

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **9 January 2014**

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***

PUBLIC REDACTED version

With Confidential, *Ex Parte* – Prosecution Only Annex 1

Prosecution's Further Observations on the "*Requête de la Défense aux fins de levée de certaines expurgations et communication de documents*" (ICC-01/04-02/06-164)

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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Introduction

1. The Prosecution provides further observations on the Defence's request for the lifting of certain redactions and access to certain *ex parte* filings, as requested by the Single Judge.

Confidentiality

2. The present filing is classified as "Confidential, *ex parte*" given that it refers to the content of *ex parte* or *under seal* documents to which it seeks to maintain certain redactions. Providing the information to the Defence in advance of a determination by the Single Judge would render moot the existing redactions as well as those that the Prosecution seeks to maintain. The Prosecution will file a public redacted version of this filing.

Procedural Background

3. On 22 August 2006, Pre-Trial Chamber I issued the first arrest warrant under seal against Mr Ntaganda.¹ On 28 April 2008, Pre-Trial Chamber I issued a public warrant of arrest against Mr Ntaganda.² On 13 July 2012, Pre-Trial Chamber II issued a second public arrest warrant against Mr Ntaganda.³
4. On 20 March 2013, Mr Ntaganda met a representative of the Court at the United States Embassy in Kigali, Rwanda and confirmed his surrender to the Court.⁴ He was transferred to the Court on 22 March 2013.⁵

¹ ICC-01/04-02/06-2.

² ICC-01/04-02/06-18.

³ ICC-01/04-02/06-36-RED-tFRA.

⁴ ICC-01/04-02/06-44-Conf-Exp, para.1.

⁵ ICC-01/04-02/06-44-Conf-Exp, paras.3-4.

5. On 5 December 2013, the Defence filed a request for the lifting of certain redactions and access to *ex parte* filings.⁶ On 6 December 2013, the Senior Adviser of the Pre-Trial Division, on behalf of the Single Judge of the Chamber, requested the Prosecution provide observations on the reclassification of documents by Monday 16 December 2013.⁷ On 16 December 2013, the Prosecution filed its observations.⁸ On 6 January 2014, the Single Judge requested that the Prosecution file observations on four documents by 8 January 2014.⁹

Prosecution's Observations

A. Request for access to *ex parte* communications

6. The Defence seeks access to a number of filings and/or decisions that are currently classified as *ex parte*.¹⁰
7. The Single Judge has requested that the Prosecution submit observations on four documents that are the subject of the Defence's request: ICC-01/04-02/06-4-Conf-Exp; ICC-01/04-02/06-15-Conf-Exp; ICC-01/04-02/06-28-US and ICC-01/04-02/06-22-Conf-Exp-Anx-1. The Prosecution will address each of the documents in turn.

(i) ICC-01/04-02/06-4-Conf-Exp

8. The Prosecution does not oppose that the filing be provided to the Defence in redacted form. The Prosecution requests redactions to several passages¹¹ [REDACTED]. The Prosecution attaches the filing with its proposed redactions as Confidential, *ex parte* Annex 1.

⁶ ICC-01/04-02/06-164.

⁷ E-mail from the Senior Legal Adviser to the Pre-Trial Division dated 9 December 2013 at 19:52.

⁸ ICC-01/04-02/06-182-Conf-Exp with public redacted version ICC-01/04-02/06-182-Red.

⁹ E-mail from the Senior Legal Adviser to the Pre-Trial Division dated 6 January 2014 at 14:44.

¹⁰ ICC-01/04-02/06-164, paras. 32-34.

¹¹ [REDACTED].

(ii) *ICC-01/04-02/06-15-Conf-Exp*

9. The Prosecution does not oppose the re-classification of this filing as Public.

(iii) *ICC-01/04-02/06-28-US*

10. The Prosecution does not oppose the re-classification of this filing as Public.

(iv) *ICC-01/04-02/06-22-Conf-Exp-Anx-1*

11. A public redacted version of this annex currently exists.¹² The Prosecution submits that the redaction must be maintained as regards the public because it relates to Prosecution witnesses, four of whom testified in the *Lubanga* case with protective measures under Rule 87 of the Rules of Procedure and Evidence, protecting their identity from public disclosure. The redaction can be lifted, however, for the Defence as it already has access to these witness identities. Accordingly, the Prosecution does not oppose that the filing is re-classified as “Confidential- Prosecution and Defence Only” in this case.

Conclusion

12. The Prosecution requests that the Single Judge authorise the requested redactions to one filing, as set out herein.



Fatou Bensouda, Prosecutor

Dated this 9th Day of January 2014
At The Hague, the Netherlands

¹² ICC-01/04-108-Red.