concerns before it are substantiated, whether the Individual has expressed these concerns and their basis under oath, and whether any substantiated concerns outweigh

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<sup>16</sup> The Chamber understands that the reference to 'Prosecution Notice' in the Defence Response, ICC-01/04-02/06-2262-Conf, para. 3 refers in fact to the confidential redacted version of the Prosecution Submissions, ICC-01/04-02/06-2257-Conf-Red.

<sup>17</sup> Defence Response, ICC-01/04-02/06-2262-Conf, paras 30-33.

<sup>18</sup> Defence Response, ICC-01/04-02/06-2262-Conf, paras 8-15.

the prejudice to the fairness of the proceedings caused by permitting extensive incriminatory information concerning the merits of this case to remain *ex parte*.<sup>19</sup>

10. According to the Defence, the issue at stake is not whether the judges are ‘psychologically or professionally capable of banishing the [relevant] information from their minds in their deliberations’, but rather: (i) the ‘direct violation’ of the requirement under Article 63(1) that the accused be present during the trial; (ii) ‘the offering of *ex parte* submissions that are not statutorily authorised’; (iii) ‘the fairness of the trial and the reasonable apprehension of bias arising from substantial *ex parte* submissions having been made, combined with the provision of incriminating information on an *ex parte* basis’; and (iv) the fact that the identity of the person who provided information on the merits of the case ‘is essential, not merely incidental, to the Defence’s understanding of the information.’<sup>20</sup>

#### *Prosecution Reply*

11. On 28 March 2018, the Prosecution sought leave to reply to three issues raised in the Defence Response (‘Request for Leave to Reply’).<sup>21</sup>
12. On 3 April 2018, the Chamber: (i) rejected leave to reply in relation to two of the issues identified in the Request for Leave to Reply, on the basis that it would not be assisted by further submissions on these issues; and (ii) granted leave to reply in relation to one issue identified by the Prosecution (‘Decision on Request for Leave to Reply’).<sup>22</sup>

<sup>19</sup> Defence Response, ICC-01/04-02/06-2262-Conf, paras 16-21.

<sup>20</sup> Defence Response, ICC-01/04-02/06-2262-Conf, paras 22-29.

<sup>21</sup> Prosecution request for leave to reply to 26 March 2018 Defence Response (ICC-01/04-02/06-2262-Conf), 27 March 2018, ICC-01/04-02/06-2264-Conf.

<sup>22</sup> Email communication from the Chamber to the parties and participants on 3 April 2018, at 17:01.



13. On 5 April 2018, in line with the time-limit established by the Chamber, the Prosecution filed its reply ('Prosecution Reply'),<sup>23</sup> asserting that the Chamber's review of materials to determine whether they are disclosable or to decide on a request for non-disclosure under Rule 81(4) is neither prejudicial to, nor inconsistent with, the accused's fair trial rights. In this respect, the Prosecution notes that: (i) the Chamber cannot assess whether an item is disclosable if it cannot see it; (ii) the Chamber has the power to review material to determine disclosure in case of uncertainty and to adjudicate requests for non-disclosure to protect witnesses and victims or ongoing investigations under Articles 64, 67, and 68 and Rule 81(2) and (4); (iii) chambers are routinely seized of applications for redactions, non-disclosure, and to determine the scope of disclosure, and, in this context, they cannot avoid reviewing the relevant material in full; and (iv) the Chamber has previously reviewed information in relation to which it authorised redactions, noting that the Prosecution was not relying on the relevant witnesses, and also considered, in relation to several of these witnesses, the fact that their material mainly contained incriminatory information.<sup>24</sup> Lastly, the Prosecution requests the reclassification of the Prosecution Reply as public,<sup>25</sup> and reiterates its request for the Chamber to authorise the non-disclosure of the information provided by the Individual.<sup>26</sup>

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<sup>23</sup> Prosecution reply to 26 March 2018 Defence Response (ICC-01/04-02/06-2262-Conf), ICC-01/04-02/06-2270-Conf.

<sup>24</sup> Prosecution Reply, ICC-01/04-02/06-2270-Conf, paras 2-7.

