

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 16 July 2015

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

Second decision on Prosecution request for authorisation of non-disclosure of five documents

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 Bosco Ntaganda

Mr Stéphane Bourgon

Mr Luc Boutin

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 ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 54(3)(e) and 67(2) of the Rome Statute ('Statute') and Rules 77 and 82 of the Rules of Procedure and Evidence ('Rules'), issues this 'Second decision on Prosecution request for authorisation of non-disclosure of five documents'.

I. Background and submissions

1. On 13 March 2015, the Office of the Prosecutor ('Prosecution') filed the 'Prosecution request for authorisation of non-disclosure of five documents obtained pursuant to article 54(3)(e)' ('Request'),¹ in which it sought authorisation for non-disclosure of five documents ('Five Documents') that were obtained pursuant to Article 54(3)(e) of the Statute, and for which the provider of the documents ('Information Provider') had refused to consent to disclosure.
2. On 7 April 2015, the Defence responded to the Request, opposing it.²
3. On 11 June 2015, the Chamber issued the 'Decision on Prosecution request for authorisation of non-disclosure of five documents' ('First Decision'),³ in which it instructed the Prosecution to consult with the Information Provider to again seek the Information Provider's consent, advising it of the ruling of the Chamber. The Prosecution was further instructed to consult with the Information Provider on 'whether it is possible to disclose certain information in or related to the Five Documents to the Defence. Such information could include, but is not limited to: (i) a redacted version of some or all of the Five Documents; (ii) a summary of the information contained in the Five

¹ ICC-01/04-02/06-509-Conf-Exp, available to the Prosecution only. Three days later, on 16 March 2015, it filed confidential redacted and public redacted versions of the Request: ICC-01/04-02/06-509-Conf-Red and ICC-01/04-02/06-509-Red2, respectively.

² Response on behalf of Mr Ntaganda to Prosecution request for authorisation of non-disclosure of five documents obtained pursuant to article 54(3)(e), ICC-01/04-02/06-542.

³ ICC-01/04-02/06-637.

Documents; (iii) a description of the type of documents that make up the Five Documents; and/or (iv) the identity of the Information Provider'.⁴ The Prosecution was ordered to report to the Chamber on the outcome of these consultations by 30 June 2015.⁵

4. On 30 June 2015, the Prosecution filed its report on its further consultations with the Information Provider ('Report').⁶ The Prosecution informs the Chamber that the Information Provider does not consent to disclosure of its identity to the Defence.⁷ However, the Information Provider does consent to the disclosure of summaries of four of the Five Documents, but not to the disclosure of the documents in any other form. The Prosecution has prepared summaries ('Four Summaries'), which are approved by the Information Provider, that 'briefly describe the nature of the documents and their content, provide the dates of the documents, and a summary of the specific content that is relevant to the preparation of the Defence'.⁸ The Information Provider does not consent to disclosure of the other document in any form.⁹ The Prosecution further provides reasons why the said document cannot be disclosed to the Defence without the Information Provider's identity becoming known.¹⁰

⁴ First Decision, ICC-01/04-02/06-637, para. 12.

⁵ First Decision, ICC-01/04-02/06-637, para. 12 and disposition.

⁶ Prosecution's report pursuant to the "Decision on Prosecution request for authorisation of non-disclosure of five documents", ICC-01/04-02/06-637, ICC-01/04-02/06-689-Conf-Exp.

⁷ Report, ICC-01/04-02/06-689-Conf-Exp, para. 3.

⁸ Report, ICC-01/04-02/06-689-Conf-Exp, para. 10 (footnote omitted). The Four Summaries are annexed to the Report.

⁹ Report, ICC-01/04-02/06-689-Conf-Exp, para. 11.

¹⁰ Report, ICC-01/04-02/06-689-Conf-Exp, para. 12.

II. Analysis

5. The Chamber recalls its previous finding that

[T]he Five Documents are either based on original sources that have been disclosed to the Defence in their original form, or are sufficiently similar to other material disclosed to the Defence due to a common authorship or identical underlying sources. Indeed, in the Chamber's assessment, all essential elements contained in the Five Documents can be found in the analogous materials indicated by the Prosecution.¹¹

6. Whilst the Chamber already considered that 'no undue prejudice to the accused would arise from non-disclosure of the Five Documents',¹² having reviewed the Four Summaries, it is satisfied that any potential prejudice would be mitigated by the provision of these summaries to the Defence. The Chamber therefore authorises the non-disclosure of the Five Documents.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Request;

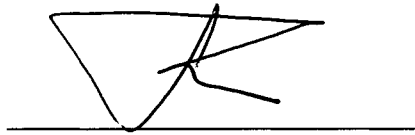
INSTRUCTS the Prosecution to disclose the Four Summaries to the Defence, by 30 July 2015; and

INSTRUCTS the Prosecution to file confidential redacted and public redacted versions of its Report, by 30 July 2015.

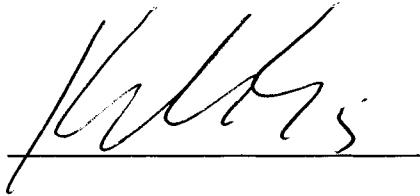
¹¹ First Decision, ICC-01/04-02/06-637, para. 11.

¹² First Decision, ICC-01/04-02/06-637, para. 11.

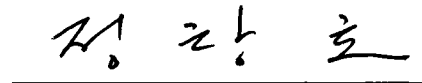
Done in both English and French, the English version being authoritative.

A stylized signature consisting of a large 'F' and 'R' intertwined, written above a horizontal line.

Judge Robert Fremr, Presiding Judge

A cursive signature, likely 'K. Ozaki', written above a horizontal line.

Judge Kuniko Ozaki

A signature in Korean characters, '정창호' (Jeong Chang-ho), written above a horizontal line.

Judge Chang-ho Chung

Dated this 16 July 2015

At The Hague, The Netherlands