

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/04-02/06
Date: **16 December 2013**

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single Judge

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

**URGENT
Public**

**Prosecution's Response to the Defence's Request to Re-classify as Public
Prosecution filing ICC-01/04-02/06-167-Conf**

Source: Office of the Prosecutor

Document 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 Marc Desalliers
Ms Caroline Buteau
Ms Andrea Valdivia

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

Other

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

Prosecution's Submissions

1. On 9 December 2013, the Prosecution filed, on a confidential basis, its *Request to adopt a Protocol for the handling of confidential information and on contact with witnesses of the opposing party* (the "Request")¹
2. On 12 December 2013, the Defence filed a response to the Request. In this response, the Defence makes a fresh request that the Single Judge re-classify the Request from confidential to public, notwithstanding the existence of a public redacted version of the Request.²
3. The Prosecution hereby submits its response to this Defence request, on an urgent basis.
4. The Prosecution maintains that the Confidential classification is necessary to protect three witnesses. Contrary to the Defence assertions,³ the Prosecution's justification for redacting the information in the public redacted version of the filing relates to the *substance* of the information the witnesses provide, not to the protection of their witness codes. Indeed, in footnote 18 of the public redacted version of the Request, the Prosecution identified by code the three victims of sexual violence. The interest being protected, as the Prosecution set out clearly in paragraph 9 of the Request, is the *information* provided by these three witnesses (in one case in the form of a direct quote)⁴ that identify which family members two of the witnesses told of their sexual abuse. The Prosecution considered that such information could be identifying, even when witness codes are being used.

¹ ICC-01/04-02/06-167-Conf.

² ICC-01/04-02/06-174.

³ ICC-01/04-02/06-174 at para. 35.

⁴ See ICC-01/04-02/06-167-Conf, para. 25.

5. The Defence has not provided good cause for altering the classification status of this filing.⁵ As the Prosecution has stated above, there exists a risk that these witnesses could be identified by the public. A public redacted version of the filing exists, limiting the redactions to a minimum. The Prosecution requests that the Single Judge reject the Defence's request for the reclassification of the Request from Confidential to Public.



Fatou Bensouda, Prosecutor

Dated this 16th Day of December 2013
At The Hague, the Netherlands

⁵ ICC-01/04-02/06-174, para. 35.