<sup>25</sup> Prosecution Reply, ICC-01/04-02/06-2270-Conf, para. 11.

<sup>26</sup> Prosecution Reply, ICC-01/04-02/06-2270-Conf, para. 12.

## II. Analysis

### 1. Contextual background and preliminary considerations

14. In the context of a Defence request for reclassification, the Chamber found that non-disclosure of the Individual's identity was justified and necessary, and, noting that the information provided by him will not be adduced, not unduly prejudicial to the accused.<sup>27</sup> Accordingly, considering that *ex parte* classification of the entirety of certain documents, including Filing 2148, was 'neither "truly necessary" nor "proportionate"', the Chamber ordered the Prosecution to file a confidential redacted version of the relevant filings, 'with redactions being limited to any information that would reveal the identity of the [I]ndividual'.<sup>28</sup> Subsequently, in Decision 2252, noting the Prosecution's indication that the information provided, or expected to be provided, by the Individual relates to the testimony of the accused and was found to be of sufficient importance to be considered for a request to present evidence in rebuttal, the Chamber considered that the information could be *prima facie* material, and therefore, disclosable to the Defence.<sup>29</sup>

15. Having received further submissions on the implementation of Decision 2252, the Chamber must assess the new and/or renewed requests in light of all the information, arguments, and material now before it. This assessment demands a careful balancing exercise, 'with due regard to the competing interests at stake',<sup>30</sup> weighing the right of the accused to a fair trial, and notably his right to be provided with any information that is material to the preparation of his defence,

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<sup>27</sup> Decision on expedited Defence request for reclassification of *ex parte* documents, 15 February 2018, ICC-01/04-02/06-2230 ('Reclassification Decision'), para. 11.

<sup>28</sup> Reclassification Decision, ICC-01/04-02/06-2230, para. 12.

<sup>29</sup> Decision 2252, ICC-01/04-02/06-2252, para. 24.

<sup>30</sup> See Decision on the Prosecution request for redactions, 7 April 2015, ICC-01/04-02/06-545-Conf-Exp. A confidential *ex parte* redacted and a public redacted version were filed on the same day as ICC-01/04-02/06-545-Conf-Exp-Red and ICC-01/04-02/06-545-Red2 ('Decision 545'), para. 16.

against the Chamber's obligation under Article 68(1) to protect victims, witnesses, and 'other persons at risk on account of the activities of the Court'.<sup>31</sup>

16. For that purpose, the Chamber will have regard to a series of criteria, including:
- (i) the existence of an objectively justifiable risk to the safety of the person concerned;
  - (ii) whether the risk arises from disclosing the particular information to the Defence and the accused as opposed to the general public;
  - (iii) the infeasibility or insufficiency of less restrictive protective measures; and
  - (iv) an assessment as to whether the restrictions sought are prejudicial to, or inconsistent with, the rights of the accused and a fair and impartial trial.<sup>32</sup>
17. As this assessment requires the Chamber to review certain information, the Chamber is unpersuaded by the Defence's claim that the applicable statutory provisions do not allow the Prosecution to submit potential Rule 77 material, and specifically incriminatory evidence, to the Chamber for an *ex parte* review. Indeed, as argued in the Prosecution Reply, the Chamber has the power - and in certain instances, the duty - to review *ex parte* information in order to adjudicate whether it is disclosable.<sup>33</sup>
18. In this context, and regardless of the outcome of its assessment, the Chamber recalls that the presentation of evidence has been closed, and that it has and will not consider the information underlying this decision for purposes other than the present litigation.

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<sup>31</sup>*The Prosecutor versus Germain Katanga and Mathieu Ngudjolo Chui*, 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 ('*Katanga Appeals Judgment*'), paras 54-56.

<sup>32</sup> See Decision 545, ICC-01/04-02/06-545-Red2, para. 16.

<sup>33</sup> See *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Appeals Chamber, Judgment on the appeal of Mr Abdallah Banda Abakaer Nourain and Mr Saleh Mohammed Jerbo Jamus against the decision of Trial Chamber IV of 23 January 2013 entitled 'Decision on the Defence's Request for Disclosure of Documents in the Possession of the Office of the Prosecutor', 28 August 2013, ICC-02/05-03/09-501 ('*Banda Appeals Judgment*'), para. 39.

