

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-02/06
Date: 30 November 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

**With Confidential, *EX PARTE* Annex A - only available to the Prosecution and
Registry**

**Public redacted version of “Request for transfer of part of the case record to
Pre-Trial Chamber II”, 14 August 2015, ICC-01/04-02/06-781-Conf**

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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Legal Representatives of the Victims

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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(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

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Pre-Trial Chamber II

Prosecution's Submissions

1. The Office of the Prosecutor ("Prosecution") is currently investigating suspected offences against the administration of justice under article 70 of the Rome Statute ("Statute") in the case against the Accused.
2. As part of this investigation, on 13 August 2015, the Prosecution requested Pre-Trial Chamber II to order the Registry to provide the Prosecution with access to the Accused's and Thomas LUBANGA DYILO's (i) non-privileged call logs; (ii) non-privileged visitor logs; and (iii) recordings of non-privileged telephone conversations, from 22 March 2013,¹ to date and on an on-going basis.²
3. The Prosecution made this request to the Pre-Trial Chamber pursuant to article 57(3)(a) of the Statute and regulation 46 of the Regulations of the Court ("RoC"). [REDACTED]³ [REDACTED].⁴
4. In order for Pre-Trial Chamber II to be able to effectively assume its responsibilities under article 57 of the Statute and to decide on the Request for Judicial Assistance, it requires access to the decisions, transcripts, filings and reports relevant to this request. However, the latter are currently classified as "Confidential" or "Confidential *Ex Parte*".
5. Regulation 22 of the Regulations of the Registry provides that: "Following an order of the Chamber, all or part of one situation or case record shall be transferred to another situation or case record, for reasons relating to, *inter alia*, a joinder or separation of trials under rule 136". The use of "*inter alia*" indicates that there may be reasons *other* than joinder or separation of trials for which a

¹ The day the Accused entered the ICC Detention Centre, see ICC-01/04-02/06-41, para.7.

² ICC-01/04-638-Conf-Exp ("Request for Judicial Assistance").

³ [REDACTED].

⁴ [REDACTED].

Chamber may order the transfer of part of a case record. The present circumstances constitute such other reasons.

6. Therefore, the Prosecution requests the Chamber to order the transfer of the relevant part of the case record to Pre-Trial Chamber II.
7. For ease of reference, Annex A to this filing contains a list of the decisions, filings, transcripts, and reports relevant to the Request for Judicial Assistance. Any annexes, corrigenda and/or redacted versions of the items listed in Annex A should also be provided to the Pre-Trial Chamber in order for it to have a complete overview of the relevant litigation before the Chamber.

Confidentiality

8. This filing and its annex are classified as “Confidential, *EX PARTE* - only available to the Prosecution and Registry” pursuant to regulation 23*bis*(1) and (2) of the Regulations of the Court since they relate to an on-going Prosecution investigation and refer to filings and decisions bearing the same classification.

Request

9. Based on the foregoing, the Prosecution requests the Chamber to order the transfer of the relevant part of the case record to Pre-Trial Chamber II.



Fatou Bensouda
Prosecutor

Dated this 30th day of November 2016
At The Hague, the Netherlands