

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/04-02/06
Date: **21 January 2016**

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

**Public redacted version of "Decision on second Katanga Defence request for
permanent lifting of restrictions on contact", 16 December 2015,
ICC-01/04-02/06-1058-Conf-Exp**

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

Mr Patrick Craig

**Victims Participation and Reparations
Section**

Others

Defence team for Mr Katanga
Trial Chamber II

Trial Chamber VI ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda* ('Ntaganda case'), having regard to Articles 21(3), 64 and 68(1) of the Rome Statute and Regulations 173-175 of the Regulations of the Registry issues this 'Decision on second Katanga Defence request for permanent lifting of restrictions on contact'.

1. On 18 November 2015, the defence team for Mr Katanga ('Katanga Defence') filed an urgent request seeking permanent lifting of an order prohibiting contact between Mr Katanga and [REDACTED] on the basis that: (i) Mr Katanga had [REDACTED]; (ii) [REDACTED]; (iii) there is no suggestion of 'impropriety' in the contacts between Mr Katanga and [REDACTED]; (iv) Mr Katanga is separated from Mr Ntaganda on a different floor of the Detention Centre and has no communication with him; (v) Mr Katanga is due to be released in two months, and [REDACTED]; and (vi) [REDACTED] is a non-privileged contact and therefore any future calls [REDACTED] would be monitored ('Request').¹
2. On 19 November 2015, the Office of the Prosecutor responded opposing the request for a full lifting of the prohibition on contact between Mr Katanga and [REDACTED], but indicating that it did not oppose a temporary modification of the restriction ('Prosecution Response').² It submitted that Mr Katanga [REDACTED] 'intimately aware of the Ntaganda case,'³ the risks of witness interference remain constant and 'the fact that Mr Katanga is no longer detained together with Bosco Ntaganda does not negate the risk of him sharing any information he gained when previously in contact with the accused.'⁴

¹ Urgent Defence Request, ICC-01/04-02/06-1019-Conf-Exp.

² Prosecution response to Katanga Defence request to lift restrictions on telephone communications, ICC-01/04-02/06-1024-Conf-Exp.

³ Prosecution Response, ICC-01/04-02/06-1024-Conf-Exp, para. 8.

⁴ Prosecution response, ICC-01/04-02/06-1024-Conf-Exp, para. 11.

3. Also on 19 November 2015, the Chamber issued its 'Decision on second Katanga Defence request for lifting of restrictions on contact,' ('Decision')⁵ where it exceptionally authorised monitored telephone contacts between Mr Katanga and [REDACTED] for a period of two weeks and deferred consideration of the remainder of the Request.
4. On 8 December 2015, the Presidency of the Court issued a decision designating the Democratic Republic of the Congo ('DRC') as the state of enforcement for the remainder of Mr Katanga's sentence of imprisonment, and directing the Registry to make the necessary arrangements for his transfer.⁶
5. On 9 December 2015, as directed in the Decision, the Registry filed a report on its monitoring of the telephone contacts between Mr Katanga and [REDACTED].⁷
6. The Chamber observes that, in light of Mr Katanga's imminent transfer to the DRC, a cooperation request would be required in order to ensure that the restrictions on contact between Mr Katanga and [REDACTED] are maintained during his detention in the DRC. As to the need for such a request, the Chamber notes that the restriction on contact between Mr Katanga and [REDACTED] and the separation of Mr Katanga from Mr Ntaganda in the Court's Detention Centre would not itself necessarily provide a basis for modifying that order.⁸ Indeed, the transfer of Mr Katanga to the DRC, being the State in which the alleged crimes in the *Ntaganda* case occurred and where many of the witnesses continue to reside, could be a reason for increasing the restrictions currently in place. Nonetheless, noting that Mr Katanga's prison sentence will end soon after his transfer to the DRC, the Chamber considers that the restrictions need

⁵ ICC-01/04-02/06-1027-Conf-Exp.

⁶ Decision designating a State of enforcement, ICC-01/04-01/07-3626-Conf. Notified to the Chamber on 15 December 2015.

⁷ Report on the Active Monitoring of conversations between Mr Katanga and [REDACTED] pursuant to Trial Chamber VI's Decision ICC-01/04-02/06-1027-Conf-Exp dated 19 November 2015, ICC-01/04-02/06-1048-Conf-Exp.

⁸ Decision on restrictions in relation to certain detainees, ICC-01/04-02/06-786-Conf-Exp-Red3.

not continue during the brief period of further detention in the DRC, prior to Mr Katanga's scheduled release on 18 January 2016.⁹ At this stage, therefore, no further action is necessary and the restrictions on Mr Katanga's contacts can be lifted once Mr Katanga leaves the Court's Detention Centre.

7. The Chamber reminds Mr Katanga of his obligations of confidentiality, including that protective measures which may have been granted in any proceedings remain in full force and effect,¹⁰ and that the Court has jurisdiction over intentional acts of corruptly influencing witnesses. Finally, the Chamber entrusts that, as a matter of proper administration and to protect the integrity of the proceedings before the Court, the Registry will ensure that no confidential materials which Mr Katanga is not authorised to access or possess would be permitted to be transferred from the Detention Centre, and therefore finds it unnecessary to make any specific order in this regard.

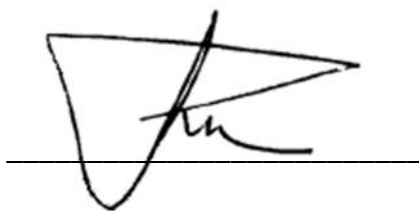
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DIRECTS that the restrictions on Mr Katanga's contacts imposed by the Chamber by way of decisions ICC-01/04-02/06-667-Conf-Exp, ICC-01/04-02/06-683-Conf-Exp and ICC-01/04-02/06-786-Conf-Exp-Red3 shall cease to have effect from when Mr Katanga leaves the Court's Detention Centre.

⁹ Request, ICC-01/04-02/06-1019-Conf-Exp, para. 6.

¹⁰ Regulation 42 of the Regulations of the Court. See also Regulation 23*bis* regarding the continuation of confidential classifications of documents until otherwise ordered by a Chamber.

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

A handwritten signature in dark ink, consisting of a large, stylized 'F' followed by a cursive 'r', positioned above a horizontal line.

Judge Robert Fremr, Presiding Judge

Two handwritten signatures in dark ink, positioned above a horizontal line. The signature on the left is 'Kuniko Ozaki' and the signature on the right is 'Chang-ho Chung'.

Judge Kuniko Ozaki

Judge Chang-ho Chung

Dated this 21 January 2016

At The Hague, The Netherlands