2. Analysis of the Request for Non-disclosure, Request for Disclosure, and Request to Maintain Redactions

(i) *Whether the information provided by the Individual is disclosable*

19. The information submitted by the Prosecution for the Chamber's review includes a three-page Statement<sup>34</sup> as well as a five-page Report.<sup>35</sup> While the majority of the information in the Statement is of procedural rather than substantive nature, two sentences relate to facts covered by a specific portion of the accused's testimony, and may be considered as challenging the accused's account on the issue discussed in that context. The Report contains information relating to procedural and logistical matters surrounding the Prosecution's interview with the Individual, security concerns expressed by the Individual, as well as references to statements made by the Individual in relation to facts covered by the aforementioned specific portion of the accused's testimony.

20. As both the Statement and the Report include information relating to the credibility of the testimony of the accused, and which, according to the Prosecution, is incriminatory in nature, the Chamber finds that the information provided by the Individual is of relevance to the facts in the present case.

21. The fact that the Prosecution has ultimately decided not to rely on the relevant information may be considered as attenuating the potential prejudice that would be caused by non-disclosure to the accused, when balanced against the Chamber's obligations under Article 68(1).<sup>36</sup> However, this does not render the information irrelevant to the preparation of the defence,<sup>37</sup> or undermine the

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<sup>34</sup> ICC-01/04-02/06-2257-Conf-Exp-AnxA.

<sup>35</sup> ICC-01/04-02/06-2257-Conf-Exp-AnxB.

<sup>36</sup> See in this regard, Reclassification Decision, ICC-01/04-02/06-2230, para. 11, where the Chamber found that, noting that the information provided by the Individual will not be adduced, non-disclosure of his identity was not unduly prejudicial to the accused.

<sup>37</sup> See in this regard, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on Response to Prosecution Application Regarding the Disclosure of the Identities of Certain Individuals Who Will not Appear

general principle that recourse to *ex parte* submissions should be exceptional,<sup>38</sup> particularly when the relevant information relates to the facts of the case.

22. In view of the above, and in line with the principle that the term ‘material to the preparation of the defence’ is to be interpreted broadly,<sup>39</sup> the Chamber concludes that both documents are, in fact, disclosable under Rule 77 of the Rules, given their *prima facie* materiality to the present case.

(ii) *Whether restrictions on disclosure are applicable and appropriate*

23. The Chamber will thus proceed to examine whether one or more of the restrictions on disclosure provided for under the Rules, in particular, Rule 81 of the Rules, are applicable and appropriate.<sup>40</sup>

24. The Chamber is mindful of the security concerns expressed by the Individual concerning potential disclosure of his identity and Statement to the Defence and the accused, as well as the Prosecution’s submissions in relation to the Individual’s personal security-related situation,<sup>41</sup> which formed the basis of the Chamber’s initial ruling to withhold the Individual’s identity from the Defence. While it considers the question whether the security concerns, and their basis, were expressed under oath<sup>42</sup> to be of limited relevance to its determination, the Chamber notes that the concerns expressed by the Individual are of a rather general and hypothetical nature and do not refer to any concrete threats received in connection with his potential involvement with the Court.

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as Trial Witnesses, 28 August 2013, ICC-01/09-01/11-886, where the trial chamber, prior to the commencement of the trial proceedings, found that information in screening notes of persons who will not be called as witnesses must be disclosed when the information is covered by Article 67(2) and Rule 77.

<sup>38</sup> Decision on Defence request for stay of proceedings with prejudice to the Prosecution, 28 April 2017, ICC-01/04-02/06-1883, para. 49, referring to *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on the procedures to be adopted for *ex parte* proceedings, 6 December 2007, ICC-01/04-01/06-1058, para. 12.

<sup>39</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeal of Mr. Lubanga Dyilo against the Oral Decision of Trial Chamber I of 18 January 2008, 11 July 2008, ICC-01/04-01/06-1433, para. 78.

