

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **15 August 2017**

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 Lubanga Defence request seeking access to reports filed by the Registry concerning the restrictions imposed on contacts of Mr Lubanga', 6 June 2017, ICC-01/04-02/06-1939-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 Christopher Gosnell

Legal Representatives of Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of Applicants

**Unrepresented Applicants for
Participation/Reparation**

Unrepresented Victims

**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

Mr Paddy Craig

**Victims Participation and Reparations
Section**

Other

Counsel for Mr Thomas Lubanga Dyilo

Trial Chamber VI ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Article 64(6)(f) of the Rome Statute and Regulations 23 *bis* and 101 of the Regulations of the Court ('Regulations'), issues the following 'Decision on Lubanga Defence request seeking access to reports filed by the Registry concerning the restrictions imposed on contacts of Mr Lubanga'.

I. Background

1. On 1 May 2017, the Chamber issued an order adopting a timetable for the filing of submissions by the Office of the Prosecutor ('Prosecution') and the defence team for Mr Lubanga Dyilo ('Lubanga Defence') with a view to conducting a review of the restrictive measures imposed on Mr Lubanga's contacts ('Order Inviting Submissions').¹ On this occasion, the Chamber noted that it had received notification of two sets of Registry reports, respectively on 5 February 2016 ('First Report') and 10 April 2017 ('Second Report', together, 'Registry Transmission Reports').²
2. On 19 May 2017, the Prosecution filed a 'Request for access to the Reports [REDACTED], whereby it submitted that access to the Registry Transmission Reports was 'necessary for the Prosecution to make informed submissions as to whether restrictions should be maintained' ('Prosecution Reclassification Request').³

¹ Order requesting submissions on the restrictions imposed on contacts of Mr Lubanga, ICC-01/04-02/06-1884-Conf-Exp, confidential *ex parte*, only available to the Prosecution, Registry and defence team for Mr Lubanga. A redacted version thereof was also notified to the defence team for Mr Ntaganda on the same day (ICC-01/04-02/06-1884-Conf-Exp-Red).

² [REDACTED].

³ ICC-01/04-02/06-1912-Conf-Exp, only available to the Prosecution, Registry and Lubanga Defence.

3. On 22 May 2017, by way of email, the Chamber informed the Prosecution, the Lubanga Defence and the Registry that it rejected the Prosecution Reclassification Request, with reasons to follow.⁴
4. Also on 22 May 2017, as instructed, the Prosecution filed its submissions on the restrictions to Mr Lubanga's contacts.⁵
5. On 24 May 2017, the Lubanga Defence filed a request seeking access to any and all documents transmitted by the Registry to the Chamber with regard to the restrictions on Mr Lubanga's contacts ('Lubanga Defence Reclassification Request').

II. Determination by the Chamber

6. The Chamber first notes that the Registry Transmission Reports are the only Registry filings on the implementation of the restrictions on Mr Lubanga's contacts submitted to the Chamber since his transfer to the DRC.
7. Concerning their classification, the Chamber notes that the Registry indicated that the Registry Transmission Reports were filed on a 'confidential, *ex parte*, only available to the Registry' basis due [REDACTED].⁶ In this regard, the Chamber observes that the reports inform the Chamber of [REDACTED].⁷
8. The Chamber further notes that, by way of these two reports, the Registry also transmitted to the Chamber [REDACTED]. The Chamber notes that the information they contain does not appear to be *prima facie* relevant to the ongoing review of the restrictions, but nonetheless considers it appropriate, in the circumstances, for Mr Lubanga to also have access to these documents.

⁴ E-mail from a Legal Officer of the Chamber on 22 May 2017 at 13:32.

⁵ Prosecution's submissions on the restrictions to Thomas Lubanga's contacts, ICC-01/04-02/06-1916-Conf-Exp. A confidential redacted version was filed on 23 May 2017 (ICC-01/04-02/06-1916-Conf-Red).

⁶ [REDACTED].

⁷ [REDACTED].

9. Accordingly, pursuant to Regulation 23 *bis* of the Regulations, the Chamber orders the reclassification of the portions of the Registry Transmission Reports which refer, in substance, to the contacts of Mr Lubanga. The Registry is therefore instructed to file a redacted version of the Second Report providing the Lubanga Defence access to the documents contained at pages 3-19 of Annex II and at pages 4-13 of Annex V and applying any further redactions considered necessary, [REDACTED].
10. Moreover, the Chamber notes that the Registry transmitted a signed statement by Mr Lubanga [REDACTED]. The Chamber sees no reason to restrict access to this document from Mr Lubanga and therefore decides that the Lubanga Defence shall have access to the document contained at pages 4-5 of Annex III to the First Report.
11. At this stage, in light of the above, and based on the information before it, the Chamber has not found it appropriate or necessary to grant the Prosecution access to the Registry Transmission Reports. In this regard, the Chamber however clarifies that the information transmitted to it by the Registry does not contain any report of interruption of calls or visits.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

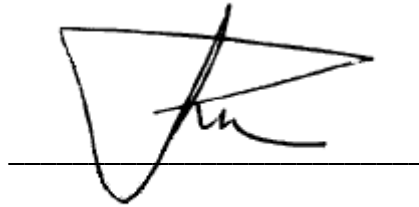
GIVES reasons for its decision rejecting the Prosecution Reclassification Request, communicated by way of email on 22 May 2017 to the Prosecution, Lubanga Defence and Registry;

GRANTS, in parts, the Lubanga Defence Reclassification Request; and

DIRECTS the Registry to file, in accordance with the directions at paragraphs 9 and 10 above, confidential redacted versions of the relevant parts of the Registry Transmissions Reports, *ex parte*, only available to the Lubanga Defence and Registry, by **9 June 2017**; and

REJECTS all other requests.

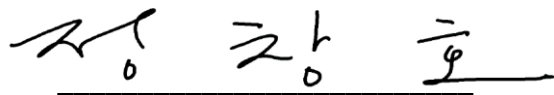
Done in both English and French, the English version being authoritative.

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

Judge Robert Fremr, Presiding Judge

A handwritten signature in black ink, appearing to read 'Kuniko Ozaki' in a cursive script, positioned above a horizontal line.

Judge Kuniko Ozaki

A handwritten signature in black ink, consisting of stylized Korean characters, positioned above a horizontal line.

Judge Chang-ho Chung

Dated 15 August 2017

At The Hague, The Netherlands