

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **24 June 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

Confidential

Prosecution's request to reclassify confidential decision of 2 June 2016 (ICC-01/04-02/06-1360-Conf) as public

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. This Trial Chamber, along with three others, has issued a confidential decision pertinent to the approach to be taken to disclosure (under rule 77 of the Rules of Procedure and Evidence) of requests for assistance (RFAs).¹ Although the Court's jurisprudence reflects a generally consistent approach on this issue, this is to some extent obscured by the classification of the relevant decisions. This has become relevant to recent litigation in other cases.²

2. Accordingly, to assist in the exposition of this law in the future, the Prosecution requests this Chamber to reclassify its Decision as "public". This is appropriate since the witness in question has now testified, and the facts of her testimony, her relationship with the UN and MONUC in particular, and this Court's relationship with the UN and MONUC are already in the public domain.

Confidentiality

3. This motion is filed confidentially to reflect the present status of the Decision. However, if the application is granted, the Prosecution requests the Chamber to reclassify this application likewise as "public".

Submissions

4. There is a general interest in the publicity of this Court's proceedings,³ notably including decisions which interpret "principles and rules of law".⁴ To the extent possible, the Parties and Chambers of this Court should attempt to comply with this principle, taking into account the other requirements of the Court's mandate

¹ ICC-01/04-02/06-1360-Conf ("Decision").

² See e.g. ICC-02/04-01/15-457 ("*Ongwen* Decision"), para. 14 (ruling on the disclosure under rule 77 of RFAs); ICC-02/04-01/15-462 (seeking reconsideration of the *Ongwen* Decision); ICC-02/04-01/15-468 (denying reconsideration of the *Ongwen* Decision).

³ See e.g. Statute, article 64(7) ("The trial shall be held in public").

⁴ See e.g. Statute, article 21(2) ("The Court may apply principles and rules of law as interpreted in its previous decisions"). To give effect to this provision, it is manifestly necessary that Chambers of the Court may access relevant decisions interpreting principles and rules of law.

(including *inter alia* the protection of victims and witnesses, the effectiveness of investigations, and the rights of third parties).⁵

5. It may not always be necessary to produce public versions of certain procedural motions and decisions, where the legal principles appear uncontroversial and the facts at issue must largely remain confidential. Yet Chambers should remain receptive to requests for reclassification, with suitable redactions, if circumstances change.

6. Until now, the disclosure of RFAs or similar materials under rule 77 appears to have been decided by the ordinary application of legal principles which are found in numerous public decisions. As such, there was no compelling interest in making the legal reasoning of the Decision public, taking into account the necessary confidentiality of the facts. Yet the approach of the Decision, with other confidential case-law, may recently have assumed new significance for the future interpretation of the Statute and Rules in this respect.

7. Furthermore, the reasons for the original confidentiality of the Decision appear to have fallen away. The witness in question has now testified, and her occupation and the Court's cooperation with both the UN and MONUC are already in the public domain

⁵ See *e.g.* Statute, articles 54(3)(e), 57(3)(c), 64(2) and (7), 68(1) and (2), 69(5), 72, 73, 87(3), 93(8), 99(5); rule 81.

Conclusion

8. For the reasons above, the Chamber should reclassify the Decision as "public".



Fatou Bensouda, Prosecutor

Dated this 24th day of June 2016

At The Hague, The Netherlands