

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 5 August 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

Response to “Request on behalf of Mr Ntaganda seeking access to all *inter partes* confidential material in the *Lubanga* case”

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

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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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Counsel for the Defence of Thomas
Lubanga
Legal Representative of Victims V01
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Introduction

1. The Defence seeks access to confidential material placed on the trial record in the case of *The Prosecutor v. Thomas Lubanga Dyilo* ("Request").¹ The Prosecution does not oppose the Request in principle, subject to the views of the Defence of Mr Lubanga and of the Legal Representatives of Victims on the security implications of a variation of protective measures for witnesses they called or materials they presented.

Prosecution's Submissions

2. The Defence sets out the material for which it seeks access in paragraph 1 of the Request. In this paragraph, the Defence states that it seeks: (i) all exhibits classified as confidential; (ii) all *inter partes* confidential filings; (iii) all confidential decisions issued by Trial Chamber I; and (iv) all transcripts of private and closed sessions.
3. Subsequently, in paragraph 12, the Defence notes that the Request "is limited to" certain enumerated categories of materials, including: (i) all transcripts of closed and private sessions in the *Lubanga* case; (ii) all exhibits admitted into evidence in the *Lubanga* case classified as confidential; (iii) all witness statements on the record classified as confidential; and (iv) all confidential submissions of the Parties and participants as well as all confidential decisions issued by Trial Chamber I.
4. For clarity, based on a reading of these two lists together, the Prosecution understands that the Defence seeks access to:

¹ ICC-01/04-02/06-721. The title of the filing refers to "all *inter partes* confidential material in the *Lubanga* case", which is defined on page 3 as the "Defence Request". In paragraph 1 of the Defence Request, the Defence specifies that it is seeking access to "certain confidential material placed on the trial record" of the *Lubanga* case (emphasis added), and enumerates four categories that it defines as "Requested Material". Later, in paragraph 12, the Defence states that the Defence Request "is limited to" the following categories of materials; these categories differ from those categories listed in paragraph 1.

- (i) all exhibits classified as confidential that were admitted into evidence in the *Lubanga* case;
 - (ii) transcripts of all private and closed sessions in the *Lubanga* case;
 - (iii) all decisions classified as confidential that were issued by Trial Chamber I in the *Lubanga* case;
 - (iv) all submissions classified as confidential that were filed by the Parties and participants in the *Lubanga* case; and
 - (v) all witness statements classified as confidential placed in the trial record in the *Lubanga* case.
5. The Prosecution does not oppose the Defence being granted access by the Registry to the materials set out above, given the overlap between the proceedings. To this end, the Prosecution notes that its approach was to disclose to the Defence materials disclosed in the *Lubanga* proceedings under rule 77 of the Rules of Procedure and Evidence or article 67(2) of the Statute.
6. Further, the Prosecution already requested and was granted a variation of existing protective measures under regulation 42 of the Regulations of the Court to allow for disclosure of the transcripts of witnesses who previously testified in the *Lubanga* case and upon whom the Prosecution intends to rely in these proceedings. The Prosecution defers to the views of Mr Lubanga and the Legal Representatives of Victims as to whether there are security implications in varying the protective measures imposed by Trial Chamber I for the witnesses they called or materials they presented.

Conclusion

7. The Prosecution does not oppose the Request, subject to the views of the Defence of Mr Lubanga and of the Legal Representatives of Victims on the security implications of a variation of protective measures for witnesses they called or materials they presented.



Fatou Bensouda
Prosecutor

Dated this 5th day of August 2015
At The Hague, the Netherlands