

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 28 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

With Confidential, *EX PARTE* - only available to the Prosecution Annexes 1-4

Public redacted version of "Prosecution's report pursuant to the 'Decision on Prosecution request for authorisation of non-disclosure of five documents', ICC-01/04-02/06-637", 30 June 2015, ICC-01/04-02/06-689-Conf-Exp

Source: The 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 reports to Trial Chamber VI (“Chamber”) on the outcome of its further consultations with [REDACTED] (“Provider”) in relation to five documents obtained under article 54(3)(e) of the Rome Statute (“Five Documents”).
2. The Provider consents to disclosure of summaries of four of the five documents,¹ which will be disclosed without delay. It is unable to consent to the disclosure of these four documents in any other form.
3. The Provider maintains its refusal to agree to the disclosure of the fifth document² (“[REDACTED] Notes”) in any form. Furthermore, the Provider is unable to agree to the disclosure of its identity to the Defence.

Background

4. On 13 March 2015, the Prosecution requested authorisation for non-disclosure of the Five Documents (“Prosecution’s Application”).³
5. On 7 April 2015, the Defence responded to the Prosecution’s Application and made a new request for relief. It requested that the Chamber: (i) delay adjudication of the Prosecution’s Application; (ii) order the Prosecution to provide additional information on the Five Documents; and (iii) grant the Defence a further opportunity to respond.⁴
6. On 28 April 2015, the Prosecution responded to the Defence’s new request for relief and sought, in the alternative, leave to reply pursuant to regulation 24(4) of the Regulations of the Court. It also detailed for the Defence the categories of relevant

¹ One report ([REDACTED]) and three annexes ([REDACTED]).

² [REDACTED].

³ ICC-01/04-02/06-509-Conf-Exp with confidential redacted version at ICC-01/04-02/06-509-Conf-Red and public redacted version at ICC-01/04-02/06-509-Red2.

⁴ ICC-01/04-02/06-542.

information contained in the Five Documents, and identified analogous or original evidence⁵ (“Prosecution’s Further Submissions”).

7. On 11 June 2015, the Chamber issued its “Decision on Prosecution request for authorisation of non-disclosure of five documents”⁶ (“Decision”), in which it dismissed the Prosecution’s Further Submissions and denied the alternative request for leave to reply.⁷ The Chamber instructed the Prosecution to renew its consultations with the Provider in order to explore, once again, whether any measures short of complete non-disclosure were available, and to report to the Chamber on the outcome of these consultations by 30 June 2015.⁸ The Chamber directed the Prosecution to explore, in particular, whether the Provider would agree to the disclosure of (i) redacted versions of the Five Documents, (ii) summaries of the information they contain, (iii) a description of the type of documents that make up the Five Documents, and (iv) the identity of the Provider.

Confidentiality

8. This filing is classified as “Confidential, *EX PARTE*- only available to the Prosecution” pursuant to regulation 23*bis*(1) of the Regulations of the Court because it contains information of a confidential nature and concerns material that is subject to conditions imposed pursuant to article 54(3)(e). The Prosecution will file a redacted version of this filing.

Prosecution’s Submissions

9. From 12 June 2015 onwards, pursuant to the Decision, the Prosecution held consultations with the Provider and advised it of the Chamber’s Decision. The Prosecution, enquired *de novo* about the feasibility of disclosure of the documents

⁵ ICC-01/04-02/06-574.

⁶ ICC-01/04-02/06-637.

⁷ However, the Chamber took note of para.15 of the Prosecution’s Further Submissions. Decision, paras.5-7.

⁸ Decision, para.12.

themselves, redacted versions thereof, summaries of the relevant information they contain, and the identity of the Provider.

10. The Provider has agreed to the disclosure of summaries of four of the Five Documents. The summaries, prepared by the Prosecution and approved by the Provider, briefly describe the nature of the documents⁹ 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.¹⁰ The Prosecution will disclose the summaries shortly. The Provider has refused all other forms of disclosure of these four documents.

11. The Provider is unable to consent to the disclosure of the fifth document, the [REDACTED] Notes, in any form. The Provider noted that the [REDACTED] Notes merely capture information contained in a third party's reports.

12. The [REDACTED] Notes are a reproduction of facts set out in [REDACTED] reports. They do not contain any comments or analysis. They remain limited to copying relevant factual content from [REDACTED] reports viewed in the course of [REDACTED] research. [REDACTED] researcher prepared them. [REDACTED]. As developed in previous submissions, all but one of the reports underlying the [REDACTED] Notes have been disclosed to the Defence.¹¹ These reports constitute the original evidence. The remaining relevant information contained in the [REDACTED] Notes can be found in analogous evidence already disclosed.¹² Indeed, the Chamber has already assessed that no undue prejudice to the Accused would arise from the non-disclosure of the Five Documents.¹³

⁹ See Decision, para 12(iii). See also Prosecution's Further Submissions, para. 15 and footnotes 14-19, where the Prosecution had previously identified the type of information material for the Defence contained in each of the documents, and listed by ERN the analogous or original evidence already disclosed.

¹⁰ The summaries are attached in Confidential – *Ex Parte* – Annexes 1-4, for the Chamber's consideration.

¹¹ ICC-01/04-02/06-509-Conf-Red, para.10. See DRC-OTP-0208-0272 at 0275, para.12 and DRC-OTP-2067-1914 at 1916, para.10.

¹² ICC-01/04-02/06-509-Conf-Exp, para.11 and ICC-01/04-02/06-509-Conf-Exp-AnxA, pp.6-7.

¹³ ICC-01/04-02/06-637, para.11.

15. The Prosecution notes the Chamber's observations in para. 10 of the Decision and hereby informs the Chamber that it sought the Provider's consent to disclosure of the Five Documents in 2013, and the Provider refused to lift restrictions on the Five Documents in December 2014. Moreover, only two of the Five Documents (two of the annexes to the report at [REDACTED] and [REDACTED]), were the subject of an earlier ruling, in February 2014,¹⁴ when Pre-Trial Chamber II found that their non-disclosure did not prejudice the rights of the Defence at the confirmation of charges stage.¹⁵



Fatou Bensouda, Prosecutor

Dated this 28th day of July 2015
At The Hague, The Netherlands

¹⁴ ICC-01/04-02/06-247, p.10.

¹⁵ ICC-01/04-02/06-247, p.10.