<sup>40</sup> See *Banda Appeals Judgment*, para. 35.

<sup>41</sup> Prosecution Submissions, ICC-01/04-02/06-2257-Conf-Exp, para. 23.

<sup>42</sup> See Defence Response, ICC-01/04-02/06-2262-Conf, para. 21.

25. The Chamber further underlines that, at this stage, the issue of disclosing the Individual's identity to the general public has not been raised. Rather, the relief sought by the Defence is limited to disclosure to: (i) the Defence, who is bound by confidentiality obligations under the Code of Professional Conduct for counsel and the Code of Conduct for Investigators; and (ii) the accused, who, as previously emphasised,<sup>43</sup> is under existing obligations under the Court's statutory framework to refrain from disclosing confidential case information to his contacts, including insofar as such conduct would violate existing decisions and orders issued by the Chamber,<sup>44</sup> defeat the confidential classification of filings under Regulation 23 *bis* of the Regulations, or infringe Article 70 of the Statute.
26. Finally, the Chamber underlines that any specific security concerns that may arise from disclosure of the Individual's identity may be brought to the attention of the Victims and Witnesses Unit, in line with its mandate to provide protection to victims, witnesses, and persons at risk.<sup>45</sup> In these circumstances, the Chamber does not consider that withholding the identity of, and information provided by, the Individual is 'necessary so as to preserve the fundamental rights of an individual put at risk by the activities of the [...] Court'.<sup>46</sup>
27. Having balanced all the aforementioned factors, including the content and nature of the information provided by the Individual, the Chamber concludes that, at this stage, the identity of the Individual, and the information provided by him in relation to the facts of the *Ntaganda* case, shall be disclosed to the Defence.

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<sup>43</sup> Decision on the present restrictions on Mr Ntaganda's contacts, 19 February 2018, ICC-01/04-02/06-2236-Conf. A public redacted version was filed on the same day as ICC-01/04-02/06-2236-Red.

<sup>44</sup> *See, for example*, 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-AnxA, paras 4 and 7-8.

<sup>45</sup> *See, inter alia*, Regulations 93(1) and 96 of the Regulations of the Registry.

<sup>46</sup> *See* Prosecution Reply, ICC-01/04-02/06-2270-Conf, paras 9-10, referring to *Katanga* Appeals Judgment, paras 58, 62, and 69.

28. Consequently, and in line with this general direction, the Prosecution shall disclose the Statement and Report to the Defence.

*(iii) Further directions following from the Chamber's determination*

29. In light of the Chamber's determination that the Individual's identity shall be disclosed to the Defence, the Chamber finds that the Prosecution Request to Maintain Redactions cannot be sustained. The Chamber directs the Prosecution to review all of its filings relating to the Individual, and file lesser redacted versions or request their reclassification, as applicable, pursuant to Regulation 23 *bis* (3).

30. Lastly, the Chamber considers that the Defence Response, the Prosecution Reply, and the redacted version of the Prosecution Submissions do not contain any information requiring confidential treatment and shall therefore be reclassified as public.

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

**PLACES** on the record the Decision on Request for Leave to Reply;

**REJECTS** the Request for Non-disclosure;

**GRANTS** the Request for Disclosure;

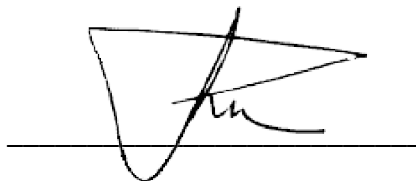
**REJECTS** the Request to Maintain Redactions;

**DIRECTS** the Prosecution to disclose the Statement and the Report to the Defence;

**DIRECTS** the Prosecution to either file lesser redacted versions or request reclassification of all its filings relating to the Individual; and

**ORDERS** the reclassification of the Defence Response, the Prosecution Reply and the redacted version of the Prosecution Submissions as public.

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



**Judge Robert Fremr, Presiding Judge**



**Judge Kuniko Ozaki**



**Judge Chang-ho Chung**

Dated 11 April 2018

At The Hague, The Netherlands